

Joint Legislative Hearing on Public Protection

2019-2020 Executive Budget Proposal

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Testimony of The Children's Defense Fund – New York

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Good morning. My name is Julia Davis and I am the Director of Youth Justice and Child Welfare at the Children's Defense Fund-New York (CDF-NY). Our *Leave No Child Behind* mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. We provide a strong, effective and independent voice for all children who cannot vote, lobby or speak for themselves. We pay particular attention to the needs of poor children, children of color and those with disabilities. Our unique approach to improving conditions for children combines research, public education, policy development, community organizing and advocacy activities, making us an innovative leader for New York's children, particularly in the areas of health, education, early childhood, child welfare and juvenile justice.

We co-lead the Raise the Age-New York coalition, and sit on the Governor's Raise the Age Implementation Taskforce, with the purpose of ensuring that the law is implemented with fidelity to its principles. We also continue to work with State-wide stakeholders to push for further reform, including strengthening protections for the oldest youth and youngest children impacted by the justice system, and building up the continuum of services and supports they need to thrive.

We would like to thank Chairwoman Krueger, Chairwoman Weinstein and members of the legislature for this opportunity to submit testimony on the Public Protection proposals in the Governor's Executive Budget for State Fiscal Year 2019-2020.

New York's youth justice system has been shrinking, with decreasing numbers of youth arrests, detention, placement, and incarceration. The State's approach to youth prosecuted in both the criminal and juvenile court systems has contributed to the progress. Our legislative and budget priorities seek to build on this success and create the conditions for sustained improvements for children and families.

Supporting Raise the Age Implementation

We strongly support the Governor's commitment to Raise the Age, including the allocation of \$200 million for implementation-related expenses in the Executive Budget proposal. This includes \$100 million in new funds in anticipation of the expansion of Raise the Age to include 17 year olds later this year. This is essential funding to support a continuum of local services, including prevention, diversion, and treatment to help keep youth in their communities. As county partners work with the State to implement their Raise the Age plans, the Executive Budget serves as a durable funding stream to sustain the reforms in communities. We are, however, disappointed that New York City appears to remain ineligible for any of the State's Raise the Age implementation dollars, despite serving the largest number of youth impacted by the law.

Ending the Prosecution of Children Under 12

As Raise the Age is implemented, this is an opportunity for New York to make further reforms in youth justice. Under current law, children as young as 7 years old can be arrested and processed as Juvenile Delinquents in Family Court.¹ As such, they may be subject to police questioning, pre-trial detention with older youth, supervision by a probation officer for up to 2 years, and mandatory confinement in an institution. We must end this by raising the lower age of jurisdiction for Juvenile Delinquency in the Family Court to 12.²

Processing and confining young children in the juvenile justice system exposes youth to damaging impacts. According to a recent article by a researcher at UCLA on prosecuting young children for delinquency, studies “show[] that the more youth are involved with the juvenile justice system--from arrest to detainment to transfer to an adult court--the higher their chances are of early death, specifically a violent one. Going to juvenile detention also increases risk for poorer life outcomes in terms of educational attainment, relationships and gainful employment.”³ Ending juvenile delinquency prosecutions for 7, 8, 9, 10 and 11-year old children will help close the school to prison pipeline, reduce incarceration (in detention or placement), and promote a more age-appropriate response to young children’s behavioral needs.

Not surprisingly, prosecuting children under the age of 12 as Juvenile Delinquents raises significant concerns about a young child’s ability to exercise his or her rights. Indeed, research has shown that there are worrying questions about the capacity of very young children to stand trial.⁴

Moreover, children prosecuted as Juvenile Delinquents may be subject to confinement, through detention (during the case) and placement (following disposition) in institutional settings. Research shows that these youth are at the greatest risk of being victims of violence when in custody, including psychological distress and physical or sexual abuse.⁵ Children are safer and better served in their homes and communities.

By ending prosecution of youth under 12, we can respond to young children’s needs through existing local social services districts, which can provide preventative services that are supportive and rehabilitative to families and children where there is a risk that the child may be placed in

¹ NY FCT Sec. 301.2(1). *See also* FINAL REPORT OF THE GOVERNOR'S COMMISSION ON YOUTH, PUBLIC SAFETY AND JUSTICE, Recommendations for Juvenile Justice Reform in New York State (2015), available at:

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice_0.pdf, at 34.

² Other states have ended the prosecution of youth under 12 for juvenile delinquency in recent years, *see e.g.*, Massachusetts

(<https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter69>);

³ Natalia Orendain, *Should Children As Young As 12 Get Locked Up For Committing Crime?* Huffpost, Jan. 15, 2019. Available at:

https://www.huffingtonpost.com/entry/juvenile-detention-age-california_us_5c2fb68be4b09dafda3bc283.

⁴ FINAL REPORT OF THE GOVERNOR'S COMMISSION ON YOUTH, PUBLIC SAFETY AND JUSTICE, Recommendations for Juvenile Justice Reform in New York State (2015), available at:

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice_0.pdf, at 35.

⁵ Sickmund and Puzanchera, eds., *Juvenile Offenders and Victims: 2014 National Report*, 216, available at: <http://1.usa.gov/1DhEoyR>.

foster care.⁶ These include home visiting programs, mental health services, respite, day treatment programs, after-school and summer programs, family engagement, mediation services, relative/kinship assistance, mentoring programs, and parenting education.⁷ These interventions are available for many very young children who are currently being charged with offenses.

Rather than rely on Juvenile Delinquency proceedings, New York should invest in a behavioral health system that provides children with psychiatric treatment, counseling, intensive home and/or community-based services in order to address the treatment needs of children with mental health issues. State Medicaid reform efforts have increasingly emphasized the importance of family-focused, community-based interventions that decrease the need for more intensive services later in life, and reduce the likelihood of children's involvement with the juvenile justice system.

Making this change will impact a significant number of young children. Based on data from 2014, outside of New York City, nearly 1500 children under the age of 13 were arrested, including 215 children aged 10 and under and 1230 children aged 10 to 12.⁸ In New York City, there were 41 arrests for youth ages 7 to 10, 115 arrests of 11-year-olds, and 361 arrests of 12-year-olds in 2013.⁹ More recent data shows that young children are also being detained. During the third quarter of 2018, there were 25 detention admissions of delinquency-charged youth aged 12 and under, and 40 admissions the previous quarter.¹⁰ Most of these youth are African American and Latino, reflecting 92% of young children aged 12 and under detained.¹¹ Detaining young children in Juvenile Delinquency prosecutions is a misguided, cruel and destructive use of our resources for children who need therapeutic support and community-based services.

Expanding Protections for Emerging Adults

New York has the opportunity to create robust protections for court-involved youth age 19-25. Adolescents do not become fully mature adults at the age of 18.¹² Research in neuroscience and psychology demonstrates that human brain development continues into the mid-20s.¹³ As a result,

⁶ Office of Children and Family Services, Preventive Services Practice Guidance Manual (2015), available at: <https://ocfs.ny.gov/main/publications/Preventive%20Services%20Guide%202015.pdf>, at 3-1.

⁷ Office of Children and Family Services, Preventive Services Practice Guidance Manual (2015), available at: <https://ocfs.ny.gov/main/publications/Preventive%20Services%20Guide%202015.pdf>, at 1-5.

⁸ FINAL REPORT OF THE GOVERNOR'S COMMISSION ON YOUTH, PUBLIC SAFETY AND JUSTICE, Recommendations for Juvenile Justice Reform in New York State (2015), available at:

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice_0.pdf, at 34.

⁹ *Id.*

¹⁰ Office of Children and Family Services Juvenile Detention Alternatives Initiative (JDAI) Quarterly Detention Report - New York State, data extract date: 12/14/2018, available at: <https://ocfs.ny.gov/main/reports/detentionReports/2018/New-York-State-JDAS-Tables-2018-Q3.pdf>, Table 1 Juvenile Delinquent Detention Population; data extract date: 8/18/2018, available at:

<https://ocfs.ny.gov/main/reports/detentionReports/2018/New-York-State-JDAS-Tables-2018-Q2.pdf>. Data showing the number of children under the age of 12 in JD detention is not publicly available.

¹¹ Office of Children and Family Services Juvenile Detention Alternatives Initiative (JDAI) Quarterly Detention Report - New York State, data extract date: 12/14/2018, available at: <https://ocfs.ny.gov/main/reports/detentionReports/2018/New-York-State-JDAS-Tables-2018-Q3.pdf>, Table 2 Juvenile Delinquent Detention Admissions by Sex, Race and Ethnicity.

¹² See generally, Selen Siringil and Lael Chester, *Emerging Adults: A distinct population that calls for an age-appropriate approach by the justice system*, June 2017, available at:

https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/MA_Emerging_Adult_Justice_Issue_Brief_0.pdf.

¹³ *Id.* at 3.

young adults are more impulsive, and more susceptible to peer pressure than adults.¹⁴ This is leading to a consensus in the field of youth development that our justice system must take a more tailored approach to responding to older youth to improve both public safety and outcomes for young people.

Under current law, nineteen year olds face adult criminal justice sentences and records that create severe, long-term barriers to participation in school, access to housing, and employment. In response, the state should create a new “Young Adult Status” covering youth up to age 25 with protections similar to existing Youthful Offender (YO) law. At the same time, we should expand existing protections under YO to benefit more youth under 19, by allowing judges discretion to grant YO status for a new misdemeanor, even to a young person who already received YO status for a prior felony. When eligible for YO status, the law should also allow judges to choose to keep the case private while it is pending. The state should also amend the statute to make YO adjudications presumptive for the first felony, unless the prosecutor shows that it is not in the interest of justice. We should also remove the surcharge of \$95 - \$300 for YO cases and allow judges to waive all fees and surcharges for youth before the court.¹⁵

Protecting Adolescents Prosecuted Before Raise the Age

Under our current law, sixteen and seventeen year olds prosecuted before Raise the Age was enacted—or even after the law was passed, but before it went into effect—must wait 10 years before they can even apply to have their records sealed. New York should make sensible fixes to “Raise the Age” sealing to shorten the waiting period and expand eligibility for these youth.¹⁶

Supporting Close to Home

Close to Home allows youth placed outside of their home as the result of juvenile delinquency proceedings to remain in small home-like environments in and near New York City. Close to Home providers utilize evidence-based models, work collaboratively with youth and their families, engage youth in pro-social community activities, and allow youth to earn education credits attending NYC Department of Education schools. Close to Home providers also manage youth’s return home after placement, through aftercare services that maintain continuity between case planners and services providers as youth go back to their families and their neighborhoods.

A 2018 evaluation of Close to Home found a number of key indicators of positive youth development and public safety improvements since the program began, including:

- 37% decline in youth detention 2012-2016 (vs. -31% in the rest of the state);

¹⁴ *Id.*

¹⁵ Please refer to the testimony before this Committee of my colleague, Kate Rubin of Youth Represent for more detailed information about the proposed Youthful Offender amendments and Young Adult Status.

¹⁶ Please refer to the testimony before this Committee of my colleague, Kate Rubin of Youth Represent for more detailed information about the need for sealing reforms for adolescents.

- 41% reduction in the number of youth absconding from facilities; and
- 91% of youth passed their academic classes (2016-2017 School Year).¹⁷

Implementation of Raise the Age has made Close to Home even more essential, as it expands to serve additional youth through the Family Court.¹⁸ Under the new law, the majority of 16- and 17-year olds will be processed in the juvenile system as opposed to the adult justice system, which will grow significantly to absorb the older adolescents over the next few years.

In prior years before State funding was cut in 2018, the City received more than \$30 million in State matching dollars to operate Close to Home. Under the current executive budget proposal, the City must shoulder these costs without State support. The lack of State funding means that the City must direct its resources to program operation and expansion, instead of investing in other system-improvements, including increases in provider workforce compensation that would strengthen the quality and continuity of services upon which justice-involved youth rely.

Funding the Continuum of Services in Youth Justice

State and local investments in prevention, community-based services, alternatives to detention and placement, and aftercare/re-entry services have helped to shrink New York’s youth justice system. Sustaining and strengthening these services, while also ensuring that youth who are detained or placed/incarcerated are cared for in a developmentally-appropriate manner, requires State leadership and significant financial support.

General funding for local youth justice services through the Supervision and Treatment Services for Juveniles Program (STSJP) program has remained flat over recent years, and State support for local juvenile justice/child welfare prevention has been diminished over the last decade (from 65% State share as codified in State statute to 62% in practice). To meet the needs of youth at risk for, or who have contact with the justice system, the State must increase its investments in local, community-based resources for vulnerable children.

Conclusion

Youth Justice in New York is at a critical moment, as it implements Raise the Age and opens a new chapter for young people. Now we have the opportunity to expand our shared commitment to children and families, by boldly embracing additional investments and reforms. We urge the Governor and the Legislature to adopt a budget that invests in the continuum of youth justice services necessary for children to thrive, and restores the State’s financial commitment to Close to Home. We also encourage the Governor and the Legislature to end the prosecution of children

¹⁷ Marsha Weissman and Vincent Schiraldi, *Does Keeping Youth Close to Home Really Matter? A Case Study*, Columbia University Justice Lab, Mar. 16, 2018, available at: http://justicelab.iserp.columbia.edu/img/forum_handout_final_3.12.18.pdf.

¹⁸ See generally, Marcy Mistrett, *New York Raise The Age Is Making Strides Where It Counts*, Juvenile Justice Information Exchange, Jan. 23, 2019, available at: <https://jjiie.org/2019/01/23/new-york-raise-the-age-is-making-strides-where-it-counts/>.

under 12, to expand sealing protections for adolescents, and to build on youthful offender protections for people up to 25. We are eager to work with you and your colleagues in the Legislature to implement a bold agenda for New York's children and their families this session. Thank you for considering our testimony. If you have any questions or you would like further information, please contact Julia L. Davis, Esq., Director of Youth Justice and Child Welfare at Children's Defense Fund-NY, 212-697-0882 / jdavis@childrensdefense.org.