

New York State Budget Hearing:
Testimony of
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Submitted to the
New York State Senate Finance Committee
and
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Regarding the New York State Executive Budget Proposals
for Human Services
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presented by
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My name is Gabrielle Horowitz-Prisco. I am the Director of the Juvenile Justice Project of the Correctional Association of New York and an attorney who previously represented children in Family Court. The Correctional Association of New York is an independent, non-profit organization founded by concerned citizens in 1844 and granted unique authority by the New York State Legislature to inspect prisons and to report its findings and recommendations to the legislature, the public and the press. Through monitoring, research, public education and policy recommendations, the Correctional Association strives to make the administration of justice in New York State more fair, efficient and humane. The Correctional Association does not provide direct services other than leadership training programs and does not engage in litigation or represent a sector or workforce. Our unique access to prisons combined with our policy and legislative expertise and connections to system-involved youth inform our perspective on the issues before you today.

Thank you to the distinguished Chairs and members of the Ways and Means and Finance committees for the invitation to testify today. Thank you also to the Social Services and Children and Families committees. We value this opportunity, and look forward to working with you this session.

To begin, I want to share a statement by Hernan C., age 21. Hernan wrote this statement while sitting in a previous hearing on New York's age of criminal responsibility:

“I, Hernan C., was charged and convicted for the crime of attempted murder at age 16. I was fortunate enough to have spent 4 years in the juvenile justice system and not set foot in the adult system because of having committed my crime 2 days prior to turning 16. However, the stigma that I have from my adult conviction (I was convicted of a juvenile offense, which carries an adult criminal conviction) has made the transition back into society difficult. The only reason I am able to stay positive and not return to a life of crime is because I have individual people in my life who continuously remind me about what I have to offer my community. Not only that, I have also had an opportunity to pursue a higher education out in the community after having stepped out of the (Office of Children and Family Services) facility I was placed in with a G.E.D. and 54 college credits.

I went from being an alcoholic, aggressive, out-of-control gang-banger to a college student at John Jay College of Criminal Justice and a research assistant at an organization working on policy issues.”

Hernan also now serves on a number of national and state advisories and communities, including serving as a Board Member of the New York State Juvenile Justice Advisory Group (NYS JJAG); the Northeast Regional Representative to the National Youth Committee, Coalition for Juvenile Justice (CJJ), and as a member of the Young Adult Advisory Group to the Institute of Medicine & National Research Council (part of the National Academy of Sciences).

Hernan's experience illustrates some of the many reasons the Correctional Association of New York applauds the creation of the Commission on Youth, Public Safety and Justice (the Commission) as outlined in the proposed FY 2014-15 Executive Budget. The Correctional Association also wholly supports the allocation of funds to the Commission to carry out this work. The creation of the Commission offers New York the chance to not only catch up with the rest of the nation with regard to the laws governing the age of criminal responsibility, but to also become a national leader.

The Correctional Association of New York also supports the proposed change to the timeframe for facility closures under the Close to Home Initiative. Given the modifications to the timeframe of the implementation of the Close to Home Initiative, this change is logical and important. We urge the Legislature to add an additional criteria to the six criteria outlined for such closures in order to ensure that those facilities that remain open are culturally competent with regard to the provision of services to lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth.

This testimony is structured as follows:

1. An outline of the current landscape regarding the prosecution of children as adults in New York State;
2. A series of recommendations with regard to the Commission;
3. A discussion and recommendations with regard to OCFS facility closures, and the needs of lesbian, gay, bi-sexual, transgender and questioning (LGBTQ youth).

The current landscape regarding the prosecution of children as adults in New York State

Introduction

New York is only one of two states, in company with North Carolina, that prosecutes all 16- and 17-year-olds in the justice system as adults, regardless of charge severity. Every year nearly 50,000 16- and 17-year-olds are arrested in New York State (NYS or NY).¹ If detained or incarcerated, these 16- and 17-year-olds are housed in adult jails and prisons and can be placed in solitary confinement.

NYS also prosecutes children as young as 13 as adults, when charged with certain serious crimes, called "juvenile offenses." Over 600 13- to 15-year-olds were automatically charged

¹ Department of Criminal Justice Services, Criminal Justice Case Processing of 16-17 Year Olds (2010 data), on file with the author (in 2010, there were 45,692 arrests of 16- and 17-year-olds in New York State); Governor's Children's Cabinet Advisory Board, Advancing a Fair and Just Age of Criminal Responsibility for Youth in New York State (January 2011) (in 2009, there were 47,339 16- and 17-year-olds arrested in New York State).

as adults under the state's Juvenile Offender Law in 2010. If detained or incarcerated, these youth are housed in youth facilities, and can, in certain instances, be transferred to adult facilities beginning at age 16.

New York's age of criminal responsibility is out of date and out of line with vast bodies of research on adolescent brain development, rehabilitation, and public safety. Prosecuting children as adults has repeatedly been shown to harm youth and increase recidivism and future violence.

Some of New York's youth justice laws and practices are also drastically in need of reform. For example, New York prosecutes children as young as 7 in Family Court, a practice out of line with best practices and what is known about child brain development. Also, although NYS has significantly expanded the continuum of non-residential community-based programs--which are proven to work to reduce recidivism and help youth succeed--the system needs further expansion to serve more youth. The Commission will offer our state a solid mechanism for evaluating and implementing raising the age of criminal responsibility and comprehensive youth justice reform.

Prosecuting children as adults, including for violent crimes, harms public safety

Young people charged as adults have been shown to commit more crime and violence in the future, and return to prison at significantly higher rates than youth who were prosecuted in the youth justice system.² Youth in the adult system do not generally receive the kinds of rigorous, research-driven, and age-appropriate services that are offered in the youth system and have been shown to enhance public safety.

Public safety concerns are sometimes cited as a barrier to raising the age of criminal responsibility for youth charged with violent and serious crimes. The reality-- proven in a robust body of social scientific research--is that youth charged with violent and serious crimes processed in the adult criminal justice system engage in *more* future violence and recidivate at far higher rates as compared to youth charged with the same crimes processed in the youth system. A rigorous study by Professor Jeffrey Fagan compared New York and New Jersey youth charged with robbery (1^o and 2^o), burglary (1^o) and assault (1^o and 2^o).

² Angela McGowan et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review*, Department of Health and Human Services, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, November 30, 2007 / Vol. 56 / No. RR-9 (The independent, nonfederal Task Force on Community Preventive Services' review of published scientific evidence concerning the effectiveness of laws and policies that facilitate the transfer of juveniles to the adult criminal justice system. The report found that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth and recommends against laws or policies facilitating the transfer of juveniles to the adult criminal justice system for the purpose of reducing violence); Office of Juvenile Justice and Delinquency Prevention, Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* (June 2010), <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>.

The NY cases originated in adult criminal court and the NJ cases originated in juvenile court. The research found that New York youth were *100% more likely to be rearrested for a violent offense* and *47% more likely to be rearrested for a property offense*. The New York youth also had a greater number of rearrests for such offenses and a 26% greater chance of being reincarcerated.³

Similarly, the independent, nonfederal Task Force on Community Preventive Services conducted a systematic review of published scientific evidence concerning the effectiveness of laws that transfer youth to the adult system, finding a “34% relative increase in subsequent violent or general crime” for youth transferred to the adult system as compared to youth prosecuted in the juvenile system. The report concludes that transferring young people to the adult system—including for serious crimes—is “*counterproductive* to reducing juvenile violence and enhancing public safety.”⁴

Raising the age for all youth prevents law enforcement challenges

Jurisdiction based on the crime charged, rather than a bright-line age of criminal responsibility, introduces complications for law enforcement. Illinois initially raised its age of juvenile jurisdiction to include only 17-year-olds charged with misdemeanors. A report on the overall success of the effort described the particular problems with making a jurisdictional distinction based on the crime, rather than age. The report stated, “Since the change in the law, police are forced to either prophylactically apply the more extensive juvenile procedures to all 17-year-olds, or draw very early conclusions about the nature and extent of a crime. The pressure to adopt conclusions during an investigation carries a risk. A decision to investigate or prosecute a crime as a misdemeanor later on means applying the Juvenile Court Act requirement (parental notification, place of custody) mid-stream and retroactively, resulting in confusion, or failure to implement a necessary protection.”⁵ Both due to the success of raise the age efforts, and some of these unforeseen law enforcement complications, this past year, Illinois went a step further and raised the age of juvenile jurisdiction to include 17-year-olds charged with felonies.⁶

Youth housed in adult jails and prisons are often abused and don't receive the kinds of developmentally-appropriate services that reduce recidivism

³ Office of Juvenile Justice and Delinquency Prevention, Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* (June 2010), *citing* Jeffrey Fagan, Aaron Kupchick and Akiva Liberman, *Be careful what you wish for: The comparative impacts of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders*, <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>.

⁴ Robert Hahn, Angela McGowan, Akiva Liberman et. al, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System, A Report on Recommendations of the Task Force on Community Preventive Services* (2007), <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.

⁵ *Raising the Age of Juvenile Court Jurisdiction*, Illinois Juvenile Justice Commission, at 34.

⁶ *Illinois Raises Age of Juvenile Court Jurisdiction*, Office of Juvenile Justice and Delinquency Prevention (July 21, 2013) *available at* <http://www.ojjdp.gov/enews/13juvjust/130722.html>.

Young people housed in adult prisons and jails are in grave danger, facing serious and elevated risks of sexual abuse, suicide, armed attacks, and emotional abuse. Children in adult facilities are nearly fifty percent more likely to face an armed attack when inside, and nearly 100% as likely to be beaten by staff as compared to young people in youth facilities.⁷ 16- and 17-year-olds in New York State Department of Corrections and Community Supervision (DOCCS) prisons are housed side-by-side with adults. There are no separate residential areas for those under 18.

In New York State, children in adult jails and prisons may be placed in solitary confinement, including for months at a time or longer. Children in solitary confinement may spend only one hour a day out of their cells, with their “recreation” taking place alone in an outdoor pen.⁸ Children in solitary confinement do not leave their cells to go to school or programs. They also cannot make phone calls, including to their parents. Extended isolation can be psychologically shattering for anyone, but it is especially harmful for developing adolescent minds.⁹ Solitary confinement has been shown to both cause and exacerbate mental illness in adolescents.¹⁰

According to a recent one-day data snapshot issued by the New York City Board of Corrections, almost 27% of the youth held on Rikers Island were in solitary confinement, and 71% of those youth were diagnosed with a mental illness.¹¹ The average length of stay for adolescents in solitary confinement inside city jails is 43.1 days.¹² At the state level, there were 560 placements of young people 18 and under in the Solitary Housing Unit (SHU) in the NYS prison system in 2011.¹³

⁷ Martin Forst, Jeffrey Fagan and T. Scott Vivona, “Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy,” *Juvenile and Family Court Journal*, 40 (1) (1989).

⁸ New York Civil Liberties Union, *Boxed In: The True Cost of Extreme Isolation in New York’s Prisons* (2012), <http://www.boxedinny.org/>.

⁹ American Civil Liberties Union and Human Rights Watch, *Growing Up Locked Down, Youth in Solitary Confinement in Jails and Prisons Across the United States* (2012).

¹⁰ *Id.* (Growing Up Locked Down), at 23 citing Maureen L. O’Keefe et al., Colorado Department of Corrections, “One Year Longitudinal Study of the Psychological Effects of Administrative Segregation,” October 31, 2010, <https://www.ncjrs.gov/pdffiles1/nij/grants/232973.pdf> (accessed August 27, 2012); Peter Scharff Smith, National Institute of Corrections, “The effects of solitary confinement: Commentary on One Year Longitudinal Study of the Psychological Effects of Administrative Segregation,” June 2011, www.community.nicic.gov/cfs-

[filessystemfile.ashx/_key/CommunityServer.CommunityServer.Components.PostAttachments/00.00.05.95.22/Supermax_2Doo_T_2Soo_Smith.pdf](http://www.community.nicic.gov/cfs-filessystemfile.ashx/_key/CommunityServer.CommunityServer.Components.PostAttachments/00.00.05.95.22/Supermax_2Doo_T_2Soo_Smith.pdf) (accessed August 27, 2012).

¹¹ Three Adolescents with Mental Illness in Punitive Segregation at Rikers Island, New York City Board of Corrections, Staff Report (October 23).

¹² Growing Up Locked Down.

¹³ NYS Department of Correctional Services Locator System, Summary of New Placements into SHU Cells, Offenders Aged 18 and Under Only, during 01/01/11–12/31/11, available at <http://www.boxedinny.org/library/> (click on “Prisoner Population in Special Housing Units,” and then “Prisoners Newly Placed into SHUL Cells Aged 18 and Younger 2007-2011”) (note that this document reflects unique placements, and that the same individual may have multiple placements within an annual period).

If a parent locked their child in a small room for 23 hours a day, with virtually no human contact and with their food pushed in via a small slot in the door, the child would most certainly be removed from their home, and the parent would be charged with child abuse or neglect in Family Court. The parent might also be charged in criminal court. Yet this practice is part of the city and state's custodial care of children.

It is hard for me to think or write about raising the age of responsibility without thinking about Jonathan McClard, a seventeen-year old who committed suicide by hanging in an adult facility. I met Jonathan's mother, Tracy, at a youth justice event- after Jonathan's death, she quit her job as a schoolteacher to devote herself to getting kids out of adult jails and prisons. Tracy described to me the marked changes she observed in Jonathan's appearance as he spent time in adult facilities- the hardening and shutting down, the fighting he was forced to do, and his fear. She described her powerlessness to get her son out of what they both knew was a life-threatening situation. How Jonathan had been placed in solitary confinement as punishment for putting his hands in his lap during their visit. How she believed his fear of being raped in prison led him to take his own life.

Jonathan's death is not unique— children in adult jails are *36 times more likely to commit suicide* than children in adult detention facilities,¹⁴ and the National Prison Rape Elimination Commission stated that “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.”¹⁵

Criminal records prevent successful community re-entry

New Yorkers as young as 13 can receive a lifelong criminal record, which can forever limit their chances of employment, education, and housing assistance—all of which are critical to successful community re-entry.¹⁶ Parents and families who have a child with a criminal record living with them in public housing may, in some cases, lose that housing—even when that same parent is legally obligated under the New York State Social Services Law to provide housing for their child. The vast majority of youth in New York State who wind up with criminal records have been convicted of serious offenses, including violent offenses—providing another reason that the age of criminal responsibility should be raised for all youth.

¹⁴ Arya Neelum, *Jailing Juveniles: The dangers of incarcerating youth in adult jails in America* (2007), http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf.

¹⁵ National Prison Rape Elimination Commission Report (2009) at 18, <http://www.ncjrs.gov/pdffiles1/226680.pdf>.

¹⁶ See e.g. Corriero, M.A. *Judging Children as Children: Reclaiming New York's Progressive Tradition*, 56 N.Y.L. Sch. L. Rev. 1413, 1419 (2011–12); and Juskiewicz, J. (2007, October); *To Punish A Few: Too Many Youth Caught in the Net of Adult Prosecution*.

Washington, D.C.: Campaign for Youth Justice.

Black and Latino youth are disproportionately harmed by New York's age of criminal responsibility

Young people of color are more likely than white children to bear the serious and lasting consequences of being charged and incarcerated as adults. Children of color are more likely to be targeted by the police¹⁷ and are disproportionately represented at virtually every point in the justice system.¹⁸ Additionally, national research shows that children of color are more likely to be transferred into the adult system than are white children.¹⁹

In a study of 40 major jurisdictions, African-American youth made up 62% of transferred (to adult court) youth. Over 40% of these youth were ultimately not convicted, suggesting that cases brought against them were not very strong. Nevertheless, many spent time in an adult jail; of the black youth held pretrial in the adult system, 65% were held in adult jail.²⁰ Nationally, African-American youth are 62% of the youth prosecuted in the adult criminal system.²¹ African-American youth are nine times more likely than white youth to receive an adult prison sentence.²² And one out of every four Latino incarcerated Latino children are held in an adult jail or prison.²³

In 2010 in New York State, 70.7% of the 16-17 year-olds arrested (as adults) were Black or Hispanic. Among those 16- and 17-year-olds arrested and sentenced to incarceration, 79.2% were Black or Hispanic. Additionally, 14.8% of the Black 16- to 17-year-olds arrested received sentences to prison or jail, compared to 8.2% of whites and 8.8% of Hispanics.²⁴ In each of these metrics, Black youth are particularly burdened.²⁵

Failing to raise the age for all youth, regardless of charge, makes it more likely that children of color will be disproportionately charged as adults. When there is discretion about charging

¹⁷ Neelum Arya and Ian Augarten, Campaign for Youth Justice, *Critical Condition: African-American Youth in the Justice System*, (September 2008) (addressing the disproportional treatment of African-American youth in the justice system);

http://www.campaignforyouthjustice.org/documents/CFYJPB_CriticalCondition_000.pdf; *Stop-and-Frisk Campaign: About the Issue*, NYCLU, www.nyclu.org/issues/racial-justice/stop-and-frisk-practices (the NYCLU data is specific to New York City).

¹⁸ James Bell and Laura John Ridolfi, The W. Haywood Burns Institute, *Adoration of the Question: Reflections on the Failure to Reduce Racial & Ethnic Disparities in the Juvenile Justice System* (Shadi Rahimi ed., 2008),

http://sccounty01.co.santa-cruz.ca.us/prb/jdai/bi_dmc.pdf; The National Council on Crime and Delinquency, *And Justice for Some, Differential Treatment of Youth of Color in the Justice System* (2007),

http://www.nccdglobal.org/sites/default/files/publication_pdf/justice-for-some.pdf.

¹⁹ Neelum Arya & Ian Augarten. *Critical Condition: African-American Youth in the Justice System* (2008).

²⁰ Neelum Arya & Ian Augarten. *Critical Condition: African-American Youth in the Justice System* (2008).

²¹ *Id.* (Arya, Critical Condition).

²² *Id.* (Arya, Critical Condition).

²³ Neelum Arya, with Francisco Villarruel, et al., *America's Invisible Children, Latino Youth and the Failure of Justice* (2009).

²⁴ New York State Department of Criminal Justice Services, 2010, on file with the Correctional Association of New York.

²⁵ *Id.* (Department of Criminal Justice Services).

youth as adults, children of color may be charged as adults more frequently than white youth. We cannot simply rely on even the best-intentioned laws or district attorneys or judges and assume that discretion will always be applied equitably. At the same time, statutory exclusion mechanisms (laws that bar certain categories of crimes from prosecution in the youth system) have also been shown to result in racial and ethnic disparities.²⁶ These racial disparities are one more critical reason that the age of criminal responsibility must be raised across the board for all youth, regardless of the crime they are alleged to have committed.

Other states have successfully raised the age, saving money and improving public safety

Over the last decade, many states have successfully raised the age of criminal responsibility without overwhelming the courts, and while maintaining and even improving public safety. Data from other states also demonstrates that raising the age of criminal responsibility does not result in the kinds of astronomical costs that opponents often cite in opposing such reforms.

When nearby Connecticut was considering raise the age legislation, opponents estimated an increase of 100 million dollars. In reality, Connecticut both successfully raised the age and *increased* spending on community based programs, with the end result of a *decrease* in overall spending. Specifically, “Connecticut expanded its investment in evidence-based, family-focused adolescent treatment programs from \$300,000 in 2000 to \$39 million in 2009.”²⁷ Connecticut also raised the age of criminal responsibility from 16- to 18-years-old. Yet, in 2011, after adjusting for inflation, Connecticut spent \$2 million less on its youth justice system than it had ten years earlier.²⁸ After raising the age, Connecticut also saw total arrests and violent crime arrests plummet.²⁹ In 2009, before Connecticut raised the age its juvenile probation 24-month rearrest rate was 64%. In the 3rd Quarter of 2013, after full implementation of raise the age for both 16- and 17-year-olds, that recidivism rate has dropped to 58%.

²⁶ FN 20 (Arya & Augarten), at 26 stating that most African-American youth are transferred to the adult system via statutory exclusion or prosecutorial waiver mechanisms. “Half (49.2%) of all cases involving African-American youth were filed in criminal court as a result of statutory exclusion. A third (31.9%) of cases were filed as a result of direct file/prosecutorial discretion. Only 18.9% were judicial waiver cases where a judge could make an individual decision after a hearing.”

²⁷ Campaign for Youth Justice, <http://www.campaignforyouthjustice.org/state-by-state.html>, *citing* Justice Policy Institute, *Juvenile Justice Reform in Connecticut: How Collaboration and Commitment Have Improved Public Safety and Outcomes for Youth* (2013).

²⁸ Justice Policy Institute, *Juvenile Justice Reform in Connecticut: How Collaboration and Commitment Have Improved Public Safety and Outcomes for Youth* (2013).

²⁹ *Id.* (Justice Policy Institute).

In addition, the experience of states like Connecticut demonstrate that raising the age of criminal responsibility can result in the more efficient use of court resources and a reduction in overall court processing.³⁰ In other jurisdictions, fears of youth system “flooding” have not materialized in fact.

Adolescent Brain Development

In most other legal contexts, New York State recognizes the developmental differences between children and adults. New York State does not allow 16- and 17-year-olds to get a tattoo,³¹ enter into a cellphone contract, or purchase cigarettes.³² A 16-year-olds cannot use a fake tanning booth at all, and a 17-year-old can only do so with parental consent.³³

Yet New York State’s criminal justice system is far behind a robust body of scientific research about brain development in young people and their ability to make fully informed choices. The Supreme Court recognized and relied on this research in a recent series of cases in which they found that youth under 18 must be treated differently under the law because of developmental differences.

The prefrontal cortex of the brain is crucial for weighing risk vs. reward, future planning, impulse control, and its development is critical for rational decision-making.^{34 35} The prefrontal cortex is one of the last parts of the brain to develop and is still not fully mature even in late adolescence.³⁶ Juveniles, even in their late teens, do not have the same ability as adults to make mature decisions. As anyone who has been a teenager or has parented one,

³⁰ *Id.* (Justice Policy Institute).

³¹ http://www.health.ny.gov/community/body_art.

³² https://www.health.ny.gov/prevention/tobacco_control/current_policies.htm.

³³ <http://www.health.ny.gov/environmental/indoors/tanning>.

³⁴ This section draws heavily on a research fact sheet prepared by the Campaign for Youth Justice, and significant portions related to research findings in the field of adolescent brain development is paraphrased with their permission.

³⁵ Antoine Bechara et al., *Characterization of the Decision-Making Deficit of Patients with Ventromedial Prefrontal Cortex Lesions*, 123 *Brain* 2189, 2198-2200 (2000) (patients with lesions in the prefrontal cortex suffered from impairments in the ability to make real-life decisions because of an insensitivity to future consequences, whether reward or punishment); Antoine Bechara et al., *Dissociation of Working Memory from Decision Making Within the Human Prefrontal Cortex*, 18 *J. Neurosci.* 428, 428, 434 (1998) (prefrontal cortex is necessary for decision-making in tasks involving evaluation of risk and reward); Antonio R. Damasio & Steven W. Anderson, *The Frontal Lobes*, in *Clinical Neuropsychology* 404, 434 (Kenneth M. Heilman & Edward Valenstein eds., 4th ed. 2003) (one “hallmark of frontal lobe dysfunction is difficulty making decisions that are in the long-term best interests” of the individual); see also Elizabeth R. Sowell et al., *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 *Nature Neurosci.* 859, 860 (1999) (frontal lobes are essential for planning and organization); see also, e.g., Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* 23, 24, 141 (2001); see also B.J. Casey et al., *Structural and Functional Brain Development and its Relation to Cognitive Development*, 54 *Biological Psychol.* 241, 244-246 (2000).

³⁶ Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 *Proc. Nat’l Acad. Sci.* 8174, 8177 (2004); Casey et al., *supra* note 14, at 243; Linda Spear, *The Behavioral Neuroscience of Adolescence* 108-111 (forthcoming 2009).

engaging in reckless behavior is normal during adolescence.³⁷ It is harder for adolescents to exercise self-control as compared to adults.³⁸ Adolescents are more likely to place greater weight on rewards than on risks when making choices,³⁹ and adolescents often do not properly assess risk to begin with. Adolescents are also less likely to consider the long-term consequences of their actions and are more vulnerable to the negative influences of environment and peer pressure than adults.

At the same time, recent neuroscientific advances also offer an opportunity to rethink our approach to youth justice. Recognizing the malleability of the adolescent brain provides policymakers with a chance to design and deliver age-appropriate rehabilitative services that will be more effective in guiding young people during a critical period in their development and identity formation. This approach is well aligned with the goals of holding youth accountable and improving public safety. By applying the science of brain development, policymakers can now ensure that justice systems hold youth accountable in ways that are developmentally appropriate and thus far more likely to achieve their intended goals of reducing recidivism and increasing the positive long-term outcomes for system-involved youth.

New York State's youth justice system is better equipped to meet the needs of youth.

The application of the Family Court Act to the cases of *all* young people under the age of 18 is critical. Regardless of which courthouse a young person's case is heard in, it is imperative that the myriad benefits of the juvenile (youth) justice system apply.

While certainly not without flaw and in need of significant more resources (including judges and funding for more community-based services) New York State's youth justice system

³⁷ Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Rev.* 339, 344 (1992).

³⁸ Elizabeth Cauffman & Laurence Steinberg, *(Im)Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 *Behav. Sci. & L.* 741, 748-749, 754 & tbl. 4 (2000); *see also* Laurence Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 *Developmental Psychol.* 1764, 1774-1776 (2008); *see also* Adriana Galvan et al., *Risk Taking and the Adolescent Brain: Who is at Risk?*, 10 *Developmental Sci.* F8, F13 (2007) (in study of individuals aged 7 to 29, finding that impulse control continues to develop over the course of adolescence and early adulthood); Rotem Leshem & Joseph Glicksohn, *The Construct of Impulsivity Revisited*, 43 *Personality & Individual Differences* 681, 684-686 (2007) (reporting significant decline in impulsivity from ages 14-16 to 20-22 on two different impulsivity scales).

³⁹ Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1012 (2003); *see also* Arnett, *supra* note 1, at 350-353 (summarizing evidence that adolescents' poor capacity for assessing probabilities plays a role in their reckless behavior); Bonnie L. Halpern-Felsher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 *J. Applied Developmental Psychol.* 257, 261, 264-270 (2001); Susan G. Millstein & Bonnie L. Halpern-Felsher, *Perceptions of Risk and Vulnerability, in Adolescent Risk and Vulnerability* 15, 34-35 (Baruch Fischhoff et al. eds., 2001); Elizabeth Cauffman et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Test*, *Developmental Psychol.* 1, 11, 14 (forthcoming 2009).

currently includes a wide range of appropriate youth development tools and processes including probation adjustment; a robust continuum of community based supervision, treatment and services including alternatives to detention and incarceration; more effective and developmentally appropriate residential placements; more developmentally appropriate probation services; and a fiscal infrastructure that promotes community based programs. In general, the current Family Court process actually offers *more* rigorous supervision and treatment for young people than does the adult justice system, including for example the routine monitoring of school attendance, curfew, and participation in community based services.

Youth justice system staff members are generally trained to work specifically with youth, and many have specialized training in critically important areas such as positive youth development⁴⁰ and trauma-informed care.

The youth justice systems in both New York City and New York State also have groundbreaking protections for lesbian, gay, bi-sexual, transgender, and questioning (LGBTQ) youth, including anti-discrimination policies and guidelines that are national models. Research demonstrates that LGBTQ youth are over-represented in the youth justice system and are particularly vulnerable to routine and systemic mistreatment in detention and placement.⁴¹ While the leaders of New York's youth justice systems have recognized and affirmatively responded to these harms, New York's adult criminal justice system currently provides LGBTQ youth with no specific protections.

Additionally, the New York State Office of Children and Family Services (OCFS) utilizes the "New York (NY) Model," "a comprehensive system of care for adolescents in residential and community-based programs (see footnote for more details on this program model)."⁴²

⁴⁰ An increasing number of practitioners and advocates in the juvenile justice field are adopting a positive youth development (PYD) perspective and other strengths-based strategies that focus on youths' assets rather than their weaknesses or problems. PYD can be described as a youth's development of a sense of competency, usefulness, belonging, and influence.

NAT'L JUVENILE JUSTICE NETWORK, POLICY PLATFORM: APPROACHING JUVENILE JUSTICE WITH A FOCUS ON POSITIVE YOUTH DEVELOPMENT 1 (2010) [hereinafter APPROACHING JUVENILE JUSTICE] (citations omitted) (internal quotation marks omitted), http://www.njjn.org/uploads/digital_library/resource_1427.pdf.

⁴¹ See Prisco, *When the Cure Makes You Ill: Seven Principles for Changing the Course of Youth Justice*, (56 N.Y.L. Sch. L. Rev. 1413), and see Majd, et. al., *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009).

⁴² New York State Office of Children and Family Services. The NY Model is built on a foundation of empirically supported and evidence-based programs. The NY Model uses the Sanctuary Model to "guide the creation and maintenance of a trauma-informed environment," which is particularly important given that a very large percentage of youth in the justice system have experienced childhood trauma. The NY Model also uses concepts and tools from the Missouri Youth Services Institute (MYSI). The work being done in Missouri's youth justice system is generally considered the nation's gold standard. The NY Model also uses Dialectical Behavior Therapy (DBT), a skills-focused and behaviorally-based treatment program, and "organizes and

New York State has invested heavily in creating a youth justice system that is evidence-informed and in line with national best practices and social scientific research, whereas the state's adult criminal justice system does not include these kinds of research-driven treatments and services for youth.

Additionally, New York's youth justice system has built in "off-ramps" that divert youth from formal court processing, often instead requiring that youth follow guidelines set by a probation officer. Such off-ramps are usually referred to as "diversion" or "adjustment." Diagnostic testing for service needs occurs at the diversion/adjustment stage, and a wide range of services may be provided via probation or social service agencies. Diversion/adjustment is both less expensive than formal court processing,⁴³ and proven to reduce recidivism.⁴⁴

Children in New York State's youth justice system also have access to a robust spectrum of rigorous community-based programs offering supervision, treatment and services as an alternative to detention and incarceration. The adult criminal justice system, by contrast, offers less opportunity for these kinds of community-based supervision, treatment, and services. Decades of research demonstrates that children who interact with the formal court system—particularly those who are detained and/or incarcerated—commit *more* future acts of crime and violence as compared to children who commit similar crimes or delinquencies and never become system involved or those who instead receive community-based supervision, treatment, and services.⁴⁵

New York State also has built some important components of a fiscal infrastructure to support for youth in the justice system. You as legislators have previously passed some important reforms with a positive impact on the youth justice system, and it is important that raise the age reform is executed in such a way that is responsive to and inclusive of these achievements.

For example the FY 2011-12 Budget included the Supervision and Treatment Services for Juveniles Program (STSJP), a new, permanent funding stream to support community based services for youth in the Juvenile Delinquency and Juvenile Offender systems. This funding stream provides support for youth with mental health disorders, substance abuse problems, learning disorders, as well as temporary respite care; family therapy or support, or alternative

prioritizes treatment goals in relation to behaviors that are dangerous to self and others, that interfere with treatment, and that support emotional regulation at home, in school and in the community.”

⁴³ Juvenile Diversion Guidebook, Models for Change Diversion Workgroup, at 12.

⁴⁴ Anthony Petrosino, Sarah Guckenburg, and Carolyn Turpin-Petrosino, Formal System Processing of Juveniles: Effects on Delinquency: A Systematic Review, 1, 1-88, <http://campbellcollaboration.org/lib/project/81/>.

⁴⁵ This term is used to refer to forms of supervision (such as probation), treatment (such as mental health and substance abuse treatment), and services (such as vocational training and educational services) that can be provided in community settings for children who are youth-justice involved. These kinds of programs and services are also sometimes referred to as alternatives-to-detention and alternatives-to-incarceration.

housing options for youth who are at risk for detention or residential placement due to the absence of an available home; post-release support to a youth in the community; and programs and services to reduce arrest rates or recidivism.

In addition, the FY 2011-12 Budget capped state funding for the pre-adjudication detention of youth, and includes a local option to shift detention funds from reimbursement for detention expenses to community-based services. Consequently between April 1st 2011 and March 31st 2013, \$3,215,319 has been invested in community-based programming as opposed to detention.⁴⁶

Counties should be able to draw on these incentives when moving young people currently prosecuted as adults into a new jurisdictional framework. Maintaining young people in the adult court system (even if Family Court-style dispositional options were available) would deny counties the opportunity to build on these significant reforms.

New York State has also invested in extensive youth justice detention reforms. In 2012, the Annie E. Casey Foundation added New York State to their Juvenile Detention Alternatives Initiative (JDAI), a systems review process in which all of the entities that touch a child during the path of a case (e.g., schools, Family Court, faith-based communities, probation and other stakeholders) collaborate on ways to safely reduce the use of secure detention and promote systemic youth justice reform. In July 2012, Governor Cuomo authorized \$500,000 to bring JDAI to six counties: Nassau, Orange, Albany, Onondaga, Monroe, and Erie. It is our understanding that expansion of JDAI is contemplated. JDAI has been shown to reduce reliance on secure confinement; improve public safety; reduce racial disparities and bias; save taxpayers' dollars; and stimulate overall juvenile justice reforms.⁴⁷

Counties and the state should again have the opportunity to draw on these significant reforms and investments when designing a new approach. Maintaining youth in the adult system or in a hybrid system within the adult system denies counties and the state the opportunity to apply JDAI youth justice reforms to this population, and may ultimately leave both these young people and public safety at greater risk.

Additionally, the risk assessment instruments used in the youth justice system are designed specifically for young people. In the youth justice system, risk assessment instruments (RAIs) are used at two stages, detention (used as part of the process for determining whether a youth will be detained or remain in the community pretrial) and post-dispositional (used after a finding of juvenile delinquency as part of the process for determining the disposition (sentence), such as whether a young person will be placed in a residential facility or mandated to probation or a community-based program). The tools used by New York City

⁴⁶ The Office of Children and Family Services provided this information on funding shifts in 2011 and 2012.

⁴⁷ Juvenile Detention Alternatives Initiative website,

<http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx>

and upstate counties generally assess risk as well as needs (what needs does a young person have) and protective factors (what are the positive forces in a young person's life that may keep them from offending) in youth populations, and have been designed specifically for populations under 18. By contrast and as previously discussed, this is not true in the adult system.

In light of the aforementioned research and analysis, the Correctional Association urges this body and the Commission to consider the following as proposals for reform are considered:

Commission membership: The work of the Commission will be strengthened by a diverse membership, including significant representation by members of the advocacy community and representatives who are directly system-impacted. A growing body of evidence demonstrates that including individuals directly impacted by criminal justice policies in decision-making increases the chances of sustainable and successful reforms. In addition, including those directly impacted by these policies in decision-making increases the likelihood of widespread buy-in for the Commission's findings, including support at the community level. It is critical that directly impacted individuals and advocates be part of the decision-making body itself, as opposed to merely serving in a consulting fashion. With regard to parent and youth representatives, it is critical that there be more than one representative from each of these categories. It is our experience that when a single youth or parent is included as the sole representative of their constituency on a body otherwise made up of professional system stakeholders, their voices and experiences can easily be marginalized and discounted as too idiosyncratic or personal. In addition, both youth and parents have a wide array of different experiences. While two representatives cannot fully capture the range of experiences for these constituencies, having multiple voices speaking to these experiences is preferable to a single voice.

Accordingly, the Correctional Association strongly supports appointment of the following stakeholders to the Commission:

- Two parent representatives, each of whom is the parent of a child who has been involved with the adult criminal justice system during adolescence, to be appointed by the Governor;
- Two youth/young adult representatives, one of whom has experience in the youth justice system and the other of whom has experience in the adult criminal justice system (as an adolescent).
- Four members of the juvenile/youth justice and criminal justice advocacy communities representing different geographic regions, to be appointed by the Governor;
- At least one representative of alternative to incarceration or alternative to detention programs working juveniles or youth in the justice system, to be appointed by the Governor;

- At least one representative from the psychological or neuro-physiological community with expertise in adolescence, to be appointed by the Governor; and
- Two academic representatives with research experience focusing on juvenile and youth justice programs and policy and the impact of systems change, to be appointed by the Governor.

It is crucial that the Commission do more than simply evaluate this issue. The Commission should develop comprehensive legislation that accomplishes the following goals:

- **Ensures that all youth are treated appropriately for their age in the court system, regardless of the crime charged.** Even children charged with violent felonies should be treated as children, as brain research is clear children at this age lack the ability to control impulse and think of future consequences of their actions. Furthermore, multiple studies show that when these youth are prosecuted as adults, they are more likely to commit future crime, particularly violent crime. Youth charged with serious crimes are also more likely to end up with a criminal conviction and suffer a lifetime of collateral consequences, including barriers to accessing employment, education, and housing. In addition to harming youth, these collateral consequences make it harder for young people to successfully re-enter communities, harming public safety. Ensuring that all youth are treated in an age-appropriate manner includes raising the age of criminal responsibility so that the youth justice system includes:
 - treating all 16- and 17-year-olds as children, even those charged with violent felonies;
 - treating all 13- to 15-year-olds as children by repealing the Juvenile Offender Law; and
 - raising the minimum age at which a child can be arrested to 12.
- **Adjudicating all youth under the Family Court Act.** Using the Family Court Act as the legal framework for all youth ensures availability of age-appropriate services and courts and may increase availability of federal funding for the kinds of services and programs that help youth succeed and increase public safety. In addition, it reduces collateral consequences by guaranteeing that no youth will have criminal convictions and that court records remain private. Courtrooms to hear the cases of youth whose cases are currently heard in adult court could be located anywhere (i.e., in either family court or adult court buildings); the important part is ensuring that Family Court Act is the legal framework for all youth. However, modifications to disposition options could account for placement of older youth and those charged with more serious offenses.
- **Guaranteeing that no youth are housed in adult jails and prisons.** Children in adult facilities are nearly fifty percent more likely to face an armed attack when inside, and nearly 100% as likely to be beaten by staff as compared to young people in youth

facilities.⁴⁸ Youth in adult jails are 36 times more likely to commit suicide than those in youth detention facilities. According to the Prison Rape Elimination Commission, youth in adult facilities may be at the highest risk for sexual abuse of all incarcerated people. Removing youth from adult facilities would ensure New York's compliance with the Youthful Inmate Standard of the Prison Rape Elimination Act. Housing all youth in juvenile facilities would help keep youth safe from sexual abuse and would also help taxpayers as failure to comply with PREA can result in a loss of federal funds.

- **Reducing detention and placement in juvenile facilities.** New York should continue the successful youth justice reforms implemented in recent years and expand these efforts. We recommend limiting eligibility for placement to youth who have committed serious offenses and pose a clear and demonstrated risk to public safety. The use of placement as a punishment for technical probation/court violations should be ended. Instead, New York should continue to invest in the kinds of evidence-informed community-based services and alternatives to incarceration that have been proven to both help youth succeed and reduce recidivism.
- **Increasing the ability to divert cases from court and at arrest.** Diverting low-risk youth holds youth accountable while reserving court resources. Other states that have recently raised the age have instituted robust diversion (with diversion being defined as diversion from formal court processing). In Illinois, they created a station adjustment process, allowing the police to divert consenting youth from formal processing.⁴⁹ Connecticut also instituted robust diversion and preventive services as part of its youth justice reform.⁵⁰ Due in part to these diversion efforts, both of these states were able to raise the age without overburdening their youth justice systems.⁵¹ The experiences of these states is supported by a 2010 systematic review of 29 different studies comparing outcomes of youth diverted from formal court processing with outcomes of youth who were formally adjudicated in courts. The study found that youth who were not diverted (and were formally processed in court) had higher recidivism rates, even when controlling for differences in cases characteristics.⁵²

In NYS, over 75% of arrests of 16- and 17-year-olds are for misdemeanors; 17% of all arrests are for petit larceny (usually shoplifting) and another 13% are for misdemeanor marijuana offenses (based on 2010 data). More low-risk youth should

⁴⁸ Martin Forst, Jeffrey Fagan and T. Scott Vivona, "Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy," *Juvenile and Family Court Journal*, 40 (1) (1989).

⁴⁹ Raising the Age of Juvenile Court Jurisdiction, Illinois Juvenile Justice Commission, at 37.

⁵⁰ Juvenile Justice Reform in Connecticut: How Collaboration and Commitment Have Improved Public Safety and Outcomes for Youth, at 17, 24.

⁵¹ See Illinois Raises the Age of Juvenile Court Jurisdiction, Office of Juvenile Justice and Delinquency Prevention (July 21, 2013), <http://www.ojjdp.gov/enews/13juvjust/130722.html>, and Juvenile Diversion Guidebook, Models for Change Juvenile Diversion Workgroup, at 12.

⁵² Formal system processing of juveniles: Effects on delinquency. Campbell Systematic Review, 1, 1-88.

be diverted from court by creating multiple points of diversion, including at arrest. Furthermore, the probation adjustment process should be expanded by removing the ability of complainants to veto adjustment, instead giving probation officers' full discretion to adjust a case.

- **Tailoring Services to Individual Needs and Combat Racial Disparities.** In recent years, the youth justice system has become increasingly sophisticated at assessing risk and needs. Using validated risk assessment instruments can help connect youth with appropriate programs that prevent recidivism and protect public safety. This should be done in a way that ensures that the justice system is not used as a proxy for social service needs. Low-risk youth who present no risk to public safety should be diverted to services outside of the justice system. Research consistently shows that using the criminal justice system to treat low-risk youth for social service needs actually increases recidivism.

To combat racial disparities, validated risk-assessment tools should be consistently applied to all cases and there must be on-going efforts to analyze system outcomes, including risk assessment scores, for racial and ethnic disparities. As recommended by experts on reducing racial disparities, data about race, ethnicity, geography, gender and offense (REGGO) should be consistently collected and publicly released for all children in the justice system.

- **Increasing opportunities for older youth, including expanding youthful offender adjudication eligibility to 21.** Research has shown that youth continue to develop through their mid-twenties. To increase the opportunities of youth to move forward to successful adult lives, we must reduce collateral consequences youth face by extending the eligibility age for youthful offender adjudication to 21, eliminating barriers to obtaining youthful offender status, allowing youthful convictions to be sealed, and ensuring youth are issued certificates of relief at sentencing.

In order to best effectuate the aforementioned outcomes, the Commission should evaluate the following items:

1. The appropriate age of adult criminal responsibility.
2. The appropriate minimum age of family court jurisdiction for acts that would be considered crimes if committed by adults.
3. What criteria and process should be included in any statutory framework for determining whether any proceeding should or must be transferred to criminal court for prosecution.
4. An examination of the Juvenile Offender Law and research on the most effective way of treating with young offenders charged with serious, violent felonies.
5. Examining the categorization of youth who commit violent offenses, including the ways in which certain non-violent offenses can currently be legally categorized as violent.
6. Reducing net widening by ensuring that court and program resources are reserved for youth who evidence shows will benefit from such services.

7. Increasing options for diversion at the point of arrest, pre-petition, and filing, including an examination of zero tolerance policies and school-to-prison pipeline issues.
8. Decreasing use of detention and placement and expanding the use of community-based alternatives, including expansion of restorative justice and reconciliation models that both hold youth accountable and involve victimized population in the justice process.
9. Improving juvenile delinquency procedure and investing in family court infrastructure and operations development.
10. Impact on public safety based on evidence from studies comparing adult versus juvenile prosecution.
11. The impact of confining youth in adult facilities and New York State compliance with Prison Rape Elimination Act.
12. Improving and expanding the use of data and other performance measures to guide decision-making, enhance accountability, and drive system improvement.
13. Examination of expansion of the Youthful Offender Law, including eligibility and disqualifications.
14. Proposals to eliminate racial disparity in complaints, commitments, community program availability, and other key decision and impact points in the process.
15. Collateral consequences of being prosecuted as an adult and the lifetime impact for youth prosecuted as adults, including the confidentiality of records maintained by police, courts, and other criminal justice entities.
16. The availability of federal monies dependent on defining 16- and 17-year-olds as juveniles.
17. Community-based violence prevention, including identifying and expanding evidence-based programming to reduce youth violence and recidivism.
18. Developing a justice reinvestment program for youth, families, and communities with disproportionate system involvement whereby long-term fiscal savings are reinvested in communities, with the goal of preventing system-involvement.
19. Increasing opportunities for system-involved and former system-involved youth to become partners in reform, including increasing formal supports and funding opportunities for youth like Hernan who are interested in becoming professionally involved in the system; and
20. Increasing coordination with other social service systems, including child welfare, education and homeless services, so that youth with social service needs outside of the justice system can have those needs met, and so that the justice system does not serve as a proxy for other social service needs.

In conclusion, New York State is woefully behind the rest of the country in enacting smart and sensible raise the age reforms that would aid both public safety and young people. Our state's current approach contradicts a very significant body of scientific evidence on what works to promote community safety and help young people grow into successful adults. Young people prosecuted and incarcerated as adults are at grave risk of sexual, physical and emotional harm, and generally fail to receive the kinds of rigorous rehabilitative services that promote both accountability and rehabilitation. Arguments that prosecuting children as

adults is necessary for public safety in the face of robust evidence that adult court prosecution leads to increased violence and recidivism. Youth charged with serious and violent crimes must be part of any reform for this very reason. The best way to reduce violence and recidivism is to recognize that children and adolescents are not adults, to remove them from an adult system that routinely fails to meet their needs and exposes them to trauma and hardening influences; and to provide rigorous, evidence-informed rehabilitative services and options tailored to their developmental needs.

Raising the age of criminal responsibility should occur in the context of comprehensive youth justice reform including raising the minimum age of criminal responsibility (currently 7); expanding the continuum of evidence-informed rehabilitative options for children and adolescents, particularly those charged with serious crimes; targeted efforts to eliminate racial and ethnic disparities; and ensuring that the youth justice system has the resources to effectively serve all children. New York has a chance to do more than catch up with the rest of our nation—we have a chance to become a leader, both for the children and communities of our state and for the rest of the country. The time is now.

Close to Home and the Criteria for OCFS Closures

The proposed Education Labor and Family Assistance Article VII legislation outlines the criteria OCFS should use when assessing which OCFS facilities to close or to implement significant reductions in services, reductions in public employee staffing, and/or transfer of operations to a private or not-for-profit entity, following approval of the Close to Home Initiative transferring the operations of youth justice placements and services from OCFS to a social service district.⁵³ The six criteria are: (1) ability to provide a safe, humane and therapeutic environment for placed youth; (2) ability to meet the educational, mental health, substance abuse and behavioral health treatment needs of placed youth; (3) community networks and partnerships that promote the social, mental, economic and behavioral development of placed youth; (4) future capacity requirements for the effective operation of youth facilities; (5) the physical characteristics, conditions and costs of operation of the facility; and (6) the location of the facility in regards to costs and ease of transportation of placed youth and their families. Due to the well-documented needs and risks of LGBTQ youth in the youth justice system, the Correctional Association urges the assessment of the specific safety, health, and development needs of LGBTQ placed youth as an additional seventh criteria.

Any closures of facilities due to the Close to Home Initiative should consider the specific service and safety needs of LGBTQ youth to prevent a harmful, disproportionate impact on LGBTQ youth in the system. Due to the stress of social stigma and parental rejection, LGBTQ youth have been shown to be at risk for substance abuse, mental health disorders, homelessness, and poor education outcomes – factors that frequently funnel them in

⁵³ Proposed Education Labor and Family Assistance Article VII legislation, at 85.

disproportionate numbers into placement.⁵⁴ Research has also shown that LGBTQ youth suffer routine and systemic mistreatment in detention and placement as a result of their perceived or actual sexual orientation, gender expression, or gender identity.⁵⁵ Although the CA does not believe that incarcerating children is the most effective method of serving them, OCFS must ensure that youth have a range of placement options at facilities of all sizes and security levels that can provide LGBTQ affirming care. It is crucial that state and local administrations invest the resources needed to ensure that each region has facilities of all security levels equipped to work effectively with LGBTQ youth.

An OCFS facility that has a replicable model approach to working with LGBTQ youth is Red Hook Residential Center. Although Red Hook is not a facility exclusively designed for LGBTQ youth, the facility is known to specialize in providing LGBTQ affirming placements. On May 30-31, 2012 the CA's Juvenile Justice Project executed a visit to Red Hook Residential Center as part of the SAFETY Initiative. The SAFETY Initiative is a project in collaboration with OCFS to evaluate the safety of LGBTQ youth in custody, assess the effectiveness of the 2008 *OCFS LGBTQ Anti-Discrimination Policy and Guidelines* (hereafter referred to as "the policy"), and ensure meaningful implementation of the policy.

The CA found Red Hook to be a model for an affirming, safe facility for LGBTQ youth – and all youth – in the following key ways:

- 1) A strong leadership that clearly communicates the expected professional values and expectations to all staff. This provides a solid foundation for all staff to effectively work with LGBTQ youth and all youth in their care.

The director of the facility at the time of our visit articulated a clear set of core values and expectations for his facility, including the importance of affirming LGBTQ youth; this set a unified tone of respect and inclusion throughout the facility. As a result, the staff we spoke with took the policy seriously and displayed knowledge and fluency about the tenets and principles.

⁵⁴ Please see Katayoon *Majid* et al., "*Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts*" (The Equity Project, 2009), http://www.equityproject.org/pdfs/hidden_injustice.pdf, in particular Chapter 5, Impact of Family Rejection and School Harassment on LGBT Youth Involvement in the Juvenile Justice System, for a more comprehensive discussion of the research on the impact of social stigma and parental rejection on LGBTQ youth in the youth justice system.

⁵⁵ Please see Angela Irvine, "*We've Had Three of Them*": *Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System*, 19 Colum. J. Gender & L. 675–76, 687 (2010) and the Center for American Progress; *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth in the Juvenile Justice System*, June, 2012, <http://www.americanprogress.org/issues/lgbt/report/2012/06/29/11730/the-unfair-criminalization-of-gay-and-transgender-youth/> for statistics related to the disproportionate numbers of LGBTQ youth in the youth justice system.

- 2) An investment of time and resources into training and staff development on LGBTQ issues.

Red Hook is a good illustration that there must be consistent and repeated training on LGBTQ issues to ensure equitable and effective treatment of LGBTQ youth in OCFS facilities. The facility includes a training module every year on LGBTQ issues to staff. As a result, the staff we met in the course of our visit displayed a high degree of knowledge and understanding about adolescent development and sexual orientation, gender identity, and gender expression; they also viewed the acceptance of LGBTQ youth as part of their required duties as employees.

- 3) Youth input and feedback about the facility must be routinely solicited and integrated into programs, services, and operations.

The staff at Red Hook view the youth in their care as “partners and stakeholders.” As a result, the needs of LGBTQ youth, especially transgender and gender non-conforming youth can be voiced and accommodated in decisions related to programs and recreational options. We were impressed with Red Hook’s efforts and genuine commitment to include the voices of residents in decisions related to programming and operations.

- 4) The facility integrates the needs of LGBTQ youth in all of its resources, dissemination of information, supplies and materials, etc.

Red Hook shares resources for LGBTQ youth with all residents; this is routine practice. They also thoroughly explain the LGBTQ anti-discrimination policy and guidelines to each resident at admission. By ensuring that all protocols and materials are inclusive of LGBTQ youth, Red Hook relays a clear and powerful signal that the facility is inclusive and affirming.

- 5) The facility utilizes effective positive youth development practices; recognizing that the development of strong relationships to caring adults is critical to the safety, growth, and success of youth. In addition, the staff at the facility demonstrate an understanding that the exploration, expression, and integration of identity – including sexual orientation, gender identity, and gender expression – is a vital part of healthy adolescent development.

Red Hook places an emphasis on building strong relationships and engaging in dialogue with residents. Their commitment to positive relationship building and mentoring – a cornerstone of positive youth development – is perhaps the most crucial component to their successful creation and maintenance of a safe and affirming facility for LGBTQ and all youth. The staff continuously emphasized the importance of building strong, trusting relationships with youth. Red Hook’s emphasis on education, positive youth development principles, as best exemplified and reflected in their ongoing dialogue with residents, ensures that the facility is safe for all residents, including those who are LGBTQ, and that healthy adolescent development is supported.

Recommendations

The criteria for OCFS facility closures, reductions, or transfer of operations used by the commissioner should be amended to include a seventh item: the ability to provide LGBTQ affirming care. Such an addition will ensure that the first three criteria – specifically the ability to: provide a safe, humane and therapeutic environment for placed youth; meet their educational, mental health, substance abuse and behavioral health treatment needs; and connect them to community networks and partnerships that promote their social, mental, economic and behavioral development – are fully realized for *all* youth in OCFS care, including LGBTQ youth, who have particular culturally specific needs in each of these three criteria areas.

Thank you for this opportunity to testify and for your consideration of these recommendations.

