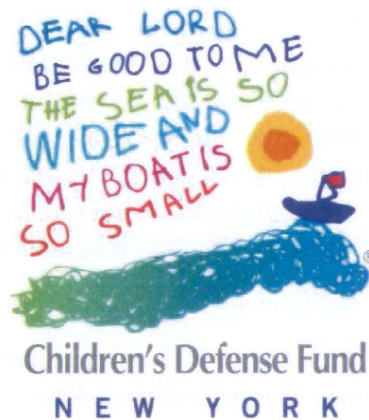


Joint Legislative Hearing on Public Protection
2017-2018 Executive Budget Proposal

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Testimony of The Children's Defense Fund – New York

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The Children's Defense Fund's (CDF) 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. CDF provides a strong, effective and independent voice for all the children of America 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. CDF – New York's 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 and juvenile justice.

We would like to thank the Assembly and Senate committees for this opportunity to submit testimony on the Public Protection and Safety proposals in the Governor's Executive Budget for State Fiscal Year 2017-2018.

CDF-NY's FY2017 Legislative and Budget Priorities reflect our commitment to advancing effective policies and investments to provide children and youth with the support they need to be successful. As a lead-member of the state-wide Raise the Age NY Campaign, we are enthused at the inclusion of legislation to raise the age of criminal responsibility within the Fiscal Year 2017-2018 Executive Budget. We urge the Governor and the Legislature to adopt a budget that includes raise the age legislation and ensures that both the state and the localities will have the resources necessary to effectively raise the age of criminal responsibility.

New York is one of only two states in the country to automatically charge youth as adults at age 16, regardless of the severity of the offense. The majority of states set their age of criminal responsibility at age 18 with five states continuing to automatically prosecute youth at age 17, and only two states in the country setting the age of 16 as the age at which youth are automatically considered adults in the justice system – New York and North Carolina. In 2016 South Carolina¹ and Louisiana² raised the age of criminal responsibility from 17 years old to 18 years old. The most recent states to leave New York behind as one of two states setting their age at 16 were Connecticut³ and Illinois⁴. In 2016 Connecticut introduced a proposal to further raise the age from 18 years old to 21 years old⁵.

Neuroscience indicates that brain development continues into the mid-twenties. Later stages of brain development include areas responsible for impulse control, planning, and thinking ahead,

¹ Campaign for Youth Justice. (2016, June 15). *CFYJ Applauds South Carolina and Louisiana for Raising the Age* [Press release]. Retrieved from <http://www.campaignforyouthjustice.org/news/cfyj-news-press-releases/item/cfyj-applauds-south-carolina-and-louisiana-for-raising-the-age>.

² Louisiana Youth Justice Coalition. (2016, June 14). *Raise the Age LA Becomes Law!* [Press release]. Retrieved from http://www.laccr.org/youth-justice/?jjpl_newspost=4706.

³ Mendel, R. (2013, February 27). *Juvenile Justice Reform in Connecticut: How Collaboration and Commitment Have Improved Public Safety and Outcomes for Youth*. Justice Policy Institute. Retrieved from http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_juvenile_justice_reform_in_ct.pdf.

⁴ Illinois Juvenile Justice Commission. (2013, February 1). *Raising the Age of Juvenile Court Jurisdiction: The Future of 17-yr-olds in Illinois' Justice System*. Retrieved from <http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/IJJC%20-%20Raising%20the%20Age%20Report.pdf>.

⁵ Schein, Z. (2016, March 24). *Illinois, Connecticut Propose Bills to Raise the Age to 21* [Press Release]. National Juvenile Justice Network. Retrieved from <http://www.njjn.org/article/illinois-connecticut-propose-bills-to-raise-the-age-to-21>.

amongst others⁶. Youth under 25 years old often exhibit more impulsive behavior with less ability to focus on consequences of behavior than older individuals⁷. For meaningful intervention to be successful, young people require age-appropriate services and programming that recognize their stage of development and ensure that their unique needs are appropriately met.

In 2015, nearly 28,000 16- and 17-year olds were arrested and involved in New York's adult criminal justice system – 72% for misdemeanor offenses⁸. Considered adults by the criminal justice system, these adolescents were potentially interrogated without parental involvement, exposed to adult jails and prisons, and saddled with criminal records that negatively impact the rest of their lives. Processing young people in the adult criminal justice system increases the likelihood that they will be physically and sexually abused⁹, results in elevated rates of suicide¹⁰ and increases the likelihood that they will recidivate. Studies have shown that youth charged as adults are more likely to be rearrested sooner and for more serious offenses compared to young people treated in the juvenile justice system¹¹.

New York's current way of treating 16 and 17 year olds charged with committing a crime is not only out of step with the rest of the country, it harms youth and compromises public safety. Youth of color are disproportionately impacted by this antiquated policy, with Black and Latino youth representing 70% of youth arrested and 80% of youth sentenced to incarceration¹².

Raising the age of criminal responsibility requires more than simply increasing the age at which a young person can be charged as an adult. CDF-NY supports seven principles key to comprehensively raising the age in New York:

1. Raise the overall age of juvenile jurisdiction to 18

New York is one of only two states where youth are automatically charged as an adult for any offense, regardless of the severity of the charge. Youth treated in the adult criminal justice system have higher rates of physical abuse, sexual abuse, and elevated risks of suicide. Not only is New

⁶ MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Issue Brief #3: Less Guilty by Reason of Adolescence, http://www.adjj.org/downloads/6093issue_brief_3.pdf.

⁷ Brief for the American Psychological Association, American Psychiatric Association, National Association of Social Workers, and Mental Health America as Amici Curiae, *Graham v. Florida*, 130 S. Ct. 2011 (2010), <http://www.apa.org/about/offices/ogc/amicus/graham-v-florida-sullivan.pdf> III Dispositions of Youth Arrests (16 and 17 year olds), New York State Division

⁸ Dispositions of Youth Arrests (16 and 17 year olds), New York State Division of Criminal Justice Services, <http://www.criminaljustice.ny.gov/crimnet/ojsa/youth-arrests/nys.pdf>

⁹ National Prison Rape Elimination Commission, Report 18, June 2009, <https://www.ncjrs.gov/pdffiles1/226680.pdf>

¹⁰ "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America", Campaign for Youth Justice, November 2007.

¹¹ Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: Report on Recommendations of the Task Force on Community Preventive Services, Centers for Disease Control and Prevention, November 30, 2007, <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.1.htm>

¹² Governor's Commission on Youth, Public Safety and Justice. (2015, January). Final Report of the Governor's Commission on Youth, Public Safety and Justice: Recommendations for Juvenile Justice Reform in New York State. https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice_0.pdf.

York's current practice of treating all youth 16 and up as an adult in the criminal justice system harmful to youth, it is ineffectual, resulting in a criminal justice system that fails to protect the public. Research has shown that treating youth in age-appropriate ways as opposed to treating them as if they were adults increases their future success and decreases the likelihood that they will re-enter the criminal justice system.¹³

2. Ensure no youth who is 16 or 17 years old is placed in an adult jail or prison

In December 2015 Governor Cuomo issued an Executive Order removing 16 and 17 year old girls and minimum and medium security boys from adult prisons and into a separate facility. While the Office of Children and Family Services (OCFS) plays a role in ensuring services are age appropriate, youth continue to be detained in adult facilities, albeit separate from adults. While this represents a positive step for many youth, it does not accomplish what is needed by comprehensive raise the age legislation. While nearly 100 youth are in adult prisons in New York State, nearly seven times that amount are in local jails around the state¹⁴. Youth are five times more likely to be sexually assaulted in adult facilities - often within the first 48 hours of incarceration¹⁵.

3. Ensure parental notification upon the arrest of a 16 or 17 year olds and ensure 16 and 17 year olds are interviewed using practices employed for youth, including parental involvement prior to waiving Miranda rights

Law enforcement officials are not obligated to engage the parents of youth charged as adults, because they are considered adults under the law. This results in youth being arrested and processed without their parents ever being aware. Such youth are vulnerable to actions that can have catastrophic impacts on their cases and lives such as understanding their Miranda rights. Ensuring parents are notified of arrests and are involved in critical decisions such as waiving Miranda rights are critical components of any raise the age legislation.

4. Address the collateral consequences of court involvement and help youth become successful adults by sealing records and expanding Youthful Offender status to age 21 and to additional non-violent crimes

Criminal records cause youth lifelong barriers to education, employment, housing, public benefits, and immigration status. Under the Governor's proposal 16-and 17-year olds charged with misdemeanors and some non-violent felonies will have their cases heard in Family Court, thus they will not have a public criminal record. For youth who remain in adult court and are not transferred

¹³ Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: Report on Recommendations of the Task Force on Community Preventive Services, Centers for Disease Control and Prevention, November 30, 2007, <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>

¹⁴ Final Report of the Governor's Commission on Youth, Public Safety and Justice: Recommendations for Juvenile Justice Reform in New York State.

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

¹⁵ National Prison Rape Elimination Commission, Report 18, June 2009, <https://www.ncjrs.gov/pdffiles1/226680.pdf>

to Family Court, the proposal extends opportunities for Youthful Offender status and record sealing, if youth meet certain criteria for eligibility. Opportunities for sealing and expanded Youthful Offender status provide critical relief from long-term collateral consequences.

- 5. Increase investments in the front-end diversion services that keep youth in their communities rather than incarceration. These alternative to detention, placement and incarceration services are less expensive and more effective at reducing recidivism**

Youth arrested before age 16 and charged with juvenile delinquency in Family Court have opportunities to have their cases diverted. Probation meets with youth prior to the filing of a case in Family Court and has the opportunity to divert the case through the process of adjustment. Youth are offered services and stipulations are set forth that if met keep the case from going forward. Offering front end diversion to young people can help address their needs before ever entering the court system which can both improve outcomes for youth and decrease demand on the courts.

- 6. Originate as many cases of 16 and 17 year olds in Family court as possible; create Youth Parts in adult court for remaining cases, and apply the Family Court Act to as many as possible, regardless of which courthouse in which the case is heard**

Misdemeanors make up nearly 72% of all charges against 16 and 17 year olds in New York¹⁶. Family Court offers an age appropriate model as well as interventions and dispositions best suited to meet the needs of court involved young people.

- 7. Raise the lower age of juvenile delinquency from age 7 to age 12 (except for homicide offenses, which should be raised to 10)**

Currently children can be arrested at seven years old in New York. While many states do not set a lower age of juvenile jurisdiction, of the states that do New York's extremely low age of jurisdiction is one of the lowest, second only to the low age of 6 years old enforced in North Carolina¹⁷. Raising the age is important not only for the upper limit of juvenile jurisdiction, but the lower as well, impacting children just beginning elementary school.

Conclusion

Passing Raise the Age legislation in this budget is critical for the youth, families and communities throughout New York State. CDF-NY strongly supports raising the age of criminal responsibility in New York. We urge the Governor and the Legislature to adopt a budget that includes raise the age legislation and ensures that both the state and the localities will have the resources necessary to effectively raise the age of criminal responsibility.

¹⁶ Dispositions of Youth Arrests (16 and 17 year olds), New York State Division of Criminal Justice Services, <http://www.criminaljustice.ny.gov/crimnet/ojsa/youth-arrests/nys.pdf>

¹⁷ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Statistical Briefing Book: https://www.ojjdp.gov/ojstatbb/structure_process/qa04102.asp?qaDate=2012

We are eager to work with you and your colleagues in the Legislature to implement a comprehensive and thoughtful agenda for New York's children and their families this session. Thank you for carefully considering our testimony. If you have any questions or you would like further information, please contact Beth Powers, Director of Youth Justice, 212-697-0882.