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New York State Budget Hearing:
Testimony of
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Regarding the New York State Executive Budget Proposals
State Fiscal Year 2016-2017
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Introduction

My name is Soffiyah Elijah. I am the Executive Director of the Correctional Association of New York and an attorney who previously worked in both Family and criminal court. I also served as co-chair of the Governor's Commission on Youth, Public Safety and Justice.

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 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 New York State's prisons combined with our policy and legislative expertise inform our perspective today.

I would like to thank Chairman Farrell, Chairman Young, and members of the Assembly Ways and Means and Senate Finance Committees for holding this hearing on the Public Protection related proposals in the Governor's Executive Budget for State Fiscal Year 2016-2017. We value the opportunity to discuss these important proposals, and look forward to working with you this session.

My testimony will initially focus on the portions of the budget impacting the treatment of young people in in New York's criminal and youth justice systems and the need to raise the age of criminal responsibility and remove young people from adult jails and prisons. Following this portion of the testimony, I will provide separate additional analysis related to the Department of Corrections and Community Supervision (DOCCS) proposed FY 2016-2017 budget, including issues related to the DOCCS' overall budget and general operations, solitary confinement, work release and parole, staff violence, oversight, college programs, video visiting, and alternatives to incarceration and reentry.

Raise the Age

Background

New York is one of two states that automatically prosecutes 16- and 17-year-olds as adults in the criminal justice system. There are zero exceptions, even for minor offenses. The adult criminal justice system generally fails to provide young people with the kinds of rigorous rehabilitative services proven to increase public safety. And youth in the adult criminal justice system can receive lifelong criminal records, forever impacting their employment, education and housing prospects- each of which are key to successful community re-entry and reducing recidivism. New York also houses 16- and 17-year-olds in adult jails and prisons, where they face rape, sexual and physical abuse, and are at elevated risk of suicide. Youth in adult jails and prisons

generally do not receive rehabilitation, negatively impacting public safety. And all of these harms are disproportionately born by Black and Latino children.

New York's current law is not smart on crime. Scientific evidence and other states' experiences prove that prosecuting kids as adults increases crime, including violent crime.[1] A study comparing youth charged in New York's adult courts with youth charged with identical crimes in New Jersey's juvenile courts found New York youth were 100% more likely to re-offend with a violent offense and 26% more likely to be reincarcerated.[2] When Connecticut moved the majority of the cases of 16- and 17-year-olds out of adult court, arrests plummeted, including for violent crime.[3] States across the nation have raised the age of criminal responsibility (the age at which children can be prosecuted as adults), and have seen positive results.

New York's current law also contradicts a robust body of scientific research about brain development[4] in young people as well as the science of what works. Recent neuroscientific

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[1] Robert Hahn, Angela McGowan, Akiva Liberman 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; 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; 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," Columbia Law School, Pub. Law Research Paper No. 03-61, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=491202.

[2] *Id.* (Fagan, Kupchick and Liberman).

[3] Justice Policy Institute, Juvenile Justice Reform in Connecticut 3, 16 (2013), available at http://towfoundation.org/wp-content/uploads/2013/03/JPI_JJ-Reform-in-CT_pre-press.pdf.

[4] The prefrontal cortex of the brain, crucial for weighing risk vs. reward, future planning, and impulse control, is one of the last parts of the brain to develop and is still not fully mature even in late adolescence. Its development is crucial for rational decision-making. *See* 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). Juveniles, even in their late teens, do not have the same ability as adults to make mature decisions, and engaging in reckless behavior and failure to exercise self-control is normal for adolescents. Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 Developmental Rev. 339, 344 (1992); *see also* 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). Adolescents often do not accurately access risk and are more likely to place greater weight on rewards than on risks when making choices. 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. *See* 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 5, at 350-353 (summarizing evidence that adolescents' poor capacity for

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.

It is critical that New York State passes comprehensive legislation to raise the age of criminal responsibility and align with evidence-based advances in youth justice, increase public safety and protect the well-being of our children. We highlight the aspects of the Governor's legislation that are rooted in the principles that maximize positive outcomes for youth, change young people's behaviors and life trajectories, and increase public safety. In particular, we support the Governor's legislation for reflecting and incorporating these seven essential principles and actions:

1. Raise the overall age of juvenile jurisdiction to 18.
2. Raise the lower age of juvenile delinquency from age 7 to age 12.
3. Ensure no youth are held in adult jails and prisons, but are instead placed in youth facilities. Create youth facilities that utilize evidence-based therapeutic youth development models in small residential settings.
4. Originate as many cases of 16- and 17-year-olds in Family Court as possible, and create Youth Parts in the adult court system for the remaining cases, with the option for removal to Family Court.
5. Ensure parental notification of arrest.
6. Expand opportunities for diversion from the system.
7. Allow for the sealing of records.

Raising the age of criminal responsibility is good for public safety and, therefore, good for all New Yorkers. It also ultimately ensures that the public's tax dollars are well spent on the kinds of interventions proven to work. It is imperative that the Governor and Legislature make raise the age the number one priority in 2016. It cannot be lost to negotiation on other issues or pushed aside for other priorities.

1. Raise the overall age of juvenile jurisdiction to 18, which is consistent with other states.

New York and North Carolina are the only two states where the age of adult criminal responsibility is set at 16. In 2013, there were 33,404 arrests of 16- and 17-year-olds in New

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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).

York State.[5] These teenagers are automatically prosecuted as adults, even for the most minor of offenses. Under current law, no one – not even a judge – can transfer the case of a 16- or 17-year-old to Family Court. This current law also means that 16- and 17-year-olds are in adult jails and prisons. The Governor issued an executive order in December 2015 to remove some 16- and 17-year-olds out of adult prisons and place them in a separate facility operated by the adult system's Department of Corrections and Community Supervision (DOCCS). This is a first step, however, such youth are unable to benefit from the services and programs of the youth justice system unless the age of juvenile jurisdiction is changed to 18. This executive order also does not affect youth in jails. The legislation must raise the age of criminal responsibility to 18 to ensure that all youth are treated as youth in New York's justice system.

The Executive Budget proposal would "raise the age" of criminal responsibility (the age at which a person can be tried as an adult) to 17-years-old in 2018, and 18-years-old in 2019. This type of phased in approach was used in nearby Connecticut, and worked successfully.

2. Raise the lower age of juvenile delinquency from age 7 to age 12.

New York is currently one of 16 states that sets a lower bar on juvenile jurisdiction by statute, and of those states only 6 set the age below 10.[6] States without a statutory minimum still have a practical minimum that varies depending on prosecutorial and judicial discretion, other legal standards, and competency determinations.[7]

We support the proposed executive budget's measure that would additionally raise the lower age of juvenile jurisdiction from 7 to 12 for all but homicide offenses.[8]

The number of youth under 12 involved in delinquency proceedings in the state is currently very small.[9] Scientific studies show that the ability of young children to understand and exercise their legal rights in a trial-like setting is limited.[10] These young children often have serious and unmet social service needs, and would benefit from services and interventions designed to meet their unique needs and improve their future prospects. By contrast, justice system involvement can have the unintended consequence of worsening long-term outcomes for this highly vulnerable

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[5] *See* Final Report of the Governor's Commission on Youth, Public Safety and Justice at 39.

[6] Juvenile Justice Geography, Policy, Practice & Statistics (JJGPS), http://www.jjgps.org/jurisdictional-boundaries#age-boundaries?year=2012&ageGroup=1. In North Carolina the lower age of juvenile jurisdiction is set at 6-years-old, in New York, Massachusetts, and Maryland it is 7, and in Arizona and Washington it is 8.

[7] For example, in California the state needs "clear proof" that a child under fourteen can understand the wrongfulness of his or her conduct in order to try him or her in a family court. *See* In re James B., 135 Cal. Rptr. 2d 457, 464 (Cal. App. 4 Dist. 2003).

[8] New York State Executive Budget 2016-17, Education, Labor, and Family Assistance Article VII Legislation, Part N, §56, pg. 234. Juvenile jurisdiction would continue for 10- and 11-year-olds accused of first or second degree murder.

[9] In 2013, only 272 initial juvenile delinquency petitions were filed in 2013 for children under 12. DCJS-OCA Juvenile Delinquent Family Court Database, prepared by the Division of Criminal Justice, Office of Justice Research and Performance (OJRP), April 29, 2014.

[10] *See* Thomas Grisso, et al., "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants," *Law and Human Behavior* 27, no. 4 (2003): 333–63.

population. Providing age- and developmentally- appropriate interventions and services for children younger than 12 would ultimately ensure that fewer of them become justice-involved as they age, ultimately improving their long-term outcomes, benefitting public safety, and saving taxpayer funds. The current PINS system for community-based diversion could be used for very young children engaging in delinquent behavior, as could family support and crisis centers found in the Proposed Executive Budget.

3. Ensure no youth are held in adult jails and prisons, but are instead placed in youth facilities that utilize evidence-based therapeutic youth development models in small residential settings, proven to be an effective approach to preventing recidivism and helping young people make positive, lasting changes in their behavior.

Currently, 16- and 17-year-olds prosecuted as adults are held in adult jails and prisons. In New York State Department of Corrections and Community Supervision (DOCCS) prisons, youth are, to the best of our knowledge, currently housed in general population with adults, including side-by-side in shared dormitories holding as many as 60 people of all ages.[11]

As noted earlier, the Governor issued an executive order to remove some 16- and 17-year-olds out of adult facilities and place them in a separate facility still operated by the adult system's Department of Corrections and Community Supervision (DOCCS). This is a first step but a very limited one due to the current age of criminal responsibility being set at 18 and resulting lack of *juvenile* jurisdiction for youth who are 16- and 17-years-old. Through our unique legislative mandate to monitor the state's prison system, the CA has consistently found DOCCS staff routinely mistreats and abuses people in their custody and deprives them of the quality mental health, education, and supportive services they need and deserve.[12] Furthermore, the CA's visit to Greene Correctional Facility, where the median age of incarcerated people is 22, found that 97% of those incarcerated stated that corrections officers subjected younger people to greater harm and violence than other people in custody.[13] This Executive Order does not address or ameliorate any of the immense harms youth face in New York's adult prisons.

In addition, even under the Executive Order, sixteen and seventeen-year-old youth in New York State will not have direct access to developmentally appropriate and necessary services and programs operated by the state's youth justice agency, the Office of Children and Family Services (OCFS). Under this Executive Order, sixteen- and seventeen-year-old male youth classified as maximum security will be housed in Coxsackie, another DOCCS facility, and excluded from access to any of the youth-appropriate evidence-based services from which they would clearly benefit.

Furthermore, as noted earlier, this executive order does not affect the youth in jails. New York State law also requires local jails to house 16- and 17-year-olds separately from those 18 and

[11] Final Report of the Governor's Commission on Youth, Public Safety and Justice, at pages 81 to 83.
[12] Correctional Association of New York, Testimony before the NYS Assembly Committee on Correction re: Oversight and Investigations of the Department of Corrections and Community Supervision (December 2, 2015).
[13] Correctional Association of New York, Greene Correctional Facility: 2012-2014 (2014)

older, although minors and adults can mix in common areas.[14] Despite this separation, conditions for 16- and 17-year-olds in adult jails can be brutal and can worsen outcomes for youth, ultimately harming both young people and public safety. In New York City, adolescents in the Rikers Island jail complex are separated from adults, although a federal Department of Justice investigation found that these young people are subject to brutal and inhumane conditions, including the routine use of excessive force.[15]

Youth in adult jails are thirty-six times more likely to commit suicide than those in juvenile detention facilities.[16] Youth in adult facilities are nearly one hundred percent more likely to face physical assault by staff than youth in juvenile facilities.[17] 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.[18] 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."[19] In addition, in some, although not all, adult facilities in New York, children may face some forms of isolation, albeit limited. Research shows that isolation can both cause and exacerbate mental illness in adolescents.[20]

The Proposed Executive Budget would prevent youth arrested before age 18 from being held in adult jails or prisons, and instead commit them to the custody of the Office of Children and Family Services (OCFS) to be housed in youth facilities.[21] Youth adjudicated as Juvenile Offenders or Youthful Offenders will be in OCFS custody if they are under 21-years-old at the time of sentencing and may remain in OCFS custody until the age of 23.[22] The Proposed Executive Budget will ensure that when youth are confined, they are held with other youth in

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[14] Final Report of the Governor's Commission on Youth, Public Safety and Justice, at page 81.

[15] Press Release, Preet Bharara & Eric Holder, Manhattan U.S. Attorney Finds Pattern And Practice Of Excessive Force And Violence At NYC Jails On Rikers Island That Violates The Constitutional Rights Of Adolescent Male Inmates (Aug. 4, 2014), http://www.justice.gov/usao/nys/pressreleases/August14/RikersReportPR.php.

[16] Arya Neelum, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America* (2007), Campaign for Youth Justice.

[17] 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).

[18] *Id.*

[19] National Prison Rape Elimination Commission Report (2009) at 18, http://www.ncjrs.gov/pdffiles1/226680.pdf.

[20] 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), 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-filesystemfile.ashx/_key/CommunityServer.CommunityServer.Components.PostAttachments/00.00.05.95.22/Supermax-_2Doo_-T-_2Soo_-Smith.pdf (accessed August 27, 2012).

[21] New York State Executive Budget 2016-17, Education, Labor, and Family Assistance Article VII Legislation, Part N, §80, pg. 255-256.

[22] New York State Executive Budget 2016-17, Education, Labor, and Family Assistance Article VII Legislation, Part N, §80, pg. 256.

settings more appropriate to their age and development. The Proposed Executive Budget also stipulates that new facilities created by OCFS to house youth will utilize current best practices, including smaller, more home-like facilities close to the home, family, and community of the youth. We further highlight and support that such facilities will provide gender-responsive programming and provide the individualized attention and encouragement of supportive peer relationships that are hallmarks of effective residential services. (p. 259)

The provision of age- and developmentally-appropriate rehabilitation and services will improve both individual outcomes and public safety. Additionally, protecting children from the rape, sexual abuse, assault, emotional abuse, and suicide that frequently characterizes the experience of children in adult jails and prisons is a critically important outcome in its own right. The trauma and abuse that children routinely face inside adult facilities can scar them for life, decreasing the chances that they will successfully reenter the community upon release.

4. Originate as many cases of 16- and 17-year-olds in Family Court as possible, and create Youth Parts in the adult court system for the remaining cases, with the option for removal to Family Court.

Under New York's current "Juvenile Offender" law, youth who are 13, 14 and 15 and are charged with certain serious crimes have their cases filed in adult criminal court, with the possibility of a judicial removal to Family Court. In the proposed executive budget, all misdemeanors, many non-violent felonies, and certain violations originate in family court.[23] In addition, this legislation establishes a youth part in each Superior Court where are all other cases will originate, with the possibility for removal to Family Court.[24] Judges in the youth part will receive specialized training to be able to effectively hear such cases, and this part will have exclusive jurisdiction of all proceedings related to juvenile offenders.[25] There will also be an option to remove to Family Court certain violent felony offenses, with heightened requirements for more serious crimes.[26]

The benefits of raising the age of automatic adult prosecution are many, and will accrue to individual youth, family members, communities, and the general public. This is because the harmful impacts of the adult prosecution of youth begin at arrest and can last a lifetime. As discussed later in this testimony, starting with arrest, parents whose 16- and 17-year-olds are arrested have no right of notification, even if their child is held overnight, and the police can interrogate youth without an adult present. Once a child enters the adult justice system, they generally cannot access the kinds of rigorous and age-appropriate interventions proven to reduce recidivism and improve public safety.

[23] New York State Executive Budget 2016-17, Education, Labor, and Family Assistance Article VII Legislation, Part N, §722, pg. 174-178.
[24] *Id.*
[25] *Id.*
[26] *Id.*

Analysis completed in support of the Governor's Commission for Youth, Public Safety, and Justice's work in 2014, of which I served as co-chair, found that if New York were to implement a range of evidence-based services currently used in juvenile justice for its population of 16- and 17-year-olds in the adult system (who currently do not have access to these interventions), the state would eliminate between 1,500 and 2,400 crime victimizations every five years.[27]

Overall, a strong body of scientific research proves that prosecuting youth as adults *increases* recidivism, including for violent crime. A rigorous study compared New York and New Jersey youth charged with robbery (1° and 2°), burglary (1°) and assault (1° and 2°). The NY cases originated in adult criminal court and the NJ cases originated in juvenile court (New Jersey's age of criminal responsibility is 18). 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 re-incarcerated.*[28]

Similarly, an independent systematic review of published scientific evidence found 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 is "*counterproductive* to reducing juvenile violence and enhancing public safety."[29]

While not without flaw, New York State's youth justice system currently includes a wide range of appropriate tools for effectively and efficiently responding to youth who break the law. New York State – including this body – has invested heavily in creating a youth justice system that is evidence-informed and increasingly 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.

New York State's Family Courts have undergone significant reforms in recent years, and are well equipped to handle the cases of 16- and 17-year-olds. Family Court judges already hear a significant portion of more serious cases (as almost one-third of more serious "Juvenile Offense" cases for 13-, 14-, and 15-year-olds are currently waived down from adult criminal court).[30] The Family Court system includes probation adjustment (discussed in more detail later in this testimony); a robust continuum of community-based interventions; and probation and rehabilitation services designed for effectiveness with youth. The Family Court process also engages young people's families in services, as needed and appropriate. Youth justice staff members are generally trained to work specifically with youth, and many have specialized

[27] *See* Final Report of the Governor's Commission on Youth, Public Safety and Justice, at 1.
[28] FN 1 (Fagan, Kupchick and Liberman).
[29] FN 1(Hahn, McGowan, Liberman).
[30] In 2013, 30% of Juvenile Offense cases were removed to Family Court, Final Report of the Governor's Commission on Youth, Punic Safety and Justice, at 67.

training in critically important areas such as positive youth development[31] and trauma-informed care. The current Family Court process offers rigorous supervision and treatment for young people, including the routine monitoring of school attendance, curfew, and participation in community based services.

5. Ensure parental notification of arrest for all 16- and 17-year-olds.

Under the current law, because youth 16- and 17-years-old are considered adults, police are not statutorily obligated to notify parents when their child is arrested. A youth may remain in police custody or jail, or police lockups with adults, for days without a parent or guardian's knowledge.

The Proposed Executive Budget would expand to 16- and 17-year-olds who are arrested the current juvenile practices for parental notification and questioning.[32] Research shows that youth are substantially more likely than adults to waive their *Miranda* rights, make incriminating—and often untrue—statements, have difficulty understanding their *Miranda* rights, and misunderstand the long-term consequences of not invoking their rights.[33] The law recognizes that typical *Miranda* warnings are not enough to protect youth during the post-arrest process, which is why there are currently additional procedural requirements—such as parental notification—for youth under 16. 16- and 17-year-olds are equally as vulnerable in the interrogation setting and the Budget Proposal would allow for them to be provided the same protections and caregiver support post-arrest.

This legislation would bring New York standards in line with practices in comparable states. Without these protections, the youth are more likely to give unreliable statements or false confessions during the interrogation, which can threaten the soundness of the judicial outcome, harm innocent youth and their families, and erode the public's faith in the judicial process.

This change would also benefit parents and caregivers. Currently the parent/caregiver of a 16- or 17-year-old does not have to be notified of their child's arrest, even when a child is held overnight. Under the current law, parents/caregivers have no right to be with their child during questioning. The lack of parental notification and presence can be particularly detrimental for

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[31] 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. National Juvenile Justice Network, Policy Platform: Approaching Juvenile Justice With a Focus on Positive Youth Development 1 (2010) (citations omitted) (internal quotation marks omitted), http://www.njjn.org/uploads/digital_library/resource_1427.pdf.

[32] New York State Executive Budget 2016-17, Education, Labor, and Family Assistance Article VII Legislation, Part N, §20, pgs. 188-192.

[33] Barry C. Feld, "Real Interrogation: What Actually Happens When Cops Question Kids," *Law & Society Review* 47, no. 1 (2013): 12.; Jodi L. Viljoen et al., "Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Pleas, Communication with Attorneys, and Appeals," *Law and Human Behavior* 29, no. 3 (2005): 253–77; Thomas J. Grisso and Carolyn Pomicter, "Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver," *Law and Human Behavior* 1, no. 4 (1977): 321–342.

youth with cognitive impairments and/or mental health disorders. Evidence shows that youth with mental health and/or cognitive impairments are disproportionately represented in the justice system.[34] These youth are at great risk of giving false information to the police, failing to understand police questions, and failing to understand their rights to counsel and to remain silent.

By including 16- and 17-year-olds in the current protections for younger youth, the Budget Proposal would go a long way to ensuring that the rights of youth and parents are better protected.

6. The state should expand the capacity for local law enforcement and probation departments to divert low-level cases from the juvenile justice system.

New York's Family Court 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." In Family Court, "(a)djustment occurs when the probation department decides not to refer the case to the presentment agency, as long as the youth follows the guidelines set by a probation officer. Diagnostic testing for service needs occurs at this stage, and a wide range of services may be provided through either probation or social service agencies."[35]

Sixteen- and seventeen-year-olds prosecuted in adult criminal court currently have no opportunity for probation diversion. The lack of probation diversion for this population is costly in terms of both dollars and increased recidivism. The Executive Budget proposal requires probation departments to use a validated risk assessment tool to assess a young person's risk level when making determinations about whether to attempt to adjust a case.[36] The proposal also requires probation to assess the harm to victim when making the determination about whether to attempt to adjust a case.[37]

Under the Executive Budget Proposal, the department of probation may attempt to adjust a case before a petition is filed in court if probation assesses the case is suitable based on the level of risk as determined by a validated risk assessment instrument, and considering the extent of injury to victim.[38] We further support that the Executive Budget Proposal mandates that probation must attempt to adjust if a child is assessed to be low risk, the charges are a violation or non-violent misdemeanor and meets certain criteria.[39] All cases in the Youth Part of superior court will be

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[34] In 2013, 57.3% of youth admitted to OCFS facilities were found to have mental health needs at intake. *See* Final Report of the Governor's Commission on Youth, Public Safety and Justice, at 118.

[35] The New York State Juvenile Justice Steering Committee, *Safe Communities Successful Youth: A Shared Vision for the New York State Juvenile Justice System, Strategy and Action Plan* (July 2011), at 22, Appendix B.

[36] New York State Executive Budget 2016-17, Education, Labor, and Family Assistance Article VII Legislation, Part N, §65, pgs. 241-245.

[37] *Id.*

[38] *Id.*

[39] *Id.*

screened by probation using a validated risk assessment instrument and youth will be offered appropriate services. Upon successful completion of this service plan, youth may have their case dismissed with the consent of the District Attorney.[40]

Generally, diversion/adjustment is both less expensive than formal court processing,[41] and proven to reduce recidivism.[42] When low-risk youth receive community-based services, rather than penetrate the justice system, their recidivism rates decrease. Allowing the adjustment of low-risk cases for 16- and 17-year-olds would benefit both public safety, and taxpayers. Adjusting low-risk cases preserves limited resources for higher-risk youth, while reducing – rather than inadvertently increasing – recidivism among low-risk youth.

Currently, youth who are arrested and not released to their parents by the police are held in detention facilities until the Family Court is next in session, which means they could be held for several days if arrested over a weekend. In the status quo, the court possesses the discretion to detain and place youth in residential settings for any offense, even minor violations. This allows for youth to be placed in settings that are more restrictive than necessary for their risk level, which can increase rates of recidivism, violence, and poor life outcomes.[43]

The Commission found that youth who have committed only low-level non-violent offenses are often being placed in custody. For example, about 2,200 minors receive sentences to jail or time served following a misdemeanor arrest, and 80% of those involved non-violent arrest charges. In New York City, 59 percent of detention admissions are for youth charged with misdemeanor offenses.[44] Placing low-risk youth in custody harms their individual outcomes, and is an inefficient and wasteful use of taxpayer funds.

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[40] New York State Executive Budget 2016-17, Education, Labor, and Family Assistance Article VII Legislation, Part N, §722, pg. 173.

[41] Juvenile Diversion Guidebook, Models for Change Diversion Workgroup, at 12.

[42] 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/.

[43] D. A. Andrews and James Bonta, "Rehabilitating Criminal Justice Policy and Practice," Psychology, Public Policy, and Law 16, no. 1 (2010): 39–55; See Neelum Arya, Campaign for Youth Justice, "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America" 1 (2007), http://www.campaignforyouthjustice. org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf; Amanda Petteruti et al., Just. Pol'y Inst., "The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense" 1, app. A, at 16–19 (2009), http://www.justicepolicy.org/images/ upload/09_05_REP_CostsOfConfinement_JJ_PS.pdf; see also Barry Holman & Jason Ziedenberg, Just. Pol'y Inst., "The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities" 1, 4–5 (2006), http://www.justicepolicy.org/images/ upload/06-11_REP_DangersOfDetention_JJ.pdf; "The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform," Campaign for Youth Just. 1 (Liz Ryan & Jason Ziedenberg eds., 2007), http://www.campaignforyouthjustice.org/documents/CFYJNR_ConsequencesMinor.pdf; Task Force on Community Preventive Services, "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System," 32 Am. J. Prev. Med. S7 (2007), http://www.thecommunityguide.org/violence/mcgowanarticle4.pdf.

[44] Final Report of the Governor's Commission on Youth, Public Safety and Justice, at 95 to 96.

The Executive Budget authorizes designated magistrates to conduct detention hearings on weekends and other times when the Family Court is not in session, so that youth are not unnecessarily held for extended periods.[45] Furthermore, we fully support the Proposed Executive Budget's stipulation that youth who are alleged to have commit a violation or non-violent misdemeanor cannot be detained if the youth has no prior felonies, not more than one prior non-violent misdemeanor, and is assessed as low risk using a validated risk assessment instrument, unless there is imminent public safety risk.[46] In addition, under the Proposed Executive Budget, youth must not be directed to placement if the court finds the youth committed a violation or non-violent misdemeanor, the youth has no prior felonies, no more than one prior non-violent misdemeanor, and was assessed as low risk by a validated risk assessment instrument, unless there is imminent public safety risk.[47]

The proposal allows jurisdictions to concentrate resources on youth who pose a safety risk while requiring diversion attempts for low-risk cases and expanding opportunity for assessment and targeted interventions, including the creation of Family Support Centers to provide community-based supportive services to children and families to prevent Person In Need of Supervision (PINS) adjudications.[48] In the status quo, low-risk youth held for violations and non-violent misdemeanors are ultimately released after very short stays. Detaining them for any period of time is of no benefit to public safety and only increases the cost of the system to taxpayers. Additionally, the proposal would prevent increased recidivism rates that result from detaining youth in residential settings that are disproportionate to their level of risk.[49] Research shows that the community-based interventions provided to low-risk youth through diversion instead of court

[45] New York State Executive Budget 2015-16, Education, Labor, and Family Assistance Article VII Legislation, Part N, §16, pg. 186.

[46] New York State Executive Budget 2016-17, Education, Labor, and Family Assistance Article VII Legislation, Part N, §68, pgs. 245-246.

[47] New York State Executive Budget 2016-17, Education, Labor, and Family Assistance Article VII Legislation, Part N, §71, pg. 249.

[48] In the status quo, youth can be detained and placed in juvenile facilities for status offenses, such as truancy. Status offenses are not crimes. A "status offender" is defined as a youth under 18 who does not attend school as required, is incorrigible, is ungovernable, is habitually disobedient and beyond the lawful control of a parent or other person legally responsible, violates the provisions of the penal law regarding marijuana or prostitution, or appears to be a sexually exploited child (NY Family Court Act § 712(a). Local service attempts to divert PINS cases from court are required by law, with no time limit on diversion, before a petitioner can access the Family Court. Currently, youth being adjudicated for PINS may be placed in institutional settings although they have committed no criminal offense, but can be confined only in non-secure detention and placement facilities. The residential placement of youth solely adjudicated Persons In Need of Supervision is an ineffective and inefficient use of taxpayer resources. Placing these youth in residential settings has not been demonstrated to work, and comes at great taxpayer cost.

[49] Andrews and Bonta, The Psychology of Criminal Conduct; Andrews, Zinger, Hoge, Bonta, Gendreau, and Cullen, "Does Correctional Treatment Work?"; Craig Dowden and D. A. Andrews, "What Works in Young Offender Treatment: A Meta-Analysis," Forum on Corrections Research 11, no. 2 (May 1999): 21–24; and Paul Gendreau, Paula Smith, and Sheila A. French, "The Theory of Effective Correctional Intervention: Empirical Status and Future Directions," in Francis T. Cullen, John Paul Wright, and Kristie R. Blevins, eds., Taking Stock: The Status of Criminological Theory (New Brunswick, NJ: Transaction Publishers, 2006), 419–46.

processing are effective in reducing recidivism rates.[50] As noted in the Commission report, other states have placed restrictions on the use of out-of-home placement for some youth charged with low-level offenses. Texas, Ohio, Georgia, Mississippi, Kentucky, and Florida have enacted legislation banning the use of custody for specific categories of youth, particularly those charged with misdemeanors.[51]

The Commission also found that resources currently being used for the unnecessary detention and placement of low-risk youth can be redirected to support the use of these settings for those youth who have been found to pose a risk to public safety.[52] Reducing the unnecessary and ineffective confinement of low-risk youth, while increasing access to community-based interventions (as outlined both in this and other sections of this testimony) is good for kids, and good for the public.

7. Allow for the sealing of records.

Young people with criminal convictions face enormous barriers to maintain stable and productive lives – including barriers to obtaining housing, employment, public benefits and education. The state must provide relief from the collateral consequences of an adult conviction by granting the capacity to seal convictions for crimes committed by those under age 21.

Currently, other than for those youth who receive Youthful Offender status, convictions remain on youth's criminal records for life, which can forever limit an individual's chances for stable housing, employment, and education—all of which are critical to successful community re-entry, and reducing recidivism.

Under the Executive Budget Proposal, youth eligible to receive Youth Offender status have been expanded from youth under age 19 to youth under 21.[53] Furthermore, youth would have the ability to apply to the court to have up to two eligible convictions but not more than one felony sealed ten years following conviction or, if the youth was incarcerated, from the date of release for the latest conviction. The Executive Budget Proposal details the application process.[54] If the conviction is sealed, the conviction would still be available to law enforcement agencies,

[50] Examples are Multisystemic Therapy, Functional Family Therapy, and Aggression Replacement Training. *See* Final Report of the Governor's Commission on Youth, Punic Safety and Justice, at 23-27.
[51] Final Report of the Governor's Commission on Youth, Punic Safety and Justice, at 96.
[52] Final Report of the Governor's Commission on Youth, Punic Safety and Justice, at 95.
[53] New York State Executive Budget 2016-17, Education, Labor, and Family Assistance Article VII Legislation, Part N, §39, pg. 208
[54] New York State Executive Budget 2016-17, Education, Labor, and Family Assistance Article VII Legislation, Part N, §160.59, pgs. 226-230

agencies with the responsibility for issuing gun licenses, and prospective employers of police or peace officers.[55]

As discussed in the previous section, criminal convictions pose serious barriers to successful re-entry. The proposal is a first step to reducing those collateral consequences, while simultaneously maintaining law enforcement access.

Conclusion

Raising the age of criminal responsibility and ensuring that youth in the justice system are held accountable in ways that work must be a priority this legislative session. The measures outlined in the testimony are good for New York's youth, families, communities, public safety, and taxpayers.

These seven principle are based on and driven by strong scientific evidence about how to help youth and reduce delinquencies and crime. This evidence repeatedly makes clear that prosecuting youth in the adult justice system and housing children in adult jails and prisons increases, rather than decreases, crime. This scientific proof is further supported by the experience of many other states across our nation who have raised the age of criminal responsibility, and seen their arrest and recidivism rates drop.

New York and North Carolina share a failed public policy. You have before you the chance to move New York from laggard to leader, and to improve the lives of children, as well as the safety of our communities. We urge your support. The lives of young people and the safety of our communities hang in the balance.

DOCCS Overall Budget and General Operations

Overall, the DOCCS budget ($3.18B) was increased by more than 8% from the previous year, though this increase is entirely due to an increase in capital appropriations, which had been drastically reduced in FY 2014-15 and FY 2015-16. In FY 2016-17, the DOCCS capital appropriations budget was restored to the traditional level existing prior to the recent reductions. In contrast, the DOCCS state operations budget for FY 2016-17 was reduced from $2.903B to $2.842B, representing a reduction of 2.07%, greater than the decrease in the total DOCCS population which declined only 0.98%. Overall, the continued large expenditure on incarcerating people raises concerns about the use of New York's taxpayer dollars on prisons rather than on education, health, and other human services that actually help make our communities safer and thriving. Moreover, the allocations to the various divisions of the Department are not even and reflect some positives and some concerns about the adequacy and use of funding for the next fiscal year. While on the positive side there is a continued increase in

[55] New York State Executive Budget 2016-17, Education, Labor, and Family Assistance Article VII Legislation, Part N, §160.59, pg. 230.

funding for hepatitis C medications, there are serious concerns about continued under-funding of program and medical services.

Program Services –The Governor's budget indicates that DOCCS program staff will increase from 2,848 to 2,949 positions, effectively adding 101 program staff items in FY 2016-17. However, the previous year's budget for FY 2015-16 indicated the Department would have 2,946 program FTEs as of March 2016, well above the current estimation of only 2,848 positions. The failure to hire the staff intended for FY 2015-16 means that in fact the projections of program staff positions for FY 2016-17 is only three positions more than what was projected to have already been in existence. The failure to hire projected program staff during the current fiscal year signifies that essential program services were not delivered this year due to inadequate staffing. Last year we applauded the plan for a major expansion of program staff that had been necessary since staffing declined at unacceptably high rates during the five-year period between FY 2009-10 through FY 2013-14.[1] Though we acknowledge that the small program staff increase occurring during the last fiscal year and the planed continuation of that increase in the proposed budget are positive steps, we are concerned whether in fact the projected program staff increases will materialize in the coming fiscal year.

Even with the increases proposed in FY 2016-17, the amount of program staff will be 15% less than it was in March 2009, a greater reduction than the 14% decline in the prison population. Also, during this time period, DOCCS program staff had to assume the duties of the prison parole staff who were transferred from parole to DOCCS. Further increases will be needed in the next few years just to get back to where DOCCS was six years ago. Moreover, additional programming staff is required to meet the needs of the prison population. During our prison visits in the last several years, we have seen a tremendous number of program staff vacancies, long waitlists to get into basic mandatory programs, and a lack of programs other than the most basic mandatory requirements to help empower incarcerated persons and help prepare them to successfully return to their home communities.

A related area of concern is the overall decrease in the program services budget. The budget indicates that the personal service funds are roughly 3% less than in FY 2015-16. Furthermore the amount of funding for non-personal expenses did not increase significantly (less than 1%) and mirrored the budgets of the past several fiscal years; the amount of funding for non-personal expenses for program services remained essentially flat. As was the case in FY 2015-16, this amount is 30% less than the funds for programming provided in the FY 2010-11 budget. During our prison visits we are told by program participants and sometimes even by program staff that the supplies they need are limited and that equipment is sometimes outdated and in need of replacement. Given the expansion of program staff during FY 2015-16 and the increases proposed in FY 2016-17, it is unrealistic to expect that the cost of supplies and materials for programming will not increase. Moreover, as the educational system continues changing to

incorporate the new Common Core curriculum for New York State schools within the prisons, the need for new educational written materials and more and updated computers in the prisons is critical. The current non-personal service program budget would not appear to be adequate to meet the program needs for the incarcerated population.

Medical Services – The FY 2015-16 budget includes an almost $14M increase in the DOCCS health services budget, with a $4.4M decrease in staffing expenditures and a $18.4M increase in non-personal services. The increase is primarily contained in the supplies and materials portion of the healthcare budget, amounting to more than $14M. The Senate and Assembly analyses of the DOCCS budget indicates that this increase will be used primarily to meet increased drug costs, specifically for patients who will be prescribed the new Hepatitis C medications, which are extremely effective and well tolerated. In addition, there is a $4M increase in medical contract services to cover increased hospitalization and specialty care costs. We are pleased to see the continuation of this large allocation of funds specifically for the aid of the more than 6,000 HCV-infected patients in DOCCS custody. Given the expanding health needs of the prison population, this increase is appropriate, and we remain concerned whether there are sufficient funds to meet the specialty care needs of the population.

Although the increase in medication funding is a welcomed development, other aspects of the healthcare budget raise concerns. Specifically, the funding for FY 2016-17 personal services has been reduced by more than $4M, and the current number of staff are insufficient to meet the medical needs of people incarcerated in the state. The budget indicates that Health Services staff will increase from 1,603 to 1,651, a purported increase of 48 staff members. However, even more concerning than with program services, the budget for FY 2015-16 indicated that there were 1,644 medical staff members at the time of last year's proposed budget and the projection was that this staffing would be maintained until the end of FY 2015-16. Thus, the number of medical staff declined again in FY 2015-16, as it has for the past **eight years**, and the projections for the upcoming year are simply to bring staffing levels back to about where they were projected to be last year. Looked at in a broader context, since 2011 the medical staff has declined by nearly 20% and even with the projected return to last year's numbers of staff in the proposed budget, staff will have declined by almost 18%. In contrast, the total DOCCS population has been reduced by 8.4%. It is very distressing that the medical staff has declined at a rate **more than two times** that of the population reduction. Throughout our prison visits, we are identifying vacancies in crucial medical staff, including doctors, physician assistants and nurses, and in turn receive numerous complaints from incarcerated persons about both access to care and the quality of care received. It is only appropriate that so long as there continue to be so many people incarcerated DOCCS, the state must significantly increase its medical personnel, particularly during a time when the DOCCS population is aging, requiring additional health services and the Department is expanding HCV treatment, which requires close monitoring by DOCCS physicians and nursing staff.

Supervision of Incarcerated Population – The FY 2016-17 DOCCS budget for supervision of the incarcerated population contains a 3.58% reduction in funding, but an increase in security staffing. Concerning staffing, in the opposite manner as in program and medical services, the Governor's proposed budget implies an increase in security staffing that is smaller than the actual effective increase. Specifically, while the last fiscal year's budget projected maintaining the same level of security staff of 19,141 employees, in fact security staff increased to 19,244 items. The current projected budget for FY 2016-17 furthers that increase with an additional 24 security employees, up to 19,268. Thus, over the last two fiscal years, security staff will have increased at the same time that the number of people incarcerated in DOCCS has continued to decline. Moreover, during the period from March 2010 to the projected staffing for FY 2016-17, security staff has declined only 6.1% while the DOCCS population has declined 11.6%. The reduction in security staff during this six-year period is substantially less than the reductions in support services (14.9%) and health services (17.9%). This contrast is particularly disturbing because during this time, 13 prisons have closed and many other housing units have been vacated, requiring less security staff to monitor the incarcerated population. The closing of housing units and prisons should have a larger impact on the security staff than for other services, which are primarily impacted only by reductions in prison census, but not reductions in building security.

Support Services – The FY 2016-17 funding for support services ($382.5M) is 4.2% less than the amount proposed for last year's fiscal budget. After a decrease in support services staff in the last fiscal year that was even greater than the projected decline, the support staff is projected to return this fiscal year to the lowered level projected last year of 2,679 items. Again, as with program and medical staff, it appears according to the budget for FY 2016-17 that there is a 41-employee increase in FY 2016-17. However, the 2015-16 budget projected a decline from 2,735 FTEs to 2,677, and in fact the number of staffing items is currently down to 2,638. Furthermore, the 2,679 items that are proposed in this years' budget show an overall reduction of 25% from the staffing levels that existed in March 2009. This reduction runs parallel to neither the reduction in supervision staff (9.52%) nor the reduction in the DOCCS population (13.98%) throughout the same time period. During our prison visits, we uniformly hear concerns raised by staff and incarcerated people about the reductions in clerical and maintenance staff and the consequent problems the Department is experiencing with completing necessary records and repairing the aging facilities in which many persons are incarcerated. We are concerned that the long-term reductions in support staff has resulted in a lessening of DOCCS ability to adequately maintain its records, process papers in a timely manner, and maintain the physical plants of the 54 prisons in the state.

Solitary Confinement

The legislature should adopt the budget measures intended to implement policies and procedures related to the settlement agreement in the *Peoples v. Fisher* litigation,[56] and go much further to end the torture of solitary confinement in New York prisons and jails, including by passing the Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A. 4401 / S. 2659. The *Peoples* settlement does make some welcome initial positive first steps in the right direction to limit the use of solitary confinement, and the legislature should support the budget proposals supporting program staff and training to implement these measures. Specifically, the settlement will create – over a three year period – 444 new alternative treatment program and step-down units with two or three hours of out-of-cell programming, four or five days a week, in addition to two hours of recreation, possibly congregate, seven days a week. DOCCS has agreed to a goal of full utilization of these programs, with the possibility of easing eligibility requirements if not full. The settlement also creates some alternative keeplock units with congregate recreation and access to phone calls, property, and visits, as well as SHU units with greater access to in-cell study. For all SHU units, the settlement will end the use of the loaf – a brick of food that is ordered as a punishment to substitute for meals; place shower curtains in those cells with in-cell showers; install head phone jacks; and give some limited access to phone calls – including earning up to one call every 30 or 60 days. The settlement will also create limits on the lengths of individual SHU sentences, with some having a maximum of 30 days for a first time charge, others 90 days, and others will not have a maximum. For some minor rule violations, SHU time will no longer be a possible penalty. In addition, the settlement requires training – four hours, one day, or one week for different groups – regarding de-escalation, the impact of the SHU, and the purpose of the settlement. DOCCS will also report quarterly on the size and composition of people in solitary, and annually on the status of efforts to implement the settlement. In addition, plaintiffs may be able to release data and documents they receive if they would be available under the Freedom of Information Law (FOIL).

While the settlement will reduce the number of people and lengths of time spent in solitary, and increase staff training and public oversight, much more is needed to end the torture of solitary for thousands of people. New York will continue to inflict solitary at rates above the national average. Currently, on any given day, in New York prisons alone more than 4,000 people are held in Special Housing Units (SHU) and an additional estimated 1,000 or more people are held in keeplock.[57] This rate of 7.84% of all people incarcerated in the SHU, is likely the highest rate in the history of NY prisons, more than a third higher than the rate in the early 2000s, even higher than its previous peak in 2012 prior to some limited reforms to the use of solitary in the

[56] The Executive Proposal includes $1.5 million to support 20 new FTEs and $1.5 million for training to implement policies and procedures related to the settlement agreement.

[57] On June 1, 2015 (just prior to the escape from Clinton), 3,621 people were held in the SHU in NY. Following the escape, by the middle of July the total number of people in the SHU across NYS prisons was over 3,900 people and since August the number has remained over 4,000, with 4,092 people in SHU as of November 9, 2015.

state prisons.[58] New York's rate is much higher than the national average of around 4.4% and **four or more times higher** than some other states– like Colorado and Washington – that have less than 2% of incarcerated people in solitary.

Contrary to popular belief, isolated confinement is not primarily used to address chronically violent behavior or serious safety or security concerns, but often comes in response to non-violent prison rule violations, or even retaliation for questioning authority, talking back to staff, or filing grievances. Moreover, lengthy solitary confinement sentences are frequently imposed for assault on staff allegations after staff have brutalized an incarcerated person. Whether for disciplinary confinement, administrative segregation, or protective custody reasons, people in either SHU or keeplock in NYS prisons spend 22 to 24 hours per day locked in a cell, without any meaningful human interaction, programming, therapy, or generally even the ability to make phone calls, and often with limited, restricted, or no visits. The sensory deprivation, lack of normal human interaction, and extreme idleness that result from the conditions in solitary confinement have long been proven to lead to intense suffering and physical and psychological damage, and to increase the risk of suicide and self-harm. Moreover, solitary is recognized as causing a deterioration in people's behavior, while restrictions on the use of solitary have had neutral or positive effects on institution safety. Further, solitary is disproportionately imposed on Black and Latino people. The reforms in *Peoples* themselves further reveal just how inhumane and counterproductive the conditions within solitary are. For example, under the new reforms an incentive for people to earn, by advancing themselves through good behavior to phase 2 of the alternative to SHU step down program, is one phone call, for fifteen minutes, every 60 days. Also of note, many of the reforms of the settlement will not be fully operational for over three years, and the settlement then has a time limitation of two years after that, meaning that the legislature must take further action even to make these changes permanent.

There is a growing trend and consensus around the country and internationally toward ending this torture of solitary confinement. President Obama, Supreme Court Justice Kennedy, and the Pope have all strongly denounced the use of solitary confinement.[59] The Mandela Rules – recently adopted by the entire UN General Assembly and supported by a US delegation consisting of corrections administrators – place an absolute prohibition of solitary confinement

[58] *See* Jack Beck, Testimony before the Hearing of the NYS Assembly's Corrections and Mental Health Committees, Mental Health Services in NY Prisons, Nov. 13, 2014, p. 19, *available at*: http://www.correctionalassociation.org/wp-content/uploads/2014/11/Testimony-by-Jack-Beck-11-13-2014-re-Mental-Health-Services-FINAL.pdf.

[59] *See, e.g.*, http://solitarywatch.com/2015/07/14/obama-in-criminal-justice-speech-denounces-the-overuse-of-solitary-confinement-in-u-s-prisons/; http://solitarywatch.com/2015/06/23/supreme-court-justice-kennedy-denounces-human-toll-of-solitary-confinement-and-invites-constitutional-challenge/; http://solitarywatch.com/2014/10/26/pope-francis-denounces-solitary-confinement-calls-for-prison-conditions-that-respect-human-dignity/.

beyond 15 consecutive days.[60] Yet, in New York State, thousands of people will continue to spend months and years in solitary, and even decades, including upwards of 30 years.[61]

The legislature and Governor should thus not only adopt the measures from the *Peoples* settlement, but also take further steps, including passing several bills currently pending in the NY legislature that would make substantial progress in the direction of the international trends toward ending the torture of solitary. The Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A. 4401 / S. 2659 would ensure that *no* person is subjected to the torture of solitary confinement beyond 15 days and would create more humane and effective alternatives. For any person that needs to be separated from the general prison population for more than 15 days, HALT would create separate, secure, rehabilitative and therapeutic units providing programs, therapy, and support to address underlying needs and causes of behavior, with at least seven hours out-of-cell time per day consisting of 6 hours of out-of-cell programming and 1 hour of out-of-cell recreation. HALT would also restrict the criteria for placement in solitary or alternative units, ban the use of solitary for people particularly vulnerable to its damaging effects or additional abuse in solitary, such as young people and people with mental illness, and expand staff training, procedural protections, transparency, and oversight. In addition, a bill that has already passed the Assembly, A. 1346A / S. 5900 would, among other limitations, prohibit solitary for all people with mental illness and any person under the age of 21. Similarly, A. 1347 / 5729, which also already passed the Assembly, would prohibit solitary confinement for women who are pregnant, have recently given birth, or who have infants in the prison nursery program. The use of solitary confinement traumatizes the individual being isolated and the corrections staff assigned to monitor them. It negatively impacts the prison and community safety and has led our state into an urgent human rights crisis. The Governor and legislature must HALT solitary confinement in New York State and end this torture.

Work Release and Parole

The Governor's proposals to revive work release and institute reforms to increase Parole Board releases should be adopted by the legislature and further expanded. With respect to work release, this program, which can serve as an important and meaningful transition period for people who will return home from prison, has been almost eliminate in New York over the past decade and a half. While nearly 6,800 people participated in some form of temporary release in New York in 2000, under 900 people participated in the program in 2012 – the latest year of available data. It is long past due for New York to revive the work release program and provide people with an enhanced opportunity to prepare for their release to the community.

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[60] *See* http://www.penalreform.org/news/10071/; Rules 43-44, http://www.penalreform.org/wp-content/uploads/2015/05/MANDELA-RULES.pdf.

[61] *See, e.g.*, William Blake, *Voices from Solitary: A Sentence Worse than Death*, Solitary Watch, Dec. 24, 2014, *available at*: http://solitarywatch.com/2014/12/25/voices-from-solitary-a-sentence-worse-than-death-2/.

With regard to parole, the Governor's proposal would take important steps in the right direction toward fixing a failed parole system.[62] Thousands of people each year are denied parole in New York State.[63] Worse still, thousands of people are repeatedly denied parole, sometimes as many as ten or more times, thereby remaining in prison for decades longer than they should. Indeed, only one out of every five people who appears before the Parole Board for a general assessment of eligibility for parole is released, whether appearing for the first time or as someone previously denied parole.[64] All of those individuals who have been denied have already served at least the minimum sentence deemed appropriate by the judiciary and the legislature for their crimes of conviction and past criminal history. Yet, the Board repeatedly denies parole based on the nature of applicants' crimes of conviction or their past criminal history, in the process failing to adequately consider or give sufficient weight to what people have accomplished while incarcerated, their current readiness for reentry, or their risk to the community as measured in an objective manner. Although a risk assessment is now conducted for each person appearing before the Parole Board and although the Board by its own regulations is now required to consider the assessment in its decisions along with a case plan intended to measure rehabilitation progress, the Board often ignores the assessment and case plan and frequently denies people determined to be at very low risk of committing an offense upon release.

The Governor's proposed initiatives will begin to address the failed parole system. Training incarcerated people and their advocates regarding presentations to the Board and opening parole hearings to the public will help provide support for people going to the Board, decrease arbitrariness in the Board's decisions, and increase transparency in the Board's processes. Requiring the Board to articulate how it weighed evidence of rehabilitation and current risk and adopting statutory changes to institute a rebuttable presumption of release for people at low risk of committing a crime will re-focus the Board's efforts on its intended role to evaluate people's current readiness for release. Currently, the Board consistently ignores or places insufficient weight on objective evidence-based risk assessment scores, and demonstrated rehabilitation and readiness for release through program participation and self-transformation. The primary reliance on the nature of the crime or past criminal history contravenes the longstanding requirement that Parole Commissioners give due consideration to *all* statutory factors delineated for parole decisions, including applicants' current risk, institutional record, program participation, and release plans. This reliance also thwarts the underlying intent and purpose of indeterminate sentencing and parole to create positive incentives for people to improve themselves while incarcerated. The role of the Parole Board should be to evaluate whether an individual is ready to return to the community, not to re-sentence a person to additional punishment – a role reserved

[62] For more information regarding the failures of the Parole Board and the need for fundamental reform, *see* Correctional Association Testimony before the NYS Assembly Corrections Committee re Board of Parole, Dec. 4, 2013, *available at*: http://www.correctionalassociation.org/wp-content/uploads/2013/12/CA-Parole-Testimony-12-4-13-Hearing-FINAL.pdf.

[63] CA analysis of data provided by the Board of Parole for 2011, 2012, and 2013.

[64] *Ibid.*

for the courts. In 2011, the legislature amended the Executive Law in an attempt to reorient the Board to its proper role of evaluating applicants for their readiness for return to their communities. However, the Board has not implemented this mandate to make decisions based on what people have accomplished, what objective risk they pose, and whether they are ready to return to society. Rather, the Board has ignored the objective COMPAS risk assessments, continued to rely on the nature of applicants' crimes of conviction or past criminal history rather than their accomplishments and growth, and continued to deny parole to the vast majority of applicants at equivalent rates as in the past.

The Governor's proposals will realign the Board's decisions with its intended function. The legislature should adopt these measures as well as additional legislation that goes further to ensure the Board relies on forward looking factors of rehabilitation and readiness for reentry, improves procedural protections and applicant participation in hearings – such as through allowing legal representation, and provides specific guidance for people denied parole along with a clear path on how they can obtain release. Moreover, the composition of the Board must be more representative of the people who are appearing before it and the communities to which they will return. Overall, the state must release more individuals who have demonstrated rehabilitation efforts in order to reduce the human and financial costs of unnecessary incarceration, and allow valuable family and community members to return to the communities where they belong. The legislature should thus pass the SAFE Parole Act, A. 2930 / S. 1728, or other comprehensive reform to allow the release of all people who have demonstrated their accomplishments or transformation while in prison, current low risk of harm to others, and/or readiness for reentry.

The repeated denials of parole, particularly when coupled with DOCCS programming that is lacking and insufficiently supported, is an inhumane form of persistent punishment and a form of violence. In particular, elderly people and/or people serving long sentences who are denied parole even when they have completed required prison programming and demonstrated rehabilitation are left to languish with little positive opportunities and little hope. In addition to this human cost, this system of parole denials also is a tremendous drain on taxpayer funds. Each denial of parole to the 10,000 people denied each year generally results in an additional two years in prison, and the annual cost per incarcerated person in NYS prisons is approximately $60,000. Even if one looked solely at the Board appearances for a general assessment of eligibility for parole and increased the rate of release in those categories to only 50% in a single year, there would be approximately an additional 4,000 people released and thus, potential savings of hundreds of millions of dollars per year. Moreover, when the state fails to abide by the rule of law, the resulting demoralization from repeated parole denials can lead some people to become less willing to engage in beneficial activities, to instead carry out problematic or disruptive behavior, or to lose respect for the rule of law or society as a whole. Perhaps most importantly, repeated parole denials deprive families and communities of valuable and contributing members. Many people who are denied parole are parents, children, or

grandparents; have transformed their lives or self-actualized; have attained GEDs or college degrees; and are genuinely cognizant of the harms they have caused others and deeply committed to doing something positive in the community to help repair the harms caused. For them and our communities, New York must let them return home to be contributing members of our society.

Staff Violence and Abuse

While the Governor has proposed the introduction of more fixed cameras and a pilot program for body cameras in NY prisons, the legislature and the Governor should adopt a comprehensive approach to address the horrific and pervasive staff violence and abuse taking place across NY prisons. New York State prisons are plagued by an entrenched culture of staff brutality, violence, abuse, racism, dehumanization, and intimidation. As CA reports on Clinton, Attica, Greene, Fishkill Correctional Facilities and other prisons have long documented,[65] and as exposed by the brutal beating of George Williams at Attica, systematic beatings at Clinton in the wake of the June 2015 escape from that facility, and the recent killings of Samuel Harrell at Fishkill[66] and Karl Taylor at Sullivan, these abuses and their cover-ups are regular and typical practices. An underlying culture and environment of abuse – not a few individual bad actors – drive the dehumanization and brutalization taking place. This culture is undergirded and fueled by racism, staff impunity, a lack of meaningful programs, a history of violent repression (especially at Attica and Clinton), and a reliance on force, punishment, and disempowerment.

This staff violence is intrinsically linked with the systemic racial disparities in the targeting of Black and Latino people in the New York State prison system. Nearly 75% of the people incarcerated in New York prisons are Black (49%) and Latino (24%), vastly disproportionate to the percentage of Black (13%) and Latino (17%) people in New York State as a whole. Yet, the vast majority of Correction Officers (COs) are white, and at some prisons, there are no or almost no Black COs. At Clinton for example, DOCCS has reported at times that there was not one Black CO at the prison. Moreover, disproportionately, staff harassment, brutality, and abuse are often most directed at Black and Latino people.

The CA has documented elsewhere extensive brutality taking place at Clinton, Attica, Great Meadow, Southport, Greene, Wyoming, and Fishkill.[67] Although some of these prisons stand out with respect to the severe levels of violence, brutality, racism, and other staff misconduct; staff

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[65] *See* http://www.correctionalassociation.org/wp-content/uploads/2015/03/Clinton-Correctional-Facility-Final-Draft-2.pdf; http://www.correctionalassociation.org/wp-content/uploads/2015/02/Attica-2014-CA-Updated-Report-Final.pdf; http://www.correctionalassociation.org/wp-content/uploads/2014/10/Greene-C.F.-Report-Final.pdf; http://www.correctionalassociation.org/wp-content/uploads/2013/12/Fishkill-C.F.-Final-Report.pdf.

[66] *See* http://www.nytimes.com/2015/03/01/nyregion/attica-prison-infamous-for-bloodshed-faces-a-reckoning-as-guards-go-on-trial.html; http://www.nytimes.com/2015/08/12/nyregion/after-2-killers-fled-new-york-prisoners-say-beatings-were-next.html; http://www.nytimes.com/2015/08/19/nyregion/fishkill-prison-inmate-died-after-fight-with-officers-records-show.html?ref=nyregion&_r=0.

[67] *See, e.g.*, http://www.correctionalassociation.org/wp-content/uploads/2015/12/CA-Testimony-re-Oversight-of-DOCCS-Dec-2-2015-with-Appendix.pdf.

abuse is not limited to these facilities but is system-wide. The CA constantly receives information regarding brutal staff assaults on people in prisons across the DOCCS system – in both medium and maximum security prisons. The pervasive racism-fueled staff brutality permeates the entire DOCCS prison system.

The legislature should support the use of cameras, including body cameras, in prisons across the state *if* other mechanisms, such as those described below, are put in place, and ensure that there are enhanced policies for preservation and review of camera footage by outside investigative and monitoring agencies. Cameras are a highly expensive, and too often unreliable mechanism, and certainly should not be viewed as a panacea. Cameras can potentially provide some level of transparency and accountability if utilized in conjunction with the other mechanisms described below, as well as other safeguards. As examples of important safeguards, the legislature should require DOCCS to create better mechanisms for preservation and dissemination of visual and audio recordings,[68] so that recordings can in practice provide evidence of specific incidents of violence and abuse, serve as a means of refuting alleged misconduct by staff or incarcerated persons,[69] serve as a deterrent to misconduct,[70] and to the extent recordings are disseminated, as a mechanism of public transparency. In addition, as many people incarcerated across DOCCS prisons have recommended to the CA, there should be independent reviewers of camera footage, potentially both in real time and through preservation and review.

While cameras can provide some positive outcomes if used in conjunction with these safeguards, if the Governor and legislature are committed to ending staff brutality, much more needs to be done. New York State must close Attica in order to stop the ongoing abuses at that prison that have been happening for decades, and to send a ripple effect throughout the prison system that abuse will not be tolerated. At the same time, New York must end brutality within all New York prisons. So long as the state continues to confine people in prisons, the state must be compelled to create mechanisms to reduce violence and abuse in our prisons, including through a broad package aimed at transforming the entrenched racist and punitive culture of the prison system and ending mass incarceration. The state must effectively implement a no tolerance policy for improper or excessive use of force, including absolute prohibitions of certain types of force (such as blows to the head) and strengthened prohibitions against any use of force other than in exceptional circumstances in response to imminent violence or harm. The state must also transform the incarcerated person and staff disciplinary systems, foster greater transparency and accountability (as described below), empower incarcerated persons to build a more effective environment, and fundamentally transform the culture and environment in the prisons.

Specifically related to culture, the culture and environment of brutality, violence, excessive punishment, dehumanization, intimidation, fear, and abuse must end. It must be replaced by a culture that prioritizes mutual respect and communication between staff and incarcerated

[68] *Ibid.* at 11, 34. *See also DOJ 2014 Report* at 52.
[69] *Report of the Commission on Safety and Abuse* at 34.
[70] *Ibid.*

persons; conflict resolution, transformation, and de-escalation; and individual autonomy, support, programs, empowerment, and personal growth for incarcerated persons. Examples from around the world – such as systems in Germany, the Netherlands, Norway, and Sweden; from around the country – such as the Resolve to Stop Violence Project in San Francisco jails; and from within New York State – such as the now closed Merle Cooper program; demonstrate that an alternative culture focused on growth, transformation, and preparation for return to the community can have much more successful outcomes, including decreased violence within prisons, better job satisfaction for staff and experiences for incarcerated people; and lower recidivism rates and greater success for people returning home.

Overall, New York policy-makers must demonstrate their seriousness in ending staff brutality and abuse; shift away from a punishment paradigm rooted in racism toward a model premised on effective rehabilitation, treatment and growth; and reduce the number of people incarcerated to allow for greater ability to implement a more empowering culture with a smaller number of people inside and provide greater resources in outside communities. The other proposals described in this testimony – such as enhancing oversight and investigations, ending the torture of solitary confinement, creating more opportunities for college and other education and program opportunities, releasing parole-ready people, providing greater reentry support, and raising the age of criminal responsibility – would be important steps toward this transformation.

Oversight and Investigations of NY Prisons, Jails, and Youth Facilities

The Governor has proposed the creation of an Office of an Independent Special Counsel to provide a fair and independent review of police killings of people in the community. New York should build upon the proposal for independent oversight and investigations, and apply such principles not only to police but also to corrections officers in NY's prisons, jails, and youth detention and placement facilities. The same type of state-inflicted, racialized violence and social control that exists in the form of police brutality, surveillance, and open-air prisons in outside communities also occurs every day in our prisons, jails, and youth detention and placement facilities. The longstanding and ongoing brutality, torture, and abuse taking place within these institutions demands that DOCCS and other state agencies running these institutions can no longer police themselves and that the legislature must make bold fundamental changes to end the abuses occurring inside. The legislature and Governor should adopt the following:

1. **Expand Public Oversight and Transparency**: Expand **media access** to the prisons and people incarcerated, including with a presumptive allowance of audio, photographic, and video recording. Also require **mandatory public reporting** by DOCCS, OMH, the Justice Center, Department of Health (DOH), SCOC, OASAS, and other state agencies, including collecting and periodically publicizing data most relevant to such topics as staff violence and abuse, solitary confinement, mental health care, medical care, deaths in the prisons, prison-based treatment and educational programs, shackling, and parole.

2. **Support Investigations and Oversight Wholly Independent of New York State**: Support the call for a **system-wide federal investigation by the Department of Justice**, and urge full cooperation with such an investigation by DOCCS and all state agencies. Also, require **access by the UN Special Rapporteur** against Torture, and other international investigative and oversight bodies to NY prisons. In addition, **augment the authority of the Correctional Association**, including by requiring DOCCS to respond to the CA's findings in writing and develop corrective action where necessary, as well as authorizing the CA to utilize unannounced visits, access to all relevant documents, confidential communications with incarcerated people during monitoring visits, and unencumbered access to speak with staff. Further, consider creating a **new local community monitoring system**, based off of the UK's Independent Monitoring Boards, where local members of the public have unfettered access to monitor and investigate conditions inside of each prison. Also, strengthen the ability of incarcerated people to **bring legal cases**, and adopt positive aspects of the **PREA audit process**.

3. **Create and Expand Independent State Agencies' Oversight and Investigations**: Expand the authority of existing state agencies and/or create new mechanism(s) to ensure there is an **independent oversight body/bodies**, with the power, independence, and sufficient funding to carry out regular routine unannounced visits, with unencumbered and confidential access to prisons, incarcerated persons, staff, and documents, and with an obligation to publically report its findings and recommendations with a concomitant obligation on DOCCS to publically respond and take remedial action. For expanding existing agencies, provide sufficient resources, independence, and will to the **Justice Center**, **SCOC**, **DOH**, and **OASAS** to carry out their legal mandates to monitor prisons and jails; and remove the exemption of prisons from the full powers of the **Justice Center**, and expand the **SCOC's** review of medical care to look at systemic problems and acts of self-harm. Also, create an **independent statewide Special Prosecutor** to investigate DOCCS' staff abuse of incarcerated people.

4. **Transform Agency-Level Investigations and Accountability**: Remove investigations of staff abuse of incarcerated persons **from the OSI to an independent state agency** that has complete independence, capacity, and will to investigate. Remove barriers to accountability, such as **removing mandatory arbitration** and allowing superintendents to override bid placements in cases of staff abuse of incarcerated people. Strengthen prohibitions, reporting requirements, and remedial actions for **inappropriate / excessive staff use of force**. Investigate the effectiveness of DOCCS' PREA compliance operations, address limitations, and adopt positive aspects for all types of staff abuse.

5. **Transform Prison-Level Investigations and Accountability**: Create an **independent ombudsman** office to investigate and administratively resolve complaints by incarcerated

persons about conditions and treatment in prison, and mandate a confidential outside hotline. Fundamentally **transform the failed grievance system** – which rules against incarcerated people in almost all cases and functions little more than a barrier to litigation – including by properly analyzing and responding individually and systemically to grievances filed, protecting people against retaliation, and ensuring staff involved in grieved incidents are not part of the investigations. Similarly, fundamentally **transform the disciplinary system of incarcerated persons** – which is fundamentally unfair and too often a cover up for staff abuses – including by requiring neutral decision-makers, enhancing procedural protections, and allowing legal representation. Require **DOCCS to effectively track, analyze, publicly report on, and effectively rectify** all indicators of individual and systemic abuse, including grievances, other complaints, UIRs, Use of Force reports, investigations, lawsuits, and issues raised by the ILC.

6. **Adopt Oversight/Investigations Mechanisms as Part of Broader Transformation**: As discussed throughout, ensure new oversight and investigations mechanisms are one part of a package of **broader cultural transformation** within prisons and **broader policy reforms** of the incarceration system to fully address the abuses taking place.

College Programs

We commend the Governor for his executive order reallocating $7.5 million in criminal forfeiture funds obtained by the Manhattan District Attorney's Office to expand college in prison programming in state correctional facilities. College programs, along with other academic and vocational programs, inside prisons have the power to transform lives and increase safety in prisons and in outside communities.[71] As demonstrated by the example of so many currently and formerly incarcerated persons, these programs can help participants grow and develop, increase opportunities for employment and success upon release, and empower incarcerated persons to become peer leaders, teachers, and role models for others inside prisons and in our communities. Despite this enormous potential, the number and quality of DOCCS programs fail to match the need and opportunity. Specifically for college programs, while it is well known that college education is one of the most effective means of helping people transform their lives and decrease the likelihood of returning to prison, there are very limited college opportunities since the state ended Tuition Assistance Program (TAP) eligibility for incarcerated persons, and the federal government ended Pell grants. The Governor's plan to increase college program is a positive step in the right direction.

[71] For more information about the need for expanded education opportunities, including college education inside New York prisons, *see* Correctional Association Testimony before the Hearing of NYS Assembly Corrections Committee re Educational and Vocational Programs in NY Prisons, Nov. 29, 2012, *available at*: http://www.correctionalassociation.org/wp-content/uploads/2013/02/testimonu-prison-ed-voc-progs-nov-2012.pdf.

Even with this initiative, however, tens of thousands of people who could benefit from access to higher education will be left relatively idle in the prisons. In NYS prisons, over 60% of people incarcerated (over 31,000 people) already have obtained their high school equivalency. Yet, only 1,000 people are currently enrolled in a college program and with the proposed expansion only an additional projected 1,000 people over five years will be able to be enrolled.

The State needs to additionally reinstate TAP access to people in NYS prisons so that incarcerated people have greater access to college education. At the very least, NYS needs to provide additional funding and/or other mechanisms to further expand existing college programs, specifically by providing more support for peer-led education, college preparation courses, and technology-based access to college program opportunities. The New York Theological Seminary program is a leading model for peer-led initiatives as graduates of the NYTS Masters program help teach a certificate program in collaboration with NYTS faculty. The state should consider the expansion of this and similar programs to continue the growth of incarcerated individuals who have already received their degree and are willing to assist other persons in seeking post-secondary education. We also urge the Governor to reconsider the limitation that only persons with upcoming earliest release dates be eligible for the college program and allow access to anyone who is incarcerated. Because of the beneficial effects for each incarcerated person and the environment within the prison system and outside communities, we believe all incarcerated people who are interested in obtaining a college education should be eligible for this program regardless of their sentence. In addition, the state should pass the Fair Access to Education Act, A. 3363 / S. 0969, to ensure that public and private colleges do not discriminate against previously incarcerated people in admissions after they return to the outside community.

Video Visiting

The exploration of secure email communication and addition of $300,000 to expand family televisiting programs between incarcerated parents and their children at certain state correctional facilities is positive, as the maintenance of relationships between incarcerated people and their children, family, friends, and community is essential for both people incarcerated and their loved ones, as well as an integral part of one's preparation for returning home. Though we recognize this expansion as a positive step, we urge the state to expand a diverse number of communications and visiting programs. Televisiting must not be seen as the solution and more opportunities must be provided to enhance in-person visits;[72] the state must not replace one program with another, but instead add funds and resources in an interdisciplinary fashion. Specifically, the state must reinstate the "Free Bus Program" that was used from 1973 to 2011. This program helped families and loved ones stay connected and in many instances provided the only means by which family members could have human interactions with one another. For

[72] *See, e.g.,* American Bar Association Letter June 19, 2013, in support of contact visits rather than only video visitation, *available at*: http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2013june19_dcvisitation_l.authcheckdam.pdf, (citing ABA Standards for Criminal Justice: Treatment of Prisoners, Standard 23-8.5 cmt. At 260).

incarcerated people as well as children, families, friends, and other loved ones who visit people incarcerated, having regular contact visits is essential. It is well-known that maintaining family and community ties while a person is incarcerated, especially through contact visits, is essential to help with that person's and their family's well-being and also with their successful return to their home community.[73] Not only does the research show that prison visitation promotes positive parent-child and other relationships, but it also has proven to be integral in helping to manage incarcerated people's behavior, reducing recidivism, and facilitating reentry. For example, The Washington State Department of Corrections found that incarcerated individuals who receive regular visits from family were *six times less likely* to commit a violation in prison.[74] With this qualitative and quantitative data in mind, it is essential that we only make visitation and communication services more expansive, not less.

Alternatives to Incarceration and Reentry

Alternatives to incarceration and reentry programs need to be expanded and provided with additional funding. The Executive proposal will enhance opportunities for ATIs and other related community programs, and the legislature should support the initiatives, particularly given the success of ATI programs' in dramatically reducing conviction and incarceration rates by 70%-85% in recent years. Of note, the Executive proposal includes a $1 million expansion of ATI programs for people in upstate counties who are at high risk of being incarcerated. Services for these programs are proposed to provide include defendant screening, assessment, referral, monitoring, and case management.

The CA is pleased to see a focus on re-entry and transitional services for returning citizens in the FY 2016-17 budget. The Executive proposal includes $1 million in new funding to expand the County Re-Entry Task Forces (CRETF). CRETFs are critical components for a successful transition for returning citizens, as they provide individual case management, conduct public outreach and education, and identify gaps and develop strategies to reduce the risk of people returning to prison. It is unclear whether the funding will be allocated to new counties or counties with existing task forces. The budget also includes funding for transitional support services during the first six months after release into the community, a critical time for a returning community member. The proposal will provide transitional housing assistance as part of the Executive's $20 billion five-year Capital Housing Plan, targeting vulnerable populations and people experiencing homelessness, including the formerly incarcerated. The housing will be offered to people while they are connecting with family members, seeking employment, or qualifying for high need housing. By providing transitional housing to returning community members, the possibility of obtaining a job and being accepted into one's family's home

[73] *See, e.g., Lowering Recidivism through Family Communication*, Prison Legal News, April 15, 2014, *available at*: https://www.prisonlegalnews.org/news/2014/apr/15/lowering-recidivism-through-family-communication/; Ryan Shanahan and Sandra Villalobos Agudelo, *The Family and Recidivism*, Vera Institute of Justice, AMERICANJails, p. 17-24, Sept./Oct. 2012, *available at*: http://www.vera.org/files/the-family-and-recidivism.pdf.

[74] *See, e.g.,* http://www.vera.org/in-the-news/advocates-want-free-ny-prison-visitor-bus-back.

increases. Additionally, the Executive proposal includes using existing $5.8 million on transitional employment assistance. Approximately $3 million of the allotted funds would be used for high-risk parolees statewide, and the remaining over $2 million will be used for low-risk ATI employment services. The budget also includes an additional $170,000 in new funding for vocational training to assist recently released individuals in connecting to employment opportunities. In addition to transitional housing and employment assistance, the budget also includes a $5 million proposal of existing Department of Health Medicaid funding to connect people returning home with Health Homes for medical, behavioral and mental health, and social services supports. The CA commends the Executive proposal for realizing and addressing the critical importance of housing, employment, and health and mental health needs for formerly incarcerated individuals during the months immediately following release.

Conclusion

The Governor's proposals contain many positive initiatives that will help support people who are currently and formerly incarcerated, people who are at risk of involvement with the incarceration system, and their families and communities. The legislature and Governor should adopt, as well as improve and expand upon many of these initiatives. Most specifically and urgently, New York State must: raise the age of criminal responsibility and ensure that no children are held in adult prisons and jails; end the torture of solitary confinement for all people; close Attica and end violence and abuse across all NYS prisons; provide greater oversight over prisons and incarceration systems; expand college and other program opportunities for people who are incarcerated; improve family and community ties with people incarcerated; release more people on parole who have served their minimum sentences; and provide greater diversion from prison and better supports and preparation for people returning home. New York must address the long and ongoing racial injustice and paradigm of punishment infusing the incarceration system. These and other initiatives will help move the state in the right direction and help the state reduce the ineffective use of incarceration as a response to socio-economic problems facing our communities; better ensure that conditions in prisons, jails, and youth facilities are humane and that the rights of incarcerated people and their families are protected; and promote transparency and accountability. Such changes will help ensure fairness, promote greater respect for the rule of law and societal institutions, empower healthier and more successful people who have been incarcerated, and ultimately make us all safer and more enriched.