



CITIZENS CRIME COMMISSION
OF NEW YORK CITY

TESTIMONY

Joint Legislative Public Hearing on

2015-2016 Executive Budget Proposal: Human Services

Raising the Age of Adult Criminal Responsibility

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Citizens Crime Commission of New York City
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The Citizens Crime Commission of New York City thanks the Senate Finance and Assembly Ways and Means Committees for the opportunity to submit this testimony to the joint hearing on the 2015-2016 Executive Budget Proposal regarding human services.

The following testimony relates to the Crime Commission's support for raising the age of criminal responsibility to 18 years old.

About the Crime Commission

For over 30 years the Crime Commission has been a leader in converting ideas that address crime and protect the economic and social viability of New York into action. A non-partisan non-profit organization working to make criminal justice and public safety policies and practices more effective, the Crime Commission addresses gaps in the criminal justice system by combining expertise in research, advocacy, education, and innovation on a broad range of issues from juvenile justice, to gun violence, to cybercrime, to counter-terrorism, to crime prevention strategies.

The Crime Commission Supports Raising the Age of Criminal Responsibility

From 2011 to 2012, the Crime Commission and its partners convened an informal network of stakeholders from all over New York State to conduct a comprehensive analysis of the laws governing the age of criminal responsibility and the impact these policies have on youth and our communities. Today, the Crime Commission continues to meet with stakeholders to discuss these topics.

By interviewing over 100 stakeholders including judges, prosecutors, corrections officials, law enforcement, service providers, and advocates, we learned the current system has not been effective in deterring and preventing future crime, results in needless duplication and gaps in services, negatively effects youth, and comes at a high cost to society. Most importantly, we found broad consensus in a number of areas. These findings indicate it is time for New York to realign our justice system with the rest of the country and set our youth on a path towards success and away from crime.

Ineffective Deterrent & Prevention Strategy

Since 2012, when comprehensive legislation to raise the age of criminal responsibility was first introduced, New York has missed nearly 130,000 opportunities to meaningfully intervene in the lives of 16- and 17-year-olds.¹

During each of those years between 27,000 and 38,000 16- and 17-year-olds were arrested statewide—the vast majority for minor crimes (74% for misdemeanors). New York City youth represent more than half of these arrests.²

More than 50,000 cases were dismissed via adjournment in contemplation of dismissal (ACD or ACOD) between 2012 and 2015.³ When utilizing this disposition option, the

court is not legally required to assess the youth's risks or needs, and it is not required to make referrals for services based on the results of a risk and needs assessment. In these cases we missed the opportunity to identify and address the underlying factors that brought these youths into the justice system.

In addition, more than 16,000 16- and 17-year-olds were sentenced to a period of incarceration in an adult jail or prison, during these four years.⁴ It is important to note that while we applaud Governor Cuomo's action to separate 16- and 17-year-olds from adult prisoners and provide them with more age-appropriate services, his executive order does not apply to the youth in local jails, like Rikers Island, who are awaiting trial or are sentenced to less than 90 days. Further, it is at the discretion of the local correctional facility to request housing of youth sentenced in excess of 90 days in the state facility, and at the Commissioner of DOCCS' discretion to approve such a request.

These sentencing practices produce poor outcomes. A New York State Division of Criminal Justice Services' recidivism analysis found that nearly 70% of 16- and 17-year-olds sentenced to jail were reconvicted of a felony or misdemeanor offense within five years of their conviction, compared to 47% of those receiving straight probation sentences.⁵

National studies show re-arrests among youth placed in adult facilities are 34% higher than among those housed exclusively with juveniles.⁶

In other words, placing 16- and 17-year-olds with adults instead of only with offenders in their own age group leads to thousands more crimes committed over time.

As adults, those young people are then more likely to continue to commit crime and much less likely to contribute to society. There's a scientific reason why: studies show that the regions of the brain which regulate foresight, impulse control, and peer pressure are still developing at age 17.⁷

The outcomes of the current system clearly indicate that New York's low age of criminal responsibility is ineffective in deterring and preventing future crime. These youths and our communities would benefit from treating 16- and 17-year-olds in an age-appropriate manner that seeks to rehabilitate youth while holding them accountable.

Needless Duplication & Gaps in Services

When youth enter the criminal justice system they encounter numerous agencies throughout the case process. Because the age of criminal responsibility is not aligned with other policies, needless duplication and gaps in services are created.

For example, in New York City, inmates under age 18 who have not graduated from high school or earned a GED must attend school while incarcerated.⁸ Because 16- and 17-year-olds make up a small portion of the jail and prison population⁹, the dividing line of

the age of criminal responsibility poses a challenge for providing educational services to youths in correctional facilities. Typically, 16- and 17-year-olds are still in high school working towards a high school diploma, while individuals age 18 and older are generally out of high school or working towards earning a GED.

The juvenile justice system is already providing educational services to high school students (ages 15 & under) and have implemented mechanisms to ease the transition from confinement back to school. If jurisdiction is raised to age 18, adult correctional facilities would no longer need to provide high school curriculum. Therefore, educational services could be streamlined and focused to better suit the needs of these populations. This would ultimately improve outcomes and lead to cost savings and increased earning potential.

Moreover, coordination of services is often hindered because the age of criminal responsibility is not aligned with other policies. For example, the Office of Mental Health sets the dividing line for adulthood at age 18,¹⁰ providing separate services for those younger and older (these services are typically run by different providers for each age group). In most jurisdictions in NY State, only the adult services (18+) staff work with the criminal justice system, and the children's services (under 18) staff only work with the juvenile justice system. The absence of children's services staff in the criminal system creates a gap in services for the 16- and 17-year-olds who are tried as adults.

Negative Effects on Youth

Further, the current system negatively effects youth in a number of ways.

Education, employment, and stable housing have been found to be protective factors against delinquency and criminality. For adolescents, involvement in the criminal justice system and having a criminal record creates barriers to finishing high school, getting into college, obtaining employment, and securing housing.

Justice system involvement can hinder educational advancement as court appearances, incarceration, and collateral consequences of a criminal record can cause youth to fall further behind in their education and/or decrease their ability to attend college. In fact, two-thirds of youth released from jail do not return to school in the community.¹¹

A criminal conviction can severely limit educational and employment opportunities because New York youths who are convicted of crimes at 16 and 17 years of age have to report their conviction if asked on a college or job application. Meanwhile, 16- and 17-year-olds who are convicted of the same crimes in 48 other states don't have to carry that burden.

This jeopardizes public safety, as studies show every additional year of education is estimated to reduce arrest rates by 11%.¹² An additional year of schooling is estimated to reduce instances of murder and assault by nearly 30%; motor vehicle theft by 20%; arson by 13%; and burglary and larceny by 6%.¹³

Criminal record checks have become a common part of the tenant screening process making it even harder to find housing. Property owners typically require rental applicants to provide sufficient personal information to enable them to conduct a credit history check. This information gives property owners enough data to run a criminal background check as well. The Fair Housing Act does not prohibit property owners from discriminating against applicants based on their criminal history.¹⁴

For youth who reside in or are seeking to live in public housing, a criminal *arrest* or *conviction* can prohibit them from doing so. Individual housing authorities have the discretion under federal law to determine whether they will bar applicants with criminal histories, and whether they will consider the individual circumstances of an arrest.¹⁵ In New York City, every person aged 16 and over who will be residing in public housing is subject to a criminal background check.¹⁶ The housing authority has discretion to admit or deny housing based on any criminal offense including violations¹⁷--which more than 26,000 16- and 17-year-olds have been convicted of since 2012.¹⁸

Continuing the status quo by not raising the age of criminal responsibility means each year thousands of youth face the possibility of ending their careers and limiting their livelihoods before they've ever had a chance to go to college, job-hunt, or get a home of their own.

High-Costs to Society

These negative effects and the high levels of re-arrests and re-offending, noted earlier, put a long-term strain on taxpayers, costing millions every year. A Vanderbilt University study found that the whole cost to society of a juvenile offender who becomes a career criminal – including lost income, taxes and productivity – is, on average, \$3.8 million.¹⁹

There are more immediate costs to our criminal justice system as well. The average inmate in New York City jail costs us nearly \$168,000 a year.²⁰

Versus an average of \$18,250 per person for an alternative to incarceration (ATI) program.²¹ ATIs are not exactly a cakewalk for offenders either; sentenced youth are still held accountable for their actions via strict program mandates and the possibility of harsher sanctions if the youth does not comply.

Given that less than 20% of ATI program participants have a new criminal conviction within two years;²² it is clear that interventions for these teens are both cheaper and more effective.

Broad Consensus

Lastly, during our conversations with stakeholders from across the state we discovered broad consensus in a number of areas including:

- ❖ Access to a developmentally-appropriate approach and rehabilitative services;
- ❖ Parental notification of arrest and court proceedings;
- ❖ Opportunities for front-end diversion;
- ❖ Removing adolescents from adult correctional facilities; and
- ❖ Expanded disposition options.

Proposals have been introduced that will achieve the goals in the areas where we found broad consensus. With this broad support, the New York State Legislature should take action this session to move us towards realigning our justice system with the rest of the country.

Conclusion

We cannot afford this archaic approach any longer.

In the more than 50 years that New York State has been treating 16- and 17-year-olds as criminally responsible adults, we have learned five critical things:

First, New York's current system is ineffective in deterring and preventing future crime;

Second, New York's low age of criminal responsibility results in needless duplication and gaps in services;

Third, there are significant short-term and long-term negative effects on 16- and 17-year-olds who encounter the criminal justice system;

Fourth, the impacts of the system come at a high-cost to society; and

Fifth, we do not need to wait any longer to start handling the cases of 16- and 17-year-olds in an age-appropriate manner.

To get these youths on a path away from crime, protect the victims of the crimes they will commit in the future if they don't rehabilitate, and save taxpayers the exorbitant cost of incarcerating them instead of treating them, this must be the year we take concrete steps to finally raise the age of criminal responsibility in New York.

Raising the age will not only reduce crime and save taxpayer dollars; it will help countless young people have another shot at a good, productive life. The nearly 30,000 16- and 17-year-olds who will enter our justice system in the coming year deserve a helping hand, not a closed fist.

Let's start treating all youth as youth to protect our communities from preventable harm.

ENDNOTES

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- ¹⁰ New York State Mental Hygiene Law § 1.03(26)
- ¹¹ New York City Department of Probation & New York City Center for Economic Opportunity, *AIM (Advocate, Intervene, Mentor) Program Concept Paper* (2011) http://www.nyc.gov/html/prob/downloads/pdf/aim_concept_paper.pdf
- ¹² Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests and Self-Reports* (2003) <http://elsa.berkeley.edu/~moretti/lm46.pdf>
- ¹³ Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests and Self-Reports* (2003) <http://elsa.berkeley.edu/~moretti/lm46.pdf>
- ¹⁴ 42 U.S.C. § 3604 (2006)
- ¹⁵ 42 U.S.C. § 13661(c) (allowing public housing authorities to deny applicants on the basis of certain criminal convictions); Legal Action Center, *After Prison: Roadblocks to Reentry; A Report on State Legal Barriers Facing People with Criminal Records* (2004) http://www.lac.org/roadblocks-to-reentry/upload/lacreport/LAC_PrintReport.pdf

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