The New York City Bar Association supports raising the age of criminal responsibility to 18 years old for all crimes because that change will protect the well-being of our youth, reduce recidivism and improve public safety.

Under current law, New York stands nearly alone in prosecuting all 16- and 17-year-olds in the adult criminal justice system, regardless of the severity of the alleged crime. Each year, approximately 40,000 16- and 17-year-olds are arrested and face the possibility of prosecution as adults in New York’s criminal courts, the vast majority for minor crimes. And, if these young people are detained or incarcerated because of a criminal court order, they are confined in adult prisons and jails. Only youths under the age of 16 can be prosecuted as juveniles in family court. Even then, New York treats 13-, 14-, and 15-year-olds accused of committing certain serious crimes as “juvenile offenders” (J.O.s) who may be prosecuted as adults.

We agree wholly with Governor Andrew Cuomo’s statement in his 2014 State of the State address that New York needs to change the way it handles youth in the criminal justice system. Across the country, the trend is toward raising the age of criminal responsibility, and New York should follow suit. It is one of only two states (the other being North Carolina) that prosecutes all youth as adults once they turn 16. We also support the Governor’s creation of a Commission on Youth, Public Safety & Justice (the Commission) to provide concrete recommendations in this area. Given the extensive procedural and legal changes that will be required to reform New York’s approach to youth justice, we urge the Commission to base its recommendations on the extensive research showing what approaches provide the best outcomes for youth and for public safety.

---

1 After conviction, if a young person (under the age of 18) meets the requirements of the youthful offender law, it is sometimes possible to convert the criminal conviction to a youthful offender adjudication. See C.P.L. § 720.10. The City Bar believes, further, that judges should be able to grant youthful offender status to young people up to and including age 21. See Report on Legislation by the Criminal Justice Operations Committee A.1794/S.6524, available at http://www2.nycbar.org/pdf/report/uploads/20072410-IncreasingtheAgeofYouthOffenderStatus.pdf.


5 This report does not make a recommendation as to which court should handle 16- and 17-year-olds in the first instance, whether family court, criminal court, or some other entity, nor does it address the question of the additional judicial resources that would be required. The overriding purpose of this report is to express the City
Because the decision-making capacity of young adults improves as they move into adulthood, most young offenders are not likely to become adult offenders. Yet, our criminal justice system largely treats youth the same as adults, saddling them with the lifetime consequences of a criminal conviction despite the fact that young adult brains do not have the same decision-making capacity as adult brains. These consequences can prevent young people from accessing employment and educational opportunities necessary for them to become productive adults.

Recognizing these developmental differences, the United States Supreme Court in *Roper v. Simmons* found that juveniles under 18 must be treated differently under the law, and barred capital punishment for all youth below the age of 18. The decision was grounded in three developmental factors that separate youth from adults. First, youth lack maturity and have a less developed sense of responsibility than adults, which can result in impetuous and ill-considered actions and decisions. Second, youth are more vulnerable and susceptible to negative influences and pressure. Third, the character of youth is not as well formed as that of adults—it is transitory and less fixed.

In *Graham v. Florida*, the Court considered the same three factors when invalidating life without parole sentences for all youth under 18 convicted of non-homicide offenses. More recently, the Court in *Miller v. Alabama* held that the mandatory imposition of life sentences without the possibility of parole on juvenile offenders convicted of murder is unconstitutional because “children are constitutionally different from adults for the purposes of sentencing.” And, in *J.D.B v. North Carolina*, the Court made the connection more explicit when it held that police must consider the individual’s youthful status when determining if a juvenile is in custody for *Miranda* purposes.

New York remains stubbornly behind the national consensus that treating youth appropriately for their age serves to protect their well-being, improve public safety and reduce recidivism. The City Bar strongly supports raising the age of criminal responsibility and we urge the Commission and lawmakers to consider these recommendations as they move New York toward providing better outcomes for youth and safer communities.

**DIFFERENCES IN BRAIN DEVELOPMENT BETWEEN YOUTH AND ADULTS**

Neuroscience research in the last ten years has helped us pinpoint the differences between adult and adolescent brains that affect decision-making capacity; that research shows that the

---

Bar’s support for raising the age of responsibility to 18 for all crimes and to lay out the reasons for that support. We look forward to hearing the Commission’s recommendations concerning jurisdiction and, if practicable, commenting further at that point.


8 Id. at 569.


brain continues to develop into a person's mid-20's. The part of the brain that plays the largest role in decision-making—weighing risk versus reward, future planning, and impulse control—is one of the last parts of the brain to develop. Young adults do not have the same ability as adults to make mature decisions and place greater value on reward than adults, even if the young people do adequately assess the risk. Engaging in reckless behavior is normal during adolescence and declines steeply as young people grow into adults.

Young people’s brains are more responsive to the neural-chemical rewards of social connections and acceptance; therefore, peer pressure and acceptance play outsized roles in adolescent behavior. Because of the influence of peer pressure, negative influences can have a

---


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


major impact on a youth’s engagement in illegal behavior.\textsuperscript{16} Yet young people have less freedom than adults to escape negative environments.\textsuperscript{17} Finally, young adults are less likely to consider the long-term consequences of the actions they choose because their capacity for thinking and planning for the future is still developing.\textsuperscript{18}

**RAISING THE AGE WILL REDUCE RECIDIVISM**

There is a robust body of research showing that prosecuting youth in the adult system—even youth charged with violent offenses—is not effective for preventing future violence.\textsuperscript{19} Put simply, public safety is not served by treating children as adults. A 2007 study comparing similarly situated 15- and 16-year-olds charged with violent felonies in the adult system in New York, versus those charged in the juvenile system in New Jersey, found that New York youth were twice as likely to be re-arrested for a violent crime, 46\% more likely to be re-arrested for a property crime, and 26\% more likely to be incarcerated in the future than their New Jersey counterparts.\textsuperscript{20}

A review of studies throughout the nation by the Task Force on Community Preventive Services of the Centers for Disease Controls found that, overall, young people transferred to the adult criminal justice system have approximately 34\% more re-arrests for violent and non-violent crimes than youth retained in the youth justice system.\textsuperscript{21} Based on this study, the Task Force recommended against policies that transfer youth to the adult justice system for the purpose of reducing violence. The data shows that public safety is best served by prosecuting youth in the juvenile system.
ADULT JAILS ARE DANGEROUS FOR YOUTH

Youth are safer and fare better when held in facilities designed specifically for youth and which implement a child welfare model and other best practices, such as trauma-informed care. Adult facilities often engage in practices that are particularly detrimental to youth. Although New York City is ending the practice of putting youth in solitary, children in adult jails and prisons across New York State are placed regularly in solitary confinement, including for lengthy periods of time. Consequently, a recent one-day snapshot of youth being held at Rikers Island is instructive: almost 27% were in solitary confinement, and of those youth, 71% had been diagnosed with a mental illness. These youth spend 23 hours each day locked in a cell, with one hour of recreation while locked in a metal cage outside. In an August 2014 report to Mayor de Blasio, the Department of Justice concluded that “there is a pattern and practice of conduct at Rikers that violates the constitutional rights of adolescent inmates.” The American Academy for Child and Adolescent Psychiatry and the United Nations Special Rapporteur have strongly advocated that solitary confinement should not be used as a punishment for adolescents.

In addition, because negative influences have a disproportionate impact on young people’s engagement in illegal behavior, they learn the criminal mores and behaviors of more serious offenders when they are incarcerated with adults. A study of Florida youth showed stark differences: youth in juvenile facilities were more likely to believe that they would not reoffend and the study found that the facilities were more treatment and rehabilitation oriented. In contrast, youth in Florida’s adult prisons reported that much of their incarceration was spent learning criminal behaviors and proving how tough they were, and only one-third of these youth believed that they would not re-offend.

New York has taken the first steps to comply with the federal mandate contained in the Youthful Inmate Standard of the Prison Rape Elimination Act and amended the law to require

---

22 Such practices can include the use of unnecessary and excessive force by corrections officers who are not trained to deal with youth in crisis. *U.S. Inquiry Finds a Culture of Violence Against Teenage Inmates at Rikers Island*, New York Times, August 4, 2014.

23 *Three Adolescents with Mental Illness in Punitive Segregation at Rikers Island*, New York City Board of Corrections, Staff Report (October 2013), at ii.


housing separate from adults for 16- and 17-year-olds in adult jails.\textsuperscript{28} However, this is not enough to protect and rehabilitate youth fully.

**ALTERNATIVES TO THE CRIMINAL JUSTICE SYSTEM FOR YOUTH**

Research has repeatedly validated alternatives to incarceration as being safe, cheaper, and more effective at reducing recidivism than a prison sentence. Accordingly, increasing the use of alternatives to detention and incarceration for youth should be part of any plan to increase the age of criminal responsibility.

Youth held in detention or incarcerated are more likely to re-offend than those who are referred to community-based supervision, treatment, and services.\textsuperscript{29} Those incarcerated in secure facilities are less likely to return to school. Consequently, their future earning potential diminishes, as does the chance that those individuals will remain in the labor market.\textsuperscript{30} Thus, to ensure that youth who have been in the criminal justice system have the greatest chance for rehabilitation, detention should be used only where the youth is charged with a serious offense and poses a clear and demonstrated risk to public safety.

Those youth who are at the lowest-risk of reoffending often suffer the greatest detriment as a result of criminal justice interventions. Research shows that recidivism actually increases when low-risk youth are exposed to intensive criminal justice interventions, even when the court system also attempts to address their social service needs. The *Adolescent Diversion Program* (ADP), a pilot program that established youth court parts within adult courts in nine counties in New York in January 2012, provides within the confines of the current law age-appropriate services and clinical assessments for a small portion of 16- and 17-year-old defendants.\textsuperscript{31} Young defendants who agreed to participate in ADP all had active criminal cases. In some counties, youth participated in services as part of a pre-disposition agreement; in other counties, youth were required to plead guilty prior to participation.\textsuperscript{32} The service mandates ranged from one to three group sessions to three to six months of intensive intervention. A study of the ADP by the Center for Court Innovation found that while participation in this specialized youth court reduced

\begin{footnotesize}
\textsuperscript{28} See Corr. L. 500-b(4), as amended by the 2014 Executive Budget. Additionally, the Department of Corrections and Community Supervision recently settled a lawsuit which includes separating youth under age 18 in prisons from adult inmates. However, the terms of the settlement are contingent on the State receiving funding. See Stipulation for a Stay With Conditions, Leroy Peoples, et al., v. Brian Fischer, et al., available at http://www.nyclu.org/files/releases/Solitary_Stipulation.pdf.


\textsuperscript{32} Id. at 3-5.
\end{footnotesize}
Recidivism for medium- and high-risk youth, it actually increased recidivism for low-risk youth.\(^33\) The study concluded that:

\[
\text{[P]ositive recidivism reductions can be maximized as programs and policies effectively target moderate-risk and high-risk defendants. Conversely, to avoid the negative peer influences that can result from placing low-risk youth in programs alongside their high-risk peers, low-risk youth are best handled with minimal intervention (i.e., afforded outcomes such as declination to prosecute, case dismissal, ACD, or straight conditional discharge). In short, consistent with prior research, public safety can be maximized through policies that treat youth who pose the greatest future threat to public safety, while avoiding intensive services for those who pose little risk if they are left alone.}^{34}\]

One method of preventing deeper involvement of low-risk youth into the criminal justice system is through the creation of multiple points of diversion based on risk analysis. Several states have created police adjustment systems, allowing police officers with consent of the juvenile's parent to move minor cases out of the criminal justice system by using a range of alternative responses, such as warnings, curfews, letters of apology, community service, and referral to community programs. Other states that have recently raised the age also have instituted robust diversion and, in part to these efforts, those jurisdictions were able to raise the age without overburdening their juvenile justice systems.\(^35\)

A recent pilot program in Kings County also used expedited court calendars for youth to minimize their contact with the justice system. The program provided for dismissal and immediate sealing of the court file for youth given appearance tickets who completed a required workshop on critical-thinking skills; youth in this program had two court appearances within four to six weeks, with dismissal and sealing on the final date. The project was completed under the auspices of the ABA Racial Justice Improvement project, and yielded promising initial findings.\(^36\)

Likewise, a primary goal should be to reduce youth arrests for adolescent misbehavior that can be better addressed outside of the criminal justice system. We support the recommendations of the New York City School-Justice Partnership, chaired by Former Chief Judge Judith Kaye, for keeping youth in school and out of court, including: (1) focusing the role of school safety agents on keeping schools safe, not as being first responders to everyday misbehavior; (2) integrating school safety agents into the school administration, so they share

- \(^{33}\) Id. at 47.
- \(^{34}\) Id.
- \(^{36}\) A full description of the pilot program can be found at http://racialjusticeproject.weebly.com/new-york.html. Final evaluation findings, covering a five month period post-program, demonstrated that the re-arrest rate among participants was less than half of the re-arrest rate among a comparison group.
the goal of creating a positive learning environment; and (3) providing applicable training for
school safety agents based on youth development principles to promote culturally competent
skills and positive interaction with students.

PROTECTING YOUTH FROM COLLATERAL CONSEQUENCES

Youth charged in the adult system face an array of consequences from arrest,
prosecution, and conviction that prevent them from moving forward with their lives precisely at
the time that they should be taking the first steps toward adulthood. Simply having court records
and proceedings open to the public while cases are pending can result in housing and
employment consequences, regardless of whether a conviction results.\(^{37}\) Any legislation that
raises the age of criminal responsibility should protect the privacy of juveniles and ensure that
their records are not used against them in collateral proceedings. Thus, the court records of
youth should be completely confidential to everyone except those involved directly in the court
proceedings. Also, in order to ensure that youth do not suffer from collateral consequences, if a
young person is found to have committed an act that would be considered a crime if the youth
were an adult, the resulting judgment should be a juvenile adjudication.

Legislation also should require that judges, prosecutors, and defenders who work with
youth receive training on the latest research and practices to help inform the work of the court.
This training should cover adolescent development, including the latest brain development
research and findings, evidence-based practices, and practices promoting enhanced
communication with youth.

Finally, youth should be exempt from money bail (if applicable), court fees and
surcharges. As a practical matter, youth often are unable to afford bail and will remain in
detention. Alternatively, their bail will be paid by a relative further removing the financial
incentives for the youth to appear in court. The court should use a validated risk assessment
instrument -- as is the current practice in Family Court -- to inform release decisions and have
access to an array of alternative to detention programs.

ADDRESSING RACIAL AND ETHNIC DISPARITIES

The deep racial and ethnic disparities that exist in the arrest and prosecution of youth in
New York must be addressed as New York moves forward with raising the age of criminal
responsibility. In 2010, in New York City, 87.9% of 16- and 17-year-olds arrested were black or
Hispanic (only 8.2% were white), and of those sentenced to incarceration, 92.1% were black or
Hispanic (only 5.3% were white).\(^{38}\) Statewide, black 16- and 17-year-olds were almost twice as
likely as white 16- and 17-year olds to be sentenced to prison or jail.\(^{39}\)

\(^{37}\) See e.g., Collateral Consequences Calculator, at http://calculator.law.columbia.edu/; The Civil Consequences of

\(^{38}\) New York State Division of Criminal Justice Services OJRP, (2013 January 4), Criminal Justice Case Processing
of 16-17 Year Olds.

\(^{39}\) Id. According to the U.S. Census Bureau, 2013 American Community Survey, the population of white, non-
Hispanic youth ages 15 -17-years old residing in New York State is 2.9 times greater than that of youth ages 15 – 17
The City Bar has long advocated for ending racially discriminatory policing policies, and most recently urged Mayor de Blasio to reform stop and frisk practices of the New York Police Department that have resulted in similar disparities.\textsuperscript{40} New York State agencies should make data on these issues public and readily available, analyze racial disparities at every decision-making point in the justice system, and provide regular, targeting training for all system stakeholders. The stakeholders can work to create performance measures that align with the current research, law and notions of fairness.\textsuperscript{41}

\textbf{CONCLUSION}

New York lags behind the rest of the nation in automatically prosecuting youth at age 16 in the adult system, and prosecuting as adults youth as young as 13 years old. Research shows that transferring youth to the adult system, and housing youth in adult facilities, increases the chance of recidivism and is detrimental to public safety. New York can move forward to a smarter criminal justice policy by raising the age of criminal responsibility, ensuring youth receive community treatment instead of adult incarceration, and diverting low-risk youth from the justice system. In addition, by ensuring that youth are not saddled with the lifetime consequences of adult convictions and by addressing racial disparities, our government can ensure that New York youth the opportunity to participate as full members of their communities.

Children and the Law Committee
Meredith Kimmel Hamsher, Chair

Corrections & Community Reentry Committee
Allegra Glashauser, Chair

Council on Children
Jane F. Golden, Chair

Criminal Courts Committee
Kathryn S. Paek, Chair

Criminal Justice Operations Committee
Risa B. Gerson, Chair

Criminal Law Committee
Sharon L. McCarthy, Chair

Family Court & Family Law Committee
Marshall C. Cook, Chair

October 2014


\textsuperscript{40} In 2012, approximately 85% of those stopped by the NYPD and almost 90% of those frisked were black or Latino, though they comprised only 50% of the population. Committee on Civil Rights, New York City Bar Association, Letter to Mayor de Blasio, January 2, 2014, available at http://www2.nycbar.org/pdf/report/uploads/20072633-MemotodeBlasioonStopFriskReform.pdf.

\textsuperscript{41} Id.}