



THE CORRECTIONAL ASSOCIATION OF NEW YORK

Treating youth like youth: why it's time to "raise the age" in New York

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New York is **one of only two states in the country** that prosecutes all 16 and 17-year-olds charged with a crime in the adult criminal justice system, regardless of the severity of their alleged crime. New York also treats 13, 14, and 15-year-olds accused of committing certain serious crimes as "juvenile offenders" (J.O.s), prosecuting these young people as adults unless their cases are transferred to Family Court.

In New York State, 16 and 17-year-olds detained or incarcerated via a criminal court order are **confined in adult prisons and jails**. Youth convicted of juvenile offenses are confined in youth facilities until at least 16, at which time they can be transferred to adult prisons with a judge's order.

16- and 17-year-olds in New York State Department of Corrections and Community Supervision (DOCCS) prisons are **housed side-by-side with adults**. There are no separate residential areas for these young people and they often share large dormitory-style rooms with multiple adults.

Each year, over 45,000 16- and 17-year-olds are arrested as adults in New York State.¹ Because they are defined by the law as adults, these youth can be questioned by police without parental notification and confined in adult prisons and jails. They also do not have access to the rigorous and age-appropriate rehabilitative services that are available in Family Court.²

Young people housed in adult prisons and jails are in grave danger. Children in adult prisons and jails face very high rates of sexual assault and rape,³ physical assaults,⁴ attacks with weapons,⁵ and can be held in solitary confinement for long periods of time.⁶ Children in adult jails are also more likely to commit suicide than children in youth detention facilities.⁷

Research demonstrates that prosecuting and sentencing children as adults not only presents threats to children's safety and wellbeing, but also decreases public safety. Young people who are charged as adults have been shown to be more likely to commit crime and violence in the future, and return to prison at significantly higher rates than youth who were prosecuted in the youth justice system.⁸

Youth who are convicted with adult crimes may have to carry that mark with them for the rest of their lives, making it difficult for them to get on the right path and become productive and healthy adults. The aftermath of a lifelong criminal record can include significant barriers to college admission and employment; potential de-

YOUTH IN ADULT FACILITIES

THE FACTS

36

*times more likely
to commit suicide**ⁱ

100

*percent more likely
to face physical assault by
staff**ⁱⁱ

23

*number of hours per day
a youth can be held in
solitary confinement*ⁱⁱⁱ

45,000

*approximate number of
youth
that are arrested as adults in
NYS each year*^{iv}

**when compared to young
people in youth facilities*

- i. Arya Neelum, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America* (2007), Campaign for Youth Justice.
- ii. 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).
- iii. Human Rights Watch and American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, (October 2012); New York Civil Liberties Union, *Boxed In: The True Cost of Extreme Isolation in New York's Prisons* (2012).
- iv. Department of Criminal Justice Services, *Criminal Justice Case Processing of 16-17 Year Olds* (2010); Governor's Children's Cabinet Advisory Board, *Advancing a Fair and Just Age of Criminal Responsibility for Youth in New York State* (January 2011).



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portation; and the loss of housing for both themselves and their families⁹. This has a negative impact on both young people and our nation's economy.

This issue impacts some communities much harder than others. Because they are more likely to be targeted by the police¹⁰ and are disproportionately represented at virtually every point in the justice system¹¹, young people of color are more likely than white children to bear the serious and lasting consequences of being charged and incarcerated as adults.

Conclusions

Over the last decade, many states, including nearby Connecticut,¹² have successfully raised the age of criminal responsibility without overwhelming the courts or the youth justice system. Usually a leader in criminal justice reform, New York State is shamefully behind on this issue.

When considering ways to “raise the age” in New York, legislators and policymakers must ensure three things: 1) that the age of criminal responsibility is raised for all young people, regardless of the crime they are charged with; 2) that no one under the age of 18 will ever be confined in an adult prison or jail; and 3) that the Family Court Act is applied in all children's legal cases.

The youth justice system, while not perfect, provides children with more meaningful opportunities for rehabilitation. It is designed to serve young people, and thus is better able to meet their educational, social and emotional needs.

By contrast, children in adult courts and in adult jails and prisons are generally treated as if they are adults—an approach that fails both them and public safety. This is because the adult system provides children with little to no opportunity for developmentally appropriate services and rehabilitation, making it far less likely that youth will get the help they need to succeed.

Treating children in the justice system as children is not at odds with holding young people accountable for their behavior. The youth justice system simultaneously promotes accountability and provides opportunities for young people to receive the kinds of rigorous rehabilitative programs that have been proven to work.

Since the late 19th century, New York State has treated 16- and 17-year-olds in the justice system as adults. Over fifty years ago, as New York State's legislators created the Family Court, they discussed whether to raise the age at which young people could be tried as adults. Unable to reach consensus, the lawmakers of that era left the age of criminal responsibility at 16. A legislative committee emphasized that the decision was “tentative and subject to change” and urged further study, which did not happen.

It is now past time to revisit that tragic decision. New York State must end the shameful practice of prosecuting children in adult courts and locking children up in adult jails and prisons. We cannot afford any more delay—the lives of children and the safety of communities hang in the balance. ■

1. Department of Criminal Justice Services, *Criminal Justice Case Processing of 16-17 Year Olds* (2010), on file with the author (in 2010, there were 45,692 arrests of 16- and 17-year-olds in New York State); Governor's Children's Cabinet Advisory Board, *Advancing a Fair and Just Age of Criminal Responsibility for Youth in New York State* (January 2011) (in 2009, there were 47,339 16- and 17-year olds in New York State).
2. See generally Michael A. Corriero, *Judging Children as Children: Reclaiming New York's Progressive Tradition*, 56 N.Y.L. Sch. L. Rev. 1413, 1419 (2011-12) (discussing the options available to family court judges that are not available to adult criminal or supreme court judges).
3. U.S. Department of Justice, Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates, Survey 2011-12* (May 2013), <http://www.bjs.gov/content/pub/pdf/svpjni112.pdf>; U.S. Department of Justice, Bureau of Justice Statistics, *Sexual Violence Reported by Correctional Authorities, 2005* (July 2006), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1152>; and U.S. Department of Justice, Bureau of Justice Statistics, *Sexual Violence Reported by Correctional Authorities, 2006* (August 2007), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=425>.
4. 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) (Children in adult prisons are one hundred percent more likely to be beaten up by staff than youth in juvenile facilities).
5. Endnote 4 (Martin Forst, Jeffrey Fagan and T. Scott Vivona) (Children in adult prisons are far more likely to be attacked with weapons than are youth in juvenile facilities).
6. Human Rights Watch and American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, (October 2012), <http://www.aclu.org/criminal-law-reform/growing-locked-down-youth-solitary-confinement-jails-and-prisons-across-united>; New York Civil Liberties Union, *Boxed In: The True Cost of Extreme Isolation in New York's Prisons* (2012), http://www.nyclu.org/files/publications/nyclu_boxedin_FINAL.pdf
7. Arya Neelum, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America* (2007), Campaign for Youth Justice, http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf.
8. Angela McGowan et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review*, Department of Health and Human Services, Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report*, November 30, 2007 / Vol. 56 / No. RR-9 (The independent, nonfederal Task Force on Community Preventive Services' review of published scientific evidence concerning the effectiveness of laws and policies that facilitate the transfer of juveniles to the adult criminal justice system. The report found that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth and recommends against laws or policies facilitating the transfer of juveniles to the adult criminal justice system for the purpose of reducing violence); Office of Juvenile Justice and Delinquency Prevention, Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* (June 2010), <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>.
9. Endnote 2 (Michael A. Corriero).
10. Neelum Arya and Ian Augarten, Campaign for Youth Justice, *Critical Condition: African-American Youth in the Justice System*, (September 2008) (addressing the disproportional treatment of African-American youth in the justice system); http://www.campaignforyouthjustice.org/documents/CFYJPB_CriticalCondition_000.pdf; *Stop-and-Frisk Campaign: About the Issue*, NYCLU, www.nyclu.org/issues/racial-justice/stop-and-frisk-practices (the NYCLU data is specific to New York City).
11. James Bell and Laura John Ridolfi, The W. Haywood Burns Institute, *Adoration of the Question: Reflections on the Failure to Reduce Racial & Ethnic Disparities in the Juvenile Justice System* (Shadi Rahimi ed., 2008), http://seccounty01.co.santa-cruz.ca.us/prb/jdai/bi_dmc.pdf; The National Council on Crime and Delinquency, *And Justice for Some, Differential Treatment of Youth of Color in the Justice System* (2007), http://www.nccdglobal.org/sites/default/files/publication_pdf/justice-for-some.pdf.
12. Justice Policy Institute, *Juvenile Justice Reform in Connecticut: How Collaboration and Commitment Improved Outcomes for Youth* (October 2012), http://towfoundation.org/wp-content/uploads/2013/03/JPI_shortreport_web.pdf.