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**REPORT IN SUPPORT OF  
RAISING THE AGE OF CRIMINAL RESPONSIBILITY**

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.<sup>1</sup>

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. It is one of only two states (the other being North Carolina) that prosecutes all youth as adults once they turn 16.<sup>2</sup> 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.

In 2016, almost 25,000 16- and 17-year-olds were arrested and faced the possibility of prosecution as adults in New York’s criminal courts, 86% for non-violent crimes.<sup>3</sup> And, if these young people are detained or incarcerated because of a criminal court order, they are confined in adult prisons and jails. We applaud Governor Andrew Cuomo’s introduction of ‘raise the age’ legislation the past three years and his repeated statements and support for this needed change.<sup>4</sup>

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<sup>1</sup> The City Bar has previously expressed its support for raising the age of criminal responsibility. See Statement on Raising the Age (October 2014) available at <http://www2.nycbar.org/pdf/report/uploads/20072795-RaisingtheMinimumAge18forCriminalResponsibility.pdf> and Report on 2015-16 Executive Budget Proposal regarding Raising the Age of Criminal Responsibility (March 2015) available at [http://www2.nycbar.org/pdf/report/uploads/7\\_20072872-RaisingtheAgeofCriminalResponsibility.pdf](http://www2.nycbar.org/pdf/report/uploads/7_20072872-RaisingtheAgeofCriminalResponsibility.pdf).

<sup>2</sup> See “Get the Facts”, Raise the Age New York, at <http://raisetheagency.com/get-the-facts>. North Carolina also appears poised to enact legislation that would raise the age in that state, potentially leaving New York behind. See Nick Niedzwiedek, *North Carolina ‘raise the age’ bill could leave New York behind*, March 10, 2017, available at <http://www.politico.com/states/new-york/albany/story/2017/03/north-carolina-raise-the-age-bill-could-leave-new-york-behind-110268>. See also North Carolina Commission on the Administration of Law & Justice, *Recommendations for Strengthening the Court System of North Carolina*, March 2017, available at <https://nccalj.org/final-report/>.

<sup>3</sup> Dispositions of Youth Arrests (16 and 17 year olds), NYS Division of Criminal Justice Services, at <http://www.criminaljustice.ny.gov/crimnet/ojsa/youth-arrests/nys.pdf>. 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>.

<sup>4</sup> See e.g., <https://www.governor.ny.gov/keywords/raise-age>. In April 2014, Governor Cuomo appointed a Commission on Youth, Public Safety and Justice (the “Commission”) to make recommendations about how New

Support for raising the age of criminal responsibility is growing in the Legislature. The Assembly has once again passed a bill to raise the age<sup>5</sup> and all parties that released one-house budget documents included some level of support for addressing the age of criminal responsibility.<sup>6</sup> New York State must seize this unprecedented moment in time to come together and enact comprehensive legislation that will once and for all raise the age of criminal responsibility.

The City Bar strongly supports raising the age of criminal responsibility and we urge our State's lawmakers to consider these recommendations as they move New York toward providing better outcomes for youth and safer communities.<sup>7</sup>

## **RAISING THE AGE WILL REDUCE RECIDIVISM**

Public safety is not served by treating children as adults. There is a robust body of research showing that prosecuting youth in the adult system — even youth charged with violent offenses — increases the likelihood of future violence.<sup>8</sup> A comprehensive 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

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York could raise the age of juvenile jurisdiction and make other reforms to improve youth outcomes while increasing community safety (Executive Order No. 131). The Commission released an extensive Final Report in January 2015 containing 38 concrete recommendations (*available at* [http://www.njcn.org/uploads/digital-library/ReportofCommissiononYouthPublicSafetyandJustice\\_0%20\(1\).pdf](http://www.njcn.org/uploads/digital-library/ReportofCommissiononYouthPublicSafetyandJustice_0%20(1).pdf)). The recommendations of the Commission — which was comprised of law enforcement, advocates and service providers — were unanimous.

<sup>5</sup> A.4876 (NYS 2017) *available at* <http://assembly.state.ny.us/leg/?bn=A.4876&term=2017>.

<sup>6</sup> See A.3006-B, Part J (NYS 2017) and Overview of Assembly Budget Proposal State Fiscal Year 2017-18 at 34-2 *available at* [http://nyassembly.gov/Reports/WAM/20170313/2017\\_budget\\_summary.pdf](http://nyassembly.gov/Reports/WAM/20170313/2017_budget_summary.pdf); R1050 Senate Budget Resolution in Response to the 2017-2018 Executive Budget Submission *available at* <https://www.nysenate.gov/legislation/resolutions/2017/r1050>; Independent Democratic Conference Resolution in Response to the 2017-2018 Executive Budget Submission at 6, *available at* [https://www.nysenate.gov/sites/default/files/idc\\_one-house\\_budget\\_reso.pdf](https://www.nysenate.gov/sites/default/files/idc_one-house_budget_reso.pdf); and Senate Democratic Conference Letter to Hon. John Flanagan regarding budget priorities, March 13, 2017, at 3, *available at* <https://www.scribd.com/document/341854282/Senate-Democratic-Conference-s-Budget-Letter>.

<sup>7</sup> 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 or criminal court, 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 Bar's support for raising the age of responsibility to 18 for all crimes and to lay out the reasons for that support. The City Bar did support the Governor's 2015 Executive budget proposal to raise the age which would have given the Family Court original jurisdiction over most youth who were arrested (approximately 86%), with the Criminal Court retaining jurisdiction over youth charged with serious offense crimes and offense charged under the Vehicle and Traffic Law. See [http://www2.nycbar.org/pdf/report/uploads/7\\_20072872-RaisingtheAgeofCriminalResponsibility.pdf](http://www2.nycbar.org/pdf/report/uploads/7_20072872-RaisingtheAgeofCriminalResponsibility.pdf).

<sup>8</sup> 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, Nov. 30, 2007 / Vol. 56 / No. RR-9, *available at* <http://www.thecommunityguide.org/violence/mcgowanarticle4.pdf>.

property crime, and 26% more likely to be incarcerated in the future than their New Jersey counterparts.<sup>9</sup>

A review of studies throughout the nation by the Task Force on Community Preventive Services of the Centers for Disease Control and Prevention 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.<sup>10</sup> According to Governor Cuomo's Commission on Youth, Public Safety, and Justice, raising the age would avoid between 1,500 and 2,400 crime victimizations every five years.<sup>11</sup> Simply put, raising the age would ensure fewer New Yorkers suffer the trauma of crime.

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

Neuroscience research has helped us pinpoint the differences between adult and adolescent brains that affect decision-making capacity; that research shows that the brain continues to develop into a person's mid-20's.<sup>12</sup> 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.<sup>13</sup> Adolescents 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.<sup>14</sup> Engaging in reckless behavior is normal during adolescence and

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<sup>9</sup> Fagan, J.; Kupchik, A.; Liberman, A. (2007) *Be Careful What You Wish For: Legal Sanctions and Public Safety Among Adolescent Felony Offenders in Juvenile and Criminal Court*. Law Research Paper 03-61. New York: Columbia Law School Pub., available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=491202](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=491202).

<sup>10</sup> Centers for Disease Control and Prevention, *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*, MMWR 2007;56 (No. RR-9):10, available at <http://www.cdc.gov/mmwr/PDF/rr/rr5609.pdf>.

<sup>11</sup> The Governor's Commission on Youth, Public Safety, and Justice, Summary of Recommendations for Juvenile Justice Reform in New York State (2015), 1, available at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ExecutiveSummaryofCommissiononYouthPublicSafetyandJusticeRecommendations.pdf>.

<sup>12</sup> Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 Proc. Nat'l Acad. Sci. 8174, 8177 (2004); Linda Spear, *The Behavioral Neuroscience of Adolescence* 108-111 (2009).

<sup>13</sup> 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).

<sup>14</sup> 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

declines steeply as young people grow into adults.<sup>15</sup> Because the decision-making capacity of young adults improves as they move into adulthood, most young offenders are not likely to become adult offenders.<sup>16</sup>

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.<sup>17</sup> Because of the influence of peer pressure, negative influences can have a major impact on a youth's engagement in illegal behavior.<sup>18</sup> Yet young people have less freedom than adults to escape negative environments.<sup>19</sup> 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.<sup>20</sup>

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Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Rev.* 339 (1992) at 350-353 (summarizing evidence that adolescents' poor capacity for 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); Susan G. Millstein & Bonnie L. Halpern-Felsher, *Perceptions of Risk and Vulnerability, in Adolescent Risk and Vulnerability* 15, 34-35 (Baruch Fischhoff et al. eds., 2001); Elizabeth Cauffman et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Test*, 46 *Developmental Psychol.* 193, 193, 204, 207 (2010).

<sup>15</sup> Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Rev.* 339, 344 (1992); 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); see also Laurence Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 *Developmental Psychol.* 1764, 1774-1776 (2008); see also Adriana Galvan et al., *Risk Taking and the Adolescent Brain: Who is at Risk?*, 10 *Developmental Sci.* F8, F13 (2007) (in study of individuals aged 7 to 29, finding that impulse control continues to develop over the course of adolescence and early adulthood); Rotem Leshem & Joseph Glicksohn, *The Construct of Impulsivity Revisited*, 43 *Personality & Individual Differences* 681, 684-686 (2007) (reporting significant decline in impulsivity from ages 14-16 to 20-22 on two different impulsivity scales).

<sup>16</sup> Moffitt, *Adolescent-Limited and Life-Course-Persistent Antisocial Behavior*, *supra* note 2, at 685-686; Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 38 (2008) at 101-105.

<sup>17</sup> Thomas J. Berndt, *Developmental Changes in Conformity to Peers and Parents*, 15 *Developmental Psychol.* 608, 612, 615-616 (1979); Laurence Steinberg & Susan B. Silverberg, *The Vicissitudes of Autonomy in Early Adolescence*, 57 *Child Dev.* 841, 848 (1986); Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 38 (2008); see also Kristan Erickson et al., *A Social Process Model of Adolescent Deviance: Combining Social Control and Differential Association Perspectives*, 29 *J. Youth & Adolescence* 395, 420-421 (2000) (discussing peer influence on delinquency); Jeffrey Fagan, *Contexts of Choice by Adolescents in Criminal Events*, in *Youth on Trial* 371, 382-384 (Thomas Grisso & Robert G. Schwartz eds., 2000) (discussing coercive effect of social context on adolescents); Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 *Developmental Psychol.* 625, 626-634 (2005); Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Influence*, 43 *Developmental Psychol.* 1531, 1531 (2007) (describing Gardner and Steinberg study).

<sup>18</sup> Fagan, *supra* note 17 at 371-394.

<sup>19</sup> Alan E. Kazdin, *Adolescent Development, Mental Disorders, and Decision Making of Delinquent Youths*, in *Youth on Trial* 33, 47 (Thomas Grisso & Robert G. Schwartz eds., 2000).

<sup>20</sup> See, e.g., Jari-Erik Nurmi, *How Do Adolescents See Their Future? A Review of the Development of Future Orientation and Planning*, 11 *Developmental Rev.* 1, 28-29 (1991); Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 *Child Dev.* 28, 30, 35-36 (2009).

Recognizing these developmental differences, the United States Supreme Court has held repeatedly that “children are constitutionally different from adults for the purposes of sentencing.”<sup>21</sup> 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.<sup>22</sup>

## **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 and fail to focus on rehabilitation.<sup>23</sup> The U.S. Department of Justice’s 2014 investigation of Rikers Island<sup>24</sup> prompted New York City’s plan to remove 16- and 17-year-olds from Rikers to a juvenile facility, but officials now say that could take six years.<sup>25</sup> Children held in adult facilities are twice as likely to be physically assaulted as children in juvenile facilities, five times as likely to be sexually assaulted, and up to 36 times as likely to commit suicide.<sup>26</sup>

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.<sup>27</sup> 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

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<sup>21</sup> See also *Roper v. Simmons*, 543 U.S. 551, 578 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012).

<sup>22</sup> *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2397 (2011).

<sup>23</sup> 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.

<sup>24</sup> See Letter from the Department of Justice to Hon. Bill de Blasio, Commissioner Joseph Ponte and Zachary Carter regarding CRIPA Investigation of the NYC Department of Correction Jails on Rikers Island (August 4, 2014), available at <http://www.justice.gov/usao/nys/pressreleases/August14/RikersReportPR/SDNY%20Rikers%20Report.pdf>.

<sup>25</sup> Edgar Sandoval and Sarah Ryley, *Activists slam de Blasio’s plan to renovate Rikers Island ‘hell,’ demand its closure*, New York Daily News, March 18, 2017, available at <http://www.nydailynews.com/new-york/activists-slam-de-blasio-plan-renovate-rikers-island-hell-article-1.3002003>.

<sup>26</sup> Campaign for Youth Justice, Key Facts: Youth in the Justice System (June 2016), available at <http://www.campaignforyouthjustice.org/images/factsheets/KeyYouthCrimeFactsJune72016final.pdf>.

<sup>27</sup> Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Bulletin, June 2010, at 7, available at <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>.

learning criminal behaviors and proving how tough they were, and only one-third of these youth believed that they would not re-offend.<sup>28</sup>

## 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> 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

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<sup>28</sup> Bishop, D.M., and Frazier, C.E. 2000. *Consequences of transfer, The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court*, edited by J. Fagan and F.E. Zimring, 227–76. Chicago, IL: University of Chicago Press.

<sup>29</sup> A newly released Justice Policy Institute New York Fact Sheet details how reforms already started in New York make it ready to raise the age. See [https://www.scribd.com/document/341118716/New-york-FactSheet-3-2-2017-Final2#from\\_embed](https://www.scribd.com/document/341118716/New-york-FactSheet-3-2-2017-Final2#from_embed). Access the full JPI report, *Raise the Age: Shifting to a Safer and More Effective Juvenile Justice System*, here: <http://www.justicepolicy.org/uploads/justicepolicy/documents/raisetheage.fullreport.pdf>.

<sup>30</sup> Barry Holman & Jason Ziedenberg, Just. Pol’y Inst., *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* 1, 2–3 (2006), available at [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf).

<sup>31</sup> 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), available at [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf).

<sup>32</sup> *The Adolescent Diversion Program*, Center for Court Innovation, at 47 (January 2013), available at [http://www.courtinnovation.org/sites/default/files/documents/ADP\\_Report\\_Final.pdf](http://www.courtinnovation.org/sites/default/files/documents/ADP_Report_Final.pdf).

<sup>33</sup> *Id.* at 3-5.

Center for Court Innovation found that while participation in this specialized youth court reduced recidivism for medium- and high-risk youth, it actually increased recidivism for low-risk youth.<sup>34</sup> The study concluded that:

[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.<sup>35</sup>

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 young person'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 raised the age also have instituted robust diversion and, due in part to these efforts, those jurisdictions were able to raise the age without overburdening their juvenile justice systems.<sup>36</sup> For instance, after Connecticut raised the age of criminal responsibility to 18, it saw juvenile arrests drop 68%.<sup>37</sup>

A program in Kings County, since expanded to the Bronx, 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. An evaluation of the program found that 84% of participants had not been re-arrested within six months of completion.<sup>38</sup>

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<sup>34</sup> *Id.* at 47.

<sup>35</sup> *Id.*

<sup>36</sup> *Illinois Raises Age of Juvenile Court Jurisdiction*, Office of Juvenile Justice and Delinquency Prevention (July 21, 2013) available at <http://www.ojjdp.gov/enews/13juvjust/130722.html>; Juvenile Diversion Guidebook, Models For Change Juvenile Diversion Workgroup, at 12.

<sup>37</sup> Editorial Board, *Crime and the Adolescent Brain*, New York Times (March 11, 2017), available at [https://www.nytimes.com/2017/03/11/opinion/sunday/crime-and-the-adolescent-brain.html?\\_r=0](https://www.nytimes.com/2017/03/11/opinion/sunday/crime-and-the-adolescent-brain.html?_r=0).

<sup>38</sup> FACT SHEET: De Blasio Administration, Public Officials Highlight Series of Evidence Backed Reforms to Reduce Recidivism Among Young Adults, available at <http://www1.nyc.gov/assets/criminaljustice/downloads/pdfs/YoungAdultAnnounceFinal.pdf>.

## 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.<sup>39</sup> 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 and to law enforcement. 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).<sup>40</sup> 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.<sup>41</sup> 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

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<sup>39</sup> See e.g., Collateral Consequences Calculator, at <http://calculator.law.columbia.edu/>; The Civil Consequences of Criminal Proceedings, at <http://www.reentry.net/ny/library/attachment.172234>.

<sup>40</sup> New York State Division of Criminal Justice Services OJRP, (2013 January 4), Criminal Justice Case Processing of 16-17 Year Olds.

<sup>41</sup> *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 years old that identify as African-American or Black. U.S. Census Bureau, 2013 American Community Survey, available at <http://www.census.gov/acs/www/>.

stakeholders. The stakeholders can work to create performance measures that align with the current research, law and notions of fairness.<sup>42</sup>

## CONCLUSION

New York lags behind the rest of the nation in automatically prosecuting youth at age 16 in the adult system. 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 have the opportunity to participate as full members of their communities.

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<sup>42</sup> *Id.*