



Testimony of

**Stephanie Gendell, Esq.
Associate Executive Director
For Policy and Government Relations**

**Presented to the
New York State Senate Finance Committee
And
New York State Assembly Committee on Ways and Means**

**Regarding the
New York State Executive Budget Proposals for
Public Protection
State Fiscal Year 2016-2017**

February 4, 2016

Good afternoon. My name is Stephanie Gendell and I am the Associate Executive Director for Policy and Government Relations at Citizens' Committee for Children (CCC). CCC is a 72-year-old privately supported, independent, multi-issue child advocacy organization dedicated to ensuring every New York child is healthy, housed, educated and safe.

CCC does not accept or receive public resources, provide direct services, nor represent a sector or workforce. For 72 years, CCC has undertaken public policy research, community education and advocacy efforts to draw attention to children and their needs so that we can advance budget, legislative and policy priorities that produce good outcomes for our youngest New Yorkers.

I would like to thank Chairman Farrell and Chairwoman Young and all the members of the Assembly Ways and Means and Senate Finance Committees for holding today's hearing on the Public Protection-related proposals in the Governor's Executive Budget for State Fiscal Year 2016-2017.

CCC supports many of the Governor's new proposed investments, such as \$100 million for community schools, creating 18,000 units of supportive housing over the next 15 years, expanding prekindergarten to more 3-year olds, and creating six new mental health services for children. We were also extremely pleased to see that the Governor's budget maintains funding levels established by the legislature for runaway and homeless youth services and the Foster Youth Success Initiative.

We also applaud the Governor for once again including a comprehensive and fully-funded plan to raise the age of criminal responsibility in New York. As you know, New York remains one of only two states that prosecutes all 16 and 17- year olds as adults, despite the research proving that this is detrimental both to public safety and to the young people. We urge the Legislature to negotiate a budget with the Governor that includes Raise the Age this year.

We were also pleased to see that the Governor's Executive budget includes a number of proposals that will help all New Yorkers, and particularly the low-income New Yorkers in every part of the state. Specifically we support raising the minimum wage to \$15 an hour, creating a Paid Family Leave program, and increasing poverty initiatives upstate.

On the other hand, the \$143.5 billion Executive Budget limits spending growth to 1.7%, below Governor Cuomo's own 2% threshold. While CCC believes in fiscal prudence, New York has seen recent economic growth, and this artificial cap limits the ability of the state agencies to sufficiently meet the needs of many children and their families.

CCC is disappointed that the Executive Budget fails to include funding for critical programs and services for children. For example, the budget does not include enough funding for the over \$90 million child care budget hole created by new federal rules that must be implemented nor funding for contracted non-profit programs to implement the proposed minimum wage increase. Furthermore, the budget fails to include funding to expand the programs proven to produce good outcomes, such as prekindergarten for 4-year olds, child care subsidies, after-school programs and home-visiting programs such as Healthy Families New York and Nurse-Family Partnership. Finally, the budget also fails to make new investments in areas that CCC has been advocating for

such as creating a funding stream for primary preventive services and increasing the child welfare housing subsidy.

CCC is extremely concerned that the way that the Governor seems able to create new state-funded programs while remaining at 1.7% growth (which due to inflation translates into cuts), is by shifting nearly \$1 billion in costs to New York City. This is not fair or equitable to the residents of New York City, notably the nearly 2 million children, 1/3 of whom are living in poverty. Requiring New York City to pay for its Medicaid increases, which no other county is responsible for, and shifting 30% of the costs of CUNY to the City, is unacceptable. To accommodate these huge costs, New York City would be forced to cut programming for its residents. In recent days, the Governor has seemed to indicate that the Medicaid and CUNY proposals would not cost the City money; we hope this is true and look forward to seeing the details.

Given the state's positive budget outlook and the fact that the State's Budget needs to accommodate the needs of every county in the state, CCC urges the Legislature to negotiate a budget with the Governor that eliminates the cost shifts and invest significantly more in the programs and services that will produce outcomes for the children and families throughout New York.

Turning specifically to the Executive Budget proposals related to Public Protection, this testimony focuses on two key aspects of the Executive Budget: 1) supporting the Judiciary's Budget request and 2) the plan to raise the age of criminal responsibility in New York. CCC is in full support of both measures.

The Judiciary Budget

CCC strongly supports a fully funded Judiciary. This is the only way that New York can ensure access to justice to all New Yorkers.

The Judiciary Budget requests a total of \$1.9 billion, reflecting a \$44.4 million over current years funds, which represents a 2.4% increase. The 2% spending growth cap artificially imposed by the Governor is not necessary in a budget year where there is a surplus and the Judiciary needs this funding to account for cost increases, including mandatory salary increases for non-judicial, unionized staff, the cost of annualized cost of 5 Family Court Judgeships effective January 1, 2016, and a \$15 million increase for civil legal services.

These additional funds are necessary for the courts to provide adequate staffing in the courts and that New Yorkers receive counsel. We urge the Legislature to work with the Governor to enable the Judiciary Budget to be enacted as proposed.

Raise the Age

“Our juvenile justice laws are outdated. Under New York State law, 16 and 17 year olds can be tried and charged as adults. Only one other state in the nation does that; it’s the state of North Carolina. It’s not right, it’s not fair – we must raise the age.” Governor Cuomo, State of the State Address, January 9, 2014.

CCC is extremely pleased that Governor Cuomo has once again included a comprehensive plan to raise the age of criminal responsibility, as well as the needed state funds to do it, in the Executive Budget. As one of only two states in the country that prosecutes all 16 and 17-year olds as adults regardless of the crime, these changes are long past due.

Notably, raising the age will not only produce better outcomes for youth but will also do a better job of protecting public safety. In fact, the Commission the Governor appointed last year found that implementing the range of evidence-based services for youth 16 and 17 year old would eliminate between 1,500 and 2,400 crime victimizations every five years due to the reduction in recidivism.

In New York, when a youth ages 16 or 17 is arrested, there is no parental notification, youth can waive their Miranda Rights on their own, they are housed in adult jails and currently prisons where they are more likely to face physical and mental abuse and commit suicide, and according to research comparing states, they are more likely to re-offend than youth of the same age who receive age-appropriate consequences.

Aside from New York’s statute being out of line with the rest of the country, it contradicts the brain science research about adolescents and actually jeopardizes, rather than protects, public safety. Science has proven that brains are not fully developed until young adults are 25-years old. Since it is the frontal lobe to develop last, adolescents are likely to act more impulsively and also to be more receptive to rehabilitative services. Alternatively, prosecuting children as adults has been shown to increase recidivism—thereby jeopardizing public safety while also depriving the young person of the services proven to turn young lives around.

It cannot be understated that it is critical for New York to raise the age of criminal responsibility-NOW. There are children locked up on Rikers Island and Sing Sing while adults like us are negotiating a law to get them out. These youth are not receiving services to turn their lives around but are instead learning how to survive in a criminalized environment- like Kalief Browder who spent 3 years at Rikers for allegedly stealing a backpack. There are 16 and 17 year olds arrested every day for misdemeanors who will end up with these crimes on their permanent records, which will impact their ability to be educated, get a job and secure housing for the rest of their lives. Tonight there will be a 16 or 17 year old arrested, who will not come home, and whose parents will be frantic and worried having no idea that their child is at the police station.

Youth have been waiting over 50 years- since the Family Court Act was created- for adults in New York to resolve this issue. In 1962, when the Family Court Act was passed, to create the Family Courts, New York’s Constitutional Convention decided to defer the decision about Family Court jurisdiction for 16 and 17 year olds. In the official legislative committee comment to the original Family Court Act, it reads, “This section follows existing law in limiting juvenile delinquency to persons under sixteen years of age. This decision is tentative and subject to

change upon completion of a study... The Joint Legislative Committee on Court Reorganizations plans to complete this study and submit legislation in 1963.”¹ While the study was completed in 1963, it did not come to a firm decision.² Over 50 years later, the Governor of New York established a Commission to finally develop a plan to raise the age and we now stand on the precipice of finally addressing this critical issue.

We cannot waste the opportunity that this budget session gives us to right this wrong. In FY 16-17, the Governor’s budget includes \$110 million for OCFS facility capacity needs, \$10 million for OCFS facility capacity needs. In addition, the 5 year plan includes:

- Funding to the highest need social service districts to contract with non-profits to operate family support centers.
- 100% state reimbursement (exclusive of federal funds) for preventive, after-care, independent living and foster care services for youth 16 or older receiving these services due to Raise the Age legislation.
- 100% state reimbursement (exclusive of federal funds) for approved juvenile justice services under an approved close to home initiatives for youth 16 and older receiving these services due to the RTA legislation.
- 100% state reimbursement for probation services (such as juvenile risk intervention services, a continuum of evidence-based intervention for youth alleged to be JDs, and supervision) for expenditures for youth 16 and older receiving the services due to the RTA legislation.
- 100% of a municipality’s expenses for the care, maintenance and supervision of youth 16 years of older in non-secure and secure detention facilities who are receiving these services due to the RTA legislation.

CCC is a lead member of the Raise the Age NY Campaign. As such, we believe that there are 7 core components that constitute comprehensive Raise the Age reform. We urge the Legislator to negotiate a budget with the Governor that includes the following 7 principles:

- Raise the overall age of juvenile jurisdiction to 18, which is consistent with other states.
- Ensure no youth who is 16 or 17 years old is placed in an adult jail or prison.
- Amend the law to ensure parental notification upon the arrest of a 16 or 17 year old and ensure 16 and 17 year olds are interviewed using practices employed for youth, including parental involvement prior to waiving Miranda rights.
- Better address the collateral consequences of court involvement and help youth become successful adults by sealing records and expanding YO status to age 21 and to additional non-violent crimes.

¹ N.Y. JOINT LEGISLATIVE COMM. ON COURT REORGANIZATION, THE FAMILY COURT ACT REPORT 110 (1962).

²Sobie, Merril. “Pity the Child: The Age of Juvenile Delinquency in New York. Pace Law Review (2010), at 1073.

- Increase investments in the front-end diversion services that keep youth in their communities rather than incarceration. These alternative to detention, placement and incarceration services are less expensive and more effective at reducing recidivism.
- Originate as many cases of 16 and 17 year olds in Family court as possible; create Youth Parts in adult court for remaining cases, and apply the Family Court Act to as many as possible, regardless of which courthouse in which the case is heard.
- Raise the lower age of juvenile delinquency from age 7 to age 12 (except for homicide offenses, which should be raised to 10).

The Adolescent Brain

Anyone who has ever interacted with a 16- or 17- year old is well aware that these youth are not adults. This is not just perception—it has been proven by the science of brain development.

Numerous brain studies have now proven that the adolescent brain is not fully developed. Brain scans show that young brains do not look like those of adults until the early 20s. The scans also suggest that different parts of the cortex mature at different rates. The parts of the brain involved in basic functions, such as controlling movement, mature first. The parts of the brain responsible for planning and impulse control, are the last to mature.

Specifically, the prefrontal cortex (or frontal lobe), which is the part of the brain that supports reasoning, advanced thought, and impulse control develops last, leaving the adolescent brain to rely heavily on its emotional center. This is why youth often have less self-control, are drawn to higher levels of risk and stimulation, have undeveloped decision-making abilities, and are bad predictors of consequences.³

Professor Laurence Steinberg, who has researched, studied and written on this topic for many years, sums it up this way:

“Middle adolescence is a period during which brain systems implicated in how a person responds to rewards are at their height of arousability but systems important for self-regulation are still immature. The different timetables followed by these different brain systems create a vulnerability to risky and reckless behavior that is greater in middle adolescence than before or after. It’s as if the brain’s accelerator is pressed to the floor before a good braking system is in place. Given this, it’s no surprise that the commission of crime peaks around age 17—as does first experimentation with alcohol and marijuana, automobile crashes, accidental drownings, and attempted suicide.”⁴

³ Selected research reviewed includes: National Institute for Mental Health, *The Teen Brain: Still Under Construction*, 2011. <http://www.nimh.nih.gov/health/publications/the-teen-brain-still-under-construction/index.shtml>; Frontline, *Adolescent Brains are Works in Progress*, 2000. <http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/work/adolescent.html>; Beckman, Mary, *Crime, Culpability and the Adolescent Brain*, 2004. <http://www.admrec.sonoma.edu/users/p/pollack/edu420/adolescentbrainvpt.pdf>.

⁴ Steinberg, Laurence, *Should the Science of Adolescent Brain Development Inform Public Policy?* 2011. <http://www.issues.org/28.3/steinberg.html>.

While the immaturity of the adolescent brain may lead to risky behavior, it also makes the adolescent and his/her brain more receptive to rehabilitative services. In fact, with the right services and support, the adolescent brain may be the most receptive of all to rehabilitative services.⁵

Adolescence and the Law:

In many ways, most other laws in New York already recognize that adolescents are not able to make the same sound judgments and decisions as adults. For example, in New York and throughout the country, you need to be 21 to drink alcohol, 18 to get married without parental permission, 18 to join the military, 18 to vote (for the elected officials who determine the age of criminal responsibility) and 17 to see an R-rated movie without adult supervision. Furthermore, just last month, New York City raised the age at which a young person can purchase cigarettes from 18 to 21.

The United State Supreme Court has recently been very deliberate in recognizing that children are different from adults, particularly with regard to the justice system. In 2005, the United States Supreme Court ruled in *Roper v. Simmons* that the juvenile death penalty was unconstitutional. Justice Kennedy wrote, "Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." Then, in 2010 the Supreme Court ruled in the case of *Graham v. Florida*, that juveniles convicted of crimes in which no one is killed may not be sentenced to life in prison without the possibility of parole. Justice Kennedy wrote, "By denying the defendant the right to reenter the community, the state makes an irrevocable judgment about that person's value and place in society. This judgment is not appropriate in light of a juvenile nonhomicide_ offender's capacity for change and limited moral culpability."

The Court, in part, relied upon brain science in making these rulings. "No recent data provide reason to reconsider the Court's observations in *Roper* about the nature of juveniles. As petitioners amici point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. ... Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults," the Court wrote in *Graham*.

And now, just a few weeks ago, the Supreme Court held 6-3 in *Montgomery v. Louisiana* that *Miller* applied retroactively and that youth sentenced to life without parole as juveniles can have their cases reviewed. Justice Kennedy delivered the opinion of the Court and was joined by Chief Justice Roberts and Justices Ginsburg, Breyer, Sotomayor and Kagan.

Public Safety:

"The underdeveloped frontal cortex of the adolescent brain renders adolescents both more amenable to rehabilitation and more susceptible to negative influences. . . . [T]ransferring youth

⁵ Satchel, Roslyn, *Lost Opportunities: Our Children are Not Rehabilitated When They are Treated and Incarcerated as Adults*, 2002. http://www.prisonpolicy.org/scans/lost_opportunities.pdf .

to the adult system runs counter to both of these scientific findings, and undermines the original rationale for trying adolescents as adults: public safety.”⁶

Raising the age of criminal responsibility in New York is not about being soft on crime- but about being smart on crime. Studies have repeatedly found that when youth are prosecuted and/or incarcerated in the adult system, they have higher recidivism rates. This is likely due to the lack of mental health and rehabilitative services in the adult system, the heightened criminogenic environment of the adult system, and the lifelong impact a criminal record has, including difficulties obtaining jobs and housing.

A well-known study by Jeffrey Fagan compared New York youth to New Jersey youth, from similar communities, who had been charged with felonies. The New York youth were prosecuted in adult court and the New Jersey youth were prosecuted in juvenile court. The study found that New York’s youth were 100% more likely to be rearrested for a violent offense and 47% more likely to be arrested for a property offense than the New Jersey youth⁷. These results replicated a similar New York/New Jersey study that Fagan published in 1996.⁸

Similarly, the independent, non-federal Task Force on Community Preventive Services conducted a review of published scientific evidence regarding the effectiveness of laws and policies related to the transfer of juveniles to the adult criminal justice system in Washington, Pennsylvania, and regions of New York, Minnesota and Florida. They found that prosecuting youth in the adult system versus the juvenile system “typically increases rather than decreases rates of violence among transferred youth.” They conclude, “On the basis of these findings, the Task Force recommends against laws or policies facilitating the transfer of juveniles to the adult criminal system for the purpose of reducing violence.”⁹

A 2010 Bulletin from the Office of Juvenile Justice and Delinquency Prevention within the US Department of Justice also reviewed various studies on the impact of transferring juveniles to the adult criminal justice system and concluded, “The practice of transferring juveniles for trial and sentencing in adult criminal court has produced the unintended effect of increasing recidivism, particularly in violent offenders, and thereby promoting life course criminality.”¹⁰

⁶ Washington Coalition for the Just Treatment of Youth, *A Reexamination of Youth Involvement in the Adult Criminal Justice System in Washington: Implications of New Findings About Juvenile Recidivism and Adolescent Brain Development*, 2009. http://www.columbialegal.org/files/JLWOP_cls.pdf

⁷ Fagan, J. Kupchick, A., and Liberman, A. *Be careful what you wish for: The comparative impacts of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders*. 2003.

⁸ Fagan, J. *The Comparative Benefit of Juvenile versus Criminal Court Sanctions on Recidivism and Adolescent Juvenile Offenders*, Law and Policy, 1996.

⁹ *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on the Recommendations of the Task Force on Community Preventive Services*, 2007. <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>

¹⁰ Redding, R. *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* OJJFP Juvenile Justice Bulletin. June 2010.

Conclusion

The children of New York have been waiting for over 50 years to be treated like children. It is time for New York to fall in line with what has been proven by science, adopted by 48 states and recognized by the United States Supreme Court—children are different from adults and should be treated as such in the justice system. New York’s children and youth, alleged to have committed acts that would be crimes if committed by adults, should have their cases handled pursuant to laws created for juveniles, which focus on rehabilitation.

Thank you for this opportunity to testify.