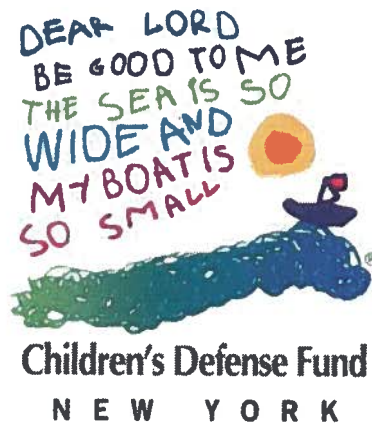


# **FY2015 Joint Legislative Hearing on Public Protection** *2015-2016 Executive Budget Proposal*

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## ***Testimony of The Children's Defense Fund – New York***

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The Children's Defense Fund's (CDF) Leave No Child Behind® mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective and independent voice for all the children of America who cannot vote, lobby or speak for themselves. We pay particular attention to the needs of poor children, children of color and those with disabilities. CDF – New York's unique approach to improving conditions for children combines research, public education, policy development, community organizing and advocacy activities, making us an innovative leader for New York's children, particularly in the areas of health, education, early childhood and juvenile justice.

We would like to thank the Assembly and Senate committees for this opportunity to submit testimony on the Public Protection and Safety proposals in the Governor's Executive Budget for State Fiscal Year 2015-2016.

CDF-NY's FY2015 Legislative and Budget Priorities reflect our commitment to advancing effective policies and investments to provide children and youth with the support they need to be successful. As a lead-member of the state-wide Raise the Age NY Campaign, we enthusiastically support the Governor's FY2015 proposal to raise the age of criminal responsibility and implement the comprehensive recommendations developed by the Commission on Youth, Public Safety and Justice to remove all 16- and 17-year olds from adult jails and prisons, decrease long-term collateral consequences for youth and increase diversion and other rehabilitative services to support justice-involved youth and make communities safer.

### *Raise the Age*

New York is one of only two states in the country to automatically charge youth as adults at age 16. In 2013, 34,000 16- and 17-year olds were arrested and involved in New York's adult criminal justice system, subject to adult jails and prisons, and saddled with criminal records that negatively impact the rest of their lives. Processing young people in the adult criminal justice system increases their likelihood of being abused, and increases the likelihood that they will recidivate and return to the criminal justice system in the future. Our current way of treating youth charged with committing a crime is not only out of step with the rest of the county, it harms youth and harms public safety. **We emphatically urge the Legislature to seize the important opportunity that Governor Cuomo has created through his FY2015 Budget Legislation to change New York's treatment of justice-involved youth. We respectfully request that the Legislature facilitate this bold step forward by supporting the Governor's allocation of \$25M operating and \$110M capital to raise the age, and passing associated Article VII legislation to comprehensively reform New York's juvenile justice system this session.**

### *A Bold Step Forward*

Raising the age in the broad and comprehensive way recommended by the Commission on Youth, Public Safety and Justice will make New York a leader in youth justice. Having looked closely at recent attempts to raise the age in Connecticut and Illinois, the Commission's recommendations – which are all focused on reducing recidivism and protecting communities – go further than other states have by including services for the needs of unique populations and an infrastructure of support to facilitate re-entry of youth into communities after court involvement. Specifically, the Commission's comprehensive proposal recommends expanded use of the August Aichhorn RTF model for justice-involved youth with mental health issues, programs to meet the specialized needs of LGBTQ youth, expanding educational opportunities for 18-21 year olds, post-release supervision by OCFS aimed at rehabilitation and support services rather than surveillance as is the model for post-release parole in the adult system, availability of supportive housing for older youth and expansion of successful re-entry models piloted in Monroe County to meet key needs and

continue to reduce the likelihood of recidivism. CDF-NY supports this mix of recommendations as they are expected to eliminate between 1,500 and 2,400 crimes every five years while facilitating improved outcomes for youth and families.

In both Connecticut and Illinois, raising the age of criminal responsibility and using evidence-based interventions to steer non-violent young offenders away from the justice system demonstrated reduced recidivism and juvenile crime rates. Reductions in overall juvenile crime meant that actual costs related to raising the age were significantly less than projected in both states. The Commission's recommendations for New York were developed with these experiences in mind. By including the provision of age-appropriate, rehabilitative services for youth and methods for right-sizing the juvenile system by diverting low-risk offenders from court-involvement and decreasing the overall detention population, CDF-NY believes that the elements of the Governor's comprehensive proposal, when implemented together, will bring down juvenile crime overall and make communities safer.

Adequate resources are necessary to realize these potential outcomes. The Governor's FY2015 budget provides funding for localities to implement Raise the Age reforms and demonstrates a strong state-level commitment to making New York State a leader in juvenile justice practices. Their commitment and staff in the Governor's office, who will work with localities to plan implementation, will be critical to the successful roll out and impact of the Raise the Age reform package through full implementation.

#### *Supporting Justice-Involved Adolescents and Young Adults*

The Children's Defense Fund firmly believes that children in New York deserve a chance to learn from their transgressions in a manner that is fair and effective. The Governor's legislation makes strides toward that maxim not only for older youth, but for our youngest children accused of breaking a law. Currently children can be arrested at seven years old in New York. While many states do not set a lower age of juvenile jurisdiction, of the states that do New York's extremely low age of jurisdiction is one of the lowest, second only by the low age of 6 years old enforced in North Carolina. Raising the age is important not only for the upper limit of juvenile jurisdiction, but the lower as well, impacting children just beginning elementary school.

Though only roughly 100 16- and 17- year olds are currently in adult prisons, there are a little over 34,000 16- and 17- year olds arrested each year and processed in the adult criminal justice system. Many of these young people languish in adult jails. On average, there are 700 16- and 17- year olds in adult jails every day. Youth are five times more likely to be sexually assaulted in adult facilities - often within the first 48 hours of incarceration. Youth are twice as likely to be beaten by staff and 50 percent more likely to be attacked with a weapon. The changes proposed by the Governor's budget legislation would ensure that youth are placed in juvenile facilities and not in adult prisons by December 2015, and removed from adult jails, like Rikers Island, upon full implementation.

Under the Governor's proposal, 86% of arrested 16- and 17-year olds are expected to have their cases originate and be processed under the Family Court Act. These 16- and 17- year olds will have access to the age-appropriate support infrastructure provided by the Family Court. A small portion of 16- and 17- year olds, charged with violent felonies and a small group of other offenses excluded from Family Court jurisdiction, will continue to have their cases originate under the criminal procedure law. In 2013, 1,400 violent felony convictions represented only 4% of total 16- and 17-year old arrests (33,064 for misdemeanors and felonies). For the small percentage of youth who have their cases processed under the criminal procedure

law, the proposal calls for their cases to be presided over by specially trained judges in youth parts of the criminal court and that those parts provide 16- and 17-year olds, for the first time, with access to age-appropriate services, JO and YO sentencing structures if appropriate, and, in some instances, avoidance of long-term collateral consequences caused by adult convictions.

Criminal records cause youth lifelong barriers to education, employment, housing, public benefits, and immigration status. Under the Governor's proposal the majority of 16-and 17-year olds who will have their cases heard in Family Court will not have a public criminal record, protecting them from long-term collateral consequences. For youth who remain in adult court and are not transferred to Family Court, the proposal extends opportunities for Youthful Offender status and provides opportunities for conditional record sealing if youth meet certain criteria for eligibility. Sixteen and seventeen year olds with Juvenile Offender convictions (excluding Class A felonies, homicides, and sex offenses) may have their records sealed if they remain conviction free for 10 years. Other 16- and 17- year olds will be eligible to have one conviction sealed (excluding violent felonies, Class A felonies, homicides, and sex offenses) for crimes committed under age 21 if they meet eligibility criteria. These sealing opportunities will provide critical relief from long-term collateral consequences. To the same end, Youthful Offender status, which results in non-public adjudications rather than adult convictions, will for the first time be extended to youth ages 19 and 20 to mitigate collateral consequences. For the first time, if a youth does not have a previous felony finding YO status will be granted presumptively unless rebutted by a district attorney in the interest of justice. These elements of the Governor's proposal eliminate barriers to meaningful contributions to communities and restore critical opportunities for youth to serve as productive members of society.

### *Making Communities Safer*

Not only is New York's current practice of treating all youth 16 and up as an adult in the criminal justice system harmful to youth, it is ineffectual, resulting in a criminal justice system that fails to protect the public. Research has shown that treating youth in age-appropriate ways as opposed to treating them as if they were adults increases their future success and decreases the likelihood that they will re-enter the criminal justice system. CDF-NY supports elements of the Governor's proposal that will reduce recidivism by providing evidence-based, age-appropriate programming for a range of system involved youth including Persons in Need of Supervision (PINS), justice system involved youth, and incarcerated older adolescents and young adults. The Governor's budget legislation would ensure that youth have access to age-appropriate services, such as juvenile probation and would not allow youth to be housed in adult facilities. Currently youth in adult corrections have poor access to mental health services, are subject to solitary confinement, and have limited access to quality education. In DOCCS facilities, adolescents housed with older inmates experience long waits for vocational and therapeutic programming.

Intervening and diverting appropriate cases before they reach the courts both improves outcomes for youth and better protects public safety. Low-risk kids pulled deeply into the system are actually more likely to re-offend. Community-based interventions are cost effective compared to detention and out of home placement and effective in regard to decreasing future offending. Diversion can be provided for an average cost of \$3,000 per case while the cost of out of home placement can reach over \$200,000 a year per child. The proposal mandates diversion attempts for certain low-risk appropriate cases and broadens categories of cases able to be considered for diversion.

By appropriately intervening and decreasing recidivism the proposal benefits not only system involved youth but also communities most impacted by crime. The Commission predicts that the recommendations they put forth would decrease between 1,500 and 2,400 crimes every five years. Communities of color are disproportionately impacted by incarceration as well as by crime. Adopting the comprehensive set of recommendations to raise the age as put forth by the Commission will tremendously impact youth of color not only on an individual level but also more broadly on a community level by decreasing recidivism and restoring opportunities.

### **Conclusion**

New York has an opportunity to set nation-wide precedent for the development and treatment of children while increasing public safety for all New Yorkers. The proposed reforms are needed to ensure that youth are protected and that New York's response to crime is smart and effective.

CDF-NY supports raising the age of criminal responsibility in New York; the Governor's Executive Budget investment of \$25M to plan, create and expand raise the age services including diversion and probation services; and \$110M in capital investments to OCFS to develop needed raise the age, secure placement infrastructure.

We are eager to work with you and your colleagues in the Legislature to implement a comprehensive and thoughtful agenda for New York's children and their families this session. Thank you for carefully considering our testimony. If you have any questions or you would like further information, please contact CDF-NY at (212) 697-2323.

