



Testimony of

Grant Cowles, Esq.
Senior Policy and Advocacy Associate for Youth Justice

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 2017-2018*

January 31, 2017

Good afternoon. My name is Grant Cowles and I am the Senior Policy and Advocate Associate for Youth Justice at Citizens' Committee for Children (CCC). CCC is a 73-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 73 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 2017-2018.

CCC appreciates the Governor's efforts to alleviate burdens on the middle class and invest in programs and services that benefit children and families. Notably, we appreciate the Governor's proposals to raise the age of criminal responsibility, expand after-school programs and pre-kindergarten, re-introduce the Dream Act, and develop a plan for tuition-free college for middle class students.

On the other hand, the Executive Budget proposes numerous cuts to vulnerable New Yorkers, which concerns us greatly. For example, the Executive Budget proposes to cut funding for foster care, special education placement reimbursement, the Foster Youth Success initiative which supports foster youth in college, Title XX social service-funded programs, and school-based health services in New York City. Furthermore, the Executive Budget does not increase funding or create a new rental assistance program to help homeless families, does not increase funding for home visiting programs, and does not increase funding to ensure child care programs can implement new federal rules without decreasing access. Many of these cuts are specifically focused on cost-shifts to New York City.

In addition, CCC is especially concerned that the Executive Budget includes contingency language all throughout, which would authorize the Budget Director to reduce funding to localities if funding from the federal government is reduced, all without approval from the legislature.

Given the need for New Yorkers to rely on their State and Local governments more than ever, we urge the Legislature to negotiate a budget with the Governor that eliminates cost shifts and contingencies, and invests significantly more in the programs and services that will produce good outcomes for the children and families throughout New York.

We now turn to the Executive Budget proposals related specifically to raising the age of criminality.

1. THE TIME TO RAISE THE AGE IS NOW

“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 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.

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 two years ago found that implementing the range of evidence-based services for 16- and 17-year-old youth would eliminate between 1,500 and 2,400 crime victimizations every five years due to the reduction in recidivism.¹ Research has demonstrated that raising the age would reduce recidivism by approximately 34%.²

In New York, when a youth aged 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 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 and services.

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 in their mid-twenties. 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 while adults like us are negotiating a law to get them out. 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. Every day, 16- and 17-year-olds are being thrown into the adult criminal justice system which saddles them with a lifetime of mental, social, and legal consequences. The 16- and 17-year-olds who are arrested, most often for misdemeanors, can end up with the crime on their permanent

¹ New York State Commission on Youth, Public Safety and Justice, *Final Report of the Governor’s Commission on Youth, Public Safety and Justice: Recommendations for Juvenile Justice Reform in New York State*, January 2015, p. 44, available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice_0.pdf.

² Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: Report on Recommendations of the Task Force on Community Preventive Services, Centers for Disease Control and Prevention, November 30, 2007, <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.

records, which will impact their ability to be educated, get a job and secure housing for the rest of their lives. The youth in this system do not receive services to turn their lives around, but instead learn how to survive in a criminalized environment, like Kalief Browder who spent three years at Rikers for allegedly stealing a backpack before the psychological harm inflicted on him caused him to take his own life.

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."³ While the study was completed in 1963, it did not come to a firm decision.⁴

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. It is well past time for New York to make this needed and common sense change. We cannot waste the opportunity that this budget session gives us to right this wrong.

2. RAISE THE AGE LEGISLATION

CCC is a lead member of the Raise the Age NY Campaign.⁵ As such, we believe that there 7 core requirements that must be included in comprehensive legislation to raise the age. We urge the legislature to negotiate a budget with the Governor that includes these 7 components:

1. Raise the overall age of juvenile jurisdiction to 18.
2. 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 16- and 17-year-olds as possible, regardless of which court the case is heard.
3. Ensure no youth who is 16 or 17 years old is placed in an adult jail or prison.
4. 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.
5. 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.
6. Increase investments in the front-end diversion services that keep youth in their communities rather than incarceration.

³ N.Y. Joint Legislative Comm. on Court Reorganization, *The Family Court Act Report* (1962), at 110.

⁴ Sobie, Merrill. "Pity the Child: The Age of Juvenile Delinquency in New York. *Pace Law Review* (2010), at 1073.

⁵ Raise the Age NY is a public awareness campaign that includes national and local advocates, youth, parents, law enforcement and legal representative groups, faith leaders, and unions that have come together to increase awareness of the need to raise the age. There are over 100 organizations represented in the Raise the Age NY campaign. For more information, see <http://raisetheagency.com/about-us>.

7. Raise the lower age of juvenile delinquency from age 7 to age 12 (except for homicide offenses, which should be raised to 10).

3. THE GOVERNOR'S EXECUTIVE ORDERS ARE STEPS IN THE RIGHT DIRECTION BUT DO NOT RAISE THE AGE

Governor Cuomo has issued several Executive Orders to help mitigate some of the harms created by New York's age of criminal responsibility not yet being raised to 18. While we appreciate these efforts, it is important to keep in mind that these are not sufficient. In fact, they could all be over-turned by any future Governor of New York.

Governor Cuomo issued Executive Order 150 in 2016 to remove 16- and 17-year-olds in state prisons (except for those in maximum security) into a separate facility.⁶ These youth are now housed in the Hudson Correctional Facility. This executive order does not fully address the problems that exist by still legally treating 16- and 17-year-olds as adults. Though these youth are in a separate facility, the facility is still administered as an adult facility and regulated pursuant to the laws governing adult incarceration and administered by the adult correctional agency, the Department of Corrections and Community Supervision. This facility, while better than traditional facilities, is still inferior to juvenile facilities which provide secure supervision but are designed to promote education, pro-social behavior, and access to services and have staff trained to work with youth.

Importantly, this facility is only for 16- and 17-year-olds who are convicted and then sentenced to over one year of incarceration in a state prison. This executive order does not (and could not) address local jails, which is where youth 16- and 17-years-old are detained before a conviction if their sentence is for less than a year. For example, Kalief Browder was held at NYC's Rikers' Island for three years awaiting trial- and this Executive Order would not have applied to him.

A little over a year ago, Governor Cuomo also announced an opportunity for an executive pardon to those convicted of non-violent crimes when they were 16 or 17 and who meet certain qualifications, including remaining conviction free for at least 10 years.⁷ While this pardon opportunity is helpful, it still falls far short of the necessary reforms needed to address the problems with adult convictions for 16- and 17-year-olds that only raising the age can provide. First, this pardon opportunity only becomes available after 10 years from conviction, meaning young people must struggle with the many barriers to being a productive citizen during those 10 years. Second, there are many qualifications that must be met, such as currently residing in New York and being employed or looking for employment, which limits the availability of this program. Third, a person must proactively apply for this pardon, making it unusable to anyone who is not informed about this program (which perhaps explains why only approximately 100 people have taken advantage of this in the first year when there is an estimated 10,000 people eligible). Fourth, a pardon such as this is hamstrung by modern realities, as it only restricts the court from providing a person's criminal history for future public requests. It can do nothing to

⁶ Exec. Order No. 150, "Establishing One or More Correctional Facilities Within the Department of Corrections and Community Supervision Exclusively for Youth," 2016, available at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO150.pdf>.

⁷ See <http://www.ny.gov/services/apply-clemency>.

address the ongoing “record” of the criminal conviction residing in the public domain, such as ubiquitous internet caches of criminal records which allow landlords, employers, and others to find this information regardless.

While these executive actions are welcome and we applaud the Governor for them, they are not equivalent to raising the age for the tens of thousands of 16- and 17-year-olds becoming ensnared in the adult system every year.

4. WHY WE NEED TO RAISE THE AGE NOW

Every year that passes where we fail to raise the age results in another cohort of youth being subjected to the adult system. In 2015, 27,281 youth aged 16 and 17 were arrested, all of whom were legally considered “adults” in the criminal justice system.⁸ 19,572 of these arrests were for misdemeanors and 3,877 of these arrests were for non-violent felonies, while 3,832 were for violent felonies.⁹

Raising the age will improve public safety, will improve outcomes for youth, is supported by brain science, and is consistent with other laws regarding youth. It is urgent that New York join the well-established process and raise the age of criminal responsibility to 18 in order to better provide public protection and to effectively rehabilitate 16- and 17-year-olds who are arrested.

a) Research Shows Using the Juvenile Justice System for 16 and 17 Year Olds Will Decrease Crime

Raising the age of criminal responsibility in New York is smart on crime, not soft on crime. Studies have repeatedly found that when youth are prosecuted and/or incarcerated in the adult system, they have higher recidivism rates. There are many reasons for this outcome, including the lack of effective rehabilitative services in the adult system (like mental and behavioral health services), the heightened criminogenic environment of the adult system, the disruptive impact of adult criminal procedures (in contrast to the juvenile justice system’s attempt to strengthen existing positive elements in a youth’s life), and the lifelong impact of a criminal record.

There are many studies showing that processing youth in the juvenile justice system improves public safety compared with processing those youths in the adult justice system. For example, one study found that otherwise similar youth in the juvenile justice system were 34% less likely to be rearrested for a felony than youth in the adult system.¹⁰ A local study by Jeffrey Fagan compared 16-year-olds in New York to similar 16-year-olds in New Jersey who had been charged with felonies, controlling for other differences. 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

⁸ Division of Criminal Justice Services, “New York State Arrests Among 16-17 Year Olds,” available at <http://dcjs.ny.gov/crimnet/ojsa/youth-arrests/nys.pdf>.

⁹ Id.

¹⁰ Center for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: Report on Recommendations of the Task Force on Community Preventive Services*, November 30, 2007, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.

likely to be arrested for a property offense than the New Jersey youth.¹¹ These results replicated a similar New York/New Jersey study that Fagan published in 1996.¹² There are many other similar findings about the public safety benefits of processing 16- and 17-year-olds in the juvenile justice context compared to the adult criminal context.¹³

There has been a steady movement of states raising the age of criminal responsibility to 18, including Louisiana raising its age from 17 to 18 just this past year.¹⁴ Connecticut raised the age from 16 to 18 in 2007 with resounding success.¹⁵ Since raising the age, Connecticut has seen a reduction in youth arrests by 54%, these juveniles successfully completed probation without re-arrest at higher rates than before raising the age, and state spending on juvenile justice *decreased*, despite including an entirely new cohort of youth within their juvenile system.¹⁶ Connecticut's experience raising the age from 16 to 18 has been so successful, Connecticut's Governor is now pushing to continue raising the age to 21 to expand the benefits even further.¹⁷

The juvenile justice system does not release a youth who poses a significant risk to public safety, both during the pendency of a case or after. All arrested youth are screened using validated assessments to determine their objective likelihood of committing a crime or violence if released into community, and high risk youth are detained in secure detention facilities. If a youth is adjudicated as delinquent, a court can place a youth in a secure placement facility. For the very rare but serious violent acts, there are juvenile offender laws which try youth in adult court with very lengthy sentences, including up to a lifetime in prison for murder.¹⁸

¹¹ 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.

¹² Fagan, J. *The Comparative Benefit of Juvenile versus Criminal Court Sanctions on Recidivism and Adolescent Juvenile Offenders*, Law and Policy, 1996.

¹³ For example, Richard E. Redding, "Juvenile Justice Fact Sheet: Recidivism Rates in Juvenile Versus Criminal Court," Institute of Law, Psychiatry & Public Policy, University of Virginia, 2007; Marcy Rasmussen Podkopacz and Barry C. Feld, "The End of the Line: An Empirical Study of Judicial Waiver," *Journal of Criminal Law and Criminology* 86, no. 2 (Winter 1996): 490-91 (finding a 38 percent higher recidivism rate for youths in adult facilities compared to youths in juvenile facilities); and J. White et al., *The Comparative Dispositions Study: Handling Dangerous Juveniles*, executive summary (Washington, DC: US Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1985). See generally Jennifer M. O'Connor and Lucinda Kinau Treat, "Getting Smart about Getting Tough: Juvenile Justice and the Possibility of Progressive Reform," *American Criminal Law Review* 33, no. 4 (Summer 1996): 1299 and 1315; Richard E. Redding, "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?" *Juvenile Justice Bulletin*, June 2010, 6; and Jennifer L. Woolard, et al., "Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations," *International Journal of Forensic Mental Health* 4, no. 1 (2005): 1-18. See also Patrick A. Langan and David J. Levin, "Recidivism of Prisoners Released in 1994," press release, US Department of Justice, Bureau of Justice Statistics, 2002 (finding that youths in adult facilities had significantly higher recidivism rates than adults in the same facilities).

¹⁴ National Conference of State Legislatures, "NCSL Juvenile Justice Quarterly Newsletter," September 2016, available at <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-justice-quarterly-newsletter636083342.aspx>.

¹⁵ New York State Commission on Youth, Public Safety and Justice, at 29-31.

¹⁶ Campaign for Youth Justice, "The Impact of 'Raise the Age' Laws," June 7, 2016, available at <https://www.campaignforyouthjustice.org/images/factsheets/RTAImpactTwoPagerJune72016final.pdf>.

¹⁷ Takepart, "Extended Adolescence Reaches the Courtroom," November 19, 2015, available at <http://www.takepart.com/article/2015/11/19/connecticut-raise-age>.

¹⁸ NY Penal Law § 10.00(18), 70.05.

b) *Brain Science About Adolescent Brain Development Shows Youth are Less Culpable, have Greater Likelihood to Become Negatively Affected in Adult System, and Greater Capacity for Rehabilitation in Juvenile System.*

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.¹⁹

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.”²⁰

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.²¹ The developmental nature of 16- and 17-year-olds makes youth physiologically primed to changing their thinking and behaviors about criminogenic norms and beliefs, either for

¹⁹ 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/adolescentbraindvpt.pdf>.

²⁰ Steinberg, Laurence, *Should the Science of Adolescent Brain Development Inform Public Policy?* 2011. <http://www.issues.org/28.3/steinberg.html>.

²¹ 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.

good or bad. Research shows that the adult criminal justice system changes youth for the worse, whereas the juvenile justice system can provide the services needed for pro-social development.

c) *New York Laws and the Supreme Court Already Recognize 16- and 17-Year-Olds are Different Than Adults, and Criminal Responsibility is no Different*

In many ways, most 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), 17 to see an R-rated movie without adult supervision, and New York City recently raised the age at which a young person can purchase cigarettes from 18 to 21.

The United State Supreme Court has also 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.²² 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.²³ 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."²⁴

The Court, in part, relied upon brain science in making these rulings. The Court wrote in *Graham*, "No recent data provides 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."

Conclusion

Passing Raise the Age legislation in this budget is critical for the youth, families and communities throughout New York State. We understand that there are no costs to the localities in the upcoming fiscal year because of the phase-in of the legislation and that the budget includes \$110 million for the capital needs. We urge the Governor and the Legislature to adopt a budget that includes comprehensive raise the age legislation and ensures that both the state and the localities will have the resources necessary to effectively raise the age of criminal responsibility.

²² *Roper v. Simmons*, 543 U.S. 551 (2005).

²³ *Graham v. Florida*, 560 U.S. 48 (2010).

²⁴ *Id.* At 67.

It is time for New York's justice system to reflect what science has proven, what has been adopted by 48 states, and what the United States Supreme Court has recognized—children are different from adults and should be treated as such in the justice system. Using the juvenile system for 16- and 17-year-olds is common sense, smart on crime, and works in nearly every other state. New York's children and youth should have their cases handled pursuant to laws created for juveniles.

The time is NOW to finally raise the age of criminal responsibility in New York. Children only get to be children once—and today's 16- and 17-year-olds need us to implement sound policies as soon as possible.

Thank you for the opportunity to testify.

