

Raising the Age of Criminal Responsibility in New York State The Right Thing To Do

Should 16 and 17-year-olds be treated as adults? Our answer is an unequivocal no. Yet, in New York State we treat them as adults when it comes to the criminal justice system. New York is one of only two states in the country that does so. Now, New York has an opportunity to address the issue of raising the jurisdictional age of our state's juvenile justice system from 16 to 18 at the same time that other system reforms are discussed and implemented.

New York is a "significant outlier" in terms of how children should be prosecuted and treated if they break the law and are found guilty.¹ There is strong consensus, both nationally and internationally, that the age of majority should be 18. Advocates and government officials in New York have been unwilling to address the question of whether or not youth, ages 16 or 17, belong in the juvenile justice system instead of the adult criminal system. Because the conditions in state-operated juvenile facilities are so poor, there is reluctance to place any additional youth in these facilities. Of course, raising the age to 18 would shift a number of youth from the adult system to the juvenile justice system and has the potential of increasing placements in these poorly run facilities. But that does not mean that sending 16 and 17 year olds to the adult criminal system is the right thing to do.

The discussion about whether or not to raise the age in New York state is long overdue. In 1962, New York's legislators and government leaders discussed the issue of jurisdictional age for juvenile justice at the time the Family Court Act was created. They reviewed legislation passed in 1824 and 1909 which established the age threshold of seven to fifteen which is still used today. No consensus was reached in 1962. Instead, the decision was made to establish the jurisdictional age at 16 as a temporary fix until input from public hearings and research presented at conferences could better inform new legislation. Unfortunately, the issue was never revisited. Consequently, the "tentative" age level is still in existence 48 years later. New York was already behind in addressing the issue in 1962 as all but three states had raised their age by 1940.²

Connecticut raised its jurisdictional age to 18 in 2007, leaving only New York and North Carolina with an upper age level set at 16. North Carolina has introduced legislation to raise the age to 18. New York has nothing under consideration. Connecticut can serve as a model for changing practice in New York State. Connecticut's decision was based on

¹ Lubow, B. (2009) *Re-Considering North Carolina's Age of Juvenile Jurisdiction*. February 26th speech, Action for Children, Raleigh NC.

² Sobie, M. (2007) *New York's Juvenile Delinquency Jurisdictional Age Limitation*. Memo to the New York State Bar Association Committee on Children and the Law

the fact that the overwhelming majority of crimes committed by youth are minor in nature. For those cases that involve a serious, violent crime, the law provides for a transfer to the adult criminal justice system. The state passed legislation in 2007 and provided adequate planning time before implementation in 2010, allowing for a smooth transition.

Raising the age is the right thing to do. New York's current law does not pass the "my child test": that is, "what would you want if your 16 or 17-year-old got in trouble and had to be brought before a court?"³ As parents we would want a system that is more concerned with rehabilitation than punishment; a system that would help and support our children to get back on track.⁴ In New York, a 16 or 17-year-old youth becomes involved in the adult criminal justice system regardless of the charges made upon arrest. They could be charged with shoplifting, vandalism, causing a disturbance, possession of marijuana or something more serious. Many of these offenses are non-violent and/or misdemeanors. Some common offenses would not be a crime at all if done by someone over the age of 21. Underage drinking is an example.

Once a part of the adult system, the prospects for youth are not good regardless of whether or not they are sentenced to jail. Those not sent to jail are not held accountable for their behaviors. They are not asked to learn from their mistakes by attending treatment programs, making restitution to their victims, if any, or doing community service work. Teens sentenced to jail have little or no access to rehabilitation services or treatment and are at risk of being victimized. They exit the system with conviction records that bar them from job opportunities, housing and military service for the rest of their lives.⁵ Further, as woeful as New York's juvenile justice system is today, sending youth to adult prisons leads to worse outcomes: youth have higher recidivism rates, re-offend sooner, and carry out more serious crimes. Essentially, adult prisons are effective incubators for young offenders to become career criminals.⁶

Youth are not adults and should not be treated as such. Teens, including 16 and 17 year-olds, are impulsive, have difficulty weighing consequences, and are susceptible to outside influences. As any parent knows, they are immature and lack rational thinking because their brains have not fully developed.

Furthermore, most youth who get into trouble have had difficult lives, living in poverty and unsafe communities. A large proportion has been involved in the child welfare system, having been abused or neglected. Those who have been maltreated are 59% more likely to enter the criminal justice system as juveniles. They are also more likely to be arrested

³ Lubow, B. (2009) *Re-Considering North Carolina's Age of Juvenile Jurisdiction*. February 26th speech, Action for Children, Raleigh NC.

⁴ Ibid.

⁵ *Fact Sheet*. (2006) National Council on Crime and Delinquency

⁶ Mayer, E. (2008). Get Tough on Crime, Not on Kids. *Corrections Today*

at a younger age, commit almost twice as many offenses and be arrested more frequently.⁷ In addition, a disproportionate number of children arrested and placed into facilities are children of color.

There is a large body of research that informs decision makers about what works for children and youth and also keeps communities safe. Early identification of at-risk youth and access to a continuum of quality, community-based services and treatment prevent crime and are cost-effective strategies. A community-based prevention service can cost \$5,000 per child while residential placement costs up to \$200,000 per child per year. These children need mental health and substance abuse treatment services. They need supervision, remedial education and family support services. They need access to positive out-of-school time activities. Most of all they need an opportunity to choose a different path in life.

Implementation of the reforms outlined in the Governor's Task Force report will transform the juvenile justice system to a system that is therapeutic in nature by providing a continuum of such services in communities and facilities. The reforms outlined will address youths' trauma or mental health needs. Children and youth who violate the law will still be held accountable for their bad behavior. But, they will only be placed in facilities for public safety reasons. The outcome of these reforms will be reduced crime, increased public safety, and more youth who become contributing adults in their communities.

Changing the jurisdictional age in New York will be challenging and will involve cross-systems planning and involvement on the part of the Office of Court Administration, Department of Correctional Services, Probation, and the Office of Children and Family Services. Funding will have to follow 16 and 17 year olds from the adult criminal system to the juvenile justice system. The work will be complex and challenging. It is time to address this issue in New York along with the juvenile justice system reform recommendations outlined in the Governor's Task Force Report. We have a unique opportunity to increase public safety, reduce crime, save money, and achieve better outcomes for our youth. It's effective public policy. It is also the right thing to do.

⁷ *Child Maltreatment & Juvenile Delinquency Fact Sheet*. Child Welfare League of America Juvenile Justice Division