

Raising the Juvenile Justice Jurisdictional Age: *Treating Kids as Kids in New York State's Justice System*

New York is One of Just Two States—North Carolina is the Other—That Treats 16-Year-Olds as Adults

New York and North Carolina are the only two states that treat children as young as 16 years of age as adults in the criminal justice system. Most states follow the federal Juvenile Justice Delinquency Prevention Act, which suggests that the juvenile court jurisdiction's upper age limit be any time before their 18th birthday.¹ In New York State, anyone age 16 or older who commits a crime is sent to the adult criminal justice system, no matter the charge. Despite the fact that 74.4% of crimes committed by 16- and 17-year-olds are misdemeanors, all of these youth go through the adult system. New York's Family Court Act set the juvenile justice jurisdictional age of 7 to 15 in 1962 as a temporary measure for further study. That temporary agreement has now been in effect for 50 years.²

The difference between the juvenile system and adult system is philosophy—mainly, rehabilitation versus punishment. The juvenile justice system focuses on the child or youth and offers an opportunity for rehabilitation. The adult criminal system focuses on what the offense warrants in terms of punishment.

Research Shows That Adolescent Brains Are Not Fully Developed

“What were you thinking?” is a refrain frequently uttered by parents of teens. The reality is that teens frequently are not thinking, or at least not thinking in a mature way, when they do something wrong. Their psycho-social, cognitive and neurological development is less mature than adults.³ They are more susceptible to peer influence, more likely to be impulsive and less able to weigh the consequences of their actions. Brain studies indicate that the frontal lobe, the part of the brain that controls decision making, planning, setting long-term goals, and risk perception does not fully develop until the age of 25.⁴ The 2005 Supreme Court case *Roper v. Simmons* recognized and agreed with the concept of diminished criminal responsibility for those

“While brain development research should not excuse wrongdoing, ignore the legitimate need for rules and laws or free adolescents from discipline and responsibility, brain development research may provide greater understanding of how to most effectively interact with adolescents, especially when they have made serious mistakes.”

—Coalition for Juvenile Justice⁵

under 18.⁶ Other areas of New York State's laws already differentiate older teens from adults in terms of rights and freedoms.

Sending Youth to the Adult Correctional System Leads to Poorer Outcomes

Several studies have concluded that youth treated in the adult criminal justice system are negatively affected by the experience, leading to poorer outcomes than those youth in the juvenile justice system. Youth who are sent to the adult system re-offend at a higher rate, offend sooner, and commit more serious crimes than their counterparts in the juvenile justice system.⁷ These studies controlled for demographics, criminal history, and offense variables.

A comparison study of 800 similar youth committing the same felony offenses of burglary and robbery found that youth in New Jersey prosecuted in the juvenile justice system fare better than youth in New York who were prosecuted in the adult criminal justice system. The study found higher re-arrest rates, higher re-incarceration rates and a shorter time period to re-arrest for New York youth in the criminal justice system versus New Jersey youth in the juvenile justice system in the study sample.⁸

A second study followed 2,000 youth charged with robbery, burglary and assault in New York and New Jersey for seven years. The researchers found that youth in New York, who were prosecuted as adults, were 85% more likely to be re-arrested for a violent crime than those prosecuted in the New Jersey juvenile courts;

Youth Have Poorer Outcomes in the Adult System

Recidivism by court jurisdiction and type of charge in New York and New Jersey

	Robbery		Burglary	
	Juvenile Court	Criminal Court	Juvenile Court	Criminal Court
Percent Re-arrested	67.0%	75.9%	81.3%	80.9%
Percent Re-incarcerated	40.9%	56.2%	65.6%	55.9%
Time to First Re-arrest	553.0 days	456.5 days	337.7 days	501.1 days
Re-arrest Rate	1.67	2.85	2.27	2.73

Source: Fagan, J. (1996). The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism among Adolescent Felony Offenders. *Law & Policy*. 18 (1 & 2).

youth prosecuted in the adult criminal system were 44% more likely to be re-arrested for felony property crimes.⁹

Sixteen- and seventeen-year-olds in adult prisons are at greater risk of victimization and are more likely to commit suicide.¹⁰ In addition, they receive little or no education, mental health treatment, or rehabilitative programming in adult prisons. Sixteen- and seventeen-year-olds also acquire an adult criminal record that may significantly limit their future education and employment and ability to support themselves without public assistance.¹¹

Research shows community-based treatment and services are more effective in reducing the likelihood of repeat offenses than are traditional residential placement facilities. Treating youth in their communities allows for a holistic approach, addressing their behavior in a real-life context, in relation to family, school and peers.¹²



Most Juveniles Commit Non-Violent and Non-Serious Offenses

Most youth in the criminal justice system have committed non-violent felony or misdemeanor offenses.¹³ In 2009, there were 46,351 arrests of 16- and 17-year-olds in New York State, 74.3% of which were for misdemeanors and 25.7% for felonies.¹⁴ Of those arrested, 19,974 were sentenced, with 43.5% given a conditional discharge.

Most Youth Are Arrested for Misdemeanors

Arrests of 16- and 17-Year-olds by top arrest charge, 2009 New York State

	Total	Felony Arrest	Misdemeanor Arrests
Arrests of 16- and 17-year-olds statewide	46,351	11,907	34,444

Source: DCJS, Computerized Criminal History system (7/2010)

Most Convicted Youth Are Not Sent to Prison or Jail

Sentences for convictions of 16- and 17-year-olds by top conviction charge, 2009 New York State

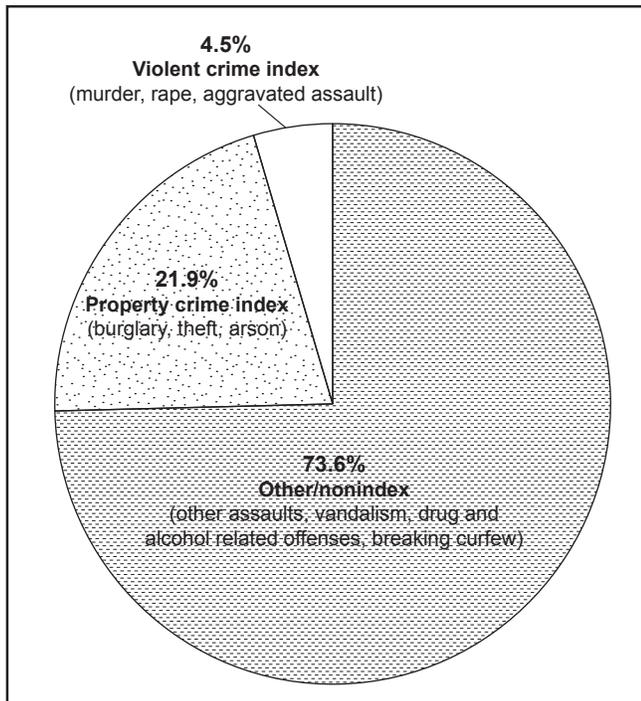
Total Number Sentenced	19,974
Prison	994
County Jail	3,804
County Jail + Probation	930
Probation	3,233
Fine	2,145
Conditional Discharge	8,690
Other	18

Source: DCJS, Computerized Criminal History system (7/2010)

Nationally, 4.5% of juvenile arrests are for violent crimes such as murder, rape, and aggravated assault; 21.9% are property crimes; and 73.6% are for non-index crimes such as other assaults, vandalism, drug and alcohol related offenses, and breaking curfew.¹⁵

A Very Small Percentage of Youth Commit Serious Crimes

Proportion of 2009 juvenile arrest rates by category



Young Offenders Have Significant Mental Health Issues

It is important to note that youth who have been maltreated are 59% more likely to enter the criminal justice system as juveniles. Maltreated youth are also more likely to be arrested at a younger age, arrested more frequently, and commit almost twice as many offenses as youth who have not been maltreated.¹⁶ Court involved teens are two to three times more likely to suffer from mental health conditions as youth in the general population.¹⁷ Nationally, 20% of youth in the juvenile justice system are diagnosed with serious emotional disturbances; by comparison, the prevalence in the general youth population is between 9% and 13%. In 2003, the NYS Office of Children and Family Services found that 53% of youth entering placement facilities needed mental health services. In the NYS Correctional system, 13.5% of the inmate population receives mental health services every day.¹⁸

Children in the Juvenile Justice System Are Overwhelmingly Children of Color

The overwhelming majority of young people involved in the juvenile justice and criminal justice systems are children of color, a difference that is not explained by crime rates. Nationally, African-Americans make up 16% of the total youth population, 38% of youth in correctional institutions, and 58% of youth

sentenced to prison.¹⁹ New York State's Department of Correctional Services reported 50.5% of inmates were African-American, 24.9% were Hispanic, and 22.4% were white.²⁰ In 2007, 59.4% of young people entering OCFS custody were African-American and 24.8% were Latino.²¹

Changes Can Lead to Cost-Savings Over Time

One of the barriers to changing New York's statute is cost. Raising the age of the juvenile courts' jurisdiction would involve cost shifts between local governments and the state.²² In addition, the change would impact law enforcement, the courts, detention, residential care, and community-based programs and services for 16- and 17-year-olds. Some of these costs would be offset by potential cost-savings gained by reducing expenses in the adult criminal justice system.²³ Connecticut estimated a system increase of 40% at a cost of \$11.8 million to move 16-year-olds to the juvenile justice system in 2010. The actual system increase was 22%, a much lower than projected cost of \$7.1 million. In 2012, the state will move 17-year-olds into the juvenile justice system.²⁴

Addressing youth's needs earlier and preventing deeper penetration into the criminal justice system avoids future costs and can bring value to society when youth find a new path and become good citizens. It is estimated that the costs of a career criminal amount to \$65,000 through age 12, \$230,000 through age 14 and close to \$5.7 million over a lifetime. It is estimated that the value of keeping a high-risk youth from becoming a career offender ranges from \$2.6 to \$5.8 million.²⁵ The Vera Institute of Justice recently completed a cost-benefit analysis for the state of North Carolina. The report concluded that, based on North Carolina's 30,500 arrests, raising the age for 16- and 17-year-olds "will cost taxpayers \$70.9 million a year and that this annually reoccurring investment will generate reoccurring benefits to youth, victims, and taxpayers over the long term."²⁶ The analysis took into consideration the increased costs for juvenile court, detention, staffing, training and capital; and the savings realized from reduced recidivism rates, population in the adult criminal justice system, and victimization costs as well as increased employment opportunities.

Review New York's Lower Age for Juvenile Justice

The lower age level in New York's statute also warrants consideration. Children as young as 7 years of age can be prosecuted in the juvenile justice system in New York. Since 1962, when the Family Court Act was established, child development and brain development

research have become widely understood and accepted. At this time, there is no consensus as to an appropriate lower jurisdictional age; many states make their decisions on a case-by-case basis. The lower age limit ranges from 6 to 10 for those states that have set a minimum jurisdictional age for juvenile justice, with 10 the age most frequently used.²⁷ Internationally, the minimum age ranges from a low of 8 to 15. The American Bar Association Juvenile Justice Standards recommends a minimum age of 10; others have suggested an age of 12 to align with international practice.²⁸

Recommendations

- 1) Treat youth as youth and not as adults by raising the juvenile justice jurisdictional age to youth under 18. The Schuyler Center joined with the 48 members of the Children's Cabinet Advisory Board in support of this change in statute which will increase safety and lead to better outcomes.²⁹ New York's change in statute should allow for careful planning and an adequate transition period to bring all 16- and 17-year-olds into the juvenile justice system safely and successfully.
- 2) Include a transfer provision to the adult criminal system for those cases when a serious crime has been committed. The preponderance of research on transfer policies concludes that transferring juveniles to the adult criminal has little deterrent effect on future crime.³⁰ Family Court judges should be given judicial discretion to make such a determination to waive a case up to the adult criminal justice system on an individual basis.³¹
- 3) Continue the juvenile justice reforms contained within the recommendations in the report by the Governor's Task Force report, *Charting a New Course, A Blueprint for Transforming Juvenile Justice in New York State*.³² New York State made significant changes in the juvenile justice system over the past two years by reducing the use of institutional placement, incentivizing community-based treatment and services, and closing residential facilities.
- 4) Address New York's lower age level through a review of research in child development, brain development, cognitive development, various international and state laws, and evidence-based practices for achieving improved outcomes with young children. Incorporate a change in the lower age when legislation is drafted to raise the upper jurisdictional age. The discussion should take into consideration competency, intent, diminished responsibility and purpose served. Younger children should be served through the child welfare system rather than the juvenile justice system.³³

Conclusion

New York State is one of only two states that has not raised the age of the juvenile courts' jurisdiction. Research demonstrates that the adult system is not appropriate for 16- and 17-year-olds who are still developing cognitively. These youth and the public are better served by raising the age of the juvenile court's jurisdiction to include youth up to their 18th birthday.

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150 State Street, 4th Floor
Albany, NY 12207

(518) 463-1896

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