

New York: It is Time to Raise the Age

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. Nationally, thirty-nine states have set their upper age limit for juvenile justice jurisdiction at 17 and ten have set their upper limit at 16.¹ 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 75.3% 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 over 50 years.²

The differences between the juvenile justice system and the adult criminal system are enormous. The juvenile system is focused on rehabilitation while the adult system is focused on punishment when found guilty. Youth are treated differently in the adult system than they are in the juvenile system. Their parents do not have to be notified upon arrest, and are not part of the court proceedings. If jailed or sent to prison, youth will not receive age-appropriate services. Youth are at greater risk of victimization and violence in the adult system and their adult criminal record often limits their opportunities upon release, keeping them from employment, housing, and higher education. In addition, they are subject to solitary confinement, for both punitive purposes and their own protection, causing serious long-term health and mental health problems.

Adolescent Brains Are Not Fully Developed

"What were you thinking?" is a refrain frequently uttered by parents of teens. The reality is that teens often are not thinking, or at least not thinking in a mature way, when they do something wrong. Research shows that 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

"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 Justice⁴

making, planning, setting long-term goals, and risk perception does not fully develop until the age of 25.⁵ The 2005 Supreme Court case, *Roper v. Simmons*, recognized and agreed with the concept of diminished criminal responsibility for those under 18.⁶ Other areas of New York State law 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.^{7,8} The studies controlled for demographics, criminal history, and offense variables. One study compared youth charged with robbery, burglary and assault who were treated in New Jersey's juvenile justice system with youth charged with the same offenses in New York who were prosecuted in the adult criminal justice system. The youth prosecuted as adults were twice as likely to be re-arrested for a violent crime, 47% more likely to be re-arrested for felony property crimes, and 26% more likely to be reincarcerated in the future.⁹ The differences in outcomes for New York youth convicted of misdemeanors is compelling. Youth sent to jail were 64% more likely to be reconvicted of a higher level crime within 5 years than those who received probation. Data from the New York State Department of

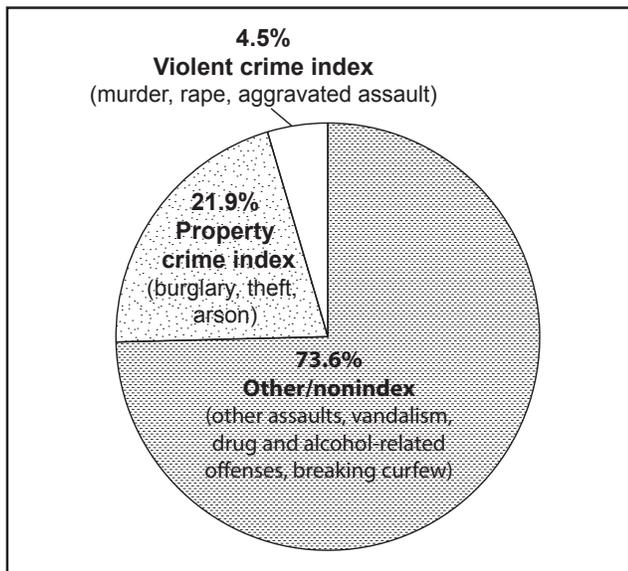
Criminal Justice Services indicates that 69.6% of the 16- and 17-year-olds who were convicted of a misdemeanor and sent to jail in 2006 were reconvicted of a felony within 5 years compared to 42.5% of those who received probation sentences.¹⁰

Sixteen- and seventeen-year-olds in adult prisons are at greater risk of victimization and are more likely to commit suicide.¹¹ In addition, they receive little or no education, mental health treatment, or rehabilitative programming in adult prisons. Should 16- and 17-year-olds acquire an adult criminal record, they may significantly limit their future education, employment and ability to support themselves.¹²

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 and addresses their behavior in a real-life context, in relation to family, school and peers.¹³ New York has made great strides in reforming its juvenile justice practices, shifting from placement in facilities to home and community-based services. New York is highlighted as a “Comeback State” for changing its juvenile justice practices, reducing the number of youth confined in facilities, and increasing funding for community-based supervision and treatment programs.¹⁴ It is time for New York to take the next steps by continuing to make improvements to the juvenile justice system and raising the age.

A Very Small Percentage of Youth Commit Serious Crimes

Proportion of 2009 juvenile arrest rates by category



Most Juveniles Commit Non-Violent and Non-Serious Offenses

Most youth in the criminal justice system committed non-violent felony or misdemeanor offenses.¹⁵ In 2010, there were 45,692 arrests (27,775 in New York City and 17,917 in the rest of the state) of 16- and 17-year-olds, 75.3% of which were for misdemeanors and 24.7% for felonies. Of the 45,692 arrested, 26,183 were disposed by October 2012. Sixty-three percent were not convicted or adjudicated; 18.8% received conditional discharges, 5.9% received probation and 11.3% were incarcerated.¹⁶

Most Youth Are Arrested for Misdemeanors

Arrests of 16- and 17-year-olds by top arrest charge, 2010 New York State

	Total	Felony Arrest	Misdemeanor Arrests
Arrests of 16- and 17-year-olds statewide	45,692	11,907	34,386

Source: DCJS, OJRP January 4, 2013

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.¹⁷

Young Offenders Have Significant Mental Health Issues

It is important to note that youth who have suffered maltreatment 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.¹⁸ Court-involved teens are two to three times more likely to suffer from mental health conditions as youth in the general population.¹⁹ 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.²⁰



Children in the Juvenile Justice System Are Overwhelmingly Children of Color

The overwhelming majority of young people involved in the juvenile and criminal justice systems are children of color. In New York State, African-Americans make up 18% of the 16- and 17-year old population, 45% of youth arrested, and 59% of youth incarcerated.²¹ In 2010 statewide, out of 536,045 16- and 17-year-olds, 25.5% of those arrested were White, 45.2% were Black and 25.5% were Hispanic. 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.²²

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.²³ 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.²⁴ Connecticut estimated a system increase of 40% at a cost of \$11.8 million to move 16-year-olds from the adult to the juvenile justice system in 2010. The system increase amounted to 22% and actual costs were \$7.1 million.²⁵ Overall, spending on juvenile justice (after adjusting for inflation) did not increase and the state's juvenile crime rate dropped. After adjusting for inflation, the state agencies in Connecticut that administer the juvenile justice system report that they spent \$2 million less on juvenile programs and facilities in the 2011-12 fiscal year than they had ten years earlier.²⁶ In 2012, the state moved 17-year-olds into the juvenile justice system.²⁷

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 one high-risk youth from becoming a career offender ranges from \$2.6 to \$5.8 million.²⁸ The Vera Institute of Justice conducted 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."²⁹ 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.

Children of Color are Disproportionately Represented in the Justice System

Race/Ethnicity	16- and 17-Year Olds in New York State	Arrests	Arrests Resulting in Sentences to Incarceration
White	53.7%	25.5%	18.2%
Black	18.0%	45.2%	59.5%
Hispanic	21.3%	25.5%	19.7%
Other/Unknown	6.9%	3.9%	2.6%

Sources: DCJS, OJRP January 4, 2013 and Woods and Poole Estimates of NYS Youth: 16-17 Year Olds in 2010 compiled by OCFS Bureau of Research, Evaluation and Performance Analytics.

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 in those states that have set a minimum jurisdictional age for juvenile justice, with 10 the age most frequently used.³⁰ Internationally, the minimum age ranges from 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.³¹

Recommendations

1. Treat youth as youth regardless of the charge, by raising the juvenile justice jurisdictional age to under 18. 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. The research is clear: treating children as children will improve public safety and lead to cost savings.
2. Adjudicate all youth under the Family Court Act to ensure the availability of age-appropriate services. Modifications to disposition options will be needed to account for placement of older youth and those charged with more serious offenses. In all cases, Family Court judges should be given judicial discretion to make determinations on an individual basis.³²
3. Expand the juvenile justice reforms made over the past several years by continuing to reduce the use of detention and placement in juvenile facilities and increasing the investments into evidence-informed community-based services and alternatives to incarceration that have proven to support youth success and reduce recidivism.³³ New York State made significant changes in the juvenile justice system over the past several years by reducing the use of institutional placement, implementing the Close to Home initiative, incentivizing community-based treatment and services, and closing residential facilities. Only those youth who present a danger to public safety should be eligible for placement. Additional reform is needed to expand opportunities to divert cases from court including at arrest.
4. Raise New York's lower age level for juvenile justice jurisdiction to age 12. Incorporate a change in the lower age when legislation is drafted to raise the upper jurisdictional age. Younger children should be served through the child welfare system rather than the juvenile justice system.³⁴

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.

Endnotes

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