

MEMORANDUM OF SUPPORT

S.4051/ A.4982

The Schuyler Center for Analysis and Advocacy urges the legislature to pass this bill to end the arrest and prosecution of children under 12 as juvenile delinquents.

The Schuyler Center for Analysis and Advocacy is a 149-year-old statewide, nonprofit organization dedicated to policy analysis and advocacy in support of public systems that meet the needs of disenfranchised populations and people living in poverty. Schuyler Center supports S.4051/ A.4982 to end the arrest and prosecution of children under 12 as juvenile delinquents.

The pepper-spraying and handcuffing of a 9-year-old Black girl suffering a mental health crisis by police in Rochester forces us to confront the criminalization of children. Research has consistently shown that Black children are more likely to be viewed by police as older, “less innocent,” and more threatening by police. Now is the time to invest in community supports for children and families and end the arrest and prosecution of children under 12. This is why Schuyler Center supports S.4051/ A.4982 and urges the legislature to pass, and the governor to sign, this important legislation as soon as possible.

Current Law

New York sets its minimum age for arrest and prosecution of children as juvenile delinquents at age 7, the second lowest set by statute in the U.S.¹ Children as young as 10 can be detained in secure facilities.² Absent legislative reform, children under the age of 12 may be subject to police interrogation, handcuffs and footcuffs, pre-trial detention with older youth, probation, and mandatory confinement in an institution. Across New York, police arrested over 800 elementary school aged children aged 12 and younger during 2018.³ Among these, more than 100 children arrested were first, second or third graders (aged 7 to 9).⁴

Experts in Children’s Health and Wellbeing Endorse Raising the Age to 12

¹ Only North Carolina sets a lower age by statute, at age 6. See *Minimum Age for Delinquency Adjudication – Multi-Jurisdictional Survey*, NATIONAL JUVENILE DEFENDER CENTER, <https://njdc.info/practice-policy-resources/state-profiles/multi-jurisdiction-data/minimum-age-for-delinquency-adjudication-multi-jurisdiction-survey/> (last visited July 13, 2020). 28 states do not set a minimum age for delinquency adjudication by statute. *Id.*

² N.Y. Family Ct. Act §§ 301.2(1), 304.1 (Consol. 2020).

³ Data tables produced by DCJS.

⁴ *Id.*

In 2020, the American Academy of Pediatrics recommended raising the minimum age of delinquency responsibility to at least 12 years old.⁵ The National Juvenile Justice & Delinquency Prevention Coalition endorsed this position in 2021.⁶ This is because formal justice system processing is harmful to children's health and development, exposing them, unnecessarily, to a system that they do not fully understand with devastating consequences on a child's future, decreasing their likelihood of school graduation and increasing their likelihood of incarceration.

Criminalizing young children runs contrary to scientific research that recognizes children are inherently less culpable than adults. Prosecuting children as young as 7 raises significant concerns about a young child's capacity to meaningfully participate in the judicial process.⁷ Moreover, juvenile probation, detention and placement are not developmentally appropriate responses for very young children. They are at best wasteful and ineffective and at worst harmful and counterproductive. A child's contact with the juvenile justice system raises the chances, by more than 50%, that he or she will someday return to the criminal justice system.⁸ Formally processing youth in the juvenile justice system does not deter future crime, but instead can increase the likelihood of future criminal convictions and incarceration.⁹ Our current approach to young children's behavior is both cruel and ineffective. Outcomes for children are improved and the community is safer when we wrap the correct services and supports around a child and family.

The Proposed Legislation

Rather than rely on arrests and prosecutions of elementary school aged children, New York can promote true community safety by ensuring that its system of local, community-based services is available to this relatively small number of children and families in need. This bill would:

- raise the lower age of delinquency jurisdiction from age 7 to 12, ending the arrest and prosecution of children under 12 as delinquents, and bringing New York in line with states like Massachusetts¹⁰;
- end the use of secure detention for children under 13;

⁵ American Academy of Pediatrics, Policy Statement, Advocacy and Collaborative Health Care for Justice-Involved Youth (2020) <https://pediatrics.aappublications.org/content/146/1/e20201755#sec-35>.

⁶ [http://www.act4jj.org/sites/default/files/resource-files/TransitionDoc%20\(2\).pdf](http://www.act4jj.org/sites/default/files/resource-files/TransitionDoc%20(2).pdf).

⁷ GOVERNOR'S 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 37 (2015); see also Thomas Grisso, et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW AND HUMAN BEHAVIOR n.4 333-63 (2003).

⁸ *The Juvenile Justice and Delinquency Prevention Act: Preserving Potential, Protecting Communities: Hearing Before the S. Comm. on the Judiciary*, 113 Cong. 4 (2014) (statement of Robert L. Listenbee, Administrator, Office of Juvenile Justice and Delinquency Prevention) (citing NATIONAL CENTER FOR JUVENILE JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 234).

⁹ Petrosino, A., Turpin-Petrosino, C. & Guckenburg, S. 2010. Formal system processing of juveniles: Effects on delinquency. Woburn, Massachusetts: Campbell Systematic Reviews, The Campbell Corporation.

¹⁰ Mass. Gen. Laws ch. 119, § 54 (LexisNexis 2020), as amended by 2017 Mass. SB 2371 §§ 72-74, 76-79 (2018).

- create an alternative response pathway for assessment and services for youth and their families through local departments of social services (LDSSs), including existing child welfare preventive services;
- provide training for police and LDSS staff to ensure appropriate response and that children and families can access services, when necessary;
- ensure records associated with services for youth are confidential and cannot be disclosed to anyone who is not involved in their treatment;
- fund the alternative response through existing streams for child welfare preventive services, family support services programs, and supervision and treatment services for juveniles; and,
- require the Office of Children and Family Services to produce an annual report documenting how programs are ensuring the safety and well-being of children, and addressing adverse impacts on minority communities in light of the well-documented racial disparities in the youth justice and child welfare systems.

The bill will bring New York's response to children in line with current research on child development, help close the school-to-prison pipeline, address racial disparities in our youth justice system, and save limited state and local resources by diverting young children from delinquency probation and prosecution, and into more effective, age-appropriate community-based services.

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