



Testimony of

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*Re: Resolution No. 1067: Supporting New York State Chief Judge Lippman's Call to
Raise the Age of Criminal Responsibility for Non-Violent Offenses to 18*

Before the
New York City Council
Juvenile Justice Committee

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Good morning. I am Stephanie Gendell, the Associate Executive Director for Policy and Public Affairs at Citizens' Committee for Children of New York, Inc. (CCC). CCC is a 68-year old independent, multi-issue child advocacy organization dedicated to ensuring that every New York child is healthy, housed, educated and safe.

I would like to thank Chair Gonzalez and Members of the Juvenile Justice Committee for holding this hearing today. In addition, I would like to thank Chair Gonzalez, along with Council Members Crowley, Barron, Brewer, Cabrera, Chin, Dickens, Dromm, Ferreras, Foster, Jackson, James, Lander, Mark-Viverito, Mendez, Nelson, Palma, Recchia, Jr., Rose, Seabrook, Vann and Williams for sponsoring Resolution Number 1067, supporting New York State Chief Judge Jonathan Lippman's call on the New York State Legislature to pass and the Governor to sign legislation raising the age of criminal responsibility for nonviolent offenses to 18 and permit the cases of 16 and 17 year-olds charged with such offenses to be adjudicated in the Family Court rather than the adult criminal justice system.

CCC has long supported the principle that children must be treated like children in the justice system, and thus all children should have the opportunity to have their cases heard in Family Court pursuant to the juvenile laws of the Family Court Act rather than in the adult criminal court system. The purpose of the juvenile justice system is very different from the purpose of the adult criminal justice system. Specifically, the juvenile justice system has two purposes: to protect public safety and to meet the rehabilitative or service needs of the youth who enter the system. Notably, unlike in the criminal justice system, punishment is not one of the principles of juvenile justice.

In New York, the juvenile justice and family court systems are only serving youth who have been alleged to commit acts that would constitute crimes if they were adults between the ages of 7 and 15. Youth who are alleged to have committed such acts at ages 16 and 17 are treated as adults and are processed through the adult court and probation systems. Furthermore, youth ages 13, 14 and 15 who have committed crimes considered to be serious and violent (such as murder or rape) also have their cases heard in the adult system (unless the Supreme Court judge chooses to waive the case down to Family Court.)

New York is one of only two states in the entire country that treat 16 and 17 year olds as adults. Yet 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. Specifically, the 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.

In many ways, the laws of New York already recognize that adolescents are not able to make the same sound judgments and decisions as adults. In New York, you need to be 21 to drink alcohol, 18 to marry without parental permission, 18 to vote and 18 to join the military.

The United State Supreme Court has recently been very deliberate in recognizing that children are different from adults, particularly with regard to the justice system. In 2005, the United State Supreme Court ruled in *Roper v. Simmons* that the juvenile death penalty was unconstitutional. 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. 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."

The Court, in part, relied upon brain science in making these rulings. "No recent data provide reason to reconsider the Courts 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," the Court wrote in *Graham*.

It is now time for New York to fall in line with what has been proven by science, adopted by 48 states and recognized by the United States Supreme Court—children are different from adults and should be treated as such in the justice system. CCC applauds Judge Lippman for so publicly recognizing this and for pushing the Legislature and the Governor to make this change now. Judge Lippman is correct that children ages 16 and 17 should be having their cases heard in Family Court by Family Court Judges pursuant to the laws created for juveniles, which focus on rehabilitation, enable records to be sealed, and would enable many of the misdemeanor cases to be adjusted by the Probation Department so that they were never needlessly wasting precious court time and resources.

While CCC wholeheartedly supports Judge Lippman's proposal to raise the age of criminal responsibility for nonviolent offenses to 18, CCC is also in full support of making this proposal broader so that all youth, including those ages 13-17 charged with more serious crimes, can also have their cases heard in Family Court. This would require changing the Juvenile Offender law to a model where cases could be heard in Family Court (and perhaps waived up contrary to our current waive down model.)

Finally, CCC understands that there are a significant number of logistics, resource needs, and costs that would need to be resolved. The juvenile system would need to have enough capacity to serve these young people in alternative to detention, alternative to placement, detention facilities and placement facilities. In addition, the court system would need to have enough Family Court Judges, lawyers and space. Changing the age of criminal responsibility may require a phasing in process (e.g. first 16 year olds, then 17 year olds, then JOs) and may at first require flexibility in terms of Family Court space. While these logistics may seem daunting, we urge the City Council, State Legislature and the Governor not to let this stand in our way of doing the right thing for children. The children of New York have been waiting for 50 years to be treated like children. We must embrace the opportunity Judge Lippman's proposal has given us and work together to ensure raising the age of criminal responsibility becomes a reality.

CCC looks forward to working with the City Council, advocates, stakeholders, Judge Lippman, State legislators and the Governor to accomplish these legislative changes in the upcoming session. Thank you for this opportunity to testify.