Testimony of

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Examination of Laws Governing the Age of Criminal Responsibility

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Good morning. My name is Stephanie Gendell and I am the Associate Executive Director for Policy and Government Relations at Citizens’ Committee for Children of New York, Inc. (CCC). CCC is a 70-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 Chairs Lentol, Weinstein, Lupardo, Nolan and Camara, as well as all of the members of the Assembly Committees on Codes, Judiciary, Children and Families, and Education, as well as the New York State Black, Puerto Rican, Hispanic, and Asian Legislative Caucus for holding today’s hearing to examine New York’s laws governing the age of adult criminal responsibility.

New York is one of only two states in the entire country that prosecutes all 16- and 17-year olds as adults (the other state is North Carolina). In addition, in New York, children as young as 13-years old can also be prosecuted as adults if they have committed serious felonies. Furthermore, New York’s Family Court Act authorizes children as young as 7-years old to be found to be juvenile delinquents if the acts they conducted would constitute a crime if committed by an adult.

The goals and purpose of the juvenile justice system are very different from those of the adult criminal justice system. Specifically, the juvenile justice system has two goals: 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 or purposes of juvenile justice.

Aside from New York’s statute being out of line with the rest of the country, it contradicts the brain science research about adolescents and actually jeopardizes, rather than protects, public safety. Science has proven that brains are not fully developed until young adults are 25-years old. Since it is the frontal lobe to develop last, adolescents are likely to act more impulsively and also to be more receptive to rehabilitative services. Alternatively, prosecuting children as adults has been shown to increase recidivism—thereby jeopardizing public safety while also depriving the young person of the services proven to turn young lives around.

New York needs a comprehensive approach to raising the age of criminal responsibility. This is in the best interest of New York’s children and youth, communities, public safety and the economy. The legal process must respond to all children as children and services and placement options must meet the rehabilitative needs of all children and youth. New York must enact a comprehensive Raise the Age policy to ensure that children are dealt with in a developmentally appropriate manner. For some, this will mean incarceration, but it should also mean appropriate treatment and services.
The Adolescent Brain

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. Brain scans show that young brains do not look like those of adults until the early 20s. The scans also suggest that different parts of the cortex mature at different rates. The parts of the brain involved in basic functions, such as controlling movement, mature first. The parts of the brain responsible for planning and impulse control, are the last to mature.

Specifically, the prefrontal cortex (or 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.1

Professor Laurence Steinberg, who has researched, studied and written on this topic for many years, sums it up this way:

“Middle adolescence is a period during which brain systems implicated in how a person responds to rewards are at their height of arousability but systems important for self-regulation are still immature. The different timetables followed by these different brain systems create a vulnerability to risky and reckless behavior that is greater in middle adolescence than before or after. It’s as if the brain’s accelerator is pressed to the floor before a good braking system is in place. Given this, it’s no surprise that the commission of crime peaks around age 17—as does first experimentation with alcohol and marijuana, automobile crashes, accidental drownings, and attempted suicide.”2

While the immaturity of the adolescent brain may lead to risky behavior, it also makes the adolescent and his/her brain more receptive to rehabilitative services. In fact, with the right services and support, the adolescent brain may be the most receptive of all to rehabilitative services.3

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2 Satchel, Roslyn, Lost Opportunities: Our Children are Not Rehabilitated When They are Treated and Incarcerated as Adults, 2002. http://www.prisonpolicy.org/scans/lost_opportunities.pdf.
Adolescence and the Law:

In many ways, most other laws in New York already recognize that adolescents are not able to make the same sound judgments and decisions as adults. For example, in New York and throughout the country, you need to be 21 to drink alcohol, 18 to get married without parental permission, 18 to join the military, 18 to vote (for the elected officials who determine the age of criminal responsibility) and 17 to see an R-rated movie without adult supervision. Furthermore, just last month, New York City raised the age at which a young person can purchase cigarettes from 18 to 21.

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 States 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 Court’s 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.

Public Safety:

“The underdeveloped frontal cortex of the adolescent brain renders adolescents both more amenable to rehabilitation and more susceptible to negative influences. ... [T]ransferring youth to the adult system runs counter to both of these scientific findings, and undermines the original rationale for trying adolescents as adults: public safety.”4

Raising the age of criminal responsibility in New York is not about being soft on crime—but about being smart on crime. Studies have repeatedly found that when youth are prosecuted and/or incarcerated in the adult system, they have higher recidivism rates.

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This is likely due to the lack of mental health and rehabilitative services in the adult system, the heightened criminogenic environment of the adult system, and the lifelong impact a criminal record has, including difficulties obtaining jobs and housing.

A well-known study by Jeffrey Fagan compared New York youth to New Jersey youth, from similar communities, who had been charged with felonies. The New York youth were prosecuted in adult court and the New Jersey youth were prosecuted in juvenile court. The study found that New York’s youth were 100% more likely to be rearrested for a violent offense and 47% more likely to be arrested for a property offense than the New Jersey youth. These results replicated a similar New York/New Jersey study that Fagan published in 1996.

Similarly, the independent, non-federal Task Force on Community Preventive Services conducted a review of published scientific evidence regarding the effectiveness of laws and policies related to the transfer of juveniles to the adult criminal justice system in Washington, Pennsylvania, and regions of New York, Minnesota and Florida. They found that prosecuting youth in the adult system versus the juvenile system “typically increases rather than decreases rates of violence among transferred youth.” They conclude, “On the basis of these findings, the Task Force recommends against laws or policies facilitating the transfer of juveniles to the adult criminal system for the purpose of reducing violence.”

A 2010 Bulletin from the Office of Juvenile Justice and Delinquency Prevention within the US Department of Justice also reviewed various studies on the impact of transferring juveniles to the adult criminal justice system and concluded, “The practice of transferring juveniles for trial and sentencing in adult criminal court has produced the unintended effect of increasing recidivism, particularly in violent offenders, and thereby promoting life course criminality.”

Placement and Compliance with the Prison Rape Elimination Act (PREA)

Section 115.14 of the federal regulations implementing the federal Prison Rape Elimination Act (PREA) prohibits youthful inmates from being “placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area or sleeping quarters,” and outside housing units there must be “sight and sound separation” or direct staff supervision. The federal regulations go on to urge agencies to avoid using solitary confinement as the means to ensure sight and sound separation for the juveniles. This

law was passed in 2003, new regulations went into effect in August 2012 and as of August 2013, New York is subject to be audited for compliance by the federal government.

Because 16- and 17-year olds are treated as adults in New York’s criminal justice system and the state’s Corrections Law allows those 16 and older to be placed in adult jails and prisons, it is likely that New York State is out of compliance. This leaves New York subject to federal penalties for being out of compliance.

Even more troubling than any federal penalty, youth in adult prisons are twice as likely to report being beaten by staff and nearly 50% more likely to be attacked with a weapon than youth placed in youth facilities.9 Youth in adult prisons face the highest risk of sexual assault10 and are 36 times more likely to commit suicide in an adult facility than in a juvenile facility.11 Thus, placing New York’s youth in adult prisons and jails not only violates federal law, but also threatens the safety and well-being of the children.

How is the Juvenile Justice System Different?

To understand why it is so important to “Raise the Age” in New York requires understanding the key differences between the two systems.

First, because children under 16 are viewed as children, the juvenile justice system requires parental notification and consent. On the other hand, because 16 and 17 year olds are considered adults by the justice system, there is no parental notification or consent. Thus, parents of 16 and 17 year olds are not notified when their children are arrested, are not notified about their children’s court appearances, and are not required to be present or consent during police questioning of their children. As a result, when a 16 year old is arrested and brought to lock-up, his or her parents will not be informed and may spend the entire evening trying to locate their child.

Second, as discussed previously, New York’s 16 and 17 year olds may be held in the same facilities with adults, leaving them at increased risk of violence and sexual assault.

Third, the records of juveniles are confidential. Some youth in New York, including 13-15 year old juvenile offenders and 16-19 year olds prosecuted in adult courts, may receive youthful offender status that will result in the sealing of their records. But not all youth will be granted this status. When it is not granted, the child will have an adult criminal record for the rest of his or her life. This could make the child and family ineligible for subsidized housing (such as NYCHA), impact the youth’s ability to get into college, and create lifelong barriers to getting a job.

Fourth, because the juvenile system serves the dual purpose of protecting public safety and rehabilitation, there is a continuum of services that those charged as juvenile offenders and those charged as adults are not able to receive. This includes adjustment at services prior to (or in lieu of) filing a petition in court, services as an option at disposition, and placement facilities designed to better address the needs of youth (including education, health and mental services, and youth services.)

Recommendations:
CCC believes that there are a number of ways that New York can raise the age in a comprehensive manner that ensures that children are held accountable for their actions in an age-appropriate way that better protects public safety and helps the young person become a contributing member of our community.

Some of the key components include:
- Treating all children like children, in an age-appropriate way that holds them accountable, regardless of the alleged crime.
- Raising the lower age of juvenile delinquency from 7 years old to 12 years old.
- Applying key provisions of the Family Court Act to youth ages 16 and 17:
  - Inform parents of their children’s arrests.
  - Allow for the use of adjustment services prior to the filing of a case, such that a young person may engage in appropriate services without ever having a petition filed in court.
  - Expand the dispositional options to include the services (alternative to incarceration/placement) that have been proven effective.
  - Ensure all youth records are kept confidential or sealed.
  - Place youth only in juvenile facilities.
  - Expand the use of youthful offender status by making it mandatory for all youth under 18 and increase the age of eligibility to at least 21.

CCC is a member of the Raise The Age – New York (RTA-NY) Campaign, which includes over 50 members representing national and local advocates, youth, parents, law enforcement and legal representatives, faith leaders, and unions that have come together to increase public awareness of the need to implement a comprehensive approach to raising the age of criminal responsibility in New York State so that the legal process responds to children as children and services and placement options better meet the rehabilitative needs of all children and youth.

As a member of the Campaign, we believe that the following 6 Policy Points should guide the development of New York State’s new law and policies developed to Raise the Age:

1. **Ensure that all youth are treated appropriately for their age in the court system, regardless of the crime charged.** Even children charged with violent felonies should be treated as children, as brain research is clear children at this age lack the ability to control impulse and think of future consequences of their actions. Furthermore, multiple studies show
that when these youth are prosecuted as adults, they are more likely to commit future crime, particularly violent crime. Youth charged with serious crimes are also more likely to end up with a criminal conviction and suffer a lifetime of collateral consequences, including barriers to accessing employment, education, and housing. In addition to harming youth, these collateral consequences make it harder for young people to successfully re-enter communities, harming public safety. Ensuring that all youth are treated in an age-appropriate manner includes raising the age of criminal responsibility so that the youth justice system includes:

- treating all 16- and 17-year-olds as children, even those charged with violent felonies;
- treating all 13- to 15-year-olds as children by repealing the Juvenile Offender Law; and
- raising the minimum age at which a child can get be arrested to 12.

2. **Adjudicate all youth under the Family Court Act.** Using the Family Court Act as the legal framework for all youth ensures availability of age-appropriate services and courts and may increase availability of Federal funding for the kinds of services and programs that help youth succeed and increase public safety. In addition, it reduces collateral consequences by guaranteeing that no youth will have criminal convictions and that court records remain private. Courtrooms to hear the cases of youth whose cases are currently heard in adult court could be located anywhere (i.e., in either family court or adult court buildings), the important part is ensuring that Family Court Act is the legal framework for all youth. However, modifications to disposition options would be needed to account for placement of older youth and those charged with more serious offenses.

3. **Guarantee that no youth are housed in adult jails and prisons.** Studies show that youth in adult prisons are twice as likely to report being beaten by staff, and far more likely to be attacked with a weapon than children placed in youth facilities. Youth in adult jails are 36 times more likely to commit suicide than those in youth detention facilities. According to the Prison Rape Elimination Commission, youth in adult facilities may be at the highest risk for sexual abuse of all incarcerated people. New York is currently out of compliance with the Youthful Inmate Standard of the Prison Rape Elimination Act. Housing all youth in juvenile facilities would help keep youth safe from sexual abuse and would also help taxpayers as failure to comply with PREA can result in a loss of federal funds.

4. **Reduce detention and placement in juvenile facilities.** New York should continue the successful youth justice reforms implemented in recent years and expand these efforts. We recommend limiting eligibility for placement to youth who have committed serious offenses and pose a clear and demonstrated risk to public safety. The use of placement as a punishment for technical probation/court violations should be ended. Instead, New York should continue to invest in the kinds of evidence-informed community-based services and alternatives to incarceration that have been proven to both help youth succeed and reduce recidivism.

5. **Increase the ability to divert cases from court and at arrest.** Diverting low-risk youth holds youth accountable while reserving court resources. Over 75% of arrests of 16- and 17-year-olds are for misdemeanors; 17% of all arrests are for petit larceny (usually shoplifting) and another 13% are for misdemeanor marijuana offenses (based on 2010 data). More low-risk youth should be diverted from court by creating multiple points of diversion, including at arrest. Furthermore, the probation adjustment process should be expanded by removing the
ability of complainants to veto adjustment, instead giving probation officers’ full discretion to adjust a case.

6. **Tailor Services to Individual Needs and Combat Racial Disparities.** In recent years, the youth justice system has become increasingly sophisticated at assessing risk and needs. Using validated risk assessment instruments can help connect youth with appropriate programs that prevent recidivism and protect public safety. This should be done in a way that ensures that the justice system is not used as a proxy for social service needs. Low-risk youth who present no risk to public safety should be diverted to services outside of the justice system. Research consistently shows that using the criminal justice system to treat low-risk youth for social service needs actually increases recidivism.

To combat racial disparities, validated risk-assessment tools should be consistently applied to all cases and there must be on-going efforts to analyze system outcomes, including risk assessment scores, for racial and ethnic disparities. As recommended by experts on reducing racial disparities, data about race, ethnicity, geography, gender and offense (REGGO) should be consistently collected and publicly released for all children in the justice system.

**Conclusion:**
The children of New York have been waiting for over 50 years to be treated like children. It is 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. New York’s children and youth, alleged to have committed acts that would be crimes if committed by adults, should have their cases handled pursuant to laws created for juveniles, which focus on rehabilitation.

The time is NOW to finally raise the age of criminal responsibility in New York. Children only get to be children once—and today’s 16 and 17 year olds need us to implement sound policies as soon as possible.

CCC looks forward to working with the Governor, the Assembly, and the Senate to make this a reality this upcoming session.

Thank you for this opportunity to testify.