

TESTIMONY

The Council of the City of New York

Committee on Juvenile Justice
Sara M. Gonzalez, Chair

Res. No. 1067 - Resolution 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.

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Submitted by:

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Good morning. I am Steven Banks, Attorney-in-Chief of the Legal Aid Society. I submit this testimony on behalf of the Legal Aid Society, and thank Chairwoman Gonzalez as well as the Committee on Juvenile Justice for inviting our comments on the proposed resolution supporting Chief Judge Jonathan Lippman's call to treat teenagers as teenagers and therefore raise the age of criminal responsibility in New York to 18. We appreciate your attention to this area of vital concern to our City's teenagers and their families.

The Legal Aid Society is the nation's largest and oldest provider of legal services to low-income families and individuals. As you know, from offices in all five boroughs, the Society annually provides legal assistance to low-income families and individuals in some 300,000 legal matters involving civil, criminal and juvenile rights problems. Our Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our Juvenile Rights staff represented more than 34,000 children, including approximately 4,000 who were charged in Family Court with juvenile delinquency. During the last year, our Criminal Practice handled nearly 240,000 cases for clients accused of criminal conduct. Many thousands of our clients with criminal cases in Criminal Court and Supreme Court are teenagers. In addition to representing these children each year in trial and appellate courts as well as school suspension hearings, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

Our perspective comes from our daily contacts with children and their families, and also from our frequent interactions with the courts, social service providers, and City agencies, including the New York Police Department, the

Department of Education, the Department of Youth and Family Justice, the Department of Correction, and the Department of Probation as well as the Administration for Children's Services.

Because of the breadth of Legal Aid's representation, we are uniquely positioned to address this issue. We currently represent the vast majority of teenagers prosecuted in the Family, Criminal and Supreme Courts in New York City. We have close to 50 years of experience assessing the cases of teenagers, identifying diversion programs and advocating for alternatives to incarceration. We have developed strong advocacy relationships in the courts, with prosecutors and with City and State agencies which have resulted in connecting our teenage clients with the services that best meet their needs, as well as those of the community. Our experience indicates that community safety is best protected when appropriate services are identified and accessed for the vast majority of court-involved teenagers, so that they become less likely to be entangled again in the criminal or juvenile justice systems. The Legal Aid Society strongly supports Chief Judge Lippman's call to raise the age of criminal responsibility to 18, as it will provide an effective mechanism to create pathways to necessary services for 16 and 17 year olds which currently do not exist in the Criminal Court system.

A Brief Historical Perspective Of The Prosecution Of Teenagers

New York State first grouped 16 and 17 year olds with adults for purposes of criminal prosecution in the late 1800s. During the first 25 years of the twentieth century, great reform took place throughout the country. Embracing social work and child psychology findings, States recognized that children were different than adults, and juvenile courts were established to address the needs of children and teenagers. Despite the fact that almost every State set the age of adult criminal

prosecution at 18, New York maintained that 16 and 17 year olds were adults for purposes of criminal prosecution. A 1931 report of the New York State Crime Commission criticized the jurisdictional cutoff at 16, but no action was taken. Again, this issue was discussed in detail at the 1961 Constitutional Convention which established the New York State Family Court. The Convention deferred a decision to raise the age from 16, but no further action was ever taken.¹ As a result, for over 100 years New York State has set its jurisdictional age as low as 16. There is no evidence whatsoever that this outdated policy has led to lower rates of crime or recidivism by adolescents. Given recent social science and neuroscience findings, the time is ripe for reconsideration of this issue.

Recent Developments Addressing The Culpability Of Adolescent Offenders

Historically in New York State, sentencing policies viewed teenage offenders aged 16 - 17 in the same category as the adult offenders without individualized attention to their specific needs. Notably, almost all of the social science, neuroscience, psychiatric findings supporting the conclusion that teenagers should be evaluated for criminal culpability differently than adults have been published in the last fifteen years. In 1995, the phrase “superpredator” was coined by John Dilulio, who was at that time a professor at Princeton, to describe the then preadolescents who he predicted would be part of a huge and ruthless juvenile crime wave.

Soon after the peak of criminal activity in the mid-1990s, the juvenile crime rates fell for the next 10 years and several studies showed that Dilulio and others had gotten the issue wrong. Just two years after making that prediction, after receiving criticism from many academics including those who had previously supported him, he wrote several pieces distancing himself from his prediction. He began working with churches in inner-city communities, claimed that he never

intended for young people to be incarcerated with adults and urged a stop to prison growth.

Since the year 2000, brain researchers and psychologists began to publish scientific studies demonstrating that the brain continues to develop during the adolescent years and is not fully formed until the early 20s, with some studies placing the age of complete development at 25. The neuroscience research, made possible by new technologies such as magnetic resonance imaging (MRI) that allow scientists to study brain images, demonstrates that the last areas of the brain to develop are the frontal lobes, specifically the pre-frontal cortex, which govern decision-making, judgment, and impulse control. As this area of the brain develops, young adults become more reflective and deliberate decision makers.²

These studies were recognized by the United States Supreme Court in its findings that age can be considered a mitigating factor in Roper v. Simmons (disallowing the death penalty for offenders under the age of 18); Graham v. Florida (prohibiting life without parole on non-homicide offenses for youth under the age of 18) and just four months ago in J.D.B. v. North Carolina³ (holding that a child's age is a relevant factor to consider in determining whether a child is "in custody" for the purposes of Miranda warnings).

In these decisions, the United States Supreme Court has recognized that social science research confirms that *"a lack of maturity and an underdeveloped sense of responsibility are found in youth more than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions."*⁴ The Court also noted that youth have less control over their own environment.⁵ The Court further acknowledged that *"almost every state prohibits those under 18 years of age from voting, serving on*

*juries, or marrying without parental consent.*⁶ In fact, New York sets the age of majority for most civil purposes at age 18.⁷

Further, the United States Supreme Court has recognized that adolescents are less blameworthy for the offenses they commit because they are less capable of evaluating the possible outcomes of different courses of actions and they are more vulnerable to external pressures. For example, the Court has found that *“adolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long range terms than adults.”*⁸

Culpability concerns the degree to which a defendant in court can be held accountable for his actions. Immature judgment is considered as a possible mitigating circumstance, which would render the defendant less blameworthy for transgressions committed.⁹ Developmental psychologists who have examined the issue of youth and delinquency propose that adolescents, as a class, may warrant characterization as less mature than adults, not because of cognitive immaturity, but because of deficiencies in maturity of judgment.¹⁰

These “psychosocial factors” include the ability to control one’s impulses, to manage one’s behavior in the face of pressure from others to violate the law, or to extricate oneself from a potentially dangerous situation.¹¹ Interestingly, corporate entities have also embraced the research recognized by the Supreme Court. In 2005, Allstate Insurance Company released a study through the Allstate Foundation examining the root causes of teen deaths as a result of driving. This

study, entitled “*Chronic: A Report on the State of Teen Driving*”, includes reports by two of the experts recognized by the Supreme Court in the above decisions: Laurence Steinberg, Ph.D, a professor of psychology at Temple University and Jay Giedd, M.D., chief of brain imaging in the Child Psychiatry Branch of the National Institute of Mental Health.¹²

Dr. Steinberg describes in the report how the intellectual, emotional, and social dimensions of brain function develop at different rates from one another, and according to different timetables. That fact, combined with the social pressures all teens experience, renders teens more prone than adults to risk-taking behavior. Through studies, they found that “*[b]y the age of 15 or 16, for example, most teenagers’ logical reasoning abilities are the same as adults’. Their emotional and social development at this age, however, is still relatively immature. That’s why an adolescent who is “book-smart” and who appears to have good reasoning abilities may actually demonstrate surprisingly poor judgment and decision-making in the real world, where a combination and variety of intellectual and psychosocial factors are at work. Immaturity in any of them can compromise a young person’s judgment.*”

Dr. Steinberg worked with three age groups—adolescents, young adults (college undergraduates) and adults in their late 20s and 30s. He designed a battery of computer-driven tasks, or games to measure things like risk-taking, planning ahead, impulse control, and the way in which individuals balance risks and rewards when making decisions. Steinberg described his findings as follows: “*[I]nstead of looking at behavior only when the individuals were alone, we asked participants to bring along two friends, then we randomly assigned them to play the games alone or with their friends looking over their shoulder and giving advice... The results were fascinating. When playing a video game simulating*

driving alone, levels of risk-taking were similar across the three age groups. So, like other researchers working in a lab, we found that the risk behavior of adults and teens is nearly identical. But with friends alongside, risk-taking increased significantly among adolescents and college students (average ages 14 and 19, respectively) but not among adults (average age 37). In other words, the presence of peers increased risk-taking in the two younger groups but had no influence on the older group.”

The report noted that this finding has important implications:

- When assessing adolescent judgment and risk-taking, the social context has a marked impact on the outcome.
- In the presence of peers, even college students—young adults in their late teens and early 20s—exhibit behavior similar to that of adolescents. This finding is consistent with the findings of studies of brain maturation.
- In order to understand and address adolescent risk-taking, the role of the peer group must be considered. *“For reasons that are not yet clear, the presence of peers may actually sharpen an adolescent’s natural appetite for risk-taking. Most of the dangerous things adolescents do are done in groups...One need only consider the following fact: nearly all juvenile crime is committed in groups, whereas most adult crime is committed by individuals acting alone.”*¹³

Most Adolescent Offenders Do Not Continue Their Behaviors Into Adulthood

The United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention published a recent report which analyzed the most comprehensive data set currently available about serious adolescent offenders and their lives in late adolescence and early adulthood. The most significant finding of the study is that *“[m]ost youth who commit felonies greatly reduce their offending over time, regardless of the intervention. Approximately 91.5 percent of youth in the study [aged 14-18] reported decreased or limited illegal activity during the first 3 years following their court involvement.”*¹⁴ Additionally, the study found that “longer stays in juvenile facilities did not reduce reoffending;

institutional placement even raised offending levels in those with the lowest level of offending. These findings of desistance in offending by adolescents as they age are consistent with the findings of brain maturation as teens enter adulthood.

Collateral Consequences of Criminal Convictions

One of the most significant effects of prosecuting 16 and 17 year olds in the adult courts is the exposure to the collateral consequences of criminal convictions. Aside from the exposure to adult sentences and detention or imprisonment with adults, the collateral consequences of a criminal conviction can permanently remove an adolescent from the path to becoming a contributing member of society. A criminal conviction interferes with or bars an individual from access to many of the systems necessary to becoming a successful adult. Criminal convictions create barriers to employment, lead to eviction and homelessness, create barriers to college admission and/or financial aid, and have significant immigration consequences.

Given the well-documented issue of disproportionate minority contact in the criminal justice system, it is important for us, collectively, to decrease the obstacles to success for minority youth. Creating lifelong barriers for behavior that has been shown, for the most part, to be time-limited is an incredibly harsh consequence that can be remedied by raising the age of criminal jurisdiction to 18.

Conclusion

In the concurring opinion of Graham v. Florida, Justice Stevens used language that carries great meaning for the dialogue in New York about raising the age of criminal responsibility to 18. He noted that *“knowledge accumulates. We learn, sometimes, from our mistakes. Punishments that did not seem cruel and unusual at one time may, in light of reason and experience, be found to be*

cruel and unusual at a later time.” Similarly, the time has come in New York to reassess what is the appropriate response to adolescent offending in light of the advances in society’s understanding of adolescent development. Social science and brain science and the highest court in the United States have all recognized that adolescents are different than adults and should be treated that way by the law. The time has come for New York to come into line with the 48 other States in this country that set the age of majority for purposes of criminal prosecution at age 18.

We join with the community of parents, teenagers, and advocates in supporting the City Council’s resolution to support Chief Judge Lippman’s call to raise the age of criminal responsibility in New York State.

Thank you for the opportunity to speak about this important issue.

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¹ Merrill Sobie, *Pity the Child: The Age of Delinquency in New York*, 30 Pace L. Rev. 1061 (2010).

²Elizabeth S. Scott and Laurence Steinberg, *Blaming Youth*, 81 Tex. L. Rev. 799, 816 (2003) (citing Patricia Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 Neuroscience & Behavioral Reviews 417, 421-23 (2000); National Institute of Mental Health,

Teenage Brain: A Work In Progress (NIH Publication No. 01-4929, January 2001)(available at <http://www.nimh.nih.gov/publicat/teenbrain.pdf>).

³ 131 S.Ct. 2394.

⁴ *Roper v. Simmons*, 543 US 551, at 569 (2005) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)); cf. *Graham v. Florida*, 130 S.Ct. 2011 (2010)

⁵ *Id.* at 569 (citing Laurence Steinberg and Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003).

⁶ *Id.*

⁷ CPLR 105, D.R.L 2, NY Gen. Oblig. Law 1-202; New York State restricts the rights of 18 year olds in the following areas: Alcohol possession/sale NY Alco. Bev. Cont. 65c; Possession/purchase of cigarettes NY Pub. Health Law 1399-cc; Contract rights UCC Law 3-305, CPLR 105; Driving VTL 502; Firearms PL 265.16; Gambling NY Tax Law 1610, Gen. Mun. Law 486, Rac. Pari-Mut Wag. & Breed. Law 104; Jury Duty Jud. Law 510; Working hours D.R.L. 7; Pawnbrokers Gen. Bus. Law 47-a; Pornography PL 235.21; Tatoos PL 260.21, Voting NY Elec. Law 5-102, Wills EPTL 3-1.1.

⁸ *Eddings v. Oklahoma*, 455 US 104, 115 n. 11 (1982) (citing to 1978 Report of the Twentieth Century Task Force on Sentencing Policy Toward Young Offenders); see also, *Roper* 543 US at 569.

⁹ E. Cauffman, J. Woolard and N.D. Reppucci, Justice for Juveniles: New Perspectives on Adolescents' Competence and Culpability, 18 QLR 403 (1999).

¹⁰ *Id.*

¹¹ L. Steinberg and E. Cauffman, The Elephant in the Courtroom: A Developmental Perspective on the Adjudication of Youthful Offenders, 6 Va. J. Soc. Pol'y & L 389 (1999).

¹² <http://www.allstatefoundation.org/sites/all/themes/allstate2/pdf/chronic.pdf>

¹³ *Id.*, at pp.23-25.

¹⁴ Edward P. Mulvey, *Highlights From Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, March 2011.