



Testimony Before

**ASSEMBLY STANDING COMMITTEE ON CODES
ASSEMBLY STANDING COMMITTEE ON JUDICIARY
ASSEMBLY STANDING COMMITTEE ON CHILDREN AND FAMILIES
NEW YORK STATE BLACK, PUERTO RICAN, HISPANIC, AND ASIAN
LEGISLATIVE CAUCUS**

on

LAWS GOVERNING THE AGE OF ADULT CRIMINAL RESPONSIBILITY

Submitted by

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December 6, 2013

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“The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint, it would be misguided to equate the failings of a minor with those of an adult, for the greater possibility exists that a minor’s character deficiencies will be reformed.”

- *Roper v. Simmons*, 543 U.S. 551, 570 (2005)

“The teenage brain is like a car with a good accelerator but a weak brake.”

- *Professor Laurence Steinberg, Temple University*

Introduction

Thank you for the opportunity to testify before the Assembly Committees on Codes, Judiciary, Children and Families as well as the New York State Black, Puerto Rican, Hispanic and Asian Legislative Caucus. My name is Rukia Lumumba and I am the Director of the Center for Community Alternatives’ (CCA) Youth Advocacy Services. CCA is a member of the Raise the Age Coalition and supports the comments that have or will be made by other members testifying at this hearing.

Since 1988, the Center for Community Alternatives (CCA) has worked with court-involved people including youth in upstate New York (Syracuse) and the New York City. In our New York City office in particular, CCA runs court-mandated alternative-to-placement/ alternative-to- incarceration programs for young people being prosecuted in Supreme Court as juvenile offenders as well as in Family Court as juvenile delinquents. Our services are designed to enhance community safety by helping young people to realize their full potential to live law-abiding lives and make positive contributions to the community. My comments today are informed both by our day-to-day experiences working with young people and by the latest sociological and biological research about the physical and emotional changes that teenagers experience. I will direct my comments to two issues: scientific advances on adolescent brain development and the related issue of impact of putting youth in adult criminal justice systems; rehabilitative programming and resource needs related to such programming. Thus, the recommendations below flow from a perspective that is research-based and practical.

I. Scientific Advances on Adolescent Brain Development

Although the research on adolescent brain development is now widely understood, I feel compelled to start with this point, if only briefly. If we really appreciate and pay attention to the science, we will be able to make the right policy choice, which is to raise the age for all kids irrespective of their criminal behavior. This does not mean that there will be a one size fits all response to delinquency, only that the response will be developmentally appropriate for someone who is still developing and maturing.

Anyone who has parented, educated, or cared for teenagers knows that even the best-behaved, most goal-oriented teens are prone to shocking lapses of judgment. Nearly all of us know stories of college-bound teenagers who surprisingly end up in the Emergency Room after a night of thoughtless drinking or in jail after taking a car for a “joy-ride” or breaking into a residential home to steal a computer “on a dare.” The irrational and erratic behavior of teenagers often leaves us scratching our heads asking: What happened? How could such a good kid do something so shockingly stupid?

The answer is beginning to emerge from the rich body of biological and sociological research about adolescent development that has occurred over the last fifteen years. This research is confirming what parents, educators, and caretakers have intuited for years: biologically, teens are poor thinking, impulsive, and risk-prone individuals.

There are several biological events that occur during the adolescent years that essentially wreak biological, emotional and intellectual havoc on teenagers. Perhaps the most significant event is the accelerated development of the brain and significant changes “in the frontal lobe of the brain, where impulse control, judgment and long-range planning occur.” Because this part of their brains is still changing, teenagers are not programmed for good executive functioning – that is, the ability to control impulses, think about consequences, and plan for the future. Compounding this brain development issue is the fact that adolescence is that time of life when, biologically, young people are driven to “leave the nest” and venture out and away from adults. Add to this mix the fact that during the teenage years, there is a sudden surge of dopamine, a biological chemical that “intensifies pleasure and makes you want to seek out rewards again and again.” A “dopamine system in overdrive” can cause teenagers to “want immediate rewards,” and because the good decision-making part of their brain is not fully

developed, they have difficulty controlling this drive. Finally, as we all remember from our own adolescence, teenagers experience accelerated hormonal changes. Increased levels of hormones further enhance risk taking and peer-approval seeking behaviors. Recent Supreme Court decisions that overturned the use of the death penalty for children under the age of 18 and life without parole in non-homicide offenses acknowledges the all of these factors – immaturity, less sense of responsibility, greater vulnerability to peer pressure.

These biological and sociological facts about how teenagers differ from adults give rise to the need for developmentally appropriate responses that focus less on punishment and more on interventions that build on their capacity for change. Adolescence is transitory: teenagers mature and outgrow their impulsive and risky behavior and the vast majority of youth who engage in criminal behaviors desist from crime as they mature. This is no less true for teenagers who engage in violent behavior; a violent act committed by a 16 or 17 year old simply is not predictive of that child's behavior as an adult. Indeed, the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) review of "Pathways to Desistance Study" reports that most serious juvenile offenders "mature" out of crime.

The adult criminal justice system, particularly for those youth are incarcerated, is destructive and dangerous. While New York State is paying greater attention to reentry and reintegration, the sentencing goals of retribution and incapacitation continue to play a prominent role in the adult system. Prison sentences remain common, lengthy and harsh. National studies have shown that children who are processed in the adult system are 34% more likely to re-offend than children who are treated in an age-appropriate manner. And a study that compared 15- and 16-year-olds charged with serious crimes in New Jersey's juvenile justice system versus those charged in New York's adult system found that the New York youth were twice as likely to be rearrested for a violent offense, 47% more likely to be rearrested for a property offense, and 26% more likely to be re-incarcerated. Youth in adult facilities are twice as likely to report being beaten by staff, and 50% more likely to be attacked with a weapon than children placed in youth facilities. According to research by the Bureau of Justice Statistics, youth under the age of 18 represented 21 percent of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005, and 13 percent in 2006, even though youth make up less

than one percent of the inmate population. Research also shows that youth are 36 times more likely to commit suicide in an adult facility than in a youth facility.

Moreover, the adult criminal conviction results in de-facto, if not de-jure, perpetual punishment as the social stigma of a criminal conviction and the legal barriers that are erected last a lifetime. Thus, prosecution as an adult in criminal court necessarily entails a more punitive approach with life-long consequences.

II. Rehabilitation Programs

New York State has put considerable effort into developing programs for youth under the age of 16 who enter the juvenile justice system. These include programs specifically targeted at reducing the use of detention through court advocacy, after school programming and community monitoring. The City's Alternative-to-Detention (ATD) initiative, in which CCA participates, has safely reduced the detention of juveniles. In the first three years of implementation, more than 3,000 youth who would have otherwise been held in detention were released to community-based and special probation programs. Seventy two percent (72%) of those young people have been successful and only 11 percent were rearrested during their time in their ATD program. As the research shows that being released during the pendency of a case reduces the likelihood of a custodial sentence, we have no doubt that ATD initiative has contributed to the decline in the numbers of New York City youth who are sent to OCFS or other forms of placement.

Similar programs exist for youth as an alternative-to-placement. Often these programs are augmented by clinical services such as trauma-informed therapy, as well as leadership training, school supports and arts-based activities. There is ample evidence that these kinds of services would be equally applicable to 16 and 17 year old adolescents.

Perhaps a more instructive example that demonstrates that raising the age should apply to all youth and all crimes is CCA's Youth Advocacy Program or YAP. For more than 25 years, CCA's Youth Advocacy Project has demonstrated the ability to work with youth charged as juvenile offenders, i.e., young people charged with offenses defined as serious and violent. The program includes case planning, community supervision, and youth development activities. Depending on youth and family needs, services can include substance abuse intervention,

trauma-focused mental health services and family-based counseling. Leadership development allows our young participants opportunities to develop their pro-social skills, rethink their responsibilities and connections to their families and communities and practice these skills through a myriad of forms of community service including participation on policy making committees.

The Youth Advocacy Program (YAP) works with young people in their homes and their communities and their success calls into question the assumption that a singular incident or behavior should define a teenager still developing their personal identities and abilities. For the 25 year history of the program, the re-arrest rate for participants has never exceeded 20 percent and more typically is about 15 percent. Moreover, the majority of rearrests have been for very minor crimes, such as turnstile jumping, disorderly conduct, graffiti and criminal mischief. Seventy-five percent of youth mandated to YAP successfully complete the program. While these data document outcomes for youth while they are enrolled in YAP, it is important to remember that the program is not residential and youth are at liberty in the community during their participation in the program.

Further, a 2009 evaluation of post-program outcomes on key metrics of re-conviction and graduation from high school/school retention showed that of the 74 youth included in the study, less than five percent had been reconvicted of any crime one-year post program. All youth who had successfully completed YAP were either still in school or graduated high school a year following their exit from the program and 85 percent showed improvements in one or more subject areas. Forty-three percent of program youth who graduated high school had enrolled in college.

CCA experience working with young people who have engaged in very serious criminal conduct provides insight into the services needed to help such individuals get back on track and shows that regardless of the crime charged, many young people can turn their lives around.

The key ingredients that can be adapted for programs that will serve all kids/all crimes include:

- Dispositional planning that begins as early in the process as possible
- Matching services to needs with a focus on ensuring that youth are engaged in education and/or employment.

- Developmentally-appropriate clinical services for those young people who need such interventions, including substance abuse interventions and mental health services. Substance abuse services that have been proven to be effective for young people are those that are community-based, flexible and focus on marijuana use, the common drug of choice for young people. With respect to mental health services, trauma-focused cognitive-behavioral interventions are particularly useful for youth who have experienced community- and family-related violence, including the incarceration of their parents.
- Leadership development and opportunities for community engagement.
- School support: advocacy to ensure appropriate educational placement, case management to ensure school attendance; tutoring to ensure academic achievement.
- Arts-based programming that taps into youth culture and creativity.
- Employment or work experience opportunities that include stipends for apprenticeship or internship experiences.
- Community monitoring to ensure adherence to court-imposed conditions of release such as curfew.
- Restorative justice elements including, as appropriate, victim offender mediation and community service.
- Court/justice system accountability including court advocacy to ensure that courts and prosecutors are provided with information about alternative-to-detention/incarceration plans and regular court reporting on progress and compliance.

The public has a right to expect that juvenile justice programs whether community-based or custodial produce meaningful results – that is, that young people reduce their rate of criminal behavior, and particularly desist from crimes of violence. Programs should collect data that document the efficacy of its model on the following metrics:

- Characteristics of incarcerated youth (including race, ethnicity, and gender) compared to the characteristics of youth enrolled in the program (measurement of net widening).
- Recidivism rates defined by reconviction and type of reconviction.
- Program completion rates.

- School engagement measures: school retention, graduation rates.
- Pre- and post- test measures of changes in attitudes towards violence and pro-social behaviors.
- Employment status.
- Enrollment in higher education.

With respect to the question of resources, it is critical that we not shortchange investment in community-based programs: they must have sufficient resources to ensure low staff-to-participant ratios; quality, well-prepared staff; access to training and program curricula; and a range of holistic services. This requires an equally meaningful investment in programs so that they are able to reach youth who would otherwise be incarcerated. A well-resourced ATI program – even at \$15,000 to \$20,000 a year - pales in comparison to State prison costs of \$60,000 a year or OCFS placement costs of \$260,000 a year.

There are indeed many evidence-based interventions and service models that can be used for young people, including 16-17 year olds. In short, the realities of our adult criminal justice system are at odds with developmental science and the needs of young people – including youth who are 16 and 17 years old.

Conclusion

Considered in combination, the research about adolescent development, the availability of program models that can work with adolescents and the realities of our adult criminal justice system confirms that it is time to raise the age of criminal responsibility in New York State. The adult criminal justice system is ill-suited to deal with teenage crime because it fails to acknowledge their inherent diminished culpability and their immense capacity for positive change. Most teenagers who do bad things still want to be good people who positively contribute to their communities. Responding to teenage crime in a system that focuses on rehabilitation and reintegration holds out the most promise for addressing teenage crime because it recognizes not only teenagers' lessened culpability, but also their immense capacity for positive change. *This is no less true for a teenager who engages in violent behavior.* There is no reason to believe – and no research to support the notion – that a teenager who engages in violent conduct is somehow more culpable or less able to change than other teenagers. The

same justifications that drive prosecuting non-violent teenagers as juveniles also drive prosecuting violent teenagers as juveniles. Indeed, it can be reasonably argued that because of the serious nature of their offenses, it is *even more* important that in cases involving violent teenage conduct, the justice system adopts an approach that is designed to promote change and life-long law-abiding and positive conduct.

The question is to we have the political will to create policies based on science or will we leave in place laws based on fear mongering.