



**Testimony to New York City Council
Committee on Juvenile Justice and Committee on Courts and Legal Services
Hearing on “Oversight – Raising the Age of Criminal Responsibility”**

Submitted by:

Emily NaPier, Director of Justice Strategies

David Condliffe, Executive Director

Center for Community Alternatives

25 Chapel Street, 7th Floor

Brooklyn, NY 11201

(718)858-9658

www.communityalternatives.org

January 19, 2017

“I lost the rest of my teens and all of my twenties to circumstance. I’ve never been exposed to some form of true justice aimed at making me a better citizen. I’ve contemplated suicide so many times on this journey. All I have is hope. Hope that someone somewhere will read this or something like it and endeavor to help us make something out of this life.”

-Justin, writing from Auburn Maximum Security Prison in February 2016, where he has been incarcerated since May 2003 when he was arrested in the Bronx at age 16

Introduction

Thank you for the opportunity to testify before the Council’s Committee on Juvenile Justice and Committee on Courts and Legal Services. My name is David Condliffe, and I am the Executive Director of the Center for Community Alternatives (CCA). CCA is a lead member of the Raise the Age NY campaign. Our involvement in the Raise the Age NY campaign is grounded in our experience advocating for court-involved youth throughout New York State since 1988.

In our Brooklyn office, we run court-mandated alternative-to-detention and alternative-to-incarceration programs for young people prosecuted in Supreme Court as juvenile offenders or youthful offenders and in Family Court as juvenile delinquents. Our Family Court Alternative-to-Placement Program, Client Specific Planning (CSP), is funded by this Council. All of our programs demonstrate that it is possible to hold children accountable for their mistakes – even when those mistakes are serious and may involve violence – in ways that are age-appropriate, nurture their development, and reduce the likelihood of further criminal justice system involvement, thus making our communities safer.

As you all know, New York is one of only two states that automatically prosecutes children as young as 16 as adults. This is a fact that tarnishes the progressive reputation of the state as a whole and the City

of New York. The draconian policy flies in the face of everything we know about adolescent brain development, community safety, recidivism, and cost effectiveness – not to mention our moral obligation as adults to care for and protect children. My comments today will highlight the harm that has been done to children, families, and communities – especially communities of color – and the promise that meaningful policy change holds.

A Cautionary Tale

In the course of CCA's advocacy and organizing around Raise the Age NY, we encountered Justin, a young man incarcerated at Auburn Correctional Facility, a maximum security prison about 30 miles outside of Syracuse. Now almost 32, Justin has been serving a 30 year determinate sentence since 2003 when he was arrested in the Bronx at age 16. Here is some of Justin's story, in his own words, written in February 2016 to support the Raise the Age NY campaign:

"I was born in the Bronx on June 6, 1986. My mother was addicted to crack cocaine and was literally strung out before, during, and after pregnancy. She left me alone in the hospital after giving birth because she didn't want the responsibility of caring for a child. As a result, her stepmother came to the hospital to pick me up and take me "home." Notice I didn't mention my father. That is because, even now, he doesn't exist. I don't know his name, his origin, what he looks like, nothing.

I've only seen my mother three times, the last being when she came to us shortly before my first "adult" arrest at the age of 16. She came to tell us she was about to die from AIDS having contracted HIV from sharing needles to administer heroin. In the next two months, I caught four felonies and have not been home since.

Prior to seeing my mom for the last time, I had just been released from Tryon, a juvenile detention facility. I was sentenced to 12 months. In the beginning, I got into a lot of trouble and was diagnosed with ADHD. I was given a medication called Ritalin, and I stopped getting into trouble and was even released early due to good behavior. I was still taking the medication upon my release but stopped after a couple months. As soon as I stopped (in conjunction with the reappearance of my mom) I caught four back to back felonies.

I feel I was not given consideration of so many factors that amounted to me being in the position of being arrested. My whole life I've been abused and mistreated. I abused drugs at a really young age. I had no guidance and nowhere to turn for it. I lost the rest of my teens and all of my twenties to circumstance.

I've never not been poor. I've never not been stressed. I've never been in love. I've never been exposed to some form of true justice aimed at making me a better citizen. All I've had is more abuse at the hands of bitter inmates and miserable correction officers. I've contemplated suicide so many times on this journey. All I have is hope. Hope that someone somewhere will read this or something like it and endeavor to help us make something out of this life."

The thought of a 16-year-old in a maximum security prison should strike fear into each and every one of us. Youth in adult facilities are twice as likely to report being beaten by staff, and 50 percent more likely to be attacked with a weapon than children placed in juvenile facilities. According to research by the Bureau of Justice Statistics, youth under the age of 18 represented 21 percent of all substantiated victims of sexual violence in jails in 2005, and 13 percent in 2006, even though youth make up less than one percent of the prison population. Research also shows that youth are 36 times more likely to commit suicide in an adult facility than in a youth facility.

Our state prisons and local jails are filled with Justins – filled with people who, as children, we failed in myriad ways. While some of Justin’s behavior can be explained – not excused, but explained – by his childhood trauma, many other teenagers engage in similar behavior simply by virtue of being teenagers. The research on the adolescent brain is clear: the brain is not fully developed until around the age of 25. And the frontal lobe in particular is underdeveloped, leading to risky behavior and a lack of impulse control.

I’m sure each of us can think back on some things we did as teenagers that we regret and would never do now as adults. Those of you who are parents of teenagers now are probably challenged every day to understand their decisions and behavior. Despite your frustrations, you can concede that many of the mistakes they make are just youthful indiscretions that they will outgrow. But not all teenagers are given that benefit of the doubt. Across the state, over 70 percent of 16- and 17-year-olds arrested are Black or Latino. And of those sentenced to incarceration, 80 percent are Black or Latino.

A Better Path Forward

Many people will hear a story like Justin’s and wonder what crime he committed that landed him in prison for 30 years. There is a tendency to assume that a teenager who commits a serious crime, perhaps a violent offense, is somehow more adult than a teenager who takes a car for a joyride or steals a classmate’s phone. But the reality is their brain development is the same even though the consequences of their actions may be drastically different. And research, including a study conducted by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP), shows that the vast majority of teenagers outgrow criminal behavior, and this is no less true for those teenagers who engage in violent offenses. Behavior as a teenager is simply not predictive of behavior as an adult, and I’m sure each of us can think of many examples of this.

Two such examples come from CCA’s Youth Advocacy Project (YAP). YAP serves young people under 16 prosecuted in Supreme Court as juvenile offenders and young people 16 and older who are eligible for youthful offender adjudication. It is a community-based program, meaning it is not residential. The participants continue their lives at home and at school but with supervision, support, advocacy, and counseling from CCA staff. Another key component of YAP is leadership development coupled with opportunities for engagement with and service to the community. The goal is to help young people put their lives in context and think about their place in the world which promotes more thoughtful decision-making and behavior.

Stephen was mandated by the court to participate in YAP when he was 15 years old after being charged with 1st Degree Robbery. His case manager designed a schedule of workshops for him to attend at CCA in addition to his individual meetings with her. While he initially struggled with marijuana use, as his participation in the program continued, he was able to demonstrate that he had given up smoking. He also, on his own initiative, transferred from William E. Grady High School, where he was in the 10th grade, to Academy for Urban Planning High School where he thought we would be more challenged and his educational needs would be better met. His CCA case manager maintained regular contact with the school principal who described Stephen as an “excellent student and a pleasure to work with.”

In addition to the various workshops at CCA, Stephen volunteered for community service at the ArtsConnection and the NYC AIDS Walk, for example. He also worked 10 hours per week at the Henry Street House Settlement through the Summer Youth Employment Program (SYEP) where his supervisor described him as “exceptional.” He impressed the CCA staff with his natural leadership ability and is now working with us as a peer leader. He has had no further involvement with the legal system and has blossomed into a thoughtful and well-rounded young person.

Stephen’s story illustrates the potential in young people that can be unlocked when they are given a chance to learn from their mistakes and make changes in a supportive and nurturing environment. Historically, such opportunities were provided only to teenagers under the age of 16. But in 2015, YAP expanded to include young people ages 16 to 18 who are eligible for youthful offender adjudication.

Kevin was mandated by the court to participate in YAP when, like Stephen, he was charged with 1st Degree Robbery. At 18, Kevin was not in school and not employed. He was closed off emotionally and difficult for his case manager to engage. Building trust took time, but when CCA staff accompanied Kevin to court to advocate for him, he started to open up. His case manager remembers Kevin asking him in court, “Do you think it’s too late to redeem myself?” Luckily, it was not.

After building a relationship with his case manager and participating in CCA activities, Kevin began to see himself differently. He began looking for work independently and was hired at Modell’s. After finding employment, CCA staff saw Kevin transform from being tentative and withdrawn to confident and outgoing. He has been performing so well at work, that he is now being trained to become a department manager. The judge was so impressed with his transformation that Kevin was offered a conditional discharge.

Stephen and Kevin’s success stories are not anomalies. Throughout the nearly 30 year history of YAP, 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 minor crimes, such as turnstile jumping, disorderly conduct, graffiti and criminal mischief. Seventy-five percent of youth mandated to YAP successfully complete the program. Further, a 2009 evaluation of post-program outcomes 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.

Given the opportunity for growth and development rather than punishment and isolation, many more young people across New York State could have similar outcomes. Studies have found that young people in the adult criminal justice system are 34 percent more likely to be rearrested than youth in the juvenile justice system. Further, 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 percent more likely to be rearrested for a property offense, and 26 percent more likely to be re-incarcerated.

Conclusion

As you know, there has been a proposal on the table for more than two years now to raise the age of criminal responsibility from 16 to 18. However, this is just the first step in reforming New York State's system of handling young people who get arrested. Compromises will be made to pass the legislation. It will almost certainly leave behind kids like Justin, Stephen, and Kevin who are charged with serious violent crimes and continue to prosecute them in the adult system. By supporting YAP for more than 25 years, the City Council has recognized that there is a better path forward.

New York City must continue to lead the way for the state. Expanding and replicating programs like YAP serves two purposes. First, it gives children the opportunities they deserve while keeping communities safe. Second, it demonstrates to the rest of the state that a comprehensive policy raising the age of criminal responsibility even as high as 25, when the brain is fully developed, and including all children regardless of the nature of the crime is not only possible, but preferable. The incremental change of raising the age from 16 to 18 for most kids accused of most crimes must happen, and it must happen this year. But it must also be the beginning of raising the age, not the end.