



Testimony of

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**Presented to the
New York State Senate Finance Committee
And
New York State Assembly Committee on Ways and Means**

**Regarding the
New York State Executive Budget Proposals for
Public Protection
State Fiscal Year 2014-2015**

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Good afternoon. My name is Stephanie Gendell and I am the Associate Executive Director for Policy and Government Relations at Citizens' Committee for Children (CCC). CCC is a 70-year-old privately supported, independent, multi-issue child advocacy organization dedicated to ensuring every New York child is healthy, housed, educated and safe.

CCC does not accept or receive public resources, provide direct services, or represent a sector or workforce. For 70 years, CCC has undertaken public policy research, community education and advocacy efforts to draw attention to children and their needs so that we can advance budget, legislative and policy priorities that produce good outcomes for our youngest New Yorkers.

I would like to thank Chairman Farrell and Chairman DeFrancisco and members of the Assembly Ways and Means and Senate Finance Committees for holding today's hearing on the Education-related proposals in the Governor's Executive Budget for State Fiscal Year 2014-2015.

Notably, Governor Cuomo's SFY 2014-2015 Executive Budget is the first budget since SFY 2008 that is not closing a budget deficit. While providing for very limited growth, particularly 2% for state agencies, the budget includes several proposals that if enacted will be very beneficial to the children of New York. For instance, the budget includes a modest \$21 million increase to the Child Care Block Grant, a plan to invest in full-day universal pre-kindergarten (\$100 million in SFY 2014-2015), and a plan to begin expanding after-school programs in the 2015-2016 school year.

While CCC believes in fiscal prudence, it is important to note that this Executive Budget proposes \$2 billion in tax relief, mostly to the wealthiest residents and corporations in New York. At the same time, there are reductions to programs for some of the most vulnerable New Yorkers or the failure to create or expand needed programs. CCC was disappointed that the Executive Budget failed to include funding for critical programs and services for children such as: funding to create a new housing subsidy program for homeless families; more funding for runaway and homeless youth services; funding for sexually exploited youth; and funding for post-adoption services for youth adopted from foster care.

Given the State's positive budget outlook, CCC urges the Legislature to negotiate a budget with the Governor that does more to invest in the children of New York. This includes approving the Judiciary budget request, adding at least 20 more Family Court Judges, restoring funding for child abuse prevention services and giving New York City the authority to raise taxes to support UPK for every 4 year old and after-school programs for every middle school student.

Turning specifically to the Executive Budget proposals related to Public Protection, this testimony focuses on two key aspects of the Executive Budget: 1) the Judiciary Budget request, particularly as it relates to Family Court and 2) the plan to raise the age of criminality in New York.

The Judiciary Budget- as it Relates to Family Court

CCC was extremely pleased to see that the Judiciary Budget request includes funding both to start addressing recent budget cuts and funding for more Family Court Judges. We were extremely disappointed by the Governor's negative commentary on the Judiciary Budget proposal. We strongly urge the Legislature to approve the Judiciary's Budget as proposed. In addition, we also strongly urge the Legislature to not only approve the \$5 million needed to add 20 new Family Court Judgeships statewide this Fiscal Year, but to also pass legislation amending the Family Court to add at least 20 new Judgeships.

The Judiciary Budget request includes a \$63 million increase compared to the SFY 2013-2014 budget, the majority of which (\$38 million) is for courts of original jurisdiction. The Governor noted in his commentary that this increase reflects a 2.7% growth rather than the 2% spending growth he has limited agencies to.

It is critical to note two important things about the modest increase requested:

- 1) The 2% spending growth cap artificially imposed by the Governor is not necessary in a budget year where there is a surplus and a plan to create \$2 billion in tax cuts to mostly wealthy New Yorkers; and
- 2) The \$63 million proposed increase represents less than one twentieth of 1 percent (.046%) of the State's total \$137 billion budget.

We strongly believe that the Judiciary Budget proposal is in fact in line with the fiscally responsible goal of the State Government and that it is unnecessary to create a controversy over such a minimal amount of funding that will in fact be tremendously beneficial to the children and families in New York—and will in fact help the Judiciary “robustly fulfill its constitutional duties.”

New York's most vulnerable children depend on the Family Court for some of the most important decisions about their lives such as where they will live, who will raise them, whether they are at imminent danger of harm, and how and when they will visit their parents and siblings. Similarly, victims of violence depend on the Family Court for critical decisions that came save their lives.

Since 2010, the Judiciary budget has been severely cut by over \$140 million and this Executive Budget proposes to restore some of this lost funding so that the courts can better ensure justice for New Yorkers. In State Fiscal Year 2009-2010, the statewide Family Court budget was \$165.6 million, but the current Family Court budget is \$156.4 million.¹ Thus, in addition to failing to adjust the Family Court budget for typical budget growth, the Family Court budget has been cut \$9.2 million, or 5.6% in the past 2 years.

It is important to note that prior to the state budget cuts to the Family Court that began in 2010, the Family Courts were already “desperately short of judicial resources”² and resources in

¹ Conversation with Office of Court Administration. November 2013.

² Chief Judge S. Judith Kaye, *The State of the Judiciary*, 2007.

general. It feels like an understatement to say that the budget cuts of the past several years have exacerbated this already untenable situation.

The Family Courts in New York have jurisdiction over abuse, neglect, child support, paternity, termination of parental rights, Persons in Need of Supervision (PINS), juvenile delinquency, guardianship, adoption, custody, visitation, and family offense cases.³ The New York State Family Court Act limits the number of judges handling these cases to merely 153 judges statewide,⁴ who in 2012 struggled to manage nearly 700,000 court filings.⁵ For the past 22 years, since 1991, New York City has been statutorily limited to 47 Family Court Judges.⁶ In 2012, there were 241,432 cases filed in the New York City Family Courts.⁷

While the statutory limit on the number of Family Court Judges in New York City has not changed since 1991 when the State Legislature authorized 47 Family Court Judges and there have been few additions for the rest of the state, other key statutes have been amended or added over the past 22 years. Many of these well-intentioned laws have increased the role of the Family Courts without adding resources.⁸

Impact of Budget Cuts on the Family Court

The budget cuts to the Family Court have translated into real, tangible losses to the Family Courts. There has been a hiring freeze in effect since January 2011. As a result, statewide, the non-judicial Family Court staff has been reduced by 147 employees,⁹ approximately 100 of which were in the New York City Family Courts.¹⁰ In New York City, the loss of staff includes 9 in the law series (including 2 referees and 5 support magistrates), 7 court security positions, 53 in the clerk series (including 8 principal court clerks, 24 senior law clerks, 4 associate court clerks and 13 court assistants), 12 court analysts, 12 interpreters, 5 court reporters, 1 computer technical staff and 1 treatment court staff. In addition, New York City now has just 7 Judicial Hearing Officers (JHOs), but previously had 16.¹¹

The budget cuts have necessitated the elimination of overtime in the New York City Family Courts. As a result, since April 2011, the courtrooms in New York City are required to stop hearing cases at 4:30 PM and new petitions must be filed by 3:00 PM in order to be heard that day.¹² This has led to cases where the court was unavailable when the Administration for Children's Services (ACS) sought approval to remove a child from his or her parents. In some of

³ New York State Family Court Act §115 (2013).

⁴ New York State Family Court Act §121 and §131 (2013).

⁵ Statewide, a total of 698,372 cases were filed in the Family Courts. New York State Unified Court System, *Annual Report 2012*, at 25.

⁶ New York State Family Court Act §121 (2013).

⁷ New York State Unified Court System, *Annual Report 2012*, at 25.

⁸ These statutes include the 1999 Adoption and Safe Families Act of 1999 which added annual permanency hearings and expanded judicial oversight of child welfare cases; the 2005 Permanency Law that doubled the number of permanency hearings and the 2008 intimate partner law that expanded access to the family court for unmarried/unrelated victims of violence.

⁹ Id.

¹⁰ E-mail communication with New York City Family Court staff. November 21, 2013.

¹¹ Phone conversation with New York City Family Court Staff. November 19, 2013.

¹² Limited exceptions have been permitted with the permission of the Administrative Judge. In addition, in December 2013, OCA started a child protective pilot in NYC that permits courts to stay open until 5:30 PM on Fridays and days before court holidays in cases where ACS is seeking to remove children from their homes.

these cases, ACS conducted a removal under their emergency power (sometimes in the courthouse where it is very emotional) and then at the hearing the next day, the court determined the removal was unnecessary. Unnecessary removals can cause trauma to children and parents that can never be rectified. The court can forestall unnecessary removals as well as other problems that can arise with removals, such as violations of constitutional rights, violations of the Tenenbaum and Nicholson decisions, and violations of Family Court Act §§1022 and 1027, but the earlier closing time makes the court less available to do so.

In addition, closing the courtrooms at 4:30 PM impacts witnesses who may be unable to finish their testimony and may need to take additional time off from work to testify at the next adjourn date (often months later). This is particularly troublesome for victims in Juvenile Delinquency cases.

Notably, the Office of Court Administration has stated that a portion of their modest budget increase would be used to enable courtrooms to remain open until 5:00 PM rather than close at 4:30 PM. This would be invaluable, particularly for the Family Courts.

Finally, the budget cuts have also led to the elimination of some of the services in the Family Court that had been put in place to better serve children, families and the public. For example, the New York City Child Permanency Mediation Program was eliminated even though a program evaluation found that it was effective at reducing court time/court appearances, reducing the length of stay in foster care, and increasing compliance with service plans.¹³ In addition, New York City is no longer able to offer full- day child care services in all five of its Family Courts, as Queens and Staten Island are only open from 9:00 AM-1:00 PM.

New York City Data Document the Impact of the Budget Cuts on the Family Court

Available data show the impact the reduction in court staff and the long unfulfilled need for more Family Court Judges has had on the ability of the Family Courts to process cases timely. CCC has had the opportunity to review data provided to us by the New York City Family Courts and the Administration for Children's Services.

The data show that even though Family Court filings have decreased since the budget cuts were implemented in 2010, the court has not been able to dispose of cases as timely and thus, has not been able to keep pace with even this reduced level of filings. **As a result, pending caseloads are rising, meaning inventories of cases are building, and this has led to increases in court processing time for cases.**

Looking at the data, we see that fortunately since the budget cuts went into effect, there has been a decline in the annual number of cases filed due to the reduction in Child Protection and Juvenile Delinquency case filings. New York City Family Court filings have declined from 246,300 in 2010 to an estimated 236,100 in 2013.¹⁴

¹³ Center for Policy Research, *New York City Child Permanency Mediation Program Evaluation*, September 2011. <http://nycourts.gov/ip/cwcip/Publications/permMediation.pdf>.

¹⁴ Email communication with New York City Family Court staff. November 22, 2013.

The trend for case dispositions is going in the opposite direction. In 2010, the last year before the reduction in resources, 2,600 more cases were disposed of than filed. But starting in 2011, the numbers turned the other way such that there were 3,000 FEWER dispositions than filings. By 2013, it is estimated that there will be 11,000 fewer dispositions than filings.¹⁵ The full data on filings and dispositions is shown in the chart below:

Comparison of Filings/Dispositions Over Time (in NYC’s Family Courts)¹⁶:

	Filings	Dispositions	Net
2010	246,300	248,900	2,600 more disposed than filed
2011	250,300	247,300	3,000 fewer disposed than filed
2012	241,400	237,500	3,900 fewer disposed than filed
2013 (estimated)	236,100	225,100	11,000 fewer dispositions than filings

As a result of the disposition of cases increasingly being unable to keep up with the number of filings, the number of pending cases in NYC has increased 16% from 2010 to 2013.¹⁷ Not surprisingly, the build-up of cases is leading to longer adjournments and increasing time to reach disposition. In New York City, there are 8,000 more cases on the calendar this year compared to this time last year—despite the reduction in filings.¹⁸

Impact on Children, Families and the Public

For children and families this data translates into longer lengths of stay in foster care, longer periods of uncertainty in all types of child custody cases, longer time for resolution of juvenile delinquency cases, and protracted periods of the stress, instability and trauma implicit in the cases that are heard in Family Court.

For instance, the New York City Family Court has reported that the length of adjournments in Support, Custody/Visitation, and Family Offense cases are growing the most. It is not unusual for a Judge this past September 2013 to have adjourned a case for trial until May 2014.¹⁹ The build-up of cases in Family Court is leading to delays in the resolution of Juvenile Delinquency cases. Despite the decline in juvenile delinquency (JD) filings, Family Court processing time has increased. Statewide, in 2010, 62% of JD cases were processed in 3 months or less and only 12% took longer than 6 months. But in 2012, only 53% of the cases were processed in less than 3 months and 22% took longer than 6 months.²⁰ In New York City, the

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Personal conversation with New York City Family Court staff. November 19, 2013.

²⁰ Juvenile Justice Trends Powerpoint slides dated 9/12/13, provided by Administration for Children’s Services. November 20, 2013.

median Family Court processing time increased 8 days from 2011 to 2012. In the rest of the state, the median increased by 4 days. There are variations by county when comparing the median increase in Family Court case processing time from 2011 to 2012 with some counties experiencing dramatic increases. For example, in Queens County the median increased 8 days and in Erie County the median increased 12 days.

The insufficient Family Court resources are also having a tremendous impact on child welfare cases. Every time the federal government reviews how long New York's children are in foster care compared to other states, New York routinely ranks at the bottom of the list for time to reunification and adoption (Most recently 50 out of 52²¹). The need for timeliness in child welfare cannot be understated as these cases typically involve children who have been removed from their homes and placed in foster care, and who are literally growing up while the Family Court case is pending regarding who will be the permanent family for the child.

These delays translate into real costs for children, families and taxpayers. At an average price of \$36 per day for foster care, every additional month in care translates into \$1,080 of foster care costs. For the parents and children reunifying from foster care, each extra month in foster care translates into 30 days of missed family dinners, good nights, homework help, hugs, and all of the other benefits family stability brings. And for each month a child waits to be adopted from foster care, it translates into another month of caseworker visits and uncertainty regarding the future.

Don't Delay: Approve the Judiciary Budget Add More Family Court Judges Today!

Despite all of the efforts of Family Court staff, Family Court Judges, the Administrative Judges and the attorneys practicing in Family Court, the children and families of New York are suffering as a result of the shortage of resources. There have been countless studies and reports concluding that more Family Court Judges and more Family Court resources are needed. And there have been countless initiatives put into place by well-meaning professionals trying to make the best use of available resources. There is no need for any more studies or initiatives. Children only get to be children once—New York's children deserve better than to grow up in foster care or in limbo waiting for their hearings to be held. The time is NOW to invest in the Family Court system throughout the state.

In New York City, the average judicial caseload for a Family Court Judge is 1,533 cases (dockets) per year. If there are 222 court days per year, hearing cases 6 hours per day (9:30-4:30 with a one hour lunch break), with a caseload of 1,533 cases per year, a Family Court Judge can only spend **52 minutes per case each year.**

²¹ The federal government reviews the 50 states, Washington, DC and Puerto Rico.

Raise the Age

“Our juvenile justice laws are outdated. Under New York State law, 16 and 17 year olds can be tried and charged as adults. Only one other state in the nation does that; it’s the state of North Carolina. It’s not right, it’s not fair – we must raise the age. Let’s form a commission on youth public safety and justice and let’s get it done this year.” Governor Cuomo, State of the State Address, January 9, 2014.

As Governor Cuomo said, 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. CCC strongly supports the Governor’s desire to make New York a leader in the field of juvenile justice—we also do not want to just beat North Carolina, but want to make New York’s laws, policies and programs for youth a model for the rest of the country.

It is important to note that raising the age of criminality is not only the right thing to do for youth but it is supported by brain science research, has been proven to protect public safety by reducing recidivism, and it benefits New York’s economy because young people are not saddled with a criminal record that prevents them from furthering the education, getting a job or securing housing.

CCC looks forward to working with the Governor’s Office, the Legislature, the soon-to-be-formed Commission, and the Raise the Age Campaign to ensure that the recommendations developed by the Commission ensure New York Raise the Age by next year.

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.²²

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.”²³

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.²⁴

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

²² Selected research reviewed includes: National Institute for Mental Health, *The Teen Brain: Still Under Construction*, 2011. <http://www.nimh.nih.gov/health/publications/the-teen-brain-still-under-construction/index.shtml>; Frontline, *Adolescent Brains are Works in Progress*, 2000.

<http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/work/adolescent.html>; Beckman, Mary, *Crime, Culpability and the Adolescent Brain*, 2004.

<http://www.admrec.sonoma.edu/users/p/pollack/edu420/adolescentbraindvpt.pdf>.

²³ Steinberg, Laurence, *Should the Science of Adolescent Brain Development Inform Public Policy?* 2011. <http://www.issues.org/28.3/steinberg.html>.

²⁴ 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.

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.”²⁵

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. 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 youth²⁶. These results replicated a similar New York/New Jersey study that Fagan published in 1996.²⁷

²⁵ Washington Coalition for the Just Treatment of Youth, *A Reexamination of Youth Involvement in the Adult Criminal Justice System in Washington: Implications of New Findings About Juvenile Recidivism and Adolescent Brain Development*, 2009. http://www.columbialegal.org/files/JLWOP_cls.pdf

²⁶ Fagan, J. Kupchick, A., and Liberman, A. *Be careful what you wish for: The comparative impacts of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders*. 2003.

²⁷ Fagan, J. *The Comparative Benefit of Juvenile versus Criminal Court Sanctions on Recidivism and Adolescent Juvenile Offenders*, Law and Policy, 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.”²⁸

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.”²⁹

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.³⁰ Youth in adult prisons face the highest risk of sexual assault³¹ and are 36 times more likely to commit suicide in an adult facility than in a juvenile facility.³² Thus,

²⁸ *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on the Recommendations of the Task Force on Community Preventive Services*, 2007.

<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>

²⁹ Redding, R. *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* OJJFP Juvenile Justice Bulletin. June 2010.

³⁰ Fagen, J., Forst, M., Vivona, T.S., “*Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy*,” *Juvenile and Family Court Journal*, 1989.

³¹ National Juvenile Justice Network, *Keeping Youth Out of Adult Court, Jails and Prisons*. 2013.

<http://www.njjn.org/about-us/keep-youth-out-of-adult-prisons>

³² Campaign for Youth Justice, “*Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*,” November 2007.

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.
- Become a leader in the field by looking at how the justice system can best address public safety and outcomes by also looking at options for youth 18-25 years old.

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.

Conclusion

After so many years of dismal budgets resulting in cuts to programs that have led to negative impacts on children and families, New York State is now poised to be able to pass a budget that will have a positive impact on the well-being of New York's children and families. We urge you to enact a budget that ensures New York's children are healthy, housed, educated and safe.

Thank you for this opportunity to testify.