

## Memorandum in Support

NYSBA #3

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A. 3006, Part-J

By: BUDGET

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Senate Committee: Finance

Assembly Committee: Ways and Means

The New York State Bar Association (NYSBA) has long supported raising the age of criminal responsibility in New York. There is overwhelming national consensus recognizing that children should not, except in extraordinary circumstances, be charged criminally as adults until they attain the age of 18 and the recognition that New York is now one of only two states in which children who are age 16 are criminally prosecuted as adults.

Research has shown that the adolescent brain is not as fully developed as the adult brain; limiting youths' critical decision-making, reasoning, impulse control, ability to resist peer pressure and understanding of risk. The United States Supreme Court in a series of landmark decisions based in part on the adolescent brain research, has determined that the penalties accorded juveniles who commit serious crimes should take into account their youth and ability to be rehabilitated.

Children in New York age 16 years and over could benefit greatly from the different treatment of young offenders upon which the Family Court is premised - as responsible but less blameworthy by reason of their age and to provide rehabilitation and age-appropriate services - and from the programs and services available only for children found to be delinquent in Family Court and not convicted in a criminal court.

Governor Cuomo in 2014 created the Commission on Youth, Public Safety, and Justice. The Commission was to “develop a concrete plan to raise the age of juvenile jurisdiction in the most effective and prudent manner possible, and to make other specific recommendations as to how New York State’s juvenile and criminal justice systems could better serve youth, improve outcomes, and protect communities.”<sup>i</sup>

The Commission released its Report in January. Beyond the just and humane basis for raising the age, the recommendations for juvenile justice reform in New York State detail key developments that make reform necessary and possible as well as demonstrate the social, emotional, health and economic benefits of this reform. The Report cites “experience in states like Connecticut and Illinois that have raised the age of criminal responsibility recently has demonstrated that recidivism and juvenile crime rates can be lowered through evidence-based interventions that steer non-violent young offenders out

of the justice system and into family mental health or other needed services.”<sup>ii</sup> The Commission also relied on the “extensive research on the significant negative impacts on adolescents of incarceration in adult jails and prisons has brought a sense of urgency for reform. Higher suicide rates, increased recidivism, and many other measures all suggest that both offenders and their communities are harmed by placing adolescents into adult jails and prisons.”<sup>iii</sup> Additionally, the Report documents the unacceptable over-representation of our young men of color in the criminal justice system.

The Governor has included this long overdue reform in his proposed executive Budget. NYSBA through its Committee on Children and the Law enthusiastically supports the urges the passage of legislation to raise the age of criminal responsibility.

Key components include:

- Raise the age of juvenile jurisdiction to 18, consistent with other states.
- Raise the lower age of juvenile jurisdiction to twelve, except for homicide offenses, which should be raised to ten.
- Mandate diversion attempts for low-risk (per risk assessment) misdemeanor cases except where probation finds no substantial likelihood that youth will benefit from diversion in the time remaining for adjustment or if time for diversion has expired and the youth has not benefited from diversion services.
- Expand categories of cases eligible for adjustment to allow for adjustment in designated felony cases and juvenile offender cases removed to Family Court, with a requirement for court approval for all juvenile offender cases and if the youth is accused of causing physical injury in a designated felony case. Revise the criteria for determining suitability for adjustment to include risk level and the extent of physical injury to the victim.
- Expand Family Court jurisdiction to include youth ages 16 and 17 charged with non-violent felonies, misdemeanors, or harassment or disorderly conduct violations.
- Create “Youth Parts” with specially trained judges who would preside over cases of minors that would remain under criminal court jurisdiction.
- Provide juvenile probation case planning and services for cases pending in criminal court.
- Prohibit confinement of any minor in an adult jail or prison and, to the extent funding and operational considerations allow, permit youth to remain in youth settings until age 21.

Raising the age of criminal responsibility is a fundamental step to shift from a punitive approach that has detrimental consequences for our children, families and communities to a restorative approach that ensures public safety while holding young offenders accountable for their actions and helping them develop competencies that will avoid future offenses. We strongly urge the Legislature to pass legislation to raise the age of criminal responsibility to finally create a fair and just juvenile justice system consistent with scientific research and national standards.

Based on the foregoing, the New York State Bar Association **SUPPORTS** legislation to raise the age of criminal responsibility, which is among our legislative priorities for 2015.

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<sup>1</sup> New York Executive Order No. 131: Establishing Commission on Youth, Public Safety, and Justice. (April 9, 2014). Accessed 2/26/15 at <https://www.governor.ny.gov/news/no-131-establishing-commission-youth-public-safety-and-justice>.

<sup>2</sup> Final Report of the Governor's Commission on Youth, Public Safety, and Justice: Recommendations for Juvenile Justice Reform in New York State. (January 19, 2015). Accessed 2/26/15 at [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice\\_0.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice_0.pdf)

<sup>3</sup> Id.