



March 24, 2015

Honorable Velmanette Montgomery
903 Legislative Office Building
Albany, NY 12247

Dear Senator Montgomery:

Brooklyn Defender Services (“BDS”) recognizes the many areas in which New York State must re-consider its approach to prosecuting 16- and 17-year-olds. We support the Senate Democrats for your leadership in pushing for thoughtful and deliberate reform and your concerted efforts to make New York a leader in the application of real criminal justice for adolescents. We applaud the Governor, the Assembly and the advocacy community for identifying many of the key areas in the criminal and juvenile justice systems where change would be welcome. It is important to understand that defining a problem and identifying solutions that appear to have worked in the aggregate in other jurisdictions are the mere beginnings of the sort of comprehensive change that true Raise the Age reform entails.

There is extreme urgency in addressing the devastating effects of continuing to house 16- and 17-year-olds in adult jails and prisons. Rape, extensive stays in solitary confinement, lack of educational and other opportunities for young people, along with documented brutality are destroying the rehabilitative effect of incarceratory sentences for the age group most receptive to rehabilitation: teenagers. We must immediately focus our energies on this very aspect of the Raise the Age proposals and move the rest of the broad, sweeping, and entirely unvetted legislative package from the budget process. The proposed reforms, which span 300 pages and over 100 statutes, are complicated and potentially counterproductive. This process has been criticized by many, including the NYS District Attorneys Association and the NYS Association of Criminal Defense Lawyers, two organizations whose members work in the courts every day and know how these changes will impact the operations and outcomes for court-involved youth.

BDS provides innovative, client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy to 45,000 low income residents in Kings County each year. Our annual adolescent client base consists of 2,000 16- and 17-year-olds, and another 8,000 clients up to age 21. Our Brooklyn Adolescent Representation Team (BART) provides youth-focused criminal defense representation as well as specialized social workers and youth advocates, immigration attorneys, education attorneys, and youth-specific administrative and investigative staff. As is true for many other defender offices, we provide age-appropriate resources for 16- and 17-year-olds in-house. We have developed excellent programs in conjunction with Brooklyn courts and the Kings County District Attorney’s Office,

and we have supported innovative programming in the community to prevent young people from getting arrested in the first instance. These programs can continue to assist thousands of young people while New York State carefully considers the best way to adapt its legal system to do an even better job for these youth and the communities in which they live.

This breath of experience and expertise guides us to make the following recommendations:

1. **Pass a bill that would move all juveniles out of adult jails and prisons as soon as possible and fund the creation of youth facilities and other appropriate programming** - a critical first step in bringing about real, lasting, comprehensive juvenile justice reform. As has been well-documented, 16- and 17-year-olds who are incarcerated in adult facilities are harmed in greater numbers, commit suicide in greater numbers, and are more likely to recidivate than youth in juvenile facilities. Immediate movement from these facilities is essential. Consideration of alternatives to placement must be part of this movement.

All juvenile facilities to which the young people are moved must contain these reforms:

- a. Fully funded educational and vocational services for all youth
- b. A lower correction officer ratio and a higher social worker ratio
- c. Mandates to adopt the Missouri model for disciplining young people
- d. Prohibition of solitary confinement for all adolescents
- e. Specialized treatment for emerging mental health issues

2. **Prepare a thorough racial impact analysis on every other provision of this criminal justice legislation to prevent disparate treatment for young people of color.**

- a. Making 16- and 17-year-olds subject to arrest and prosecution for violations under the Family Court Act may exacerbate existing racial disparities in the criminal justice system. For example, disorderly conduct, not currently prosecutable in Family Court, would become so for 16- and 17-year-olds under both the Governor's and Assembly one-house proposals. Since these arrests mostly begin with street encounters initiated by police, our experience shows that young teens of color will be most affected by the choice to include these provisions. Brain science research also shows that the behaviors that may appear to be disorderly in an adult are actually typical for adolescents and form the basis to raising the age reforms in the first place. The potential ramifications of a Family Court case arising from an arrest for disorderly conduct are potentially much harsher than they currently are in adult court. Young people and their families under the jurisdiction of the Family Court are subject to far more government intrusion than they are for identical cases in adult courts. As we also know from our experience in Family Court, seemingly low level offenses comprise the basis for a very large percentage of placement in juvenile facilities because of a number of complex factors.
- b. There is also potential for racial disparity in the choice to increase the number and types of crimes that originate and can be prosecuted in adult court. Unarmed

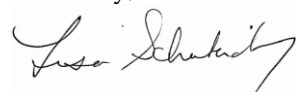
Robbery in the Second Degree is prosecutable in criminal court in the governor's bill. It is also one of the crimes most frequently and disparately charged against Black adolescents in New York City. This same event may look like a teen bullying event in an affluent community and a violent robbery in an underserved neighborhood. Regardless of which way it is perceived, the adolescents who are accused of unarmed robbery are still subject to limitations in impulse control and resisting peer pressure due to their level of brain development.

3. **Put statutory safeguards in place recognizing that not all youth currently in adult facilities need to be incarcerated and may be eligible for alternatives to placement and detention.** The budget should fund additional resources to avoid unnecessary detention. These resources should include:
 - a. Drug programs targeted to 16- and 17-year-olds
 - b. Residential programs not limited to drug abuse treatment that could provide services for youth who are mentally ill, facing arson or other charges that make them ineligible for other treatment programs
 - c. PINS respite centers and encouraging parents to file PINS petition rather than filing criminal charges
 - d. Alternatives to traditional sentences for young people, such as the art-based Young New Yorkers program (www.youngnewyorkers.org), a cost-effective three-hour program focused on decision-making, after which the young person's case is dismissed. The re-offense rate for these teens is 50% lower than for a control group
 - e. Police diversion

4. **Additional reforms that improve outcomes for court-involved young people can and should be proposed, thoughtfully analyzed, and sensibly negotiated for passage at a later time.**

Brooklyn Defender Services strongly believes that all of the relevant stakeholders can come together to create truly innovative juvenile justice reform based on science and best practices from other states. Such legislation should seek to limit racial disparities in the criminal justice system, rather than exacerbate existing inequalities. For this reason, and all of the reasons listed in the New York State Association of Criminal Defense Lawyers Raise the Age Position Paper, we urge legislators to delay action on all the substantive issues concerning Raise the Age except the movement of 16- and 17-year-olds from adult prisons and the creation of non-incarceratory placements targeted to the needs of this age group, which should happen immediately.

Sincerely,



Lisa Schreibersdorf
Executive Director