

Statement
of

Judge Michael A. Corriero (Ret.)
Executive Director
The New York Center for Juvenile Justice

Before

The New York State Permanent Sentencing Commission

June 10, 2011

Thank you for giving the New York Center for Juvenile Justice and my fellow presenters the opportunity to address the Sentencing Commission concerning the sentencing of minors whose cases are heard in the adult criminal courts of New York.

My name is Michael Corriero. I am the Founder and Executive Director of the New York Center for Juvenile Justice where, in collaboration with families, communities and diverse stakeholders in the juvenile justice system, we are promoting a model of justice for minors that treats children as children, that responds to their misconduct with strategies designed to improve their chances of becoming productive members of society. I was a judge for 28 years in the Criminal Courts of the State of New York. During the last 16 years of my tenure, I presided over Manhattan's Youth Part, a court set aside within the adult court system to deal exclusively with the cases of juvenile offenders who were 13, 14, and 15-year-olds, and their co-defendants regardless of age, charged with the most serious crimes. As a result I had the responsibility of adjudicating the cases of thousands of teenagers.

New York's juvenile/criminal justice system is at a pivotal crossroads; some refer to it as a watershed moment, others a crisis. I prefer to view our current posture as offering a rare and valuable opportunity. Efforts have already begun to improve the manner in which children are treated in the Juvenile/ Family Courts, and when they are in the custody of New York's State's Office of Children and Family Services.

Governor Andrew Cuomo has initiated a plan that calls for, among other reforms: the imprisonment of only those juveniles who pose a risk to public safety; improvement of the conditions of confinement; and greater reliance on community-based programming. New York City's Juvenile Justice Plan includes

proposals to authorize the City of New York to operate juvenile justice facilities for placement of adjudicated juvenile delinquents and juvenile offenders from New York City, and to allocate resources to fund local placement options, including these facilities, as well as community-based programs. The Governor's and the City's plans should be viewed as important components in an overarching strategy to transform juvenile justice in New York.

New York is one of only two states—North Carolina is the other—that draws the line for adulthood for criminal justice purposes as low as sixteen years of age. Further, children as young as 13 years of age may also be prosecuted as adults, if accused of certain offenses defined by New York's Juvenile Offender Law. As a result, these children fall outside the jurisdiction of the Family/Juvenile Court. They are statutorily deemed criminally responsible for their behavior as adults, their cases are adjudicated in adult criminal courts and they are subject to the same procedures and potential criminalization as adults. Moreover, they are, in essence, statutorily precluded from participating in an array of social service programming available solely pursuant to New York's Family Court Act.

New York's procedure is incongruous with that of the overwhelming majority of states, as well as with current research demonstrating marked cognitive differences between adults and adolescents.

The Juvenile Offender Law

New York's Juvenile Offender Law requires the automatic prosecution of children as young as 13 in the adult criminal justice system, if they are charged with certain designated offenses.ⁱ In such "JO cases," these children face mandatory imprisonment and criminalization unless afforded "youthful offender" treatment by a sentencing judge. Prosecution as an adult for a 13-, 14-, or 15-year old charged pursuant to the Juvenile Offender Law is mandated regardless of the

youth's individuality, potential, or extent of involvement in the underlying designated charge.

The Statutory Age of Criminal Responsibility

The issues are exacerbated when a case involves 16- and 17- year olds, as a result of New York's low threshold age of criminal responsibility, which is set at 16. "Today in 48 states, a child who is 16 years of age will be adjudicated in a juvenile or family court. Only two states, New York and North Carolina adhere to the original early twentieth century age limitation."ⁱⁱ

In 2001 our own legislature recognized the developmental needs of adolescents by raising the age of PINS (Person In Need of Supervision) jurisdiction in the Family Court.ⁱⁱⁱ In New York, a child under 18 remains a child in all other legal contexts and relationships, unless he is accused of committing a crime.

The intractable contours of the Juvenile Offender Law and the inordinately low age of criminal responsibility—combined—significantly affect the way we treat, judge and sentence youth under the age of 18. The confluence of these two laws shape the lens through which we view youth under 18— minors in all other respects—who come into contact with the adult criminal justice system.

By delimiting the sentences of juvenile offenders to institutional confinement in secure facilities, or probation through the granting of YO status, the legislature sharply deviated from the flexible array of dispositional alternatives that traditionally characterized juvenile dispositions. Further, subjecting 16- and 17- year olds to the adult penal scheme dramatically compromises the capacity of adult court judges to respond to the developmental needs and issues of adolescent offenders.

Criminalization

Unlike juvenile delinquents, 13-, 14-, 15-, 16- and 17-year olds prosecuted in an adult criminal court can incur a criminal record carrying a lifetime stigma. An adolescent conviction is more pernicious than an adult conviction because it can permanently disconnect youth before they ever have an opportunity to embark upon a productive adult life. “Punishing a young offender in ways that significantly diminish later life chances compromises the essential core of America’s Youth Protection Policies”.^{iv}

As professor Andrew Schepard of Hofstra University Law School observed, A Juvenile conviction will require an offender “to disclose information about his record when applying to college, the conviction will show up on background checks when he is applying for jobs, a license to practice a profession, and public housing.”^v A criminal record has a profound effect on an individual’s ability to obtain gainful employment, education, and public benefits. As a result, such a conviction may well prove an insurmountable barrier to economic viability, rendering successful reintegration into society for a convicted minor an overwhelmingly onerous task.

In his treatise *American Youth Violence*, Professor Frank Zimring stated:

“The principal objective of policy in the adjudication and sentencing of minors is to avoid damaging the young person’s development into an adulthood of full potential and free choice; thus, the label for this type of policy is ‘room to reform.’”^{vi}

The crux of this approach is to afford children an opportunity to learn from their mistakes, when to do so would not pose an unjustifiable risk to public safety, so

that as these children mature, they will not be precluded from becoming contributing members of our society.

Our current sentencing structure for minors does not adequately accommodate these interests; it all too often results in the unnecessary criminalization of a significant number of youth who are being denied a rational opportunity to redeem themselves.

Lack of Developmentally Appropriate Programming

Adult court judges are not statutorily authorized to sentence adolescent offenders (“juvenile offenders,” and 16- and 17-year-olds) to placement in a private voluntary agency or residential treatment center, even though one of those agencies might better serve the youth’s needs and further protect society. Moreover, because of this lack of statutory authority, programs that offer these services and that are willing to accept these children, have no mechanism of financial reimbursement from the court. Programs amenable to providing these services are required to secure their own funding in order to treat these adolescent offenders. For example, Criminal and Supreme Court judges cannot, under the present statutory scheme, sentence convicted adolescent offenders, as an authorized sentence, to placement in a program or residential setting that is specifically designed to provide developmentally sensitive services such as: mentoring, socialization skills, family counseling, mental health intervention, vocational and educational counseling. Judges who determine that such rehabilitative services are warranted in a given adolescent’s case are left to their own devices and improvisational skills, to craft a disposition that integrates participation in a program, pending a statutorily authorized sentence.

The Family Court Act, in contrast, authorizes these interventions because the legislature recognized that Family Court judges require flexibility to address the multifaceted needs of court--involved youth. Unfortunately, the legislature did not tender these options to adult Criminal or Supreme Court judges in either the Juvenile Offender sentencing scheme, or the adult scheme applicable to 16- and 17- year olds. It is paradoxical that, in many instances, those children who could most benefit from such remedial social services are the very individuals who, by virtue of their age, fall outside the parameters of the statutes which establish, fund and implement those programs.

Impact on New York's Teenagers

In 2009, according to data provided by the [New York State Division of Criminal Justice Services \(DCJS\)](#), 46,129 children under eighteen years of age were prosecuted as adults in New York State's criminal justice system; 27,757 of these children were prosecuted in New York City's adult criminal courts.

The societal and economic ramifications of prosecuting tens of thousands of children as adults must be scrutinized as part of any comprehensive Sentencing Reform Agenda. If we are to adeptly confront juvenile crime in New York, we must productively intervene at the earliest opportunity in the lives of children who violate the law. This, in turn, requires a statewide shift in policy and legal practice from judging children as adults, to judging children as children.

Altering the policy of prosecution of minors is more than merely a matter of principle; it's about refining perceptions and, ultimately, values regarding the lives of New York's children. Increasing the age of criminal responsibility and opening the Family Court's therapeutic services to all children under the age of 18 will essentially transform the culture of prosecution of minors from an intrinsically

punitive approach to a rehabilitative-based model. This revision will have a complementary impact on the collateral consequences of juvenile misconduct by reducing unnecessary criminalization of many youth currently subject to adult court jurisdiction.

This approach is consistent with current United States Supreme Court juvenile justice jurisprudence as reflected in a series of cases exemplified by the decision of the Court in *Roper v. Simmons*. *Roper* held that executing juveniles below 18 years of age was unconstitutional.^{vii} Justice Anthony Kennedy, speaking for a plurality of the Court, reasoned, “From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”^{viii}

The Department of Justice, the Federal Center for Disease Control and Prevention, and The Brookings Institution, have all issued reports confirming that trying minors as adults in adult courts does not work.^{ix} In fact, these studies establish that young people tried in adult court are much more likely to reoffend.

Perhaps the most compelling evidence of the deficiencies of New York’s current approach to the sentencing of minors is demonstrated by a research project sponsored by the MacArthur Foundation. This project compared the cases of a sample of youth adjudicated in New York courts with a significantly matched sample of youth, accused of similar offenses, in New Jersey. In New Jersey, the age of criminal responsibility is 18. The researchers found that youth prosecuted in the adult courts of New York were 85 percent more likely to be re-arrested for violent crimes than those prosecuted in the New Jersey Juvenile Courts, and 44 percent more likely to be re-arrested for felony property crimes.^x

The New York Center for Juvenile Justice believes that New York must replace the current unyielding statutory structure, and embrace a robust evidence-based juvenile justice system that judges children as children; a system that recognizes

the developmental differences of children, responds to their misconduct with developmentally sensitive programming, and provides them with room to reform.

In sum, there cannot be true systemic reform of New York's sentencing structure as it applies to adolescent offenders unless New York sets a fair, rational, and just age of criminal responsibility. Extending the age of Family/Juvenile Court jurisdiction will result in fewer adolescents prosecuted as adults and automatically criminalized for mistakes made at an exceedingly young age.

At bottom, common sense should prevail.

We now have the opportunity to take an historic step to ensure that New York children are finally judged as children. It will not be easy, but if this is accomplished, I pledge to you that you will be supported by an insightful coalition of parents, community leaders, mental health specialists, students, and citizens who understand that treating children as adults in the criminal justice system is profoundly wasteful, socially destructive, and, for these young individuals, antithetical to their pursuit of the American dream.

- ⁱ N.Y. Crim. Proc. Law § 1.20(42) (McKinney 2010).
- ⁱⁱ Merril Sobie, *Pity the Child: The Age of Delinquency in New York*, 30 Pace L. Rev. 1061 (2010).
- ⁱⁱⁱ N.Y. Fam. Ct. Act § 712 (McKinney 2010).
- ^{iv} Franklin E. Zimring, *Penal Proportionality and the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility*, in Thomas Grisso and Robert G. Schwartz, eds., *Youth on Trial* (Chicago: University of Chicago Press 2000).
- ^v Andrew Schepard, *Collateral Consequences For Young People Convicted as Adults*, N.Y.L.J., May 9, 2011.
- ^{vi} Franklin E. Zimring, *American Youth Violence* (Oxford University Press, 1998), p. 142.
- ^{vii} *Roper v. Simmons*, 543 U.S. 551 (2005).
- ^{viii} *Id.* at 570.
- ^{ix} See e.g., Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Juv. Just. Bull. (Office of Juvenile Justice & Delinquency Prevention, Wash., D.C.), June 2010, available at <http://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>; *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, Morbidity & Mortality Wkly. Rep. (Ctrs. for Disease Control & Prevention, Atlanta, Ga.), Nov. 30, 2007, available at <http://www.cdc.gov/mmwr/PDF/rr/rr5609.pdf>; Laurence Steinberg and Ron Haskins, *Keeping Adolescents Out of Prison*, The Future of Children: Brookings Institution Policy Brief (Fall 2008), available at http://www.brookings.edu/papers/2008/fall_juvenile_justice_haskins.aspx.
- ^x John D. and Catherine T. Macarthur Found, *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Adult Criminal Court* (Jeffrey Fagan & Franklin E. Zimring eds., 2006), available at <http://www.adjj.org/downloads/8710Changing%20Borders.pdf>.