

RAISE THE AGE TO LOWER THE HARM

Adapted from testimony before the New York City Council on 1/19/2017

There are only two states that criminally prosecute sixteen year olds as if they were adults: North Carolina and, sadly, New York. It's long past time to raise the age of criminal responsibility to at least eighteen; more than forty states have already done just that. In fact, we believe New York should raise the age to nineteen, the current demarcation for youthful offender status. There is precedent for this change.

In 1922, this state created a Children's Court and defined juvenile delinquency proceedings as those proceedings involving individuals under sixteen who violated the penal law. There was an exception, youth could be charged as adults with crimes for which death or life imprisonment could be imposed. Throughout the sixties and seventies our notions of juvenile justice seemed to morph. In the late-seventies, we saw criminal responsibility applied to younger and younger defendants, even extending to those as young as thirteen. New York defined these youths, aged thirteen to fifteen, as Juvenile Offenders and authorized their prosecution in adult court if they were charged with certain serious offenses. We had moved away from the original concept of young people needing a different type of criminal justice intervention, one that did not seek to stigmatize but rather to correct. All driven by the harmful notion that there existed irredeemable youthful super-predators from whom we need protection.

Today we have a dual method of dealing with youth who commit crimes. We have the Family Court model where youth are not criminalized. This model seeks, even if imperfectly, to address the needs, conditions, and predicates for a young person's involvement in the criminal justice system. It is not a model where all youths automatically remain at liberty but it is one where incarceration is not the first default. In criminal court youth are charged as adults but there exists potential mitigation in the form of Youthful Offender status -- where certain youth are protected from criminal records and lengthy sentences - and Juvenile Offender Status where sentences are reduced. The problem with this two-tiered system is that it leads to unjust anomalies. A youth, by virtue of his or her age and the nature of his or her crime, can receive vastly different treatment depending on whether he is in Family or Criminal Court, eligible for youthful offender status, or defined as a juvenile offender.

Young people's brains are still developing in crucial ways even as they enter their mid-twenties. Science clearly demonstrates that youth are more impulsive, lack mature decision-making capacities, and can be easily swayed by peer pressure. Unsurprisingly, these deficits can contribute to what is often temporary criminality. Black and brown youth are overrepresented in the criminal justice system, as are poor people. These factors can't help but argue for a raising of the age of criminal responsibility.

Having been involved in the criminal justice system as a defense attorney for more than twenty-five years, I've seen our practice change dramatically. We find that more and more of our clients suffer from mental illness, mental disability, addictions, and post-traumatic stress disorder. While the community at large often equates incarceration with solving the problem of public safety, incarceration is not even conceivably a long-term solution. What brings a youth to the criminal justice system is an act, an event, a circumstance. But what keeps them from returning, what changes the trajectory?

What's clear is that incarceration doesn't. On the contrary, research shows that a youth who is jailed is more likely to later reoffend. Of paramount importance is what services are available to the young offender. Can they get much-needed medication? Will they have a place to live? Are they getting proper instruction or tested for potential cognitive impairments? What stressors are present and what role can the youth's family play in overcoming them? These considerations require a different kind of mindset than is normally found in adult criminal court where imprisonment is too often seen as the safe answer. Our jails and prisons are not safe for young people and incarceration's effects redound negatively long after the young person's inevitable release.

Even in the absence of incarceration, the stigma of a criminal conviction sustained while still a minor can later adversely affect critical aspects of that person's entire adult life. Criminal convictions essentially authorize societal discrimination. A person with a criminal record can be denied employment opportunities and banned from public housing. He can be denied the financial aid necessary to pursue higher education. He may be stripped of the right to vote before he's even of age to exercise it. A just criminal justice system concerns itself not only with retribution and public safety but also with reintegration of the offender into the community.

New York must stop treating children as adult offenders. Children who criminally offend must find themselves in Family Court where the salient expertise and services reside or else we need to dramatically expand the reach and resources of our existing Youth Courts. We need a system that does not criminalize first and primarily but rather one that seeks to aid vulnerable young people in their adjustment back to law-abiding productivity. Only such a system can truly address the best interests of society while adequately protecting the human rights of our still-developing citizens.

Stephanie Conners
Special Litigation Unit