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February 10, 2012

To: Hon. Jonathan Lippman

From: Hon. Barry Kamins BK
Hon. Cyrus Vance CV

Re: Raising the Age of Criminal Responsibility

On September 29, 2011, you proposed that New York raise the age of criminal responsibility for 16 and 17-year-olds charged with "less serious, non-violent crimes." At that time, you charged this Commission to address the complex issues involved in making such a change.

The members of the Commission and staff have worked diligently since then to address the change you proposed. Attached hereto is a report of our deliberations and recommendations to achieve it.

We appreciate the opportunity to work on this important issue and hope that our proposal meets with your approval.

Introduction

On September 29, 2011, in a speech before the Citizens Crime Commission, Your Honor said that, "the adult criminal justice system is not designed to address the special problems and needs of 16 and 17-year-olds." You charged this Commission to: "produce the blueprint for a more modern and effective juvenile justice system in New York." In that speech, you called for raising the age of criminal responsibility for 16 and 17-year-olds charged with non-serious, non-violent offenses. You noted that changing the age of criminal responsibility could not be done, "on a whim. There are many legitimate and complex issues that have to be worked through."

Since that time, this Commission, with the assistance of the Hon. Michael Corriero (ret.), the Hon. Monica Drinane, OCA staff, and others, has been working diligently to fulfill your vision. We have met with numerous stakeholders and interested parties including Family Court Judges; consulted with experts and representatives of various levels of government within New York State and representatives of other states that have made such a change; and we have attempted to model the change we are proposing in order to estimate the impact of the recommendation we make today.

Among those we consulted are:

- The New York Center for Juvenile Justice
- The Permanent Judicial Commission on Justice for Children
- Citizens Committee for Children
- Children's Aid Society
- Children's Defense Fund
- Schuyler Center for Analysis and Advocacy
- County Attorneys Association of New York State
- Center for Community Alternatives
- National Association of Criminal Defense Lawyers NYS Chapter
- Neighborhood Defender Services
- New York State Family Court Judges Association
- New York City Family Court Judges Association

- New York State District Attorneys Association
- New York State Association of Counties
- New York State Sheriffs Association
- New York State Chiefs of Police
- New York State Council of Probation Administrators
- City of New York Criminal Justice Coordinator
- Legal Aid Society
- State of Connecticut Juvenile Jurisdiction Policy and Operations Coordinating Council
- Professor Jeffrey Fagan, Columbia University School of Law

Deliberations

As a result of those consultations and conversations, we concluded that the best definition of the term "less serious nonviolent crime" that you employed in your September 29th address, is the State's existing delineation between Violent Felony Offenses ("VFOs") as defined in Penal Law § 70.02 and other offenses, including non-violent felonies, misdemeanors and violations. While we extensively debated other formulations, we ultimately concluded that the State Legislature has already made the distinction and that it would be confusing to superimpose yet another set of distinctions upon our criminal justice system. We recognize the Legislature may wish to further refine this definition, but for purposes of moving forward we propose that the change to procedure apply to 16 and 17-year-olds arrested for the "less serious nonviolent" felonies that are **not** VFOs, all misdemeanors and violations of the Vehicle and Traffic Law. [1]

We also took seriously your charge that we weigh the "financial costs and benefits to the State" and, "the legal, public safety, service delivery and demographic implications," as well as the impacts upon "the courts, probation, corrections, prosecutors, defense providers, and state agencies dealing with families and children."

[1] Violations are **not** included within the jurisdiction of the Family Court and some stated a belief that with respect to this age group, excluding violations from the matters that could be considered in the courts would be a mistake. In the end, the Commission decided that only Vehicle and Traffic Law violations should be subject to the jurisdiction of the courts pursuant to this new procedure and that, as in Family Court, there be no jurisdiction over behavior that would constitute other violations.

We met with representatives of the State of Connecticut, which recently made such a change to the age of criminal responsibility. Among the things we learned is that Connecticut is a "unitary" form of state government where the role of the counties in providing services including pre-trial detention, juvenile delinquency services and social and probation services is very different than in New York. Also, we learned that the juvenile justice system in Connecticut, even after their reform, may yet be stricter procedurally than current New York practice and the proposal we make below.[2]

Unlike Connecticut, in New York there is a real and meaningful division of responsibility for the provision of services that would be implicated by a transfer of over 35,000 arrests annually to the Family Court. Such a change would lead to a substantial cost shift from the State to County Government and the City of New York. In New York, costs for pre dispositional confinement of juveniles are borne by the City of New York and counties, as are the costs of probation services, and social services following disposition. Also, if confinement is ordered post disposition, those very high costs are partially borne by New York City and the counties. For that reason, a strict comparison to what was accomplished in Connecticut is inapposite. We seek to avoid a substantial cost shift from current practice to the detriment of the City of New York and County Governments. Having carefully considered these parameters, we propose a local/state planning process and a two year timetable to implement these changes.

In addition, we heard consistently, including from Family Court judges, concerns about the capacity of Family Courts to absorb a hefty additional workload. Moreover, representatives from the Legal Defense Bar and the District Attorneys and County Attorneys associations expressed concern about meeting some of the requirements of the Family Court Act, as well as the fact that transfer to Family Court would deprive these defendants of their right to a jury trial, and subject them to pre-disposition detention standards that do not include bail.

You should be gratified to learn that New York's bench and bar already is responsive to the differences between these adolescent defendants and other adult defendants and treats them differently. Indeed, data from DCJS indicates that of the almost 35,000 misdemeanor arrests of 16 and 17-year-olds in 2010, there were only 1,260 convictions that were **not** youthful offender adjudications ("YOs"); and from the more than 11,000 felony arrests of

[2] In Connecticut, the general rule is this: For juveniles 14 and over: A and B felonies are mandatory transfers to adult court. For all other felonies, the state's attorney has the discretion to transfer any of them to adult court. In practice, many of the mandatory transfer A and B felonies end up being transferred back to juvenile court, and very few other felonies are actually transferred. But, to be clear, the prosecutor has essentially unbridled discretion to do so if he/she chooses.

16 and 17-year-olds in 2010, only 1,088 felony convictions did not result in youthful offender adjudications.[3]

Finally, and because there are equally relevant developmental differences between 13-15 year-olds and 16-17 year-olds as there are differences between the latter and adults, we propose to you a uniquely New York way in which the Court system, "can intervene meaningfully in the lives of troubled young people—before minor problems escalate into major problems—and without subjecting them to a criminal record." This uniquely New York approach builds upon the ground breaking work that has already begun in the pilot adolescent intervention parts created following your September 29th speech and that will lead the way in steering these adolescent offenders to specially trained judges; judges who understand the legal and psychosocial issues affecting troubled adolescents and who have access to a broad range of services and interventions designed specifically to address the risks and needs of these young people. We propose to meld the best and most appropriate elements of the Family Court and the adult courts and give judges new powers and procedures to intelligently adjudicate and respond to matters involving youth ages 16 and 17.

The Commission Recommends

I. **Introduction:**

a. Establishment of "youth parts" created in New York's superior courts - - Supreme Court in New York City and County Court outside of New York City - - to handle **eligible** cases of 16 and 17-year-olds under a new set of procedures containing elements of provisions from both the Family Court Act and the Criminal Procedure Law. The youth courts would have access to services specifically tailored to the unique needs of this population, including any appropriate social and educational services. In addition, judges and staff working in youth parts would receive special training in adolescent development and in effective juvenile justice interventions to adjudicate cases involving youth who are 16 and 17 years old.

b. "**Eligible Cases**" subject to the new procedures below are defined as non-violent felony (Penal Law § 70.02) and misdemeanor arrests and violations of the Vehicle and Traffic Law. (Note: Consistent with the Family Court Act which does not have jurisdiction over behavior that would constitute Penal Law violations, there would be no jurisdiction to hear matters of 16-17 year-

[3] From a total of more than 46,000 arrests of 16 and 17–year-olds in 2010, only 943 prison sentences resulted of which 314 were YOs and only 1,488 jail sentences were imposed of which 853 were YOs.

olds accused of committing acts currently defined as violations under the Penal Law.)

c. For youth ages 16 and 17 charged with misdemeanors and non-violent felonies, the new procedures, including provisions allowing for the opportunity for adjustment by probation and family court type dispositions, would apply.

d. Cases involving "**juvenile offenders**" ages 13, 14 and 15 would be handled in the same manner they are currently handled in adult court (using provisions of the Criminal Procedure Law), but could be heard in the youth parts. Cases of 16 and 17 year-olds charged with **violent felony offenses** could be handled in youth parts as they currently are (using provisions of the Criminal Procedure Law) in the adult court.

II. **New procedures and case flow for Misdemeanors and non VFO felonies:**

a. Police procedure: Provisions, including parental notification and holding youth separately from adults, would apply.

i. DAT's could be issued to 16 and 17-year-olds provided that:
1. Police have made reasonable efforts to contact the parent.
2. Notice of the arrest and DAT is promptly made to parents by best means available.
3. 16 and 17-year-olds could be released from detention pursuant to provisions of the Family Court Act.
4. Appearance on DAT would be governed by Family Court Act provisions (2 week maximum return date).

b. Adjustment, Detention and Arraignment:

i. Where police do **not** seek to detain a youth, they would issue an appearance ticket directing the youth to probation (as they currently do with Family Court Appearance Tickets) for the possibility of adjustment, which, if granted, would divert the matter before any filing in court.

1. Cases that are **not** diverted through adjustment would be commenced in court by the District Attorney's filing of an

accusatory instrument pursuant to current Criminal Procedure Law provisions.

ii. Youth would be arraigned in a youth part, **unless such part is not in session**, in which case, arraignment would take place in a local criminal court (including Town and Village Courts outside NYC) and the matter would be adjourned to a youth part for the next day such court is in session. At arraignment, judges would issue securing orders, including the option of fixing bail, pursuant to Criminal Procedure Law provisions (Articles 510, 520, 530).

iii. If police detain a youth, the youth would be taken immediately for arraignment in a youth part (or in local court if the youth part is closed and adjourned to the next day the youth part is in session). Any youth who are detained would be confined separately from adults (persons 18 and over) and would receive educational and social services appropriate to their needs. Probation would interview those youth in detention for consideration of adjustment. In addition, Criminal Procedure Law provisions regarding release (§§ 170.70 and 180.80) would apply.

c. Intermediate Procedural Provisions: As cases (that are not adjusted) proceed in the youth parts, Criminal Procedure Law provisions, including those governing the right to indictment by grand jury, pretrial motions and suppression motions, speedy trial and the right to trial by jury, would apply. Misdemeanor trials could be heard by a judge sitting in the Criminal Court.

d. Disposition and Sentencing: Trials or plea agreements that result in adjudications of guilt would result in or be replaced with a juvenile delinquency fact finding and the dispositional provisions of the Family Court Act would be applied. For dispositions that involve confinement, youth would be confined separately from persons age 18 and over.

III. **Juvenile Offenders**:

a. Cases involving youth ages 13, 14 and 15 who are "juvenile offenders" pursuant to Penal Law § 10.00(18) could be handled in youth parts in the same manner (using all the same Criminal Procedure Law provisions) as they are currently in adult court.

IV. **Vehicle and Traffic Law violations:**

a. Violations under the Vehicle and Traffic Law involving 16 and 17-year-olds could be handled in youth courts or other courts. These cases would be handled using youth part procedures. They could, therefore, be eligible for adjustment.

V. **VFOs:**

a. Cases of 16 and 17-year-olds charged with violent felony offenses defined under Penal Law § 70.02 would continue to be handled under current Criminal Procedure Law provisions, whether in youth parts or other courts.

b. A process to "remove" these VFO cases (similar to removal currently provided for in the Criminal Procedure Law) and perhaps render them eligible for youth part procedures would be included. (The Commission tabled a determination on what that procedure would be.)

VI. **Place of Confinement:**

a. Statute would state as follows:

i. **Eligible** 16 and 17-year-olds (non-VFO felons and misdemeanants) confined pretrial would be held by the County in a facility compliant with OCFS rules.
ii. Localities would be given one year to propose a plan subject to approval by OCFS.
iii. For pretrial detention
    1. Regional detention initiatives would be allowed.
    2. Use of Risk Assessment Instruments would be required.
    3. Use of non-secure detention would be allowed pursuant to the local plan.
    4. Localities would be required to implement the plan one year following the due date of the plan.
iv. For post-disposition confinement
    1. Local plan may address realignment.

VII. **Release:**

a. Would be governed by Family Court Act provisions.

VIII. **Judicial Training**:

a. Judges and staff in youth parts would be specially trained in adolescent development and in effective adolescent justice interventions.

IX. **Services**:

a. Youth parts would have access to services currently available to youth under the age of 16 in Family Court and other age appropriate services, including social and educational services.

X. **Effective Date**:

a. Two years following enactment.

Conclusion

The Commission believes that this proposal meets the goal you set in September to change for the better the manner in which New York handles 16 and 17–year-olds in the justice system and is responsive to the unique needs of these youth, the structure of New York's government and the interests of public safety. We are mindful that despite best efforts, there will be costs to government to implement this proposal. There will, likewise be offsets of those costs. The Commission believes, however, that over the long term, improved life chances for these adolescents will improve their ability to participate in our society, obtain education and employment and become productive, law abiding and tax-paying adults. In short, the Commission believes that treating 16 and 17-year-olds differently than adult offenders will, in the long run, inure to the benefit of these individuals, and ultimately to society and the State.

If you agree and accept this recommendation, we will provide draft statutory language within 21 days.