



550 Tenth Avenue, New York, NY 10018 • 212-613-0300

March 19, 2021

MEMO OF SUPPORT

Ending the Arrest and Prosecution of Children Under 12 as Juvenile Delinquents S4051 (Bailey) / A4982 (Hevesi)

The pepper-spraying and handcuffing of a 9-year-old Black girl suffering a mental health crisis by police in Rochester forces us to confront the criminalization of children. Research has consistently shown that Black children are more likely to be viewed by police as older, “less innocent,” and more threatening by police.¹ Now is the time to invest in community supports for children and families and end the arrest and prosecution of children under 12. This is why Covenant House New York (CHNY) supports the S4051 / A4982 and urges the legislature to pass, and the governor to sign, this important legislation as soon as possible.

CHNY is the nation’s largest, non-profit adolescent care agency serving homeless, runaway and trafficked youth. During this past year, CHNY served over 1,600 young people in our residential programs, as well as through our drop-in center and outreach efforts. On a nightly basis, we provide shelter to approximately 300 young people, including, LGBTQ youth and pregnant women and mothers with their children as well as survivors of human trafficking/commercial sexual exploitation. Our youth are primarily people of color and over a

¹ “The Essence of Innocence: Consequences of Dehumanizing Black Children,” *Journal of Personality and Social Psychology*, published online Feb. 24, 2014; Phillip Atiba Goff, PhD, and Matthew Christian Jackson, PhD; University of California, Los Angeles; Brooke Allison, PhD, and Lewis Di Leone, PhD, National Center for Post-Traumatic Stress Disorder, Boston; Carmen Marie Culotta, PhD, Pennsylvania State University; and Natalie Ann DiTomasso, JD, University of Pennsylvania; “Girlhood Interrupted: The Erasure of Black Girls’ Childhood,” Center on Poverty and Inequality at Georgetown Law School, Rebecca Epstein, Jamilia J. Blake, Thalia Gonzalez (2017).



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third of our youth have spent time in the foster care system. We provide young people with food, shelter, clothing, medical care, mental health and substance abuse services, legal services, high school equivalency classes and other educational and job-training programs, as well as a safe house and specialized services for survivors of human trafficking/commercial sexual exploitation. All of these services help young people overcome the trauma of abuse, homelessness and exploitation and move toward stability. Many of our young people have had previous negative interactions with the juvenile justice system and members of law enforcement and were understandably upset by seeing footage of pepper spray being used against a child.

Current Law

New York sets its minimum age for arrest and prosecution of children as juvenile delinquents at age 7, the second lowest set by statute in the U.S.² Children as young as 10 can be detained in secure facilities.³ Absent legislative reform, children under the age of 12 may be subject to police interrogation, handcuffs and footcuffs, pre-trial detention with older youth, probation, and mandatory confinement in an institution.

Across New York, police arrested over 800 elementary school aged children aged 12 and younger during 2018.⁴ Among these, more than 100 children arrested were first, second or third graders (aged 7 to 9).⁵ Of the 150 petitions filed against young children age 7 to 11 in 2018, nearly 60% were for property offenses or fighting.⁶

² Only North Carolina sets a lower age by statute, at age 6. See *Minimum Age for Delinquency Adjudication—Multi-Jurisdictional Survey*, NATIONAL JUVENILE DEFENDER CENTER, <https://njdc.info/practice-policy-resources/state-profiles/multi-jurisdiction-data/minimum-age-for-delinquency-adjudication-multi-jurisdiction-survey/> (last visited July 13, 2020). 28 states do not set a minimum age for delinquency adjudication by statute. *Id.*

³ N.Y. Family Ct. Act §§ 301.2(1), 304.1 (Consol. 2020).

⁴ Data tables produced by DCJS.

⁵ *Id.*

⁶ See *id.* (58%) During 2018, 60 of the 150 petitions filed were for property offenses (theft and destruction), and 27 were for charges of assault.



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The **American Academy of Pediatrics** and the **Society for Adolescent Health and Medicine** recommend raising the minimum age of delinquency responsibility to at least 12 years old.⁷ Criminalizing young children runs contrary to scientific research that recognizes children are inherently less culpable than adults. Prosecuting children as young as 7 raises significant concerns about a young child’s capacity to meaningfully participate in the judicial process.⁸ Moreover, juvenile probation, detention and placement are not developmentally appropriate responses for very young children. They are at best wasteful and ineffective and at worst harmful and counterproductive. A child’s contact with the juvenile justice system raises the chances, by more than 50%, that he or she will someday return to the criminal justice system.⁹ Moreover, studies show that the more youth are involved with the juvenile justice system—from arrest to detention to transfer to an adult court—the higher their chances are of early death, specifically a violent one. Juvenile detention also increases the risk of leaving school and barriers to employment.¹⁰ Our current approach to young children’s behavior is both cruel and ineffective. Outcomes for children are improved and the community is safer when we wrap the correct services and supports around a child and family, and only when necessary.

⁷ American Academy of Pediatrics, *Advocacy and Collaborative HealthCare for Justice-Involved Youth* (2020), available at: <https://pediatrics.aappublications.org/content/pediatrics/146/1/e20201755.full.pdf>; Society for Adolescent Health and Medicine, *International Youth Justice Systems: Promoting Youth Development and Alternative Approaches: A Position Paper of the Society for Adolescent Health and Medicine* (2016) available at: [https://www.jahonline.org/article/S1054-139X\(16\)30242-7/fulltext](https://www.jahonline.org/article/S1054-139X(16)30242-7/fulltext).

⁸ GOVERNOR’S COMMISSION ON YOUTH, PUBLIC SAFETY, AND JUSTICE, FINAL REPORT OF THE GOVERNOR’S COMMISSION ON YOUTH, PUBLIC SAFETY AND JUSTICE: RECOMMENDATIONS FOR JUVENILE JUSTICE REFORM IN NEW YORK STATE 37 (2015); see also Thomas Grisso, et al., *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants*, 27 LAW AND HUMAN BEHAVIOR n.4 333–63 (2003).

⁹ *The Juvenile Justice and Delinquency Prevention Act: Preserving Potential, Protecting Communities: Hearing Before the S. Comm. on the Judiciary*, 113 Cong. 4 (2014) (statement of Robert L. Listenbee, Administrator, Office of Juvenile Justice and Delinquency Prevention) (citing NATIONAL CENTER FOR JUVENILE JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 234).

¹⁰ Natalia Orendain, *Should Children As Young As 12 Get Locked Up For Committing Crime?*, HUFFINGTON POST (Jan. 11, 2019), https://www.huffpost.com/entry/juvenile-detention-age-california_b_5c2fb68be4b09dafda3bc283?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&gucce_referrer_sig=AQAAAHgiqw_Kblk9Rf6sAw8eqkGF8v_HTLDPDLaO3F4shc02S4MtOc3DyqcBY3glB_qinFwKF8TOT_a2ov4TUynhLrLh4ktxPP3MxLFCEh9YcZHdPxpzl9aU2D6qzaQdXzvx07eZU9bRXf26KfSsrRGUA3eieW9-fbt3A3FyM-mOL4Frm.



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The Proposed Legislation

Rather than rely on arrests and prosecutions of elementary school aged children, New York can promote true community safety by ensuring that its system of local, community-based services is available to this relatively small number of children and families in need. This bill would:

- raise the lower age of delinquency jurisdiction from age 7 to 12, ending the arrest and prosecution of children under 12 as delinquents, and bringing New York in line with states like Massachusetts and California¹¹;
- end the use of secure detention for children under 13;
- create an alternative response pathway for assessment and services for youth through local departments of social services (LDSSs), including existing child welfare preventive services;
- provide training for police and LDSS staff to ensure appropriate response and that children and families can access services, when necessary;
- ensure records associated with services for youth are confidential and cannot be disclosed to anyone who is not involved in their treatment;
- fund the alternative response through existing streams for child welfare preventive services, family support services programs, and supervision and treatment services for juveniles; and,
- require the Office of Children and Family Services to produce an annual report documenting how programs are ensuring the safety and well-being of children, and addressing adverse impacts on minority communities in light of the well-documented racial disparities in the youth justice and child welfare systems.

The bill will bring New York's response to children in line with current research on child development, help close the school-to-prison pipeline, address racial disparities in our youth

¹¹ Mass. Gen. Laws ch. 119, § 54 (LexisNexis 2020), *as amended by* 2017 Mass. SB 2371 §§ 72–74, 76–79 (2018); Cal. WELF. & INST. Code §§ 601–02 (LexisNexis 2020), *as amended by* 2017 Cal SB 439 (2018).



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justice system, and save limited state and local resources by diverting young children from delinquency probation and prosecution, and into more effective, age-appropriate community-based services.

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