

Joint Legislative Hearing on Public Protection
2019-2020 Executive Budget Proposal

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youthrepresent

JUSTICE FROM COURTROOM TO COMMUNITY

Testimony of Youth Represent

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Youth Represent is a holistic legal defense and advocacy organization. Our mission is to ensure that young people affected by the criminal justice system are afforded every opportunity to reclaim lives of dignity, self-fulfillment, and engagement in their communities. We provide criminal and civil reentry legal representation to young people age 24 and under who are involved in the criminal justice system or who are experiencing legal problems because of past involvement in the criminal justice system. We also engage in policy advocacy and train the next generation of leaders through our Youth Speakers Institute. Our interdisciplinary approach allows us to understand the full extent of our clients' legal and practical challenges so we can effectively represent them as they make the journey from courtroom to community.

We thank Chair Krueger, Chair Weinstein and members of the Finance and Ways and Means Committees and the Legislature for the opportunity to submit testimony on the Public Protection proposals in the Governor's Executive Budget for State Fiscal Year 2019-2020.

About Youth Represent

Even after nearly a decade of steady declines in incarceration, there were over 135,000 arrests of young people 24 and under in New York in 2017. Over 65,000 of those arrests led to convictions and over 20,000 ended with sentences to jail or prison.¹ At each of these points in the criminal justice system, youth of color are vastly over-represented. And at each point, lasting consequences can arise. Employers, landlords, and colleges all run criminal background checks. A conviction—even from one's teenage years—can be used as a reason to deny a job, a home, or an education. Justice involvement can damage critical family ties and interfere with a young parent's custody or visitation rights. Even minor criminal matters—such as summonses for quality-of-life crimes or bench warrants for missed court dates—can harmfully impact a young person's future.

Together, these results of the criminalization of young people of color serve as potentially lifelong impediments to the cornerstones of stability we all need. New York City boasts scores of community-based organizations dedicated to helping lift youth out of poverty, but even their best efforts can be thwarted by an arrest or conviction. Youth Represent fills this gap by providing critical reentry legal services for young people, and we do so in their own communities.

Our clients are overwhelmingly youth of color, and all are low-income. Forty-eight percent have no high school diploma (or equivalent), and more than 90% are unemployed when we meet them. Thirty-four percent live in subsidized housing; 67% come from single-parent homes. Fifty-four percent are Black and 32% are Latino. The average age is 21. Twenty-eight percent live in public housing developments and another 7% live in housing subsidized by Section 8.

Youth Represent's flagship community-lawyering model brings high-quality direct legal representation, Know Your Rights trainings, and leadership opportunities to court-involved youth across all five boroughs of New York City. Historically, we delivered this model in workforce development programs and alternative to incarceration programs. Recently, we have expanded it to NYC public schools, Rikers Island, mental and medical health clinics, immigration advocacy groups, and organizations providing emergency housing and crisis services to LGBTQ youth. Wherever we deliver services, our model includes four essential elements:

¹ Arrest and disposition data for youth 16-24 provided by the Division of Criminal Justice Services; on file with author.

1. Direct Representation

We represent young people in employment discrimination cases, eviction proceedings, school suspension hearings, and on Family Court matters such as custody and visitation rights and child support. We obtain their RAP sheets and explain what they have to disclose to potential employers and which cases have been dismissed and sealed. We also provide limited criminal representation, mainly in Summons Court and in clearing up warrants.

2. Know Your Rights Workshops

Most of our clients meet us through tailored Know Your Rights workshops, which we developed with a focus on youth development and education. These interactive classes educate young people on their legal rights and responsibilities in different situations including police stops, conducting a job search with a criminal history, or facing eviction from NYCHA housing.

3. Staff Development

Through training and ongoing technical assistance, we increase the capacity of frontline staff working with justice-involved youth by equipping them with knowledge and tools to help participants facing a criminal or civil legal matter, including how to identify legal issues and make referrals before they become crises.

4. Policy Advocacy and Youth Leadership Development

Youth Represent has been at the forefront of policy campaigns to protect young New Yorkers, including Raise the Age and the Right to Know Act, which was recently passed in New York City. We engage young people as advocates and train them in public speaking and the legislative process so they have a seat at the table, both when we determine our organizational policy priorities and in discussions with lawmakers.

Legislative Priorities for 2019-2020 Budget

As lead members of the Raise the Age – NY campaign, we applauded the passage of landmark Raise the Age legislation in 2017 and are working with partner organizations to monitor its implementation. We strongly support the allocation of \$200 million for Raise the Age expenses in the FY2020 Executive Budget proposal, which includes \$100 million in new funds in anticipation of the law going into effect for 17 year olds. We also appreciate the broad commitment to criminal justice reform and reentry reflected in the Article VII proposals of the budget.

New York now has the opportunity to lead the nation by creating the strongest and most robust protections for both older youth and the youngest children in the justice system, and to ensure that those prosecuted at age 16 and 17 before Raise the Age went into effect can benefit from the policy. Though they were not included in the Executive Budget Proposal, we urge the legislature to ensure that these priorities, outlined below, are included in the final 2019-2010 New York State budget.

1. Second Chances for Emerging Adults

New York's youthful offender law provides critical protections for youth under age 19 who are tried as adults. The law allows cases to be sealed to the public so that they won't show up on background checks when the young person applies for jobs, college, or apartments. It also allows for shorter sentences, including sentences in the community rather than jail or prison. In 2017, over 3,300 convictions in New York were converted into youthful offender adjudications.

At Youth Represent, we see first-hand how youthful offender status changes the course of young people's lives. There is no better illustration than the radically different experiences of two of our clients, Shawn P. and Gerardo S. Each was arrested for a violent felony offense at the age of 17. Neither had any prior convictions or adjudications, but the similarities end there. Shawn received a youthful offender adjudication and was sentenced to probation. A few months later, Shawn became the sole care-taker of his infant child. Since then, he has been living with his daughter in a subsidized apartment in a New York City Housing Authority (NYCHA) development in Manhattan. He has worked as a youth counselor and security guard and is earning over \$400 per week. Had he been convicted of a felony, Shawn could have been barred from living in NYCHA for five years.² He would have been barred by statute from obtaining a security guard license³ and he would have faced significant hurdles applying for other jobs. Shawn's youthful offender adjudication has meant stability and opportunity not only for him but for his young daughter.

By contrast, Gerardo pled guilty to a felony conviction and did not receive a youthful offender adjudication. He served three years in prison and was released on Parole. Compared to others with similar experiences, Gerardo is doing well: he earned his GED in prison and is living in stable housing with family. In the year since he has been home, he has not been arrested again. However, Gerardo has applied for and been denied by dozens of jobs and currently works part-time, earning approximately \$200 per week, far below the poverty line.

Gerardo's experience is consistent with studies that have found that a criminal record depresses not only employability but also wages. A recent report summarizes research findings from studies of criminal record expungement in Michigan and California: In Michigan, preliminary findings showed that people whose records were expunged saw a 6.5% increase in employment and a 22% increase in wages within a year; in California participants who had their records expunged reported an average increase in yearly income of \$6,190.⁴

Based on research in neuroscience and psychology, we know that human brain development continues into the mid-20s. Young adults are more impulsive, more susceptible to peer pressure, and less able to delay gratification than adults. Yet at age 19, youth not only are tried as adults, but cannot access youthful offender status, meaning they face adult sentences and lifelong criminal records. New York should raise the bar by strengthening existing protections under the youthful offender law and creating a new "Young Adult Status" covering youth up to age 25.

There is a growing recognition among professionals and policy-makers that the years from 18 to 25 comprise a critical developmental period of "emerging adulthood," marked by the transition from childhood dependency on parents and guardians to full adult independence. During this time, young people display many adult characteristics, but cognitive and emotional skills are still developing.⁵

² See New York City Housing Authority Tenant Selection and Assignment Plan, September 23, 2016: "Persons convicted of Class D or E felonies. The family shall be ineligible until five years after the offending person has completed the sentence, not including probation and parole, with no further convictions or pending charges." Available: <https://www1.nyc.gov/assets/nycha/downloads/pdf/TSAPlan.pdf>.

³ NY General Business Law §89-h.

⁴ Gullen, Jamie, "Why Clear a Record? The Life-Changing Impact of Expungement," September 2018. Available: <https://clsphila.org/sites/default/files/issues/Life-Changing%20Impact%20of%20Expungements%20Report%20-%20final.pdf>.

⁵ Perker, Selen Siringil and Chester, Lael, "Emerging Adults: A distinct population that calls for an age-appropriate approach by the justice system." Harvard Kennedy School Malcolm Weiner Center for Public Policy, June 2017.

For this reason, the American Association of Pediatrics recently released new guidelines on the upper age limit for pediatric care, noting that “21 years is an arbitrary demarcation line for adolescence because there is increasing evidence that brain development has not reliably reached adult levels of functioning until well into the third decade of life.”⁶ Here in New York, the 2018 enacted budget included legislation allowing local governments to raise the maximum age for receiving runaway and homeless youth services to 24. And last year four states (Connecticut, Massachusetts, Vermont, and Illinois) considered legislation that would raise the age of juvenile justice jurisdiction beyond the 18th birthday, with Vermont enacting legislation that will raise the upper age limit of juvenile justice jurisdiction to the 20th birthday by 2022.⁷

Youthful offender status is among the most powerful tools we have to promote reentry and second chances for youth in the justice system, but thousands of young people each year are not able to access it because of eligibility bars or because they were charged with an offense after their 18th birthday. We urge the Governor and the Legislature to remedy this in the budget process through legislation that includes the following key elements:

- Allow youth over age 18 but under age 25 at the time of an offense to benefit from a newly created “young adult status.” Sentencing for young adult status should be consistent with section 60.02 of the Penal Law, giving discretion to judges to impose non-incarceratory sentences and setting the maximum term of imprisonment at four years. Cases that are granted young adult status must be sealed from the public.
- Make youthful offender and young adult status presumptive for the first felony offense, unless the prosecutor can demonstrate that it is not in the interest of justice.
- Allow judges discretion to grant youthful offender and young adult status when it will facilitate successful reentry, even if the young person already received youthful offender status for a felony.
- When cases are eligible for youthful offender and young adult status, allow judges to choose to keep felonies as well as misdemeanors private while the case is open. Some cases stay open for years, allowing information to leak onto the internet where it can be impossible to remove even once a case is sealed.
- Remove the surcharge of \$95 - \$300 for youthful offender cases and young adult status cases and allow judges to waive all fees and surcharges for youth up to age 25.

Available:

https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/MA_Emerging_Adult_Justice_Issue_Brief_0.pdf.

⁶ Hardin, A.P., Hackell, J.M., AAP Committee On Practice And Ambulatory Medicine. (2017). “Age Limit of Pediatrics.” *Pediatrics*. 2017; 140(3):e20172151.

⁷ Perker, Selen Siringil, Chester, Lael, and Schiraldi, Vincent, “Emerging Adult Justice in Illinois: Towards an Age-Appropriate Approach,” Columbia Justice Lab, January 2019. Available:

<https://justicelab.columbia.edu/sites/default/files/content/EAJ%20in%20Illinois%20Report%20Final.pdf>.

- Clarify that the court must grant youthful offender or young adult status to replace an eligible youth's first misdemeanor conviction, regardless of whether the misdemeanor conviction was in a local criminal court.

2. Protections for Adolescents Prosecuted Before Raise the Age

Sixteen and seventeen year olds prosecuted before Raise the Age was enacted—even after the law was passed but before it went into effect—must wait 10 years before they can even apply to have their criminal records sealed pursuant to Criminal Procedure Law section 160.59. Some are not eligible for sealing at all and face lifelong criminal records. Because Raise the Age reflects a recognition that youth are fundamentally different from adults and should in most cases be spared the lifetime stigma of a criminal record, **we urge the Governor and the Legislature to include amendments to CPL § 160.59 in the adopted budget that ensure that people prosecuted as adolescents before Raise the Age took effect can benefit from the law. These include:**

- Allowing any individual who was convicted of one or more eligible offense(s) at age 16 or 17 before Raise the Age went into effect to apply immediately for sealing pursuant to CPL § 160.59, bypassing the statutory waiting period and the eligibility limit of two convictions.
- Adding Class A drug felonies to the list of eligible offenses for CPL § 160.59 and allowing for a waiver of the violent felony offense exclusion when the offense was committed before the applicant turned 19.
- Allowing applications to be filed under seal or in a way that otherwise protects the identity of the applicant in public court documents.

3. Ending Prosecution of Children Under 12

Today, children as young as 7 years old can be arrested and processed as juvenile delinquents in Family Court in New York State. Very young children who are coming into contact with the police should be provided intensive services within the context of their family and community through the social services system. Juvenile probation, detention and placement are not developmentally appropriate responses for very young children. We stand with our colleagues in the Raise the Age-NY campaign in underscoring that **the State must increase the minimum age of juvenile delinquency jurisdiction to 12.**

Support for Reentry Provisions in the Executive Budget Proposal

Youth Represent strongly supports many of the provisions in Section II of the Executive Budget Proposal, the “Comprehensive Reentry Package to Improve Outcomes for Formerly Incarcerated Individuals.” In particular, the limits on disclosure of mugshots (Subpart K), the limits on disclosure of arrest charges for which there is no corresponding conviction (Subpart N), and the prohibition on discrimination in employment and other areas against individuals whose criminal cases have been adjourned in contemplation of dismissal (Subpart O) are common-sense proposals that would facilitate successful reentry by easing barriers to employment and housing for tens of thousands of young people. In addition to our support for these measures, we strongly recommend strengthening Subpart O by:

- Adding language to sections 170.55 and 17.56 of the criminal procedure law explicitly clarifying that upon granting the order of adjournment the action shall be considered terminated in favor of the accused for the purpose of employment and licensing;
- Specifying that decision-makers in the domains of employment, housing, higher education, and volunteer work are explicitly prohibited from asking applicants about Juvenile Delinquent dispositions, a protection that is not currently included in the Family Court Act's confidentiality provisions;
- Adding language to prohibit colleges and universities from asking applicants about or making admissions decisions based on any arrest that did not lead to a criminal conviction; and
- Explicitly authorizing applicants to respond negatively to unlawful inquiries.

Together, these provisions would help ensure that the long-term, destabilizing consequences of arrests that have not resulted in a conviction will no longer deny New Yorkers of any age the opportunity to earn a fair wage and enjoy the dignity of a day's work.

Youth Represent also strongly supports removing criminal record bars to occupational licenses. For the sake of clarity and simplicity, we support the full repeal of statutory bars to licenses whenever possible, including for security guard licenses. Article 23-A of the Correction Law serves as an effective guide for employers and licensing agencies making individualized decisions about whether there is a direct relationship between any prior criminal offenses(s) and the duties of the employment or license sought and whether the issuance of a license or grant of employment would involve unreasonable risk to an individual or the public.

We support comprehensive parole reform, including due process protections for parole applicants, transparency in decision-making, and an emphasis on facilitating safe reentry rather than on the nature of a crime that may have been committed many years in the past. This is particularly important for people who were convicted as teenagers or emerging adults and have spent decades in prison.

We support cannabis regulation and taxation and wish to underscore the importance of expungement of criminal records for people previously convicted of marijuana offenses, substantial reinvestment of tax revenues in communities of color disproportionately targeted for marijuana enforcement, and the principle that youth under 21 should not be criminally liable for marijuana possession or use.

Finally, we support many of the criminal justice reforms included in the Executive Budget Proposal, including elimination of the death penalty, the Domestic Violence Survivors Justice Act, pre-trial justice reform, asset forfeiture reform, and the reduction of misdemeanor sentences to 364 days ("One Day for All New Yorkers"). However, as a provider of reentry legal services focused on the civil consequences of arrest and conviction, we lack the expertise to comment on the specific legislative proposals in these areas.

Conclusion

New York has made important strides in our youth justice system over the past decade, notably in the overall reduction in youth arrests and incarceration, the adoption of the Close to Home model, and the enactment of Raise the Age. But there is more work to do, especially to ensure that we are providing effective and developmentally appropriate treatment to both very young children and older youth. We urge the Governor and the Legislature to adopt a budget that strengthens and expands

protections for older youth in the justice system, allows people prosecuted at age 16 or 17 before Raise the Age to benefit from sealing, and ends prosecution of children under 12. We strongly support the inclusion of comprehensive reentry legislation in the budget as well. We are eager to work with you and your colleagues to implement a youth justice agenda for this session. Thank you for considering our testimony. If you have any questions or you would like further information, please contact Kate Rubin, Director of Policy, at (646) 759-8079 or krubin@youthrepresent.org.