



**TESTIMONY OF JULIA L. DAVIS, ESQ.
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BEFORE THE ASSEMBLY STANDING COMMITTEE ON CODES AND THE
ASSEMBLY STANDING COMMITTEE ON CORRECTION**

Tuesday, December 10, 2019 10:30 A.M.
Assembly Hearing Room 1923
250 Broadway, New York, New York

Good morning. Thank you Chair Lentol, Chair Weprin, and Committee members for the opportunity to testify before you today. My name is Julia Davis and I am the Director of Youth Justice and Child Welfare at the Children's Defense Fund-New York (CDF-NY).

Our Leave No Child Behind mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. We pay particular attention to the needs of poor children, children of color and those with disabilities. Our unique approach to improving conditions for youth combines research, public education, policy development, community organizing and advocacy activities, making us an innovative leader for New York's youth, particularly in the areas of health, education, early childhood, child welfare and youth justice.

Who do we mean when we talk about "youth" at CDF-NY?

Our programmatic work with adolescents in New York City, and our state-wide policy advocacy is driven by science, and the emerging consensus that young people do not reach full maturity and independence on their 18th birthday. We recognize and support policies in health care, education, child welfare and criminal justice reform that increasingly expand protections for youth into the mid-twenties because research in neurobiology, developmental psychology and sociology show that this age group – *emerging adults* – is different.¹ This is why a children's organization like ours is before you today to talk about the need to expand youthful offender protections up to age 25 in New York.

¹ See generally, Arnett, J. *Emerging Adulthood, A Theory of Development From the Late Teens Through the Twenties*, at: http://www.jeffreyarnett.com/articles/ARNETT_Emerging_Adulthood_theory.pdf.

New York's Raise the Age reforms of 2017, which we helped to champion, moved our state from shameful outlier status to the center of the pack, ending the presumptive prosecution of all 16 and 17-year-olds as adults, and bringing us in line with most other states in the U.S.

Today, we have an opportunity to move New York into a national leadership position in youth justice, enlarging protections for youth left out of Raise the Age, who are 18 to 25 and are prosecuted in adult criminal court.

Why We Must Expand Youthful Offender Status Protections for Emerging Adults

Over 100,000 youth aged 19 to 25 were arrested in New York during 2017. We have an opportunity to shift away from policies that burden many of these young people with permanent criminal records, subject them to lengthy incarceratory sentences, encumber them with court fees and fines, and expose them to the varied collateral consequences these produce in young people's lives. Instead, we, like other jurisdictions across the country, can embrace a developmentally-centered approach that recognizes emerging adults' unique risks and vulnerabilities, and capitalizes on their potential for growth, change and contribution to our State's communities.

New York already recognizes that young people require additional supports and protections even after they turn 18:

- Youth must be at least 21 years old to purchase or consume alcohol;
- Youth must be at least 21 years old to purchase cigarettes;
- Youth can remain in foster care up to age 21, and obtain support for education up to age 23;²
- Youth have the opportunity to earn a high school diploma up to age 21;³
- Homeless and runaway youth can access state supports up to age 24;⁴ and
- Youth can remain on their parents' health insurance plans up to age 26 under the federal Affordable Care Act, and under New York law, in some cases, up to age 29;⁵

² *Education and Training Voucher Application and Eligibility Requirements*, NYS OCFS Informational Letter, Transmittal 19-OCFS-INF-05, dated July 1, 2019.

³ National Center for Education Statistics, Compulsory school attendance laws, minimum and maximum age limits for required free education, by state: 2017, at: https://nces.ed.gov/programs/statereform/tab5_1.asp.

⁴ Office of Children & Family Services, *Enacted 2017 Runaway and Homeless Youth Legislation*, at: <https://ocfs.ny.gov/main/youth/assets/2017-Enacted-RHY-Legislation-Slides.pdf>, at slide 5.

⁵ New York Department of Financial Services, Coverage Expansion Through Age 29

These laws and policies are consistent with the research. A report released earlier this year from the National Academy of Sciences, *The Promise of Adolescence: Realizing Opportunity for All Youth*, gathers evidence from a range of scientific disciplines to frame policy responses across social systems for youth up to age 25.⁶ The report states that “the adolescent brain undergoes a remarkable transformation between puberty and the mid-20s” where young people have enormous capacity to learn and thrive.⁷ At the same time, the science recognizes that young adults are more impulsive, and more susceptible to peer pressure than older adults.⁸ Appropriate policies must respond to both the risks and opportunities presented in emerging adulthood.

Advances in the science of adolescent development have focused attention on the value of developmentally-appropriate practices for older adolescents involved in the criminal justice system.⁹ Indeed, research shows that criminal behavior consistently declines as youth age-out of adolescence and enter their mid-20s.¹⁰ Experts in the field explain that criminal justice policies that use “18 as a stark demarcation of the ‘transition’ between childhood and adulthood [in] the criminal justice system could, unintentionally, be making this natural maturing process worse rather than better: Emerging adults are ‘branded’ as criminal and are weighed down with a criminal conviction that will follow them throughout the rest of their adult lives, affecting their employment, housing and educational opportunities.”¹¹

Stark racial disparities among youth in the criminal justice system, and the opportunities to address the disproportionate prosecution and incarceration of Black and Latinx youth must also be central to the proposal for Youthful Offender reform in New York. Experts suggest that “[b]ecause the criminal justice system impacts emerging adults in minority communities at higher rates, the decrease in opportunity for socio-economic development hits these communities hardest. Age-appropriate responses to justice-involved emerging adults will reduce racial and

"Young Adult" Option - Frequently Asked Questions, at:

https://www.dfs.ny.gov/consumers/health_insurance/faqs_age29_young_adult_option.

⁶ See generally, National Academies of Sciences, Engineering, and Medicine 2019. *The Promise of Adolescence: Realizing Opportunity for All Youth*. Washington, DC: The National Academies Press, available at: <https://doi.org/10.17226/25388>.

⁷ *Id.* at xii.

⁸ *Id.* at 51-54.

⁹ *Id.* at 11.

¹⁰ *Id.* at 295.

¹¹ Chester, L. and Schiraldi, V., *Public Safety and Emerging Adults in Connecticut* (2016), Harvard Kennedy School, Malcolm Wiener Center for Social Policy, Program in Criminal Justice Policy and Management, at 12.

ethnic disparities, enhance social cohesion and create new opportunities for economic development.”¹²

At a recent national meeting of experts in youth justice held at Columbia University in June 2019 called *Emerging Adults and Justice Reform*, judges, prosecutors, defense attorneys, researchers and advocates, including CDF-NY, met to discuss best practices based on work being done across the country.¹³ In light of the developmental science, and the diminishing rates of arrest for youth as they age, reforms in a number of jurisdictions have included policies targeted at reducing the collateral consequences of justice-system involvement, including minimizing disclosure of records that derail employment, education and housing, reducing the imposition of fines and fees, and limiting incarceration in adult settings.

For example, in Washington, D.C., youth aged 24 or younger prosecuted in adult criminal court are eligible for alternative sentencing that reduces the length of incarceration, and can replace a prison sentence with community-based probation and supervision. See 24 D.C. Code § 901(6). The District’s Youth Rehabilitation Act provides the criminal court flexibility in sentencing young adults and an opportunity for youth to have their sentence “set aside” (similar to expungement) if the youth satisfies the conditions of the sentence. Vermont also recently expanded its Youthful Offender law to include emerging adults up to the 22nd birthday. See 22 V.S.A § 5280, *et seq.* In Vermont, cases can be directly filed in the Family Division (the equivalent of Family Court in New York), or can be transferred from the Criminal Division for Youthful Offender consideration. If the youth is adjudicated as a Youthful Offender, a criminal conviction is deferred so if the youth successfully completes probation, a conviction is never entered.¹⁴ Similarly, California recently expanded eligibility for its youth offender parole program to people who were under 26 at the time of their offense. See CA Penal Code § 3040-3073.1.

How We Should Strengthen and Expand Youthful Offender Protections in New York

We support building on New York’s existing youthful offender law, which protects young people under 19 from some of the most severe and long-term impacts of criminal justice involvement, specifically:

¹² Perker, S. and Chester, L., *Emerging Adult Justice in Massachusetts* (2017), Harvard Kennedy School, Malcolm Wiener Center for Social Policy, Program in Criminal Justice Policy and Management, at 4.

¹³ See *generally*, Columbia University Emerging Adult Justice Project, <https://justicelab.columbia.edu/EAJ>.

¹⁴ Other states are examining their treatment of emerging adults: the Colorado legislature established a taskforce to explore expanding family court jurisdiction for youth ages 18 through 24. Recent legislative proposals in Massachusetts and Illinois aim to expand original family court jurisdiction up to age 21.

- Creating a new “Young Adult Offender” (YAO) status for emerging adults age 19 to 25. Similar to youthful offender status, YAO status would encourage alternatives to incarceration and other programs instead of prison, limit maximum prison sentences, and replace the public criminal conviction with a confidential adjudication.
- Expand the list of low-level offenses for which YO is automatic.
- Allow judges to keep YO and YAO-eligible felony cases private during the proceedings.
- Make Youthful Offender (YO) and Young Adult Offender (YAO) presumptive for eligible youth, unless the prosecutor can demonstrate that it would undermine the interest of justice.
- Allow judges discretion to grant YO and YAO when it will facilitate rehabilitation, even if the young person already received YO for a felony.
- Remove the court surcharge of \$95 to \$300 for YO and YAO status cases, and allow judges to waive all fees and surcharges for youth up to age 25.

By broadening and strengthening our youthful offender protections we have an opportunity to build on the criminal justice reforms your Committees have led to make New York more safe, and more just. Thank you for holding this important hearing today.

Julia L. Davis