



**children's  
defense fund  
new york**

# **Joint Legislative Public Hearing on 2021 Executive Budget Proposal: Public Protection**

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## Testimony on the 2021 Executive Budget Proposal: Public Protection

On behalf of the Children’s Defense Fund-New York (CDF), I thank the Chairs and Committee Members for the opportunity to submit this testimony. CDF is a non-profit child advocacy organization that works statewide to ensure that every child in New York State has a Healthy Start, a Head Start, a Fair Start, a Safe Start and a Moral Start in life and a successful passage to adulthood with the help of caring families and communities. As the New York office of the Children’s Defense Fund, a national organization which grew out of the Civil Rights Movement, we are committed to advancing racial equity and to leveling the playing field for vulnerable New York children, youth and families. We provide a strong, effective and independent voice for children who cannot vote, lobby, or speak for themselves. We pay particular attention to the needs of poor children, children of color and those with disabilities. CDF strives to improve conditions for children through research, public education, policy development, organizing and advocacy. Our policy priority areas are racial justice, health justice, education justice, economic justice, child welfare and youth justice. To learn more about us, please visit [www.cdfny.org](http://www.cdfny.org).

### Success in Shrinking the Youth Justice System in New York and Opportunities to Do More

We were proud to serve on the Governor’s Raise the Age Implementation Task Force from 2018-2020. The final report, issued in December 2020, highlights some of the successes of the reform:

- Since 2016, we went from **577** adolescents under the age 18 sentenced to the adult prison system and **2399** sentenced to local adult jails, to **zero adolescents in adult jails or prisons by the end of 2020**.<sup>1</sup>
- All adolescents under the age of 18 who are confined are in juvenile settings licensed or operated by the Office of Children and Family Services (OCFS), where **solitary confinement is prohibited**.
- Raise the Age is part of a decade-long **decrease in felony arrests** (down 53%), **decrease in detention** admissions (down 64%) and **decrease in placements** (down 52%).<sup>2</sup>

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<sup>1</sup> Raise the Age Task Force, *Final Report* (2020), available at: <https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL%20Report-Raise%20the%20Age%20Task%20Force%2012-22-20.pdf>, at 3.

<sup>2</sup> *Id.* at 4.

New York has the opportunity to build on this success by continuing to right-size its youth justice system. This includes:

- closing state-operated juvenile justice placement facilities and investing savings in services that support community safety,
- embracing reforms that remove the youngest children from the system of arrest and prosecution, while
- expanding youthful protections that advance economic opportunity to adolescents and young adults and build community resiliency.<sup>3</sup>

### Moving Ahead with Closure of Four OCFS Youth Justice Placement Facilities and Embracing Community Reinvestment of Savings

We support the Governor’s proposal to close four State-operated juvenile justice placement facilities and to reduce New York’s investment in youth incarceration. Institutional settings can pose significant risk to young people’s mental health and well-being, and have been shown to neither reduce future contact with the system nor promote community safety. Moreover, juvenile placement facilities are the site for extreme racial disproportionality. During 2019, almost 75% of children admitted to Office of Children and Family Services (OCFS) custody were Black or Latinx, while they represent only 40% of New York’s children.

These facilities are a waste of state funds. The annual cost for placement in OCFS-operated facilities is **\$892,206 per child**.<sup>4</sup>

Extensive research reveals that secure youth incarceration **increases the likelihood of recidivism** and **harms educational attainment, lifetime wages, and future health** outcomes for youth.<sup>5</sup>

**These funds need to be reinvested in community-based supports that can serve children and families and improve community safety.** The savings associated with closing these four youth facilities – estimated at over \$21 million in operational and \$14 million in capital costs – should be reinvested in communities, including those that are driving use of state juvenile justice placements for children.

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<sup>3</sup> Published in the fall of 2020 by Children’s Defense Fund-NY and Youth Represent, we outline a number of areas for future reform in *Expanding Youth Justice in New York*, available here: [https://www.cdfny.org/wp-content/uploads/sites/3/2020/10/FINAL\\_Expanding-Youth-Justice-in-New-York-4.pdf?\\_ga=2.963377.1872016947.1612965815-1869868877.1594679339](https://www.cdfny.org/wp-content/uploads/sites/3/2020/10/FINAL_Expanding-Youth-Justice-in-New-York-4.pdf?_ga=2.963377.1872016947.1612965815-1869868877.1594679339). This testimony focuses on current budget and legislative proposals that align with this research.

<sup>4</sup> Justice Policy Institute, *Sticker Shock 2020: The Cost of Youth Incarceration*: [http://www.justicepolicy.org/uploads/justicepolicy/documents/Sticker\\_Shock\\_2020.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/Sticker_Shock_2020.pdf).

<sup>5</sup> *Id.*

## Youth Justice Legislation to Advance Economic Justice And Support Racial Equity

**1. Second Chances for Youthful Offenders.** One of the most significant effects of a criminal conviction is exposure to the civil consequences which can permanently impair one's future, even if the individual never reoffends. The Council of State Governments has found more than 1,000 civil consequences of conviction in New York.<sup>6</sup> These sanctions and restrictions attach to both felony and misdemeanor convictions and affect numerous aspects of life, including the ability to get and keep jobs, housing, loans, credit, education and, for non-citizens, the right to remain in the country. These consequences ensure that punishments become a life sentence of stigma and lost opportunity for those prosecuted as teenagers.

The devastating and racially disparate consequences of criminal convictions create barriers for young people that impact not only themselves, but also their communities. They derail opportunities for employment, education, and stable housing, creating often insurmountable obstacles to long-term success because of youthful mistakes.

New York's legal system has existing protections for youth up to age 18 who are prosecuted in the adult court system. Criminal Procedure Law § 720 allows judges to replace a criminal conviction with a noncriminal adjudication for young people under the age of 19 in certain criminal cases by granting "Youthful Offender" (YO) Status. YO status protects young people from the consequences of a criminal record and seals cases from the public so that they will not show up on background checks.

**Bill no. S282 (Myrie) expands the opportunity for Youthful Offender Status to those who were eligible, but instead were convicted of a crime, allowing them to apply to the court for a "second look" five years after the sentence was imposed or the person was released from prison or jail.** A judge will make the decision whether a criminal conviction should continue to burden an individual for life after their sentence is served.

Relieving the civil consequences of a conviction will allow many young people, particularly young people of color, to meaningfully join the workforce and reach their full potential as contributing members of our communities.

People with criminal convictions suffer from societal biases, apart from the legal impediments, in their efforts to obtain and maintain employment. A Harvard study found that people with criminal records are less likely to receive callbacks for job interviews if they had a criminal conviction than those without. This result held true for white applicants, who were 50% less likely to receive a callback for a job interview if they had a criminal conviction, and Black

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<sup>6</sup> National Inventory of Collateral Consequences of Conviction, results of database search for New York: [https://niccc.csgjusticecenter.org/database/results/?jurisdiction=204&consequence\\_category=&narrow\\_category=&triggering\\_offense\\_category=&consequence\\_type=&duration\\_category=&page\\_number=1](https://niccc.csgjusticecenter.org/database/results/?jurisdiction=204&consequence_category=&narrow_category=&triggering_offense_category=&consequence_type=&duration_category=&page_number=1).

applicants, who were 65% less likely to receive a callback for a job interview if they had a criminal conviction.<sup>7</sup>

In addition to the significant reductions in individual earnings that result from these employment penalties, the economy as a whole suffers from a reduced workforce. A recent report estimated that the population of former prisoners and people with felony convictions cost the U.S. about \$80 billion in GDP during 2014.<sup>8</sup>

**For communities to recover and thrive in the face of the pandemic and its attendant economic hardship, we must embrace policies that center young people’s participation and opportunities to grow and contribute.** The COVID-19 crisis, which has disproportionately impacted Black and Latinx communities, has further diminished access to employment, safe and stable housing, and education, leaving our youth and communities even more vulnerable. Expanding the protections available under our Youthful Offender law is an essential component of New York’s commitment to racial equity, public health, and to young people, their families and communities.

**2. Youth Justice & Opportunities Act: *Breaking Down Barriers for Youth for a Stronger and Healthier New York.*** Young people’s well-being is an essential foundation of community health. The devastating and racially disparate consequences of criminal convictions create barriers that undermine community health and well-being. Criminal convictions derail opportunities for employment, education, and stable housing, creating often insurmountable obstacles to long-term success for young people.

New York’s legal system has crucial protections for youth up to age 18 who are prosecuted in the adult court system that allows judges to replace a criminal conviction with a noncriminal adjudication for young people under the age of 19 in certain criminal cases by granting “Youthful Offender” Status. YO status protects young people from the consequences of a criminal record and seals cases from the public so that they won’t show up on background checks. It also allows for shorter sentences that include services in the community like substance abuse and mental health treatment. YO treatment allows young people to accept responsibility and bear age-appropriate consequences without impeding their ability to find a job, pursue education, or secure stable housing. In 2018, over 3,200 convictions in New York were converted into youthful offender adjudications, but the Youth Justice & Opportunities Act (A3536, O’Donnell)<sup>9</sup> has the potential to help tens of thousands more.

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<sup>7</sup> Pager, D. (2017) *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*. Chicago, IL: University of Chicago Press.

<sup>8</sup> Bucknor, C. and Barber, A., *The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies*, June 2016, Center for Economic Policy and Research: <https://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf>.

<sup>9</sup> The bill will be amended shortly with updated language.

impacted Black and Latinx communities, has further diminished access to employment, safe and stable housing, and education, leaving our youth and communities even more vulnerable. Expanding the protections available under our Youthful Offender law and extending its scope to include college-aged youth is an essential component of New York’s commitment to racial equity, public health, and to young people, their families and communities.

New York has the opportunity to advance and support community well-being and lead the nation by creating the strongest and most robust protections for young people. Other states have expanded protections for youth past age 18, with Michigan and Washington D.C. both allowing for record sealing and shorter sentences for youth up to age 24. The Youth Justice & Opportunities Act goes further by expanding youthful offender eligibility and strengthening its laws to protect the futures of young people under the age of 26.

The Youth Justice & Opportunities Act recognizes the ability of young adults to grow and change and prevents the negative consequences that marginalizing young people can have on community health. The Act allows judges to consider the effect brain development has on decision making when crafting appropriate sentences for young people. It makes the legal system more fair and effective by providing opportunities for emerging adults to move forward in their lives and contribute to their communities without the barrier of a criminal conviction. The Act would increase opportunities for youth and reduce State and local spending on youth incarceration-- money that could be invested in communities to alleviate poverty and homelessness, ensure quality education, and fund treatment for mental illness and substance use disorders. In turn, this bill would stabilize communities, promote community health, and increase public safety for all.

### **Responding to Children in Crisis After Rochester: An Urgent Legislative Agenda for Public Protection**

The pepper-spraying and handcuffing of a 9-year-old Black girl suffering a mental health crisis by police in Rochester, New York has become national news. As the *Daily News* said in a weekend editorial, “[w]hen a 9-year-old is cuffed and casually pepper-sprayed, it must be a clarion call for change. Mental health first responders can no longer be afterthoughts. This is no longer about pilot programs or experiments. Put them at the center of our response to people in crisis. Enough. Enough. Enough.”<sup>10</sup>

The Legislature has the opportunity to advance a package of legislation that would limit police contact with children in crisis, protect them from pepper spray and chemical agents, increase access to rapid response mental health services and community based supports, and stop unnecessary court-involvement.

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<sup>10</sup> <https://www.nydailynews.com/opinion/ny-edit-rochester-pepper-spray-police-mental-illness-20210207-zpqvi7ixyjfbrnxfxelmj7sxqq-story.html>

## **1. Daniel’s Law: Establish State and Regional Councils and Response Units for Mental Health Emergencies**

Named to honor Daniel Prude, who was killed by Rochester police during a mental health crisis in March 2020, A4697 (Bronson) would create councils charged with ensuring the most appropriate treatment and response to individuals experiencing a mental health crisis, and increase effective services that could minimize the number of people who experience such crises. The state council would have the power to amend or enact new rules and regulations establishing minimum standards for mental health, including emergency crisis response. Regional councils would develop local policies and procedures to effectuate necessary reforms establishing mental health response units that do not rely on police.

## **2. Legislation to Prohibit the Use of Chemical Agents by Police Against Minors**

Bill No. S4002 (Brouk) would prohibit the use of chemical agents by police against children. We would suggest amending this bill to increase its protections by limiting the use of mechanical restraints (like handcuffs).

## **3. Legislation to Establish a Black Youth Suicide Prevention Task Force**

Bill No. S3408 (Brouk) would examine, evaluate and determine how to improve mental health and suicide prevention for New York's Black children. In New York, Black and Latinx children have the highest rates of adolescent suicide attempts, and suicide is the 2<sup>nd</sup> leading cause of death among youth 15 to 19 in the State.<sup>11</sup> Over half of children in New York with a mental or behavioral condition did not receive treatment when they needed it.<sup>12</sup>

## **4. Legislation to End the Arrest and Prosecution of Children Under 12 as Juvenile Delinquents**

Bill No. S4051 (Bailey) would end the arrest and prosecution of children as young as 7 years old, and instead, provide linkages to local community-based services through existing child welfare and behavioral health systems. While the little girl in Rochester was not arrested, she was placed in police custody. Similarly, the majority of children who have contact with the justice system have significant mental health needs.<sup>13</sup> The juvenile justice system serves as a system for the delivery of mental health services for vulnerable youth whose families lack access to those services in their communities. The youngest children that police arrest are significantly more likely to be children of color. In 2019, 94% of all children under 12 who were arrested in New York

<sup>11</sup> <https://www.healthymindshealthykids.org/facts>

<sup>12</sup> [https://ebe0beff-078c-4e61-acfc-2c2f8592ac52.filesusr.com/ugd/9c5953\\_7455049a2729454aa6916138c0a0949f.pdf?index=true](https://ebe0beff-078c-4e61-acfc-2c2f8592ac52.filesusr.com/ugd/9c5953_7455049a2729454aa6916138c0a0949f.pdf?index=true)

<sup>13</sup> [http://njjn.org/uploads/digital-library/resource\\_349.pdf](http://njjn.org/uploads/digital-library/resource_349.pdf)

City were Black, Latinx or Asian. This bill permits communities to wrap children and families in the services they need without the trauma of arrest and family court processing.

Young children simply do not belong in court--they are unable to fully understand the legal implications of their actions; they do not have the cognitive abilities to understand the court process; the process itself and certainly any confinement is substantially likely to harm them; and rather than providing a public safety benefit, formal system processing often results in youth having more contacts with police and the criminal legal system. 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.<sup>14</sup>

## Conclusion

Thank you for your time and consideration of this testimony. The Children's Defense Fund-New York looks forward to working with you on a State budget and legislation session that improves the well-being of youth in New York and supports community safety.

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<sup>14</sup> The American Academy of Pediatrics(2020), available at: <https://pediatrics.aappublications.org/content/146/1/e20201755#sec-35>; Society for Adolescent Health and Medicine (SAHM) (2016), available at: <https://www.jahonline.org/action/showPdf?pii=S1054-139X%2816%2930242-7>.