

Citizens Crime Commission
September 21, 2011

Good morning. It's a delight to be with you again. I want to thank Richard Aborn for inviting me to address you. It is truly a privilege to have this opportunity to share some thoughts with you about what we can all do together to make New York a safer and better place to live.

In this regard, I want to speak to you today about our juvenile justice system, which for over a generation was a problem hiding in plain sight. Across the political spectrum, regardless of one's philosophy, it was impossible to feel good about a system that was spending enormous sums – well over \$200,000 annually per child – to lock up young people, most of them 15-years old and under, in state facilities that were breeding grounds for abuse and future criminality.

Thankfully, the past few years have been a time of

positive reform. We have gone from incarcerating more than 2,200 of these young people -- most of them arrested for misdemeanors -- in state facilities each year to less than 700, a reduction of two-thirds. Indeed, Governor Cuomo made it one of his first priorities to close down a number of these failed youth prisons. The positive ramifications of this reduction are far-reaching, not only for the lives of the individuals involved but for their families and communities.

We've also seen the creation of new programs that have provided hundreds of troubled young people with the community-based services, structure and support they need to avoid incarceration and get their lives back on track. And we've seen new, objective risk assessment instruments introduced in Family Court so that judges can make more informed decisions about the service needs and public safety

risks associated with individual juveniles.

The courts have been an enthusiastic partner in much of this progress, along with our colleagues in the executive and legislative branches, and often we've taken the lead, providing judges with access to new alternative sanctions, and sparking new thinking about how best to re-invigorate our state's juvenile probation system. This kind of proactive leadership by the judiciary in reforming the justice system is one of the most important ways that we go about being accountable and responsive to our citizenry and the other branches of government. The public we serve -- the public that supports us with their tax dollars -- has every right to expect a court system that is capable of dealing effectively with the complex societal problems like juvenile crime that inevitably find their way onto our court dockets.

This commitment to judicial accountability explains why we have been so invested in juvenile justice reform, and why I believe we must confront another glaring problem that is very much on my mind these days -- the age of criminal responsibility in New York. And here I want to acknowledge the work of the Citizens Crime Commission in this area, which I believe has been right on the mark.

Every year, about 45,000 to 50,000 youths aged 16 and 17 are arrested in New York and prosecuted as adults in our criminal courts -- overwhelmingly for minor crimes. In 37 other states and the District of Columbia, the age of criminal responsibility starts at 18. Eleven states have set the age at 17. New York and North Carolina, alone in the nation, continue to prosecute 16-year olds as adult criminals. And, based on recent developments in the North Carolina

legislature, New York may very soon have the dubious distinction of standing alone on this issue.

Before going on, I want to clarify that the focus of my remarks today is on the less serious crimes committed by adolescents. As you know, New York and every other state already prosecutes the most violent juveniles as adults. In New York, the age of criminal responsibility for all murder cases starts at 13, and at 14 for major felonies. You know the history -- these ages were lowered three decades ago after a 15-year old named Willie Bosket shot and killed two people on the subway in 1978. Let me be clear about one thing. Those juveniles who commit these types of serious offenses can and should be prosecuted in the criminal courts.

But as to how we prosecute the vast majority of young

people who do not commit those serious crimes, the question must be asked: How is it that New York, which has always been the progressive leader in the country, finds itself so out of step with national norms? The history of juvenile justice in New York is a complicated one, full of false steps, missed opportunities, and paths not taken. Indeed, the current age of criminal responsibility is a perfect example of this. When the current Family Court Act was enacted in 1962, the Legislature could not agree on the age of criminal responsibility and so age 16 was chosen as a temporary measure, until public hearings could be held and additional research could be presented. Unfortunately, the issue was never revisited, and the "temporary fix" of 16, which even in 1962 was already out of step with most of the country, has now lasted half a century without meaningful reconsideration.

Fifty years later, we know based on scientific research that adolescents, even older adolescents, are different than adults. In particular, their brains are not fully matured, and this limits their ability to make reasoned judgments and engage in the kind of thinking that weighs risks and consequences. Teenagers have difficulty with impulse control, and with resisting outside influences and peer pressure. The United States Supreme Court has recognized the validity of the science of adolescent brain development in concluding that different penalties are appropriate for juveniles who commit serious crimes. In 2005, in Roper v Simmons, the Court outlawed the death penalty for crimes committed by persons under 18. Last year, in Graham v Florida, the Court outlawed life without parole for juveniles in non-homicide cases. The Court made

clear in Roper that young offenders are not to be absolved of responsibility or punishment for their actions, but rather that they need to be treated differently from older criminals because their transgressions are not as "morally reprehensible as that of an adult."

If you are the parent of a teenager, or remember those years, you know that these are not revolutionary concepts. Teenagers do stupid, impulsive, irrational things that leave you shaking your head and pulling out your hair. But as a state, what do we want for our 16 and 17-year-olds who get arrested for minor drug offenses, shoplifting, vandalism, trespassing, fare-beating, or the like? Do we really want these teenagers to be processed in an adult criminal justice system focused on punishment and incarceration? . . . where rehabilitative options are limited . . . where they may be

jailed . . . where they may be victimized . . . and where they may be burdened with a criminal record that bars them from future employment and educational opportunities?

Or do we as a state want these young people to go through a family court system that is equipped to intervene meaningfully in their lives, before their troubles escalate into more serious criminality, and without exposing them to a criminal record? . . . a system that is focused on rehabilitation and getting children back on the right track, that offers supervision, mental health treatment, remedial education and other services and programs . . . a system where judges are obligated by law to act in the “best interests” of the children who come before them – a mandate that does not exist in criminal court.

In our society, we don't allow 16 and 17 year-olds to

vote or drink or serve in the military, because we know full well that they lack the necessary maturity and judgment. Why, then, do we treat them as adults when it comes to crime? Why? It makes no sense.

And when I say crime, again, I am talking primarily about less serious, non-violent crime. The truth is that relatively few of the cases involving young people in New York are murders, rapes, aggravated assaults or robberies. Such serious crimes make up a tiny fraction of all juvenile cases.

I think the question of the day for all of us in New York is this: are 16 and 17 year olds arrested for less serious crimes better served by going to criminal court or family court? If the goal is to achieve better outcomes that change juvenile behavior and protect public safety, then the answer

to this question could not be any clearer: better outcomes would be achieved for everyone concerned by adjudicating these cases in family court.

Put simply, the adult criminal justice system is not designed to address the special problems and needs of 16 and 17-year-olds. Prosecuting these adolescents in the criminal courts does not improve public safety or the quality of life in our communities. There are plenty of research studies out there confirming that older adolescents who are tried and sentenced in criminal courts have higher recidivism rates, re-offend sooner, and go on to commit violent crimes and felony property crimes at a higher rate than those youths who go through the family court system.

This should not be surprising to anyone. The whole culture and guiding philosophy of family court is to focus on

the problems that are specific to children and young people. Each case is considered within the context of the family, and with the goal of promoting rehabilitation wherever possible. There are important practical and legal benefits as well. Teenagers in family court are technically charged with delinquency and not crimes. The implications of this subtle change in vocabulary are far-reaching. First and foremost, those charged with delinquency do not receive criminal records. This means they can honestly state on applications for employment and financial aid and housing that they have never had a criminal conviction. This so often can be the difference between a gainfully employed productive citizen and an unemployed, welfare-dependent person who gets caught in the revolving door of the criminal justice system.

In family court, there are off-ramps at nearly every stage

of the process, from arrest to adjudication to sentencing. In fact, many juvenile cases never even make it to court but are instead “adjusted” by probation. Under the Family Court Act, probation departments across the state have the discretion to divert a case for up to 120 days. If the young person complies with whatever conditions probation imposes – which could include curfews, letters of apology, and links to services – then the case is closed and sealed and no further action is taken.

While prosecutors in the criminal system may, on occasion, decline to press charges, and judges may, of course, link defendants to community services, there is essentially no equivalent to probation adjustment in the adult courts. And so the cases of 16 and 17 year olds, many of them arrested for minor offenses, continue to clutter our

criminal courtrooms, adding to the delay and the frustration of all involved.

As someone who has spent over 40 years in the justice system, I just cannot fathom how New York has allowed itself to get so out of step with the rest of the country. It really says something when avowedly tough-on-crime states like Texas, Georgia and Mississippi, to name just a few, have all seen the wisdom of prosecuting troubled young people in family court, while New York continues to expose teenagers to an adult criminal justice system that so often serves as a breeding ground for career criminals.

So why haven't lawmakers raised the age of criminal responsibility in New York? There are obvious financial concerns. Shifting many thousands of cases a year to family court would place a heavy burden on the infrastructure and

staffing of the court and the entire juvenile justice system. We may need additional judges, certainly many more community service options, and a more robust juvenile probation system. Even considering the savings to the criminal court system, there could be significant additional costs, particularly in the current economic climate.

Some advocates for children and defense organizations have also raised genuine concerns about extending the reach of family court. We know that conditions in state-operated juvenile facilities are deplorable. Governors Cuomo, Paterson and other public officials have criticized them for harming children, wasting money and ultimately endangering public safety. If the alternative to prosecuting 16-and 17 year-olds in criminal court is to have family court judges send young people to these failed youth prisons, then

we are doing little or nothing to advance public policy in this critical area. Rather, we must find ways in which the family 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.

If we have learned anything in recent years it is that community-based interventions are much more cost-effective and successful in preventing future crime than incarcerating kids in state facilities. But alternatives to incarceration do require an up-front investment, and we will have to convince budget officials and legislators that the long-term benefits and savings to the state will greatly outweigh the initial outlays. In this regard, the VERA Institute of Justice recently completed a detailed cost-benefit analysis of North

Carolina's efforts to raise the age of criminal jurisdiction to age 18, which found that the economic benefits to the state would far exceed the costs -- both over the short and long term.

Clearly, raising the age of criminal responsibility cannot be done on a whim. There are many legitimate and complex issues that have to be worked through. The financial costs and benefits to the state must be weighed; the legal, public safety, service delivery, and demographic implications must be considered; and, ground work must be laid for the kind of inter-agency planning and collaboration that will be required among the courts, probation, corrections, prosecutors, defense providers, and state agencies dealing with families and children and criminal justice.

Raising the age of criminal responsibility will be a

challenge, but it is hardly an impossible task. New York has overcome difficult challenges before, and we can do so again if the people in this room join together and commit themselves -- as I do today on behalf of the Judiciary - to being leaders on this issue and to working nonstop to make sure that New York does not become the last place in the country to prosecute 16 and 17 year olds as adult criminals. This cannot be what any of us want for New York or for the future of our young people.

We must work through all the complex issues on a fast-track basis and draft legislation in time for the 2012 legislative session. To make that happen, I have asked the New York State Permanent Sentencing Commission, Co-chaired by District Attorney Cy Vance and Judge Barry Kamins, to combine their expertise and resources with that

of Michael Corriero, the Executive Director and Founder of the New York Center for Juvenile Justice, the former Presiding Judge of Manhattan's Youth Part, and someone who has been so engaged on this issue over the years. By working together with our partners in government and reaching out to the many affected constituencies, and the organizations, such as the Citizens Crime Commission, which has, through Richard, already done so much terrific work in this area, I believe we will produce the blueprint for a more modern and more effective juvenile justice system in New York. There are so many groups out there vitally interested in this critical issue, including our own Bar Association.

But even while we work on this front and with Governor Cuomo and reformers in the legislative branch to revise the

law, we cannot simply stand by and accept the status quo – not when there are steps we can take now to improve the way we handle older teenagers in our criminal courts. That is why, in the next 90 days, we will establish a new set of adolescent intervention criminal court parts dedicated exclusively to handling the cases of young people ages 16 and 17.

We will create these pilot parts in the New York City Criminal Court and around the state under the direction of Judge Judy Harris Kluger, the Chief of Policy and Planning for the Courts, and in consultation with the Center for Court Innovation, the research and development arm for the New York State court system. Cases involving nonviolent offenses will be steered to specially-trained criminal court judges who both understand the legal and psychosocial

issues involving troubled adolescents and are familiar with the broad range of age-appropriate services and interventions designed specifically to meet the needs and risks posed by these young people. In essence, youths 16 and 17 years old would continue to be processed in the adult court system while receiving most of the benefits of the family court approach, including court outcomes designed to help defendants avoid the collateral consequences associated with criminal convictions. This is no idle daydream. Indeed, we've been employing many of the ideas that I've outlined here – a problem-solving approach, special subject matter training for judges, and an emphasis on alternatives to incarceration – in our drug courts, mental health courts and community courts for adults. And the data is unequivocal: these programs have helped to reduce

recidivism and incarceration. Indeed, New York is one of just a handful of states in the country to consistently accomplish both goals. While national prison populations have exploded, New York houses 12,000 fewer inmates today than it did in 1999. At the same time, the rate of violent crime in this state, even with some recent upticks, has been reduced to levels not seen since John F. Kennedy was president.

New York has a proud history of being at the cutting edge when it comes to juvenile justice reform. In the 1800s, New York became the first state to construct special facilities that enabled children to be removed from adult penitentiaries. As is so often the case, New York set the bar back then, and other states followed. Now it is time for us to once again embrace our great history and take our place at

the national forefront of juvenile justice reform.