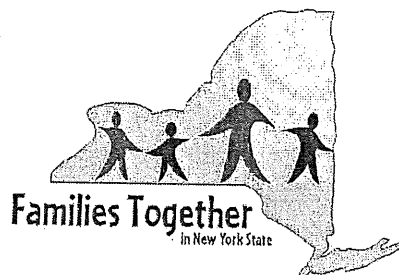


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Paige Pierce, Chief Executive Officer of
Families Together in New York State

Presents testimony to the Joint Legislative Budget Committee on
Public Protection.

February 26, 2015

As the CEO of Families Together in New York State, a nonprofit parent-run organization serving families of youth with social, emotional and behavioral challenges, I have dedicated my career to serving these most vulnerable citizens, connecting them with community-based supports, and advancing sound social welfare policies in response to family identified needs. As such, throughout the decades I have heard many horrifying accounts of children falling through the cracks, many of whom have done so as a result of an interaction with our criminal justice system.

As you are well aware, New York State continues to be only one of two states that automatically processes, prosecutes and incarcerates 16- and 17-year-olds as adults. Upon arrest, they are interrogated (without so much as a call to their parents), charged (should it be deemed appropriate) and incarcerated with the adult population in the local jail while awaiting trial. Should they be found guilty of charges (the majority of which are nonviolent offenses), they are incarcerated with the adult prison population where they are five times more likely to be sexually assaulted, two times more likely to be injured by prison staff, and five times more likely to complete suicide than if they were in a juvenile facility. They are also more likely to recidivate upon release, do so at a higher level, and perpetuate public safety concerns.

The emerging evidence overwhelmingly demonstrates our current model to be archaic in its design, an ineffective deterrent model, and exorbitantly costly. Neuroscientists, respected researchers and even our nation's Supreme Court have all registered concerns and recommended we utilize the wide breadth of evidence laid before us to build a better system.

Last year, when I came before you I introduced you to several of the children we represent; Daniel, James, and Frederick. If I may indulge your memory for a moment - Daniel is a young man who was sent to an adult facility for stealing Chinese food out of a delivery car. Once incarcerated, he was sexually assaulted and though he has since been released, he suffers from debilitating PTSD. James, a young man with social, emotional and behavioral challenges who was in custody for stealing a pair of shoes, decompensated so severely while inappropriately incarcerated, he was a scant 87 pounds upon release. And Frederick, a 16-year-old boy diagnosed as being on the Autism spectrum and suffering from Generalized Anxiety Disorder, Bipolar Disorder and Oppositional Defiant Disorder; a dangerous combination of issues that impairs his coping skills, ignites a heightened level of anger and clouds his sense of judgment even beyond that of a so called "normal" teen. Frederick has already had one brush with the law stemming from an act of property destruction but he was 15 at that time. Now that he's turned 16, his mother fears any additional interaction with the criminal justice system will result in his incarceration as an adult.

Since my testimony last year, the US Attorney's office released a scathing 79 page report articulating the realities of youth who were incarcerated at Rikers Island where they were routinely beaten, raped and remanded to solitary confinement for months on end. Most recently, right here in our back yard, a young man (challenged by mental health issues) imprisoned in an adult facility took his life in his prison cell. How many more children will we irrevocably harm or lose before we implement reforms?

As you are aware, The Governor's Commission on Youth, Public Safety and Justice, an appointed body of experts with a range of perspectives, interests, and specific knowledge

concerning juvenile and criminal justice, including judges, law enforcement officials, probation administrators, child welfare professionals, advocates, service providers, local government officials and other critical stakeholders, were charged with providing “concrete, actionable recommendations regarding youth in New York's criminal and juvenile justice systems...” Several weeks ago, the Commission released its comprehensive recommendations that, if enacted, will position New York State as a leader in juvenile justice policy, lead us to the development of a smart on crime model and keep intact a strong response to violent offenses.

The main components of the recommendations include:

- Raising the age of criminal responsibility from 16 to 18,
- Prohibiting youth from being incarcerated as adults and allowing those who need to be incarcerated in a secure juvenile facility to remain until the age of 21. Thus allowing them access to proper health and mental health services, educational opportunities and rehabilitative programming,
- Expanding Family Court jurisdiction to include 16-and 17-year-olds charged with non violent, misdemeanors, harassment or disorderly conduct, thus allowing judges access to a full array of supportive rehabilitative services,
- Originating violent offenses in criminal court, however, under the provision of a new youth part, presided by a specially trained judge who has jurisdiction to both criminal court and family court,
- Expanding categories of cases eligible for adjustment through risk assessments and evaluations of the severity of case,
- Expanding access to diversion interventions as a means to avoid court involvement for low risk misdemeanor cases through probation,
- Reducing unnecessary use of detention and placement for low level misdemeanor cases and probation violations that do not involve personal injury to another individual,
- Prohibiting the detention of PINS youth, none of which are even accused of a crime,
- Establishing family engagement specialists to facilitate tailored comprehensive interventions,
- Creating Family Support Centers, which will afford families access to rapid family assessments, crisis intervention, family mediation, mental health and substance abuse services, case management and respite services, and
- Cultivating strong evidenced based reentry services.

On behalf of the thousands of families served by Families Together in New York State, we contend that such comprehensive, evidence-driven reforms will lead to a system that is rehabilitative in its approach, drive crime rates down, and increases public safety. And while we understand that change can be scary, we also recognize, as a society that we do better when we know better and given the constantly emerging body of evidence on this topic, we now know better.

Over the course of the last several weeks, we have been meeting with members of the legislature and their staff in an attempt to advance these recommendations through the state's budget process. While the overwhelming response has been one of openness, leading me to believe

there is consensus that we need to alter our course, there have been some concerns posed as well. A common theme among such inquiries is related to recidivism rates and the fact that many of those who work in law enforcement report on the revolving door of cases they see. Such accounts are not at all surprising and in fact, supported by evidence which clearly contends that juveniles, who are processed, prosecuted and incarcerated as adults will generally recidivate and do so at a higher and higher rate of offense.

In one of many studies completed on the topic of juvenile offenders in adult courts, the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice examined the effectiveness of prosecuting teens as adults by comparing such New York teens with their cohorts in the border state of New Jersey. Findings have many questioning the effectiveness of New York's system. In New York City, juveniles as young as 13 can be charged in adult court, while in New Jersey, most juvenile offenders under the age of 18 are processed in juvenile court. When comparing youth arrested for the same felony offenses in New York City and New Jersey, data showed that "adolescents processed in the New York adult courts were more likely to be rearrested, they were rearrested more often and more quickly and for more serious offenses, and they were reincarcerated at higher rates than those in the New Jersey juvenile courts."

So while we understand in some cases, the question is not should we incarcerate juvenile offenders, but instead the questions posed should be where do we incarcerate, what support services should we be providing while incarcerated and what kind of human beings do we want released back into society? When the research so clearly proves better, SAFER, outcomes with a juvenile centric based system, why would we continue to choose one that stymies the path to productive citizenship and greater public safety?

Another inquiry we have received focuses on the potential costs. While there is a modest upfront capital cost associated with implementation, the overall results are expected to decrease costs. Should we look to our neighbors in Connecticut, the state that most recently implemented Raise the Age legislation, we will see that Connecticut transformed its juvenile justice system by reducing the state's reliance on confinement and incarceration of youth in expensive facilities or prisons in favor of building a now nationally recognized continuum of cost-effective community-based programming that utilizes evidence-based diversion programs, rehabilitative interventions, and skillbuilding at a fraction of the direct costs of confinement. From 2009 to 2011, 16-and 17-year-olds were transferred to juvenile jurisdiction and during that time Connecticut continued to enjoy a steady decline in youth arrests. Meanwhile, the state agencies responsible for implementation spent \$2 million less on juvenile justice in the 2011-2012 fiscal year than they did ten years prior despite the introduction of many new programs and services. Beyond state fiscal impacts, a cost benefit study conducted by the Urban Institute projected that Connecticut society will save \$3 for every \$1 it spends moving older teens to juvenile jurisdiction in the form of indirect costs that would have been associated with lower future incomes, fewer high school graduates, more reliance on public assistance, increased likelihood to commit future crimes, and increased costs to future crime victims.

So again, we contend, the fears are unlikely to be realized.

Lastly, one of the questions we've received and believe should be addressed here today is related to the concern that we completely reform a system for "so few youth." Currently there are 800 teenagers in adult facilities and countless others who are remanded to juvenile justice facilities for low level offenses. Allow me to tell you about the one who is missing from either of these settings.

Ben Van Zandt, by all accounts was a "normal" middle class boy living in here in a capital region suburb. He was a shy teenager who excelled in school and was destined for college and a great career. He had never been in any trouble and was an easy child to raise. He played the violin for six years and loved music. He was a Boy Scout who was starting to work on his Eagle Scout rank. He came from a loving, stable and supportive family, and all was going well. Ben's arrest and the crime he committed was a shock to everyone who knew him.

At the age of 16, Ben started suffering from depression and over time it became severe enough that he developed psychosis. He never asked for help because at the time his greatest fear was that he would end up in a psychiatric hospital and everyone at his school would know about it. Eventually, his delusional thoughts convinced him that burning a house and taking things would bring him happiness and make the depression go away. His intent was never to hurt anyone, which is why he selected a house when the family was away on vacation. Ben was arrested and charged as an adult. As such, his parents were not allowed to accompany him to the police station nor advise him. By the time they arrived with an attorney a few hours later, the police had already coerced a signed confession from him. This was easy for the police because Ben was raised to respect authority and cooperate. He told his parents he thought the police were going to help him rather than use the confession against him.

Despite Ben's young age, lack of criminal record, a forensic evaluation detailing his mental illness, and the recommendation of youthful offender in the presentence investigation report, he was sentenced to 4 to 12 years in prison for arson. The sentence also included restitution of almost \$500,000. There was no opportunity for Ben to be sentenced in a mental health or youth court. There was no opportunity for him to receive the psychiatric care he badly needed. And there was no opportunity to negotiate a sentence; it was a take it or leave it plea bargain from the district attorney. In the end, they not only gave Ben a severe sentence but also a death sentence.

Ben entered the correctional system as a mentally ill, naive and very vulnerable 17-year-old incapable of handling prison life. He went from the security of his home to an environment he did not understand, and with people he could not relate to. He was placed in the general population even though the forensic evaluation strongly advised against this. Within a few months, he was sexually victimized by an older inmate who pretended to be his friend and then threatened him. In response to this victimization, Ben was given solitary confinement, until his parents intervened on his behalf. He was then transferred to another facility and placed in a unit for mentally ill inmates. He developed symptoms of PTSD, suffering from nightmares, insomnia and short-term memory loss, and yet he did not receive any treatment for this. In addition, his mental health status was changed, and he was allowed to have contact with prisoners in the general population. While there, a prisoner who was part of a gang befriended him, and then threatened and coerced him into buying and transporting contraband and drugs for him. Ben was

very frightened and did not want to be beaten, or worse. Again, Ben was punished for being a victim at the hands of other prisoners.

Once again, he was transferred to another facility with a mental health unit. In the four months that he was there, he endured harassment and threats from correctional officers because of his age and mental illness. He witnessed mistreatment and the beating of a mentally ill prisoner in his unit by untrained staff. He learned that he could not complain to anyone about this because of the fear of retaliation from staff. Ben was also taken off his psychotropic medication for no legitimate reason and his mental health level was lowered. Upon being relegated to solitary confinement once again, Ben made a rope from his bed sheets and shoelaces and hung himself in his cell. He was 21-years-old and had suffered through almost four years of prison hell.

The criminal justice system completely failed Ben. It treated him and punished him like an adult that he was not, and they placed him in a facility with adults he was not mature or experienced enough to handle. Ben was highly intelligent and could have been rehabilitated and gone on to a productive life if given other opportunities. Regardless of his crime, he did not deserve to die in prison.

So in answer to the question, how many youth should propel us toward reform of our system? We would contend that we've reached a tipping point. Not one more youth and their families should suffer the same path and ultimate fate of Ben.

Daniel should not be suffering from severe PTSD as a result of a rape he experienced while in an adult facility. James should not have suffered such a severe health and mental health decompensation while incarcerated in an adult facility. Frederick's mother should not have to live in fear that her emotionally challenged teenager may end up the victim of adult inmates should he have another brush with the legal system and never, should we hear of another teenager completing suicide while in custody of our justice system. The time has come to lay down the misguided notion that our current system is an effective tough on crime model. It has failed. It was ill conceived from the outset and is contrary to ALL of the scientific and cost evidence. It is contrary to public safety.

There is a famous quote from Maya Angelou that says, "When we know better, we do better." We know better. We need to do better. When a state is an outlier, it must examine such a status and act in one of two ways...justify it or re-chart its course. The evidence strongly recommends we heed the later.