



NYSACDL
NEW YORK STATE ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS

TESTIMONY OF
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PRESIDENT, NEW YORK STATE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
BEFORE
NEW YORK STATE PERMANENT SENTENCING COMMISSION
DECEMBER 15, 2011

Good afternoon. My name is Kevin O'Connell and I am the President of the New York State Association of Criminal Defense Lawyers (NYSACDL). Thank you for the opportunity to be heard on the issues surrounding Chief Judge Lippman's proposal to raise the age of criminal responsibility in New York. NYSACDL is the only state-wide bar association comprised exclusively of criminal defense lawyers. We are a local affiliate of the National Association of Criminal Defense Lawyers. NYSACDL members represent youths and adolescents in criminal and Family Courts throughout the state. As such, we see the effects of the criminalization of our children on a daily basis.

NYSACDL fully supports Chief Judge Lippman's proposal to raise the age of criminal responsibility to 18 in New York. We have seen the effects of criminal convictions on the lives and futures of our youngest clients. In recent years the Courts and the legal community have come to recognize that these collateral consequences should be a concern of all participants in the criminal justice system. Judge Lippman's predecessor, Chief Judge Kaye was a strong advocate for this awareness. Even the United States Supreme Court in its *Padilla* decision urged courts and prosecutors to be aware of this problem and to seek to minimize the consequences. Our own Penal Law has as one of its primary purposes to promote "the rehabilitation of those convicted, the promotion of their successful and productive re-entry and reintegration into society". Criminal convictions can deny our young people jobs, education, licenses, and the hope for a productive life.

At the outset, it is clear that this proposal requires significant legislative change to be effective. The transfer of a large number of cases to the Family Court dockets will require reallocation of resources. It is a move worth making. This Commission has been charged with developing a plan for doing so. We would like to take this moment to urge you to be as bold and innovative as Judge Lippman's original proposal allows. We ask you to include all misdemeanors and as many felonies as can be fit under the broad "non-serious" definition put forth by the Judge.

Judge Lippman spoke eloquently about the real differences between adolescents, even older ones, and adults. Many of the differences we all know instinctively from our own



experiences. If we accept the principle that teenagers are different and that their reasoning and judgment are “works in progress”, then we should be willing to give all but the most serious offenders the chance to grow and mature into productive citizens. Further, if we accept that our Family Courts have the capability to intervene and offer intensive treatment and rehabilitation for young offenders, we should give them the opportunity to do just that for as many young people as possible. We, therefore, urge this Commission not to play it safe. Stretch the boundaries of the proposal. Do not confine the expansion of Family Court jurisdiction to “easy” cases. As an example, consider that there are certain felonies classified as Violent Felony Offenses where, in fact, little or no actual violence is involved, such as Burglary in the Second Degree as defined in PL 140.25(2) or Robbery in the Second Degree as defined in PL160.10(1). We recognize that including crimes such as these in any legislative proposal can be problematic, but we believe they fit within the spirit of the proposal.

Legislative change comes slowly. Knowing that, we applaud the Chief Judge’s initiative to begin pilot projects in the courts in the interim. We urge the courts and judges to use what discretion they have to begin to effectuate the change required. Some of us practice in specialized problem-solving courts that deal with a variety of offenders and issues through the use of treatment, counseling and deferred sentencing scenarios. Some are aimed at Juvenile Offenders and youths potentially eligible for Youthful Offender treatment. These types of programs can provide data and examples of the type of intervention that can be effective.

We ask that the Commission examine the issue of eligibility for Youthful Offender Treatment in its proposal. Youthful Offender Treatment (YO) can have significant positive effects on the future of a youth who is eligible. YO can eliminate a conviction that would have serious collateral consequences for a young person’s life. Immigration consequences are one area where this is true. Receiving YO can forestall deportation in some situations. This should certainly be a consideration in a state with numerous immigrant residents. In addition, having a YO instead of a conviction will not show up in a background check by a college or university or a prospective employer. The Commission should consider whether New York’s YO statutory scheme is unnecessarily restrictive and out of step with other jurisdictions. Are we handicapping our young people with convictions, while residents of other states are not so encumbered?

Since we are considering raising the age of criminal responsibility, perhaps the Commission should consider a concurrent raise in the age of eligibility for YO. We suggest that our young people be considered for this benefit up until the age of 21. We further ask the Commission to broaden the scope of YO eligibility to include young people who have completed deferred sentence supervision on more serious felonies. The previous statutory formulation of



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mitigation should be expanded to include such situations. Finally, we suggest that all misdemeanor cases as well as low level non-violent felonies be subject to mandatory YO treatment.

Some of these proposals will at first appear extremely problematic for the legislature. We believe that the Chief Judge's vision and the expertise of the Permanent Sentencing Commission can see the wisdom of this approach and the long term benefits to be gained from it. Young people whose lives are re-directed and changed in beneficial ways will grow to become productive citizens who can enrich the life of their state, community, and family. That is and should be the goal and the result of a system that forsakes the punitive for the supportive and invests in the future of its children.