Adolescents Do Not Belong in the Adult Legal System

Katrina vanden Heuvel on March 23, 2015 - 1:15 PM ET

Currently, only New York and North Carolina automatically treat 16- and 17-year-old offenders as adults in the criminal-justice system. This means that New York is one of just two states in the country that has failed to recognize what research and science have confirmed—namely, that adolescents are children, and that placing them in the adult criminal-justice system doesn’t work for them and doesn’t work for public safety. Not only is it immediately cruel to incarcerate children along with hardened adult offenders, it also destroys their future prospects: children who go through the adult system are more likely to reoffend and less likely to go on to a productive life.

Acknowledging New York’s exacerbation of the problem, Governor Cuomo included in his 2015–16 Executive Budget juvenile justice reform recommendations from his Commission on Youth, Public Safety & Justice. In a comprehensive plan that would reform New York’s system, Governor Cuomo outlined reforms that will ensure that the state’s legal process provide children with age-appropriate consequences and treatment and thereby improve outcomes for youth, communities and the criminal-justice system as a whole. He must get this proposal passed in the budget this week. There is no time to waste.

The proposed legislation includes a number of critical reforms, including:
—Raising the overall age of juvenile jurisdiction to 18, consistent with other states.
—Raising the lower age of juvenile delinquency from 7 to 12 (except for murder offenses, which would be raised to 10).
—Ensuring that no 16- or 17-year-old youths are placed in adult facilities.
— Moving the majority of cases for 16- and 17-year-olds to Family Court and creating a new “Youth Part” in the adult system for youths who have allegedly committed more violent crimes.
— Expanding services—including alternatives to detention and incarceration—to keep youth in their communities and not incarcerated.
— Increasing the age for youthful offender status to 21 and broadening eligible crimes to better address the collateral consequences of court involvement.

These changes were unanimously recommended by the Governor’s Commission on Youth, Public, Safety & Justice, a group of legal, criminal justice, and social services experts Governor Cuomo tasked in 2014 with providing clear recommendations on how to reform New York’s criminal and juvenile justice systems. If adopted, the proposed changes would make New York a national leader on juvenile justice and public safety. You can read a more detailed outline of the proposed reforms in the Commission’s Summary of Recommendations for Juvenile Justice Reform in New York State.

In New York in 2013, nearly 35,000 16- and 17-year olds were arrested, presenting them with the possibility of prosecution as adults in criminal court. Never mind that the vast majority of these arrests were for minor crimes, and that misdemeanors accounted for 74 percent of the arrests. In 2013, more than 650 children aged 13 to 15 were prosecuted in adult criminal courts, seriously diminishing these youths’ prospects before they’ve even entered high school. What is worse, more than 70 percent of the children and youth arrested in New York are black or Latino. And of those sentenced to incarceration, 80 percent are black and Latino.

Research into brain development underscores that adolescents are, in fact, more like children than adults. A child’s brain is not fully formed until he is 25 years old. As the cognitive skills of adolescents are developing, their behavior is often impulsive and, well, childlike. Compared with adults, adolescents have diminished ability to focus on the consequences of their behavior. Furthermore, because the adolescent’s brain is still developing, his character, personality traits and behavior is highly receptive to change. That is, adolescents respond well to interventions, learn to make responsible choices and are likely to grow out of negative or delinquent behavior. Of course, those interventions need to be appropriate, and those responsible choices need to be effectively modeled.

Treating children as adults in the criminal-justice system is short-sighted and ineffective. Youth who are incarcerated in adult facilities are more likely to suffer physical and emotional abuse, and to recidivate. Obviously, these realities are at odds with the correctional goal of rehabilitating youth and protecting public safety. Studies show that young people transferred to the adult criminal justice system have approximately 34 percent more re-arrests for felony crimes than do young people retained in the youth justice system. Around 80 percent of youth released from adult prisons reoffend, often going on to commit more serious crimes.

Studies have also shown that, compared to children placed in youth facilities, youths in adult prisons are twice as likely to report being beaten by staff, and 50 percent more likely to be attacked with a weapon. Youths in adult prisons face the highest risk of sexual assault. Children in adult prisons are often placed in solitary confinement. This isolation is destructive to their mental health and can cause them irreparable harm. Children are thirty-six times more likely to commit suicide in an adult facility than in a juvenile facility.

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Rather than continuing to lock up young people in adult prisons, it is critical for New York to ensure that children involved in the criminal justice system are provided with court processes, services and placement options that are developmentally appropriate. A comprehensive approach to raising the age of criminal responsibility in New York State is in
the best interest of New York’s children and youth, communities, and public safety. I urge New York not to let this opportunity pass by.

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