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Memorandum in Support of A.10727/S.8685

I am writing to express my strong support for A.10727/S.8685, which would amend the Family Court Act, Social Services Law, and Executive Law to end the arrest and prosecution of children under the age of 12. This legislation would protect our most vulnerable children from the serious negative impacts of justice system involvement and is a critical step towards a more effective justice system.

I am an Assistant Professor of Psychology at John Jay College of Criminal Justice and am both a psychologist and an attorney. My expertise is on child and adolescent development as it relates to youths' functioning within the justice system, and I conduct research and scholarship on the juvenile justice system. I write in support of this bill in my capacity as a researcher, because this bill recognizes what scientists in this area have long known: **Children do best when provided with age-appropriate support and resources—and when children have the tools they need for success, communities are safer.**

Current Law

New York presently allows for a 7-year-old—a child in the first grade—to be arrested and prosecuted as a juvenile delinquent.¹ By age 10, when still in elementary school, children can be detained in secure facilities,² placed with much older youth in settings that are profoundly inappropriate for a young child. Children under 12 can currently be exposed to aspects of police and court system processing that we know can be damaging even for much older youth, including undergoing police interrogation, being handcuffed, separated from their family and placed in secure detention until their court hearings, required to comply with probation requirements that may be inconsistent with their developmental needs, and confined in an institution.

Across New York, police arrested over 800 elementary school aged children aged 12 and younger during 2018.³ Among these, more than 100 children arrested were first, second or third graders (aged 7 to 9).⁴ Of the 150 petitions filed against young children age 7 to 11 in 2018, nearly 60%

¹ N.Y. Family Ct. Act §§ 301.2(1), 304.1 (Consol. 2020).

² *Id.*

³ Data tables produced by DCJS.

⁴ *Id.*

were for property offenses or fighting.⁵

The way the law is currently structured, children are prosecuted who are not developmentally capable of understanding what is happening in court; even young adolescents may struggle to meaningfully grasp and participate in legal proceedings.⁶ Additionally, because their brains are still developing, young children are less likely to be able to meaningfully think through the possible consequences of their behavior before acting or learn from their mistakes,⁷ meaning that holding them criminally responsible in the same way as adolescents is inconsistent with developmental science.

Moreover, justice system stakeholders overwhelmingly agree that juvenile probation, detention, and placement are not developmentally appropriate responses for young children, and that other approaches are necessary for youth under 12.⁸ Traditional justice system processing for these young children is at best wasteful and ineffective and at worst harmful and counterproductive. When children are handled in the justice system, their developmental trajectories can be negatively impacted, and the chances that they will recover from a childhood mistake are reduced.⁹ A child's contact with the juvenile justice system raises the chances, by more than 50%, that he or she will someday return to the criminal justice system.¹⁰ Additionally, youth processed in the juvenile justice system face a huge number of collateral consequences beyond the punishment imposed by the court, including lifelong barriers to employment, negative impacts on future educational attainment, an inability to serve in the military, and loss of some public benefits.¹¹ Fortunately, there is another way: Research consistently shows that youth do best when provided with services tailored to directly meet their needs, and that this can be done *outside* of juvenile justice system processing.¹²

The Proposed Legislation

In light of robust science on childhood development and the impact of justice system involvement on youth, it is clear that **children will be more successful and our communities will benefit from no longer prosecuting youth under the age of 12.** The proposed legislation would:

⁵ See *id.*

⁶ See, e.g., Jodi L. Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms*, 29 L. & HUM. BEHAV. 723, 736 (2014).

⁷ See generally Eveline A. Crone & Maurits W. van der Molen, *Development of Decision Making in School-Aged Children and Adolescents: Evidence From Heart Rate and Skin Conductance Analysis*, 78 CHILD DEVELOPMENT 1288 (2007).

⁸ See generally Laura S. Abrams, Elizabeth S. Barnert, Matthew L. Mizel, Antoinette Bedros, Erica Webster, & Isaac Bryan, *When Is a Child Too Young for Juvenile Court? A Comparative Case Study of State Law and Implementation in Six Major Metropolitan Areas*, 66 CRIME & DELINQUENCY 219 (2020).

⁹ Elly Farmer, *The Age of Criminal Responsibility: Developmental Science and Human Rights Perspectives*, 6 J. CHILDREN'S SERV. 86, 89-90 (2011).

¹⁰ *The Juvenile Justice and Delinquency Prevention Act: Preserving Potential, Protecting Communities: Hearing Before the S. Comm. on the Judiciary*, 113 Cong. 4 (2014) (statement of Robert L. Listenbee, Administrator, Office of Juvenile Justice and Delinquency Prevention) (citing NATIONAL CENTER FOR JUVENILE JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 234).

¹¹ Jennica Janssen, Suraji Wagage, Lindsey M. Cole, Elizabeth Gale-Bentz, & Naomi E. S. Goldstein, *Collateral Consequences for Juveniles in the Justice System: Change in Perceptions after an Educational Intervention*, 19 ANALYSES OF SOCIAL ISSUES AND PUB. POL'Y 456, 457 (2019).

¹² See, e.g., Holly A. Wilson & Robert D. Hoge, *The Effect of Youth Diversion Programs on Recidivism*, 4 CRIM. JUST. & BEHAV. 497 (2013).

- raise the lower age of delinquency jurisdiction from age 7 to 12, ending the arrest and prosecution of children under 12 as delinquents, and bringing New York in line with states like Massachusetts and California¹³;
- end the use of secure detention for children under 13;
- create an alternative response pathway for assessment and services for youth through local departments of social services (LDSSs), including existing child welfare preventive services;
- provide training for police and LDSS staff to ensure appropriate response and that children and families can access services, when necessary;
- ensure records associated with services for youth are confidential and cannot be disclosed to anyone who is not involved in their treatment;
- fund the alternative response through existing streams for child welfare preventive services, family support services programs, and supervision and treatment services for juveniles; and,
- require the Office of Children and Family Services to produce an annual report documenting how programs are ensuring the safety and well-being of children, and addressing adverse impacts on minority communities in light of the well-documented racial disparities in the youth justice and child welfare systems.

The bill will bring New York's response to children in line with current research on child development, protect our communities, and save limited state and local resources by diverting young children from delinquency probation and prosecution, and into more effective, age-appropriate community-based services. I urge the New York State Legislature to pass this important legislation and bring New York law in line with available scientific knowledge.



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¹³ Mass. Gen. Laws ch. 119, § 54 (LexisNexis 2020), *as amended by* 2017 Mass. SB 2371 §§ 72–74, 76–79 (2018); Cal. WELF. & INST. Code §§ 601–02 (LexisNexis 2020), *as amended by* 2017 Cal SB 439 (2018).