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Patrick Harty

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**THE MORAL AND ECONOMIC ADVANTAGES OF RAISING  
THE AGE OF CRIMINAL RESPONSIBILITY IN NEW YORK  
AMONG JUVENILE OFFENDERS, AND PLANS FOR  
REHABILITATION**

*Patrick Harty\**

**I. INTRODUCTION**

On April 10, 2017, New York Governor Andrew Cuomo signed into law a bill that no longer places sixteen through eighteen-year-olds at the mercy of New York criminal courts.<sup>1</sup> Before the passage of this bill, New York was one of only two states in the country that prosecuted all youths as adults beginning at the age of sixteen.<sup>2</sup> The age of criminal responsibility was first lowered to sixteen in the year 1978 in response to a so-called “epidemic” in the number of crimes committed by children between the ages of sixteen to eighteen.<sup>3</sup>

Prior to the passage of the new “Raise the Age” law, there were numerous scientific and empirical studies supporting the idea that the brain of a sixteen-year-old child functions drastically different from that of an adult.<sup>4</sup> A sixteen-year-old child often possesses “an underdeveloped sense of responsibility” which can result in

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\*J.D. Candidate 2018, Touro College Jacob D. Fuchsberg Law Center; TOURO LAW REVIEW, Associate Editor, Bachelor of Arts in Political Science from Salisbury University. I would like to thank my Notes Editor Megan Forbes, as she put a great amount of time and effort into helping me with this note. I would also like to thank my Faculty Advisor Samuel Levine for helping me as well. Lastly, I would like to thank my parents, as they have always been by my side.

<sup>1</sup> Jesse McKinley, “*Raise the Age*,” *Now Law in New York, Is Still a Subject of Debate*, N.Y. TIMES (Apr. 10, 2017) [https://www.nytimes.com/2017/04/10/nyregion/raise-the-age-new-york.html?\\_r=0](https://www.nytimes.com/2017/04/10/nyregion/raise-the-age-new-york.html?_r=0).

<sup>2</sup> North Carolina is the other state. See *Get the Facts*, RAISE THE AGE NEW YORK, <http://raisetheagency.com/get-the-facts> (last visited Jan. 30, 2017).

<sup>3</sup> *People v. Robert C.*, 998 N.Y.S.2d 761, 762 (Sup. Ct. Queens County 2014).

<sup>4</sup> Ellen Torregrossa-O’Connor, *New Jersey’s Juvenile Waiver Reform and the Nexus Between Adolescent Development and Criminal Responsibility*, 296 OCT-N.J. LAW. 16, 19 (2015).

“impetuous and ill-considered actions and decisions.”<sup>5</sup> Governor Cuomo planned to end the incarceration of nonviolent, youthful offenders ages sixteen and seventeen in his most recent budget proposal.<sup>6</sup> This plan came into action by the passing of the new bill on April 10, 2017, which pushed New York in the right direction in terms of referring juveniles to Family Court, instead of the criminal courts, where they are often subject to harsher penalties in adult facilities.<sup>7</sup> This new law is still subject to debate, however, as it only allows for juveniles committing misdemeanors to be automatically sent to Family Court.<sup>8</sup> Juveniles who have committed nonviolent felonies will still be sent to criminal courts, and automatically sent to Family Court after thirty days, unless a “district attorney can prove ‘extraordinary circumstances.’”<sup>9</sup> Juveniles who have committed violent felonies will be subject to a “three part test: whether the victim sustained serious physical injury, whether the accused used a weapon, and whether the perpetrator engaged in criminal sexual conduct.”<sup>10</sup> The phrase “extraordinary circumstances,” has not yet been defined in a court of law, and only time will tell how this term will be construed.<sup>11</sup>

The United States Supreme Court has also recognized the scientific evidence of incarceration harming youths in its decision to ban capital punishment for those who committed the crime under the age of eighteen.<sup>12</sup> Empirical evidence, along with data and studies from states across the country, have all shown that New York needs to take a hard look at its current legislation regarding the age of criminal responsibility.<sup>13</sup> New York should consider the current wave throughout the country and help these children instead of placing them into adult facilities, regardless of whether the crime is a misdemeanor or felony.<sup>14</sup> This will not only reduce recidivism amongst juveniles,

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<sup>5</sup> Johnson v. Texas, 509 U.S. 350, 367 (1993).

<sup>6</sup> Jesse McKinley & Vivian Yee, *Cuomo Takes a New Approach in Unveiling his 2017 State Budget Proposal*, N.Y. TIMES 1, 2 (Jan. 17, 2017) [https://www.nytimes.com/2017/01/17/nyregion/andrew-cuomo-new-york-state-budget.html?\\_r=0](https://www.nytimes.com/2017/01/17/nyregion/andrew-cuomo-new-york-state-budget.html?_r=0).

<sup>7</sup> McKinley, *supra* note 1.

<sup>8</sup> McKinley, *supra* note 1.

<sup>9</sup> McKinley, *supra* note 1.

<sup>10</sup> McKinley, *supra* note 1.

<sup>11</sup> McKinley, *supra* note 1.

<sup>12</sup> See generally *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>13</sup> See Hamsher et al., *Statement on Raising the Age*, NEW YORK CITY BAR (2014) <http://www2.nycbar.org/pdf/report/uploads/20072795-RaisingtheMinimumAge18forCriminalResponsibility.pdf>.

<sup>14</sup> *Id.*

but evidence from various other states has also shown that the state will save money in the process.<sup>15</sup>

Before the newest bill was passed on April 10, 2017, waiving the right to adjudication and becoming a youthful offender was the closest label that New York had in terms of creating an avenue for the youth to be kept out of adult prisons and placed within the discretion of family courts.<sup>16</sup> Courts assessed defendants on a case-by-case basis, determining whether the defendant was a good candidate for their respective youthful offender program.<sup>17</sup> Those rejected from the youthful offender program were placed at the mercy of the criminal courts, and often in adult facilities.<sup>18</sup> Moving forward, New York courts will now look at whether the crime was a misdemeanor or felony, and whether the crime was violent or nonviolent.<sup>19</sup> Although this new bill offers an improvement over the previous situation, it still places juveniles who committed nonviolent and violent felonies before criminal courts.<sup>20</sup>

In order to understand why the country adopted such strict laws regarding criminal responsibility, it is vital to understand the temper of the country at the time of their adoption.<sup>21</sup> In order to fully understand why New York revised these laws, it is necessary to understand the advantages other states have experienced when raising the age of criminal responsibility.<sup>22</sup> These advantages, such as reduced recidivism and cutting costs, have some states even thinking about

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<sup>15</sup> See generally Katie Meyer, *Progress, Not Punishment: Connecticut Reimagines Approaches for Youthful Offenders*, NCCD BLOG (Nov. 10, 2015), <http://www.nccdglobal.org/blog/progress-not-punishment-connecticut-reimagines-approaches-for-youthful-offenders>; *A Common-Sense-Plan for Safer Communities: Include 17-year-olds in Juvenile Court*, LOUISIANA YOUTH JUSTICE COALITION at 3 (Apr. 2016), <http://www.laccr.org/wp-content/uploads/2016/04/LYJC-Raise-the-Age-Report.pdf>; Donna M. Bishop et al., *The Transfer of Juveniles to Criminal Court: Does it Make a Difference?*, 42 CRIME & DELINQ. 171 (1996).

<sup>16</sup> See generally N.Y. CRIM. PROC. LAW § 720.20 (McKinney 2006).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> McKinley, *supra* note 1.

<sup>20</sup> McKinley, *supra* note 1.

<sup>21</sup> See John J. Dilulio, Jr., *The Coming of Super-Predators*, THE WEEKLY STANDARD (Nov. 27, 1995), <http://www.weeklystandard.com/the-coming-of-the-super-predators/article/8160> (providing a look into how the country felt about its juveniles during the period of time where raising the age of criminal responsibility was seen as justified).

<sup>22</sup> *A Common-Sense-Plan for Safer Communities: Include 17-year-olds in Juvenile Court*, LOUISIANA YOUTH JUSTICE COALITION at 3 (Apr. 2016), <http://www.laccr.org/wp-content/uploads/2016/04/LYJC-Raise-the-Age-Report.pdf> [hereinafter *A Common-Sense Plan*].

raising the age of criminal responsibility beyond eighteen.<sup>23</sup> Not only would this help the state, but it would also assist children through the difficult situations they face when placed in dangerous adult facilities.<sup>24</sup>

This note explores the reasons why New York changed its previous law in regard to the age of criminal responsibility for juvenile defendants. More specifically, this note analyzes how scientific evidence shows juveniles have undeveloped brains, making them less culpable for their conduct, the negative effects juveniles have when they are incarcerated with adults, and how New York will benefit by raising the age of criminal responsibility. Section II analyzes the current law regarding juveniles in New York. Section III discusses the history of having strict laws for juvenile criminal responsibility. Section IV explains the negative impacts juveniles experience when they are mixed with adults in adult prisons, rather than with similarly situated juveniles in juvenile facilities. Section V analyzes the vast amount of scientific research on juvenile's underdeveloped brains, and how it makes them more susceptible to crime. Section VI explains why raising the age of criminal responsibility in New York will actually help reduce recidivism. Section VII discusses how and why New Jersey, Connecticut and Louisiana have changed their laws, and the successes they have experienced as a result. Section VIII sets forth the arguments against raising the age of criminal responsibility. Lastly, Section IX looks into certain strategies that New York can take in order to rehabilitate its youth, as well as some of the efforts already being taken within the state.

## II. CURRENT JUVENILE LAW IN NEW YORK

In New York, children arrested under the age of sixteen are usually referred to Family Court.<sup>25</sup> Now, with the passage of the "Raise the Age Bill," juveniles who have committed misdemeanors will also now be referred to Family Court. In Family Court, the adolescent is given treatment based mainly on rehabilitation, and not

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<sup>23</sup> Meyer, *supra* note 15.

<sup>24</sup> See generally Beck et al., *Sexual Violence Reported by Correctional Authorities*, 2006. U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS (2007) (providing a look into the unsafe conditions for juveniles on Rikers Island).

<sup>25</sup> Camacho, Honorable Fernando, *Adjudicating Cases Involving Adolescents in Suffolk County Criminal Courts*, 31 TOURO L. REV. 361, 362 (2015).

necessarily incarceration.<sup>26</sup> That is why it is vital that all juveniles, not just those who commit misdemeanors, be placed in Family Court.<sup>27</sup> Previously, after reaching the age of sixteen in New York, this placement did not occur if the court decided not to label the sixteen to nineteen year old a “youthful offender.”<sup>28</sup> Children over the age of sixteen were referred to the criminal courts where they were left susceptible to stricter penalties and incarceration in adult facilities.<sup>29</sup>

Previously, a court could exercise its discretion to give youthful offender status to a defendant between the ages of sixteen and eighteen.<sup>30</sup> The newest law signed by Governor Cuomo is similar with respect to that discretion.<sup>31</sup> The criminal courts will automatically refer a juvenile to Family Court, unless the prosecutor can prove “extraordinary circumstances.”<sup>32</sup> This has not yet been defined, and that gray area could prove disastrous if given a broad interpretation.<sup>33</sup> A defendant aged sixteen to eighteen would previously be eligible as a youthful offender unless:

(a) the conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, or (ii) an armed felony as defined in subdivision forty-one of section 1.20, except as provided in subdivision three, or (iii) rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse, except as provided in subdivision three, or (b) such youth has previously been convicted and sentenced for a felony, or (c) such youth has previously been adjudicated a youthful offender following conviction of a felony or has been adjudicated on or after September first, nineteen hundred seventy-eight a juvenile delinquent who committed a designated felony act as defined in the family court act.<sup>34</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> McKinley, *supra* note 1.

<sup>28</sup> N.Y. CRIM. PROC. LAW § 720.20 (McKinney 2006); Camacho, *supra* note 25, at 361.

<sup>29</sup> Camacho, *supra* note 25, at 361.

<sup>30</sup> N.Y. CRIM. PROC. LAW § 720.20 (McKinney 2006); N.Y. CRIM. PROC. LAW § 720.10 (McKinney 2006).

<sup>31</sup> McKinley, *supra* note 1.

<sup>32</sup> McKinley, *supra* note 1.

<sup>33</sup> McKinley, *supra* note 1.

<sup>34</sup> N.Y. CRIM. PROC. LAW § 720.10 (McKinney 2006).

It was mainly in the court's discretion to categorize a defendant as a youthful offender.<sup>35</sup> If, in the court's opinion, "the interest of justice would be served by relieving the eligible youth from the onus of the criminal record and by not imposing an indeterminate term of imprisonment of more than four years, the court may, in its discretion, find the eligible youth is a youthful offender."<sup>36</sup>

Under the recently signed "Raise the Age" law, juveniles who have committed misdemeanors are automatically referred to Family Court.<sup>37</sup> Those who have committed nonviolent felonies are still referred to criminal court for thirty days, where they can be subject to harsh penalties.<sup>38</sup> Upon completion of the thirty-day waiting period, the juvenile is sent to Family Court unless the District Attorney finds "extraordinary circumstances."<sup>39</sup> This has yet to be defined by the court, leaving an unnerving gray area.<sup>40</sup>

### III. THE HISTORY BEHIND THE FORMER STRICT LAWS OF JUVENILE CRIMINAL RESPONSIBILITY

The topic of criminal responsibility among juveniles first gained attention during the Progressive Era, when Jane Addams<sup>41</sup> and several other progressives opened the world's first juvenile court.<sup>42</sup> This court was created not to punish children, but rather to seek out what would best benefit the child.<sup>43</sup> The idea that courts should not try children in criminal court, but instead direct these cases to family court, soon spread throughout the country.<sup>44</sup> These family courts were run through a collaborative effort between judges and probation officers, as opposed to traditional adult criminal courts consisting of

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<sup>35</sup> N.Y. CRIM. PROC. LAW § 720.20 (McKinney 2006).

<sup>36</sup> *Id.*

<sup>37</sup> McKinley, *supra* note 1.

<sup>38</sup> McKinley, *supra* note 1.

<sup>39</sup> McKinley, *supra* note 1.

<sup>40</sup> McKinley, *supra* note 1.

<sup>41</sup> See generally Alden Long, *The Origins of the Juvenile Justice System in America*, WORLD SOCIALIST WEBSITE, (Nov. 11, 1999), <https://www.wsws.org/en/articles/1999/11/juven11.html>. Jane Addams is regarded as one of the most significant reformers of her time. She was heavily involved in social activism during the Progressive Era.

<sup>42</sup> David S. Tanenhaus, *First Things First: Juvenile Justice Reform in Historical Context*, 46 TEX. TECH L. REV. 281, 282 (2013).

<sup>43</sup> *Id.* at 282.

<sup>44</sup> *Id.* at 283.

prosecutors and defendants.<sup>45</sup> Only extreme cases of violence were directed to the adult criminal courts, a practice established in *Kent v. United States*.<sup>46</sup> In *Kent*, a sixteen-year-old was accused of rape and robbery.<sup>47</sup> The juvenile court waived its exclusive jurisdiction without conducting a full investigation into the matter, which placed the case in the criminal court's hands.<sup>48</sup> The Supreme Court held that the juvenile court was wrong for not conducting a full investigation before waiving its jurisdiction, but in the end, charges as serious as these were correctly placed in the adult criminal court.<sup>49</sup> When serious charges, such as the ones in *Kent*, were present, it was "critically important" that the defendant be faced by a prosecutor; therefore, a collaborative approach which did not involve prosecutors would be inappropriate.<sup>50</sup> This system of rehabilitating juveniles rather than prosecuting them in most cases soon faced criticism as some thought of it as a type of "kangaroo court" that let children off too easily.<sup>51</sup>

Throughout the 1980s and 1990s, New York, along with a majority of states, began enacting legislation to lower the age of criminal responsibility.<sup>52</sup> This was done in response to massive public concerns over juvenile crime at the time.<sup>53</sup> Almost all states made it significantly easier to prosecute adolescents as adults.<sup>54</sup> America was simply becoming afraid of its youth.<sup>55</sup> The nation was convinced that the upcoming generation was filled with what it called "superpredators."<sup>56</sup> The term "superpredators" was mainly rhetoric used by the media.<sup>57</sup> This led the public to believe that the next generation of children would be roaming the streets terrorizing the townspeople.<sup>58</sup> This generation was viewed as having no morality,

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<sup>45</sup> *Id.* at 284.

<sup>46</sup> 383 U.S. 541 (1966).

<sup>47</sup> *Id.* at 544.

<sup>48</sup> *Id.* at 548.

<sup>49</sup> *Id.* at 553-56.

<sup>50</sup> *Id.* at 553-54.

<sup>51</sup> Tanenhaus, *supra* note 42, at 285.

<sup>52</sup> Tanenhaus, *supra* note 42, at 288.

<sup>53</sup> Dilulio, Jr., *supra* note 21.

<sup>54</sup> Tanenhaus, *supra* note 42, at 288.

<sup>55</sup> Tanenhaus, *supra* note 42, at 288.

<sup>56</sup> Dilulio, Jr., *supra* note 21.

<sup>57</sup> Dilulio, Jr., *supra* note 21.

<sup>58</sup> Dilulio, Jr., *supra* note 21.



thus making criminal activity second nature to them, and the circumstances were seen as unprecedented.<sup>59</sup>

This view of the younger generation was not entirely unjustified, because during this time period, children between the ages of fourteen to twenty-four were almost entirely responsible for a huge spike in homicide rates and violent crime.<sup>60</sup> A 1995 article stated, “The out-migration of middle class types, divorce, out-of-wedlock births, and graffiti-splattered churches have spawned totally unsocialized young white males who commit violent crimes and youth gangs that prefer murder to mischief.”<sup>61</sup> The theory behind placing juveniles in adult prison was simple—it would deter them from recidivism.<sup>62</sup> The public saw the system prior to the 1990s as ineffective—a basic “slap on the wrist.”<sup>63</sup> Juveniles would serve a lenient sentence and then be back “on the street again engaging in criminal activity.”<sup>64</sup> The response to these fears was predictable, as “all states except Nebraska” had adopted stricter provisions to adjudicate juveniles as adults.<sup>65</sup> It has been estimated that by 1996, “20% to 25% of all juvenile offenders” were being prosecuted as adults.<sup>66</sup>

When states enacted these stricter laws, there were several main approaches to place a child in adult prison.<sup>67</sup> The first approach was a “judicial waiver,” where the court took into account the child’s “perceived lack of amenability to treatment, which is often based on considerations such as age, seriousness of the current offense, and previous delinquency.”<sup>68</sup> Another approach was a prosecutorial

<sup>59</sup> Dilulio, Jr., *supra* note 21; *See also* Tanenhaus, *supra* note 42.

<sup>60</sup> Matthew Razo, *Fair and Firm Sentencing for California’s Youth: Rethinking Penal Code Section 190.5*, 41 W. ST. U. L. REV. 429, 439-40 (2014).

<sup>61</sup> Dilulio, Jr., *supra* note 21.

<sup>62</sup> Robert A. Hahn et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System, A Systematic Review*, DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTER FOR DISEASE CONTROL AND PREVENTION, MORBIDITY AND MORALITY WEEKLY REPORT (Nov. 30, 2007), <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.

<sup>63</sup> Fagan, J. et al., *Be Careful What You Wish For: Legal Sanctions Among Adolescent Felony Offenders in Juvenile and Criminal Court*, COLUM. U. PUB. L. & LEG. THEORY, 1, 2 (2007); Elizabeth S. Scott & Laurence Steinberg, *Social Welfare and Fairness in Juvenile Crime Regulation*, 71 LA. L. REV. 35 (2010).

<sup>64</sup> Elizabeth S. Scott & Laurence Steinberg, *Social Welfare and Fairness in Juvenile Crime Regulation*, 71 LA. L. REV. 35, 48 (2010).

<sup>65</sup> Hahn et al., *supra* note 62.

<sup>66</sup> Hahn et al., *supra* note 62.

<sup>67</sup> Hahn et al., *supra* note 62.

<sup>68</sup> Hahn et al., *supra* note 62, at 3.

waiver, which gave the prosecution the discretion to put a juvenile in the adult system.<sup>69</sup> There was also the “Statutory Exclusion” approach.<sup>70</sup> The states that used this approach looked specifically at the crime committed.<sup>71</sup> Some states automatically referred the youth to adult prison, while others would charge the child as a juvenile.<sup>72</sup> Some states merely set the age that a juvenile could be charged as an adult.<sup>73</sup> For example, if a state were to set the age of criminal responsibility at seventeen, anyone at or over seventeen could be charged as an adult.<sup>74</sup> Another approach in some states was that if a child was emancipated, he was treated as an adult in the criminal justice system.<sup>75</sup> Lastly, some states looked to what was called a “blended sentence.”<sup>76</sup> This meant that the incarcerated youth spent time in a juvenile facility until he reached the age of adulthood, and then was transferred to an adult facility to serve out the remainder of his sentence.<sup>77</sup> This combined both juvenile and adult sanctions.<sup>78</sup>

These harsh laws led to an increased number of nonviolent juvenile offenders placed in the adult court system. However, some judges have begun recognizing the sweeping changes that have taken hold throughout the country.<sup>79</sup> In *People v. Robert C.*,<sup>80</sup> the defendant, who was fifteen years old at the time of the crime with no prior criminal history, was charged with robbery in the first degree.<sup>81</sup> The defendant, along with a co-defendant, stopped the victim in the middle

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<sup>69</sup> Hahn et al., *supra* note 62, at 3.

<sup>70</sup> Hahn et al., *supra* note 62, at 3.

<sup>71</sup> Hahn et al., *supra* note 62, at 3.

<sup>72</sup> Hahn et al., *supra* note 62, at 3.

<sup>73</sup> Hahn et al., *supra* note 62, at 3.

<sup>74</sup> Hahn et al., *supra* note 62, at 3.

<sup>75</sup> Hahn et al., *supra* note 62, at 3.

<sup>76</sup> Hahn et al., *supra* note 62, at 3.

<sup>77</sup> Hahn et al., *supra* note 62, at 3.

<sup>78</sup> Hahn et al., *supra* note 62, at 3.

<sup>79</sup> *Robert C.*, 998 N.Y.S.2d at 761.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 762; N.Y Penal Code § 160.15 (McKinney 2017) (“A person is guilty of robbery in the first degree when he forcibly steals property and when, in the course of commission of the crime or of immediate flight therefrom, he or another participant in the crime: (1) Causes serious physical injury to any person who is not a participant in the crime; or (2) is armed with a deadly weapon; or (3) Uses or threatens the immediate use of a dangerous instrument; or (4) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun, or other firearm was not a loaded weapon from which a shot, readily capable of producing death or other serious physical injury, could be discharged.”).

of the street and requested she give them “everything she got.”<sup>82</sup> The co-defendant did a majority of the talking, while the defendant stood by with a black BB gun pointed at the victim.<sup>83</sup> The victim complied by giving them her money and phone.<sup>84</sup> After threatening to have the phone traced, the defendant and co-defendant threw back her phone and ran away.<sup>85</sup> At the age of sixteen, the defendant faced the risk of being placed in an adult prison facility.<sup>86</sup>

In *Robert C.*, Judge Joseph A. Zayas looked to the sweeping reform that was taking place throughout the country in terms of “raise the age” statutes.<sup>87</sup> He recognized that he could not rule contrary to the 1978 statute CPL 210.43(2), which lays out the various instances a juvenile should be placed in the adult criminal courts, but determined that in this case, removal to family court did not require the People’s consent and was within the “interests of justice.”<sup>88</sup> This provision in New York’s juvenile offender statute, CPL 210.42, allows courts to consider “any other relevant fact indicating that a judgment of conviction in the criminal court would serve no useful purpose.”<sup>89</sup> Judge Zayas saw no purpose in subjecting this sixteen-year-old special education student to an adult prison.<sup>90</sup> Thus, Judge Zayas granted a removal to family court “in the interests of justice” and “the shifting ‘confidence of the public’ relating to the issue of whether Family Courts or Criminal Courts are the more appropriate forum to adjudicate juvenile crime.”<sup>91</sup> This decision was especially due to the minor role played by the defendant, as the co-defendant did a majority of the talking.<sup>92</sup> Judge Zayas’ opinion may have been seen as radical when decided, but it obviously played some role in showing that New York needed to change its former legislation.<sup>93</sup> This, in addition to the recently passed law, will allow New York to put behind its inexorable

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<sup>82</sup> *Robert C.*, 998 N.Y.S.2d at 762.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Robert C.*, 998 N.Y.S.2d at 766.

<sup>88</sup> *Id.* at 764.

<sup>89</sup> *Id.* at 763.

<sup>90</sup> *Id.* at 768.

<sup>91</sup> *Id.* at 769.

<sup>92</sup> *Robert C.*, 998 N.Y.S.2d at 762.

<sup>93</sup> *See generally id.* at 761.

approach and embrace methods that will best prepare its youth for a more prosperous future.<sup>94</sup>

#### IV. THE HARSH REALITY OF ADULT PRISONS AND THEIR PROFOUND EFFECT ON CHILDREN

Adult prisons place youth in extremely dangerous and potentially volatile situations.<sup>95</sup> The current system puts youthful offenders in a counterproductive setting to their rehabilitation.<sup>96</sup> It has been found that “youth in adult facilities were eight times more likely to commit suicide than those placed in the juvenile justice system.”<sup>97</sup> In a 2006 study, the U.S. Department of Justice Bureau of Justice Statistics found that 13% of the victims of inmate-on-inmate sexual assault were youths under the age of eighteen.<sup>98</sup> To put this in perspective, these victims make up only 1% of the prison population.<sup>99</sup> These statistics paint a grim future for those subjected to New York’s strict laws relating to its juvenile offenders.<sup>100</sup>

In the United States Department of Justice’s 2014 study at Riker’s Island, a jail in New York, the study found disturbing information on the treatment of its adolescent inmates:

We find that adolescent inmates are not adequately protected from harm, including serious physical harm from rampant use of unnecessary and excessive force by DOC staff. In addition, adolescent inmates are not adequately protected from harm caused by violence inflicted by other inmates, including inmate-on-inmate fights. Indeed, we find that a deep-seated culture of violence is pervasive throughout the adolescent facilities at Rikers, and DOC staff routinely utilize force not as a last resort, but instead as a means to control the adolescent population and punish disorderly

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<sup>94</sup> *Id.*

<sup>95</sup> Beck et al., *supra* note 24.

<sup>96</sup> Beck et al., *supra* note 24; *see also* Letter from Jocelyn Samuels et al. to The Hon. Bill de Blasio et al. 1, 3 (Aug. 4, 2014), <http://www.justice.gov/usao/nys/pressreleases/August14/RikersReportPR/SDNY%20Rikers%20Report.pdf> (regarding CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island).

<sup>97</sup> Torregrossa-O’Connor, *supra* note 4, at 19.

<sup>98</sup> Beck et al., *supra* note 24, at 35.

<sup>99</sup> Beck et al., *supra* note 24, at 35.

<sup>100</sup> *See generally* Beck et al., *supra* note 24.

or disrespectful behavior. Moreover, DOC relies far too heavily on punitive segregation as a disciplinary measure, placing adolescent inmates – many of whom are mentally ill – in what amounts to solitary confinement at an alarming rate and for excessive periods of time.<sup>101</sup>

Children, whose brains are still developing, are being placed in hostile environments and into solitary confinement in adult prisons.<sup>102</sup> According to studies, solitary confinement “wreaks profound neurological and psychological damage, causing depression, hallucinations, panic attacks, cognitive deficits, obsessive thinking, paranoia, anxiety, and anger.”<sup>103</sup> Being locked into a room for long periods of time with no interaction with others has a particularly profound effect on juveniles, as their brains have not fully matured.<sup>104</sup> The frontal lobe of the human brain, which is “responsible for cognitive processing such as planning, strategizing, and organizing thoughts or actions,” is not fully developed in some children until their mid-twenties.<sup>105</sup> Children within the ages of sixteen to eighteen are also at a critical point in developing their social and psychological skills.<sup>106</sup>

## V. SCIENCE BEHIND THE ARGUMENT: HOW THE TEENAGE BRAIN IS MORE SUSCEPTIBLE TO COMMITTING CRIME

There is a great deal of scientific research showing that from the ages of sixteen to eighteen, juvenile brains have not fully developed.<sup>107</sup> This, in turn, makes them more suggestive, impulsive,

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<sup>101</sup> Letter from Jocelyn Samuels et al. to The Hon. Bill de Blasio et al. (Aug. 4, 2014) regarding CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island 1, 3 (Aug. 4, 2014) available at <http://www.justice.gov/usao/nys/pressreleases/August14/RikersReportPR/SDNY%20Rikers%20Report.pdf>; DOC represents the Department of Corrections.

<sup>102</sup> Laura Dimon, *How Solitary Confinement Hurts the Teenage Brain*, THE ATLANTIC (June 30, 2014), <http://www.theatlantic.com/health/archive/2014/06/how-solitary-confinement-hurts-the-teenage-brain/373002/>.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> See generally *Roper v. Simmons*, 543 U.S. 551 (2005); Torregrossa-O'Connor, *supra* note 4.

and therefore more willing to take risks.<sup>108</sup> The Supreme Court recognized the differences in brain functioning between adults and juveniles in its decision, *Roper v. Simmons*,<sup>109</sup> which eliminated capital punishment for juvenile offenders under the Eighth and Fourteenth Amendments.<sup>110</sup> Here, Justice Kennedy recognized the differences between juveniles under eighteen and adults, concluding that youth cannot be regarded as the worst offenders in our system.<sup>111</sup>

Studies have shown that juvenile brains “are more responsive to neural-chemical rewards of social connections and acceptance; therefore, peer pressure and acceptance play outsized roles in adolescent behavior.”<sup>112</sup> Consequently, when placed in an adult prison, a juvenile is more likely to take part in illegal activity in order to please those around him.<sup>113</sup> Further, research has shown that adolescents spanning ages ten to twenty-four are:

- 1) more likely to underestimate the existence and seriousness of risks attendant to their conduct; 2) more prone to risk taking and sensation seeking due to the failure to weigh costs against immediate rewards; 3) less likely to control their impulses and accurately weigh consequences; 4) more susceptible to outside influences; and 5) more likely to mature and ‘outgrow’ the offending behavior.<sup>114</sup>

These deficiencies in the development of adolescent brains have thus led to more children being behind bars with adults.<sup>115</sup> New York started looking at this research, which indicates that instead of fast-tracking its youth to adult facilities, a different approach was necessary.<sup>116</sup>

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<sup>108</sup> Meyer, *supra* note 15.

<sup>109</sup> 543 U.S. 551 (2005).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 569. In this case, the defendant was convicted of first-degree murder at the age of seventeen and sentenced to death. The Court held in this case that when a capital crime is committed before one reaches the age of eighteen, execution is unconstitutional under the 8<sup>th</sup> and 14<sup>th</sup> Amendments. *Id.* at 551.

<sup>112</sup> Hamsher et al., *supra* note 13.

<sup>113</sup> Hamsher et al., *supra* note 13.

<sup>114</sup> Torregrossa-O’Connor, *supra* note 4, at 16.

<sup>115</sup> Torregrossa-O’Connor, *supra* note 4, at 16.

<sup>116</sup> Hamsher et al., *supra* note 13 (explaining the importance of raising the age in New York).

Many studies suggest that juveniles cannot fully control their actions or emotions because their brains are not fully developed.<sup>117</sup> It is unfair to hold children accountable for actions that they may not be able to fully control.<sup>118</sup> New York does not allow sixteen-year-olds to drink or gamble until the age of twenty-one, but will place them at the mercy of the criminal courts.<sup>119</sup> In an era where some sixteen-year-olds cannot even be trusted to spend one night alone without their parents' supervision, New York trusts that they can continue to develop in facilities with criminals twice to three times their age.<sup>120</sup>

**VI. RAISING THE AGE OF CRIMINAL RESPONSIBILITY:  
REDUCING RECIDIVISM AND KEEPING CHILDREN OUT OF  
ADULT PRISONS**

One argument for children being prosecuted under the adult criminal justice system is that it is more harsh, strict, and severe, and this will lead to specific and general deterrence.<sup>121</sup> This argument follows the premise that a child will be discouraged, and therefore less likely to commit a crime if the consequences are more severe.<sup>122</sup> Supporters of stricter criminal policies, such as those who support a lower age of criminal responsibility, point to the fact that crime-rates among juveniles have decreased since the 1990s.<sup>123</sup> However, this may not be a direct result of stricter penalties.<sup>124</sup> Researchers have had trouble finding a correlation between harsher punitive laws and reduced crime-rates.<sup>125</sup> Due to juvenile minds being more malleable, placing them in a hostile environment will only increase the chances that the child commits crimes later in life.<sup>126</sup>

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<sup>117</sup> See generally Torregrossa-O'Connor, *supra* note 4, at 16; Hamsher et al., *supra* note 13.

<sup>118</sup> See generally Meyer, *supra* note 15.

<sup>119</sup> N.Y. ALCO. BEV. CONT. LAW § 65 (McKinney 2016); N.Y. RAC. PARI-MUT. WAG. & BREED. LAW § 1332 (McKinney 2014).

<sup>120</sup> David Pimental, *The Widening Maturity Gap: Trying and Punishing Juveniles as Adults in an Era of Extended Adolescence*, 46 TEX. TECH L. REV. 71, 88-91 (2013).

<sup>121</sup> Hahn et al., *supra* note 62.

<sup>122</sup> Merriam-Webster's Dictionary defines deterrence as "the inhibition of criminal behavior fear especially of punishment." MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/deterrence>.

<sup>123</sup> Tanenhaus, *supra* note 44, at 289.

<sup>124</sup> Scott & Steinberg, *supra* note 64, at 56.

<sup>125</sup> Scott & Steinberg, *supra* note 64, at 56.

<sup>126</sup> See generally Hamsher et al., *supra* note 15.

Since New York raised its age of criminal responsibility for juvenile offenders, evidence shows that the recidivism rates among those between the ages of sixteen to eighteen will likely decrease.<sup>127</sup> A study in 2007 sought to find the connection between recidivism rates among children in adult prisons versus children placed in juvenile facilities.<sup>128</sup> The study compared children arrested and placed in adult prisons in New York for robbery with children arrested for the same crimes in New Jersey who were placed in the juvenile courts.<sup>129</sup> The results showed that those placed in adult criminal courts were more likely to be rearrested and subsequently incarcerated.<sup>130</sup> When comparing fifteen and sixteen-year-olds charged with violent felonies in the New York adult system against the New Jersey juvenile system, it was also found that juveniles in New York were twice as likely to be rearrested for a violent crime.<sup>131</sup> Children in New York were also more likely to be rearrested for a property crime, and more likely to be incarcerated in the future.<sup>132</sup> The overall conclusion from this study was that “adolescents prosecuted and sentenced in criminal court are at a significantly greater risk of rearrest for violent and felony property offenses, their risks accrue more quickly, and they are more likely to be subsequently incarcerated than matched samples of adolescents prosecuted in juvenile courts.”<sup>133</sup>

An additional study in Florida was conducted that also supported the conclusion that longer prison sentences and stricter penalties against juveniles are ineffective in reducing recidivism.<sup>134</sup> The study found that juveniles who were transferred to adult prisons were rearrested at a rate of 30%.<sup>135</sup> This is comparable to the only “19% of the juvenile court sample.”<sup>136</sup> Harsher punitive laws, which were enacted to prevent re-arrest and deter crime are doing the opposite of their intended purpose.<sup>137</sup> New York has started, and taken the first

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<sup>127</sup> Scott & Steinberg, *supra* note 64, at 57-60 (providing examples of how recidivism rates would drop if children were placed in juvenile facilities).

<sup>128</sup> Fagan, J. et al., *supra* note 63.

<sup>129</sup> Fagan, J. et al., *supra* note 63.

<sup>130</sup> Fagan, J. et al., *supra* note 63, at 69.

<sup>131</sup> Fagan, J. et al., *supra* note 63, at 39, 41.

<sup>132</sup> Fagan, J. et al., *supra* note 63, at 39, 41.

<sup>133</sup> Fagan, J. et al., *supra* note 63, at 69.

<sup>134</sup> Scott & Steinberg, *supra* note 64.

<sup>135</sup> Fagan et al., *supra* note 63, at 15.

<sup>136</sup> Fagan et al., *supra* note 63, at 15.

<sup>137</sup> Fagan et al., *supra* note 63, at 15.



steps, towards seeing that the basis from which it enacted its law lowering the age of criminal responsibility in 1978 was no longer relevant and was ultimately placing its youth at a disadvantage.<sup>138</sup>

## VII. HOW AND WHY OTHER STATES HAVE CHANGED THEIR LAWS

### A. New Jersey

In 2015, New Jersey Governor Chris Christie signed into law New Jersey Assembly Bill 4299, which put great limitations on the types of crimes that could place youthful offenders in adult prisons.<sup>139</sup> New Jersey had previously relied almost exclusively on the waiver system when dealing with its juvenile offenders.<sup>140</sup> This system automatically placed a waiver on certain crimes, placing those juveniles within the adult court's jurisdiction.<sup>141</sup> This legislation drastically cut back the number of crimes that are considered automatic waivers to the adult criminal system.<sup>142</sup> Only those juveniles over the age of fifteen who have committed "chart one" offenses will be considered candidates for waiver.<sup>143</sup> Chart one charges include, but are not limited to, homicide, robbery in the first degree, aggravated sexual assault, sexual assault, kidnapping, gang criminality, and aggravated assault.<sup>144</sup> New Jersey Assembly Bill 4299 also creates a "presumption that youth waived for adult prosecution will be held in juvenile detention centers rather than adult jails while awaiting trial and that youth sentenced in the adult system will presumptively be held in youth facilities until the age of 21."<sup>145</sup> Although not all crimes have

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<sup>138</sup> Fagan et al., *supra* note 63, at 15; *see also* Meyer, *supra* note 17.

<sup>139</sup> Zoe Schein, *New Jersey to Reform Youth Transfer, Waiver and Confinement Policies*, NATIONAL JUVENILE JUSTICE NETWORK 1, 1-3 (Sept. 15, 2015), <http://www.njjn.org/article/new-jersey-bill-to-reform-youth-transfer-waiver-and-confinement-policies>.

<sup>140</sup> Torregrossa-O'Connor, *supra* note 4, at 16-17.

<sup>141</sup> Torregrossa-O'Connor, *supra* note 4, at 19-20.

<sup>142</sup> Schein, *supra* note 144; *see also* ASSEMB. BILL NO. 4299, 216<sup>TH</sup> LEG. (N.J. 2015); SEN. BILL NO. 2003 (2014).

<sup>143</sup> ASSEMB. BILL NO. 4299, 216<sup>TH</sup> LEG. *available at* [http://www.njleg.state.nj.us/2014/Bills/A4500/4299\\_S2.PDF](http://www.njleg.state.nj.us/2014/Bills/A4500/4299_S2.PDF).

<sup>144</sup> *Id.*

<sup>145</sup> Schein, *supra* note 144, at 3.

been fully revised, New Jersey has taken a giant step in the right direction.<sup>146</sup>

With the passage of the New Jersey Assembly Bill 4299, New Jersey now heavily focuses on rehabilitation of juveniles rather than their incarceration.<sup>147</sup> This statute includes various provisions that now make it more challenging for the prosecution to send a juvenile to an adult facility.<sup>148</sup> The prosecution now has the burden of proving that rehabilitation would be ineffective for the individual defendant in order to be tried as an adult.<sup>149</sup> The burden falls on the prosecution for all “chart 2” offenses.<sup>150</sup> New Jersey is taking significant steps towards rehabilitating youth as opposed to putting them behind bars.<sup>151</sup> New Jersey passed this bill due to the overwhelming scientific evidence that children between the ages of sixteen to eighteen are more impulsive, therefore making them more susceptible to crime.<sup>152</sup> The psychological effects an adult prison has on a child are astounding, as they are “eight times more likely to commit suicide” while incarcerated.<sup>153</sup>

## B. Connecticut

Connecticut also serves as an example to New York of the financial opportunities that could await the state if it were to raise the age of criminal responsibility.<sup>154</sup> Connecticut recently raised its age of criminal responsibility from sixteen to eighteen in 2007.<sup>155</sup> Connecticut Governor Dannel Malloy was the first governor of Connecticut to suggest that the age be raised even higher.<sup>156</sup> Governor Malloy has recently suggested that the age of criminal responsibility be increased even higher to age twenty.<sup>157</sup> The fact that Connecticut

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<sup>146</sup> Torregrossa-O’Connor, *supra* note 4.

<sup>147</sup> Torregrossa-O’Connor, *supra* note 4 at 20.

<sup>148</sup> ASSEMB. BILL NO. 4299, *supra* note 148.

<sup>149</sup> Torregrossa-O’Connor, *supra* note 4, at 20.

<sup>150</sup> ASSEMB. BILL NO. 4299, *supra* note 148.

<sup>151</sup> Schein, *supra* note 144.

<sup>152</sup> Torregrossa-O’Connor, *supra* note 4, at 17-19.

<sup>153</sup> Torregrossa-O’Connor, *supra* note 4, at 19.

<sup>154</sup> Meyer, *supra* note 17.

<sup>155</sup> RAISE THE AGE CT, <http://www.raisetheagect.org/> (last visited Jan. 10, 2017).

<sup>156</sup> Meyer, *supra* note 17.

<sup>157</sup> Meyer, *supra* note 17.

is considering increasing the age of criminal responsibility even higher is a direct result of the success of this change.<sup>158</sup>

Since Connecticut has raised the age of criminal responsibility, “the Governor’s office estimates this drop saves the State at least \$58.3 million each year.”<sup>159</sup> It has seen a 51% reduction in the number of people ages eighteen to twenty-one being admitted to state prisons.<sup>160</sup> Connecticut not only saw the potential that raising the age of criminal responsibility could have on its youth, but also the amount of money it could save.<sup>161</sup> Research showed that “moving all 16- and 17-year-old youth out of the adult system into the juvenile system, while maintaining all other services for youth as they are today, will return about \$3 in benefit for every \$1 in cost.”<sup>162</sup> Not only is this new method of treating juveniles giving them the rehabilitation their undeveloped brains require, it also has the potential to save the state money.<sup>163</sup> It comes as no surprise that the state is looking to include even more children into this newfound dollar saver.<sup>164</sup>

### C. Louisiana

Recently, Louisiana followed the example of the majority of the country and passed Senate Bill 324, which raised the age of criminal responsibility from seventeen to eighteen.<sup>165</sup> Before its passage, “41 other states” had raised the age, and “66% of Louisianans” supported the new legislation.<sup>166</sup> Louisiana Governor John Bel Edwards signed Bill 324 and said:

We know that at 17 a young person’s brain is still developing. We recognize this when it comes to voting, joining the military, or even buying a lottery ticket. We

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<sup>158</sup> *A Common-Sense-Plan*, *supra* note 22.

<sup>159</sup> *A Common-Sense-Plan*, *supra* note 22, at 3.

<sup>160</sup> *A Common-Sense-Plan*, *supra* note 22, at 19.

<sup>161</sup> See generally John Roman, *Remarks Before the Judiciary and Appropriations Committee*, CONN. GEN. ASSEMB. (Feb. 21, 2006), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/900959-The-Economic-Impact-of-Raising-the-Age-of-Juvenile-Jurisdiction-in-Connecticut.PDF>.

<sup>162</sup> *Id.* at 3.

<sup>163</sup> *A Common-Sense Plan*, *supra* note 22.

<sup>164</sup> Meyer, *supra* note 17.

<sup>165</sup> *Raise the Age LA Becomes Law!*, LOUISIANA CENTER FOR CHILDREN’S RIGHTS (June 14, 2016), <http://www.laccr.org/news/raise-the-age-la-becomes-law/>.

<sup>166</sup> *Id.*

should give prosecutors and district attorneys the flexibility to recognize that as well when it comes to the age-appropriate sentencing that 41 other states and 66 percent of Louisianans support. In the end, it's about not giving up on any young person.<sup>167</sup>

The passing of this bill into law was in response to a great rise in public support.<sup>168</sup> A report by the Louisiana Youth Justice Coalition clearly laid out the various advantages that Louisiana would experience following the passage of the bill into law.<sup>169</sup> Similar to raise the age supporters in Connecticut, the report lists both the economic advantages, as well as those for the state's youth.<sup>170</sup>

### VIII. OPPONENTS TO RAISING THE AGE OF CRIMINAL RESPONSIBILITY

The main opponents to raising the age believe that because it is more expensive to house juveniles than adult offenders, the increased number of adolescents placed in juvenile facilities will have a negative fiscal impact on the state.<sup>171</sup> Texas, which currently charges seventeen-year-olds as adults, recently reported that it costs \$366.88 per day to house a juvenile offender in a juvenile facility, while it only costs \$50.04 per day to house a juvenile in an adult facility.<sup>172</sup> The report also lists other expenses such as a need for "increased juvenile probation caseloads" for lawyers, a "need for new specialized programs," and "increased bed usage."<sup>173</sup> The initial burden that is associated with raising the age is costly, however the long term economic benefits of moving juvenile offenders out of adult facilities cannot be denied.<sup>174</sup> This report lists some of the long term advantages such as "Fewer arrests . . . Less re-incarceration . . . Avoidance . . . [of] collateral consequences mean more youth in school, higher education, and jobs."<sup>175</sup> The far reaching ways of cost saving could potentially

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<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *A Common-Sense Plan*, *supra* note 22.

<sup>170</sup> *A Common-Sense Plan*, *supra* note 22.

<sup>171</sup> *See generally* HOUSE COMM. ON CRIMINAL JURISPRUDENCE. A REPORT TO THE HOUSE OF REPRESENTATIVES 84<sup>TH</sup> TEXAS LEGISLATURE, 84<sup>th</sup> Leg., 1 (2015).

<sup>172</sup> *Id.* at 4.

<sup>173</sup> *Id.* at 10.

<sup>174</sup> HOUSE COMM. ON CRIMINAL JURISPRUDENCE, *supra* note 162.

<sup>175</sup> HOUSE COMM. ON CRIMINAL JURISPRUDENCE, *supra* note 162, at 10.

save taxpayers millions of dollars, and the results have already started to be seen in other states.<sup>176</sup>

### **IX. STRATEGIES FOR NEW YORK TO REHABILITATE ITS JUVENILE OFFENDERS**

Just as New Jersey has begun providing its youthful offenders with the tools they need to rehabilitate, New York has started to follow its neighbor's lead.<sup>177</sup> Vocational training is absolutely vital in order to have a successful reentry for adult youth.<sup>178</sup> Learning a skill or trade can provide juveniles with the skills necessary to obtain employment after being placed back into society.<sup>179</sup> If a juvenile is placed on the right track before release, his chances of going back to jail decrease.<sup>180</sup> Programs can provide youth with the help they need in order to become productive members of society, instead of returning to prison for additional crimes.<sup>181</sup>

Another aspect to the rehabilitation of juvenile offenders is their education. New York needs to overhaul its current educational requirements for juvenile offenders.<sup>182</sup> This is vital to the rehabilitation of juveniles, otherwise they come out of jail facilities uneducated, and essentially underprepared for either reentry into school or entry into the workplace.<sup>183</sup> These children need to be learning in order to pass the Test Assessing Secondary Completion Exam (hereinafter "TASC exam"), or for their reentry into school upon release.<sup>184</sup> The TASC exam, formally known as the General Education Development Exam ("GED" exam), is New York's version of a high school equivalency test.<sup>185</sup> In turn, education while in juvenile facilities will help those children work towards future

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<sup>176</sup> *A Common-Sense Plan*, *supra* note 22.

<sup>177</sup> Torregrossa O'Connor, *supra* note 4; McKinley, *supra* note 1.

<sup>178</sup> See generally Karen Sicner, *Juvenile Facilities Offer Vocational Programs to Engage Youths, Reduce Repeat Offenses and Offer Opportunity*, AIA KNOWLEDGE NET (July 22, 2016), <https://network.aia.org/blogs/stacey-wiseman/2016/07/22/opportunity-and-engagement-vocational-programs-in-juvenile-facilities>.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> Hamsher et al., *supra* note 13.

<sup>183</sup> Sicner, *supra* note 178.

<sup>184</sup> See TASC TEST ASSESSING SECONDARY COMPLETION, *available at* [www.tasctest.com](http://www.tasctest.com). The TASC is New York's high school equivalency exam.

<sup>185</sup> *Id.*

employment.<sup>186</sup> Some type of collaborative approach among the judge, social workers, and education system could potentially work wonders for those children who are simply looking to get their lives back on track after incarceration.<sup>187</sup>

Efforts in New York are already beginning to take shape in order to help those children referred to the adult court system.<sup>188</sup> The recently signed bill is a huge step in the right direction towards rehabilitating youth in Family Court.<sup>189</sup> However, before this bill was passed, efforts were already being taken. The Honorable Judge Fernando Camacho heads the Suffolk County Felony Youth Part, which takes juvenile offenders out of the adult system, and creates a collaborative, more effective approach for children.<sup>190</sup> This approach takes into account the reasons an adolescent between the ages of sixteen to eighteen is in the situation he is, instead of placing him into the adult court system, which would likely throw him behind bars.<sup>191</sup> This approach is rather unorthodox and strays greatly from the norm, but it does represent an excellent example of those in New York who recognized the problems with the former juvenile laws.<sup>192</sup> It is quite reminiscent of the collaborative approach taken by Jane Addams and the early progressives, who attempted to address the juvenile's issues through a more parental approach by the state.<sup>193</sup> More programs like Judge Camacho's are needed throughout New York in order to address not only what to do with adolescents in the criminal justice system, but how to rehabilitate them upon reentry into society.<sup>194</sup>

An interesting program at Rikers Island aids the youth upon their reentry into society.<sup>195</sup> This program, which is funded for the next

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<sup>186</sup> Sicner, *supra* note 178.

<sup>187</sup> Camacho, *supra* note 25 (providing a look at a more collaborative approach to juvenile youth).

<sup>188</sup> Camacho, *supra* note 25 (showing a judge using a more collaborative approach to the traditional system of law involving juveniles); *see also* *Robert C.*, 998 N.Y.S.2d at 762 (providing the basis for a judge's decision to not send a child to adult prison); *Get the Facts*, *supra* note 2 (showing a group which supports a change in litigation in order to raise the age of criminal responsibility in New York).

<sup>189</sup> McKinley, *supra* note 1.

<sup>190</sup> Camacho, *supra* note 25.

<sup>191</sup> Camacho, *supra* note 25, at 362-63.

<sup>192</sup> *See generally* Camacho, *supra* note 25.

<sup>193</sup> *See generally* Camacho, *supra* note 25; *see also* Tanenhaus, *supra* note 44, at 282.

<sup>194</sup> Camacho, *supra* note 25.

<sup>195</sup> *See generally* Colby Hamilton, *Rikers Youth Reentry Project Attempts to Fill State Juvenile Justice Gap*, POLITICO 1 (Oct. 6, 2016), <http://www.politico.com/states/new->

three years, is aimed at helping the estimated 4,000 youths on Rikers Island.<sup>196</sup> Through this program, immediately upon the youth's entry to Rikers, the child is given someone dedicated to creating access back into ones community upon release.<sup>197</sup> This program also attempts to show policy makers through its success that similar programs should be enacted throughout the state of New York.<sup>198</sup> In surrounding states, the juvenile facilities have similar types of access to people and programs that will aid them upon reentry to society, and finally New York has started to follow their examples.<sup>199</sup> The new "Raise the Age" law also provides that those juveniles incarcerated on Riker's Island<sup>200</sup> who are under the age of sixteen will no longer be held in Rikers' county jails.<sup>201</sup> Next year, this bill also will apply to seventeen-year-olds as well.<sup>202</sup>

## X. CONCLUSION

Although this new "Raise the Age" law is a major step in the right direction regarding New York's treatment of juvenile offenders, it should be extended to all juveniles.<sup>203</sup> Prior to the passage of the new law, the State of New York was one of only two states that have not raised the age of criminal responsibility, the other being North Carolina.<sup>204</sup> Advances in the understanding of adolescent brain maturation and development have proven that, at the very least, an underdeveloped brain plays a factor in an adolescent's judgment and decision-making.<sup>205</sup> Through the recent, innovative legislation in states such as New Jersey, Connecticut, and Louisiana, New York has examples of the social and economic benefits of raising the age of criminal responsibility.<sup>206</sup> The laws created throughout the 1980s in New York were created out of fear and misguided opinion regarding

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york/city-hall/story/2016/10/rikers-youth-reentry-program-looks-to-fill-state-juvenile-justice-gap-106033.

<sup>196</sup> *Id.* at 4.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* at 3.

<sup>199</sup> *Id.*

<sup>200</sup> McKinley, *supra* note 1.

<sup>201</sup> McKinley, *supra* note 1.

<sup>202</sup> McKinley, *supra* note 1.

<sup>203</sup> McKinley, *supra* note 1.

<sup>204</sup> *Get the Facts*, *supra* note 2.

<sup>205</sup> *Get the Facts*, *supra* note 2, at 3.

<sup>206</sup> *A Common-Sense Plan*, *supra* note 22.

the state's youth.<sup>207</sup> New York has realized that those laws did not work and should continue to modify its laws.<sup>208</sup> New York has taken the first steps required to support its youth, and now needs to extend those modifications to all juveniles, as each one deserves a chance at future success.<sup>209</sup>

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<sup>207</sup> Dilulio, Jr., *supra* note 21 (providing a look into how the country viewed its juveniles during the period of time when raising the age of criminal responsibility was seen as justified).

<sup>208</sup> McKinley, *supra* note 1.

<sup>209</sup> Hamsher et al., *supra* note 13, at 3.