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**TESTIMONY BEFORE THE SENATE HEARING
ON THE AGE OF CRIMINAL RESPONSIBILITY
IN NEW YORK STATE**

February 6, 2017

**Legislative Office Building
Albany, NY**

Senator Gallivan, Committee on Crime Victims, Crime and Correction Chairman. Senator Avella. Committee on Children and Families Chairman. Members of the Committees. My name is Larry Evans and I appear here today as the Legislative Chair of the New York State Probation Officers Association (NYSPOA), which is a professional organization comprised of line Probation Officers. I'm honored to have this opportunity to discuss issues in the criminal justice system related to the treatment of sixteen and seventeen year-old youths.

Although it is true that New York State is one of two States that continues to process youths up to age eighteen in criminal courts, it is not true that all these youths are "convicted." Youthful Offender status allows for them not to necessarily be burdened with a criminal conviction. The critical long-term consequence of this is not necessarily the stigma of being convicted, but that these youths are not receiving the opportunity to transition from youths to adults.

In the criminal model, the term "rehabilitation" assumes that one has become an adult in the first place. Research tends to support that sixteen and seventeen year-olds need "habilitation" as they have yet to become responsible adults. Worth noting is that adolescents are eligible for Persons In Need of Supervision (PINS) status up to age eighteen. Under current statute, a youth can possibly be a PINS and convicted "adult" at the same time, which is inconsistent and potentially harmful.

This is why the NYSPOA supports the concept of "Raise the Age." We support not only raising the age of juvenile delinquency for sixteen and seventeen year-old youths, but also raising the minimum age to twelve. We recognize that this does not solely mean that these youths would no longer be held accountable as adult "criminals." Resources to "habilitate" these youths are equally important.

Thus, if "Raise the Age" is effectively going to offer an opportunity for these youths to become responsible adults, the State's commitment must be equal to the task.

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As presented in the Governor's 2017-18 Proposed Executive Budget, this commitment is in question. In his previous proposals, allocations included 100% funding for the related Probation Services. In the current proposal, the State would fund approximately 50%. The localities potential relief would be pegged against their compliance with the 2% tax cap. More specifically, approval for reimbursement would be based on using "evidence based programming." The NYSPOA does not support this unclarified and subjective criterion, especially since many communities have effective resources that the State may not approve and, thus, deny reimbursement to said localities. This further suggests it would be reimbursed, which means the localities would have to allocate funding initially. Regarding the Probation portion of this proposal, does this suggest that the localities would initially have to fund any new Probation Officers with the expectation that full funding may follow? If so, localities would apparently be funding the additional Probation Officers through the State's Block Grant, which is approximately 90% funded by localities and 10% by the State. This commitment would be much clearer if the State allocated 100% funding for Probation Services, which are dedicated to sixteen and seventeen year-old youths, as previously proposed.

So, what is the potential impact on Probation Departments? At the present time, many of the arrests for these youths are handled in town, village, and city courts. They are frequently addressed in those various courts without probation being involved. This includes granting them Conditional Discharges, Fines, and Community Service. Their initial involvement with probation may be a presentence investigation to determine Youthful Offender eligibility. Some are adjudicated and placed on probation, but not all. Although Judges may order investigations for Violations (such as Trespass and Harassment), this is not generally the case.

Under the present "Raise the Age" proposal, with any youth who is charged with what would constitute a misdemeanor and is "assessed" as being "low risk," Probation must "diligently attempt" to provide adjustment services. Although not specified, it appears that the assessment would be according to the YASI (Youth Assessment and Screening Instrument) Pre-Screen. The shifting of these cases from the adult courts to Intake Diversion and potentially Family Court, would likely have a dramatic impact on Probation Services. First and foremost, as the philosophy moves from using an adult criminal approach to "habilitation," the amount of casework increases. Instead of holding an adult accountable for their behavior, "Raise the Age" could rightfully be termed "Raise a Child." Intake Diversion requires Probation Officers to work with families, schools, substance abuse counselors, mental health counselors, and various other support systems. If investigations are subsequently ordered, they would be pre-dispositional Investigations, which are more extensive than the previously conducted presentence investigations for the various criminal courts. Thus, youths who may currently have their cases resolved in local courts without any involvement with the Probation Department, aside from the possible investigations, may now find themselves "in the system."

Furthermore, the definition of "Juvenile Delinquent" would be expanded to include the violations of Disorderly Conduct and Harassment 2nd. The NYSPOA questions the merits of this "widening of the net."

It is unknown how many of these cases would be removed from criminal jurisdiction and "diverted" into Intake Diversion. It is also unknown how many Probation Officers would be needed to service these youths. This being said, the NYSPOA supports the establishment of workload standards in order to maintain reasonable expectations for the Probation Officers working with this population.

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Extending the time for Juvenile Delinquency Intake Diversion to four months with the possibility of extending it another two months is appropriate. However, the most critical issue may be availability of appropriate services. In many communities, there are long waiting lists for services, such as mental health counselling and substance abuse treatment. Unless this issue is adequately addressed, youths may complete Intake Diversion without ever having access to the counseling they so desperately need. Unless the agencies in all our communities that provide such services are adequately staffed, diverting these youths from criminal courts to Intake Diversion may accomplish very little of the intended outcomes.

Access to the necessary resources are often very different in rural and urban communities, but they both have their unique needs. In rural areas, there are frequently too few services available and transportation can be a serious impediment. In urban areas, there may be services available, but waiting lists can be months. These resource issues must be addressed if "Raise the Age" is to be successful.

The concept of Family Support Centers is commendable. However, fiscal resources should be made available so that all youths throughout the State who would benefit from their support can access them.

Although the goal of Intake Diversion is to prevent referral to Family Court, the reality is that some youths will not make positive adjustments. The result may be that they will be adjudicated Juvenile Delinquents and placed on probation. Ultimately there will be some youths who still don't make positive adjustments and will require placement in detention by the Family Court. Even though it is hoped that that this would not be necessary, the reality is that at its best, diversion programs can only minimize placements, not eliminate them. Thus, "Raise the Age" must provide for access to detention for all jurisdictions.

In summation, the NYSPOA supports the concept of "Raise the Age." However, we cannot support it as proposed in the 2017-18 Executive Budget. If sixteen and seventeen year-old youths are removed from criminal courts and habilitation is to be the objective, then the necessary resources must be made available throughout the State. Then we can truly say that "no child will be left behind."

As always, Probation Officers will rise to the challenges before them.

Thank you for holding this very important Public Hearing and the privilege to testify before it.

PROBATION PROTECTS...PROTECT PROBATION

Larry S. Evans
Legislative Chair
02/06/17