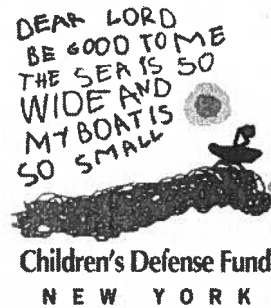


Testimony of

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Submitted for the

Joint Legislative Public Hearing on 2014-2015
Executive Budget Proposal: Topic "Human Services"

February 4, 2014

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My name is Patti Banghart and I am the Senior Early Childhood Policy Associate at the Children's Defense Fund - New York (CDF-NY). CDF-NY is a national, non-profit child advocacy organization that has worked relentlessly for 40 years to ensure a level playing field for all children. We champion policies and programs that lift children out of poverty; protect them from abuse and neglect; and ensure their access to health care, quality education and a moral and spiritual foundation. More specifically, CDF-NY is currently working to promote critical systems change in the areas of early childhood education, children's health and mental health, education and juvenile justice.

Thank you for this opportunity to testify.

To dismantle the cradle to prison pipeline that is funneling thousands of New York's youth into the juvenile and criminal justice systems, we must ensure that every child has the appropriate and necessary support starting at birth. CDF-NY's budget and legislative priorities reflect our commitment to the importance of investing in programs that are effective and provide children and youth with the support they need to be successful. As such, we are eager to work with you and your colleagues to implement a comprehensive and thoughtful agenda for New York's children and their families- especially those most at-risk.

This testimony reflects on each of the areas mentioned above, but will focus to a large extent on the proposed reforms to early education and the juvenile justice system.

Ensuring Our Children and Youth Are on Pathways to Success

Early Care and Education

CDF-NY understands that some of the major challenges children encounter that can push them off of a successful trajectory and into the pipeline to prison occur in a child's first years. Children who are not school-ready experience an achievement gap when they enter school, and this gap persists over a child's school career. In New York State, one out of three children starts kindergarten behind in basic skills.¹

The benefits of early care and education (ECE) and its' ability to eliminate these disparities are well documented. Studies have shown that children enrolled in high quality early childhood programs are more likely to graduate from high school, hold a job, and make more money and less likely to commit a crime than their peers who do not participate.² Additionally ECE

¹ QualityStarsNY brochure, Early Childhood Advisory Council, New York State Council on Children and Families, http://ccf.ny.gov/ECAC/WG/Quality/Resources/ECAC_BrochureLowRes.pdf

² Schweinhart, Lawrence J., Jeanne Montie, Zongping Xiang, W. Steven Barnett, Clive R. Belfield, and Milagros Nores. 2005. "The High/Scope Perry Preschool Study Through Age 40: Summary, Conclusions, and Frequently Asked Questions." High Scope Press.
2 Heckman, James J. 2011. "The Economics of Inequality: The Value of Early Childhood Education." The American Educator. <http://www.aft.org/pdfs/americaneducator/spring2011/Heckman.pdf>

programs have a strong return on investment. Every \$1 investment in early childhood has a lifelong economic rate of return of 7 to 10 percent per year per dollar.³

We applaud Governor Cuomo's plan and the Executive Budget's commitment to early childhood education through a \$1.5 billion investment over five years for the expansion of full-day, Universal Pre-Kindergarten (UPK) for all four year-olds statewide. Since its' inception in 1997, pre-kindergarten programs have long been underfunded and failed to serve a majority of children. It is time to commit adequate resources to provide access to high-quality programs to all children in this State—especially those most at-risk.

The \$100 million in SFY 2014-2015 for UPK is a considerable next step in New York's quest to ensure that all of our children arrive in kindergarten equipped for academic and social success. However, it falls short of what is needed to implement the Governor's vision. The state needs to invest \$225 million this year and each year after in order to fully implement high-quality pre-K for all four-year olds—but especially children in high needs areas—in the state.

CDF-NY fully supports Mayor de Blasio's plan to implement universal, full-day preschool in New York City which would reach all four year-olds (and an estimated 73,250 families) at a cost of \$340 million annually. Approximately 53,767 New York City children are receiving inadequate part-time or no pre-K programming. Under the Mayor's plan, over 70,000 four-year-olds would benefit upon full implementation. This would also then allow the State's pre-K investment to reach more four year-olds in other communities much faster.

We ask for at least \$225M from the State, to support local districts to add new high-quality, full-day Pre-K seats; and to fully support New York City's plan to expand full-day, high-quality pre-K for all four year-olds.

Ensuring positive child development of infants and toddlers, particularly those from low income families, is also critical to ensuring young children's success. According to CDF's 2014 State of America's Children report, the youngest children in New York are the poorest age group. More than 1 in 4 children under age six (346,565) were poor in 2012, and more than 1 in 9 children under age six (163,334) were extremely poor.

CDF-NY is grateful that the Executive Budget increases Child Care Block Grant funding by \$21 million to allow local social services districts to maintain child care subsidies in the face of increased costs for child care services and to offset the federal fund cuts. Child care subsidies are over \$80 million less today than in 2010-2011, when New York benefitted from stimulus funds. Over 234,000 children received child care subsidies in New York in 2012, but this does not meet the significant and growing need for child care subsidies. Child care funds may be used to support families up to 200% of the federal poverty level, but with severely limited funds, many counties only serve families up to 150% or less of the federal poverty level. Even

³ Heckman, James J. 2011. "The Economics of Inequality: The Value of Early Childhood Education." The American Educator. <http://www.aft.org/pdfs/americaneducator/spring2011/Heckman.pdf>

counties that go up to 200% of the federal poverty level have exhausted their resources and have stopped accepting applications. **The budget should increase funding for the Child Care Block Grant to adequately support the statewide need among low-income families for access to child care.**

After-School Care

According to the Afterschool Alliance, 1 in 4 children is left alone and unsupervised after-school in New York City. That means teenagers are left to spend after-school hours—the peak window for juvenile crime & violence—out on the streets. Research on high quality after-school programs has found that children who participate have improved attendance, behavior, coursework, and test scores in school. A real investment in after-school programs will make a big difference in the lives of thousands of children, who will find stability and skill-building in high-quality programs.

The Governor proposes a commitment of \$720 million over 5 years, starting in 2015-16, to expand after-school programs, but does not propose new after-school funding in this year's budget. Funding cuts are also proposed this year across current after-school programs. **While we applaud the promise of after-school funding starting in the 2015-16 school year, we are asking for an investment of \$9M in a quality infrastructure in 2014-15, in preparation for five years of investment beginning with \$160M in 2015-16.**

After-school programming is an essential part of the education continuum which helps support children's learning and development. **The promised increase in after-school funding should be accompanied by an increase in state aid for education.** The Executive Budget for education is wholly inadequate. The state is \$7 billion behind in the Campaign for Fiscal Equity, and this budget marks the sixth consecutive year of classroom cuts. It is critical that New York increases education funding and ensures a strong P-12 school system.

In addition to the commitment of new resources to after-school programs included in the Executive Budget, **CDF-NY supports Mayor de Blasio's plan to expand after-school programs to serve 120,000 middle school students through a dedicated revenue source.**

Raising the Age of Criminal Responsibility: Commission on Youth, Public Safety and Justice

New York is one of only two states in the nation to automatically charge all 16 and 17 year olds in the adult criminal justice system regardless of the offense for which they are charged. New York also automatically charges youth 13-15 years old in the adult criminal justice system for certain offenses. Children as young as seven years old can be arrested and charged in the juvenile justice system in New York.

In many ways, New York is a leader in juvenile justice reform. Unfortunately such reforms are not accessible to youth once they turn 16, or to younger youth charged with certain crimes. We applaud the announcement of a Commission on Youth, Public Safety and Justice. **It is vital**

that The Commission develop comprehensive recommendations that ensure all youth in New York are treated with age appropriate interventions, regardless of the crime for which they are charged, and that these recommendations are translated into comprehensive legislation.

Treating youth in the adult criminal justice system is harmful to youth, harmful to public safety, and harmful to communities. Nearly 50,000 16 and 17 year olds are automatically charged as adults every year in New York. Youth of color are disproportionately affected by the ineffectual policy of treating youth as adults within the criminal justice system with Black and Hispanic youth representing 70% of 16 and 17 year olds arrested in New York State and 80% of youth sentenced to incarceration.⁴ Any solutions proposed to raise the age must include tailored services to combat racial disparities. Validated risk assessment tools should be consistently used to ensure that youth are assessed on items related to risk alone. Data relating to race should be consistently collected and publicly released.

New York's current laws expose youth to extreme harm. No youth should be housed in adult jails or prisons, a standard New York is far from achieving. Youth in adult facilities are twice as likely to be beaten by staff and 50% more likely to be attacked with a weapon than their peers in youth facilities.⁵ Youth in adult facilities also face high rates of sexual victimization.⁶ They are 36 times more likely to commit suicide in adult versus juvenile facility.⁷ Youth in adult jails and prisons are subject to the use of solitary confinement. It is clear that the use of solitary confinement, the harms of which are well documented, is not only a risk for youth in adult facilities, but is a frequent occurrence to which youth are regularly subjected. This past summer a Committee of the Board of Corrections cited that over the summer 25-28% of adolescent boys were housed in solitary confinement.⁸ In October 2012 the American Civil Liberties Union and Human Rights Watch reported that the average length of stay for an adolescent at Rikers Island is 43 days.⁹ Detaining an adolescent in a small cell alone 23 hours a day with meals given through a slot in door, denied access to school, denied human contact, is reprehensible.

New York's current laws are harmful to public safety. Research has shown that youth treated in adult criminal justice systems have higher rates of recidivism than youth treated within the juvenile system. Youth transferred to the adult system have 34% more re-arrests.¹⁰ One study compared youth in New York charged with felonies in the adult system with youth in New

⁴ *Criminal Justice Case Processing of 16-17 Year Olds* (January 4, 2013). Department of Criminal Justice Services (DCJS) OJRP

⁵ Fagan, J. Forst, M., Vivona, R.S. "Youth in Prisons and Training Schools; Perceptions and Consequences of the Treatment-Custody Dichotomy"

⁶ National Prison Rape Elimination Commission, Report 18, June 2009, <https://www.ncjrs.gov/pdffiles1/226680.pdf>

⁷ "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America", Campaign for Youth Justice, November 2007.

⁸ Motion to Proceed with Rule Making Regarding Punitive Segregation on Rikers Island. Board of Corrections meeting September 2013.

⁹ Growing up Locked Down: Youth in Solitary Confinement in Prisons and Jails Across the United States. Human Rights Watch and ACLU. 2012.

¹⁰ *Effects on Violence of laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: Report on Recommendations of the Task Force on Community Prevention Services, Centers for Disease Control and Prevention, November 30, 2007,*

Jersey charged with felonies in the juvenile system. Youth in New York, who were treated as adults, were much more likely to be arrested for violent crimes, property crimes, weapons charges, and were more likely to be reincarcerated. New York needs to treat all youth within an age appropriate framework. CDF-NY supports applying the Family Court Act to all youth, regardless of the physical location of such proceedings.

Given the clear implications for harm to youth as well as harm public safety outlined above, The Commission needs to be staffed by experts not only in law enforcement but also child development, brain development, evidence based interventions for court involved youth, as well as those well versed in the current conditions and collateral consequences for youth in New York's justice system. Most importantly, The Commission needs the expertise of those with firsthand knowledge of the effects of our current law: formally incarcerated youth and affected families. Given the varying experiences of youth and the multiple paths to incarceration youth can take in New York, The Commission needs to ensure experts and youth representing all stages of the continuum to incarceration are included: prevention, alternatives to detention and incarceration, juvenile and adult detainment and incarceration, and re-entry specialists. All youth currently affected by our out-dated law should also be fully represented including experts on the experiences of youth charged as juvenile offenders, 16 and 17 year olds in the adult system, and young adults.

The past several years New York State has seen major juvenile justice reforms with a movement toward evidence informed community-based services and alternatives to placement. Reforms that help to right size the system and ensure that court and related resources are utilized in a fair, necessary, and efficient manner are key as New York plans to raise the age of criminal responsibly. One such key component of success to raising the age is the need to reduce detention and placement. Placement should be limited to youth who have been determined to pose a safety risk if placed in the community.

A major benefit for youth in the juvenile system that youth in the adult system are denied is access to probation adjustment wherein probation evaluates all youth and has the option to intervene and divert cases away from court. Over 75% of 16 and 17 year olds arrested in New York are charged with misdemeanors.¹¹ Raising the age in New York should include increasing the ability to divert cases from court and at arrest. Allowing for diversion would prevent unnecessary court involvement for low level incidents and reserve resources for where they are most needed. Illinois, one state to recently raise the age, utilizes multiple points of diversion, including the ability of police to adjust cases. This is one example of how multiple points of diversion, such as at arrest, can allow for more efficient use of the system and help eliminate unnecessary system involvement for low risk youth.

¹¹ *Criminal Justice Case Processing of 16-17 Year Olds* (January 4, 2013). Department of Criminal Justice Services (DCJS) OJRP

In addition to tailoring services to individual needs in combating racial disparities, as discussed above, risk assessment tools should be consistently used to ensure that youth are matched with services that meet their individual needs, ensuring that low risk youth are diverted to non-court based services. The court system should not be a proxy for social services. Research shows that low risk youth treated within the criminal justice system have higher recidivism rates. These youth are most appropriately served within the community.

In addition to the off ramps offered by alternatives to incarceration, diversion, and decreased confinement discussed above, there are additional ways in which New York can become a national leader juvenile justice. Given that youth continue to develop into their early 20's, there are age appropriate programmatic and legal interventions that can help alleviate the lifelong collateral consequences that often result from the arrests of young people. One such intervention is the expansion of Youthful Offender Status to allow youth beyond age 18 access as well as loosening restrictions that deny some youth access. In addition to expanding Youthful Offender Status availability, young offenders should have the opportunity for their convictions to be sealed and certificates of relief should be issued at sentencing. Older youth should have access to evidence based, developmentally appropriate rehabilitative services, including alternatives to incarceration.

The Commission on Youth, Public Safety and Justice represents a real opportunity for New York to be a leader in juvenile justice, not simply one of the last two states to try to catch up to the national standard. We are greatly encouraged by New York's commitment to be a national leader in the treatment of youth in the justice system. We are hopeful that this commitment signifies that The Commission and any subsequent legislation ensures that ALL youth in New York are treated in age appropriate ways so that the legal process responds to all children as children and services and placement options better meet the rehabilitative needs of all children and youth.

Recommendations:

New York has an opportunity to be a leader in juvenile justice. It is vital that The Commission develop comprehensive recommendations that ensure all youth in New York are treated with age appropriate interventions, regardless of the crime for which they are charged, and that these recommendations are translated into comprehensive legislation. Comprehensive legislation should:

- Ensure that all youth are treated appropriately for their age in the court system, regardless of the crime charged
- Adjudicate all youth under the Family Court Act
- Guarantee that no youth are housed in adult jails and prisons
- Reduce detention and placement in juvenile facilities
- Increase the ability to divert cases from court and at arrest

- Tailor Services to Individual Needs and Combat Racial Disparities
- Address and remediate the negative collateral consequences of justice system involvement for older youth

Close to Home: Limited secure phase in 2014-2015

Close to Home represents New York State's commitment to ensuring youth in the juvenile justice system are given the greatest opportunity of future success. For many years, New York City youth were sent far away from home to facilities in upstate communities where it was difficult and costly to remain connected with family members, where there was no guarantee that their academic credits would be counted when they returned home, and where struggling upstate economies were overly dependent on an industry that specialized in warehousing children – the majority of whom were youth of color from NYC.

We support the six factors listed for consideration of facility closures in the Education, Labor and Family Assistance Article VII Legislation Part L SubPartB. We strongly encourage that these factors be closely examined and adhered to in the closure process. Given known concerns within OCFS juvenile placement facilities, we strongly encourage particular attention to the first two factors and advocate for the inclusion of a seventh factor for consideration.

Over the past several years OCFS has come under scrutiny by the Department of Justice (DOJ) and others for excessive use of force. A 2009 DOJ investigation of four OCFS facilities, three of which were limited secure at the time, found that “staff at the four facilities consistently used a high degree of force to gain control in nearly every type of situation”. The DOJ investigation cites a tragic incident from 2006 wherein a child was restrained by OCFS staff in a limited secure, resulting in the tragic death of the child. Much change has occurred at OCFS since the DOJ investigation, however the gravity of the concerns about the physical safety of youth in custody must not be forgotten. We are grateful that the “ability to provide a safe, humane and therapeutic environment for placed youth” is a criteria to be considered in determining which facilities will be closed and strongly encourage close attention to this factor.

An additional concern identified by the DOJ was the failure of OCFS to provide adequate mental health treatment and substance abuse treatment. While there have been significant changes in OCFS since this investigation, youth in juvenile settings are more likely to have mental health and substance abuse needs than their peers. Court involved youth are 2-3 times more likely to have mental health concerns than their non-court involved peers.¹² Court involved youth also have significant educational needs. Recent data from the NYC Department of Education shows that 45% of youth in juvenile justice placements in New York City are

¹² A Road Map for Juvenile Justice Reform . The Annie E. Casey Foundation.

classified as having a disability. We fully support the consideration of “ability to meet the educational, mental health, substance abuse and behavioral health treatment needs of placed youth”.

In addition to the emphasis placed on considering these two criteria, we applaud the consideration of connection to community networks and partnerships as well as accessibility of locations to family. **In addition to the criteria laid out in the Education, Labor and Family Assistance Article VII Part L Subpart B, we recommend the inclusion of a seventh criteria: the ability of a facility to meet the needs of LGBTQ youth.** LGBTQ youth are disproportionately represented in youth justice systems. In addition, research shows that LGBTQ youth experience elevated rates of abuse within custody.¹³ Given the elevated risk for this population and disproportionate representation of LGBTQ youth in justice settings, OCFS should weigh heavily the competence of a limited secure placement when considering facility closures. It is vital that every level of placement along the juvenile justice continuum in New York State have adequate staff training, placement options, and overall safe and affirming environments for LGBTQ youth.

Pay for Success:

By utilizing private funding to finance preventative programs, “Pay for Success” projects minimize risk to the State budget, encourage significant savings and facilitate important social investment. CDF-NY applauds the Executive’s intention to increase funding by \$95 million for “Pay for Success” projects focused on early childhood development and child welfare, health care, and public safety in the coming year. CDF-NY’s budget and advocacy priorities include supporting the sustainability of school-based health centers, supportive juvenile justice intervention programs and the provision of early childhood education opportunities. Though the State budget allowed for “Pay for Success” initiatives in these areas last year, only one state-led “Pay for Success” project to reduce adult recidivism was initiated in New York in 2013. **CDF-NY urges the Executive to more actively develop public-private partnerships in the coming year and is hopeful that the Executive will use lessons from the development of the State’s first “Pay for Success” project to expedite the launch of additional projects that enable important social investments for New York’s children.**

Conclusion

New York has an opportunity to show the way forward for our entire country. We know that difficult decisions must be made to keep New York on the path to economic recovery. Bold actions are needed to ensure that the budget is balanced and that New Yorkers continue to have the kinds of opportunities that make our state strong.

¹³ *The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth in the Juvenile Justice System.* (2012). Center for American Progress.

2014 is a year of opportunity. We urge the Legislature to increase the investments in full-day pre-kindergarten for all four year-olds above the amount proposed in the Executive Budget and to realize the long-standing promise of universal Pre-K for all. We also urge the Legislature to start investing in after-school programs this year as part of the Governor's proposal to expand after-school care over the next five years. These investments will promote school success, improve accountability, and save money over time in New York's most at-risk communities.

Furthermore, we applaud Governor Cuomo's creation of a Commission on Youth, Public Safety and Justice. It is vital that The Commission develop comprehensive recommendations that ensure all youth in New York are treated with age appropriate interventions, regardless of the crime for which they are charged, and that these recommendations are translated into comprehensive legislation. In regards to the Close to Home initiative, we support the six factors listed for consideration of facility closures in Article VII ELFA—Subpart B, especially the factors related to children's right to a safe environment and their right to educational, mental health, and substance abuse supports. We also promote a seventh criteria—the ability to meet the needs of LGBTQ youth. CDF-NY is encouraged by the stated intentions behind proposed changes to the juvenile justice system, and pleased to see sustained commitments to some of the programs critically important to young people's well-being