

Memorandum in Support

COMMITTEE ON CHILDREN AND THE LAW

Children # 1

March 16, 2021

S. 4051

By: Senator Bailey

A. 4982

By: M. of A. Hevesi

Senate Committee: Children and Families

Assembly Committee: Children and Families

Effective Date: One year after it shall have become a law

AN ACT to amend the family court act, the social services law and the executive law, in relation to raising the lower age of juvenile delinquency jurisdiction from age seven to age twelve and to establish differential response programs for children under the age of twelve.

LAW AND SECTIONS REFERRED TO: Amends Family Court Act Sections 301.2, 304.1, 306.1, 308.1, 353.2, 353.6, and 354.1; amends Social Services Law Sections 409-a, adds Title 12-A, to the Social Services Law and amends Section 458-m; and amends Executive Law Section 840.

THE COMMITTEE ON CHILDREN AND THE LAW **SUPPORTS THIS LEGISLATION**

The Current Family Court Act authorizes the arrest and prosecution of children between ages seven and eighteen. The maximum age of eighteen was established pursuant to “Raise the Age” legislation, enacted in 2017 (L. 2017, c.59). The original bill, reflecting recommendations by legislative and judicial commissions, had also raised the minimum age. However, that provision was not enacted. The current bill would complete the “raise the age” reform by increasing the minimum age to an appropriate level.

Arrest and prosecution of children under the age of twelve is not prevalent. For example, as reported by the New York City Legal Aid Society, between 2016 and 2019 250 such children were arrested in the city, an average of approximately 80 per year. But subjecting pre-teens to criminal procedures is inequitable and counter-productive. Compounding the inequities, well over 90 percent were children of color (only 17 percent were white). In fact, subjecting very young children to the extreme trauma of arrest and possible penal law prosecution is extraordinary harsh and counter-productive. The recent publicized arrest of a 10-year-old girl in Rochester, entailing the use of tasers, handcuffs, transport to a police station, and criminal processing, is one example of the inequitable age threshold. This bill would eliminate the practice.

Young children simply lack the competence to negotiate the police, prosecution and judicial systems, even when ultimately represented by counsel. (Counsel is not assigned until formal court proceedings are initiated). Almost all children below the age of 12 understandably fail standard competency tests; see Larson and Grisso, Developing Statutes for Competence to Stand Trial in Juvenile Delinquency Proceedings: A Guide for Lawmakers (2011). They also frequently lack the required mens rea or intent needed to prove criminality. The rare criminal activity by a very young person should be a social services matter rather than a criminal justice matter.

The bill would also amend the Social Services Law and Executive Law to provide appropriate social services for children under age 12 who have allegedly committed a criminal act. An integral part of the legislation, the provisions would benefit the child, his or her family, and society at large.

Currently three states - California, Massachusetts, and Utah - have established a minimum age of 12. Eighteen states have established age minimums above the age of 10, far above New York's antiquated threshold. New York should join the growing number of states which have raised the minimum age.

For the reasons outlined above, the NYSBA's Committee on Children and the Law **STRONGLY SUPPORTS** this legislation.