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Memo in Support of S8685/A10727
A bill ending the arrest and prosecution of children under the age of 12

The Center for Family Representation (CFR) strongly supports the passage of S8685/A10727, which amends the Family Court Act (FCA) and Social Service Law (SSL) to raise the lower age of jurisdiction for juvenile delinquency proceedings in Family Court from 7 to 12, and prevents the detention of youth under age 13 in secure facilities.

CFR represents juveniles in FCA Article 3 delinquency proceedings in Queens and New York counties. CFR employs an interdisciplinary model of representation, marrying in court litigation to out of court advocacy: every client is assigned an attorney and a social work staff member beginning at intake, which is generally the first day a client appears before a judge and CFR is assigned.

In New York City, more than 90% of children aged 7 to 11 who were arrested were children of color, and 100% of petitions filed against this age range of children are against African American and Latinx children.¹ New York State has the second youngest statutory jurisdictional age in the U.S.² It is time for New York to fall in line with other states and recognize that children under the age of 12 lack the capacity to act criminally or understand the criminal justice system. While New York's Raise the Age legislation appropriately addressed the need of treating older youths as juveniles, it failed to address the need to stop criminalizing childish behavior from younger kids.

Our attorneys have defended children as young as 8 years old. Explaining to an 8 year old wearing pajamas with cartoon characters on them the roles of the judge and prosecutor, concepts of evidence, and what proof beyond a reasonable doubt means, is nigh impossible. Experts agree that young children lack the capacity to meaningfully participate in their own defense.³

The law, as it exists today, only serves to worsen the school to prison pipeline as the cases we see come almost exclusively from school reporting. Criminalizing young African American and Latinx children sets them up for failure and perpetuates the systemic racism inherent in our system. Social services districts can provide preventive services to support and rehabilitate, rather than punish, criminalize, and detain.

For these reasons, we join the Legal Aid Society in urging the New York State Legislature to pass this critical legislation to end the arrest and prosecution of children under the age of 12.⁴

¹ Data produced by DCFS OJRP on 3/27/19.

² National Juvenile Defender Center, Minimum Age for Delinquency Adjudication—Multi-Jurisdiction Survey (2019), available at: <https://njdc.info/practice-policy-resources/state-profiles/multi-jurisdictiondata/minimum-age-for-delinquency-adjudication-multi-jurisdiction-survey/>. Twenty-seven states do not set a minimum age for delinquency adjudication.

³ Final Report of the Governor's Commission on Youth, Public Safety and Justice, Recommendations for Juvenile Justice Reform in New York State (2015), p. 37, available at: https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/ReportofCommissiononYouthPublicSafetyandJustice_0.pdf.

⁴ The Legal Aid Society, Support Legislation Ending the Arrest and Prosecution of Children Under the Age of 12 (S8685/A10727) (2020)