

The County Perspective

The Age of Criminal Responsibility and Its Impact in New York State

Testimony
submitted by
the

New York State Association of Counties



To a joint public hearing of the
Senate Committee on Children & Families
and the
**Senate Committee on Crime Victims, Crime &
Corrections**

Monday, February 6, 2017
LOB, Hearing Room A

Hon. William Cherry, NYSAC President
Stephen J. Acquario, Executive Director

Thank you Senator Gallivan, Senator Avella and the other members of the Children and Families Committee and Crime Victims, Crime, & Corrections Committee.

I am Stephen Acquario, Executive Director of the New York State Association of Counties and I appreciate the opportunity to testify today. I am joined by two members of the Council of Probation Administrators; Rocco Pozzi, Commissioner of Probation at Westchester County and Robert Iusi, Probation Director for Warren County. I am also joined by the Washington County Attorney Roger Wickes. As you may know it is the County Attorney that handles Family Court matters including Juvenile Delinquency and PINS.

First let me say how much we appreciate that your committees have provided this opportunity to gather feedback on the Governor's Raise the Age proposal.

In recognition of time constraints, I will summarize my written remarks to leave time for any questions the Committees may have.

County Operational and Fiscal Concerns

Counties have supported the public policy goals of raising the age of criminal responsibility from 16 to 18 for nonviolent offenses, but we have also consistently raised concerns about:

- The costs of such a comprehensive proposal,
- The capacity and desire of service providers (and identified lack thereof in many areas of the state) to deliver necessary, services to all of these individuals and their families, and
- Balancing the rights of victims, public safety and providing services to those in need.

This proposal could easily impact a dozen or more county departments and services for each youth involved (probation, a broad array of social services, mental health, substances abuse, workforce training, family counseling, budget and finance, county attorney, etc.). In addition, this proposal will directly impact multiple, separately elected offices including the County District Attorney, Judges (criminal and family court), Sherriff, and other locally elected government officials. Another key area of cooperative service is the overlay with school districts and necessary strategies to minimize absences without leave from the education system.

You heard earlier today from the County District Attorneys' Association about their responsibility as locally elected justice officials to preserve the delicate balance between offender rehabilitation and accountability, public safety and victim's rights.

The Governor's proposed budget again calls for raising the age of criminal responsibility, but it has been modified from prior years. To the dismay of counties, the Governor's latest proposal no longer provides 100 percent state reimbursement of all new costs incurred by counties to implement this proposal.

The Budget provides no new funding to New York City under this proposal and estimates counties will incur \$100 million in new costs, with an assumption that at least \$22 million of these new costs will not be reimbursable.

The new proposal also requires counties to meet a variety of conditions before they become eligible for any state reimbursement, including:

- Maintain the property tax cap
- Prove to the state that these new costs create a fiscal burden for the county, and

- Provide a plan to the state for implementing the provisions of this new proposal

The first two criteria seem contradictory, in that, exceeding the tax cap in many minds would be a textbook example of experiencing fiscal stress.

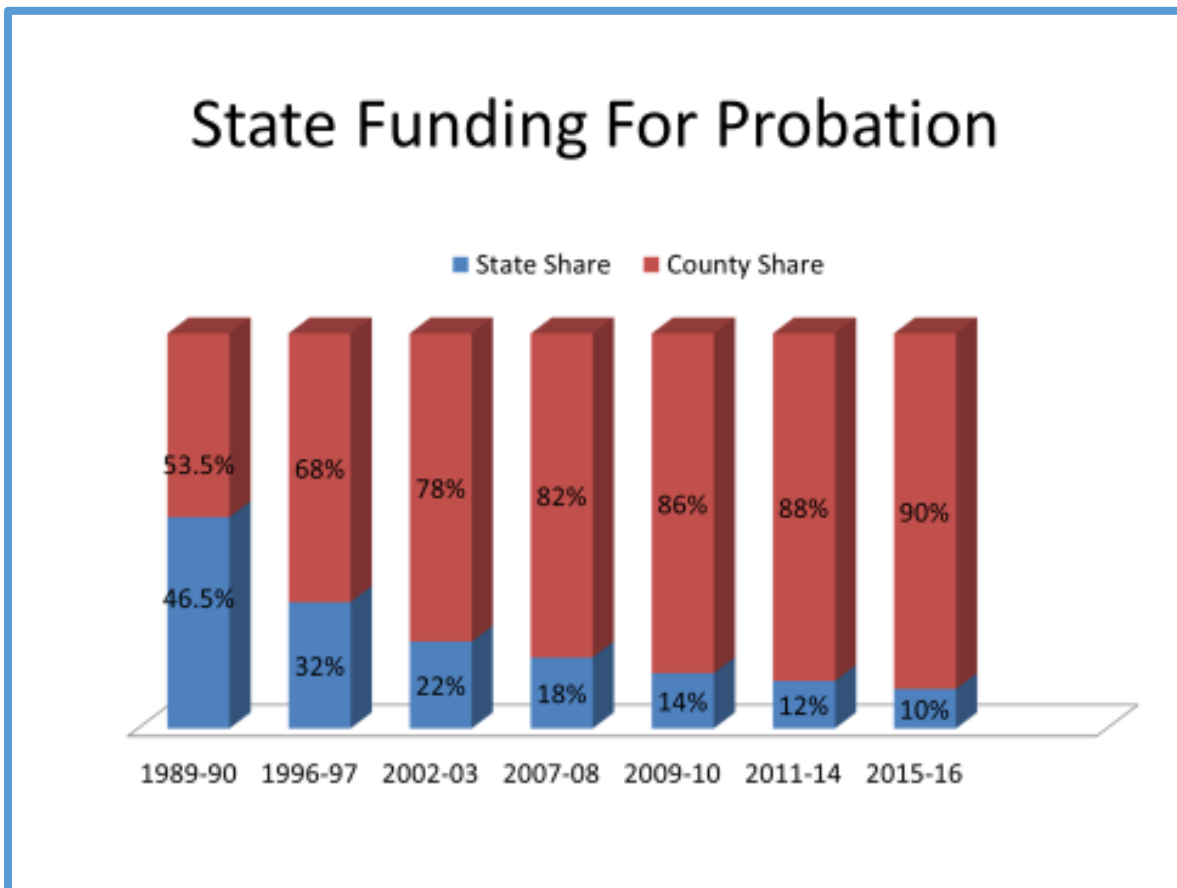
NYSAC strongly endorses and has long advocated that the governmental entity that makes legislative and public policy decisions should also be responsible for paying for them. Prior versions of this proposal from the Governor worked to satisfy that tenet. The Governor's current proposal is simply a new unfunded mandate.

An additional challenge in this budget proposal is the expectation that counties incur this \$100 million in new costs and then seek reimbursement from the state. County property tax caps have only allowed for inflationary growth of about .73 percent in 2016 and .68 percent in 2017 (about \$35 million for all counties statewide each year). Considering that this inflationary increase has to accommodate all items in a county budget including; any new costs shifts, new tax exemptions, caseload growth in state mandated programs, COLA increases in the state budget to a variety of services providers counties must reimburse, health insurance premiums, workers compensation, etc. – the Governor's proposal leaves homeowners and small businesses vulnerable to property tax increases.

The “pay and chase reimbursement” philosophy for the Raise the Age proposal is multiplied by the fact that the budget also calls for an expansion of indigent legal services, estimated to costs \$250 million annually when fully implemented that requires counties to pay first and seek reimbursement later.

Counties are also concerned because, within the last decade, the state has often cut its share of reimbursements for a wide variety of programs directly related to providing services to this at-risk population and their families including;

- Child welfare – state reimbursement cut from 65% to 62%
- Local social services administrative costs – the state eliminated its support completely (nearly \$300 million)
- Foster Care is capped and proposed for further cuts in this budget – which counties oppose,
- Youth Detention and treatment is capped,
- Total funding for Alternatives to Incarceration and similar grant programs have been reduced (slightly), and
- Probation aid has dropped significantly – from 54 percent state share to less than 10 percent in some counties.



We believe the Budget language needs to be crystal clear that all incremental costs related to this public policy change be paid in full by the State. Current language is not clear, especially in regard to the near certainty that many counties will need to expand their existing staff permanently in order to handle the influx of individuals and their families that will require an entirely new set of services. Adding to staff will provide reimbursement challenges in that current, seasoned staff in some county departments will need to be diverted to address the unique needs of this population, and new staff will need to be hired to backfill for these diversions. A clear process needs to be developed to ensure new costs are not placed on local taxpayers to support a state initiative.

Also, all new costs should be prefunded by the State to ensure there are no tax cap implications.

I would now like to turn it over to Rocco Pozzi, Commissioner of Probation at Westchester County to explain procedural concerns from the perspective of probation.

NYS Council of Probation Administrators

The NYS Council of Probation Administrators (COPA) has reviewed the Governor's 2017 proposal for Raising the Age of Criminal Responsibility (RTA) in NYS in Part J of the Budget Bill.

Since the beginning of the discussions on Raising the Age, COPA has been at the forefront in supporting the concept of Raising the Age of criminal responsibility in NYS. We have testified before the Governor's Commission, we have provided written testimony on at least four occasions and have been proactive at the County level in our support of this concept.

However, this newest version of the Raise the Age proposal, omits many of the positive changes that were made in prior years. In this new proposal we agree with:

- The ability of Probation to make an application for a temporary order of protection as part of the adjustment (page 225)
- The extension of intake period to 4 months with a possible extension of two additional months (page 230)
- Raising the lower age for juvenile delinquency from 7 to 12 (lower age for certain crimes i.e. Homicide) (page 221)

There are a number of issues which cause us grave concern:

Disorderly Conduct and Harassment 2nd

The statute proposes the inclusion of the violation level offenses of Disorderly Conduct and Harassment, 2nd Degree in the definition of a Juvenile Delinquent (page 221). Currently, under Article 3 of the Family Court Act, violation level offenders cannot be charged as Juvenile Delinquents. Additionally, since neither of these offenses require the taking of fingerprints under current criminal law, there is no way to determine the exact impact of including these offenses in the new JD definition, except to suggest that it will add many thousands of juvenile delinquents to the juvenile justice system. This will widen the net of offenses considered under the definition of JDs; while in reality, one of the purposes of the new legislation is to keep low risk youth out of the court system. The offenses of Disorderly Conduct and Harassment, 2nd Degree are low risk offenses and should not be included with the misdemeanors and non-violent felony crimes that allow youth to be charged as Juvenile Delinquents.

PINS Runaway/ Limited use of Non- Secure Detention

Detention is precluded for all PINS youth, except interstate cases, under Section 720 of the Family Court Act (page 253). Currently PINS youth can be held in non-secure detention, if the Family

Court feels it is in the best interest of the youth and community. While understanding the legislation's desire to have no PINS youth in non-secure detention, we must also carefully weigh what is best for the safety and wellbeing of the youth. Some youth need to be detained in a non-secure facility for their own protection. Runaways are by definition, PINS. It appears the wording in this legislation would prohibit the Courts from issuing warrants for runaways, which then gives no one the authority to look for and provide for their safety. We do not believe that this is good public policy. We recommend the Family Court still have the authority to place PINS in non-secure detention, if the Family Court feels it is in the best interest of the youth and the community. If the legislation allows for the placement of youth under interstate compact, it should allow the same placement for youth who runaway within the state's borders.

Use of Detention/Probation technical violations

The legislation limits use of detention for technical probation violations. In recent years, the use of detention has dramatically dropped across New York State; Family Court Judges do not remand children to detention unnecessarily. Technical violations of probation must be substantiated and the risk to the community and the risk of a new offense should be determined by the presiding Judge, not statute. Each case should be determined on its own merits.

Family Support Centers

While we applaud the concept of Family Support Centers, we are concerned that only certain counties will be designated for these Centers. The philosophy of the Centers is a good one and provision should be made for these services in all counties.

Mandated diversion for Misdemeanor cases

We are concerned with the language regarding a requirement to "diligently attempt" to adjust low risk youth charged with

misdemeanor offenses. First, the legislation should clarify the language regarding “low risk youth” to read, “youth who score low risk on an approved risk and needs assessment.” Second, there are certain misdemeanor offenses (i.e. sexual offenses) that require intervention and cannot be resolved within the six-month time limit of diversion. The nature of the offense is more significant in these matters than the level of risk. Probation should have the discretion, as it does now, to adjust cases based on risk, offense type and the youth’s circumstances. It is important to remember that Probation Departments across the state already adjust up to 85% of the cases that come through the juvenile justice system.

Evidence based programming

We are concerned as to who in the state will define evidence based programming and how counties will pay for it if they do not meet the tax cap provision and other guidelines in the legislation.

Risk Assessment Tools

We note that the legislation uses language that would have applied to the Pre-dispositional Risk Assessment Instrument (PDRAI) assessment tool that was being created by OCFS under previous legislation. That agency is not going forward with developing this instrument, thus the legislation should reflect the use of an approved risk and needs instrument. We note that all counties in New York currently employ the use of specialized risk and needs instruments designed for use with juveniles.

We look forward to working with the Governor and Legislature in Raising the Age of criminal responsibility in NYS. This is the right thing to do and we look forward to being part of the solution to make it happen.