



## THE LEAGUE OF WOMEN VOTERS *of New York State*

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### **Proposed Concurrence with LWV of Ohio's Juvenile Justice Position**

In June 2015, LWVNYS convention delegates approved a state board recommended program item to conduct a post-convention concurrence with portions of LWV of Ohio's Juvenile Justice position. Concurrence is defined as agreement by League members with a position on an issue reached by a small group of members or by another League. Based on LWVUS precedent, it is not necessary that the "decision statement" or "pre-stated position" follow verbatim the position upon which it is based. See Appendix A for more information on concurrence policy and procedure.

#### **Brief Overview:**

Typically the criminal law treats children differently than it treats adults. New York is the only state other than North Carolina that prosecutes ALL youth 16 years of age and older as adults. New York is one of only two states in the country that have not adopted laws which reflect brain development research and science which has found that the human brain is not fully formed until the age of 26. Further, New York allows children as young as 7 years old to be arrested and charged with acts of juvenile delinquency.

Research has shown:

- As the cognitive skills of adolescents are developing, adolescents' behavior is often impulsive and adolescents lack the ability to focus on the consequences of their behavior.
- Because the adolescent brain is still developing, the character, personality traits and behavior of adolescents are highly receptive to change; adolescents respond well to interventions, learn to make responsible choices, and are likely to grow out of negative or delinquent behavior.

In January of 2014 a Commission on Youth, Public Safety and Justice appointed by Governor Cuomo to make recommendations on how New York could raise the age of juvenile jurisdiction issued a Final Report in January 2015 with 38 concrete recommendations for reforming the

youth justice system. These recommendations are based on the acceptance of the basic premise that the age of criminal responsibility should be raised and that young persons accused of criminal behavior should be treated differently than adult offenders.

Based on these findings, the Governor pushed for a comprehensive legislative package in the 2015 legislative session designed to re-frame the way young people are treated by our criminal justice system. Another proposal was also introduced in the Assembly.

The legislature approved the allocation of funds to implement the principles of the proposals, but the legislature adjourned without passage of either proposal. Because LWNYS lacked an applicable position, we could not advocate for or against these proposals.

### **Context of existing New York State and LWNYS League Positions**

In New York, we have positions that address treatment of those who are taken into the criminal justice system but our positions do not address the concerns of the impact of the justice system on children directly. For example, the position on Pre-Trial Procedures provides that the rights of defendants should be protected at every stage of a criminal proceeding, including the pre-arraignment period. This principle has particular resonance in the juvenile justice system since for historical reasons juveniles actually possess fewer rights than adults accused of crimes.

The two positions that most closely touch upon the issues of juvenile justice are Bail and Alternatives to Incarceration.

Finally, there is the overarching League principle that no person or group should suffer legal, economic or administrative discrimination. (<http://lwn.org/content/principles>) Both the Ohio League and the NYS Commission report have identified ways in which many juvenile justice laws have discriminatory impacts on racial minorities.

Thus, existing positions appear to be inadequate to a thorough, considered and knowledgeable undertaking of analysis of proposed reforms. No position addresses the core issue of the current proposals, which is to raise the age of criminal responsibility in New York State. If we reach concurrence with portions of the LWN Ohio's position on juvenile justice, we will be able to have a voice in the discussion of the Raise the Age proposals.

### **Ohio League Studies/Action on Juvenile Justice**

LWN Ohio conducted a full study and several updates on Juvenile Justice and arrived at a broad and comprehensive Juvenile Justice position. Paramount is the principle that children under the age of 18 are not adults and "their treatment within the juvenile justice system should relate to their stage of development," that the purpose of juvenile justice should be rehabilitation, and that the legal rights of juveniles should be protected.

## **Proposed Concurrence**

The LWV Ohio position is quite comprehensive and specific. (See Appendix H) for discussion of the Ohio Studies and the complete position.) In contrast to the practice of LWVNYS, the Ohio position details much of the suggested implementation of the position in concrete terms. Our positions are generally phrased more broadly to allow flexibility in responding to specific legislation as it is introduced. Thus, we are proposing a concurrence with only portions of the Ohio position. The portions listed below will cover the specifics of the legislative packages proposed during the last legislative session, but are flexible enough to cover future legislative proposals.

- 1. Children under the age of 18 are not adults and their treatment within the juvenile justice and criminal court system should relate to their stage of development.**
- 2. Children should not be held in adult jails.**
- 3. Rehabilitation is the purpose of the juvenile justice system.**
- 4. The legal rights of children should be protected.<sup>i</sup>**

**If the concurrence is adopted, these principles will form our position on Juvenile Justice.**

## **Arguments in favor of concurrence**

The underlying premise of the proposed position is that children are not adults. This premise is based on accepted scientific evidence, which ‘informed’ the NYS Commission Report. It states:

Over the last 15 years, an uncontroverted body of research has emerged demonstrating that the brain does not reach maturation until early adulthood, with certain types of adult cognitive abilities not fully developed until the mid-20s. The differences between adolescents and adults can be categorized into three important areas: self-regulation, particularly in emotionally charged contexts; sensitivity to peer influence and immediate rewards; and ability to make decisions that require an orientation toward the future.

The existence of these differences in the way children and adults think, act, and react make it inappropriate for society to respond the anti-social behavior of children in the same way as it responds to anti-social behavior of adults. Notably, this science was recognized and relied upon in 2002 when LWV Ohio updated its position, demonstrating that this study was at the forefront of up-to-date thinking on the issue.

The US Supreme Court recently considered the propriety of criminal justice responses to actions of persons under the age of 18 in three cases. In these cases, it found that the diminished culpability made the imposition of the death penalty on those under 18 at the time of the criminal act and imposition of a prison term of life without the possibility for parole unconstitutional for both non-homicide and homicide offenders, noting, in the last case, that

juvenile offenders have “diminished culpability and greater prospects for reform. . . and [are] more amenable to rehabilitation than adults”

Thus the implementation of “Raise the Age” proposals would bring New York State up-to-date in the current thinking about - juvenile justice. The fact that New York is presently an outlier in this regard is not controlling, but should be seriously considered in framing policy on the treatment of young people. Adoption of this concurrence would allow LWVNYS to be part of the conversation.

Further, the proposed position is in accordance with our position on Alternatives to Incarceration, which promotes the utilization of alternative dispositions for criminal conduct over a system that favors incarceration. We have, for a long time, disfavored incarceration as the default response to criminal conduct, and have developed standards for evaluating programs directed at rehabilitation rather than punishment as the preferred response to criminal behavior.

### **Arguments against the concurrence**

There are those who say that people should be punished for their criminal acts no matter what their age. Efforts in other states to “raise the age” have been met with fears that to do so would endanger public safety, overburden the Family Court system and cost too much.

These arguments have been heard in this state also. On April 14, 2015 Tioga County legislators unanimously agreed that the cost of either of the two Raise the Age proposals now under consideration would be too much for the county to handle.<sup>ii</sup> Senator Bonacic has released a YouTube video which, while allowing for the possibility that the age should be raised for some children who engage in minor forms of criminal conduct, opines that for those who commit serious crimes, they should do the time, regardless of age.<sup>iii</sup>

According to a report in the Daily News, former Senate Deputy GOP leader Thomas Libous (R-Binghamton) said he was open to the proposal but added that it was a sensitive issue for lawmakers because of the violent nature of some youth crimes. Senator Martin Golden of Brooklyn, another Republican and a former New York City police officer, commented “Some of the most heinous crimes are committed by kids who are 16 and 17.”<sup>iv</sup>

### **Results of Raise the Age Legislation in other states**

With respect to the con arguments based on dangers to public safety and cost concerns, results of actual experience with these laws show these fears to be unfounded. In the two states that have most recently enacted these laws, evidence shows that this legislation does not result in reduced public safety, and there are indications that cost savings can also be realized.

In Connecticut a study on the effect of raise the age that recidivism rates were significantly higher for convicted youth processed in the adult system, than those who had been processed

through the juvenile court system. Measured by rates of recidivism, then, the reform enhanced public safety. The results in Illinois have been the same: a report detailing the impact of Raise the Age legislation found that there was no increase in crime and public safety was not otherwise adversely affected.

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<sup>i</sup> [http://www.lwvohio.org/assets/attachments/file/Juvenile%20Justice\(1\).pdf](http://www.lwvohio.org/assets/attachments/file/Juvenile%20Justice(1).pdf)

<sup>ii</sup> <http://www.wbng.com/news/local/Legislators-Raise-the-Age-campaign-will-cost-taxpayers-299763801.html>.

<sup>iii</sup> <http://www.nysenate.gov/video/2015/apr/20/senator-bonacic-discusses-raise-age-legislation>.

<sup>iv</sup> <http://www.nydailynews.com/news/crime/cuomo-aims-hike-age-teens-adults-article-1.1571625>