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**New York Center
for Juvenile Justice**

Statement by

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to the

New York Advisory Committee to the U.S. Commission on Civil Rights

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My name is Michael Corriero. I am the founder and Executive Director of the New York Center for Juvenile Justice where, in collaboration with families, communities and diverse stakeholders in the juvenile justice system, we are promoting a model of justice for minors that treats children as children, and responds to their misconduct with strategies designed to improve their chances of becoming productive members of society. I was a judge for 28 years in the criminal courts of the state of New York. During the last 16 years of my tenure, I presided over Manhattan's Youth Part, a court set aside within the adult court system to deal exclusively with the cases of 13-, 14- and 15-year-olds who were charged with the most serious and violent crimes.

Recently Eric Holder, the Attorney general of the United States said: "We must ensure in all circumstances—and particularly when it comes to our young people—that incarceration is used to rehabilitate, and not merely to warehouse and forget. Our nationwide effort to end the unnecessary or excessive seclusion of youth with disabilities will not be completed solely with one settlement or court filing. [...] In the days ahead, we will continue to make good on our commitment to the best practices of law enforcement and the highest ideals of our nation."¹

In my statement today, I will focus on a specific aspect of New York law which inhibits our state from fully addressing the challenge discussed by the Attorney General and undermines efforts to eliminate reliance on punitive segregation for youth—New York's low age of criminal responsibility.

With respect to punitive segregation, New York law provides clear guidance for juveniles detained pursuant to the Family Court Act. These youth have to be held in facilities certified by the Office of Children and

¹ Press Release, U.S. Dep't of Justice, Attorney General Holder Criticizes Excessive Use of Solitary Confinement for Juveniles with Mental Illness (May 14, 2014), <http://www.justice.gov/opa/pr/2014/May/14-ag-509.html>.

Family Services.² A review of regulations applicable to juveniles detained in these facilities makes clear that punitive segregation is banned. Specifically, New York’s Codes and Regulations set forth standards relating to the use of room confinement. The regulations state:

“Room confinement of children shall not be used for punishment. It shall be authorized only in cases where a child constitutes a serious and evident danger to himself/herself or others.”³

In light of these regulations, how do we explain the fact that adolescents aged 16 and 17 are held in punitive segregation? How do we explain, as Human Rights Watch noted, that “Disciplinary data reported by the New York City Department of Corrections suggests that 14.4 percent of adolescents between the ages of 16 and 18 spend part of their pre-trial detention in solitary confinement?”⁴ How do we explain a report of the New York City Board of Corrections which profiled three adolescents in Rikers Island who had mental health issues and served punitive segregation sentences ranging from 200 to 250 days?⁵

The answer is that New York is one of only two states in the entire nation that sets the age of criminal responsibility as low as 16. Consequently, minors 16- and 17- years of age fall outside the jurisdiction of the Family Court and the Family Court Act.⁶ These youth, instead of being held in facilities certified by the Office of Children and Family Services, are held in adult facilities that use adult punitive segregation techniques. By way of example, pursuant to a New York City Department of Corrections Directive, inmates in NYC Department of Corrections custody can receive

² NY Exec. Law §503(5).

³ 9 N.Y. Comp. Codes R. & Regs. §180.9(c)(11)(ii).

⁴ Human Rights Watch & American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States* (2012), <http://www.aclu.org/files/assets/us1012webwcover.pdf>.

⁵ Staff Report, City of New York Board of Correction, *Three Adolescents with Mental Illness in Punitive Segregation at Rikers Island* (2013),

http://www.nyc.gov/html/boc/downloads/pdf/reports/Three_Adolescents_BOC_staff_report.pdf.

⁶ NY Fam. Ct. Act §301.2(1).

“Punitive segregation for a period not to exceed ninety (90) days for each disciplinary charge.”⁷

It is not hard to imagine why punitive segregation is prohibited in facilities that are designated for Juvenile Delinquents. We know that isolating youth for extended periods of time, we deprive them of any social and programmatic context in which they can learn from their mistakes and return to society better equipped to succeed. As the Attorney General suggested in his statement, by excessive use of punitive segregation, we essentially move to a system that warehouses instead of a system that rehabilitates. Indeed, this practice violates international standards for the treatment of minors. The United Nations’ Committee on the Rights of the Child has indicated that punitive solitary confinement for minors violates the Convention on the Rights of the Child, noting that: “disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned.”⁸

However, since New York fundamentally changes the lens by which it views adolescents aged 16 and 17, our state allows them to be held in facilities that are mainly driven by a punitive rather than rehabilitative models. Indeed, in 2011 alone, more than 5,000 16- and 17-year-olds were sentenced to incarceration in an adult jail or prison, the majority of them for non-violent offenses.⁹

⁷ The City of New York Department of Correction, Directive on Inmate Disciplinary Due Process § III(D)(1)(d) (March 29, 2006), <http://www.nyc.gov/html/doc/downloads/pdf/6500R-B.pdf>.

⁸ Comm. on the Rights of the Child (CRC), CRC Gen. Comment 10, Children’s Rights in Juvenile Justice, U.N. Doc. CRC/C/GC/10 (2007).

⁹ Ashley Cannon, Director of Public Policy, Citizens Crime Commission of NYC, The Laws Governing the Age of Adult Criminal Responsibility, Testimony Before the NYS Assembly Standing Committees on Codes, Judiciary, Children and Families, and Education, and the NYS Black, Puerto Rican, Hispanic, and Asian Legislative Caucus (Dec. 6, 2013), <http://www.nycrimecommission.org/pdfs/Testimony-Raise-The-Age-2013.pdf>.

The unfortunate reality is that the same qualities of youth which require a developmentally sensitive response, also make them more susceptible to receive punitive segregation in the context of an adult jail—they are impulsive, shortsighted, and extremely vulnerable to peer pressure. When you consider that in New York, 16 and 17-year olds account for less than 1% of the population in prison¹⁰, and less than 7% of the population in jails,¹¹ you can see how in a system driven to respond to adults, it will be difficult to effectively plan appropriate responses tailored for youth as an alternative to punitive segregation.

That is why, if New York is to confront the challenge posed by the Attorney General, our state must recognize that 16- and 17-year olds—still minors in all other respects—should not be treated as if they are adults in our justice system. By changing the lens by which we view these youth, we will be able to move to a rehabilitative system, that as the Attorney General suggested uses isolation only in limited situations where safety is at issue.

Therefore I call on this commission to support efforts to raise the age of criminal responsibility in New York, and, until effective legislation is passed, demand that our state remove all adolescents from adult facilities.

¹⁰ *Id.*

¹¹ *Id.*