



NEW YORK  
CITY BAR

**COMMITTEE ON CORRECTIONS  
AND COMMUNITY REENTRY**

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Hon. Andrew M. Cuomo  
New York State Governor  
State Capitol Executive Chamber  
Albany, NY 12224

**Re: Plan to Offer Conditional Pardons for Certain Youthful Offenders**

Dear Governor Cuomo:

On behalf of the Corrections and Community Reentry Committee (the “Committee”) of the New York City Bar Association (the “Association”), we write to commend your plan to offer conditional pardons to certain youthful offenders, but also to urge you to take additional steps to ensure the plan fulfills its intended purpose as effectively as possible.

The Association is an independent, non-governmental organization of 24,000 lawyers, law professors, and government officials from the United States and 50 other countries. Throughout its 144-year history, the Association has consistently advocated for a fair, just, and efficient judicial process and respect for the rule of law. The Committee is an association of attorneys and legal professionals from a range of private, governmental, and non-profit work backgrounds who work to address issues affecting the people who live and work in New York’s correctional institutions.

Your plan to offer pardons to people convicted of nonviolent felonies or misdemeanors when they were 16- or 17-years old is laudable in its goal of reducing the stigma associated with a criminal record and increasing the likelihood that those who made mistakes in the past are able to put those mistakes behind them and lead productive lives.<sup>1</sup> A criminal conviction can serve as

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<sup>1</sup> Jessie McKinley & James C. McKinley, Jr., Cuomo Moves to Pardon Former Youthful Offenders, N.Y. Times (Dec. 20, 2015), A1, available at [http://www.nytimes.com/2015/12/21/nyregion/cuomo-moves-to-pardon-former-youthful-offenders.html?\\_r=0](http://www.nytimes.com/2015/12/21/nyregion/cuomo-moves-to-pardon-former-youthful-offenders.html?_r=0).

a barrier to moving forward in myriad ways from obtaining housing, to furthering education or securing gainful employment, and we commend your efforts to ease this burden. As it now stands, however, the practical effect of the pardons will be limited. More can be done to ensure the pardons have the intended positive impact on the community.

We have a few suggestions to enhance the effectiveness of the pardon proposal. First and foremost, we propose reconsidering the limits for age. As drafted, the proposal's reach will be limited by the fact that many 16- and 17-year olds convicted of crimes, particularly those charged with nonviolent crimes, will have received youthful offender status, meaning the record of those offenses will already be confidential.<sup>2</sup> By contrast, youth over the age of 18 are not eligible for youthful offender status. Studies have shown, however, that young peoples' brains are still developing through the age of 25.<sup>3</sup> Because youthful offender status is not available to them, youth over the age of 18 are far more likely to be in need of pardon relief. Expanding the age limit to include those individuals who were convicted of crimes between the ages of 16 and 25 years old will better serve the proposal's aims.

Second, the requirements that the individual have committed only one offense, and that the offense have taken place more than ten years ago, further limit the effectiveness of the pardon proposal. By the time ten years has passed, the negative consequences from a criminal conviction with respect to barriers to employment, education, and housing will likely already have taken a significant toll. A young person between the ages of 16 – 26 is entering adulthood and faces all of the attendant responsibilities of a transition to self-reliance. Facing reentry barriers during these crucial transition years can hamper success. Making pardon relief available to a 21 year old who has remained crime-free for, say, five years, will greatly increase that individual's chances of successfully negotiating his or her transition into adulthood. And, if pardon relief is inappropriate given a particular applicant's circumstances, then an individual determination can be made that the relief should be denied, perhaps with an opportunity for a subsequent application upon a change in circumstances.

Similarly, the requirement that pardon recipients have paid taxes for the past ten years is unduly burdensome on a population whose options for employment are limited by the very circumstances the pardon is intended to alleviate. To increase the number of people who could benefit from this plan, we recommend considering making these requirements less burdensome.

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<sup>2</sup> See N.Y. C.P.L. § 720.20(1)(a), (b) (setting forth the circumstances under which individuals under the age of 18 are eligible for youthful offender status: for individuals who are convicted of misdemeanors and who have committed their first offense, youthful offender status is mandatory; for those who have a previous offense or are convicted of a felony, youthful offender status is discretionary).

<sup>3</sup> Raise the Age Fact Sheet, available at <http://raisetheageny.com/get-the-facts>. See Jay N. Giedd, Jonathan Blumenthal, Neal O. Jeffries, F.X. Castellanos, Hong Liu, Alex Zijdenbos, Tomáš Paus, Alan C. Evans & Judith L. Rapoport, *Brain Development during Childhood and Adolescence: A Longitudinal MRI Study*, *Nature Neurosci.* 2, 861-63 (1999); Elizabeth R. Sowell, Paul M. Thompson, Colin J. Holmes, Terry L. Jernigan & Arthur W. Toga, *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, *Nature Neurosci.* 2, 859-861 (1999). See also Press Release, Brooklyn District Attorney's Office Announces Creation of New Young Adult Bureau, May 6, 2016, available at <http://www.brooklynda.org/> (creating special court part for youth ages 18 to 24 who are charged with misdemeanors).

Third, recipients of the pardon, in its current form, must still answer affirmatively when a potential employer asks whether they have a criminal record, and, because the pardon does not expunge the criminal record, the conviction will be readily accessible to employers or schools that run background checks. To be effective in eliminating barriers to employment and education, we recommend that those who are pardoned be able to answer negatively when a potential employer asks whether they have a criminal record. We further recommend that a sealing procedure be considered.

Fourth, we ask that you reconsider the condition that reinstates the conviction in the event that the individual is subsequently convicted of any offense. A minor setback should not reverse years of progress and hard work. These limitations significantly blunt the positive impact a pardon will have on the lives of those who are attempting to put their criminal convictions behind them. These determinations should be made on a case-by-case basis.

Finally, we ask that you consider making the pardons a possible form of relief available to young people who were convicted of violent crimes. Studies on young brain development apply equally to those who have committed violent crimes. Notably, the fact that a youth has been charged with a violent crime does not preclude him or her from receiving youthful offender status. As with youthful offender status, conditional pardon relief should not categorically bar violent crimes.

We urge you to take the above steps to ensure that the pardons have the intended effect of making it easier for those with old convictions to move on with their lives. Thank you for all that you have done to improve the ability of individuals with conviction histories to successfully reenter society.

Respectfully,



Allegra Glashausser

Cc: Anthony J. Annucci, Acting Commissioner, NYS Department of Corrections & Community Supervision