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**Administration for
Children's Services**



**The New York City Council,
Committee on Juvenile Justice
Thursday, February 28, 2013**

**“Int. No. 981: Reporting Demographic Data and Incident Reports on Youth Detained and
Placed in Juvenile Facilities”**

Testimony by

**Dawn Saffayeh, Deputy Commissioner, Policy, Planning and Measurement
New York City Administration for Children's Services**

**The New York City Administration for Children's Services
Dawn Saffayeh, Deputy Commissioner
Testimony to the New York City Council
Committee on Juvenile Justice
February 28, 2013**

**“Int. No. 981: Reporting Demographic Data and Incident Reports on Youth Detained and
Placed in Juvenile Facilities”**

Good morning Chair Gonzalez and members of the Committee on Juvenile Justice. I am Dawn Saffayeh, Deputy Commissioner for the Division of Policy, Planning and Measurement at the New York City Administration for Children's Services (ACS). Thank you for providing us with the opportunity to address the proposed legislation related to reporting data on youth in New York City's juvenile facilities.

Since the 2010 merger of the Department of Juvenile Justice and the Administration for Children's Services, ACS has worked diligently to collect and track detention data. We report juvenile detention data in our Flash Report, which graphically illustrates monthly trends in select child welfare, juvenile justice, and early care and education statistics, and in our Strategic Management Report, which we produce quarterly. We publish both of these reports on our ACS website. In addition, we provide City Council reports quarterly, which include incident and demographic data, as well as provide data that is included in the Mayor's Management Report, which is mandated by the City charter and produced biannually, both of which are also posted on our website. Finally, ACS produces on an annual basis a Community Snapshots Report which includes juvenile detention statistics broken down by community district.

We take our responsibility to collect and share data very seriously and we support the Council's proposed legislation to extend reporting requirements to our youth in placement, both non-secure and limited secure, on the same schedule that we do for our youth in detention. As we planned for Close to Home, ACS recognized the need to broaden our data collecting to include placement statistics as well as to develop quality assurance mechanisms. As such, we created a Juvenile Justice Planning and Measurement Unit (JJPM) that will measure provider performance and program outcomes for our juvenile justice placement programs.

ACS is committing to collecting and providing the same demographic data and incident information for our placement population that we presently provide for detention. While we agree that collecting and reporting the juvenile placement data is important, the proposed legislation fails to account for the fact that New York City will not be providing limited secure placement services until fall 2013. Given that non-secure placement went into effect in September 2012 and the proposed legislation requires the first demographic data report to be provided to the Council by September 30, 2013, the proposed legislation appears to contemplate a one-year "implementation period" for non-secure prior to ACS reporting data. We therefore request that the Council provide a similar "implementation period" for limited secure placement and the reporting requirements date for limited secure placement data to commence in fall 2014. Similarly, the proposed legislation states that the incident report data for non-secure placement could be required as soon as May 2013. Given that the demographic data contemplates a year grace period, we would similarly request a one year "implementation period" for incident reporting to be extended to September 2013.

Juvenile Justice Oversight Board and Resident Care Advocacy Program

In addition to our support for the proposed legislation, I would like to take this opportunity to update the Council on the work ACS has done over the past few months with respect to our juvenile justice programs. Recently, we testified before the Council on our Resident Care Advocacy Program (RCAP). As we mentioned during that hearing, with the Close to Home initiative currently underway, ACS has recognized the need for a more robust oversight mechanism to adequately address young people's needs and to continuously monitor and improve the safety and strength of our programs in both detention and placement. We have therefore created the Juvenile Justice Oversight Board that will oversee both secure and non-secure detention, as well as non-secure and limited-secure placement. The Board will analyze the data that we collect, among a number of other tasks, and discuss their findings with agency officials. We believe this will help us to assess and, where needed, improve the conditions of our detention and placement facilities.

ACS will also be hiring two additional ombudspersons to augment our existing Resident Care Advocacy Program (RCAP). The role of the ombudsperson is to ensure that all youth understand their right to report and pursue a grievance and the process for doing so. We expect that the ombudspersons will inform the work of the Board by participating in meetings and raising issues that are brought to their attention with Board members. The deadline for the Juvenile Justice Oversight Board membership applications is today and we look forward to updating the Council as we implement the Oversight Board.

Close to Home Update

As the Council knows, Phase I of Close to Home has been underway since this past September. Once it is fully operational, we will have the capacity to serve approximately 319

non-secure placement youth. We released the Request for Proposals for the aftercare system last November and are currently evaluating proposals. We expect contracts to be awarded in late April and that contracts will be enacted on July 1, 2013. Currently, we have 231 youth in active non-secure placement care.

ACS is planning for the second phase, Limited-Secure Placement, which will begin fall 2013. Like non-secure placements, young people in limited-secure settings will receive a full range of services and supports. However, limited-secure placements will have more restrictive features to ensure the safety of residents, program staff, and communities. ACS has hosted five community forums to obtain the public's feedback on limited-secure placement and we plan to distribute the draft plan for public comment in early March. Pursuant to the legislation, after we release the draft plan, ACS will also hold five public hearings this spring to obtain public comment. We will incorporate the feedback we received from the public into the plan, which we will then submit to OCFS for review and approval.

Similar to the procurement process for non-secure placement, for Limited Secure placement, ACS will issue a Negotiated Acquisition seeking highly qualified providers with extensive foster care and juvenile justice experience to provide services at an expected 9-11 residential sites within the five boroughs or close to New York City. We plan to begin accepting youth into limited secure placement beginning in fall 2013 and have an anticipated capacity of 158 youth.

Limited secure facilities will have multiple safety and security measures both to protect residents and to also ensure the safety of the surrounding community that may include things like: designated entry and exit points; full perimeter lighting; locked doors and windows; security cameras and closed circuit television monitoring. We will seek to avoid frequent

transportation of youth in and out of the facilities by providing most services on site. Some of the onsite services will include: medical, dental and mental health services; counseling and individual meeting rooms; space for family, attorney visits and conferences; indoor recreation space; outdoor yard space within the facility's property; and education. We will have a rich direct care staff ratio of one staff for every three youth and each facility will have a staffed control room operating 24/7 that controls facility entry and exits and responds to emergencies. In addition, providers will be required to create community advisory boards that will meet quarterly – these groups will consist of local residents, faith-based organizations, civic groups and other community members.

Closing

This is an exciting time for Children's Services and our juvenile justice programs. We are grateful for all of the support of the Council as we continue to strive to improve services for the City's most vulnerable young people. I will now take your questions.

JTR

New York City Council Hearing
Regarding Int. No. 981 – In relation to requiring the administration for children's services to publish demographic data and incident reports on youth detained and placed in its juvenile facilities,
and to REPEAL chapter 2 of title 9 of the administrative code of the city of New York as it relates to the department of juvenile justice

Testimony of Judy Yu, MPH, MFA
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The Correctional Association of New York

Submitted to
the Juvenile Justice Committee of the New York City Council
on February 28, 2013

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My name is Judy Yu. I am the Associate Director of LGBTQ Youth Issues at the Juvenile Justice Project of the Correctional Association of New York. The Correctional Association of New York (CA) is an independent, non-profit organization founded by concerned citizens in 1844 and granted unique authority by the New York State Legislature to inspect prisons and to report its findings and recommendations to the legislature, the public and the press. Through monitoring, research, public education and policy recommendations, the CA strives to make the administration of justice in New York State more fair, efficient and humane. The CA does not provide direct services other than leadership training programs, does not engage in litigation, and does not represent a sector or workforce. The Juvenile Justice Project is committed to working toward a youth justice system that is transparent and accountable to children and families, communities, legislators, policy-makers, and the public. The society we envision and work toward is one in which children are given the tools and skills they need to succeed and where working effectively with youth translates into increased public safety outcomes.

Thank you Chairperson Gonzalez, and committee members Arroyo, Cabrera, and Dromm for this opportunity to testify. We look forward to working with you and your colleagues to ensure that New York City's children and youth in the youth justice system are effectively served.

Introduction

The Correctional Association of New York supports the proposed amendment to the administrative code of New York requiring the Administration for Children's Services (ACS) to publish demographic data and incident reports on youth detained and placed in its juvenile justice facilities, and the repeal of chapter 2 of title 9 of the administrative code of New York City as it relates to the department of juvenile justice. This proposed bill will provide concerned citizens, families and

communities with critical information about the conditions of ACS juvenile justice facilities, whether certain populations are at disproportionate risk for youth justice involvement and particular harms while in confinement, and the overall safety of detained and incarcerated youth. We recommend enhancements to the proposed legislation to further protect all youth in ACS' care, including lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth. Research has shown that LGBTQ youth are disproportionately represented in the youth justice system; and suffer routine and systemic mistreatment in detention and placement as a result of their perceived or actual sexual orientation, gender expression, or gender identity.¹ We have observed that ACS has recently made strong efforts to implement policies and practices to protect and more effectively serve LGBTQ youth in its care. This legislation and our proposed additional measures will build upon the important work ACS is already doing on these issues. Therefore we recommend that the New York City Council codify within the proposed legislation the following:

- 1) Sexual orientation and gender identity should be included in all intake or admissions form and reported in the disaggregated data that will be posted on ACS' website.
- 2) Incident reports should include bias based incidents and published incident reporting data should be disaggregated by age, race, gender, gender identity, and sexual orientation.
- 3) An anonymous self-administered survey should be distributed to each youth on an annual basis to further collect information about the prevalence of LGBTQ youth in custody and their experiences while in detention and placement. The survey results should be included in the public reports.
- 4) Training and professional development should be mandated to ensure that the collection, management, and publication of this sensitive information benefits, and does not harm,

¹ Center for American Progress; The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth in the Juvenile Justice System, June, 2012

youth and families. Furthermore, ACS should be supported and resourced to develop their capacity to fully comply with such protocols.

We strongly feel that these proposed additions are critical for the adequate assessment of ACS' competence in serving all children and youth. Moreover, youth, families, and the public benefit from having access to such information; it provides a variety of stakeholders with the opportunity to engage with ACS about how to best serve system impacted young people, as well as reduce and prevent further involvement with the youth justice system.

1) Sexual orientation and gender identity should be included in all intake or admissions form and reported in the disaggregated data that will be posted on ACS' website.

LGBTQ youth are disproportionately represented in the youth justice system, with one national study finding that up to 15% of incarcerated youth are lesbian, gay, bisexual, or gender non-conforming.² There is also a growing body of research that shows that LGBTQ youth are at increased risk for homelessness, substance abuse, school bullying and family rejection due to homophobia, transphobia, sexism, and social stigma.³ Moreover, these issues frequently funnel LGBTQ youth into the youth justice system.⁴

ACS has recently made important strides to protect and more effectively serve LGBT youth in their care through the release of *Promoting a Safe and Respectful Environment for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth and their Families Involved in the Child Welfare, Detention, and Juvenile Justice System*. Furthermore the CA has been involved with ACS' LGBTQ Action Group. Under the leadership of the new Senior Advisor to LGBT Policy and Practice, ACS is taking significant steps to integrate the needs and perspectives of LGBTQ youth into all aspects of its operations, services,

² Angela Irvine, "We've Had Three of Them": Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System, 19 Colum. J. Gender & L. 675-76, 687 (2010).

³ See *supra* note 1 at 1

⁴ See *supra* note 1 at 2.

and programs. To the best of our understanding, this includes or will include the revision of ACS' forms to include sexual orientation and gender identity issues and recognition of LGBT families. Furthermore the Correctional Association coordinates a Juvenile Justice Coalition, a state wide network of advocates, social service providers, and community members, which includes an LGBTQ Work Group. This work group has collaborated with ACS' Division of Youth and Family Justice (DYFJ) since 2010 and meets regularly to discuss the implementation of ACS' LGBTQ policy and guidelines. Through our work, we have learned that ACS has been in conversation with a nationally recognized research expert on LGBTQ youth in the juvenile justice to add sexual orientation and gender identity to its intake form.

We applaud these efforts. However, to ensure that these nascent measures and practices are fully embedded into ACS's system and continue beyond the current leadership and administration, we urge the City Council to include in the proposed legislation sexual orientation and gender identity as demographic information to be collected and reported on ACS website. The systemic ongoing collection of this information on the individual and aggregate level is necessary to assess whether the agency is meeting its obligation to LGBTQ and all youth through culturally responsive and affirming services. It will help inform program planning, and enable ACS to improve and enhance services based on data.

ACS should continue to utilize expert technical assistance to collect such data. ACS should also follow the lead of other public agencies that have collected information on sexual orientation and gender identity for over 20 years, such as the school-based surveys of adolescents through versions of the Youth Risk Behavioral Survey.⁵ In addition, Family Builders By Adoption just released "Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems," and while this was written for the child welfare

⁵ Wilber, S, Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems, Putting Pride into Practice Project, Family Builders by Adoption, Oakland, CA 13 (2013).

system, the guidelines and recommendations are relevant and applicable to the juvenile justice system.⁶ These guidelines should be adapted for use by ACS.

2) Incident reports should include bias based incidents and incident reporting data should be disaggregated by age, race, gender, gender identity, and sexual orientation.

The collection of data related to incidents of bias based harassment in ACS' youth justice facilities and programs should also be added to the current proposed legislation. Studies show that anti-LGBTQ harassment is unfortunately pervasive in detention and placement settings.⁷ The tracking of incidents of harassment and mistreatment, and inclusion of this information in published incident reporting data, will provide important insight into the safety and conditions for all youth in facilities. It should also be used by ACS to enhance their LGBTQ anti-discrimination policy and general protocols to ensure equitable and culturally competent treatment of all youth in their care.

The New York City Department of Education has taken steps to track the bias based harassment incidents in schools as part of both its Respect for All policy, and in compliance with the Dignity for All Students Act, the recently passed state law that stipulates that "New York State public school students should have an environment free of discrimination and harassment."⁸ Under this act schools are responsible for collecting and reporting data on incidents of discrimination and harassment to the New York State Department of Education. In New York City, the online occurrence reporting system (OORS) is used to collect such incidents in schools and there is an annual audit of incident reports documenting bias-related infractions of the Student Discipline

⁶ *Id.* (Wilber)

⁷ Katayoon Majd et al., *The Equity Project, Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* 102 (2009), http://www.equityproject.org/pdfs/hidden_injustice.pdf.

⁸ *Dignity for all Students Act Guidance for Updating Codes of Conduct*, The State Education Department (2012), <http://www.p12.nysed.gov/dignityact/documents/DASACodeofConductFinal44-1.pdf>

Code. An incident of bias based on gender identity, gender expression, and sexual orientation is included as a category for which data is collected and reported.⁹

In order to ensure that all our youth are safe and protected while in the care of ACS, it is critical that ACS develops a robust system to track incidents of harassment against youth perceived to be or who identify as LGBTQ. For example, incident reports should include harassment and discrimination as a category. Each facility should appoint staff to be trained when responding and reporting incidents to identify if there was any bias due to the race, age, gender, gender identity, and/or sexual orientation of the youth involved while ensuring confidentiality of this information and protecting the complainant from any reprisals or retaliation. Furthermore all incident reports should include the age, gender, gender identity, race, and sexual orientation of the youth involved. ACS should regularly audit this information and release it as part of annual reports on incidents to the public. If the prevalence of anti-LGBTQ harassment and discrimination is high, ACS should include steps and strategies to reduce incidents in this report. Members of the community should be given opportunity to review and respond to the report to ACS, to ensure family and community engagement. ACS' published reports on incident reports should also be disaggregated by the age, gender, gender identity, race, and sexual orientation of the youth. Disaggregating the data by these categories may provide further useful context to understand the safety needs of youth, if there are particular youth at risk for violence while in the custody of ACS, and the climate of facilities.

- 3) An anonymous self-administered survey should be distributed to each youth on an annual basis to further collect information about prevalence of LGBTQ youth in custody and their experiences while in detention and placement. The survey results should be included in the public reports.**

⁹ *Id.*

Due to the social stigma LGBTQ people face, it may be difficult to obtain accurate information about the sexual orientation and gender identity of youth in custody. Youth with histories of rejection and discrimination due to their sexual orientation, gender identity, and/or gender expression may be reluctant to disclose such information at the time of admission and intake for safety reasons.¹⁰ Therefore, we recommend that a confidential self-administered survey be distributed to all youth annually as an additional mechanism for collecting information and to ensure accuracy of data.

According to a recent set of guidelines on data collection and information from Family Builders By Adoption, “Anonymous surveys permit youth to be more candid, increasing the reliability of the data and potentially providing more accurate data on the quality of services and the needs of youth.”¹¹ The anonymous surveys should include questions to assess youth’s experiences in juvenile justice facilities, including conditions of confinement, climate, and experiences of bullying and harassment. Anonymous surveys can provide a forum for youth who may be fearful of reprisals or who do not feel it is safe to disclose their sexual orientation and/or gender identity. The data captured from these surveys would assist with program evaluation and planning as well as ensuring accuracy of data. Such surveys should be designed with care, abiding by established best practices and protocols.¹²

- 4) **Training and professional development should be mandated to ensure that the collection, management, and publication of information about sexual orientation and gender identity benefits, and does not harm, youth and families. Furthermore, ACS should be supported and resourced to develop their capacity to fully comply with such protocols.**

¹⁰ Shannan Wilber et al., Child Welfare League of America, CWLA Best Practice Guidelines: Serving LGBT Youth in Out-of-Home Care 36 (2006).

¹¹ See *supra* note 5 at 13.

¹² Badgett, L., & Goldberg, N. Best Practices for Asking Questions About Sexual Orientation on Surveys. Los Angeles: The Williams Institute.

We strongly recommend the inclusion of ongoing training and professional development of ACS staff on best practices for working with LGBTQ youth, including the collection and management of sensitive data about youth in their care, in the proposed legislation. We further urge the City Council to support and resource ACS to develop their capacity to fully comply with this legislation and ensure that information related to sexual orientation and gender identity of youth in custody is effectively gathered and used. It is good childcare practice to collect such information for the purposes of individual case planning, culturally competent referrals for after care, and system wide quality assurance.¹³ However, due to the pervasive social stigma that exists related to sexual orientation and gender identity stringent protocols and professional standards must be implemented to ensure that such information is appropriately handled. Serious harm can be inflicted on children and families if the collection and reporting of such information does not occur in an agency-wide LGBTQ affirming environment grounded in shared professional standards and values. Improper, careless, or malicious disclosure about a young person's sexual orientation and/or gender identity jeopardizes a youth's safety in placement, at home, at school.¹⁴ It can subject youth to retaliation, abuse, and psychological harm by caregivers and peers.¹⁵ Premature or nonconsensual disclosure can also derail a young person's development and adjustment, resulting in detrimental health effects and loss of trust.¹⁶ The potential for such serious harm to youth cannot be overstated; ACS must make rigorous efforts to safeguard and appropriately use the information collected about sexual orientation and gender identity.

The National Association of Social Workers has noted that the following are critical elements that must be in place for an agency to ask about sexual orientation and gender identity of youth it is serving: “[the staff] must demonstrate self-awareness about personal beliefs and attitudes,”

¹³ See *supra* note 5 at 5.

¹⁴ See *supra* note 7 at 89

¹⁵ See *supra* note 10 at 35

¹⁶ *Id.* at 37

“knowledge and appreciation of LGBTQ youth,” “competent social work skills,” and “the ability to balance personal values against professional obligations.”¹⁷ Thus ACS’ internal infrastructure must be further developed so that 1) this information is collected in a sensitive and affirming manner; 2) each facility is fully compliant with ACS’ policies and guidelines about working with LGBTQ youth; 3) each worker demonstrates full compliance, competence, and fluency with the ACS’ LGBTQ policies and guidelines; and 4) the information is used solely to identify and plan the most effective care and treatment for youth and their family and is never disclosed inappropriately and without the permission or knowledge of the young person.

To achieve these conditions ACS must have the necessary resources to utilize technical assistance, consultation, and training by outside experts. In particular, resources are required in the following areas:

- Technical assistance with the design of the anonymous survey and data collection and management methodology. In order to obtain the most accurate information, ACS should seek technical assistance for the design of their intake forms and inclusion of sexual orientation and gender identity in all its forms, including incident reports. In addition, a consultant should guide the development of protocols to safeguard the information, including clear criteria for when the disclosure and sharing of a youth’s sexual orientation and gender identity are necessary and best practices for minimizing risk of unwarranted disclosure. The consultant should also advise on and help develop a clear set of protocols for incident reports, including criteria for identifying bias, so that such reporting is standardized and consistent across facilities. Technical assistance for the development of the anonymous survey is also critical as a scientifically rigorous design utilizing developmentally and culturally appropriate language will yield the most accurate information.

¹⁷ Elze, D. & McHaelen, R, National Association of Social Workers and Lambda Legal, *Moving the Margins: Training Curriculum for Child Welfare Services with LGBTQ Youth in Out-of-Home Care* 75 (2009).

- Training and coaching of staff on best practices and protocols for the collection of information related to sexual orientation and gender identity, including the adherence to state and federal confidentiality laws, and the guidelines discussed above on disclosure and safeguarding confidentiality. It is common for staff to experience discomfort and risk when asked to collect and manage information about sexual orientation and gender identity of youth.¹⁸ Unfortunately such sensitive information can be mishandled to the detriment of the youth in ACS' care. Sufficient training and ongoing supervision must be provided so that staff are equipped to perform this duty with care, sensitivity, and competence. This will also help increase the accuracy of the data collected.
- Training and coaching of internal trainers at ACS to ensure they have the tools, curriculum, and most up-to-date research and knowledge on LGBTQ youth to train all staff in both the anti-discrimination policy and guidelines and management of information pertaining to sexual orientation and gender identity. Based on our own professional experiences facilitating workshops on LGBTQ youth issues in a variety of settings, including youth justice agencies, there are unique challenges when training on the topic of sexual orientation, gender identity, and gender expression. Trainers must be prepared to encounter and challenge deeply embedded biases about LGBTQ people and engage in nuanced dialogue about such stereotypes and attitudes. It is important that the internal competency to provide such training is developed within ACS. Achieving this goal requires the dedication of resources and time for an expert trainer to work with ACS' trainers and cultivate their abilities to implement trainings on LGBTQ youth in the system. Ideally an expert trainer would provide ACS' trainers with an initial long-term period of intensive professional development, coaching, and opportunities for practice and feedback. This intensive

¹⁸ See *supra* note 5 at 4.

approach would leverage the existing strengths and knowledge of ACS' trainers and result in the sustainable internal competency of ACS' trainers on LGBTQ youth issues.

Conclusion

The Correctional Association supports the proposed legislation and its potential to illuminate the treatment, needs, and risks of youth in ACS' youth justice programs. Because LGBTQ youth are disproportionately represented in the youth justice system and vulnerable to violence, mistreatment, discrimination, and inadequate services when detained or incarcerated, the proposed inclusion of data related to sexual orientation and gender identity and incidents of bias and harassment will strengthen this legislation's reach and impact. ACS has already begun to develop and operationalize policies and practices to achieve LGBTQ affirming services; these are efforts we fully support and embrace. However, in order to ensure that sensitive information about sexual orientation and gender identity is properly gathered and managed, and that best practices for the treatment of LGBTQ youth are implemented in a sustainable way, an initial significant investment in resources should be offered to ACS for capacity development. The successful and effective collection, tracking, and management of information pertaining to sexual orientation and gender identity can only occur in an agency in which all youth, including LGBTQ youth, are consistently accepted, affirmed and valued throughout the system.

New York City Council Oversight Hearing:

Joint testimony of

Gabrielle Horowitz-Prisco, M.A., Esq.
Director, Juvenile Justice Project
The Correctional Association of New York

and

Christine L. Bella,
Staff Attorney,
The Legal Aid Society Juvenile Rights Practice

Re: Int. No. 981 - In relation to requiring the Administration for Children's Services to publish demographic data and incident reports on youth detained and placed in its juvenile facilities, and to REPEAL chapter 2 of title 9 of the administrative code of the city of New York as it relates to the Department of Juvenile Justice.

Submitted to the
Juvenile Justice Committee
February 28, 2013

My name is Gabrielle Horowitz-Prisco. I am the Director of the Juvenile Justice Project of the Correctional Association of New York and an attorney who has previously represented children in New York City's Family Court. The Correctional Association of New York is an independent, non-profit organization founded by concerned citizens in 1844 and granted unique authority by the New York State Legislature to inspect prisons and to report its findings and recommendations to the legislature, the public and the press. Through monitoring, research, public education and policy recommendations, the Correctional Association strives to make the administration of justice in New York State more fair, efficient and humane. The Correctional Association does not provide direct services other than leadership training programs and does not engage in litigation or represent a sector or workforce. The Juvenile Justice Project is committed to working toward a youth justice system that is transparent and accountable to children, families, policymakers and the public. The system we envision and work toward is one in which children are given the tools and skills they need to succeed and where positive youth development principles translate into increased public safety outcomes.

I am here today with Christine Bella, Staff Attorney with The Legal Aid Society's Juvenile Rights Practice. The Legal Aid Society is the nation's largest and oldest provider of legal services to low-income families and individuals. Legal Aid's Juvenile Rights Practice provides comprehensive legal representation to children who appear before the New York City Family Courts in all five boroughs, in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Annually, Juvenile Rights staff represents some 34,000 children, including approximately 4,000 who were charged in Family Court with juvenile delinquency, some of whom are remanded to Administration for Children's Services (ACS) detention facilities and or are placed with ACS in its non-secure placement facilities. The Legal Aid Society's perspective comes from daily contacts with children and their families, and also from frequent interactions with the courts, social service providers, and State and City agencies, including ACS. In addition to representing many thousands of children each year in trial and appellate courts, The Legal Aid Society also pursues impact litigation and other law reform initiatives on behalf of clients.

We thank you Chairwoman Gonzalez and Juvenile Justice committee members for this opportunity to testify.

Background

Juvenile detention has been called the "hidden closet for the skeletons of the rest of the system."¹ Children in residential facilities are especially isolated and uniquely susceptible to abuse and mistreatment by virtue of the combination of their age, their social isolation, and the closed nature of such facilities. These circumstances are not unique to children in the custody of ACS, and they are not unique to children in New York state.

The United States Department of Justice issued a set of findings in New York State after its extensive investigation of four New York State Office of Children and Families' facilities, documenting among other things that "[s]taff at the four facilities consistently used a high degree of

¹ Patricia Wald, 1975. Patricia Wald later became a federal circuit judge.

force to gain control in nearly every type of situation,” “restraints are used frequently and result in a high number of injuries,” and “[t]he number and severity of injuries resulting from restraints is made worse by poorly executed or intentionally harmful restraints.”² The Department has made similar findings in many jurisdictions outside of New York.³ Understanding that harms to children can and do occur across agencies and jurisdictions, laws that mandate increased public transparency over youth justice facilities are an effective way to shed light on the “hidden closet” and to ensure children’s safety.

The operation of the City’s youth justice system will, as a matter of course, exceed the terms of its current leaders and of the current Council. It is, therefore, particularly important that public transparency mechanisms that transcend the tenure of any particular agency administration be codified into law. It is also important to note that public transparency is not about “gotcha” moments with regard to ACS or its provider agencies. Instead public transparency is a way to ensure both that strong practices are identified and built upon, and that challenges can be pro-actively identified and appropriately responded to. Public transparency is just of checks and balances that should be in place in any government system, particularly one charged with the custody of vulnerable children.

The City Council has an important role to play with regard to requiring city agencies to report on critical data sets. Under Introduction 153-A and 37-A, the Council requires ACS to post a quarterly Incident Report, an annual demographic report and an annual report of child abuse allegations with regard to the its secure and non-secure detention operations. This information is publicly available via ACS’ website.⁴ There is currently no such law with regard the operation of Close to Home facilities; a vacuum that the proposed legislation addresses.

In 2010 when Introductions 153-A and 37-A were passed, New York City only operated detention facilities under what was then the Department of Juvenile Justice. Since that time, the City’s jurisdiction has extended to placement facilities. Under the newly enacted Close to Home state legislation, ACS is responsible or providing Non-Secure Placements for youth from New York City. Additionally, ACS will assume responsibility for Limited-Secure Placements beginning in fall 2013. The proposed legislation extends the data requirements of Introductions 153-A and 37-A to

² In August 2009, the United States Department of Justice concluded a two-year investigation of four New York State-operated juvenile prisons, finding routine incidents of physical abuse and excessive use of force, a complete lack of staff accountability, and woefully inadequate mental health services. *Investigation of the Lansing Residential Center, Louis Gossett, Jr. Residential Center, Tryon Residential Center, and Tryon Girls Residential Center*, U.S. Dept. of Justice, August 2009.

³ See Mendel, Richard A., *No Place For Kids*, p.5; U.S. Dept. of Justice Investigation of the Walnut Grove Youth Correctional Facility in Mississippi, March 2012: <http://www.justice.gov/opa/pr/2012/March/12-crt-352.html>; U.S. Dept. of Justice Investigation Report of Arthur G. Dozier School for Boys and the Jackson Juvenile Offender Center, Marianna, Florida, December 2011: http://www.justice.gov/crt/about/spl/documents/dozier_findltr_12-1-11.pdf; U.S. Dept. of Justice Investigation of Terrebonne Parish Juvenile Detention Center, Houma, Louisiana, January 2011: http://www.justice.gov/crt/about/spl/documents/TerrebonneJDC_findlet_01-18-11.pdf; U.S. Dept. of Justice Investigation of the Los Angeles County Probation Camps, October 2008: http://www.justice.gov/crt/about/spl/documents/lacamps_findings_10-31-08.pdf; U.S. Dept. of Justice Investigation of Marion County Juvenile Detention Center, Indianapolis, Indiana, August 2007: http://www.justice.gov/crt/about/spl/documents/marion_juve_ind_findlet_8-6-07.pdf; For more examples please see: <http://www.justice.gov/crt/about/spl/findsettle.php#juveniles%20Findings%20Letters>.

⁴ http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml

conform with ACS' newly expanded jurisdiction under the Close to Home initiative. Given that the newly enacted Close to Home initiative represents a major transformation of how New York City and New York State provide for the care and custody of children, it is imperative that the Council, the public and other stakeholders have information about what is happening inside all New York City residential youth justice facilities, including Close to Home facilities.

The Correctional Association and The Legal Aid Society fully support the proposed legislation and applaud the Council for promptly and pro-actively introducing this legislation. We also urge the Council to require ACS to report on a limited number of additional measures, each of which will be addressed in more detail at the end of this testimony.

The benefits of data transparency

The proposed legislation is critical to promoting accountability and transparency in NYC's newly transformed juvenile justice system. The public availability of such data is immensely important not only to ensure the safety of children in the custody of ACS but also to ensure the creation of sound policy, practices and programming for youth in such facilities. The data is useful to inform government officials (both the City and the State) including the City Council in its oversight role. We are heartened to hear that the City Council, ACS and OCFS are looking at this data, and find it useful to identify and address problematic practices, all in an effort to safeguard the rights of the young people in ACS' Division of Youth and Family Justice (DYFJ) custody. The data also informs advocates about what is happening in DYFJ facilities on a system-wide basis, thus enabling broader advocacy efforts to bring programming to the facilities, positively influence policy and or call for additional resources and supports to meet the needs of the children and their families. Certainly this data is invaluable to parents, family members of young men and women who are at the facilities and the general public who do not generally have access to such information and have no other way of learning about what is happening inside the facilities. The public release of this kind of critical information makes it easier for parents, families, and community members to demand accountability and call for changes in policies practices and programming for their children. Additionally, the public transparency of data, including fiscal data, increases the likelihood that public finances are used effectively and responsibly.

Finally, the proposed legislation would ensure the existence of a uniform data set available to the public as well as other stakeholders. The existence of a uniform data set about youth in detention has proved useful. For example, because of the City Council mandate that ACS release an annual detention demographic report, all stakeholders, policymakers and community members have reliable and easy access to a uniform set of demographic data. This allows, for example, individual Council members and their constituents to track detention data for zip codes in their district. Similarly, discussions about restraints and the use of force inside detention facilities can reference a shared data set, one that is both publicly available and regularly updated. It is also relevant that these detention data sets come from the agency itself. For example, when concerns about restraint practices are raised by parents or advocates, it is notable that one source of data about these practices is the agency itself. For all of these reasons, there should be a similarly uniform data set with regard to all youth justice placements.

Current Oversight Mechanisms are Internal and Do Not Allow for Public Transparency

- While we recognize and encourage ACS' growing public commitment to a deeper evaluation of its own system, we are simultaneously mindful of the tensions inherent to *any* agency or body tasked with its own oversight and public transparency mechanisms. We are also aware that current oversight models at both the City level (ACS' Quality Assurance work and its newly created Juvenile Justice Oversight Board) and the State level (including the Office of Children and Family Services' (OCFS) regulatory oversight over ACS) are primarily designed and operated as governmental internal review mechanisms. None of these bodies are, to the best of our knowledge, tasked or required to publicly report on their findings in any significant way. For example, according to our best interpretation of the Draft Juvenile Justice Oversight Board Policy, the sole primary mechanism for the public to learn of the Board's findings is one annual public forum. There is no stated requirement with regard to what must be reported at the public forum--the policy merely states the Board will "conduct an annual public forum."⁵ In addition, the Board Membership Application states, "The Board will issue an annual summary report that will be available to the public." The policy does not, to the best of our knowledge, mention this report (other than discussing an annual forum) and does not mandate what, if any, data or performance measures must be included in such an annual summary report. Similarly, the Close to Home legislation itself does not require that any performance data be reported to the general public. The Close to Home legislation requires ACS to submit to OCFS, the Temporary President of the Senate, and the Speaker of the Assembly an annual report detailing overall initiative performance, including but not limited to a series of articulated data measures. There is no requirement for the public release of this report.⁶ Further, the legislation also requires ACS to submit to OCFS data related to the youth and programs in the initiative.⁷ This data is required every month for the first year after the implementation of a new level of care (Non-Secure and Limited Secure) and on a quarterly basis thereafter. To date, neither ACS or OCFS has publicly released this data; they are not required to do so by legislation. Introduction No. 981 is unique and important in that it requires public reporting of data on a defined and regular basis.

Current data from ACS' detention facilities underscores the need for public transparency

The detention data required by Introductions 153-A and 37-A reveal longstanding and troubling patterns with regard to the use of restraints inside detention facilities.

According to the most recent publicly available data, during Fiscal Year 2013 2nd Quarter (October 1, 2012 - December 31, 2012), inside ACS-operated detention facilities, there were:

- 686 physical or mechanical restraints of children reported (in a three month period)
- 512 physical restraints and 174 mechanical restraints⁸

⁵ Draft ACS Policy: Juvenile Justice Oversight Board, page 8.

⁶ Source: S-6257-E/A-9057-D (2012) at sections 10(b) and 11.

⁷ Id.

⁸ There were 512 physical restraints reported in FY 2013, Quarter 2 and 174 mechanical restraints reported in FY 2013, Quarter 2.

- 228.67 restraints per month⁹
- 52.77 restraints per week¹⁰
- 7.46 restraints per day¹¹
- 1 restraint approximately every 3.22 hours¹²
- 65 reported injuries to children as the result of a restraint
- Injury rate of 9.50%, meaning that nearly 1 in every 10 restraints resulted in an injury to a child.¹³
- Physical restraints that led to injury = 11.13%¹⁴
- Mechanical restraints that led to injury = 4.6%¹⁵
- Injuries may be serious and require professional medical care. Of the 65 injuries reported during this three month timeframe, 2 were classified as “Injury A,” which is defined as “injuries requiring clinical treatment beyond what could be provided by a layperson with over-the-counter products.”¹⁶
- Data from FY 2012 (the most recent publicly available data) indicates that the average daily population was 326.5 across all detention facilities (secure and non-secure)¹⁷, meaning that an average of 229 restraints a month occur amongst a population of only about 327 children (note that this comparison uses the most recent publicly available data for average daily population which is from FY2012 not FY2013).
- According to the most recent publicly available data, in FY 2012, 94.6% of the children in detention identified as Black or Latino (63.5% of the children identified as Black and 31.1% identified as Hispanic).¹⁸

This data is not an anomaly. During Fiscal Year 2013 1st Quarter (July 1, 2012 - September 30, 2012), there were:

⁹ Calculated as follows: 686 reported restraints divided by the 3 months between 7/1/2012 and 9/30/2012 = 228.67 restraints per month.

¹⁰ Calculated as follows: 686 reported restraints divided by the 13 weeks between 7/1/2012 and 9/30/2012 = 52.77 restraints per week.

¹¹ Calculated as follows: 686 reported restraints divided by the 92 days between 10/1/2012 and 12/31/2012 = 7.46 restraints per day.

¹² Calculated as follows: 92 days between 10/1/2012 and 12/31/2012 multiplied by 24 hours in a day = 2,208 hours. 686 reported restraints divided by 2,208 hours = .3218 restraints per hour, and 1 divided by .3218 = 3.218.

¹³ Calculated as follows: 65 reported injuries divided by 686 reported restraints = 0.0950 multiplied by 100 = 9.50%.

¹⁴ Calculated as follows: 57 total physical injuries / 512 total physical restraints = 0.1113 multiplied by 100 = 11.13%

¹⁵ Calculated as follows: 8 total mechanical injuries / 174 total mechanical restraints = 0.0460 multiplied by 100 = 4.60%

¹⁶ Available at: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml (scroll down to “Youth and Family Justice Reports). According to the Administration for Children’s Services, this data includes restraints within non-secure detention facilities, secure detention facilities, “transportation” and “court services.” Definition of “Injury A” provided on data reports.

¹⁷ NYC ACS Detention Demographic Data Fiscal Year Report, Fiscal Year 2012, available at: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml.

¹⁸ New York City Administration for Children’s Services Detention Demographic Data Fiscal Year Report Fiscal Year 2012. Available at: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml.

- 697 physical or mechanical restraints of children reported (in a three month period)
- 510 physical restraints and 187 mechanical restraints¹⁹
- 232.33 restraints per month²⁰
- 53.62 restraints per week²¹
- 7.60 restraints per day²²
- 1 restraint approximately every 3.17 hours²³
- 57 reported injuries to children as the result of a restraint
- Injury rate of 8.18%, meaning that approximately 1 in every 12 restraints resulted in an injury to a child.²⁴
- Physical restraints that led to injury = 9.80%²⁵
- Mechanical restraints that led to injury = 3.74%²⁶
- Data from FY 2012 (the most recent publicly available data) indicates that the average daily population was 326.5 across all detention facilities (secure and non-secure)²⁷, meaning that an average of 232 restraints a month occurred amongst a population of only about 327 children (note that this comparison uses the most recent publicly available data for average daily population which is from FY2012 not FY2013).

And during fiscal Year 2012 4th Quarter (April 1, 2012 - June 30, 2012), there were:

- 829 physical or mechanical restraints of children reported (in a three month period)
- 673 physical restraints and 156 mechanical restraints²⁸
- 276.33 restraints per month²⁹
- 63.77 restraints per week³⁰

¹⁹ There were 510 physical restraints reported in FY 2013, Quarter 1 and 187 mechanical restraints reported in FY 2013, Quarter 1.

²⁰ Calculated as follows: 697 reported restraints divided by the 3 months between 7/1/2012 and 9/30/2012 = 232.33 restraints per month.

²¹ Calculated as follows: 697 reported restraints divided by the 13 weeks between 7/1/2012 and 9/30/2012 = 53.62 restraints per week.

²² Calculated as follows: 697 reported restraints divided by the 92 days between 7/1/2012 and 9/30/2012 = 7.60 restraints per day.

²³ Calculated as follows: 92 days between 7/1/2012 and 9/30/2012 multiplied by 24 hours in a day = 2,208 hours. 697 reported restraints divided by 2,208 hours = .3156 restraints per hour, and 1 divided by .3156 = 3.168.

²⁴ Calculated as follows: 57 reported injuries divided by 697 reported restraints = .0817 multiplied by 100 = 8.18%.

²⁵ Calculated as follows: 50 total physical injuries / 510 total physical restraints.

²⁶ Calculated as follows: 7 total mechanical injuries / 187 total mechanical restraints

²⁷ NYC ACS Detention Demographic Data Fiscal Year Report, Fiscal Year 2012, available at: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml.

²⁸ There were 673 physical restraints reported in FY 2012, Quarter 4 and 187 mechanical restraints reported in FY 2012, Quarter 4.

²⁹ Calculated as follows: 829 reported restraints divided by the 3 months between 4/1/2012 and 6/30/2012 = 276.33 restraints per month.

- 9.01 restraints per day³¹
- 1 restraint approximately every 2.66 hours³²
- 68 reported injuries to children as the result of a restraint
- Injury rate of 8.20%, meaning that approximately 1 in every 12 restraints resulted in an injury to a child. ³³1 injury was classified as “Injury A,” which is defined as “injuries requiring clinical treatment beyond what could be provided by a layperson with over-the-counter products.”³⁴
- Physical restraints that led to injury = 8.47%³⁵
- Mechanical restraints that led to injury = 7.05%³⁶
- For FY 2012 the average daily population was 326.5 across all detention facilities (secure and non-secure)³⁷, meaning that an average of 276 restraints a month were used amongst a population of only about 327 children.

Restraint-related data from additional previous quarters further illustrate the persistence of these alarming trends.

Restraints come with inherent risks and can be fatal. Within the past seven years, restraint practice has resulted in the death of three young men in residential care outside of ACS’ custody. In 2006, Darryl Thompson, a 15 year old confined in a NYS Office of Children and Families facility, died after being restrained.³⁸ In 2010, 20 year old Alexis Cirino-Rodriguez, died in an upstate privately run foster care placement after being restrained by staff.³⁹ Alexis was placed in the William George Agency, a private residential facility near Ithaca. Although we believe the William George agency does not currently serve youth from New York City, Alexis’s death highlights that the risks to

³⁰Calculated as follows: 829 reported restraints divided by the 13 weeks between 4/1/2012 and 6/30/2012 = 63.77 restraints per week.

³¹ Calculated as follows: 829 reported restraints divided by the 92 days between 4/1/2012 and 6/30/2012 = 9.01 restraints per day.

³² Calculated as follows: 92 days between 4/1/2012 and 6/30/2012 multiplied by 24 hours in a day = 2,208 hours. 829 reported restraints divided by 2,208 hours = .375 restraints per hour, and 1 divided by .375 = 2.66.

³³ Calculated as follows: 68 reported injuries divided by 829 reported restraints = .082 multiplied by 100 = 8.20%.

³⁴ Available at: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml (scroll down to “Youth and Family Justice Reports). According to the Administration for Children’s Services, this data includes restraints within non-secure detention facilities, secure detention facilities, “transportation” and “court services.” Definition of “Injury A” provided on data reports.

³⁵ Calculated as follows: 57 total physical injuries / 673 total physical restraints.

³⁶ Calculated as follows: 11 total mechanical injuries/ 156 total mechanical restraints)

³⁷ NYC ACS Detention Demographic Data Fiscal Year Report, Fiscal Year 2012, available at: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml.

³⁸ See Trina Darling, *OCFS Bans Shackling of Youth*, Examiner.com, <http://www.examiner.com/article/ocfs-bans-shackling-of-youth>, and Rick Karlin, *New York state pays \$3.5M to settle death case at youth prison*, Times Union, (Dec. 6, 2011), <http://www.timesunion.com/local/article/New-York-state-pays-3-5M-to-settle-death-case-at-2353770.php>.

³⁹ See Editorial, *Prone Restraint: Why is this risky technique still used at juvenile facility?*, The Post-Standard (November 10, 20120), http://blog.syracuse.com/opinion/2010/11/prone_restraint_why_is_this_ri.html.

children in custody are not limited to OCFS-operated facilities and extend to privately operated agencies (the City has contracted with private agencies for the operation of placements under the Close to Home initiative). As recently as 2012, Corey Foster, 16 years old, died after being restrained by school staff members for allegedly refusing to leave a basketball court at a Leake and Watts school for students with special needs.⁴⁰ To the best of our understanding, Leake and Watts is one of the agencies the City currently contracts with to operate Close to Home facilities. The deaths of these young men in various types of placements highlight the need for the release of restraint-related data throughout the City's youth justice system.

Room Confinement Data

The available data also raises serious concerns about ACS' use of room confinement (or what is commonly referred to as isolation) within detention facilities, again underscoring the need for expanding data transparency requirements to include placement facilities.

In FY 2013, Quarter 1, there were 71 total instances of room confinement in Crossroads and Horizons secure detention facilities (combined), with Crossroads having more than double (51) the instances of room confinement than Horizons (21). One instance of room confinement lasted 4 days and 8.5 hours, 3 instances lasted 3 days and 17.5 hours, and one instance lasted 3 days. There were also a large number of confinements of over 2 days during this period.⁴¹

In FY 2012, Quarter 4, there were 80 reported instances of room confinement, with Crossroads again having far more instances (69) as compared to Horizons (11). In this quarter, there were two instances of room confinement lasting over 4 days, both were at Crossroads. Crossroads also had four instances of room confinement lasting over three days during this quarter alone.⁴²

In FY 2012, Quarter 3, Crossroads had 41 reported instances of room confinement, while Horizons had none.⁴³ In FY 2012, Quarter 2, Crossroads had 20 instances or reported room confinement while Horizons had one.⁴⁴

Child Abuse Data

Further, in Fiscal Year 2011, there were 114 child abuse allegations regarding children in the City's secure detention facilities, non-secure group homes, and in "court services/transportation." 13 of these child abuse allegations were indicated.⁴⁵

⁴⁰ See Angela Hill, Brian Ross and Matthew Mosk, ABC News (Nov. 30, 2012) Death at School: Parents Fight Back Against Deadly Discipline, <http://abcnews.go.com/Blotter/death-school-autism-parents-fight-back-deadly-discipline/story?id=17841322>.

⁴¹ See Quarterly Incident Data Report available at: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml.

⁴² See Quarterly Incident Data Report available at: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml.

⁴³ See Quarterly Incident Data Report available at: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml.

⁴⁴ See Quarterly Incident Data Report available at: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml.

⁴⁵ For information on how an alleged child abuse or neglect case is determined to be "indicated," see A Guide to New York's Child Protective Services System, 2001 Revised Addition, available at: <http://assembly.state.ny.us/comm/Children/20011016/html/doc.html#fn32> (last accessed 2/9/2012). "By evaluating information gathered during the investigation, the protective caseworker determines whether there is some credible evidence to indicate the report of abuse or maltreatment. This determination is based on certain signs or indicators... Credible evidence is evidence that is 'worthy of belief.' If the protective caseworker does not find some credible evidence substantiating the report, the report is considered unfounded." *Id.*

Recommended additions to the proposed legislation

The Legal Aid Society and the Correctional Association of New York support Introduction No. 981 and recommend that the legislation be further strengthened through the addition of the following measures:

Arrest data should be tracked and publicly released

Unfortunately, a notable number of arrests of children in both detention and Close to Home facilities have occurred in recent times. In particular, children in the Close to Home Non-Secure Placements have been arrested in significant numbers, including arrests of multiple children at a time. It is important that legislators, including the Council, policymakers, attorneys, advocates, and the community have access to de-identified and aggregated arrest data so that they may track, analyze, and respond to any patterns. Arrest data should be aggregated by type of placement (detention; Non-Secure; Limited-Secure), provider agency as well as by age, race/ethnicity, and gender of the young person. The importance of aggregating data by sexual orientation and gender identity are addressed in separate testimony by the Correctional Association.

Modifications and movements within facilities should be tracked and publicly released

Children should not be moved from facility to facility unless absolutely necessary. It is critical that attorneys, advocates, policymakers and other stakeholders have access to information about the movement of children within various agencies and facilities so we can work together to promote stability and program success. This data should include lateral moves (movements between placements at the same level or care) and “modifications” (movements of children to a higher level of care, for example “stepping a child up” from a Non-Secure Placement to a Limited-Secure Placement). The issue of modifications is a particularly serious one. According to ACS’ White Paper on Limited Secure Placements, 109 of the 259 youth currently in Limited Secure Placements through the Office of Children and Family Services are there as a result of modifications.⁴⁶ Data on the number and types of modifications would both highlight existing problems and allow policymakers and other stakeholders to more pro-actively respond to modifications trends by improving programming. Access to this data will help stakeholders to analyze the effectiveness of various program models and placements. It will also help stakeholders pro-actively identify gaps in services and programs, and to participate in developing solutions.

Reporting requirements regarding restraints should be expanded

The data set regarding restraints in detention as required by Introductions 153-A and 37-A shed light on alarming restraint practices in detention facilities. These data sets also leave many critical questions unanswered. The limited nature of the current dataset stymies policymakers and other stakeholders from a robust exploration of the issue, and makes it harder to propose solutions and monitor more granular trends.

The proposed legislation should, therefore, be expanded to require ACS to publicly report on the following restraint-related data points:

- details about the nature of any injuries to youth and staff;

⁴⁶ Administration for Children’s Services Limited Secure Placement White Paper, October 3, 2012, available at: www.nyc.gov/html/acs/downloads/pdf/wp/LSP%20White%20Paper.pdf - 7k - 2012-10-05.

- what if any measures and mechanisms there are for staff accountability with regard to inappropriate restraints;
- information about how these measures/mechanisms are communicated to staff;
- how many restraints result in a State Central Registry report for suspected abuse and neglect;
- how many restraints result in an internal investigation within a provider agency or ACS;
- de-identified outcomes of investigations with regard to staff related to the use of restraints;
- if there is a collective bargaining agreement in place at an ACS or provider agency facility, what, if anything, does that agreement state with regard to the employment of staff who have an indicated case of abuse or neglect, and or those found to have engaged in inappropriate use of force or restraint.
- this information should be de-identified to protect staff and children's identities, but should be aggregated by key variables including by provider agency and by children's race, ethnicity, age, sex and, when possible LGBTQ status.

Conclusion

The "hidden closet" phenomenon that characterizes residential youth facilities exists and transcends any particular agency or its administration. We know by their very nature, youth justice facilities are designed to keep youth in custody separate from the general public. As a result, youth justice residential facilities are generally shrouded from public view. A strong body of evidence suggests that one of the very best ways to make youth justice facilities safer is to make them more transparent – albeit in a confidential manner. Funding for and the creation of youth justice programming and policy will only benefit from increased public awareness and participation. There should be no secrets inside a youth justice facility with regard to their operations. Both the day-to-day concerns and more serious matters should be apparent to parents, community members, legislators and the public.

Current youth justice reforms within New York City, including the Close to Home Initiative, present the City Council and other system stakeholders with a unique and important opportunity to create a new youth justice system from the ground up. New York City currently has rich potential to serve as a model both state- and nation-wide. For example, Governor Cuomo recently announced, via his FY 2013-14 Executive Budget proposals, a desire to see the rest of New York State follow New York City's lead and develop its own "Close to Home" models, and other States are also looking to New York for leadership. Data transparency is an important tool for ensuring that New York City's system effectively serves children and families, and lives up to its tremendous potential.

The Legal Aid Society and the Correctional Association of New York welcome the opportunity to work together with the Administration for Children's Services, the City Council, impacted youth, families, and community members and other stakeholders to build a sustainable and transparent justice system that ensures robust oversight and protections for children and their communities. Increased public transparency will only strengthen New York City's system and its potential to be a national leader in this regard.

Testimony of the Children's Defense Fund – New York

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Good morning. My name is Beth Powers and I am the Senior Juvenile Justice Policy Associate at the Children's Defense Fund- New York (CDF-NY). Thank you Chairwoman Gonzalez and Juvenile Justice Committee members for the opportunity to testify today regarding the proposed legislation - Introduction No. 981, that will require the NYC Administration for Children's Services (ACS) to publish demographic data and incident reports on youth detained and placed in its juvenile facilities.

The Children's Defense Fund (CDF) Leave No Child Behind® mission is to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective voice for all the children of America who cannot vote, lobby or speak for themselves. CDF educates the nation about the needs of children and encourages preventive investments before they get sick, into trouble, drop out of school or suffer family breakdown. As part of our advocacy efforts, we launched the CDF Cradle to Prison Pipeline® Campaign, a national call to action to stop the funneling of thousands of children, especially poor children and children of color, down life paths that often lead to arrest, conviction, incarceration and even death.

As a national organization, The Children's Defense Fund is currently examining the culture of mass incarceration that has sentenced one in three Black males born in 2001 and one in six Hispanic males born that same year to a likely prison experience at some point in their lives. Here in New York, we are a steering committee member of the New York City Juvenile Justice Coalition. We are also a founding member of the newly formed Take Back Our Children Alliance (TBOCA) – committed to raising the ages (both minimum and maximum) of juvenile jurisdiction so that New York's children will no longer suffer from our state's infamous position of being only one of two states that consider children to be adults as of their sixteenth birthday. We work closely with a number of community-based organizations as well as with faith leaders, youth groups and parent groups to ensure that our advocacy is shaped by the everyday realities of our most vulnerable New Yorkers – children and their families.

This testimony will address the changes proposed to the NYC Administration for Children's Services (ACS) data reporting requirements related to secure detention, non-secure detention (NSD), non-secure placement (NSP), and limited secure placement (LSP).

We are very impressed by and hopeful about how relatively comprehensive this proposed legislation already is. There is no doubt that the reporting requirements already required of ACS in regard to detention should be expanded to NSPs and LSPs to coincide with ACS's expansion of jurisdiction. The data that are currently collected have clearly demonstrated that children are regularly restrained, injured, and confined to their rooms in secure facilities. If we are to have any hope of reducing these harms, we must not allow such harmful practices to proliferate in the dark, hidden from the public.

In addition to our strong support for the expansion of data collection to include all juvenile facilities under ACS jurisdiction, we do have a number of recommendations related to deepening and expanding the proposed reporting requirements, as well as ensuring that all parties – including the voluntary agencies that, in some instances have experience serving youth in residential settings - are well equipped and supported in accurately reporting upon the experiences of the youth in their care. Data will provide evidence of how even more experienced agencies make the transition to serving the often more profound needs of this new population of justice-involved youth.

The proposed reporting requirements should be expanded and deepened.

We applaud the language requiring quarterly data reporting about incidents. Having regularly reported information about incidents within facilities will not only help the City Council, advocates and community members ensure that our children are being served appropriately and without harm, but will also support ACS's own efforts to call for community engagement when a need is identified through these data; something that will be very valuable in the immediate term as ACS prepares to roll out the next phase of Close to Home, and equally important over the long term as the agency seeks to guarantee that our young people are being well served and protected.

While data on number and type of incident are useful, even more illuminating are data regarding outcomes associated with incidents. For example, this proposed legislation requires ACS to provide data on both the total number of allegations of child abuse and neglect in a year as well as the number of allegations that were or were not substantiated. Along these lines, we recommend that ACS be required to share the following data:

1. *Number of modifications to a different level of care and the justification:* In their Close to Home Plan for Non-Secure Detention, ACS delineates that the ACS Permanency and Planning Unit is responsible for approving or denying requests for modifications to a higher or lower level of care and is required to document these decisions in their internal system, Connections¹. The unit is also required to hold a case conference with the NSP, child, parent or other discharge resource, and other relevant parties. Publicly available information regarding modifications is important to advocates and to community as it is an important indicator of how well the placement process is working and how well these children are being served by specific providers. A pattern or trend of modifications down, in many instances, suggests that progress is being made, while a pattern or trend of modification up provides reason to examine in what ways specific programs or facilities may need to modify their approach in order to better serve the youth in their care.
2. *Lateral movements between facilities and the justification:* Just as the need to monitor movement to higher or lower levels of care is necessary, lateral movements are often an indication that a program is not sufficiently well-structured to serve the youth in their care. The public needs to know that youth are being served properly in placements and not bounced from facility to facility, decreasing their chance at succeeding. It is important that advocates and the community have access to these nuanced data to ensure that youth are being served in a comprehensive manner and not simply moved to another placement when challenging behaviors emerge. Since a fundamental component of the Close to Home Initiative is community engagement, publicly sharing information about lateral movement provides an opportunity for dialogue with community about how they can better and/or differently support agencies struggling with this issue.
3. *Arrests at facilities including the charge and outcome of arrest:* ACS's Close to Home Plan for Non-Secure Placement states that providers are not to call 911 except in response to "acute, dangerous behavior that does not abate using de-escalation techniques or room isolation."²

¹ New York City Administration for Children's Services Close to Home: Plan for Non-Secure Placement For Submission to New York State Office of Children and Family Services, June 26, 2012

² Id

Anecdotally, advocates and communities are aware that youth in upstate facilities have historically faced instances of being arrested and transferred to county jails. Youth in NSPs and LSPs are similarly at risk of being arrested and sent back to detention or to Rikers Island. Transparency around the frequency of such events is vital to analysis of the efforts being made within the therapeutic environment of each NSP and LSP to work with youth in these settings and not simply pass them on to other systems.

4. *Data regarding LGBTQ Youth:* We applaud the recognition of the need to collect demographic data. The reality of disproportionate minority contact is a crisis in our juvenile facilities as is the disproportionate representation of youth from a number of our most underserved communities. In addition to requiring ACS to collect demographic information regarding age, race, gender, zip code, and offense data, we encourage the inclusion of demographic data regarding the sexual orientation and gender identity/expression of youth. As a member organization of the Juvenile Justice Coalition LGBTQ Workgroup, we understand that ACS is considering integrating questions surrounding sexual orientation and gender identity to their intake forms. At such time as this is put in place, we recommend requiring that sexual orientation and gender identity numbers be reported publicly as well. The evidence is clear. LGBTQ youth are at elevated risk of entering the juvenile justice system as a result of discrimination and failed systems of support. They are also at an elevated risk of maltreatment within the juvenile justice system³. Sharing these data is one more step in the right direction of aiming to better serve this incredibly at-risk population.
5. *Data Disaggregated to the Provider Level:* Just as the proposed legislation requires incident data for each of the two existing secure detention sites, we recommend that data reporting for NSDs, NSPs, and LSPs be disaggregated by provider in order to better understand the discrete experiences of young people served by different organizations. Ideally, these data would actually be provided at the facility level, but we understand that each non-secure and limited-secure facility serves a relatively small number of young people. Therefore, data at the facility level might be hard to provide publicly due to the small population sizes and restrictions on data sharing related to families' rights to privacy. However, in most instances, this reality should not prevent the sharing of disaggregated data by organization.

In addition to the above mentioned recommendations to the collection of incident data, we suggest expanding the existing data requirements to include indicators related to 1) how providers engage with local community, and 2) how youth fare in schools.

This legislation represents an important opportunity to publicly understand how the approaches of various providers and facilities impact a youth's rehabilitation and education experiences while detained or placed:

1. *Engaging Local Community:* In keeping with the philosophy behind the Close to Home Initiative, we suggest that ACS be required to collect and publicly share information related to how providers serving youth through the Close to Home Initiative are fulfilling their obligation to engage with local communities in serving youth's needs. In their Close to Home Plan for Non-secure placement, ACS requires providers to establish Community Advisory Boards to "help

³ Center for American Progress; The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of LGBT Youth in the Juvenile Justice System, June, 2012.

maximize community involvement in and support for their NSP facilities”. While the proposed data collection aims to gather a broad scope of quantitative data, the opportunity should not be lost to require qualitative data, specifically regarding which community organizations each provider is collaborating with and in what capacity. We suggest that requiring very basic, regular public reporting on the names of organizations, the types of services or supports provided, and the typical weekly commitment of time each organization made to youth engagement, would allow community to dialogue with providers and provide information about existing resources that the provider might not have known about or been able to leverage.

2. *Education*

One monumental benefit to youth being served closer to home is their ability to attend NYC Department of Education schools. This reality represents an important first step forward since a major collateral consequence of placing youth upstate is that educational credits youth earned often did not transfer to schools in New York City. Now youth have the opportunity to actually take and pass regents exams, and acquire credits towards graduation. Our work is not done though. In fact, it is really just beginning since we need to ensure that we fully understand the opportunities and impediments related to these young people’s educational experiences closer to home. We recommend requiring a collaboration between ACS and the NYC Department of Education (DOE) to track and report the following information – disaggregated in the same ways as other data required through this legislation:

- a. Number of education credits attained and Regents exams taken/passed:
- b. Number of suspensions, classroom removals, arrests, and summonses of youth served in Passages Academy during their placement/detention.
- c. Attendance/enrollment for youth while detained/placed.
- d. Educational discharge plan, including if a youth has been transitioned to a community school prior to discharge or to what educational setting the child will be discharged.

Appropriate training is required to ensure valid and reliable data collection.

Data are only useful if collected and recorded reliably and uniformly. In order to ensure consistent reporting, we recommend that, if not already required, ACS request that each voluntary service provider designate a primary contact for data-sharing purposes and that ACS either provide a regular training related to defining incidents and reporting them and/or create training materials that clearly articulate expectations for all facilities and/or providers. Having a designated person from each provider will help to prevent under-reporting or misreporting as well as make readily available an internal point person to trouble shoot or clarify data collection requirements.

We make this recommendation in the spirit of ensuring that providers do not rely upon harmful practices when dealing with young people. By requiring transparency and investing time and resources in training about why these practices are harmful and why they must be reported, we hope to send a strong message to providers and facility staff that relying instead upon more positive youth development approaches is the expectation.

Conclusion

Requiring ACS to make data public about the treatment of youth in juvenile justice facilities throughout New York City is one of the most important mechanisms we have to fully understand the treatment, experience, and related outcomes of youth in our juvenile facilities. In adopting legislation related to data sharing and incident reports, we hope you will take this opportunity to expand these requirements as we have detailed above. In doing so, you can send a strong message that sharing this information publicly – information that allows us to measure not only injuries and maltreatment, but also success – will allow for meaningful exchange between the organizations and facilities charged with serving our young people and the community members where these facilities are located.

We are grateful for your efforts to support this legislation and further the work of dismantling the cradle to prison pipeline. I thank you for the opportunity to testify.

**TESTIMONY
HONORABLE JUDY HARRIS KLUGER
CHIEF OF POLICY AND PLANNING
NEW YORK STATE UNIFIED COURT SYSTEM**

**COMMITTEE ON JUVENILE JUSTICE
NEW YORK CITY COUNCIL**

FEBRUARY 28, 2013

Chairwoman Gonzalez and Council Members:

Good morning, my name is Judy Harris Kluger, and I serve as Chief of Policy and Planning for the New York State Judiciary. On behalf of Chief Judge Lippman and Chief Administrative Judge Prudenti, thank you for this invitation to discuss the five pilot Adolescent Diversion Parts operating in the New York City Criminal Court.

I want to offer the Council a snapshot of the Judiciary's experience with Adolescent Diversion, and appreciation for whatever you can do to enhance resources within the community to assist adolescents.

The Council has a long record of recognizing the need to avert recidivism and re-arrest, and reduce the costs and heartache associated with incarcerating offenders, particularly young offenders.

Creating linkages to enhance services and supervision for adolescents has so much potential, for much the same reason as Adolescent Diversion Parts: both focus on building concrete life skills and promoting personal accountability in discrete populations of offenders, using the tools most appropriate for that population. Incentives-based sentencing alternatives are nothing new to the New York State Judiciary – they are the theory behind our successful Problem-solving Courts, as you have seen with our Drug, Mental Health and Veteran Courts– but now we are applying them, to the extent current state laws allow, to adolescent offenders.

As you know, New York State law established 16 as the age of criminal responsibility over 50 years ago and remains one of only two states in our nation to prosecute 16 and 17 year old adolescents as adults. Recognizing that many of these adolescents lack the capacity to fully appreciate the consequences of their actions, Chief Judge Jonathan Lippman has proposed legislation that would raise the age of criminal responsibility in our state. As he stated in his State of the Judiciary earlier this month, “With a tailored, age-appropriate approach, we can provide them with services they need to break the cycle and get their lives back on track. While enactment of this legislation, which combines features of the Family Court with the Criminal Court and would permit “adjustment” of cases for these young people, is our ultimate goal, we have created pilot court parts in the interim to address the issue.

In January 2012, we opened nine Adolescent Diversion Parts on an experimental basis. These pilot parts currently operate in the New York City Criminal Court in each of the five boroughs, as well as Nassau County District Court and the City Courts of Buffalo, Mount Vernon and Syracuse. Since their creation, these Adolescent Diversion Parts adjudicated over 3, 000 cases in which 16 or 17 year-old defendants were accused of a felony or misdemeanor offense.

In these nine pilot parts, participating judges receive substantial training in the sociology and penology of juvenile offenses. Three full day programs have been conducted and judges from each pilot site have attended. They then bring to the bench a menu of short-term social service interventions. These include community service directly targeting conduct associated with youthful transgressions, such as graffiti, fare evasion and trespass. Leveraging educational and vocational programs, conflict resolution, counseling and civic responsibility, these alternative sentences combine with close judicial monitoring to create a forum for the age-appropriate adjudication of underage offenses that, based on current state law, must be prosecuted in adult criminal courts rather than Family Court.

Among the big questions are whether this innovative approach works. The preliminary evidence is convincing that it does. Research from the Center for Court Innovation demonstrates that an overwhelming majority of cases in the Adolescent Diversion Parts are resolved without imposing criminal records or jail time, thereby avoiding potentially serious collateral consequences for under-age offenders.

But the imposition of alternative sentences is not alone the best measure of policy success. The true measure of success is whether these alternative procedures discourage adolescents from re-offending, and thus far research shows that they do. Compared to similar defendants appearing in traditional criminal parts on similar felony or misdemeanor offenses, teenagers appearing in Adolescent Diversion parts are significantly less likely to be re-arrested for similar offenses.

By both stemming the collateral consequences of conviction and by reducing the likelihood of future convictions, Adolescent Diversion Parts are substantially improving the probabilities that participating teenagers will gain and keep employment, complete their education and lead law-abiding lives.

Adolescent Diversion Parts are proving to be effective off-ramps from the adult criminal justice system, helping young offenders develop and pursue life goals as productive adults.

Even more notable is that the Adolescent Diversion Parts are obtaining these results, so far, within the Judiciary's existing resources. Due to state fiscal restraints, the Judiciary's annual budget has had effectively zero growth for several years; the budget proposed for 2013-2014 continues this trend. For this reason, Adolescent Diversion Parts have relied on existing resources and staff, partnering with local social service agencies and nonprofit providers that in this economic climate also face funding challenges.

To be effective, Adolescent Diversion Parts need seamless access to alternative sentencing and community supervision, which requires close partnership with local agencies and nonprofit providers. Their health, in an important sense, helps make or break this experiment. Expanding Adolescent Diversion Parts beyond what the web of governmental and community-based service providers can provide would only overwhelm those already stressed providers and do little to serve the policy objective of redressing the cycle of under-age offenses.

However, Adolescent Diversion Parts are inherently a stopgap measure, designed not as the ultimate judicial solution to the problem of teenage crime but a proving ground for a forward-thinking approach that requires statewide legislation to fully implement. Despite their menu of options and preliminary evidence of success, Adolescent Diversion Parts remain local criminal court parts bound to apply local criminal court procedures that are not always fully appropriate for adolescents. So long as New York continues to prosecute 16 and 17 year-old offenders as adults for even minor nonviolent offenses, without the ability to adjust appropriate cases in the manner that is routine in Family Court, the task of juvenile justice reform will be incomplete. That is why the Chief Judge proposed comprehensive adolescent justice reform, and why it is so important for New York State to enact that proposal into law.

Last year, nearly 50,000 16 and 17 year-olds were arrested and processed as adults. Adolescent Diversion Parts, successful as they are, were off-ramps for less than 3,000 of them - representing less than 6% of potentially eligible teenagers. It's a promising start, but we cannot rest until 100% of New York's youthful nonviolent offenders are eligible to be treated as youth and all courts, social service agencies and nonprofit providers have the tools necessary to make these off-ramps meaningful, wise and safe for teenagers, families and communities.

In working toward these goals, we welcome the Council's active support – to appeal to our state's leaders in Albany to enact the Chief Judge's adolescent justice reform proposal; and to ensure that New York City continues to provide the resources necessary to support the five Adolescent Diversion Parts already operating.

Thank you for the opportunity to discuss this important issue today. I would be happy to answer any questions you may have.

Center for Court Innovation Testimony
New York City Council
Juvenile Justice Committee
February 28, 2013

Good morning Chairperson Gonzalez and members of the committee. My name is Julian Adler, and I am the Project Director of the Red Hook Community Justice Center, a multi-jurisdictional community court located in the Red Hook section of Brooklyn. I am here today on behalf of the Center for Court Innovation, a public/private partnership that works with courts, government agencies, and local communities to reduce crime, assist victims, and increase public confidence in justice. Specifically, I want to share with members of the committee information relative to the progress of the pilot Adolescent Diversion Parts in Criminal Courts throughout the five boroughs and provide a window into how these pilot court parts operate.

On January 17, 2012, New York State Chief Judge Jonathan Lippman established a pilot Adolescent Diversion Program (ADP) in nine counties, including the five boroughs of New York City. The program established specialized court parts that hear the cases of 16- and 17-year-old defendants, in most instances focusing on those charged with misdemeanor offenses. In an effort to control costs and leverage best practices, ADP built upon existing programs rather than reinventing the wheel, with a particular focus on New York City's network of community courts and community-based programming operated by the Center for Court Innovation.

The ADP initiative seeks to apply a rehabilitative, developmentally-appropriate philosophy and approach to late-adolescent criminal behavior; to reduce the use of conventional criminal penalties; and to achieve these benefits without jeopardizing public safety. All participating defendants receive a clinical screening and/or assessment; age- and case-appropriate services; rigorous compliance monitoring; and, in most instances, non-criminal case outcomes should they complete assigned services. Court-ordered services vary widely by county, ranging from several sessions of community service, individual counseling, or family mediation to three to six months of drug or mental health treatment, or educational/vocational programming. (These differences

notwithstanding, all counties have succeeded in identifying adequate community services and resources to handle ADP referrals.) Notably, by keeping case resolutions proportionately similar to preexisting practice in the criminal courts, the ADP initiative does not engage in net widening, whereby other diversion programs have occasionally been known to enroll a population that might otherwise face lighter penalties in the preexisting status quo. One of the goals of the pilots is to provide age-appropriate services to these young people without exposing them to criminal records that could affect their future opportunities to secure employment, education or housing. And, of course, the hope was that in linking young people to these services and monitoring compliance with court mandates, they could avoid jail.

The selection criteria for the respective ADP pilots vary across the boroughs. For example, all pilot counties accept misdemeanor cases; however, Brooklyn considers all misdemeanor charges, excluding only those cases alleging intimate partner violence, while Manhattan tends to limit eligibility to a narrower range of quality of life offenses, taking a case-by-case approach to all other misdemeanor charges. Similarly, in Queens and Staten Island, cases are only ADP-eligible if they survive arraignment (i.e., continue beyond the first court appearance); whereas in the Bronx and two community courts respectively located in Red Hook (Brooklyn) and Midtown (Manhattan), ADP sentences can be fashioned at arraignments. Beyond misdemeanors, Queens accepts selected felony charges, and the Bronx accepts non-criminal violations.

To the extent practicable, ADP protocols are designed to obviate the need for parental or guardian consent; though, of course, no services are ever provided absent the express consent of defense counsel. Typically, for cases with short-term mandates, only a brief screening and intake process is conducted, and therefore parental or guardian consent is not required. However, longer-term mandates invariably require a more comprehensive clinical assessment at the outset to determine the appropriate course of intervention, which does require parental or guardian consent – and, ideally, parental or guardian involvement in the process.

Although ADP is still in its infancy, the preliminary results are encouraging. Across all nine counties, 1,302 cases enrolled in the first six months of operations. Furthermore, available court data indicates that as of the end of 2012, total enrollment exceeded 3,000 cases.

The vast majority of ADP participants are compliant, with four in five successfully completing mandated services and resolving their cases without criminal convictions and the attendant collateral consequences. Importantly, ADP participation does not jeopardize public safety and, in fact, produces a significantly lower re-arrest rate for new felonies (8% v. 10%). Further analysis indicates that ADP participation is most effective with high-risk youth; thus, consistent with prior research, the ADP experience in New York City suggests that public safety can be maximized through policies that offer alternative services to youth who are at higher risk for reoffending.

As the Project Director in Red Hook, I directly oversee Brooklyn's ADP pilot. I would like to briefly walk you through how the process works in Brooklyn and then provide a case example. Brooklyn ADP cases can originate at both the Kings County Criminal Court and the Red Hook Community Justice Center, which hears misdemeanor cases from three police precincts in southwest Brooklyn: the 76th (including Red Hook and Carroll Gardens), 78th (including Park Slope and the new Barclay Center) and 72nd (Sunset Park and Windsor Terrace). If the case originates at Kings County Criminal Court, the matter is initially adjourned to a specialized ADP part in the downtown courthouse. This specialized part is staffed by clinicians from Red Hook one afternoon per week, including an ADP-dedicated masters-level social worker, and the goal of the part is to reach a resolution that includes social and/or community service and that will result in a non-criminal disposition. For lower-level offenses, the case is often resolved in a single hearing. For more serious offenses, the case will often be adjourned so that the defendant and his/her parent or guardian can take part in a comprehensive psychosocial assessment process in Red Hook. Red Hook's assessment process is holistic in nature, and it is informed by trauma-informed and strengths-based approaches, e.g., positive youth justice theory. Based on the results of the assessment, clinical staff present recommendations on the next court date, which serve as the basis for a potential case disposition. If a disposition is reached, all services are coordinated and provided in Red Hook, and the case is monitored for compliance by Red Hook's presiding judge, Alex Calabrese. If an ADP case originates in Red Hook, the process is substantially similar, though it takes place entirely in Red Hook from inception.

To illustrate, consider the case of Vincent (age 17), who came through Brooklyn's downtown criminal court in March of 2012 on a charge of menacing with a weapon, his fourth arrest in less than a year and a half. He was identified as an appropriate case for a clinical assessment, which, upon the consent of his attorney, was conducted by a Red Hook social worker the following week. Vincent presented as a reserved yet markedly self-aware adolescent. It was revealed during the assessment that Vincent's home life was stressful, and that his relationship with his mother was strained due to her life-long struggle with mental illness. Vincent often had to stay home to care for her, causing him to fall behind in school. Vincent's father, who also participated in the assessment process, described his own struggles with physical disabilities that prevented him from working; as a result, Vincent's family experienced a great deal of financial hardship. Amidst these difficulties, Vincent also described his love for art, specifically drawing; as his case progressed, he would often bring in original artwork to show his social worker.

At the next court date, the assessing social worker recommended eight sessions of individual counseling at a community-based licensed mental health clinic, a 6-week art program for court-involved youth called Young New Yorkers (YNY), and a consultation with a liaison from the New York City Department of Education. Through counseling, Vincent was able to work on some of the challenges he faced at home. Vincent also displayed a high level of engagement throughout the YNY art program, which afforded him an opportunity to meaningfully explore the consequences of his actions through various creative media. Over the course of the case, the Red Hook social worker stayed in close contact with Vincent's father and offered services to the family. Upon completing all of the court-ordered services, Vincent's case was successfully resolved with a non-criminal disposition. Like all young people who come through Red Hook, he was offered opportunities to continue his involvement in Red Hook's programs and services on a voluntary basis.

To date, Brooklyn's ADP pilot has served 486 youth cases. Again, the specific services vary across the ADP pilot sites based on the availability of resources and case volume. The ADP initiative is still early into its second year. The results, as indicated, are promising. The participants are not posing any greater risk to public safety, and, in fact, the risk of serious offending has been reduced. The overwhelming majority of participants have gone through the

parts without acquiring criminal records, and many have received services that will help them on a path to law-abiding, contributing futures. The Center for Court Innovation will soon be publishing a six-month study of all of the pilot sites and will be conducting on-going research as the pilot continues. We are excited about the preliminary findings and look forward to returning to the council in the future to report on ADP's continuing progress. At this time, I would be happy to take any questions from the committee.

TESTIMONY

The Council of the City of New York

Committee on Juvenile Justice
Sara M. Gonzalez, Chair

**Oversight: Examination of Adolescent Diversion Parts in Criminal
Courts**

February 28, 2013
New York, New York

Submitted by:

The Legal Aid Society
199 Water Street
New York, NY 10038

Presented by:

Nancy Ginsburg
The Legal Aid Society

Good morning. I am Nancy Ginsburg of The Legal Aid Society. I submit this testimony on behalf of the Legal Aid Society, and I want to thank Chairwoman Gonzalez as well as the Committee on Juvenile Justice for inviting our comments. We appreciate your attention to this area of vital concern to our City's teenagers and their families. This testimony is focused on the aspect of this hearing that is focused on the oversight of the adolescent parts in the Criminal Courts. The Legal Aid Society is also providing joint testimony today with the Correctional Association on Intro. 981.

The Legal Aid Society is the nation's oldest and largest provider of legal services to low-income families and individuals. As you know, from offices in all five boroughs, the Society annually provides legal assistance to low-income families and individuals in some 300,000 legal matters involving civil, criminal and juvenile rights problems. Our Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our Juvenile Rights staff represented more than 34,000 children, including approximately 4,000 who were charged in Family Court with juvenile delinquency. During the last year, our Criminal Practice handled some 220,000 cases for clients accused of criminal conduct. Many thousands of our clients with criminal cases in Criminal Court and Supreme Court are teenagers. In addition to representing these children each year in trial and appellate courts as well as school suspension hearings, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

Our perspective comes from our daily contacts with children and their families, and also from our frequent interactions with the courts, social service

providers, and City agencies, including the New York Police Department, the Department of Education, the Department of Youth and Family Justice, the Department of Correction, and the Department of Probation as well as the Administration for Children's Services.

Because of the breadth of The Legal Aid Society's representation, we are uniquely positioned to address this issue. We currently represent the vast majority of teenagers prosecuted in the Family, Criminal and Supreme Courts in New York City. We have close to 50 years of experience assessing the cases of teenagers, identifying diversion programs and advocating for alternatives to incarceration. We have developed strong advocacy relationships in the courts, with prosecutors and with City and State agencies which have resulted in connecting our teenage clients with the services that best meet their needs, as well as those of the community. Our experience indicates that community safety is best protected when appropriate services are identified and accessed for the vast majority of court-involved teenagers, so that they become less likely to be entangled again in the criminal or juvenile justice systems. The Legal Aid Society strongly supports Chief Judge Jonathan Lippman's call to raise the age of criminal responsibility in New York to 18, as it will provide an effective mechanism to create pathways to necessary services for 16 and 17 year olds which currently do not exist in the Criminal Court system.

A Brief Historical Perspective Of The Prosecution Of Teenagers

New York State first grouped 16 and 17 year olds with adults for purposes of criminal prosecution in the late 1800s. During the first 25 years of the twentieth century, great reform took place throughout the country. Embracing social work and child psychology findings, States recognized that children were different than adults, and juvenile courts were established to address the needs of children and

teenagers. Despite the fact that almost every State set the age of adult criminal prosecution at 18, New York maintained that 16 and 17 year olds were adults for purposes of criminal prosecution. A 1931 report of the New York State Crime Commission criticized the jurisdictional cutoff at 16, but no action was taken. Again, this issue was discussed in detail at the 1961 Constitutional Convention which established the New York State Family Court. The Convention deferred a decision to raise the age from 16, but no further action was ever taken.¹ As a result, for over 100 years New York State has set its jurisdictional age as low as 16. There is no evidence whatsoever that this outdated policy has led to lower rates of crime or recidivism by adolescents. Given recent social science and neuroscience findings, the time is ripe for reconsideration of this issue.

Recent Developments Addressing The Culpability Of Adolescent Offenders

Historically in New York State, sentencing policies viewed teenage offenders aged 16 - 17 in the same category as the adult offenders without individualized attention to their specific needs. Notably, almost all of the social science, neuroscience, psychiatric findings supporting the conclusion that teenagers should be evaluated for criminal culpability differently than adults have been published in the last fifteen years.

Since 2000, brain researchers and psychologists began to publish scientific studies demonstrating that the brain continues to develop during the adolescent years and is not fully formed until the early 20s, with some studies placing the age of complete development at 25. The neuroscience research, made possible by new technologies such as magnetic resonance imaging (MRI) that allow scientists to study brain images, demonstrates that the last areas of the brain to develop are the frontal lobes, specifically the pre-frontal cortex, which

govern decision-making, judgment, and impulse control. As this area of the brain develops, young adults become more reflective and deliberate decision makers.²

These studies were recognized by the United States Supreme Court in its findings that age can be considered a mitigating factor in Roper v. Simmons (disallowing the death penalty for offenders under the age of 18); Graham v. Florida (prohibiting life without parole on non-homicide offenses for youth under the age of 18), in J.D.B. v. North Carolina³ (holding that a child's age is a relevant factor to consider in determining whether a child is "in custody" for the purposes of Miranda warnings) and in Miller v. Alabama⁴, (holding that mandatory sentences of life without parole are unconstitutional for juvenile offenders and "sentencing rules permissible for adults may not be so for children." slip op. at 2).

In these decisions, the United States Supreme Court has recognized that social science research confirms that "*a lack of maturity and an underdeveloped sense of responsibility are found in youth more than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.*"⁵ The Court also noted that youth have less control over their own environment.⁶ The Court further acknowledged that "*almost every state prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.*"⁷ In fact, New York sets the age of majority for most civil purposes at age 18.⁸

Further, the United States Supreme Court has recognized that adolescents are less blameworthy for the offenses they commit because they are less capable of evaluating the possible outcomes of different courses of actions and they are more vulnerable to external pressures. For example, the Court has found that "*adolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults.* Crimes

*committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long range terms than adults.*⁹

Culpability concerns the degree to which a defendant in court can be held accountable for his actions. Immature judgment is considered as a possible mitigating circumstance, which would render the defendant less blameworthy for transgressions committed.¹⁰ Developmental psychologists who have examined the issue of youth and delinquency propose that adolescents, as a class, may warrant characterization as less mature than adults, not because of cognitive immaturity, but because of deficiencies in maturity of judgment.¹¹

Collateral Consequences of Criminal Convictions

One of the most significant effects of prosecuting 16 and 17 year olds in the adult courts is the exposure to the collateral consequences of criminal convictions. Aside from the exposure to adult sentences and detention or imprisonment with adults, the collateral consequences of a criminal conviction can permanently remove an adolescent from the path to becoming a contributing member of society. A criminal conviction interferes with or bars an individual from access to many of the systems necessary to becoming a successful adult. Criminal convictions create barriers to employment, lead to eviction and homelessness, create barriers to college admission and/or financial aid, and have significant immigration consequences.

Given the well-documented issue of disproportionate minority contact in the criminal justice system, it is important for us, collectively, to decrease the obstacles to success for minority youth. Creating lifelong barriers for behavior

that has been shown, for the most part, to be time-limited is an incredibly harsh consequence that can be remedied by raising the age of criminal jurisdiction to 18.

Adolescent Diversion Parts in New York City

In the fall of 2011, Chief Judge Lippman called for reform of the way in which New York prosecutes 16 and 17 year olds. First, he requested that the New York State Permanent Sentencing Commission develop a legislative proposal raising the age of criminal prosecution for certain offenses to the age of eighteen. Recognizing that the legislative process can be lengthy, Judge Lippman also announced that he would create an "Adolescent Diversion Program" within the courts. The program consists of nine pilot programs throughout the State. Selected cases are assigned to specially trained Judges who have access to age appropriate services to use in sentencing plans.

The Adolescent Diversion Program has two principal purposes. The first goal is to improve the court system response to 16 and 17 year olds charged with criminal activities. The Program connects these courts to an expanded array of services, with the goal of addressing the needs of the youth, while preventing them from having a criminal record and the collateral consequences of a conviction. The second goal is to provide a courtroom laboratory where it can be examined whether a less punitive approach to adolescents delivers better results than our current system.

The Legal Aid Society represents adolescents in all five borough adolescent parts in New York City. These parts are in the Criminal Court and hear misdemeanor offenses. The practices and outcomes vary from borough to borough, since the dispositions that depend on non-criminal plea offers must be made by the District Attorneys' offices. Participation in the program is voluntary

and we have seen the best results for clients charged with more serious offenses within the misdemeanor range and with those youth with repeated system contacts. The clients agree to assessments and a service plan based on input by the Judge, defense counsel, the prosecutor and, sometimes, the service provider. If a youth completes the service plan, s/he generally receives an adjournment in contemplation of dismissal or a plea to a violation. In some cases, the Judge will calendar the case a few times prior to completion of the service plan to encourage the youth to stay on the right path.

We see the benefits of these parts as engaging court staff, the lawyers and the bench in a process which openly acknowledges that adolescents are different. The youth are addressed individually and their progress acknowledged. If the parents are in attendance, the Judge may check in with them to make sure their needs are being met and the youth is following the rules. The teenagers, generally respond well to this encouragement and engagement and are more motivated to comply with the service plans. When our adolescent clients feel the court players are invested in their success, they tend to be more successful and have a more positive view of the court process. Additionally, the court players have learned more about adjudicating adolescent cases as well as setting realistic expectations for outcomes. The process of developing relationships with community service providers has benefitted the clients and the courts.

Despite some benefits of the adolescent parts, we do have some concerns. Because the law has not yet changed to raise the age of criminal responsibility, the prosecutors retain almost exclusive control over the plea offers in the adolescent parts and Judges do not have the authority to fashion practical resolutions of cases that they would have under the Chief Judge's proposal. Additionally, due to this control issue, we have seen net widening where

adolescents in traditional Criminal Court parts would receive the same plea offer with fewer service requirements than their counterparts in the adolescent parts in some counties. Moreover, in the absence of the change in the law that the Chief Judge has proposed, teenagers in these adolescent parts are still left with the indelible mark of a criminal arrest that may affect future employment and opportunities.

Conclusion

The Legal Aid Society believes that the adolescent parts are a step in the right direction to treating adolescents in an age appropriate manner in the court system. We are optimistic that the outcomes of these pilot courtrooms will help inform the legislative process to raise the age of criminal prosecution in New York.

However, the time has come in New York to reassess what is the appropriate response to adolescent offending in light of the advances in society's understanding of adolescent development. Social science and brain science and the highest court in the United States have all recognized that adolescents are different than adults and should be treated that way by the law. The time has come for New York to come into line with the 48 other States in this country that set the age of majority for purposes of criminal prosecution at age 18.

Thank you for the opportunity to speak about this important issue.

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OR

¹ Merrill Sobie, *Pity the Child: The Age of Delinquency in New York*, 30 Pace L. Rev. 1061 (2010).

² Elizabeth S. Scott and Laurence Steinberg, *Blaming Youth*, 81 Tex. L. Rev. 799, 816 (2003) (citing Patricia Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 Neuroscience & Behavioral Reviews 417, 421-23 (2000); National Institute of Mental Health, *Teenage Brain: A Work In Progress* (NIH Publication No. 01-4929, January 2001)(available at <http://www.nimh.nih.gov/publicat/teenbrain.pdf>).

³ 131 S.Ct. 2394.

⁴ 567 U.S. ____ (2012).

⁵ *Roper v. Simmons*, 543 US 551, at 569 (2005) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)); cf. *Graham v. Florida*, 130 S.Ct. 2011 (2010)

⁶ *Id.* at 569 (citing Laurence Steinberg and Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003).

⁷ *Id.*

⁸ CPLR 105, D.R.L 2, NY Gen. Oblig. Law 1-202; New York State restricts the rights of 18 year olds in the following areas: Alcohol possession/sale NY Alco. Bev. Cont. 65c; Possession/purchase of cigarettes NY Pub. Health Law 1399-cc; Contract rights UCC Law 3-305, CPLR 105; Driving VTL 502; Firearms PL 265.16; Gambling NY Tax Law 1610, Gen. Mun. Law 486, Rac. Pari-Mut Wag. & Breed. Law 104; Jury Duty Jud. Law 510; Working hours D.R.L. 7; Pawnbrokers Gen. Bus. Law 47-a; Pornography PL 235.21; Tattoos PL 260.21, Voting NY Elec. Law 5-102, Wills EPTL 3-1.1.

⁹ *Eddings v. Oklahoma*, 455 US 104, 115 n. 11 (1982) (citing to 1978 Report of the Twentieth Century Task Force on Sentencing Policy Toward Young Offenders); see also, *Roper* 543 US at 569.

¹⁰ E. Cauffman, J. Woolard and N.D. Reppucci, *Justice for Juveniles: New Perspectives on Adolescents' Competence and Culpability*, 18 QLR 403 (1999).

¹¹ *Id.*

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/28/2013

Name: Joelyn LEXTON (PLEASE PRINT)

Address: 350 Lincoln Place Bk NY 11238

I represent: ↑ DOE (former teacher)

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: Jacklyn SHERMAN (PLEASE PRINT)

Address: _____

I represent: ACS - DYFT

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/28/13

Name: Demetria J. Frampton (PLEASE PRINT)

Address: 460 Hutchinson RVR Parkway #110E BX NY 10475

I represent: Community Connections For Youth

Address: 199 Lincoln Ave 3rd fl BX NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2-28-13

(PLEASE PRINT)

Name: Nancy Gunsberg

Address: 49 Thomas St

I represent: The Legal Aid Society

Address: 199 Walter St

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 2/28/13

(PLEASE PRINT)

Name: Dawn Saffayeh

Address: 150 William St

I represent: Administration for Children's Services

Address: 150 William St

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Reverend Ruben Austria

Address: Founder + Executive Director

I represent: Community Connections for Youth

Address: Bronx, NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Gabrielle Insko & Christine Bella

Address: 2092 Adam Clayton Powell Blvd / 199 Water St

I represent: The Correctional Assoc. / Legal Aid Society

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Julian Adler

Address: 88 Visitation place Brooklyn, NY

I represent: Center for Court Innovation 11231

Address: Same

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jeannette Bocanegra

Address: Parent of youth in system +

I represent: Parent Advocate

Address: Community Connections for Youth, Bronx NY

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)
Name: JUDGE JUDY H. KHUGER
Address: 25 BEAVER ST. NY. 10075
I represent: NYS COURTS
Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 981 Res. No. _____

in favor in opposition

Date: 2/28/13

(PLEASE PRINT)
Name: Beth Powers
Address: _____
I represent: Children's Defense Fund
Address: 15 Maiden Lane Suite 1200 NY NY 10037

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 981 Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: AKmeer Kachem

Address: 55 HANSON PL. RM 750

I represent: Families on the move NYC, INC

Address: Same as above

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 981 Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Judy Yu

Address: _____

I represent: Correctional Association of NY

Address: 2090 Adam Clayton Powell St 200
NYC 10027

Please complete this card and return to the Sergeant-at-Arms