

Committee on Juvenile Justice
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THE COUNCIL OF THE CITY OF NEW YORK

Committee Report of the Governmental Affairs Division

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COMMITTEE ON JUVENILE JUSTICE

Hon. Sara M. Gonzalez, Chair

February 28, 2013

OVERSIGHT:

Examination of Adolescent Diversion Parts in Criminal Courts

INT NO. 981:

By Council Members Rose, Brewer, Eugene, James, Mendez, Vann, Williams, Dromm, Rodriguez and Gonzalez

TITLE:

A Local Law to amend the administrative code of the city of New York, 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.

I. INTRODUCTION

On February 28, 2013, the Committee on Juvenile Justice, chaired by Council Member Sara M. Gonzalez, will hold an oversight hearing to examine the Adolescent Diversion Parts in Criminal Courts. In addition, the Committee will hear Int. No. 981, which would require the Administration for Children’s Services (“ACS”) to report on census data for the population of its detention and placement facilities and data concerning its use of physical restraint, mechanical restraint, and room confinement, as well as injuries to children and allegations of child abuse and neglect. Among those invited to testify are Judge Judy Harris Kluger with the Office of Court Administration, Department of Probation (“DOP”), ACS, the District Attorney’s Offices, Center for Court Innovation (“CCI”), advocates, and other interested parties.

II. BACKGROUND

Comparison of the Juvenile Justice System and the Criminal Justice System

The New York State Family Court Act gives family courts exclusive original jurisdiction to hear juvenile delinquency cases.¹ A “Juvenile Delinquent” is a youth who is over 7 but less than 16 years of age who commits an act that would be a crime if he or she were an adult.² During the pendency of juvenile delinquency cases, juveniles are either supervised by the DOP³ or detained in facilities overseen by ACS. A juvenile delinquent may face a maximum

¹ N.Y. Fam. Ct. Act §115(a)(vi).

² N.Y. Fam. Ct. Act §301.2(1).

³ DOP plays a significant role in New York City’s juvenile justice system. After a youth is arrested, DOP interviews the youth and other stakeholders to determine whether the case should be dismissed, adjusted (diverted from court) or referred to the New York City Corporation Counsel for prosecution in the family court. If a juvenile delinquency petition is filed, DOP makes recommendations to the family court judge on whether the youth should be detained or released during the pendency of the case. If the youth is adjudicated to be a juvenile delinquent, DOP conducts an investigation and makes recommendations to the court regarding the most appropriate disposition. *See* New York City Department of Probation, *Family Court Process*, available at <http://www.nyc.gov/html/prob/html/family/process.shtml> (last accessed on February 22, 2013).

placement term of 12 months for a misdemeanor;⁴ 18 months for a felony;⁵ or 5 years for a violent felony designated by the Family Court Act.⁶ Adjudicated youth who receive a disposition of placement are either placed in facilities overseen by ACS or the New York State Office of Children and Family Services (“OCFS”), depending of the type of placement ordered by the Court. On March 30, 2012, Governor Andrew M. Cuomo signed into law the Close to Home legislation.⁷ While OCFS continues to provide secure placement⁸ services for adjudicated juvenile delinquents, Close to Home authorized the City to oversee non-secure⁹ and limited secure¹⁰ placement services for adjudicated juvenile delinquents from New York City.¹¹ Pursuant to Close to Home, ACS began operating non-secure placement facilities on September 1, 2012. ACS is currently in the process of developing a plan for limited secure placement services to begin in 2013.¹²

Because a finding of juvenile delinquency is not considered a criminal conviction, youth do not acquire any criminal record as a result of juvenile delinquency proceedings.¹³ In addition, upon motion of the youth, the Family Court judge may seal any records relating to such a proceeding.¹⁴ While involved in the juvenile justice system, youth typically receive rehabilitative services such as counseling, mental health services, mentoring, education, and

⁴ N.Y. Fam. Ct. Act §353.3(5).

⁵ N.Y. Fam. Ct. Act §353.3(5).

⁶ N.Y. Fam. Ct. Act §353.5(4). See N.Y. Fam. Ct. Act §301.2(8) for the designated felonies.

⁷ See New York City Administration for Children’s Services, *Close to Home*, available at http://www.nyc.gov/html/acs/html/close_to_home/close_to_home.shtml (Last accessed on February 22, 2013).

⁸ A secure facility means a residential facility that is characterized by physically restricting construction, hardware and procedures. N.Y. Exec. Law §504-a.

⁹ A non-secure facility means a residential facility that is characterized by the absence of physically restricting construction, hardware and procedures. See N.Y. Fam. Ct. Act §301.2(5).

¹⁰ The term “limited secure placement” is not defined by state law or regulations. It is commonly used to refer to facilities with a security level somewhere between that of a non-secure facility and a secure facility.

¹¹ See New York City Administration for Children’s Services, *Close to Home*, available at http://www.nyc.gov/html/acs/html/close_to_home/close_to_home.shtml (Last accessed on February 22, 2013).

¹² Verbal update provided by ACS Commissioner Ronald E. Richter at the Juvenile Justice Advisory Committee meeting on January 10, 2013.

¹³ See N.Y. Fam. Ct. Act §380.1.

¹⁴ N.Y. Fam. Ct. Act §375.2.

vocational training. In addition, court-involved juveniles are often eligible for alternative services that aim to divert juveniles from institutional detention or placement by placing them in community programs. In order to ensure that detention be reserved only for youth who pose the highest risk to themselves or to the community, ACS or DOP may offer lower-risk youth alternative-to-detention (“ATD”) services during the pendency of a court case. ATDs consist of evidence-based intensive treatment models that have been shown to be significantly effective in reducing recidivism rates for youth.¹⁵ Such programs aim to keep youth in the community by working directly with families to help them manage their children more effectively and to reduce antisocial behavior.¹⁶ Another type of alternative service available to youth is alternative-to-placement (“ATP”). Similar to ATDs, ATPs allow adjudicated juvenile delinquents to remain in their community under supervision in lieu of placement. Services offered by ATPs focus on addressing the issues that cause youth to enter the juvenile justice system, such as mental illness, substance abuse and family dynamics.¹⁷

Under New York State law, adolescents who are 16- and 17-year-olds at the time of their alleged commission of a criminal offense do not qualify for Family Court jurisdiction. Instead, they are tried as adults in the criminal justice system. Unlike the juvenile justice system, the adult criminal justice system is typically thought to focus on punishment and incarceration, with limited educational or rehabilitative options available to young offenders. Even if services are available, they are often not tailored to the developmental needs of adolescents. When young people go through the adult criminal system, they often “fall through the cracks,” leaving the

¹⁵ Children Welfare Watch, *A Need for Correction: Reforming New York’s Juvenile Justice System*, at 15, Vol. 18 Fall 2009.

¹⁶ *Id.*

¹⁷ Ashley Cannon, Richard Aborn and John Bennett, *Guide to Juvenile Justice in New York City*, Citizens Crime Commission, at 33, May 2010.

system with few skills and no services to address their special needs.¹⁸ Unlike the juvenile justice system, there is no equivalent to probation adjustment in the adult courts, nor are adolescents eligible for alternative services that serve as an “off-ramps” from jail. As a result, cases of 16- and 17-year-old adolescents, many of them arrested for low-level offenses, continue to clutter the criminal courts, adding to the delay and frustration of all involved.¹⁹

A criminal conviction can limit a young person’s opportunities for the rest of his or her life. While most juvenile records are sealed, adult convictions become public record and often diminish a person’s employment prospects throughout life. Criminal records may prevent young people from voting, receiving financial aid for college, or applying for public housing.²⁰ Furthermore, adolescents involved in the criminal justice system face adult sentences and incarceration in adult jails and prisons, which can have dire long-term consequences. Empirical studies show that youth who are incarcerated in adult penal institutions, as opposed to juvenile facilities, have significantly higher recidivism rates. A literature review by the Center for Disease Control and Prevention found that youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely to be re-arrested for crimes than youth retained in the juvenile court system.²¹ Another study compared the recidivism rates between 16- and 17-year-old youth who were prosecuted in New York and youth of the same age groups in New Jersey (which has a juvenile delinquency age limit of 18,

¹⁸ Campaign for Youth Justice, *State Trends: Legislative Victories from 2005 to 2010 Removing Youth from the Adult Criminal Justice System*, at 11, April 2011.

¹⁹ Hon. Jonathan Lippman, *Statement to the Citizens Crime Commission of New York*, September 21, 2011, at 14, available at <http://www.nylj.com/nylawyer/adgifs/decisions/092211speech.pdf> (last accessed on February 13, 2013).

²⁰ See Mosi Secret, *New York Judge Seeks New System for Juveniles*, The New York Times, September 16, 2011; see also Brennan Center for Justice, *Can I Vote: Frequently Asked Questions by People with Criminal Records in New York*, available at <http://www.brennancenter.org/page/-/Democracy/NY%20State%20Voting%20FAQs%20updated%205-5-10.pdf> (last accessed on February 13, 2013).

²¹ Center for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, November 30, 2007.

such that youth over 16 are adjudicated in the juvenile courts). The study found that youth prosecuted in New York were 85% more likely to be re-arrested for violent crimes, and 44% more likely to be re-arrested for felony property crimes, compared to similarly situated teenagers in New Jersey.²²

Adolescent Arrests in New York State

During 2010, there were 46,147 youth ages 16 and 17 years arrested in New York State, out of which 28,166 occurred in New York City.²³ Over three-quarters of these arrests were for misdemeanors.²⁴ The most common offenses committed by adolescents are possession of controlled substance, petty larceny, fare evasion, trespass, graffiti, and criminal mischief.²⁵ Regardless of the severity of their offenses, all 16- and 17-year-olds are processed in the criminal justice system. New York State's treatment of 16- and 17-year-old offenders in the adult system is seen by many as out of step with most of the country. Today, the national norm is to prosecute juvenile transgressors over 16 in the juvenile system. In 37 states and the District of Columbia, the age of criminal responsibility starts at 18;²⁶ and in 11 states, the age is set at 17.²⁷ New York and North Carolina are the only two states that still try all 16- and 17-year-olds in the adult criminal court system.²⁸

III. ADOLESCENT DIVERSION PARTS IN THE CRIMINAL COURTS

The Creation of the Adolescent Diversion Parts

²² MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Adult Criminal Court*, Issue Brief 5, available at http://www.adj.org/downloads/3582issue_brief_5.pdf (last accessed on February 20, 2013).

²³ Jeff Storey, *Judges Would Wear Two Hats in Proposed Youth Court*, New York Law Journal, March 2, 2012.

²⁴ *Id.*

²⁵ Richard Ross and Alfred Siegel, *The Adolescent Diversion Program in New York, A Reform in Progress*, Center for Court Innovation, at 1, available at http://www.courtinnovation.org/sites/default/files/documents/ADP_FINAL.pdf (last accessed on February 14, 2013).

²⁶ Lippman, *supra* note 19, at 5.

²⁷ These states are: Connecticut, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas and Wisconsin. See Campaign for Youth Justice, *supra* note 18, at 29.

²⁸ Lippman, *supra* note 19, at 5.

Recognizing the poor outcomes for adolescents facing criminal prosecution, penalties and records, New York State Chief Judge Jonathan Lippman called for reform in the way the justice system treats adolescent defendants. In the Fall of 2011, Judge Lippman announced that he would create a pilot “Adolescent Diversion Program” within the criminal courts in 9 counties throughout the state, including the 5 counties in New York City.²⁹ Selected cases involving 16- and 17-year-old defendants are assigned to judges who are trained in areas such as adolescent brain development, trauma, substance abuse, mental health, co-occurring disorders, education and family matters.³⁰ Such judges have access to expanded dispositional options, including community service and social service interventions that are similar to those available to Family Court judges.³¹ The goal of the Adolescent Diversion Program is to improve outcomes for 16- and 17-year-olds by providing judges with more effective options to address the unique needs of adolescents while helping adolescents to avoid criminal records and related collateral consequences.³² Instead of being rushed through a court system that is hard to navigate and filled with older criminals often facing more serious charges, adolescents appear before judges who focus on identifying underlying problems, intervention and rehabilitation.³³ The pilot parts were implemented in January 2012 under the direction of Judge Judy Harris Kluger, chief of policy and planning for the Office of Court Administration.³⁴

The Adolescent Diversion Program involves collaboration amongst judges, prosecutors and defense attorneys, the defendant’s family, community resources and service providers,

²⁹ In addition to the 5 counties located in New York City, the pilot program would also be established in Nassau, Westchester, Onondaga and Erie counties. *See* Part 49(b) of the Rules of the Chief Judge.

³⁰ Center for Court Innovation, *Adolescent Diversion Program: The Court System Pilots a New Approach to Young Offenders*, available at <http://www.courtinnovation.org/research/adolescent-diversion-program-court-system-pilots-new-approach-young-offenders?url=research%2F4%2Particle&mode=4&type=article> (last accessed on February 19, 2013).

³¹ Ross and Siegel, *supra* note 25, at 2.

³² *Id.*

³³ Irene Plagianos, *Youth Court Program Separates Teen Defendants from Adults*, DNAinfo.com, October 22, 2012.

³⁴ Ross and Siegel, *supra* note 25, at 2.

probation and social service departments, and educational officials.³⁵ When a case is selected for disposition in the Adolescent Diversion Part, an adolescent defendant may choose to participate in the part. If the adolescent voluntarily participates, he or she must agree to cooperate with assessments and recommended services. In exchange, the adolescent receives a sentence that includes no jail time. Most resolutions involve pleas to violations instead of misdemeanors, or the granting of adjournments in contemplation of dismissal (“ACD”) if the adolescent successfully completes services.³⁶ Adolescents who decline to participate in the Adolescent Diversion Parts appear in standard criminal court parts.

The Adolescent Diversion Parts work closely with CCI in order to leverage the partnerships that CCI has created between the courts and service providers in all 5 boroughs. For example, CCI already operates community court initiatives³⁷ and youth court programs that connect young people and their families to services in their communities.³⁸ Community courts such as the Bronx Community Solutions, the Red Hook Community Justice Center and the Midtown Community Court play an instrumental role in the Adolescent Diversion Program by assessing the adolescents, referring them to appropriate community services and monitoring their compliance. The program also works with CCI’s Staten Island Youth Justice Center and Queens Engagement Strategies for Teens.³⁹

³⁵ *Id.* at 3.

³⁶ *Id.*

³⁷ Community courts are neighborhood-focused courts that provide adults and juveniles with a broad variety of rehabilitative and other services. CCI operates community courts in Red Hook, the Bronx, Midtown and Harlem. See Center for Court Innovation, *Community Court*, available at <http://www.courtinnovation.org/topic/community-court> (last accessed on February 19, 2013).

³⁸ Ross and Siegel, *supra* note 25, at 2.

³⁹ Center for Court Innovation, *Adolescent Diversion Program*, *supra* note 30.

Over the first 10 months of implementation, January 2012 to October 2012, more than 2,000 cases were heard in the 9 pilot court sites,⁴⁰ with the Brooklyn site reporting an 80% compliance rate.⁴¹

Examination of the Adolescent Diversion Parts

While the Adolescent Diversion Program is still in its early stages and may vary across the pilot sites depending on resources and priorities, a look at selected parts may highlight how the parts treat adolescents differently from the criminal justice system and suggest ways to further improve the program as it evolves.

Case Screening

In Brooklyn, the District Attorney's Office reviews arrests of 16- and 17-year-olds to determine whether to recommend their cases for participation in the Adolescent Diversion Program. In making this determination, the prosecution considers whether the adolescent has been the subject of multiple arrests, whether the new case involves an assault with injury, weapons possession, drug possession or drug sales, and whether the adolescent is subject to probation supervision pursuant to a Family Court juvenile delinquency finding.⁴² In Brooklyn, all misdemeanors are eligible for the Adolescent Diversion Program.⁴³ In Manhattan, the program seems to target mostly low-level "quality of life" misdemeanors such as jumping subway turnstiles, shoplifting and marijuana possession.⁴⁴

Once a case is before the Adolescent Diversion Part, the prosecution will make a case resolution offer which may consist of an ACD contingent upon compliance with agreed-upon

⁴⁰ Plagianos, *supra* note 33.

⁴¹ Joseph Ax, *Spotlight on Experimental Courts after Juvenile Crime Law Falters*, Thomson Reuters News & Insight, August 6, 2012.

⁴² Ross and Siegel, *supra* note 25, at 5.

⁴³ *See id.*; Plagianos, *supra* note 33.

⁴⁴ Plagianos, *supra* note 33.

services. In other situations, the case may stay open but will be dismissed (with sealing of case records)⁴⁵ or reduced to a non-criminal violation⁴⁶ once services are completed. All of these resolutions would result in the adolescent leaving the criminal court system with no conviction records.

Services and Monitoring

In Brooklyn, after arraignment at the criminal court, the adolescent is directed to appear at the Red Hook Justice Center for a clinical screening, as well as a session that discusses the compliance and service issues with the Adolescent Diversion Program. A typical “sentence” in Brooklyn may consist of the performance of one or more days of social services and/or community service, such as one-day adolescent drug/alcohol education workshop, a one-day stress and conflict management workshop, a one-day youth anger management group session, one-day individual case management session with a clinician to explore further service needs, or a two-day participation in a youth court.⁴⁷ Unlike the community service requirements ordinarily performed in standard criminal cases, the community service assignments given out by the Adolescent Diversion Parts tend to be more educational and therapeutic in nature and may involve a graffiti artist teaching in a young artists program, teaching bicycle safety to younger children, and working in a soup kitchen.⁴⁸ Placing adolescents in targeted assignments in their own communities has actually led to some of them to continue volunteering with the programs or to join new programs, even after they have completed their “sentence.”⁴⁹

In Brooklyn, adolescents whose cases are recommended for more intensive, longer-term participation are referred to a full clinical assessment at the Red Hook Justice Center to

⁴⁵ See *id*; Ross and Siegel, *supra* note 25, at 5-6.

⁴⁶ Center for Court Innovation, *Adolescent Diversion Program*, *supra* note 30.

⁴⁷ Ross and Siegel, *supra* note 25, at 7.

⁴⁸ Plagianos, *supra* note 33; Ax, *supra* note 41.

⁴⁹ Plagianos, *supra* note 33.

determine the types of services appropriate for their needs.⁵⁰ A parent or guardian's consent is required for the assessment. The assessment evaluates an adolescent's mental health, substance use, education and family and lifestyle issues in order to develop a rehabilitative service plan. Recommended services for longer-term cases may include counseling, mental health services, substance abuse treatment, conflict coaching, consultation with school liaisons and/or case management sessions, and the services are provided by local organizations in the adolescent's community.⁵¹ The clinical recommendation for services is presented to the court at the first Adolescent Diversion Program court appearance. If the adolescent or parent/guardian does not accept the recommendations, the case exits the Adolescent Diversion Program and is calendared for appearance in a standard court part. If the adolescent consents to the service plan, he or she enters a guilty plea and the court sets future court dates at the Red Hook Community Justice Center to monitor compliance with services.⁵²

In Manhattan, the pilot part was originally set up in the criminal court building until October 2012, when it moved to the Midtown Community Court building.⁵³ Like the Red Hook Community Justice Center, the Midtown Community Court also assesses, connects adolescents with appropriate social and community service programs and monitors their progress.⁵⁴

IV. ISSUES AND CONCERNS

The Committee looks forward to learning in greater detail about how the Adolescent Diversion Program has been operating since its implementation in January 2012. Specifically, the Committee would like to gain a better understanding of: (i) the number of youth who have been accepted into the Adolescent Diversion Program in each borough since the inception of the

⁵⁰ Ross and Siegel, *supra* note 25, at 5.

⁵¹ *Id.* at 8.

⁵² *Id.*

⁵³ Plagianos, *supra* note 33.

⁵⁴ *Id.*

program; (ii) the number of judges assigned to the pilot parts; (iii) the type of training the Adolescent Diversion Parts judges receive; (iv) the criteria by which cases are selected for participation in the program; (v) the methods by which youth are clinically assessed for services; (vi) the courts' monitoring of the adolescents' compliance with services; (vii) typical scenarios of how the cases are ultimately resolved; (viii) whether there are adequate community services and resources to handle the referrals from the pilot program; (ix) similarities and differences in the way cases are handled across the pilot sites; and (x) whether the program would be expanded to include additional eligible offenses.

Furthermore, the Committee is also interested in learning about the outcomes of the adolescents who participate in the pilot program. While the program is still at its early stages, preliminary data such as adolescents' compliance rates and re-offense rates would be tremendously helpful in gauging the program's success. The Committee is particularly interested in hearing the perspectives of adolescents and their families on whether they realize any benefits in having their cases heard before the Adolescent Diversion Parts. The Committee invites the various stakeholders to share their experiences with the program thus far, including any lessons learned and any suggestions they may have that could improve the pilot parts going forward.

V. OVERVIEW OF INT. NO. 981

In December of 2010, the New York City Council enacted Local Law 61 of 2010. Local Law 61 amended the New York City charter to formally effectuate the merger of Department of Juvenile Justice ("DJJ") into ACS. With the enactment of Local Law 61, the Commissioner of ACS is responsible for all the duties and responsibilities of the former DJJ Commissioner. Furthermore, ACS inherited all DJJ obligations, including reporting certain information to the

public. The impetus of the merger was to integrate child welfare programs in the long-term planning for youth as soon as the youth enter the juvenile justice system, with the goal of improving outcomes for juveniles and decreasing the City's use of detention.⁵⁵ The merger combined two agencies that serve overlapping populations.

Prior to the merger, the Council enacted Local Law 12 and Local Law 14 of 2010. Previously, there were no requirements that DJJ publish data about youth detained in its facilities. Though the demographic indicators in the Preliminary Mayor's Management Report ("PMMR") and the Mayor's Management Report ("MMR") gave a general view of the DJJ population, they provided very little information about detained youth themselves. Specifically, the data provided was too general to be useful for the determination of detention trends, for oversight purposes, or to assist in the development of juvenile justice policies. In order to have a better understanding about the youth who are detained in DJJ facilities, the Council enacted Local Law 12 to require DJJ to report on a number of more specific demographic indicators than those previously contained in the MMR and PMMR, such as age, gender, and race. Additionally, the enactment of Local Law 14 provided the Council a better understanding concerning the safety of detained youth by requiring DJJ to report information concerning a number of safety indicators, such as the use of restraints and allegations of child abuse and neglect by staff.

The merger having been completed, ACS is now charged with coordinating the detention of the City's justice involved youth. Juveniles, ages 7 through 15, who are detained in ACS facilities include alleged juvenile delinquents and offenders whose cases are pending before the courts, and those whose cases have been adjudicated and are awaiting transfer to placement

⁵⁵ See New York City Administration for Children's Services, *Children's Services and Juvenile Justice to Integrate Operations*, available at http://www.nyc.gov/html/acs/html/about/news_djj.shtml (last accessed on February 22, 2013).

facilities.⁵⁶ ACS manages two full service secure detention facilities: Horizon and Crossroads.⁵⁷ Secure detention facilities are characterized by locks on the doors and other restrictive hardware designed to limit the movement of the residents and to protect public safety. Additionally, ACS oversees 15 non-secure detention facilities located throughout the City, two of which are run directly by ACS.⁵⁸ Pursuant to the State's Close to Home legislation enacted in Spring 2012, in September 2012 ACS began to take custody of the City's adjudicated juveniles placed by family court into non-secure placement. The Close to Home initiative will also expand ACS' purview in 2013 to provide custody of limited-secure placement of New York City's youth.

VI. INT. NO. 981

Local Law 12 and Local Law 14 require ACS to publish demographic data and incident reports on youth detained in its secure and non-secure detention facilities.⁵⁹ Int. No. 981 would essentially require ACS to report similar data on youth who are placed in its non-secure and limited secure placement facilities pursuant to Close to Home.⁶⁰

Local Law 12 of 2010⁶¹ currently requires that ACS, on a yearly basis, post a report containing the total number of admissions to its detention facilities in the previous fiscal year, disaggregated by the following indicators: (i) age; (ii) gender; (iii) race; (iv) zip code of residence; (v) for youth remanded to a detention facility by a court, the most serious charged offense on the court petition, complaint or indictment at the time ACS assumed custody; and (vi)

⁵⁶ See N.Y. Exec. Law §502(3).

⁵⁷ See New York City Administration for Children's Services, *Division of Youth and Family Justice*, available at http://www.nyc.gov/html/acs/html/yfj/juvenile_resident_info.shtml (Last accessed on February 22, 2013).

⁵⁸ *Id.*

⁵⁹ ACS assumed DJJ's reporting obligations after DJJ's merger into ACS in 2010.

⁶⁰ The 2 local laws, Local Law 12 of 2010 and Local Law 14 of 2010, were codified in chapter 2 of title 9 of the New York City Administrative Code ("Admin. Code"), as the chapter related to the former DJJ. The local laws were enacted before DJJ's merger into ACS in December 2010. Int. No. 981 seeks to repeal chapter 2 of title 9 of the Admin. Code, as DJJ no longer exists, and to codify the reporting requirements currently imposed by Local Law 12 and Local Law 14 in chapter 9 of title 21 of the Admin. Code, as the chapter relates to ACS.

⁶¹ Codified as N.Y.C. Admin. Code §9-201.

for youth brought to detention by police, whether the top arrest charge was a misdemeanor or a felony at the time ACS assumed custody.⁶² Int. No. 981 would amend the current law to require ACS to further break down the above data into secure and non-secure detention facilities. In addition, it would require ACS to post a yearly report containing the total number of admissions to its non-secure and limited secure placement facilities in the previous year, disaggregated by the following indicators: (i) age; (ii) gender; (iii) race; (iv) zip code of residence; (v) youth who were detained at a detention facility immediately prior to being ordered to a placement facility by a court; (vi) youth who were not detained at a detention facility immediately prior to being ordered to a placement facility by a court; (vii) youth who were transferred to an ACS placement facility from the custody of OCFS;⁶³ and (viii) for youth ordered to a placement facility by a court, the most serious offense adjudicated against such youth by the court.

In addition, Local Law 12 of 2010 currently requires that ACS, on a yearly basis, post a report on its website containing the average daily population in secure and non-secure detention facilities. Int. No. 981 would similarly require ACS to report the average daily population in its non-secure and limited secure placement facilities. Currently, ACS must also report on the total number of admitted youth who spent time either in non-secure detention only, secure detention only, or both non-secure detention and secure detention in the previous fiscal year, disaggregated by the following indicators: (i) age; (ii) gender; (iii) race; (iv) zip code of residence; (v) for youth remanded to a detention facility by a court, the most serious charged offense on the court petition, complaint or indictment at the time ACS assumed custody; and (vi) for youth brought to detention by police, whether the top arrest charge was a misdemeanor or a felony at the time

⁶² N.Y.C. Admin Code §9-201(a).

⁶³ Int. No. 981 provides that the provision relating to the number of youth who were transferred from an OCFS to a ACS placement facility will sunset 2 years after the enactment of the local law.

ACS assumed custody.⁶⁴ Int. No. 981 would create a similar obligation on ACS to report on the population in its placement facilities, by requiring it to publish data on the total number of admitted youth who spent time either in non-secure placement only, limited secure placement only, or both non-secure and limited secure placement, during the reporting period, disaggregated by the following: (i) age; (ii) gender; (iii) race; (iv) zip code of residence; and (v) for youth ordered to a placement facility by a court, the most serious offense adjudicated against such youth by the court.

Local Law 14 of 2010⁶⁵ currently requires ACS to report information concerning a number of safety indicators, disaggregated by each ACS secure detention facility and in the aggregate for all non-secure detention facilities. Specifically, Local Law 14 requires that ACS report on its website, on a quarterly basis, information concerning: (i) the use of physical restraint by ACS staff on children; (ii) physical injuries or impairment to children as a result of the use of physical restraint; (iii) use of mechanical restraint by staff on children; (iv) physical injuries or impairment to children as a result of the use of mechanical restraint; (v) fights and altercations between children; (vi) physical injuries or impairment to children as a result of fights with other children; (vii) physical injuries or impairment to children resulting from any other means not previously mentioned; and (viii) the number of room confinements and the length of stay for each instance.⁶⁶ Local Law 14 of 2012 further requires ACS to report, on a yearly basis, the following information: (i) the number of allegations made during the last fiscal year that a child in a detention facility was a neglected or abused child; and (ii) the number of findings made during the fiscal year by OCFS substantiating allegations that a child in a detention facility was a neglected or abused child (including findings made during the fiscal year that substantiated

⁶⁴ N.Y.C. Admin Code §9-201(b).

⁶⁵ Codified as N.Y.C. Admin. Code §9-201. Note that there are duplicate sections of §9-201.

⁶⁶ N.Y.C. Admin Code §9-201(b).

allegations made prior to the fiscal year).⁶⁷ Int. No. 981 would require ACS to report all of the above safety indicators for children placed in its non-secure and limited secure placement facilities.

⁶⁷ N.Y.C. Admin Code §9-201(c).

Int. No. 981

By Council Members Rose, Brewer, Eugene, James, Mendez, Vann, Williams, Dromm, Rodriguez and Gonzalez

A Local Law to amend the administrative code of the city of New York, 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.

Be it enacted by the Council as follows:

Section 1. Chapter 2 of title 9 of the administrative code of the city of New York as it relates to the DEPARTMENT OF JUVENILE JUSTICE is REPEALED.

§2. Chapter 9 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-905 to read as follows:

§21-905. Demographic Data.

a. Definitions. For purposes of this section, the following terms shall have the following meanings:

1. "Detention" shall mean the temporary care and maintenance of youth held away from their homes pursuant to article three or seven of the family court act, or held pending a hearing for alleged violation of the conditions of release from an office of children and family services or ACS facility or authorized agency, or held pending a hearing for alleged violation of the condition of parole as a juvenile offender, or held pending return to a jurisdiction other than the one in which the youth is held, or held pursuant to a securing order of a criminal court if the youth named therein as principal is charged as a juvenile offender or held pending a hearing on an extension of placement or held pending transfer to a facility upon commitment or placement by a court. Detention shall be authorized only in a facility certified pursuant to section five hundred three of the executive law;

2. “Detention facility” shall mean a facility, certified by the New York state office of children and family services, for the care of youth detained in accordance with the provisions of the family court act, regulations of the New York state office of children and family services, and the criminal procedure law;

3. “Limited secure placement facility” shall mean a placement facility characterized by some level of physically restricting construction, hardware and procedures;

4. “Non-secure detention/placement facility” shall mean a detention or placement facility characterized by the absence of physically restricting construction, hardware and procedures;

5. “Placement” shall mean the temporary care and maintenance of adjudicated youth held away from their homes pursuant to the article three of the family court act;

6. “Placement facility” shall mean a facility, certified by the New York state office of children and family services, for the care of youth placed in accordance with the provisions of the family court act and the regulations of the New York state office of children and family services;

7. “Secure detention facility” shall mean a detention facility characterized by the highest level of security with physically restricting construction, hardware and procedures; and

8. “Youth” shall mean a person not less than seven years of age and not more than twenty years of age.

b. On or before September 30 of each year, ACS shall post a report on its website regarding the total number of admissions to (1) secure detention facilities and (2) non-secure detention facilities in the previous fiscal year, disaggregated by the following: (i) age; (ii) gender; (iii) race; (iv) zip code of residence, except that for a number between one and five admissions from one zip code, the number shall be replaced with a symbol; (v) for youth

remanded to a detention facility by a court, the most serious charged offense on the court petition, complaint or indictment at the time ACS assumed custody; and (vi) for youth brought to detention by police, whether the top arrest charge was a misdemeanor or a felony at the time ACS assumed custody.

c. On or before September 30 of each year, ACS shall post a report on its website regarding the average daily population in (1) secure detention facilities and (2) non-secure detention facilities in the previous fiscal year and the number of youth admitted during the reporting period who spent time either in non-secure detention only, secure detention only, or both non-secure and secure detention, during the reporting period, disaggregated by the following: (i) age; (ii) gender; (iii) race; (iv) zip code of residence except that for a number between one and five admissions from one zip code, the number shall be replaced with a symbol; (v) for youth remanded to a detention facility by a court, the most serious charged offense on the court petition, complaint or indictment at the time ACS assumed custody; and (vi) for youth brought to detention by police, whether the top arrest charge was a misdemeanor or a felony at the time ACS assumed custody.

d. On or before September 30 of each year thereafter, ACS shall post a report on its website regarding the total number of admissions to (1) non-secure placement facilities and (2) limited secure placement facilities in the previous fiscal year, disaggregated by the following: (i) age; (ii) gender; (iii) race; (iv) zip code of residence, except that for a number between one and five admissions from one zip code, the number shall be replaced with a symbol; (v) youth who were detained at a detention facility immediately prior to being ordered to a placement facility by a court pursuant to the family court act; (vi) youth who were not detained at a detention facility immediately prior to being ordered to a placement facility by a court pursuant to the family court

act; (vii) youth who were transferred to an ACS placement facility from the custody of the New York state office of children and family services pursuant to the family court act; and (viii) for youth ordered to a placement facility by a court, the most serious offense adjudicated against such youth by the court.

e. On or before September 30 of each year, ACS shall post a report on its website regarding the average daily population in (1) non-secure placement facilities and (2) limited secure placement facilities in the previous fiscal year and the number of youth admitted during the reporting period who spent time either in non-secure placement only, limited secure placement only, or both non-secure and limited secure placement, during the reporting period, disaggregated by the following: (i) age; (ii) gender; (iii) race; (iv) zip code of residence except that for a number between one and five admissions from one zip code, the number shall be replaced with a symbol; and (v) for youth ordered to a placement facility by a court, the most serious offense adjudicated against such youth by the court.

§3. Chapter 9 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-906 to read as follows:

§21-906. Incident Reports.

a. Definitions. For purposes of this section, the following terms shall have the following meanings:

1. “Abused child” shall mean an “abused child in residential care” as defined in section 412-a of the New York social services law, except that for purposes of this section, “abused child” shall include a youth who is eighteen years of age or older and is in the custody of ACS;

2. “Detention” shall mean the temporary care and maintenance of youth held away from their homes pursuant to article three or seven of the family court act, or held pending a hearing

for alleged violation of the conditions of release from an office of children and family services or ACS facility or authorized agency, or held pending a hearing for alleged violation of the condition of parole as a juvenile offender, or held pending return to a jurisdiction other than the one in which the youth is held, or held pursuant to a securing order of a criminal court if the youth named therein as principal is charged as a juvenile offender or held pending a hearing on an extension of placement or held pending transfer to a facility upon commitment or placement by a court;

3. “Detention facility” shall mean a facility, certified by the New York state office of children and family services, for the care of youth detained in accordance with the provisions of the family court act, regulations of the New York state office of children and family services, and the criminal procedure law;

4. “Limited secure placement facility” shall mean a placement facility characterized by some level of physically restricting construction, hardware and procedures;

5. “Mechanical restraint” shall mean the use of a mechanical device to restrict the movement or normal function of a portion of a child’s body, including but not limited to, handcuffs, leg cuffs, daisy chains or waist restraint;

6. “Neglected child” shall mean a “neglected child in residential care” as defined in section 412-a of the New York social services law, except that for purposes of this section, “neglected child” shall include a youth who is eighteen years of age or older and is in the custody of ACS;

7. “Non-secure detention/placement facility” shall mean a detention or placement facility characterized by the absence of physically restricting construction, hardware and procedures;

8. “Physical injury or impairment” shall mean the term as it is defined in section 412-a of

the New York social services law;

9. “Physical restraint” shall mean the use of bodily force to limit a child’s freedom of movement during a physical confrontation or to prevent a confrontation;

10. “Placement” shall mean the temporary care and maintenance of adjudicated youth held away from their homes pursuant to the article three of the family court act;

11. “Placement facility” shall mean a facility, certified by the New York state office of children and family services, for the care of youth placed in accordance with the provisions of the family court act and the regulations of the New York state office of children and family services;

12. “Room confinement” shall mean the confinement of a child in a room, including but not limited to the child’s own room, when locked or when the child is authoritatively told not to leave;

13. “Secure detention facility” shall mean a detention facility characterized by the highest level of security with physically restricting construction, hardware and procedures; and

14. “Youth” shall be synonymous with the term “child” and shall mean a person not less than seven years of age and not more than twenty years of age.

b. Quarterly incident reports. Within sixty days after the end of each quarter of the fiscal year, ACS shall post a report on its website containing the total number of the following incidents for the previous quarter, for: (i) non-secure detention facilities; (ii) each secure detention facility; (iii) non-secure placement facilities; and (iv) limited secure placement facilities;

1. use of physical restraint by staff on children;

2. physical injuries or impairment to children as a result of the use of physical restraint;

3. use of mechanical restraint by staff on children;

4. physical injuries or impairment to children as a result of the use of mechanical restraint;

5. fights and altercations between children;

6. physical injuries or impairment to children as a result of fights with other children;

7. physical injuries or impairment to children resulting from any other means not previously mentioned; and

8. the number of room confinements and the length of stay for each instance.

c. Annual incident reports. Within sixty days after the end of each fiscal year, commencing with the end of the fiscal year after the date of enactment of the local law that added this section, ACS shall post a report on its website containing the following data, disaggregated by secure detention, non-secure detention, non-secure placement and limited secure placement:

1. the number of allegations made during the fiscal year that a child in a detention or placement facility was a neglected or abused child; and

2. the number of findings made during the fiscal year by the New York state office of children and family services substantiating allegations that a child in a detention or placement facility was a neglected or abused child, including findings that substantiated allegations made prior to the fiscal year.

§4. This local law shall take effect immediately after its enactment into law, except that clause vii of subdivision d of section 21-905 of the administrative code of the city of New York, as added by section one of this local law, shall be deemed repealed two years after it shall have become a law.

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