



Testimony of

Katherine de Zengotita

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Before the

Committee on General Welfare

Oversight Hearing – The Juvenile Justice System During COVID-19

February 19, 2021

My name is Katherine de Zengotita and I am a Senior Trial Attorney with the Juvenile Defense Unit at New York County Defender Services (NYCDS). We are a public defense office that represents New Yorkers in thousands of cases in Manhattan’s Criminal Court and Supreme Court every year, and our Juvenile Defense Unit represents children in felony “Raise the Age” cases in both Supreme Court and Family Court. I have been a New York City public defender for a decade. Thank you to Chair Levin for holding this hearing on COVID-19 in the Juvenile Justice System.

My team represents some of the most vulnerable people in our city – children charged with crimes, some of whom are incarcerated, and many of whom are in dire need of support, services, and resources. These needs have increased exponentially during the COVID-19 pandemic, and the city’s response has been woefully inadequate. The pandemic has presented new and harrowing obstacles for system-involved youth, and has worsened the many challenges they already faced. For purposes of this testimony, we have chosen to focus on one particular issue, which seems to have failed to capture meaningful attention from the city government, but which is of the utmost important to our clients in these unprecedented times: the confiscation of electronic devices, particularly cell phones, by the police.

The vast majority of court appearances in criminal and delinquency proceedings against adolescents in New York City are occurring virtually. Both Supreme Court and Family court use the “Microsoft Teams” application to conduct all kinds of appearances, ranging from arraignment to evidentiary hearings to sentencing and dispositional hearings. If a child does not “appear” in court virtually, a warrant can be issued for his or her arrest. Our clients are often required to participate in a variety of monitoring and service programming as part of their cases, and these programs are occurring virtually as well. These programs are not simply offered for the betterment of our clients lives, they are court requirements that often determine, for example, whether a child will earn Youthful Offender treatment and avoid a lifelong felony record, or whether the child is permitted to remain in the community at all. This new virtual world creates a variety of challenges for all system players, but it presents particular obstacles for youth, and it is crucial that the city address these obstacles if the criminal and juvenile justice systems are going to uphold basic values of fairness and equity during these unprecedented times.

We grapple every single day with children whose cell phones or other devices were confiscated by the NYPD during their arrest processing. In almost every case, months upon months go by and neither our clients nor we can manage to get their phones back for them. Without a phone, young people cannot log into their court appearances. They also cannot, for example, call their attorneys, their probation officers, the programs they are mandated to attend virtually, the remote therapy sessions they are required to complete, or conduct their court-ordered curfew checks. The inability to do all of these things can have grave repercussions for a young person, and there is nothing they can do about it. Some youth are able to borrow a phone or another device from a parent, but many parents work all day and take their phones with them. If parents stay home from work so that their child can fulfill his court or other court-ordered obligations – which many do – they lose money to support their family and sometimes even put their jobs at risk. Moreover, the vast majority of young people in the criminal and juvenile justice systems come from low-income families. Often the phone that was confiscated was the only phone the family had, and therefore not only can the young person not borrow a phone from a family member, the entire family is left disconnected. Just recently a 16-year-old client of mine was arrested in his home and every electronic device in the house was confiscated, and now multiple siblings have no way of logging in to remote school. Combined with the DOE’s abysmal provision of functional laptops or tablets to its students, this family has now been floundering for months. For a 14-year-old client, whose case has been pending for almost a year with literally no action on the prosecution’s part to move it forward, and where there is no apparent relationship between the phone and the case against him, this confiscation is a maddening financial hardship. His mother is in a binding service contract for this phone, and she continues to pay it each month despite not having the phone itself – she has had to do this through a house fire that destroyed everything she owned, through a hospitalization for COVID that kept her from work, and with no end in sight or answers about when they will get the phone back.

In some cases, of course, a phone is legitimate arrest evidence, and in those cases it makes sense that the NYPD would need to keep and access it for a period of time. These scenarios represent a fraction of the cases we see where our clients lose their phone to the police, often permanently. In theory, when someone is arrested, their phone should be “vouchered” either for safekeeping or as arrest evidence, and the owner should receive a paper voucher explaining which category their property falls into. If a phone is vouchered for safekeeping, the owner should be able to retrieve it

as soon as he is released. If a phone is vouchered as arrest evidence, the owner should obtain a release, generally from the prosecutor's office and typically not until the case is over, to retrieve the property. But none of this goes as it "should." The NYPD often provides young people with no paperwork at all, and the youth has no idea whether they are permitted to get their phone back and if so, how. In many instances, phones are vouchered as arrest evidence when they have no discernable connection to the criminal case whatsoever, though prosecutors routinely refuse to release these items. My colleagues and I spend hours on the phone with local precincts, One Police Plaza, and prosecutors' offices trying to figure out where our clients' phones are and how we can get them back. We instruct our clients according to the information we are given, and they hit dead ends, spending hours and days traipsing around the city, negotiating with property clerks and police officers to no avail. Even for us – competent adults with a working knowledge of the system—it is a wild goose chase with no guide or instructions. Months go by and neither they nor we can manage to get their phones back.

In "normal" times, a phone getting inexplicably vouchered as arrest evidence and remaining unobtainable until the completion of a months-long case is hardship enough. But in a time when that phone represents a young person's entire ability to engage with family, school, work, and, most relevant here, court appearances and obligations, and when cases are dragging on for many months longer than usual, that confiscation is completely unjust and unacceptable. We urge City Council to take up and investigate this issue further, and to ensure that the NYPD and prosecutors' offices (Both District Attorneys' offices and Corporation Counsel) are only preventing a young person from retrieving their property when it is a genuine piece of evidence in a case, and that this confiscation lasts for only as long as it is absolutely necessary. In all other instances, The NYPD needs to properly categorize property as simply vouchered for safekeeping, and young people and their families need to receive clear, easy-to-follow instructions for how to get that property back as soon as possible. Young people and their families are struggling unnecessarily, and this messy and flawed system is preventing our youth from being able to comply with court proceedings and directives, despite the demand that they do so. This problem must be tackled immediately.

Thank you again for your attention to this important issue for our city's most vulnerable young people. If you have any questions about my testimony, please contact me at [kdezengotita@nycds.org](mailto:kdezengotita@nycds.org).

TESTIMONY OF DAREK ROBINSON, VICE PRESIDENT OF GRIEVANCE AND LEGAL SERVICES OF THE SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371, DC 37  
BEFORE THE CITY COUNCIL GENERAL WELFARE COMMITTEE  
FEBRUARY 19, 2021

GOOD MORNING, MY NAME IS DAREK ROBINSON AND I AM THE VICE PRESIDENT OF GRIEVANCE AND LEGAL SERVICES FOR THE SOCIAL SERVICE EMPLOYEES UNION LOCAL 371. ON BEHALF OF OUR PRESIDENT ANTHONY WELLS AND OUR 22,000 MEMBERS THAT WE REPRESENT, WE WOULD LIKE TO THANK THE CHAIR, COUNCILMAN STEVE LEVIN AND THE COMMITTEE ON GENERAL WELFARE FOR THE OPPORTUNITY TO GIVE TESTIMONY TO SPEAK ABOUT THE DEPARTMENT OF JUVENILE JUSTICE.

SSEU LOCAL 371 REPRESENTS YOUTH DEVELOPMENT SPECIALIST, CASE WORKERS, PROGRAM COUNSELORS AND INSTITUTIONAL AIDES WHO STAFF SECURE AND NON-SECURE DETENTION, AS WELL AS THE ACS CHILDREN'S CENTER. I MYSELF SERVED AS A TOUR COMMANDER (YDS2) FOR DYFJ FOR 23 YEARS.

WE UNDERSTAND THAT THE SPREAD OF THE VIRUS REQUIRED AND STILL REQUIRES STRONG MEASURES AND DIFFICULT DECISIONS. THOSE DECISIONS, HOWEVER, MUST BE MADE WITH CONSIDERATION FOR THE WELFARE OF ALL CONCERNED PERSONS, ON THE BASIS OF THE BEST INFORMATION AVAILABLE, AND WITH FULL TRANSPARENCY.

*ACS DYFJ FAILED TO MEET ANY OF THOSE STANDARDS AT THE ON SET OF THIS PANDEMIC. OUR MEMBERS WHO SERVE DETAINED JUVENILES AT CROSSROADS AND HORIZON JUVENILE CENTERS, HAVE BEEN, AND ARE AMONG THOSE MOST, EXPOSED TO THE RISKS OF INFECTION... WERE TOLD NOT TO WEAR ANY PERSONAL PROTECTIVE EQUIPMENT. AS A RESULT, OVER 40 OF OUR MEMBERS WHICH INCLUDED YOUTH DEVELOPMENT SPECIALISTS, CASE WORKERS, INSTITUTIONAL AIDES, PROGRAM COUNSELORS, AND TOP MANAGEMENT TESTED POSITIVE FOR COVID-19. CASE WORKER PATICIA GEORGE, A 25-YEAR VETERAN OF THE AGENCY DIED FROM EXPOSURE TO THE VIRUS IN THE COURSE OF WORK. YET DESPITE HER DEATH AND SEVERAL HOSPITALIZATIONS, AND UNKNOWN INFECTIONS OF RESIDENTS AND STAFF AT CROSSROADS, THE AGENCY DECIDED TO SHUFFLE RESIDENTS AND STAFF BETWEEN CROSSROADS AND HORIZON INSTEAD OF MAKING ALL LOCATIONS SAFE AND PROVIDING THE NECESSARY PPE AND IMPLEMENTING OBVIOUS PROCEDURES TO CONTROL INFECTION. ACS DYFJ HAS BEEN UNREALISTIC IN BELIEVING THAT IT CAN MAINTAIN DETENTION CENTERS WITH THE NECESSARY SOCIAL DISTANCING OR EVEN MAINTAIN DISCIPLINE AMONG THE RESIDENTS. SSEU LOCAL 371 FILED A STATE PESH (PUBLIC EMPLOYEES SAFETY & HEALTH) COMPLAINT FOR OUR MEMBERS TO FINALLY RECEIVE ALL PPE NEEDED TO BEST PREFORM THEIR TASKS.*

*FOR SEVERAL WEEKS, WE HEARD PLATITUDES ABOUT RESIDENTS AND STAFF BEING THE AGENCY'S TOP PRIORITY. BUT ACTIONS, NOT PLATITUDES, WERE NEEDED. OUR MEMBERS HAD TO ENDURE MULTIPLE ASSAULTS BY RESIDENTS, WHILE TRYING TO MAINTAIN SOCIAL DISTANCING AND CONTROL OF BOTH FACILITIES. AT ONE POINT, NYPD HAD TO ENTER*

*CROSSROADS JUVENILE CENTER AND ASSIST WITH MAINTAINING CONTROL. AS ASSUALTS CONTINUE, OUR MEMBERS ONLY DEFENSE AGAINST VIOLENT RESIDENTS IS THE AGENCY'S SAFE CRISIS MANAGEMENT (SCM) MODEL, WHICH IS INEFFECTIVE AGAINST BIGGER AND STRONGER RESIDENTS AND GANG ASSAULTS. WE ARE NOT BLAMING THE AGENCY FOR THE PANDEMIC, BUT FOR IGNORING THE SCIENCE AND NOT TAKING THE PROPER PRECAUTIONS.*

*ACS DYFJ MADE CONTACT WITH SSEU LOCAL 371 TO INFORM US OF A 12-HOUR TEMPORARY SHIFT CHANGE FOR THE YOUTH DEVELOPMENT SPECIALIST (YDS) OPPOSED TO THE ORIGINAL 8-HOUR TOUR THEY WERE CURRENTLY ON. THIS CHANGE ENABLED OUR MEMBERS TO SPEND MORE TIME AT HOME DURING THE PANDEMIC. SSEU LOCAL 371 BARGAINED IN GOOD FAITH AND AGREED TO THE TEMPORARY CHANGE UNTIL MORE INFORMATION WAS AVAILABLE AS THE COVID-19 CRISIS CONTINUED. EIGHT MONTHS AFTER THE CHANGE THE UNION DEMANDED THE YOUTH DEVELOPMENT SPECIALIST RETURN BACK TO THEIR ORIGINAL 8-HOUR TOUR. THE AGENCY REFUSED, AND WE ARE CURRENTLY IN LITIGATION ON THAT MATTER.*

THANK YOU FOR THE OPPORTUNITY TO GIVE TESTIMONY. I WOULD BE OPEN TO RESPOND TO ANY QUESTIONS.



**TESTIMONY OF  
JULIA L. DAVIS  
DIRECTOR OF YOUTH JUSTICE AND CHILD WELFARE**

**FOR THE COMMITTEE ON GENERAL WELFARE**

*Oversight Hearing – The Juvenile Justice System During COVID-19*

February 19, 2021

Thank you Chair Levin and members of the Committee for holding this important oversight hearing on the juvenile justice system during COVID-19. My name is Julia Davis, and I am the Director of Youth Justice and Child Welfare at the Children's Defense Fund-New York.

We are a non-profit child advocacy organization that works statewide to ensure that every child in New York State has a Healthy Start, a Head Start, a Fair Start, a Safe Start and a Moral Start in life and a successful passage to adulthood with the help of caring families and communities. As the New York office of the Children's Defense Fund, a national organization which grew out of the Civil Rights Movement, we are committed to advancing racial equity and to leveling the playing field for vulnerable New York children, youth and families. We provide a strong, effective and independent voice for children who cannot vote, lobby, or speak for themselves. We pay particular attention to the needs of poor children, children of color and those with disabilities. CDF strives to improve conditions for children through research, public education, policy development, organizing and advocacy. Our policy priority areas are racial justice, health justice, education justice, economic justice, child welfare and youth justice.

The COVID-19 pandemic has been devastating to many of the City's youth and families. By way of example, between March and July of 2020, 4,200 children in New York State lost a parent to COVID-19—that is one out of every 1,000 children—and 325,000 children were pushed into—or near—poverty by the pandemic-related economic downturn.<sup>1</sup> Based on county-by-county data, *more than half of children who lost a parent to COVID-19 (57%) live in the Bronx, Brooklyn, and Queens.*<sup>2</sup> Nearly a year into the pandemic, adolescents continue to suffer, and unmet needs in our communities for basic

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<sup>1</sup> United Hospital Fund, *COVID-19 Ripple Effect: The Impact of COVID-19 on Children in New York State*, available at: <https://uhfnyc.org/publications/publication/covid-19-ripple-effect-impact-covid-19-children-new-york-state/>.

<sup>2</sup> *Id.*

supports and mental health care<sup>3</sup> put many of our City’s youth at risk of coming into contact with the juvenile and adult criminal legal systems, and create enormous challenges for those who are currently court-involved.

## Youth in Detention and Placement in NYC

Juvenile detention plummeted during the summer months in NYC, with fewer than 50 admissions to detention city-wide during July and August 2020.<sup>4</sup> Stakeholders across the juvenile justice system worked diligently to keep many young people out of detention and in the community during the pandemic. Admissions in December 2020 (89 youth) were lower for the same time period than during the previous three years.<sup>5</sup> And, detention admissions have decreased from over 1,900 during 2017, to a little over 1,000 in 2020.<sup>6</sup> As of the end of 2020, there were 107 adolescents in secure or specialized secure detention (juvenile delinquents, juvenile offenders and adolescent offenders), and only 20 youth in non-secure detention.<sup>7</sup>

Despite this decline, many children remain in detention when it is likely they could remain in the community. According to recent data from the State’s Office of Children and Families (OCFS), more than 1 in 3 (38%) of youth prosecuted in family court as juvenile delinquents (JDs) who were admitted to NYC detention were charged with a misdemeanor.<sup>8</sup> And a quarter of JDs in the City’s detention facilities were considered “low risk” based on a standard risk assessment.<sup>9</sup> We must continue to look for ways to keep more youth out of detention—during the COVID-19 crisis, and beyond. This is a central racial equity issue as *nearly all of the youth in detention based on delinquency are Black and Latinx* (91%),<sup>10</sup> despite representing only 58% of the City’s children.<sup>11</sup>

Placement of youth adjudicated as juvenile delinquents in the City’s Close to Home program also decreased, with only 9 new admissions during December 2020 and a total of 64 youth in Close to Home as of the end of the year. This represents a decrease of 35% over the year.<sup>12</sup> Whether attributable to the slow-downs in the family court process with the impacts of COVID-19, or another reason, is difficult to tell. Nevertheless, the fact that fewer children are living in the City’s juvenile justice institutions is progress. Moreover, the overall decreases in Close to Home placements, down from 177 in 2017 to 82 during 2020, demonstrates that even with full implementation of Raise the Age and

<sup>3</sup> See, e.g., Afia Eama, *City’s Black and Hispanic Youth Face Dire Need for Mental Health Care*, Gotham Gazette, Dec. 10, 2020, available at: <https://www.gothamgazette.com/city/9973-nyc-black-hispanic-youth-dire-need-mental-health-care>.

<sup>4</sup> ACS January 2021 Flash Report, slide 20, available at: <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2021/01.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at slide 21.

<sup>8</sup> OCFS Quarterly Detention Report for NYC (Q3 2020), available at: <https://ocfs.ny.gov/reports/detention/stats/nyc/NYC-Detention-Stats-2020-Q3.pdf>, at table 6.

<sup>9</sup> *Id.* at table 7.

<sup>10</sup> *Id.* at table 5.

<sup>11</sup> Citizens’ Committee for Children of New York analysis of U.S. Census Bureau, American Community Survey 1-Year Estimates, Public Use Microdata Sample File (2005-2018); retrieved from <https://data.census.gov>, available at: <https://data.cccnewyork.org/data/table/98/child-population#11/18/40/a/a>.

<sup>12</sup> ACS January 2021 Flash Report, slide 25, available at: <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2021/01.pdf>.

the introduction of 16 and 17-year-olds into the family court system, New York City has been able to decrease its reliance on institutions for adolescents.<sup>13</sup>

### **Service Providers Report Youth and Communities Under Stress**

One challenge facing the youth justice system during COVID-19 has been serving court-involved young people, both in the City's institutions and in the community. Research released last month by the Youth Justice Research Collaborative (YJRC),<sup>14</sup> a participatory action research group led by Youth Represent, the Public Science Project at the CUNY Graduate Center, Citizens' Committee for Children of New York, and the Children's Defense Fund-NY, reported on the concerns of community-based providers working with court-involved youth.

Service providers noted that their young clients had lives filled with the immense challenges prior to the onset of COVID-19. The pandemic exacerbated their precarious conditions, putting them and their families in even more serious jeopardy.

Organizations working with youth identified a number of recommendations to help mitigate the impact of the crisis on court-involved youth:<sup>15</sup>

- Youth need extra economic support like emergency funding, subsidies, and grants, to assist them through this crisis.
- Youth need dependable, affordable and safe housing. Clients and their families are increasingly homeless, precariously housed or about to lose their home.
- Service providers are reporting signs of increasing food insecurity. Young people and their families need healthy, affordable and consistent meals.
- Youth need access to digital infrastructure including hardware, software and dependable wireless connections, as well as support using the technologies. They need updated technology for regular personal use such as phones, computers and tablets for virtual meetings and remote learning.

The Youth Justice Research Collaborative itself also identified a number of recommendations<sup>16</sup>, based on this research:

- **Restore Services and Programs to Youth in Juvenile Detention as Soon as Possible.** As soon as it is safe to do so, in-person programming and services must return to facilities where youth are detained and placed.

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<sup>13</sup> *Id.* at slide 24.

<sup>14</sup> Youth Justice Research Collaborative, a partnership of Youth Represent, the Public Science Project at the CUNY Graduate Center, Children's Defense Fund-NY, and the Citizens' Committee for Children. (2021, January). *The Impact of COVID-19 On Youth Service Providers and the NYC Youth They Serve*. Available at: <https://openccny.org/yjrc/reports-data/>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*



- **Invest in Youth-Serving Community-Based Organizations During the COVID Crisis and Recovery.** Young people face more vulnerability now than in the recent past. In the face of the large-scale disruption, community loss of life, and economic depression, youth-serving organizations require more resources and capacity than they had before the pandemic began. The needs are greater and the job is harder. Mental health, housing, education, employment and related supports are essential to building a bridge for young people to the other side of this crisis and investing in true community safety. Local, trusted CBOs with deep ties to our neighborhoods are best-equipped to meet these challenges, but the resources required demand significant investment and flexibility.
- **Develop Accessible Youth Training and Employment Strategies as Part of COVID Recovery Planning.** The city must center young people in their COVID-response plans by establishing dedicated economic recovery programs that target vulnerable and justice-involved youth for education, training, mentorship, employment and advancement.
- **Expand Emergency Access to Technology and Financial Supports for Youth.** Short-term, stop-gap funding available last Spring and Summer for emergency needs will not sustain young people through the current economic crisis, or protect them adequately if we face a second wave of infection. Youth and their families will have continued need for immediate access to technology and related supports, as well as cash assistance to address food insecurity, housing and other basic needs.

### **NYC Defenders Representing Youth Identify COVID-19 Impacts**

The Youth Justice Research Collaborative also conducted a survey of defenders in the City representing youth in court proceedings to capture the impact that COVID-19 is having on their clients.<sup>17</sup> Released in June 2020, the research identified a number of concerns, including:

#### *Due Process Delays*

- Lengthy adjournments by the courts undermine young peoples' rights to a speedy trial.
- Long delays of court appearances mean that youth are detained longer with more uncertainty about the resolution of cases.
- The longer cases drag on, the longer youth are subject to lengthy periods of probation supervision, causing additional stress to youth and their families. Many of the services that the court usually orders are difficult to access.

#### *Barriers to Attorney-Client Relationships and Zealous Advocacy*

- The inability of attorneys to meet face-to-face with clients limits the relationship-building necessary for quality representation.

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<sup>17</sup> Youth Justice Research Collaborative, *COVID-19 Impacts on Youth Justice* (June 2020), available at: <https://opencuny.org/yjrc/files/2020/06/Copy-of-COVID-19-Impacts-on-Youth-Justice2-1.pdf>.

- Defenders are wary about conducting interviews and openly speaking with youth clients over video because they are concerned about confidentiality (at arrest, arraignment, in detention and placement).

#### *Remote Court Appearances Create Barriers*

- Although defenders go to great lengths to meet with clients and family members in the community, court appearances normally provide important opportunities to check in with clients, especially young people who may lack reliable contact information. Remote court appearances can limit defenders' ability to speak to their clients directly, to collect information, and provide guidance or client counseling. This also limits the in-person connection with a reliable adult at a difficult point when that connection can be critical.
- Remote court appearances also limit the ability of defenders to engage with other staff working with their clients, including social workers and education advocates to connect youth with appropriate services and referrals that would improve results at disposition.

#### *Few Alternatives to Detention and Supports for Staying in the Community*

- Some youth are staying in detention longer or returning to detention because of a lack of safe, supportive housing in the community.

#### *Conditions in Detention*

- Youth have limited movement in the facilities and access to outdoor recreation.
- Youth have limited programming and other activities that have been suspended or curtailed during the pandemic.

Defenders also identified a number of recommendations to mitigate the harm of COVID-19 on court-involved youth, including:

- **Bridging the Digital Divide** - All youth (including those who are incarcerated) should have reliable access to technology (laptops, tablets, phones) so that they can participate in remote learning, and stay connected with their families, attorneys/social workers, and other programmatic supports.
- **Providing Safe Housing in the Community** – Youth should be able to secure housing if they do not or cannot live with their parents or guardians.
- **Improving Access to Education** – Ensure that all youth in detention or placement have increased access to live instruction online and special education services.

## **Conclusion**

Thank you for the opportunity to testify before the Committee. If you have any questions or you would like further information, please contact: Julia L. Davis, Director of Youth Justice and Child Welfare, Tel. 212-697-0882, [jdavis@childrensdefense.org](mailto:jdavis@childrensdefense.org).

**Written Comments of Kate Rubin, Youth Represent  
Before the New York City Council  
Committee on General Welfare  
RE: Oversight: The Juvenile Justice System During COVID-19  
February 19, 2021**

Good morning, my name is Kate Rubin and I am the Director of Policy at Youth Represent. Thank you to Chair Levin and the Committee members and staff for holding this crucial hearing and for the opportunity to testify.

Youth Represent provides holistic criminal and civil reentry legal representation to young people age 24 and under who have been impacted by the criminal legal system. We also advocate for changes in policy to stop criminalizing youth and instead invest in young people, families, and communities. The young people we serve have been some of the hardest hit by the Covid-19 crisis. They have faced economic hardship, the stress of lockdown, the difficulty of remote learning, and severely disproportionate rates of infection and loss of life. Some are navigating pregnancy and parenting young children during the pandemic. Many have faced pressure to continue working in unsafe conditions, putting them, their families, and everyone they interact with at risk. Finally, soaring unemployment has tightened the labor market, increasing the likelihood of discrimination against system-involved youth.

Throughout the past year, Youth Represent has continued to provide critical, client-centered support to young people facing a wide range of legal issues. We launched a chatbot to allow young people to begin our intake process just by visiting our website; started a citywide legal hotline in collaboration with Community Service Society; and have relied on word of mouth and social media to spread the word about our services to young people who are disconnected from traditional service providers. We also shifted resources to respond to immediate client needs and launched an emergency fund that has covered expenses ranging from groceries to cleaning supplies to cab rides so a pregnant client could travel safely to prenatal appointments. We thank the Council, which has provided critical support for our work through the Innovative Criminal Justice Programs Initiative.

## **Juvenile Arrests and Detention**

Since we opened our doors in 2007, Youth Represent has advocated for teenagers to be treated as children in the court system. We played a pivotal role in the passage of Raise the Age legislation and we appreciate the Council's long-term advocacy and support for Raise the Age and for system-involved youth generally. A concern shared by some defenders, advocates, and young people when Raise the Age legislation was enacted was that there could be an unintended "detention bump" when 16- and 17-year-olds moved from being the youngest adolescents in the adult system to the oldest in the family court system.

Raise the Age has now been fully in effect since October of 2019, and even prior to the COVID-19 crisis the numbers told a promising story, showing dramatic declines in arrests of 16-and 17-year-olds in New York City. In their recent report on the second year of Raise the Age

implementation, the New York City Criminal Justice Agency documented 555 misdemeanor arrests of 17-year-olds between October 2019 and March 2020, compared to 1,104 during the same period the prior year. They also note an equivalent decline in misdemeanor arrests of 16-year-olds the prior year, when Raise the Age went into effect for that group.<sup>1</sup> These numbers come on the heels of a decade of declining arrests: From 2010 to 2019 statewide felony arrests of 16- and 17-year-olds dropped by 53% and misdemeanor arrests by 58%.<sup>2</sup> Even though youth under 16 were not impacted by Raise the Age, there have been similar declines in arrests in this age group, with JD initial petitions citywide declining by 50% between 2015 and 2018, from 2,301 to 1,151, and then increasing only slightly to 1,464 in 2019 when the vast majority of 16 year-olds and some 17 year-olds entered the juvenile justice system.<sup>3</sup>

These declines laid the groundwork for even more historic reduction in the use of detention this spring and summer during the first wave of COVID-19 infections, as stakeholders across the system worked to keep young people home in their communities. In July and August of 2020 there were fewer than 50 admissions to detention citywide. The detention numbers have crept up since then to 89 in December of 2020.<sup>4</sup> These decreases in overall numbers have not addressed racial disparity in the system. Nearly all of the youth in detention based on delinquency are Black and Latinx (91%), despite only representing only 58% of the City's children.<sup>5</sup> Moreover, these numbers could be lower. According to the Office of Children and Family Services (OCFS) Detention Stat Sheets, between 38% and 43% of youth charged as juvenile delinquents in family court and remanded to detention in the first three quarters for 2020 were facing a top charge of a misdemeanor.<sup>6</sup>

This data is consistent with observations made by Research Associates in the Youth Justice Research Collaborative (YJRC), a joint research project created by Youth Represent, the CUNY Public Science Project, Children's Defense Fund – NY, and Citizens Committee for Children to study the implementation of Raise the Age in New York. Observing family court in the months prior to the COVID-19 lockdown we saw young people with open family court cases detained for school absence, new arrests for low level charges, and even in a few cases for lack of stable housing.

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<sup>1</sup> Gewirtz, M., New York City Criminal Justice Agency (2020, December). *The First Six Months of the Second Year of Raise the Age*. <https://www.nycja.org/assets/downloads/RTA-Year-2-first-6-months.pdf>. Note that with RTA in effect, 16- and 17-year-olds are no longer fingerprinted for non-felony arrests, so data on these arrests is no longer available through the Division of Criminal Justice Services.

<sup>2</sup> New York State Raise the Age Implementation Task Force Report, Final Report (December 2020) p. 8. <https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL%20Report-Raise%20the%20Age%20Task%20Force%2012-22-20.pdf>.

<sup>3</sup> New York State Division of Criminal Justice Services, JD Initial Petitions Filed 2015-2019. Retrieved from <https://www.criminaljustice.ny.gov/crimnet/ojsa/ij-reports/JD%20Initial%20Petitions%20Filed.pdf>.

<sup>4</sup> ACS January 2021 Flash Report, slide 20, available at: <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2021/01.pdf>.

<sup>5</sup> Citizens' Committee for Children of New York analysis of U.S. Census Bureau, American Community Survey 1-Year Estimates, Public Use Microdata Sample File (2005-2018); retrieved from <https://data.census.gov/>, available at: <https://data.cccnewyork.org/data/table/98/child-population#11/18/40/a/a>.

<sup>6</sup> OCFS Quarterly Detention Stat Sheets for New York City (Q1 2020, Q2 2020, Q3 2020), available at: <https://ocfs.ny.gov/reports/detention/stats/nyc/NYC-Detention-Stats-2020-Q1.pdf>, <https://ocfs.ny.gov/reports/detention/stats/nyc/NYC-Detention-Stats-2020-Q2.pdf>, and <https://ocfs.ny.gov/reports/detention/stats/nyc/NYC-Detention-Stats-2020-Q3.pdf>.

As you well know, every community in New York City has been hit hard by COVID-19, but the same Black and Latinx communities that are over-represented in the juvenile justice system have been disproportionately impacted by COVID-19. This is why our call across all of our areas of policy advocacy is to **divest from carceral systems and invest in community supports, families, and young people themselves.** This is even more important as New York City and State face historic budget shortfalls and must make difficult decisions about where to spend money. This call is echoed in the recommendations of public defenders and youth justice service providers, both of whom YJRC surveyed in the spring of 2020.

### **Public Defender Recommendations**

In April and May of 2020 YJRC reached out to 55 public defenders who represent clients in the youth parts of Supreme Court and in juvenile proceedings in family court in all five boroughs and received 40 responses.<sup>7</sup> Defenders identified issues with due process delays, barriers to attorney-client relationships, lack of stable housing and other supports in the community needed to keep kids out of detention, and limited programming and activities in detention. Defenders offered recommendations including:

- **RELEASE YOUTH IN DETENTION.**
- **BRIDGE THE DIGITAL DIVIDE.** All youth (including those who are incarcerated) should have reliable access to technology (laptops, tablets, phones) and wifi so that they can participate in remote learning and stay connected with their families, attorneys/social workers, and other supports.
- **PROVIDE SAFE HOUSING IN THE COMMUNITY.**
- **ENSURE PRIVATE COMMUNICATION FOR YOUTH AT EVERY STAGE OF ARREST, PROSECUTION, AND DETENTION.**
- **RESTORE AND EXPAND ACCESS TO SUMMER YOUTH EMPLOYMENT (SYEP).**
- **IMPROVE ACCESS TO EDUCATION.** Ensure that all youth in detention and placement have access to live online instruction during the pandemic, and fully restored in-person education as soon as possible.
- **DECRIMINALIZE YOUTH.** Rely on arrest and incarceration only as a last resort.

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<sup>7</sup> See Youth Justice Research Collaborative, *COVID-19 Impacts on Youth Justice* (June 2020). <https://opencuny.org/yjrc/files/2020/06/Copy-of-COVID-19-Impacts-on-Youth-Justice2-1.pdf>.

## Service Provider Recommendations

In the Spring and Summer of 2021 YJRC asked 31 service provider organizations who worked with NYC youth involved with the legal system to distribute a short open-ended survey to their employees. We received responses from 40 individuals representing 18 separate organizations (often multiple people with different roles in a single organization responded to the survey).<sup>8</sup> The providers who answered our survey highlighted that the needs of young people impacted by NYC's Legal system are not incremental but large and fundamental. They expressed the need to:

- **PRIORITIZE ACCESS TO STRUCTURAL EQUALITY FOR JUSTICE INVOLVED YOUTH:** Service providers expressed great concern over the wellbeing of their young clients and frequently raised the urgency of addressing the severe structural inequality in employment, financial assistance, housing, food, health, and technology that has only grown as the pandemic has worn on.
- **INVEST IN YOUTH OF COLOR WHO HAVE BEEN IMPACTED BY THE LEGAL SYSTEM:** Service providers are calling for a renewed and full investment in the needs of young people, in the programs, supports, advocacy, education and activities that hold and enrich their lives.
- **END TO HARM PRODUCED BY THE LEGAL SYSTEM FOR YOUNG PEOPLE AND THEIR FAMILIES:** Service providers emphasized that the pandemic has only further entrenched the vulnerability, risk and harm young people face when exposed to carceral institutions. They are calling for a range of immediate reforms and radical transformations to improve the conditions of system involved youth.

We appreciate the opportunity to share these recommendations with the Council and look forward to working together to continue to address needs of young people and families outside of the court system. If you have any questions, please don't hesitate to contact Kate Rubin ([krubin@youthrepresent.org](mailto:krubin@youthrepresent.org)).

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<sup>8</sup> See Youth Justice Research Collaborative (2021, January). *The Impact of COVID-19 On Youth Service Providers and the NYC Youth They Serve*. <https://opencuny.org/yjrc/reports-data/>.





## **Testimony for the New York City Council Committee on General Welfare Oversight - The Juvenile Justice System During COVID-19.**

February 19, 2021

Thank you, Chair Levin, and members and staff of the Council Committee on General Welfare for the opportunity to comment on the City's incarceration of youth during the pandemic.

Girls for Gender Equity (GGE) is an intergenerational advocacy and youth development organization that is committed to the physical, psychological, social, and economic development of girls and young women. GGE works to challenge structural forces, including racism, sexism, transphobia, homophobia, and economic inequality, which constrict the freedom, full expression, and rights of girls and gender-expansive youth of color.

### Overview

The pandemic has heightened the existing dangers of incarceration, particularly the risks of restricted freedoms and the inability of jails to provide access to wellness or wellness supports. New York City's youth incarceration system is rife with racial disparities and more so now works to extend the scope of health and healthcare disparities. Youth detention even under pre-pandemic operations all but ensured serious health and safety risks to young people, who experience administrative and physical violence and immediate and long-term health impacts of confinement.

In March of 2020, when pressed on efforts to reduce the population of incarcerated young people, the Mayor remarked, "Obviously, the focus has been on addressing the issues around adults in our jail system, particularly those who are older or had preexisting conditions. That's where our focus has honestly been."<sup>1</sup> This early inattention to incarcerated young people was unacceptable. Attention to the health and safety of young people must include attention to the health and safety of incarcerated young people, and we continue to call for the City to shift away from youth incarceration as a response to social, economic, and educational inequities.

During the May 2020 oversight hearing jointly held by the Committee on Criminal Justice and Committee on Justice System, "Oversight - COVID-19 in City Jails and Juvenile Detention Centers," ACS testified to a collaboration with MOCJ, the Law Department, District Attorneys, and Probation that has led to the release of "over one-third" of youth in detention. At that

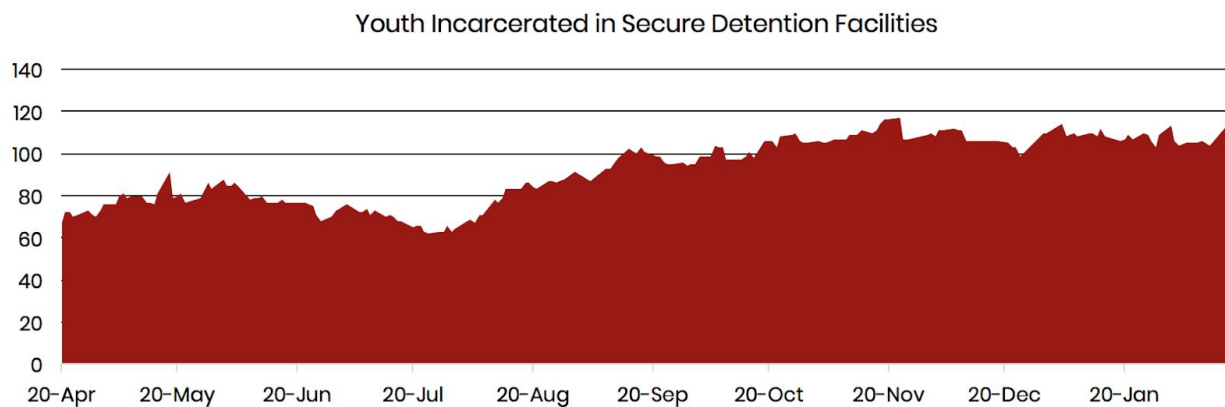
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<sup>1</sup> Transcript: Mayor de Blasio Holds Media Availability on COVID-19, March 26, 2020, Available at <https://www1.nyc.gov/office-of-the-mayor/news/193-20/transcript-mayor-de-blasio-holds-media-availability-covid-19>.

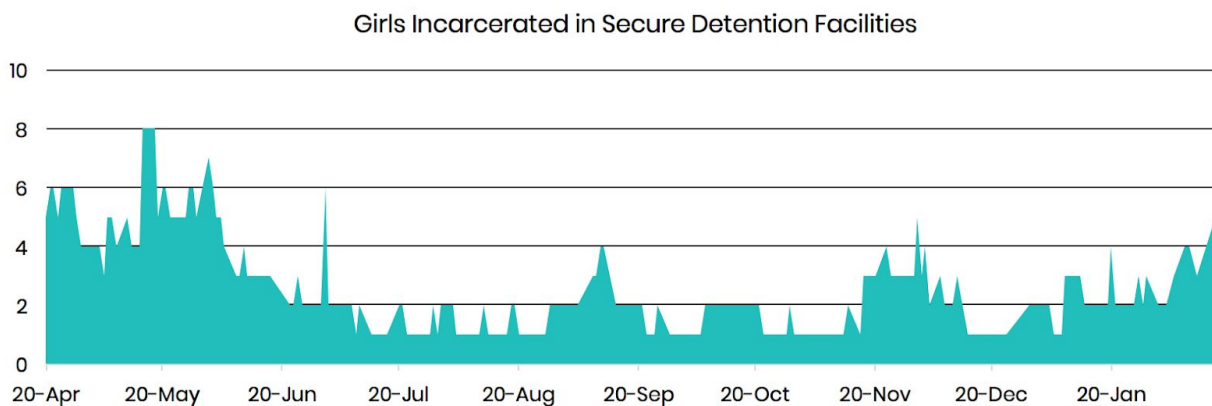
time, our detention population tracking did not reflect a trend where the rate of discharges surpassed the rate of new admissions. **Today, we have established a 70% expansion of youth incarceration in secure detention – reaching a peak of over 110 youth incarcerated. There remains significant work to be done.**

#### Tracking the Incarceration of Girls at Crossroads

The New York State Office of Children and Family Services' (OCFS) Bureau of Detention Services has been posting daily Secure and Specialized Secure Detention bed capacity,<sup>2</sup> and for the past forty-six weeks GGE has been tracking the changing population of youth incarcerated in ACS' Secure Detention Facilities (Crossroads and Horizon), as updated each and every weekday:



With the OCFS postings, we have also been tracking the changing population of girls incarcerated at Crossroads (with the exception of the week of November 23, 2020, where data indicated girls were transferred to Horizon and then back to Crossroads):



<sup>2</sup> Please see <https://ocfs.ny.gov/programs/youth/detention/census.php>.



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Early efforts to concurrently manage a pandemic and detention system led to the creation of medical isolation units at Horizon and the transfer of symptomatic youth from Crossroads. It has been established that spread is possible for people who are asymptomatic or presymptomatic, making this separation potentially more disruptive than it was effective. The May oversight hearing held by Council did not address how it might be determined that young people in custody could safely report symptoms without fear, especially considering reporting leads to an upheaval and placement in medical isolation. **This pandemic has made it much more urgent to invest in and respond to public health crises with public health responses, rather than relying on criminalizing agencies to facilitate best practices.**

Further, the administration's testimony alleging access to "ample hand sanitizer, soap, gloves, PPE" only addressed staff working with symptomatic youth – neglecting to mention young people's access to supplies. Absent a testing or contact tracing strategy, we question the reporting offered by the administration that only a total of seven youth had tested positive at that time, with five having recovered, and two youth recently diagnosed and in isolation at Horizon. Further, **there has been no public reporting of this information prior to Council convening oversight hearings, and we call on the Council to legislate public reporting similar to Introduction 1954-2020 passed in June requiring the department of correction and correctional health services to issue reports during public health emergencies.**

At the time we began tracking the population of girls incarcerated, the Daily News reported 27 people had tested positive for COVID-19 at Crossroads, according to a representative from Local 371.<sup>3</sup> It is not clear how many people enter and exit Crossroads, but given 61 young people incarcerated at Crossroads on April 20th and 246 staff at Crossroads listed in the FY21 Executive Budget Supporting Schedules, 27 of 307 people implies Crossroads was operating at an infection rate of 11% – even without transparency around the availability of youth testing.

We are extremely concerned about conflicting reports of mask distribution, quality of and youth engagement in remote learning – including access to electronic devices and live educators in lieu of packets – access to phones and tablets, and family video conferencing. In light of sustained press attention,<sup>4</sup> and as acknowledged in the Committee Report, ACS responded publicly to the concern that students in detention were unable to be seen or heard by their educators during class, relegated to a "text-messaging feature" during live instruction or phone after school hours, without a specific commitment to a timeline for the implementation of a voice communications system. ACS testified in May that they have not seen kids leaving as quickly during the pandemic as is typical, leading to a slowly increasing

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<sup>3</sup> Gartland, Michael. (2020, April 19). Worker and kids in Brooklyn juvenile detention center test positive for coronavirus at alarming rate. Retrieved from <https://www.nydailynews.com/coronavirus/ny-coronavirus-ac-s-outbreak-test-positive-20200419-a4ow2weqhbplawqzynpd57w2y-story.html>.

<sup>4</sup> See Grench, E. (2020, December 11). NYC moves to take students off mute in juvenile lockups, but due date elusive. THE CITY. Retrieved from <https://ny.chalkbeat.org/2020/12/11/22169561/nyc-juvenile-detention-remote-learning-coronavirus>.

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population. The Mayor's Preliminary Budget Management Report, released January 2021, now indicates that there was a 65% increase in length of stay from 23 to 38 days during the first four months of Fiscal Year 2021.<sup>5</sup> **Again, according to our tracking, the population of young people in detention has jumped from 60s in April 2020 to over 110 in February 2021 – a jump of 70%.**

The Department of Education (DOE) is experiencing tremendous resource and staffing challenges due to the blended learning model underway citywide, in which case we encourage the Council to again advocate that the City pursue decarceration as a solution to compromised access to education.

Lastly, as of September 30th, 2020, ACS surrendered SJD (specialized juvenile detention for pre-Raise the Age youth) certification, and Horizon is now certified as a SSD (or specialized secure detention) facility for "adolescent offenders" – marking the end of the Board of Correction's jurisdiction of Horizon.<sup>6</sup> As part of the Raise the Age Law (RTA), ACS and DOC were required to cooperatively manage the facility for pre-RTA youth. However, according to what was shared publicly by Commissioner Hansell during the October 2020 meeting of the Board of Correction, DOC will have continued presence for "some period of time" with continuing areas of responsibilities in "perimeter security" and "helping to staff the control room." The state regulations for SSD do require that DOC have a continuing role in co-administering an annual security review, even once they no longer have an on-site presence at Horizon. We would appreciate Council's oversight during this transition time as ACS adjusts staffing to replace DOC presence.

#### Budget Implications of Girls' Incarceration

Now that New York is facing sustained fiscal downturns because of the pandemic, the Council has another reason to reduce confinement of young people and provide better support for those who remain in their communities: the tremendous cost of youth incarceration. The most recent Mayor's Management Report (MMR) specifies the average daily cost per youth per day in detention at \$2,064 – up from \$1,651 in the prior fiscal year reported (amounting to a 25% growth). At that price, **we estimate that the total cost of incarcerating girls in secure detention during the pandemic has reached nearly two million dollars.**

Alarming, the MMR also proposes that ACS is working closely with the Department of Investigation to conduct canine searches in detention and "continues to work towards building its own internal capacity in this area." GGE is staunchly opposed to growing detention operations in this way.

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<sup>5</sup> Preliminary Mayor's Management Report: Administration for Children's Services (January 2021). Retrieved from <https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2021/acs.pdf>.

<sup>6</sup> Presentation of Commissioner Hansell before the Board of Correction, October 13, 2020, Available at [https://www.youtube.com/watch?v=L8f8itwZAgA&ab\\_channel=NYCBOARDOF CORRECTION](https://www.youtube.com/watch?v=L8f8itwZAgA&ab_channel=NYCBOARDOF CORRECTION). See 01:14:30.

As girls of color are persistently disproportionately represented in the population of incarcerated young women as compared to their representation in New York City, **the City is disproportionately placing young girls of color at risk by neglecting to expedite their release from the youth jail system.**

We thank the Council for their oversight and attention to these issues, and for the opportunity to testify. For more information, please contact: Charlotte Pope, Director of Policy, at [c pope@ggenyc.org](mailto:c pope@ggenyc.org).