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**THE COUNCIL OF THE CITY OF NEW YORK**

**Briefing Paper and Committee Report of the Justice Division**

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**COMMITTEE ON THE JUSTICE SYSTEM**

**Hon. Rory Lancman, Chair**

**COMMITTEE ON CRIMINAL JUSTICE**

**Hon. Keith Powers, Chair**

**December 3, 2019**

**Implementation and Expansion of Raise the Age**

**Int. No. 1628:** By Council Members Salamanca Jr. and Ampry-Samuel

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the administration of children's services and the department of probation to report on juvenile justice statistics

**Administrative Code:**  Amends Sections 21-905, 21-906, 9-306; Adds Section 9-206

1. **Introduction**

On December 3, 2019, the Committee on the Justice System, chaired by Council Member Rory Lancman and the Committee on Criminal Justice, chaired by Council Member Keith Powers, will hold a joint oversight hearing on the City’s efforts to address issues related to the final phase of implementation of raising the age of criminal responsibility. The Justice System Committee will also hear Int. No. 1628, sponsored by Council Member Rafael Salamanca, related to New York City’s Department of Probation’s (DOP) reporting on juvenile justice statistics. Those invited to testify include representatives from New York City’s Administration of Children’s Services Division of Youth and Family Justice (“DYFJ”), the Mayor’s Office of Criminal Justice (“MOCJ”), the Department of Correction (“DOC”), DOP, advocates, other interest groups and members of the public.

1. **Background**

The New York State Family Court Act gives Family Courts exclusive original jurisdiction to hear juvenile delinquency cases.[[1]](#footnote-1) Presently, 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]](#footnote-2) As will be discussed further below, legislative changes were enacted in 2017 to “Raise the Age” of criminal responsibility from 16 to 17 years-old on October 1, 2018 and from 17 to 18 years-old on October 1, 2019.

A juvenile delinquent may face a maximum placement term of 12 months for a misdemeanor;[[3]](#footnote-3) 18 months for a felony;[[4]](#footnote-4) or 5 years for a violent felony, as designated by the Family Court Act.[[5]](#footnote-5) During the pendency of juvenile delinquency cases, juveniles are either supervised by the DOP[[6]](#footnote-6) or detained in facilities overseen by DYFJ. Adjudicated youth who receive a disposition of placement in a secure setting are placed in facilities overseen by the New York State Office of Children and Family Services (“OCFS”). A finding of juvenile delinquency is not considered a criminal conviction[[7]](#footnote-7)and therefore does not result in a criminal record. Moreover, Family Court judges, in response to a motion, may seal any records relating to a delinquency proceeding.[[8]](#footnote-8)

The juvenile justice system is generally designed to rehabilitate young people who commit offenses. Coordinated efforts are made to identify youths exhibiting negative behavior so requirements can be placed on them and their families in an effort to reform them. Unfortunately, this difficult task is often exacerbated by the fact that many young people involved in the juvenile system have special needs. In 2014, approximately 42% of the 384 young people admitted into OCFS’ juvenile facilities required mental health services, and nearly 62% needed substance abuse services.[[9]](#footnote-9) Nationwide, it is estimated that 70% of females and 60% of males secured in juvenile facilities have a psychiatric disorder other than a conduct disorder.[[10]](#footnote-10) Approximately 50% of detained youth nationally have two or more mental disorders.[[11]](#footnote-11) As such, an important goal of the juvenile justice system is to connect young people with holistic services such as evidence-based therapy, mentoring, mental health services, education and vocational training.

In contrast, while the adult criminal justice system provides educational and rehabilitative options, rehabilitation is arguably not the driving force behind the system. When young people go through the adult criminal system, they often “fall through the cracks,” leaving the system with no education or skills and no services to address their individualized needs.[[12]](#footnote-12) According to the United States Department of Justice (“DOJ”), among youth processed in adult criminal court, those sentenced to prison had significantly greater odds of having a disruptive behavior disorder, a substance abuse disorder, or co-occurring affective and anxiety disorders than those who received a non-incarceratory sentence.[[13]](#footnote-13)

In 2012, New York launched the “Close to Home Initiative,” a program that allows City youth who were previously sentenced and placed in remote, state-run facilities, to be placed into small, therapeutic settings closer to their families and communities.[[14]](#footnote-14) The initiative was fueled, in large part, by a high-profile DOJ investigation into abuse and violence in state-run juvenile facilities,[[15]](#footnote-15) as well as the rising costs and growing evidence of a failed system.[[16]](#footnote-16) In Fiscal Year 2019, 97 juveniles were admitted to New York City’s Close to Home placement facilities.[[17]](#footnote-17)

1. **New York State Legislation to Raise the Age of Criminal Responsibility**

In April of 2017, the New York State Legislature enacted “Raise the Age,” legislation that shifted the age of criminal responsibility to 17-years-old starting in October of 2018 and then to 18-years-old in October of 2019.[[18]](#footnote-18) As of the date of this hearing, all provisions of Raise the Age are in effect statewide. Specific provisions of the legislation are as follows:

*Legal Classifications of Youth*

Raise the Age amended certain legal classifications for youth accused of otherwise criminal conduct.

As mentioned above, Juvenile Delinquents or “JDs” are youth who engage in behavior that would otherwise be considered criminal were they committed by an adult and have their cases processed in Family Court. Following the implementation of Raise the Age, JDs are youth 7- to 17-year olds arrested for misdemeanors and most felony offenses. Youth charged with misdemeanors are JDs as a matter of statute. Many youth arrested for felonies as Adolescent Offenders, later become JDs after their case is moved from Criminal Court to Family Court.

“Juvenile Offenders” or “JOs” are youth between 13 and 15-years old who are charged and tried as adults for committing certain enumerated serious felony crimes, such as murder or arson.[[19]](#footnote-19) Cases against JOs are processed in the Youth Part of adult criminal court.

 “Adolescent Offenders” or “AOs” are 16- and 17-year-olds arrested and charged with felony offenses whose cases are heard in the Youth Part of adult criminal court. As referenced above, many youth initially charged as AOs ultimately have their cases transferred to Family Court, where they become JDs. The process for that “removal” is explained in Section IV.

The following chart, created by the MOCJ, is a useful visual demonstration of the process pre-Raise the Age, post-Raise the Age, and those tracks that were unchanged by the legislation[[20]](#footnote-20):



*Detention and Placement*:

Raise the Age legislation included substantial reforms related to the detention and placement of justice-involved youth. Pursuant to Raise the Age, 16- and 17-year-olds cannot be sentenced to or detained in facilities that also house adults.[[21]](#footnote-21) This includes provisions prohibiting youth under 18 from being incarcerated in City jail after October 1, 2018.[[22]](#footnote-22) Youth whose cases are resolved in Family Court are detained or placed in ACS or OCFS operated or licensed facilities.[[23]](#footnote-23) AOs detained pre-trial are now held in specialized secure detention facilities (“SSDs”), which are certified and regulated by OCFS and the state Commission of Correction.[[24]](#footnote-24) Youth detained based on pre-Raise the Age arrests are held in specialized juvenile detention (“SJDs”). Adolescent Offenders who are sentenced to state imprisonment are placed in an Adolescent Offender facility developed by the state, with enhanced security managed by OCFS. [[25]](#footnote-25)

Prior to implementation, the City retrofitted the current ACS Horizon Juvenile Detention facility in the Bronx as a SJD to house 16- and 17-year-old youth transferred from Rikers Island.  At the time, staffing of the Horizon facility was shared between ACS and the Department of Correction (“DOC”).  At the outset, Administration officials testified that anticipated timeline of ACS staff hiring would require DOC presence at Horizon for a period of 24-months; with approximately 300 DOC staff members working in Horizon, comprising of 3 tours of 125 Corrections Officers, and around 75 ACS program and case worker staff.[[26]](#footnote-26) As of October 1, 2018, there were approximately 93 youth transferred from Rikers to Horizon. In the year that followed implementation of Raise the Age, ACS has been hiring and training a new civil service title of Youth Development Specialist to replace DOC staff at Horizon and other ACS facilities.

Additional changes in detention following Raise the Age were as follows.  As mentioned above, the Horizon facility housed youth transferred from Rikers Island; additionally, Horizon operates as a secure juvenile detention facility for 17-year-olds being tried as adults in the intervening period before Raise the Age’s full implementation in October of 2019. The Crossroad facility in Brooklyn is used as a SSD to detain pre-adjudication JDs, and 16-year-old AOs in a separate areas of the facility.

1. **Court Processing and Raise the Age**

The implementation of Raise the Age has taken place amidst a concurrent decline in

arrests and criminal court cases citywide. Those trends have certainly effected the Raise the Age population, but nevertheless the implementation of the legislation has created challenges and issues. The racial disparities evident in the adult system are also present for youth.

* 1. **Trends in Juvenile Arrests**

Arrests of individuals 15-years-old and younger have decreased more than 55% over the last five years – a decrease of 68% for misdemeanors and 41% for felonies.[[27]](#footnote-27) For 16-year-olds, the overall drop in arrests has been 60%; 69% for misdemeanors and 35% for felonies. For 17 year olds, arrests over that timespan dropped 58% - by 67% for misdemeanors and 29% for felonies. While there has been a corresponding drop in arrests citywide, the decrease in youth arrests is far greater. It is unclear whether this decrease in arrests is linked to Raise the Age– the decline continued for 17-year-olds even before they were included in the legislation. However the number of monthly arrests have not steadily continued to decline since RTA took effect; instead there are significant fluctuations month-to-month.[[28]](#footnote-28)

b. **Charge and Demographics**

According to an August 2019, report issued by the New York State Raise the Age Taskforce, the majority of AO arrests in New York City in the first six months of RTA were violent felony arrests. Of the 603 total AO arrests, 361 were violent felony arrests (with robbery accounting for 64% of those arrests) and 242 were non-violent felony arrests (with larceny comprising nearly 50% of those arrests).[[29]](#footnote-29) Moreover, about 66% and 27% of AO arrests in New York City during that period were Black and Latino, respectively, while over 86% of AO arrests where male and 14% female.[[30]](#footnote-30)

According to a DCJS report, there were 946 AO arrests (16- and 17-years olds charged with a felony offense) in New York City in the first nine months of RTA.[[31]](#footnote-31) Brooklyn had the highest number of AO arrests (340) followed by Manhattan (227), Bronx (176), Queens (157) and Staten Island (43).[[32]](#footnote-32)

 **c. Arraignment**

Across New York City, most adults are generally arraigned within 21 hours following their arrest.[[33]](#footnote-33) For youth, indigent service providers report that it often takes well more than 24 hours to be arraigned, and that much of that wait time consists of youth being chained to a desk at a precinct because NYPD does not have a secure pre-arraignment detention facility for youth.[[34]](#footnote-34) The majority of these cases are not arraigned in Youth Parts, but instead in regular criminal court arraignments on nights and weekends when the Youth Part is not is session. According to The City’s analysis of data from the Office of Court Administration, only 32% of youth were arraigned in a Youth Part, and youth arraigned in outside of a Youth Part were more likely to have bail set and be detained.[[35]](#footnote-35)

**d. Court Process**

The majority of cases involving 16- and 17-year-olds who have allegedly engaged in otherwise criminal conduct are being heard in Family Court, with the potential to be transferred to newly established Youth Parts within the adult criminal court system. All misdemeanors, other than Vehicle and Traffic Law offenses, are now designated JDs and stay in Family Court.[[36]](#footnote-36) All felony cases originate in the Youth Part of the adult criminal court, with provisions requiring that non-violent felonies be transferred to the Family Court unless the District Attorney files a motion within 30 days showing “extraordinary circumstances” as to why the case should remain in the Youth Part.[[37]](#footnote-37) Violent felonies—excluding offenses involving the display of a deadly weapon, causing significant physical injury, or the engagement of unlawful sexual conduct—are also subject to motion for transfer from the Youth Part to the Family Court unless the District Attorney files a motion within 30 days demonstrating “extraordinary circumstances” as to why the case should remain in the Youth Part.[[38]](#footnote-38)

Generally, judges remove AOs to Family Court – 79% of the time citywide.[[39]](#footnote-39) However, there is substantial discrepancy in rates of removal based on borough– in Brooklyn, judges remove 92% of the time, while in Queens they only remove 57% of cases.[[40]](#footnote-40) This is despite the fact that the statute governing removal is relatively clear, cases must be removed unless there are “extraordinary circumstances,” or a “serious physical injury[[41]](#footnote-41)” – this is not legislation, like the amount of cash-bail requested, where the wording is loose enough to foreseeably allow for broad disparities. Instead, a 35% difference may suggest stark borough-by-borough differences in the use of prosecutorial discretion—in when they consent to removal to family court— and judicial culture.

1. **Jail Conditions in Horizon**

*Variances on Board of Correction Minimum Standards*

The DOC has asked for several continuing variances from Board of Correction (“BOC”) minimum standards on Horizon due to “a number of reasons, most prominently related to physical design and space, but also based on differing models between the adult and juvenile justice systems.”[[42]](#footnote-42) Variances to four BOC minimum standards are currently in effect in the areas discussed below.

* **Access to Law Libraries**: Although the BOC rules require that all correctional facilities maintain a library in a separate area that is open for five days per week and one weekend, the BOC has granted a variance to allow legal coordinators in Horizon to assist youth with research for a minimum of 2 hours per day, 7 days per week.[[43]](#footnote-43)
* **Limitations on Correspondence**: While the BOC minimum standards require that people in custody be entitled to correspond with any person, the BOC has granted a variance to allow the Department to identify individuals with whom mail correspondence is restricted based on the safety and security of the youth.[[44]](#footnote-44) ACS has noted that there is an existing protocol where restriction of correspondence is discussed among youth, their case managers, and their families.[[45]](#footnote-45) Nevertheless, the lack of guidance regarding the criteria for screening of correspondence raises concerns that such a process may be overbroad and punitive.[[46]](#footnote-46)
* **Nursery Program**: Although the BOC minimum standards require that correctional facilities provide childcare and a nursery for women in custody who give birth, the Board has granted a variance to allow Horizon to continue operating without a nursery available for women in custody who give birth.[[47]](#footnote-47) While ACS has noted that it has not had any youth give birth while in custody, its plan in the event that a late-term pregnant youth is admitted to Horizon is to “make an individualized assessment to determine the best interest of the baby once the child is born.”[[48]](#footnote-48)
* **Dry Cells:** The BOC minimum standards require single-occupancy cells to be equipped with a toilet and sink with potable water. Rather than retrofit Horizon to include toilets and potable water, the Board has granted the Department a variance requiring unit staff to instead escort youth to bathrooms and drinking water within 5 minutes of a request.[[49]](#footnote-49)

*Violence at Horizon*

 From October 2018 to June 2019, rates of violence at Horizon have remained high, despite a decrease from 70 children in custody to 55 by the end of the Nunez Monitor’s reporting period.[[50]](#footnote-50) While the rate of youth – on- youth violence has remained the same throughout the monitoring period, use of force by staff increased.[[51]](#footnote-51) The Nunez monitor attributed these increases to failures of unit staff to provide individual-level systems for incentivizing positive behavior, staff’s lack of skill in developing relationships with children in custody and their tendency “to either over – or under-react to escalating tensions,” lack of implementation of classification systems for maximum vs. minimum custody youth, and ineffective usage of room confinement.[[52]](#footnote-52)



*Source: Eighth Report of the Nunez Independent Monitor, p 222*

1. **Finance Background**

The Fiscal 2019 Executive Budget added significant resources to ACS, including $51.3 million in Fiscal 2019, $84.7 million in Fiscal 2020, and $100.6 million in Fiscal 2021 and in the outyears. The Fiscal 2020 budget includes $24.5 million for full-time positions within Secure Detention. This funding will support ACS’ goal of hiring 700 Youth Development Specialists (YDS) to staff Horizon and Crossroads juvenile facilities in Fiscal 2020.

The absorption of a larger population of older youth has also placed greater demands on ACS’ Capital Commitment Plan, which includes $205 million for juvenile justice facility renovations. As of November 2019, ACS has spent nearly $142 million to date on the DYFJ capital projects, approximately $78.5 million at Horizon and $63.2 million at Crossroads. Phase 1 construction, including security and building systems upgrades, is expected to be completed in March 2020. The outdoor basketball court and grass field areas are currently in use at Horizon. Phase 2, which includes renovations and additions to facilities for programming, will continue through Fiscal 2022.

Raise the Age impacts the rest of the juvenile justice system, including Close to Home, when children exit detention and require placement services, or are ordered to engage in alternatives to detention. The Close to Home program, including non-secure placement, limited-secure placement, and aftercare programs, has Fiscal 2020 budget of approximately $72 million. ACS’s contracts with non-secure placement total $49 million, with $23 million budgeted for limited-secure placements. ACS’ budget for Close to Home has increased to accommodate the anticipated costs associated with Raise the Age. In Fiscal 2019, ACS’ Close to Home budget increased by nearly $14.8 million and increased in Fiscal 2020 by over $11 million. The average daily rate per placement bed is $663 per day or $242,000 annually. ACS funds providers for their current capacity, rather than their current census, citing the need for providers to be ready to accept youth placed in their care with appropriately trained staff in restrictive settings.

The City does not meet the eligibility criteria to access nearly all State Raise the Age funding, which requires counties to be under the two percent property tax cap or demonstrate financial hardship

1. **Issues and Concerns**

At today’s hearing, the Committees hope to learn about the Administration’s progress to facilitate the successful and complete implementation of Raise the Age. The Committees are interested to learn more about the challenges ACS/DYFJ is facing in overseeing detainment of the City’s juvenile justice population. Specifically, the Committees are interested in hearing from the Administration regarding plans for the staffing of City juvenile detention facilities, including updates on the training and deployment of new ACS Youth Development Specialists and plans regarding the anticipated role of DOC in juvenile facilities moving forward. Furthermore, the Committees are interested to hear about the plans for the future landscape of the juvenile justice continuum in New York City; including identified gaps in services and implementation obstacles faced due to required multi-agency collaboration. Lastly, aside from the logistic implementation of raising the age of criminal responsibility, the Committee wants to fully understand how raising the age has created positive impacts and opportunities for not only court involved youths, but also broader societal impacts of the legislation.

1. **Analysis of Int. No. 1628**

Section 1 of the bill amends existing reporting requirements related to demographic data of the juvenile justice system. Specifically, such reports would be amended to more closely reflect changes in legal classifications resulting from Raise the Age and to include additional information on individuals in detention and lengths of detention.

Section 2 of the bill amends existing reporting on use of force and related incidents within juvenile justice facilities. Specifically, reporting would include information on: causes of physical injuries to detained youth, serious physical injury to staff, the use of oleoresin capsicum spray, and the activation of alarm systems and crisis intervention teams.

Section 3 of the bill establishes new reporting on the staffing of juvenile detention facility. Specifically, new reporting would include information on the deployment of Department of Correction and ACS staff within juvenile facilities and the job titles of such staff.

Section 4 of the bill establishes new reporting requirements for the Department of Probation related to juvenile populations served by the agency. Specifically, new reporting would include the adjustment and diversion of youth, referral to the Law Department for presentment, and risk assessment indicators of detained youth.

Sections 5 and 6 of the bill amend existing reporting by the Mayor’s Office of Criminal Justice related to the court processing, demographics, and charging of youth in both criminal and Family Court.

This bill would take effect immediately, except that sections 1 and 2 would take effect on January 1, 2020.

Int. No. 1628

By Council Members Salamanca and Ampry-Samuel

A LOCAL LAW

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring the administration of children’s services and the department of probation to report on juvenile justice statistics

..Body

Be it enacted by the Council as follows:

Section 1. Section 21-905 of the administrative code of the city of New York is amended to read as follows:

§21-905[.] Demographic Data of the Juvenile Justice System. By January 15, 2020, and no later than 15 days after the end of each subsequent month thereafter, ACS shall submit a report related to demographics data of the juvenile justice system to the council and post such report permanently on ACS’s website. All data contained in such report shall be in a machine-readable format and include a comparison of the current reporting period to the prior four reporting periods, where such information is available. The information required pursuant to this section for each reporting period shall be accessible through the NYC Open Data website. Such report shall include, but need not be limited to, the following information:

a. Admissions to Detention Facilities.

1. [By September 30 of each year, ACS shall post a report on its website regarding the] The total number of admissions in the previous [fiscal year] month to the following facilities:

i. secure detention facilities, in total and disaggregated by facility; [and]

ii. non-secure detention facilities, in total and disaggregated by facility;

iii. specialized secure detention facilities, in total and disaggregated by facility; and

iv. specialized juvenile detention facilities, in total and disaggregated by facility.

2. The data provided pursuant to paragraph one of subdivision a of this section shall be disaggregated by the following factors:

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, further disaggregated by the youth’s age, gender and race; [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, further disaggregated by the youth’s age, gender and race[.];

vii. whether such youth have any prior contact with ACS, including but not limited to foster care cases; and

viii. whether such youth have any prior contact with the Department of Probation.

b. Demographic Data for Detention Facilities.

1. [By September 30 of each year ACS shall post a report on its website regarding the] The average daily population in the previous [fiscal year] month in the following facilities:

i. secure detention facilities, in total and disaggregated by facility; [and]

ii. non-secure detention facilities, in total and disaggregated by facility;

iii. specialized secure detention facilities, in total and disaggregated by facility; and

iv. specialized juvenile detention facilities, in total and disaggregated by facility.

2. [By September 30 of each year ACS shall post a report on its website regarding the] The number of youth admitted to a detention facility during the previous [fiscal year] month who spent time either in non-secure detention only, secure detention only, specialized secure detention only, [or] both non-secure and secure detention, both non-secure and specialized secure detention, or both secure and specialized secure detention, in total and disaggregated by the following factors:

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[.];

vii. whether such youth have any prior contact with ACS, including but not limited to foster care cases; and

viii. whether such youth have any prior contact with the Department of Probation.

3. During the prior month, the average and median bail amounts imposed by the criminal court on youth in ACS custody, and the percentage of youth in ACS custody who were remanded by the criminal court to detention without imposing bail, disaggregated by juvenile offenders, adolescent offenders, and seventeen year olds remanded to detention before October 1, 2019.

4. The total number of Adolescent Offenders in the facility on the last day of the reporting period who are serving a sentence in specialized secure detention, further disaggregated by top charge at sentencing, age, gender, and race.

c. Admissions to Placement Facilities.

1. [By September 30 of each year, ACS shall post a report on its website regarding the] The total number of placement admissions in the previous [fiscal year] month in the following facilities:

i. non-secure placement facilities, in total and disaggregated by facility; [and]

ii. limited-secure placement facilities, in total and disaggregated by facility; and

2. The data provided pursuant to paragraph one of subdivision c of this section shall be disaggregated by the following factors:

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 in accordance with subdivision six of section four hundred and four of the New York state social services law; [and]

viii. for youth ordered to a placement facility by a court, the most serious offense adjudicated against such youth by the court;

ix.   whether such youth have any prior contact with ACS, including but not limited to foster care cases; and

x. whether such youth have any prior contact with the Department of Probation.

d. Demographic Data for Placement Facilities.

1. [By September 30 of each year, ACS shall post a report on its website regarding the] The average daily population in the previous [fiscal year] month in the following facilities:

i. non-secure placement facilities, in total and disaggregated by facility; and

ii. limited-secure placement facilities, in total and disaggregated by facility.

2. [By September 30 of each year, ACS shall post a report on its website the] The number of youth admitted to a placement facility during the previous [fiscal year] month who spent time either in non-secure placement only, limited secure placement only, or both non-secure and limited secure placement, disaggregated by the following factors:

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 remanded to a detention facility by a court, the most serious offense adjudicated against such youth by the court[.];

vi.   whether such youth have any prior contact with ACS, including but not limited to foster care cases; and

vii. whether such youth have any prior contact with the Department of Probation.

e. Data on Transfers.

1. [By September 30 of each year, ACS shall post a report on its website regarding the] The total number of youth who have been transferred during the previous [fiscal year] month from:

i. a non-secure detention facility to a secure detention facility;

ii. a secure detention facility to a non-secure detention facility;

iii. a non-secure placement facility to a limited secure placement facility;

iv. a non-secure placement facility to a secure placement facility;

v. a limited secure placement facility to a non-secure placement facility;

vi. a limited secure placement facility to a secure placement facility;

vii. a secure placement facility to a limited secure placement facility; [and]

viii. a secure placement facility to a non-secure placement facility;[.]

ix. a specialized secure detention facility to a secure detention facility; and

x. a specialized secure detention facility to a non-secure detention facility;

2. The data provided pursuant to paragraph one of subdivision e of this section shall be disaggregated by the following factors:

i. age;

ii. gender; and

iii. race.

 [f.   *Interim Reports.*

1.   On or before September 30, 2013, ACS shall post a report on its website regarding the total population in non-secure placement facilities as of the last day of every month during the previous fiscal year.

2.   No more than one year after ACS begins operating limited secure placement facilities, ACS shall post a report on its website regarding:

i.   the total number of admissions to such facilities in the first nine months of their operation, disaggregated by the following factors:

(a)   age;

(b)   gender;

(c)   race; and

(d)   youth who were transferred to an ACS placement facility from the custody of the New York state office of children and family services in accordance with subdivision six of section four hundred and four of the New York state social services law;

ii.   the total population in such facilities as of the last day of every month during the first nine months of their operation; and

iii.   the number of youth admitted to such facilities during the first nine months of their operation who, during that period, spent time either in non-secure placement only, limited secure placement only, or both non-secure and limited secure placement, disaggregated by the following factors:

(a)   age;

(b)   gender;

(c)   race;

(d)   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

(e)   for youth ordered to a placement facility by a court, the most serious offense adjudicated against such youth by the court.]

f. Pre-sentence data.

1. The number of youth housed in non-secure, secure, specialized secure, and specialized juvenile detention facilities pre-sentencing, in total and disaggregated by the following factors, as defined in the New York state family court act and criminal procedure law:

i. juvenile delinquents, in total and disaggregated by facility;

ii. juvenile offenders, in total and disaggregated by facility;

iii. adolescent offenders, in total and disaggregated by facility;

iv. youth transferred from the custody of the Department of Correction on October 1, 2018; and seventeen year olds remanded to detention on or after October 1, 2018 and before October 1, 2019.

2. The data provided pursuant to paragraph one of subdivision f of this section shall be disaggregated by the following factors:

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. the most serious charged offense on the court petition, complaint or indictment, or top arrest charge at the time ACS assumed custody; and

vi. the average, median, minimum and maximum length of detention, as well as the standard deviation for pre-sentencing or pre-disposition youth.

§ 2. Section 21-906 of the administrative code of the city of New York is amended to read as follows:

§ 21-906[.] Incident Reports in Juvenile Justice Facilities.

a. Quarterly Incident Reports.

1. [Within sixty days after the end of each quarter of the fiscal year, ACS shall post a report on its website based on data from the previous quarter that shall contain the] By January 15, 2020, and no later than 15 days after the end of each subsequent quarter thereafter, ACS shall submit a report related to incidents occurring in juvenile justice facilities to the council and store it permanently on ACS’s website. All data contained in such report shall be in a machine-readable format and include a comparison of the current reporting period to the prior four reporting periods, where such information is available. The information required pursuant to this section for each reporting period shall be accessible through the NYC Open Data website. Such report shall include, but need but be limited to, the number of the following incidents:

i. use of physical restraint by 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, disaggregated by cause;

viii. serious physical injury to staff;

[viii] ix. biased-based incidents as reported by a child; [and]

x. the number of room confinements and the average length of stay for [each] such confinements [.];

xi. alarm system activity; and

xii. deployment of a dedicated unit of ACS personnel trained to respond to violent incidents, or a department of correction crisis response team.

2. The data provided pursuant to paragraph one of subdivision a of this section shall be disaggregated by the following factors:

i. [each] secure detention facilitie[y], in total and disaggregated by facility;

ii. non-secure detention facilities, in total and disaggregated by facility;

iii. non-secure placement facilities, in total and disaggregated by facility; [and]

iv. limited secure placement facilities, in total and disaggregated by facility;

v. specialized secure detention facilities, in total and disaggregated by facility;

vi. specialized juvenile detention facilities, in total and disaggregated by facility;

vii. whether the child involved in the incident was an adolescent offender, juvenile offender, juvenile delinquent, or youth transferred from the custody of the Department of Correction on October 1, 2018, or a seventeen year old remanded to detention on or after October 1, 2018 and before October 1, 2019; and

vii. where applicable, whether the staff involved in the incident was ACS or DOC staff, or both.

3. For each incident reported pursuant to subparagraphs xiii of paragraph 1 of subdivision a of this section, such report shall include the facility, duration and reason for each such room confinement. For each incident reported pursuant to subparagraph xiv of paragraph 1 of subdivision a of this section, such report shall include the facility and reason for each such alarm system activation.

b.   Annual incident reports.

1.   Within sixty days after the end of each fiscal year, ACS shall post a report on its website containing the following data:

i.   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

ii.   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.

2.   The data provided pursuant to paragraph one of subdivision b of this section shall be disaggregated by the following factors:

i.   [each] secure detention facilities[y], in total and further disaggregated by facility;

ii.   non-secure detention facilities, in total and further disaggregated by facility;

iii.   non-secure placement facilities, in total and further disaggregated by facility; [and]

iv.   limited secure placement facilities, in total and further disaggregated by facility;[.]

v. specialized secure detention facilities, in total and further disaggregated by facility; and

vii. specialized juvenile detention facilities, in total and further disaggregated by facility.

c. Oleoresin Capsicum Spray. If, at any time, the City obtains a waiver pursuant to section 180-3.19 of title 9 of the New York codes, rules and regulations, permitting ACS or the department of correction to use oleoresin capsicum spray in a specialized secure detention or specialized juvenile detention facility, ACS shall post public notice of such waiver on their website no later than 5 days following the receipt of such waiver. Beginning January 15, 2020, and 15 days after the end of each month ACS shall report on all incidents in which oleoresin capsicum spray was used in a juvenile facility, including but not limited to the following information:

i. the date and time of such use;

ii. the number of youth exposed to oleoresin capsicum spray;

iii. the age of such youth(s) exposed;

iv. the number of each ACS or DOC personnel involved in the incident;

v. the number of youth requiring medical attention after such incident; and

vi. the facility where such incident occurred.

§3. Title 21 of the administrative code of the city of New York is amended by adding a new section 21-919 to read as follows:

§21-919 Juvenile Justice Facility Staffing.

a. Within 15 days of January 1, 2020, and no later than 15 days after the end of each subsequent month thereafter, ACS shall submit a report to the council and post such report on its website regarding the average number of staff members in the previous month deployed to the following facilities:

1. Secure detention, in total and disaggregated by facility;

2. Specialized secure detention, in total and disaggregated by facility; and

3. Specialized juvenile detention, in total and disaggregated by facility.

b. The data provided pursuant to subdivision a for specialized juvenile detention shall be further disaggregated by the average number of department of correction staff and ACS staff, in total and disaggregated by tour and job title.

§4. Title 9 of the administrative code of the city of New York is amended by adding a new section §9-206 to read as follows:

§9-206 Youth probation report.

a. Definitions. Adjust. The term “adjust” has the same meaning as the process described in section 308.1 of the New York family court act, or any successor statute.

Juvenile delinquent. The term “juvenile delinquent” has the same meaning as described in the New York family court act, or any successor statute.

b. Within 15 days of January 15, 2020, and no later than 15 days after the end of each subsequent month thereafter, the department of probation shall submit to the council and post on its website a report on the number of cases in the previous month in the following categories: (i) juvenile delinquents under 16 years of age whose cases originate in family court; (ii) juvenile delinquents under 16 years of age whose cases were transferred to family court from the youth part of criminal court; (iii) youth 16 and 17 years of age whose cases originate in family court; (iv) youth 16 and 17 year of age whose cases were transferred from the youth part of criminal court to family court. This information shall be reported in total and disaggregated by the following factors:

1. The total number of youth screened for adjustment in family court, and further disaggregated by age, gender, race, the most serious offense, and age at time of interview.

2. The total number of individuals whose cases have been adjusted, and further disaggregated by age, gender, race, the most serious offense, and age at time of interview.

3. The average number of days elapsed from an individual’s arrest to adjustment interview.

4. The reasons stated for not adjusting an individual, and further disaggregated by age, gender, race, the most serious offense, and age at the time of arrest.

5. The number of individuals who successfully complete adjustment and have their cases diverted.

6. The number of individuals who are referred from the department of probation to the law department for failure to follow conditions of adjustment.

7. The number of individuals receiving probation services.

8. The number of individuals detained, disaggregated by age, gender, race, the most serious offense, risk level score, and age at the time of risk assessment interview.

9. The percent of dispositional recommendations for placement, disaggregated by age, gender, and race.

§ 5. Subdivision a of section 9-306 of the administrative code of the city of New York, as added by local law number 86 for the year 2015 and renumbered by local law number 25 for the year 2018, is amended to read as follows:

a. Within 90 days of the beginning of each reporting period, the office of criminal justice shall post on its website a report regarding bail and the criminal justice system for the preceding reporting period. The reporting period for paragraphs 1, 3, 14, [and] 15, 34, 35, 36, and 37 of this subdivision is quarterly, the reporting period for paragraphs 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 16 is semi-annually, and the reporting period for paragraphs 17 through 33 is annually. The information required pursuant to paragraphs 34-37 shall be stored permanently and shall be accessible through the NYC Open Data website, and shall be provided in a format that permits automated processing. For the purposes of this subdivision, any inmate incarcerated on multiple charges shall be deemed to be incarcerated only on the most serious charge, a violent felony shall be deemed to be more serious than a non-violent felony of the same class, any inmate incarcerated on multiple charges of the same severity shall be deemed to be held on each charge, any inmate incarcerated on multiple bail amounts shall be deemed to be held only on the highest bail amount, any inmate held on pending criminal charges who has a parole hold shall be deemed to be held only on the parole hold, any inmate held on pending criminal charges who has any other hold shall be deemed to be held only on the pending criminal charges, and any inmate incarcerated on multiple cases in which sentence has been imposed on at least one of such cases shall be deemed to be sentenced. Such report shall contain the following information, for the preceding reporting period or for the most recent reporting period for which such information is available, to the extent such information is available:

§ 6. Subdivision a of section 9-306 of the administrative code of the city of New York is amended by adding new paragraphs 34 through 37 to read as follows:

34. The number of violent felonies filed against 16 and 17 year olds in criminal court, in total and disaggregated by age at time of charge, gender, race, age at the time of the charge, county, and most serious offense.

35. The number of violent felonies removed to family court from criminal court, in total and disaggregated by age at time of charge, gender, race, age at the time of the charge, county, and most serious offense.

36. The total number of non-violent felonies filed against 16 and 17 year olds in criminal court, in total and disaggregated by age at time of charge, gender, race, age at the time of the charge, county, and most serious offense.

37. The number of non-violent felonies removed to family court from criminal court, in total and disaggregated by age at time of charge, gender, race, age at the time of the charge, county, and most serious offense.

§ 6. This local law takes effect immediately, except that sections 1 and 2 of this local law take effect on January 1, 2020.

1. N.Y. Fam. Ct. Act §115(a)(vi). [↑](#footnote-ref-1)
2. N.Y. Fam. Ct. Act §301.2(1). [↑](#footnote-ref-2)
3. N.Y. Fam. Ct. Act §353.3(5). [↑](#footnote-ref-3)
4. N.Y. Fam. Ct. Act §353.3(5). [↑](#footnote-ref-4)
5. N.Y. Fam. Ct. Act §353.5(4). *See* N.Y. Fam. Ct. Act §301.2(8) for the designated felonies. [↑](#footnote-ref-5)
6. DOP plays a significant role in New York City’s juvenile justice system. After the initial arrest, DOP interviews the youth and other stakeholders to determine whether the case should be dismissed, adjusted (diverted from court) or referred to the Law Department for prosecution in the Family Court. *See* Mayor’s Office of Criminal Justice, October 2019 Report “Raise the Age in New York City,” available at: <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/11/Raise-the-Age-in-New-York-City.pdf>. [↑](#footnote-ref-6)
7. N.Y. Fam. Ct. Act §380.1. [↑](#footnote-ref-7)
8. N.Y. Fam. Ct. Act §375.2. [↑](#footnote-ref-8)
9. “Division of Juvenile Justice and Opportunities for Youth: 2015 Annual Report Youth in Care” NYS Office of Children and Family Services available at <http://ocfs.ny.gov/main/reports/Youth_In_Care_Report.pdf> [↑](#footnote-ref-9)
10. “Perceived Barriers to Mental Health Services Among Detained Youth” U.S. Department of Justice Office of Justice Programs September 2015 *available at* <https://www.ojjdp.gov/pubs/248522.pdf> [↑](#footnote-ref-10)
11. *Id.* at 2 [↑](#footnote-ref-11)
12. Campaign for Youth Justice, *State Trends: Legislative Victories from 2005 to 2010 Removing Youth from the Adult Criminal Justice System,* at 11, April 2011. [↑](#footnote-ref-12)
13. “Detained Youth Processed in Juvenile and Adult Court: Psychiatric Disorders and Mental Health Needs” U.S Department of Justice Office of Justice Programs September 2015 *available at* <https://www.ojjdp.gov/pubs/248283.pdf> [↑](#footnote-ref-13)
14. Kramer, Abigail “Closing in On Closer to Home: NYC to Open New Juvenile Justice Homes” *available at* <http://www.centernyc.org/closing-in-on-close-to-home> [↑](#footnote-ref-14)
15. King, Loretta “Investigation of the Lansing Residential Center, Louis Gossett, Jr. Residential Center, Tryon Residential Center, and Tyron Girls Center” United States Department of Justice Civil Rights Division August 2009 *available at* <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/NY_juvenile_facilities_findlet_08-14-2009.pdf> [↑](#footnote-ref-15)
16. *Supra* note 20 [↑](#footnote-ref-16)
17. Fiscal 2019 Mayor’s Management Report, *available at* <https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2019/acs.pdf> [↑](#footnote-ref-17)
18. See A3009/S2009, Part WWW; available at: <http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A03009&term=2017&Summary=Y&Memo=Y&Text=Y> (last accessed on December 4, 2017). [↑](#footnote-ref-18)
19. “For 13-year-olds, these felonies include murder or a sexually motivated felony; for 14- and 15-year-olds, these felonies include murder (including attempted), kidnapping (including attempted), arson, assault, manslaughter, rape, criminal sexual act, aggravated sexual abuse, burglary, robbery, and weapon possession.” See <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/10/Raise-the-Age-in-New-York-City.pdf> [↑](#footnote-ref-19)
20. *Id* at page 10 [↑](#footnote-ref-20)
21. Id. §36-a. (See A3009/S2009, Part WWW; available at: <http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A03009&term=2017&Summary=Y&Memo=Y&Text=Y> (last accessed on December 4, 2017).) [↑](#footnote-ref-21)
22. Id. [↑](#footnote-ref-22)
23. Id. §79. [↑](#footnote-ref-23)
24. Id. [↑](#footnote-ref-24)
25. Id. [↑](#footnote-ref-25)
26. MOCJ testimony provided to the Juvenile Justice Committee on 9.20.18 [↑](#footnote-ref-26)
27. “Report: Raise the Age in New York City,” October 2019, available at: <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/10/Raise-the-Age-in-New-York-City.pdf> [↑](#footnote-ref-27)
28. Id. [↑](#footnote-ref-28)
29. New York State Raise The Age Implementation Taskforce, First Annual Report, August 2019, p. 49, available at <https://www.ny.gov/sites/ny.gov/files/atoms/files/NYS_RTA_Task_Force_First_Report.pdf> [↑](#footnote-ref-29)
30. Id, p. 48. [↑](#footnote-ref-30)
31. New York State Department of Criminal Justice Services (DCJS), Quarterly Update of Juvenile Offender/Adolescent Offender Arrests and Youth Part Court Activity, Aug. 8, 2018,available at <https://www.criminaljustice.ny.gov/crimnet/ojsa/rta_quarterly_oct18_jun19.pdf> [↑](#footnote-ref-31)
32. Id. [↑](#footnote-ref-32)
33. <https://www.nytimes.com/2014/03/20/nyregion/new-york-courts-meet-elusive-goal-from-arrest-to-arraignment-in-under-24-hours.html> [↑](#footnote-ref-33)
34. <https://thecity.nyc/2019/08/some-teen-defendants-still-treated-like-adults-despite-law.html> [↑](#footnote-ref-34)
35. Id. [↑](#footnote-ref-35)
36. Id. § 1. [↑](#footnote-ref-36)
37. Id. [↑](#footnote-ref-37)
38. Id. [↑](#footnote-ref-38)
39. Page 22 <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/10/Raise-the-Age-in-New-York-City.pdf> [↑](#footnote-ref-39)
40. Mayor’s Office of Criminal Justice, Report: Raise the Age in New York City, October 2019, pp. 17-18, available at <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/10/Raise-the-Age-in-New-York-City.pdf> [↑](#footnote-ref-40)
41. Criminal Procedure Law § 722.3 <https://www.nysenate.gov/legislation/laws/CPL/722.23> [↑](#footnote-ref-41)
42. Presentation by Mayor’s Office of Criminal Justice, Department of Correction, and Administration for Children’s Services, Raise the Age Board of Correction Meeting, July 10, 2018, *available at* <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/Raise%20the%20Age_BOC%20Meeting%20Presentation_7.9.18.pdf> [↑](#footnote-ref-42)
43. Board of Correction, Record of Variance Action for November 12, 2019 Public Meeting, *available at* https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20FINAL%20Variance%20Action\_Law-Library.pdf [↑](#footnote-ref-43)
44. Board of Correction, Record of Variance Action for November 12, 2019 Public Meeting, *available at* https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20FINAL%20Variance%20Action\_Correspondence.pdf [↑](#footnote-ref-44)
45. Minutes of June 11, 2019 Board of Correction Hearing, p 9, *available at*  https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/July/june\_11\_2019\_minutes\_final\_draft\_7\_10\_19.pdf. [↑](#footnote-ref-45)
46. Testimony of Children’s Rights,June 10, 2019, *available at* [https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/June/2019.06.10%20Children's%20Rights%20Letter%20to%20the%20BOC%20for%206-11-19%20mtg.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/June/2019.06.10%20Children%27s%20Rights%20Letter%20to%20the%20BOC%20for%206-11-19%20mtg.pdf) [↑](#footnote-ref-46)
47. Board of Correction, Record of Variance Action for November 12, 2019 Public Meeting, *available at https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20RTA%20Nursery%20Variance.pdf* [↑](#footnote-ref-47)
48. Minutes of June 11, 2019 Board of Correction Hearing, p 7, available at https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/July/june\_11\_2019\_minutes\_final\_draft\_7\_10\_19.pdf. [↑](#footnote-ref-48)
49. Board of Correction, Record of Variance Action for November 12, 2019 Public Meeting, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20FINAL%20Variance%20Action_Dry%20Cells.pdf> [↑](#footnote-ref-49)
50. Eighth Report of the *Nunez* Independent Monitor, p 220- 225, *available at* <https://www1.nyc.gov/assets/doc/downloads/pdf/8th_Monitor_Report.pdf> [↑](#footnote-ref-50)
51. *Id.*  [↑](#footnote-ref-51)
52. *Id.*  [↑](#footnote-ref-52)