

Mayor's Office of Criminal Justice
New York City Council
Committee on the Justice System
Committee on Criminal Justice
Oversight: Implementation and Expansion of Raise the Age
December 3, 2019

Good morning, Chair Lancman, Chair Powers, and members of the Justice System Committee and Criminal Justice Committee. My name is Jordan Stockdale, and I am the Deputy Executive Director for Close Rikers in the Mayor's Office of Criminal Justice (MOCJ). Thank you for the opportunity to testify today. Chatodd Floyd, MOCJ's Director of Intergovernmental Affairs, is here with me as well to answer questions.

New York City has long been a supporter of treating 16 and 17 year olds more appropriately within the juvenile justice system, and applauded the State for its passage of Raise the Age in April of 2017. This important reform came amid a rapidly shrinking juvenile justice system, and its success builds on ongoing efforts to treat young people fairly and appropriately in New York City. Following broader trends in the criminal justice system, from 2014 to 2018 the number of 16- and 17-year-olds in custody dropped 55% (from 239 in 2014 to 107 in 2018), and the number of children in juvenile detention dropped 65% (from 198 in 2014 to 70 in 2018), even as our overall crime rate continued its downward trend.

Since the State passed the Raise the Age legislation in April 2017, the Mayor's Office of Criminal Justice began leading a planning process with the participation of relevant city agencies, the courts, District Attorneys (DAs), Public Defenders and non-profit providers. As part of this effort, our office formed working groups focused on Court Processing, Programming and Diversion, Data Analytics, and Facilities. Central to this work was a recognition of key values that anchored our implementation of Raise the Age:

- **Fairness:** Justice outcomes for 16- and 17-year-olds should improve following the implementation of Raise the Age, not worsen.
- **Safety:** Detain or incarcerate children no more than absolutely necessary. Incarceration is not an appropriate response for children with challenging needs who have no place to go.
- **Continuity:** Whenever possible, ensure continuity of defense counsel, court of record, and prosecutorial agency.
- **Speed:** Remove appropriate cases from the Superior Court Youth Part to the Family Court system in a swift and timely manner.

Fewer kids arrested, fewer kids in detention, and safer streets – this is the story of Raise the Age. While arrests of young people have declined precipitously throughout this administration, since Raise the Age was passed, we've seen even greater declines. As detailed in our recent report, in the first 9 months of Raise the Age, misdemeanor arrests of 16 year olds declined by **61%** and for 17 year olds **32%**. Felony arrests declined by **21%** during the same time period for 16 year olds. Moreover, during the same time period, the average daily population of youth ages 17 and under in adolescent or juvenile detention facilities declined by **30%**.

Over the past two years we have been working to prepare for the implementation phases and make system improvements to our facilities necessary for effective implementation of the law. As you know, prior to October of 2018 the City moved all 16- and 17-year-olds out of jails on Rikers Island and into Horizon, a facility specialized for juveniles and adolescents. From that point onward, all 16- and 17-year-olds detained in New York City have been housed in Horizon or Crossroads -- the City's two age appropriate facilities dedicated to this purpose -- or non-secure detention.

The Raise the Age legislation also created new court processes. As of October 1, 2019, 16- and 17-year-olds arrested on misdemeanor charges for offenses occurring on or after that date, automatically go to Family Court. Those who are charged with felonies, as well as individuals under 16 years of age charged with specific serious felonies, are arraigned in the new Youth Part in Superior Court of each borough. Youth Part judges received specialized training in adolescent development from the Office of Court Administration. In order for a case to remain in the Youth Part, a District Attorney must demonstrate that extraordinary circumstances exist that should prevent the removal of the case to the Family Court. While a case is pending in the Youth Part, a judge will decide whether to release the youth with no conditions, set bail, place that person under community supervision, or remand (hold in detention without setting bail). If, after a finding of guilt, the judge imposes a sentence of incarceration, the young person will serve the sentence locally or at an OCFS facility. The development of this entire new court system with accompanying court processes required significant coordination among the courts and numerous city agencies. It is notable that during the first year of Raise the Age, approximately 80% of adolescent offender cases arraigned in Youth Part were removed to Family Court.

Young people designated as juvenile delinquents (JDs)—those with cases in Family Court—now include most 16-year-olds and 17-year-olds who previously moved through the adult criminal court system. Department of Probation (DOP) staff interview youth charged in family court to determine if the case may be resolved early through a process known as adjustment. When a case is “adjusted” it can be permanently sealed if the young person abides by certain conditions set by DOP. If it is not adjusted, the case is referred to the Law Department, which acts as the “prosecutor” in the case, investigates the allegations against the young person, and then decides whether to proceed with juvenile delinquency charges in Family Court.

Since the passage and implementation of RTA, these judicial decisions can be made outside of the confines of a court's daytime hours, with courts available during nights, weekends, and

holidays. If, after a plea or finding, a Family Court judge enters a formal finding that a youth is a JD, the judge must consider a disposition of the case that represents the least restrictive option consistent with the needs and best interests of the youth and the community. A key difference between the adult systems is that a finding of juvenile delinquency does not result in a criminal conviction. Rather, the goal of the juvenile process in Family Court is to ensure that the final disposition of the case meets the needs and best interests of the young person as well as the community's need for protection.

While the passage and implementation of the Raise the Age has been a remarkable achievement for the City of New York and we're continuing to see the positive impacts of the law, we continue to work on issues as they emerge. At MOCJ we've worked diligently over the past months to address these issues and make necessary system improvements in response. For example, we worked with NYPD, Office of Court Administration (OCA), District Attorneys, Probation and Law Department to reduce the amount of time between arrest and arraignment and to find another entrance point for the Bronx youth part, and to help implement the newly enacted Accessible Magistrate law.

The work continues each and every day and is the result of ongoing collaboration among system partners throughout the city to realize the goals of Raise the Age. Raise the Age has undoubtedly led to fewer youth being arrested, fewer youth being detained, and better, more youth-centric conditions for the smaller number of youth in our custody.

I would like to thank all the advocates who fought for years for this reform. This work is possible because of your efforts.

Thank you for the opportunity to testify here today. I would be happy to answer any questions.

October 2019

Report

Raise the Age in New York City

Trends over the past five years
and the first nine months of
Raise the Age implementation



The City of New York
Mayor Bill de Blasio

NYC[®]

Criminal Justice
Elizabeth Glazer
Director

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Executive Summary

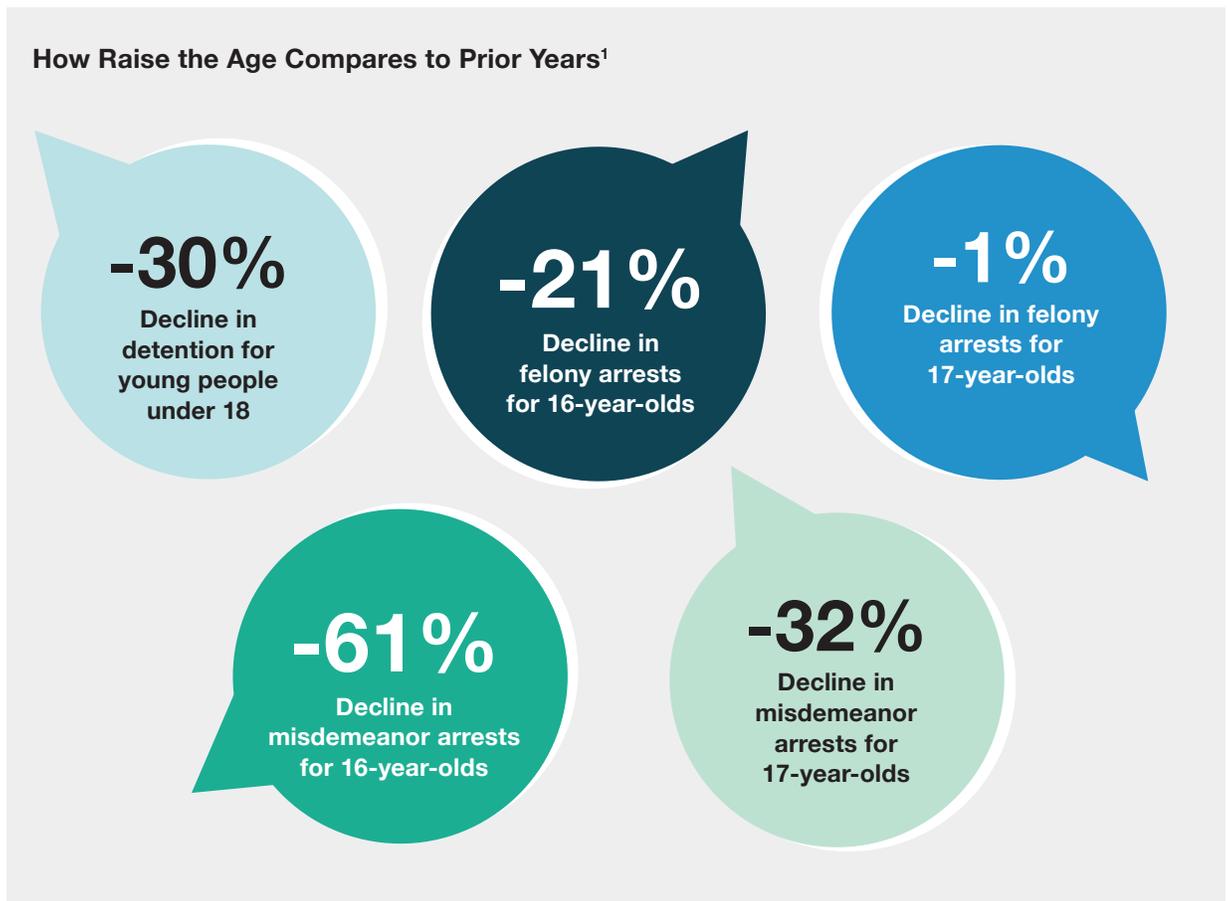
Executive Summary

In April 2017, New York State passed Raise the Age legislation, ending automatic prosecution of 16- and 17-year-olds as adults. In doing so, Raise the Age aimed to go beyond simply changing how young people were being handled by the courts. It also sought to provide age-appropriate services and facilities that would promote an environment focused on wellbeing for young people.

The law went into effect in October 2018 requiring the City to move all 16- and 17-year-olds out of jails on Rikers Island and into more age-appropriate facilities specialized for juveniles and adolescents. The law had a phased implementation with the new system applying to 16-year-olds first and 17-year-olds a year later. Under the new system, most misdemeanors are now handled through Family Court and a new Youth Part was created in the state Supreme Court, where felonies are now arraigned. Judges there decide whether to remove the case to Family Court or to continue to hear them in the Youth Part. During the first year with just 16-year-olds, nearly 80% arraigned in Youth Part were removed to Family Court.

Following broader trends in the criminal justice system, Raise the Age comes amid a rapidly shrinking juvenile justice system. From 2013 to 2018, juvenile arrests—ages 15 and under—dropped by 55%. Over that same time period, adolescent arrests—16- and 17-year-olds—decreased by 60%. Over the first nine months under the new law, declines in misdemeanor arrests of 16-year-olds were 61% lower compared to the same time period from October 2017 to June 2018.

The report describes the impact of Raise the Age in the first nine months of the new system.



¹ Post-RTA implementation arrest declines reflect difference in arrest volume between Oct18-Jun19 and Oct17-Jun18; Post-RTA implementation detention declines reflect difference in detention average daily population between Oct18-Jun19 and Oct17-Jun18.

Overview

Overview

What is Raise the Age?

Raise the Age (RTA) refers to a law passed by New York State in April 2017 that raised the age at which young people are automatically treated as adults in the criminal justice system. The law became effective for 16-year-olds on October 1, 2018 and for 17-year-olds on October 1, 2019. Before RTA passed, 16- and 17-year-olds (adolescents) who entered the criminal justice system were treated as adults throughout the court system and held in adult jails and prisons.

What happens under Raise the Age?

The vast majority of 16- and 17-year-olds' cases are now heard in Family Court, the court that hears most charges against children 7-15 years of age. Depending on the charge, these cases either start in Family Court or in the Supreme Court's Youth Part. Youth Part judges have specialized training in adolescent development. As of October 1, 2019, 16- and 17-year-olds arrested on misdemeanor charges for offenses occurring on or after that date, other than misdemeanors under the Vehicle and Traffic Law, will automatically go to Family Court. Those who are charged with felonies, as well as individuals under 16 years of age charged with specific serious felonies, are arraigned in the Youth Part in each borough.

Young people designated as juvenile delinquents (JDs)—those with cases in Family Court—now include most 16-year-olds and 17-year-olds who previously moved through the adult criminal court system.

Department of Probation (DOP) staff interview youth charged in family court (JDs) to determine if the case may be resolved early through a process known as adjustment. When a case is "adjusted" it can be permanently sealed if the young person abides by certain conditions set by DOP. If it is not adjusted, the case is referred to the Law Department, which acts as the "prosecutor" in the case, investigates the allegations against the young person, and then decides whether to proceed with juvenile delinquency charges in Family Court. The Law Department also retains discretion to divert a case to a community-based program or to decline to prosecute the case entirely. If juvenile delinquency charges are filed and the judge orders the young person to be detained during the remainder of the case, that person can be detained in either non-secure detention (consisting of less restrictive residential group homes) or secure detention (consisting of restrictive facilities typically reserved for the highest-risk young people). Alternatively, a judge may also order that the young person be released to the custody of a parent or guardian or be supervised in the community as part of an Alternative to Detention (ATD) program.

Since the passage and implementation of RTA, these decisions can be made outside of the confines of a court's daytime hours, with courts available during nights, weekends, and holidays. If, after a plea or verdict after trial, a Family Court judge enters a formal finding that a youth is a JD, the judge must consider a disposition of the case that represents the least restrictive option consistent with the needs and best interests of the youth and the community. Options include being released on conditional discharge, probation—which may include supervision in the community through an Alternative to Placement (ATP) program—or placement in a Close to Home facility (small group home in and near New York City).

A key difference between the juvenile system and the adult system is that a finding of juvenile delinquency does not result in a criminal conviction. Rather, the goal of the juvenile process in Family Court is to ensure that the final disposition of the case meets the needs and best interests of the young person as well as the community's need for protection.

Overview

Adolescent Offender (AO) is a category created under Raise the Age to describe adolescents charged with felony offenses. AOs are arraigned in the Youth Part of the Supreme Court.

Many young people initially designated as AOs ultimately have their cases transferred to Family Court by order of the Youth Part judge. Judges remove most non-violent felony cases to Family Court, unless there are “extraordinary circumstances.”² They may also remove violent felony cases to Family Court. District Attorneys have 30 days to decide whether to ask for the case to remain in the Youth Part. In order for a case to remain in the Youth Part, a District Attorney must demonstrate that extraordinary circumstances exist that should prevent the removal of the case to the Family Court. For certain serious felonies, the District Attorney must demonstrate that the youth caused significant physical injury to another, displayed a gun or deadly weapon in furtherance of the offense, or unlawfully engaged in certain sexual conduct.³ While a case is pending in the Youth Part, a judge will decide whether to release the young person with no conditions, set bail, place that person under community supervision, or remand (hold in detention without setting bail). If, after a finding of guilt, the judge imposes a sentence of incarceration, the young person will serve the sentence locally or at an OCFS facility. A sentence one year or less is served at a local secure juvenile facility. A sentence for more than one year is served at a facility managed by the New York State Department of Corrections and Community Supervision with assistance from the Office of Children and Family Services (the state agency that operates residential juvenile justice facilities)

² Criminal Procedure Law §722.23

³ Criminal Procedure Law §722.23(2)(c)

Key Terms

Key Terms

Legal categories of youth

Juvenile Delinquent (JDs): JDs are 7- to 15-year olds arrested on misdemeanors and most felonies whose cases proceed in Family Court. As of October 1, 2019, 16- and 17-year-olds who are arrested on misdemeanor charges are automatically considered JDs. Many 16- and 17-year-olds arrested on felonies (AOs, see below) become JDs because a judge has ordered their cases removed to Family Court.

Juvenile Offenders (JOs): JOs are 13- to 15-year olds charged with certain serious felonies whose cases proceed in the Youth Part. 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.

Adolescent Offenders (AOs): AOs are 16- and 17-year-olds arrested and charged with a felony offense, whose case is heard in the Youth Part of Supreme Court.

Court process under Raise the Age

Adjustment: For cases in Family court, adjustment refers to the early resolution of a case by the Department of Probation after an evaluation that considers the severity of the charge, risk of re-offense and flight, and whether an early resolution of the matter is appropriate, with consideration of the victim's views and the impact of adjustment on the victim and the community. If a juvenile delinquency matter is adjusted, and if the young person successfully completes the adjustment, then their record will be permanently sealed.

Family Court: Following Raise the Age, 16- and 17-year-olds charged as JDs—in addition to youth 15 and under charged as JDs—go through Family Court, which was established to address the needs of young people who, by reason of their legal infancy, cannot be held criminally liable for conduct that, if committed by an adult, would constitute a crime.

Youth Part: A court part established in Supreme Court by Raise the Age legislation to hear cases involving AOs and JOs. Youth Part judges are also Family Court judges.

Key Terms

Detention and placement

Non-Secure Detention: Group home facilities managed by ACS that offer less restrictive settings for JDs who have pending court cases, and who are typically lower-risk.

Secure Detention: Restrictive facilities operated by City agencies that house young people whom a judge has ordered to be detained during the pendency of the Youth Part or Family Court case.

Placement: For cases resulting in a JD finding in Family Court (which is similar to a conviction in criminal court, but which does not result in a criminal record), placement is an incarcerative sentence imposed by the judge.

Close to Home Facilities: Small group homes in or near the five boroughs that house JDs who are in non-secure placement, which are designed to look and feel like a home environment, or limited-secure placement, which have more restrictive security features than non-secure placement facilities.

Administration agencies

New York City Department of Probation (DOP): Among other responsibilities, Probation services reduce recidivism and prevent thousands of young people from experiencing detention through adjusting cases at the front end of the juvenile justice system. Utilizing a wide range of evidence-based supports—including mentoring, therapy and educational services, Probation works at all system points within Family Court and the Youth Parts to keep New York City young people safe in their communities.

New York City Administration for Children's Services (ACS): Among other responsibilities, ACS provides non-secure and secure detention services for justice-involved young people and oversees local Close to Home facilities for those who are ordered to out-of-home placement by a Family Court judge.

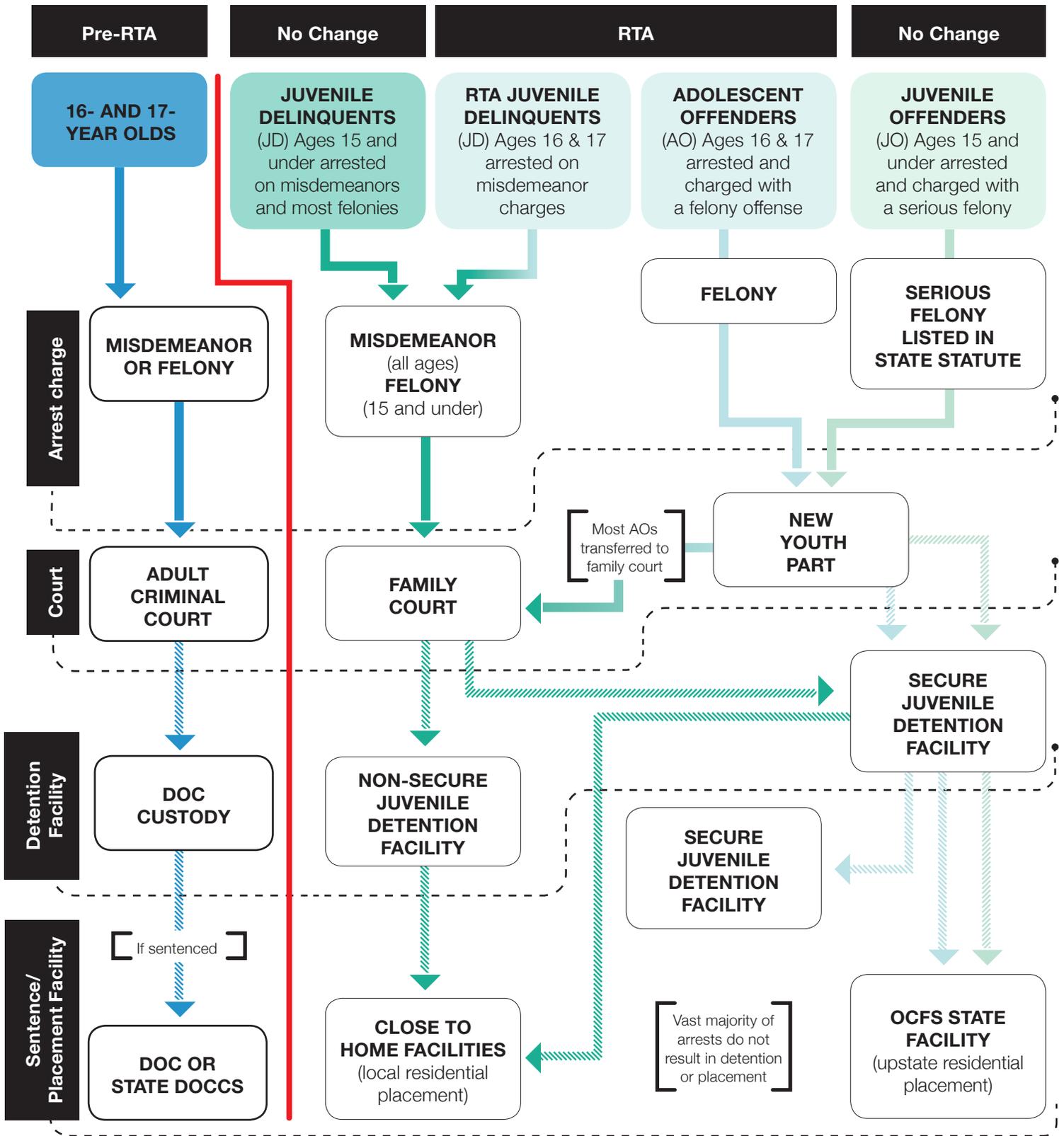
New York Department of Correction (DOC): Among other responsibilities, DOC is responsible for operating a specialized juvenile detention facility in conjunction with ACS for 16- and 17-year-olds charged in criminal court as adults.

New York State Office of Children and Family Services (OCFS): Among other responsibilities, OCFS is responsible for supervision and treatment of court-placed young people. For young people who are unable to be placed in local Close to Home facilities, OCFS runs statewide residential placement facilities.

New York State Department of Corrections and Community Supervision (DOCCS): Among other responsibilities, DOCCS is responsible for housing any young people sentenced to serve more than one year in incarceration, either prior to the enactment of Raise the Age or as an AO too old for a juvenile facility.

Juvenile Justice System Before and After RTA Implementation

Juvenile Justice System Before and After Full RTA Implementation



ARREST CHARGE Arrest charge and age determine whether the case will start in Family Court or the Supreme Court's Youth Part

COURT *Family Court: Probation assesses all cases, can "adjust" cases immediately, diverting them from prosecution *Youth Part: District Attorneys must present compelling evidence to keep felony cases (AOs)

DETENTION FACILITY *If judge orders youth to be detained while the case proceeds, they will go to either secure or non-secure detention, determined by case details

PLACEMENT FACILITY *If youth is found guilty/receives a JD finding, and a judge imposes an incarcerative sentence, the young person will go to a city or state facility, determined by case type and sentence length

Timeline

Timeline

Raise the Age Timeline: Key Dates

April 2017:

- New York State legislature passes Raise the Age legislation

October 1, 2018

- All 16- and 17-year-olds move off of Rikers Island

October 1, 2018-September 30, 2019:

- All 16- and 17-year-olds detained after an arrest held in facilities operated by ACS in conjunction with DOC as required by statute
- 16-year-olds arrested on or after October 1, 2018 for an offense alleged to have happened on or before that date go through new Raise the Age system:
 - Most misdemeanor arrests for penal law offenses go to Family Court
 - Felony arrests begin in a new Youth Part, located in Supreme Court. Serious cases may be kept in Youth Part and prosecuted by District Attorneys. All other cases removed to Family Court and prosecuted by the City's Law Department.
- 17-year-olds detained in the juvenile system, but their cases move through the adult system

October 1, 2019

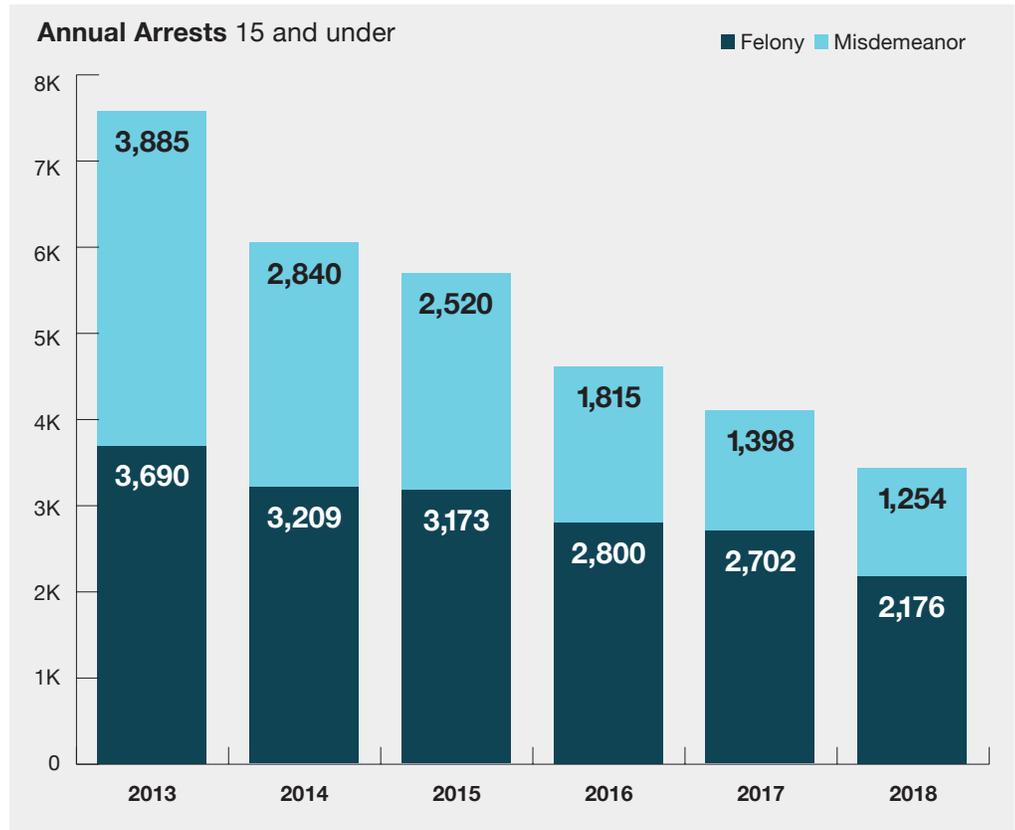
- 17-year-olds go through the new Raise the Age system described above

NYC Before-

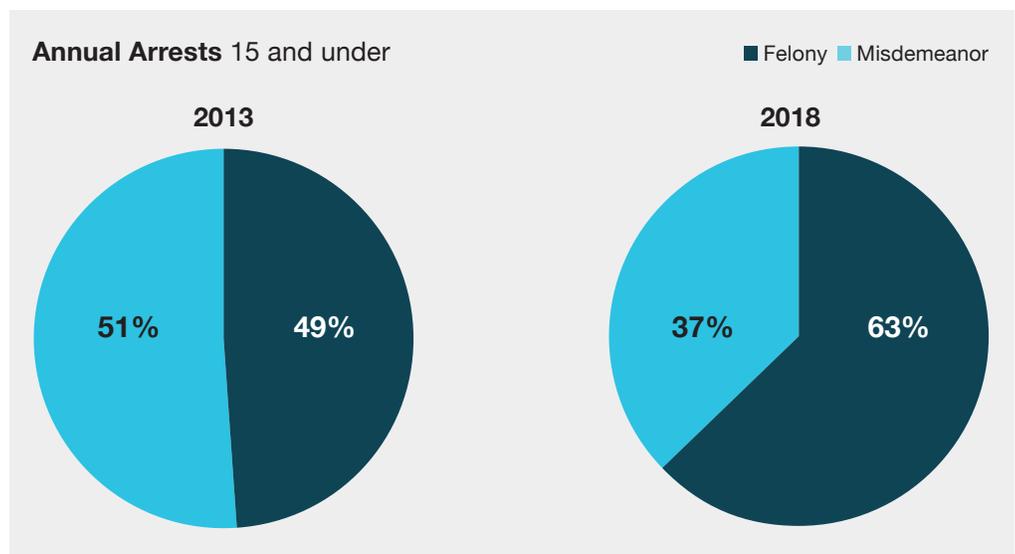
Raise the Age: 5-Year Trends

5-Year Arrest Trends: 15 and under

Before RTA took effect for 16-year-olds on October 1, 2018, the numbers of juveniles arrested had fallen to the lowest level in years while the proportion of arrests for felonies increased.

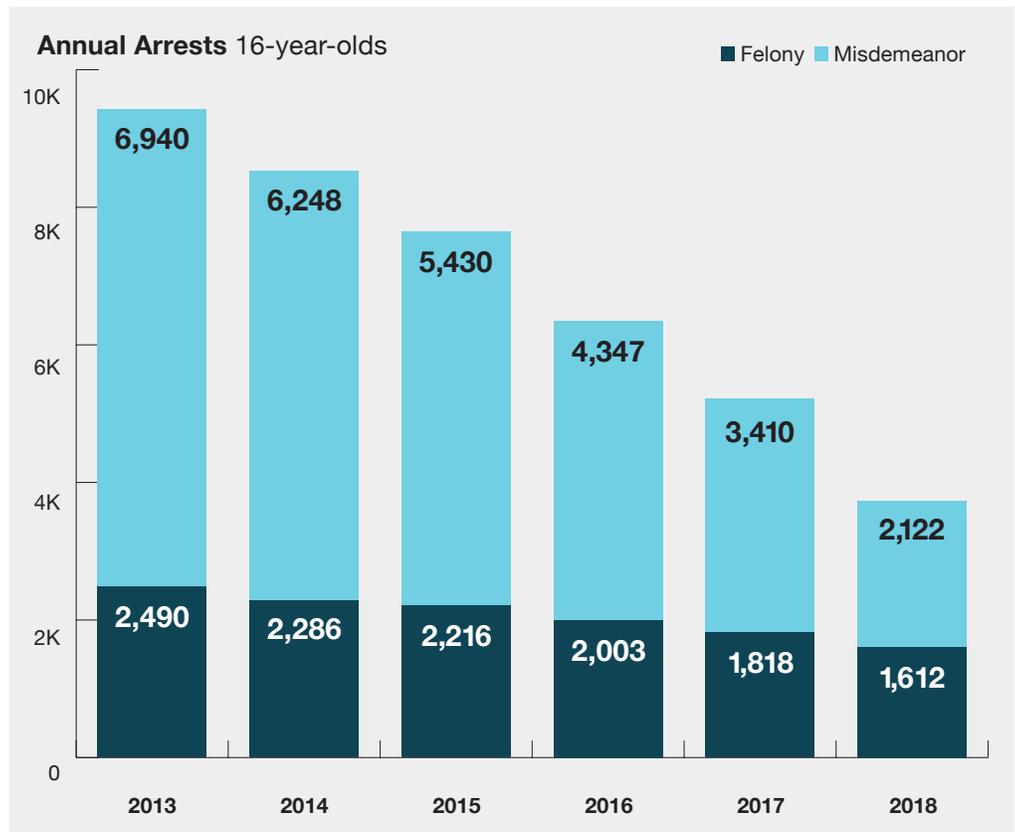


- Between 2013 and 2018, arrests of young people ages 15 and under decreased by 55%, from 7,575 to 3,430
- Reductions in misdemeanor arrests are steeper than felony arrest reductions with a 68% and 41% decline respectively
- Felony arrests have accounted for the majority of young people ages 15 and under arrested since 2014

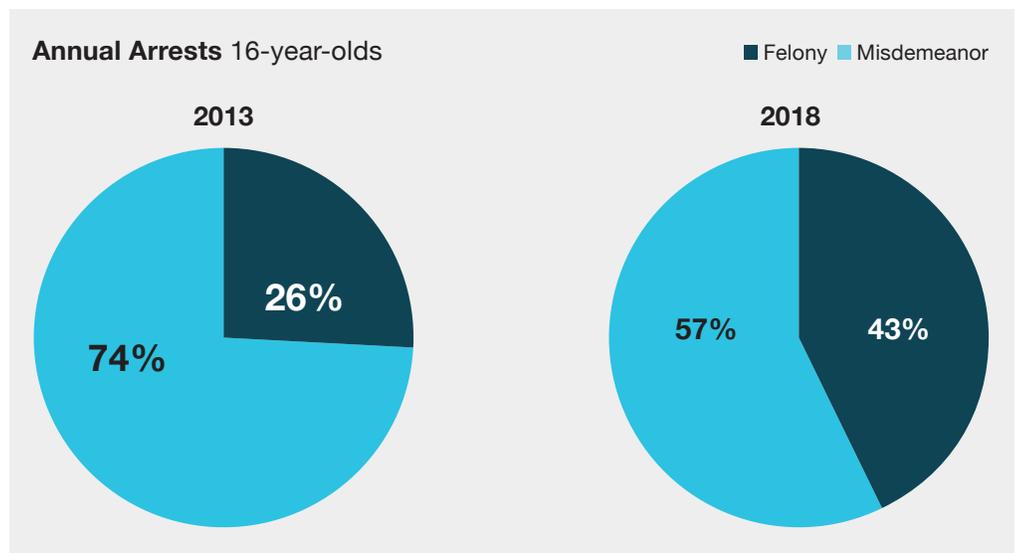


5-Year Arrest Trends: 16-year-olds

Before RTA took effect for 16-year-olds on October 1, 2018, the number of 16-year-olds arrested had fallen to the lowest level in years while the proportion of arrests for felonies increased.

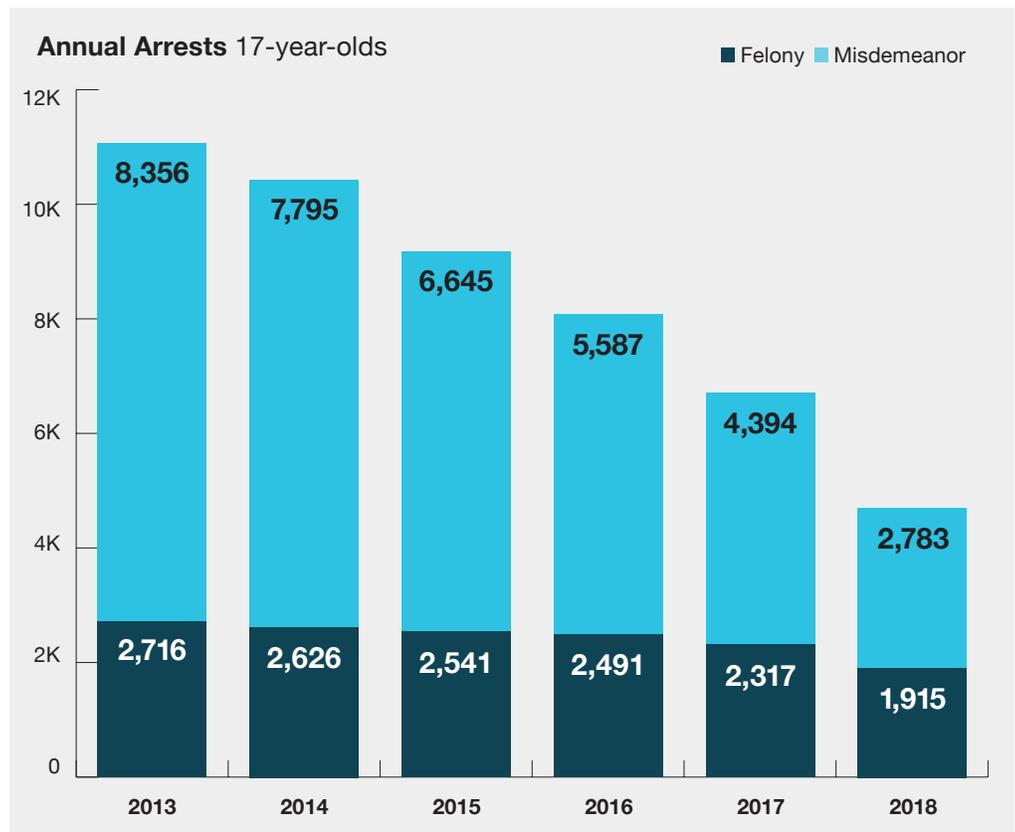


- Between 2013 and 2018, arrests of 16-year-olds decreased by 60%, from 9,430 to 3,734
- Reductions in misdemeanor arrests are steeper than felony arrests with a 69% and 35% decline respectively
- In 2018, felony arrests accounted for more than four in ten arrests for 16-year-old youth

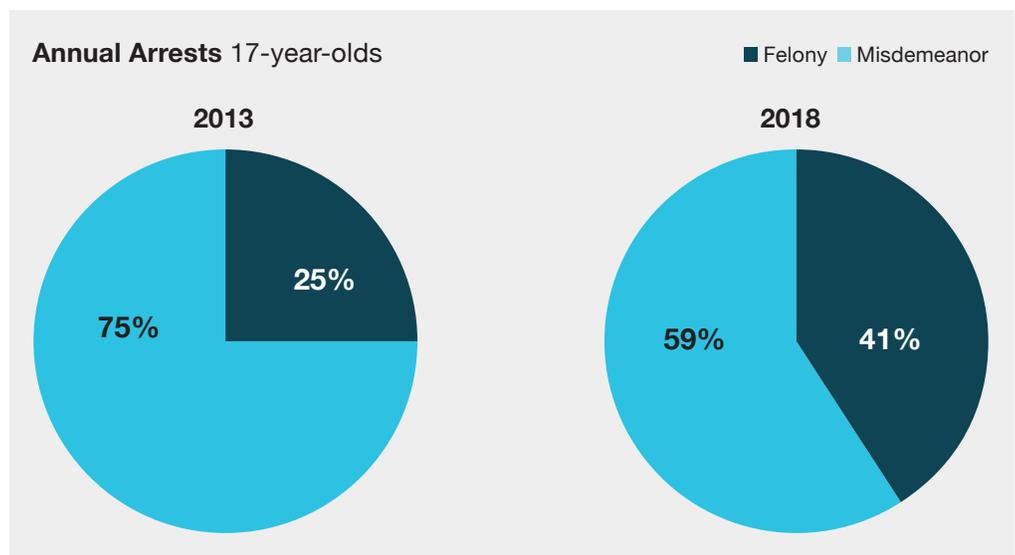


5-Year Arrest Trends: 17-year-olds

By 2018, the number of 17-year-olds arrested had fallen to the lowest level in years while the proportion of arrests for felonies increased.

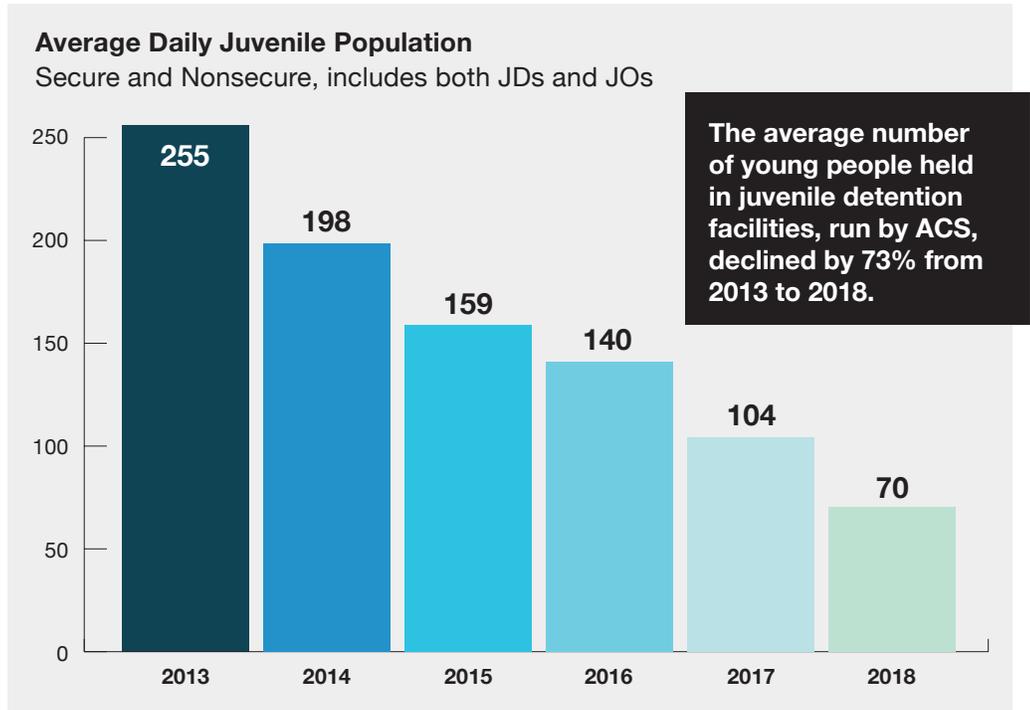


- Between 2013 and 2018, arrests of 17-year-olds decreased by 58%, from 11,072 to 4,698
- Reductions in misdemeanor arrests are steeper than felony arrest reductions with a 67% and 29% decline respectively
- In 2018, felony arrests accounted for approximately four in ten arrests for 17-year-old youth



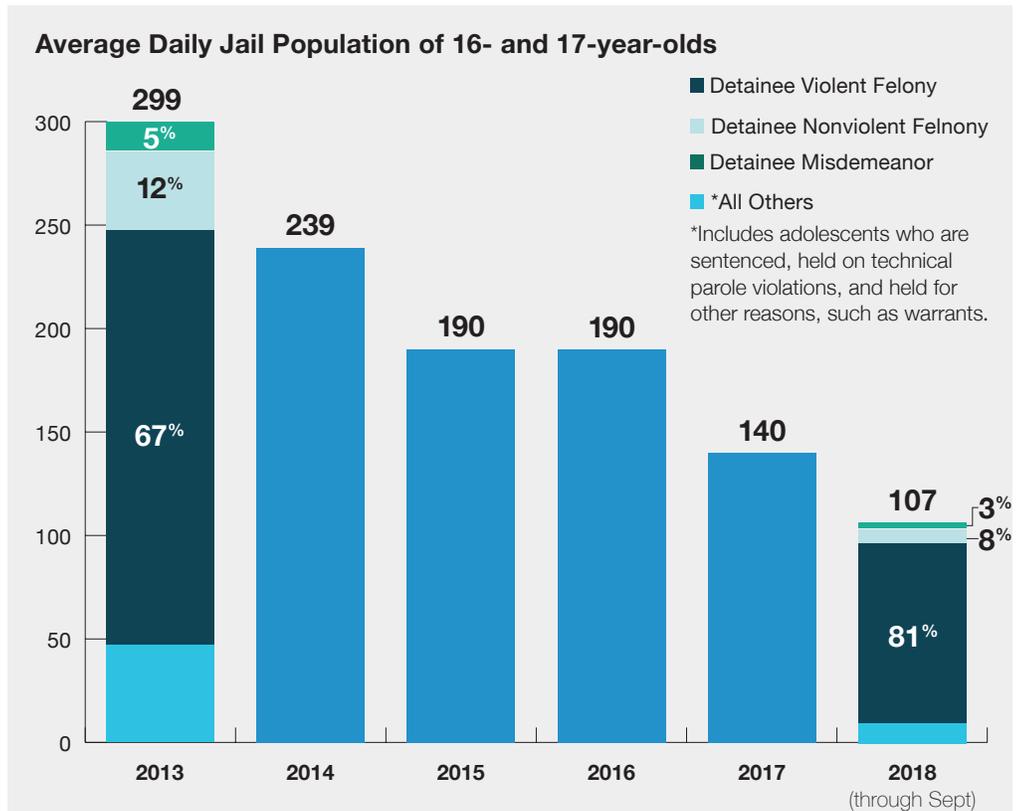
5-Year Detention Trends

Before RTA took effect for 16-year-olds on October 1, 2018, the juvenile detention population had fallen to the lowest in years.



*Note: the 2018 ADP includes AOs and 16-year-old JDs in custody from October to December. All other time periods include only JDs and JOs age 15 and under at time of offense.

Before RTA, 16- and 17-year-olds arrested for crimes were held in adult jails. From 2013 to September 2018, the average daily jail population of 16- and 17-year-olds in jail declined by 64%. At the same time, fewer young people were being detained on nonviolent felony or misdemeanor charges.



Percentages are rounded and therefore totals may not add up to 100 percent.

The First 9 Months

The First 9 Months: Arrests

OCTOBER 2018-JUNE 2019 COMPARED TO OCTOBER 2017-JUNE 2018

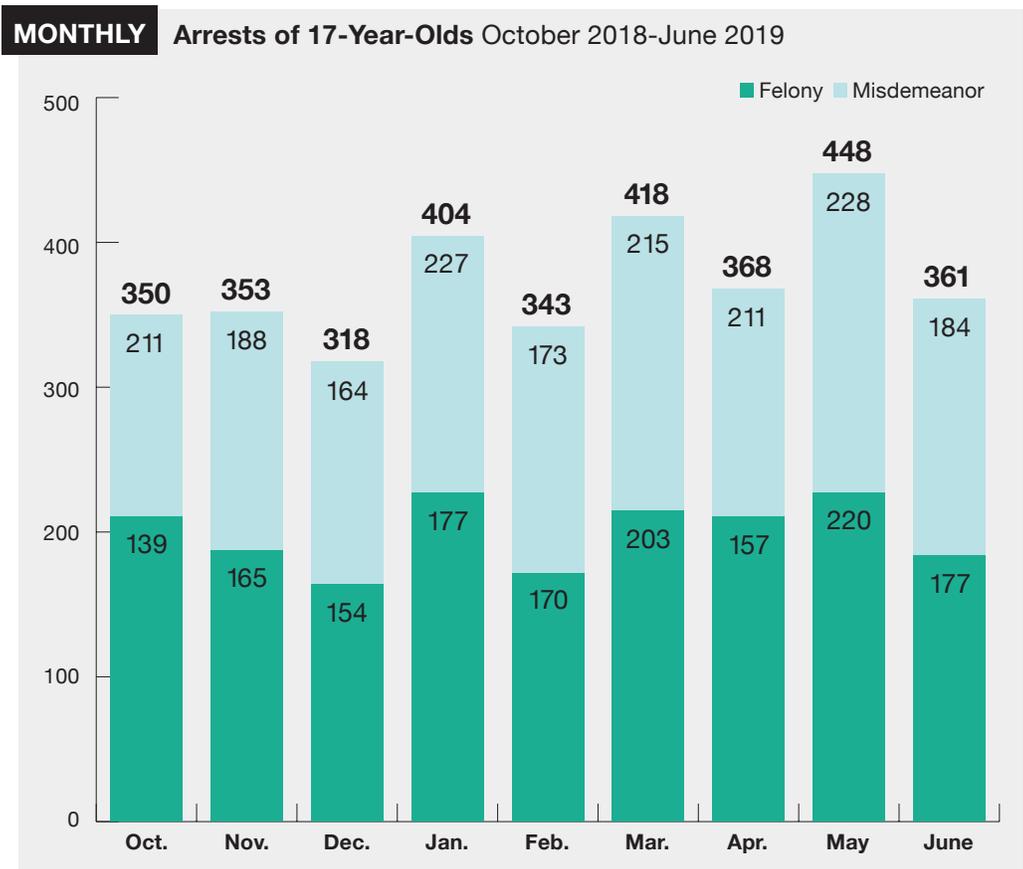
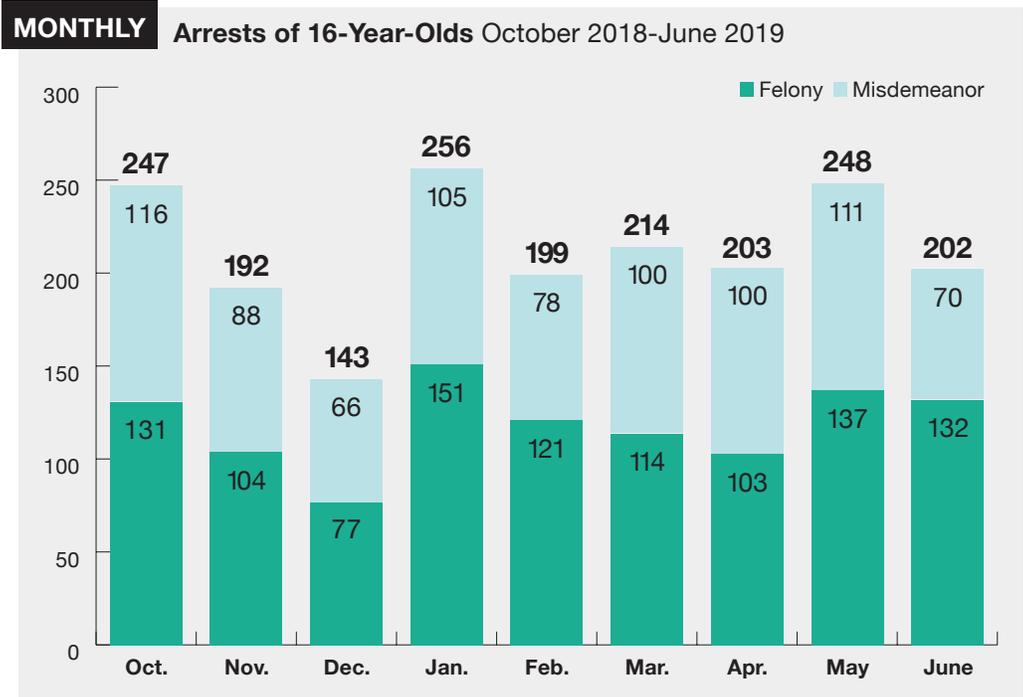
-21%
Decline in felony arrests for 16-year-olds

-61%
Decline in misdemeanor arrests for 16-year-olds

-1%
Decline in felony arrests for 17-year-olds

-32%
Decline in misdemeanor arrests for 17-year-olds

When compared to prior years, the total number of arrests of 16- and 17-year-olds are down in the first 9 months of Raise the Age. However, the number of monthly arrests have not continued to decline overall since Raise the Age implementation.



The First 9 Months

OCTOBER 2018-JUNE 2019 COMPARED TO OCTOBER 2017-JUNE 2018

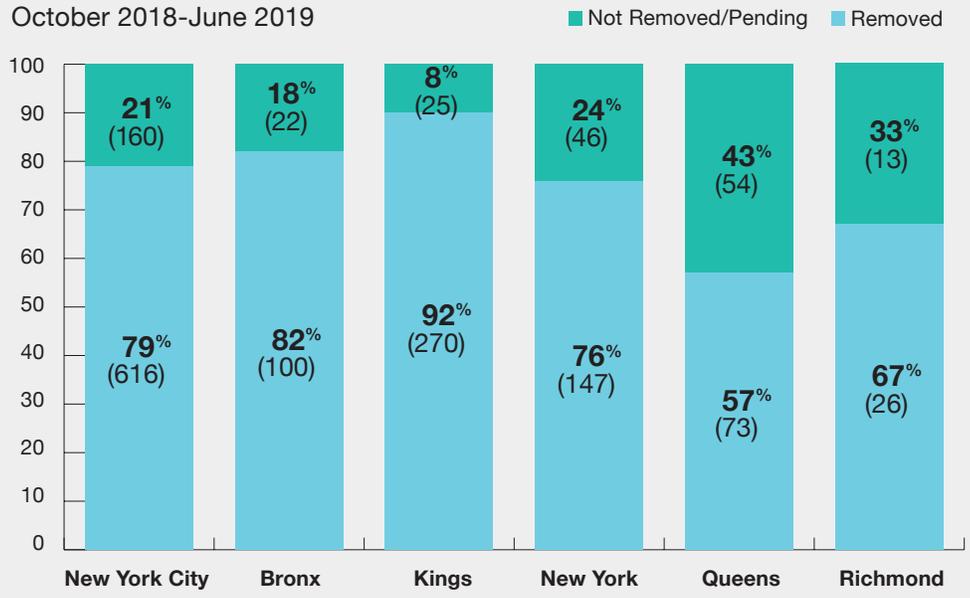
-30%
Decline in detention for young people under 18

Citywide, judges removed 79% of arraigned Adolescent Offenders (AOs) to Family Court where they are adjudicated as juveniles. Out of 776 AO cases arraigned in Youth Part, over 600 were transferred to Family Court.

ARRAIGNED

Adolescent Offenders Removed to Family Court:

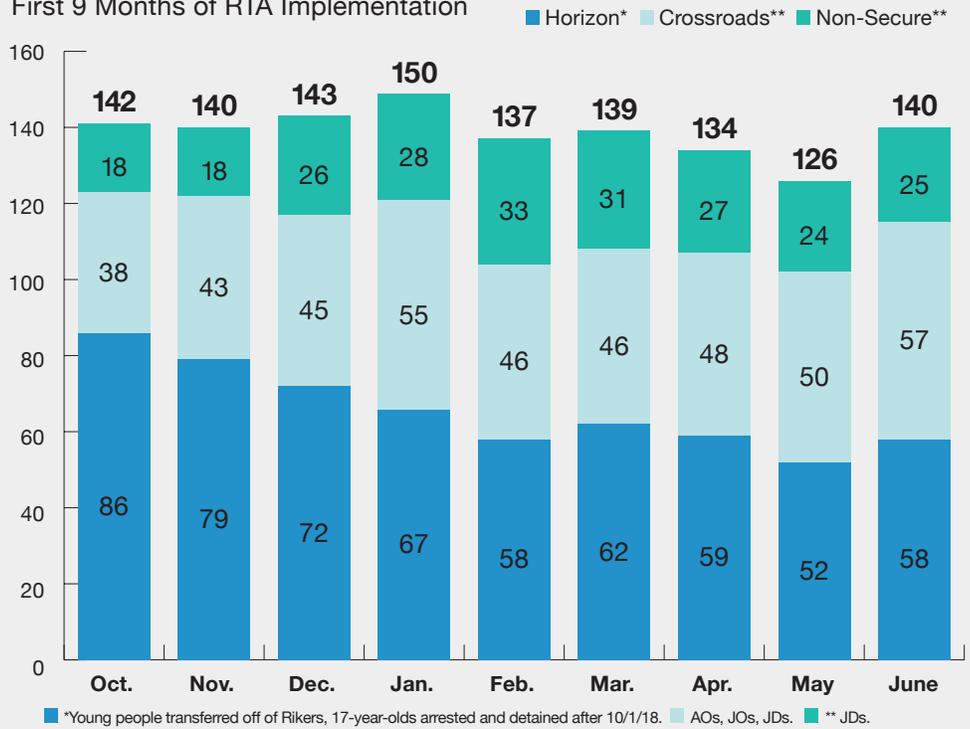
October 2018-June 2019



Under RTA, young people under 18 were transferred off of Rikers Island and into Horizon Juvenile Center prior to October 1, 2018. The use of detention for young people ages 17 and under remained fairly constant over the first nine months of Raise the Age.

Youth Detention Average Daily Population by Facility²:

First 9 Months of RTA Implementation



² This graphic reflects where young people were housed in the first 9 months of Raise the Age implementation.

Additional Resources

Additional Resources

Click the links below to view resources.

[Quarterly Update of Juvenile Offender/Adolescent Offender Arrests and Youth Part Court Activity](#)

[The First Three Months of Raise The Age And A Comparison To Similar Cases In Oct Through Dec 2017](#)

[ACS Juvenile Justice Page](#)

[ACS Monthly Data-Flash Reports](#)

[I got arrested! Now what? A guide to the juvenile justice system](#)

[Family Court FAQ](#)

[New York State Raise the Age Implementation Task Force: First Annual Report](#)

[Raise the Age|NY RTA Implementation Brief \(April 2019\)](#)



**Sara Hemmeter, Acting Deputy Commissioner,
Division of Youth and Family Justice**

**Testimony to the New York City Council
Committees on:
Justice System and Criminal Justice
December 3, 2019**

***Oversight:
"Implementation and Expansion of Raise the Age"***

Good afternoon Chairs Lancman and Powers and members of the Committees on the Justice System and Criminal Justice. I am Sara Hemmeter, the Acting Deputy Commissioner of the Division of Youth and Family Justice (DYFJ) at the New York City Administration for Children's Services (ACS). I am joined today by Charles Parkins, Deputy Associate Commissioner for Detention.

I am very pleased to be testifying before you today about ACS and our implementation of Raise the Age (RTA). While long overdue, as of October 1st of this year, we have officially raised the age of criminal responsibility to 18-years old. All newly arrested 16- and 17-year-olds are now treated as juveniles in the justice system. It has been an honor to be at ACS, working collaboratively with so many partners, during the planning and implementation of Raise the Age. ACS and DYFJ have made significant strides to improve the lives of children and families involved in the juvenile justice system, with a special focus on keeping young people strongly connected to their communities. Through our collaboration with numerous City partners including NYPD, Probation, the Department of Education, the Department of Correction and the Mayor's Office of Criminal Justice (MOCJ), as well as the City Council, advocates and providers, we have improved the prospects of justice-involved youth while enhancing public safety outcomes for everyone.

ACS Detention

ACS, along with our partner agencies and City Hall, engaged in extensive planning and implementation efforts to be ready for both the first phase of RTA implementation (16-year-olds) and the second phase of RTA implementation (17-year-

olds). In anticipation of RTA implementation, ACS completed renovations to our detention facilities, while adding extensive programming, educational and vocational options for older youth. We also ensured that we would have the necessary capacity for JDs, JOs and AOs, and created a new job title, Youth Development Specialist (YDS). ACS was ready for RTA implementation.

Horizon Juvenile Detention Center has been certified as a specialized juvenile detention center, which has housed the 16- and 17-year-old youth who transferred from Riker's Island on October 1, 2018, and any 17-year-old youth charged with crimes between October 1, 2018 and September 30, 2019 who were ordered to be detained. Our state oversight agency, the Office of Children and Family Services (OCFS), refers to these youth as pre-RTA youth, because while they are housed in a juvenile facility, they are still being prosecuted as adults in the court system.

As required by the law, ACS and the Department of Correction have been collaboratively operating Horizon. Prior to the October 1, 2018 effective date, 93 youth transferred from Riker's Island to Horizon. Since last October, no juvenile has been detained at Riker's Island. Newly arrested 17-year-olds, who were still prosecuted as adults for the past year, have also been detained at Horizon. ACS has housed 419 unique pre-RTA youth at Horizon this past year. As of October 31, 2019, there were 40 pre-RTA youth at Horizon, only two of whom were part of the original 93 youth.

To ensure proper staffing of both Crossroads and Horizon, ACS has been aggressively recruiting, hiring and training multiple classes of YDS. To date, ACS has hired over 600 YDS. ACS worked with DOC and the unions to develop a phased plan

to introduce YDS to Horizon over a period of six months. Starting April 2019, we began by bringing YDS supervisors to Horizon to observe operations. We intentionally assumed responsibility for direct care in multiple stages, so that the transition would be seamless and orderly for both the youth and the staff. As of today, there are 170 ACS YDS at Horizon, managing all ten halls. ACS assumed full management of the final hall on November 15, 2019. ACS is on track to assume primary operational control of Horizon by January 2020.

Some of the Rikers youth and pre-RTA (gap year) youth, can still be detained at Horizon until October 1, 2020. Until all of those youth leave the facility, or turn 18 years old, DOC will need to remain on-site in some capacity as required by the State. As a result, after January 2020, there will be a small contingent of DOC Officers on-site performing limited functions related to safety and security.

As of October 1, 2019, 17-year-olds are also now treated as juveniles in the justice system. This means that if they are arrested and brought to court, their cases are handled either in Family Court or the Youth Part of Supreme Court. If they are detained as a juvenile delinquent, they are now housed at Crossroads. For now, any newly charged and detained juvenile delinquent, juvenile offender, or adolescent offender is detained at Crossroads.

While the population of pre-RTA youth at Horizon is rapidly decreasing, we anticipate that the population at Crossroads will continue to increase for the foreseeable future, as it is the only secure detention or specialized secure detention facility for newly detained youth. In preparation, ACS is in the process of having some halls at Horizon

certified by the State to be specialized secure detention (SSD) and thus able to house adolescent offenders (AOs). The halls we are seeking to have certified as SSD will be separate from where the pre-RTA youth are housed. Ultimately, once all of the pre-RTA youth leave Horizon in the coming months, we will have more flexibility to house detained youth closer to their homes and communities in the two secure detention facilities, given that one facility is in the Bronx and the other is in Brooklyn. This will also give us greater flexibility with regard to population separation for safety purposes.

Youth at Horizon and Crossroads attend school on-site at DOE Passages Academy, and they have access to extensive offerings of vocational training and ACS's large array of contracted programming, as well as on-site health and mental health services, all of which is intended to provide the therapeutic and educational interventions that improve the young person's well-being and life outcomes. This past summer, youth at Crossroads and Horizon participated in the Department of Youth and Community Development's (DYCD) Summer Youth Employment Program (SYEP), which enabled them to work, earning \$15 per hour, during the summer for up to 25 hours per week in their facilities and then in the community, post-release.

ACS has a wide variety of programming available for youth in detention. This includes Cure Violence credible messenger programs, Carnegie Hall music, and various art programs. ACS has a chaplain at both detention facilities and all youth can participate in religious services and individual ministry. One of our newest offerings is Sprout by Design, an urban farming program at both Horizon and Crossroads (as well

as some of our Close to Home placement programs.) At the detention sites, youth have gardens and learn how to make healthy snacks using fresh produce from the garden.

Providing youth in detention with daily opportunities for large muscle exercise and space for recreation is essential. All youth at both facilities have the opportunity for outdoor activities. The outdoor space at Crossroads is complete, and includes basketball courts, grassy areas, sprinklers for hot days, and space for other outdoor recreation activities. As has always been the case, youth at Horizon are able to access the interior courtyard and the patios in the housing units. In April, a temporary outdoor basketball court was completed, and in August a permanent full-size basketball court was completed. There is a large grassy area now available at Horizon, which the youth at Horizon were able to use for the "Turkey Bowl," a flag football tournament on Thanksgiving.

The youth who are placed in detention are often among the highest needs youth in the City and have experienced various traumas prior to detention. Through our partnership with NYC Health + Hospitals, youth receive comprehensive psychiatric, psychological and behavioral health services delivered by skilled clinicians from Bellevue Hospital and Correctional Health Services.

DYFJ utilizes the NYC Model within our secure detention system. Adapted from the nationally recognized Missouri Youth Services Institute (MYSI) model, the NYC Model is a therapeutic approach for working with youth in the juvenile justice system. Facilitated small group interactions are at the core of this group process model and include components of positive youth development and cognitive behavioral therapy to

help youth make positive and long-lasting changes in their thinking and behavior. In addition, we continue to train our staff on Safe Crisis Management (SCM) and have expanded our contract with the developer to include monthly on-site trainings for staff to practice and apply de-escalation skills to safely manage conflict.

Close to Home

In 2012, the State and the City partnered to create Close to Home, New York City's juvenile justice placement system where adjudicated juvenile delinquents are placed in residential programs near their homes, schools and communities. Our Close to Home non-secure and limited-secure placement residences are located at 30 sites throughout the City and in Dobbs Ferry and are run by seven nonprofit provider agencies. Close to Home is grounded within a child welfare framework, and all of our providers are deeply experienced in serving the complex needs of our youth.

Despite raising the age of criminal responsibility for 16-year-olds last October, ACS has seen a decline in the Close to Home census: Close to Home placements declined 43% in the first 9 months of RTA. As of November 25, 2019, there were 101 youth in Close to Home placement (with 40 additional youth on aftercare where they continue to be supervised by ACS and the provider but are at home in the community). ACS currently contracts for 294 beds in Close to Home. With 17-year-olds adjudicated as Juvenile Delinquents now eligible for Close to Home, we expect to see the census start to increase. We are working with MOCJ to monitor this situation closely, and ensure we have sufficient capacity.

All Close to Home programs offer structured residential care for youth in a small, supervised, and home-like environment. In contrast to traditionally larger juvenile placement facilities, Close to Home programs have been intentionally designed to ensure participation in program while preserving the safety and security of youth, staff, and the community.

Close to Home allows for work to occur simultaneously with the youth, the family and the community to ensure that factors that led to juvenile justice system involvement are addressed before the youth returns to the community. In partnership with the Department of Probation, ACS has adopted a Risk-Need-Responsivity (RNR) framework and an evidence-based assessment tool—the Youth Level of Services (YLS)—to guide our intervention and ensure we reduce youth likelihood to recidivate.

Each Close to Home program is required to implement an evidence-based therapeutic program model that serves as the primary mechanism of behavioral support. Through the chosen program framework, youth address their interpersonal relationships, communication skills, and emotional regulation.

Having youth close to their families allows the inclusion of the youth's family at every level of intervention. In Close to Home, we use family team conferencing as we believe it is critical to engage the youth's family in all decisions and challenges the youth may be facing. Before youth are discharged home they and their family must have demonstrated readiness for reunification. Youth returning to the community receive at aftercare supervision from their Close to Home provider.

The goal of Close to Home aftercare is to build on the skills youth acquire while in placement and help develop a network of support that will allow them to succeed in the community. While in placement, youth form positive, trusting relationships with caring adults. These relationships are critical to facilitate each youth's growth, skill development, and progress as they learn new ways of thinking and changing their behaviors. On aftercare, residential providers build on these existing relationships with youth, along with their broader agency resources and relationships with community-based organizations, to supervise youth in the community with support from ACS, to ensure that a youth's needs are being met.

Int. 1628-2019

Intro 1628-2019 amends the current Juvenile Justice quarterly and annual data reports for detention and Close to Home to include additional components, many of which are related to Raise the Age.

ACS appreciates the City Council's interest in amending the data report to include data points specifically related to raising the age of criminal responsibility. The proposed legislation includes some data elements ACS does not have access to, would change the reporting requirement to be monthly which would be incredibly onerous for ACS, and also includes some disaggregation requirements that are too small for ACS to be able to report on (due to confidentiality). In addition, the proposed bill includes data reporting requirements for the Department of Probation and MOCJ, which ACS cannot speak to. However, ACS is committed to maximum transparency with the Council and

the public about our juvenile justice programs, and we look forward to discussing the proposed legislation more thoroughly with the bill sponsors so that we can update the current reports to include Raise the Age in a meaningful and helpful manner.

Conclusion

Thank you for the opportunity to discuss ACS's efforts to implement Raise the Age. ACS is looking forward to continuing to work with City agencies, the City Council, the providers, the advocates, the state, and most importantly youth and their families to both strengthen the juvenile justice system and reduce the number justice-involved youth. We are happy to answer your questions.



**Testimony before the
New York City Council
Committee on Criminal Justice
Chair Keith Powers
Committee on Justice System
Chair Rory Lancman
By
William Barnes, Assistant Chief
NYC Department of Correction**

December 3, 2019

Good morning, Chair Powers, Chair Lancman and members of the Committee on Criminal Justice and the Committee on Justice System. My name is William Barnes, and I am the Assistant Chief of Division IV of the Department of Correction. I appreciate this opportunity to update the Council on the Department's efforts to support the Raise the Age mandate and discuss our transition out of the Horizon Juvenile Detention Center. The Department remains committed to providing a safe, stable environment for all those who live at work at Horizon and are proud to support ACS as they take over the primary responsibility for the safety and security of the young people at the Horizon facility.

Jointly Administered

Horizon opened its doors on September 27, 2018 and has always been jointly administered by the Department and ACS per the RTA Law. This has been an important and strategic partnership that enabled the Department to ensure the safety of youth and supporting ACS in its operations. Prior to the transfer of adolescents to Horizon, the Department oversaw important renovations to the building itself that aimed to create an overall deinstitutionalized feel within the facility. Throughout this renovation process, the



Department regularly liaised with the State Commission on Correction in order to achieve operational compliance in accordance with state guidelines.

Since beginning joint operations, Horizon offered the Department an opportunity to support the young people in our care in a manner more consistent with their developmental needs. In accordance with juvenile justice best practices, Horizon provides detained adolescents with living quarters that resemble a home-like setting rather than an adult institutional facility. The correction officers who staff Horizon have dedicated themselves to learning new practices, but also have been working hard to support ACS in creating a safe and secure environment for the young people in our care. For example, the officers received extensive training on the new Raise the Age policies, they were all trained on PREA standards for the youth offenders' population and have all received thorough training on Safe Crisis Management.

DOC Transition

Following thirteen months of joint operation, the Department will largely transfer out of Horizon in December of this year and remain solely to provide perimeter security, and manage the control room. The Department will also maintain an adolescent response team that will respond only to incidents involving pre-RTA youth. The Department is prepared to maintain staffing in this manner until the last pre-RTA youth leaves Horizon, which we are aiming for early fall of 2020. Following this departure, the Department will continue to support security operations at Horizon through annual inspections as required by the Raise the Age law.

In preparation for this transfer, the Department began working with ACS Youth Development Specialists (YDS) as early as June of this year. As part of this engagement, the Department coordinated with ACS to transfer knowledge on best practices and lessons learned throughout the operation of the facility over the past year. Since then, the



Department has ceded operational control of residential halls to ACS in a gradual manner beginning in September.

As part of the transition plan, Department staff assigned to Horizon have been transitioning to other posts on a rolling basis. There will be no layoffs as a result of the Department's transition out of Horizon. Upon returning to a post at our adult facilities, Correction Officers will receive refresher training on adult correctional best practices.

As the Department prepares for the next phase of transition out of Horizon, which will involve a significant reduction in DOC staff and presence at the facility, I would like to thank Warden Pressley and all of the officers and non-uniform staff assigned to Horizon for their tireless effort and for their dedication to the young people in their care. After more than a century of treating 16-and 17-year-olds as adults, you were part of a monumental shift in correctional practice in New York City that will benefit young people for generations to come. Thank you for your hard work and your service.

Councilmember Powers, Councilmember Lancman, and members of the Criminal Justice and Justice System Committees, thank you for the opportunity to testify before you this morning. I will turn my colleague at ACS to continue the Administration's testimony.



HETRICK-MARTIN INSTITUTE FOR THE RECORD
EMPOWERMENT, EDUCATION & ADVOCACY FOR LGBTQ YOUTH

**Gender Equity in NYC: Access, Resources, and Support for Transgender and Gender Non-Conforming
New Yorkers**

The Hetrick-Martin Institute has been providing services to LGBTQ youth for forty years. What has remained consistent across those forty years is the need for increased levels of access, resources and support for transgender and gender non-conforming youth. TGNC young people face astounding levels of violence, family rejection, abuse and neglect, unemployment, and negative health disparities. For transgender and gender non-conforming youth of color these factors are especially devastating and leave them disconnected from traditional support services, resulting in social, academic, and economic barriers that severely limit their potential. Additionally, given their frequent exposure to violence, abuse, and trauma, they are inherently distrustful of authority figures and do not readily engage with service providers.

Poverty, as it intersects with institutionalized racism and transphobia, is a devastating reality for transgender and gender non-conforming youth. With no other means of making money, they are more likely to engage in sex work in order to meet their basic needs of shelter, food, and other necessities of survival. The stigma that young trans women experience when it comes to prospective employers, co-workers, and social service agencies puts them at high risk of disconnecting from employment and job readiness programs. Transgender individuals encounter increased harassment and discrimination on the job, and many report having experienced adverse job outcomes (denied promotion or getting fired) because they are transgender. There are no federal employment protections for transgender people and only 19 states have laws prohibiting workplace discrimination.



HETRICK-MARTIN INSTITUTE

EMPOWERMENT, EDUCATION & ADVOCACY FOR LGBTQ YOUTH

It is therefore critically important that community-based services developed with and for TGNC people continue to grow, that the human service sector become safer and more-inclusive of TGNC people, and that significant investments are made to create mental health services, workforce development programs, community education initiatives, and educational programs to meet the specific needs of TGNC people. Every day there are TGNC young people who come to HMI in crisis, seeking community and information. What is far more alarming and all too real, are the number of TGNC youth who connect with HMI via email and phone, who are so afraid of potential violence, humiliation and rejection that they can't leave their home to come to HMI for help. There is a world of work to be done to change that.



**TESTIMONY OF JULIA L. DAVIS, ESQ.
DIRECTOR OF YOUTH JUSTICE AND CHILD WELFARE
CHILDREN'S DEFENSE FUND-NY**

Before the New York City Council

Committee on Criminal Justice and the Committee on the Justice System

December 3, 2019

Good morning. Thank you Chair Powers and Chair Lancman, and Committee members, for the opportunity to testify before you today. My name is Julia Davis and I am the Director of Youth Justice and Child Welfare at the Children's Defense Fund-New York (CDF-NY).

Our Leave No Child Behind mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. We provide a strong, effective and independent voice for all 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. Our unique approach to improving conditions for children combines research, public education, policy development, community organizing and advocacy activities, making us an innovative leader for New York's children, particularly in the areas of health, education, early childhood, child welfare and youth justice.

In addition to our policy advocacy work in youth justice, our Freedom School summer literacy program serves youth in both of the Administration for Children's Services' (ACS) detention facilities: Crossroads and Horizon.¹ Rooted in the Mississippi Freedom Summer project of 1964 led by our Founder Marion Wright Edelman, the Freedom Schools program is a six-week summer literacy and cultural enrichment program designed to serve children and youth from elementary to high school. Working with ACS, our project expanded from Crossroads into Horizon this past summer.

Freedom School begins each morning with student scholars joining facility staff and leadership in motivational cheers and chants as part of *Harambee* -- a Kiswahili term that means "pull together." Community members come for a "read-a-loud" sharing an inspirational text, and then participate in a discussion with the scholars. Then, youth go to classrooms where they read and discuss books that are selected to be relevant to their experience. Youth are able to obtain

¹ <https://www.ny1.com/nyc/all-boroughs/news/2019/07/22/how-a-literacy-program-in-the-city-s-juvenile-detention-centers-is-making-a-difference>.

Department of Education (DOE) credit for participating in Freedom School. Under Raise the Age, ACS and CDF-NY are reaching more adolescents in the youth justice system than ever before. This is a result of ACS and DOE embracing the program, investing in staff training and support, and creating environments in Crossroads and Horizon that recognize youth for the scholars they are.

I. Update on Raise the Age Implementation in New York City

What Has Changed for 16 and 17 Year Olds?

On October 1, 2019, New York began the final phase of “Raise the Age” implementation, bringing 17-year-olds into the new system. Here in New York City, we had already removed all 17-year-olds from adult jails a year earlier, when we transferred teenagers off Rikers Island to Horizon Juvenile Detention Center in October 2018. The other key provisions of the law that are currently operative include:

- When 16- and 17-year-olds are arrested, their parents must be notified.
- When police question a 16- or 17-year-old, it must take place in an age-appropriate setting, with parental involvement, and for limited, developmentally-appropriate periods of time.
- All 16- and 17-year-olds charged with a misdemeanor (other than vehicular and traffic misdemeanors) have their cases heard in Family Court instead of adult Criminal Court, and will not be exposed to a permanent criminal record.
- 16- and 17-year-olds charged with a felony have their cases heard first in the new Youth Part of the adult Criminal Court. Most felonies (other than the most serious) will transfer to the Family Court within a few weeks, unless the court finds there are “extraordinary circumstances.” In Family Court, cases may be diverted out of the court system, and the youth charged will not have permanent criminal record.
- 16- and 17-year-olds who have allegedly displayed a deadly weapon, caused “significant injury,” or engaged in unlawful sexual conduct, will remain in the Youth Part of Criminal Court, unless the prosecutor consents to remove the case to Family Court.
- 16- and 17-year-olds in the Youth Part have their cases heard before a judge trained in adolescent development and family law.

What Does the Initial Data Tell Us?

We have some data on aspects of the Raise the Age reform, including information on felony arrests, arraignments, and the removal of cases that began in the Youth Part of criminal court. During the first 6-months following implementation, we saw **statewide felony arrests among 16-year-olds decrease by more than a third.**² This continues a trend over the last decade

² https://www.ny.gov/sites/ny.gov/files/atoms/files/NYS_RT_A_Task_Force_First_Report.pdf, at 5.

where arrests among both 16- and 17-year-olds across the State have declined by *more than half* from around 46,000 in 2010 to around 21,000 in 2017.³ In New York City, arrests among 16-year-olds decreased 60% from 2013 to 2018, and by 58% among 17-year-olds during the same time period.⁴

One important goal under Raise the Age is for as many youths' cases to begin in family court, or be transferred from the adult criminal court to family court, as possible. In the family court system they may be eligible for adjustment, and if the case moves forward, they won't face the threat of criminal records. **The first year of data shows that 81% of felony-charged 16-year-olds, known as "Adolescent Offenders" under the law, had their cases removed from the Youth Part of criminal court to family court in New York City.** By borough, however, removal rates range from 68% (Queens) to 92% (Brooklyn).⁵

Another important goal is to minimize detention and placement among adolescents. During the first 6-months of Raise the Age implementation statewide, there were 212 detention admissions among Adolescent Offenders, with 86 of those in New York City. There were 300 admissions of 16-year-old Juvenile Delinquents (JDs), including 144 in New York City.⁶

As of September 2019, there were on average, 31 Adolescent Offenders, 46 Juvenile Delinquents, 21 Juvenile Offenders, and 54 Pre-Raise the Age youth in the City's secure detention facilities (Crossroads and Horizon).⁷ Average daily population in the City's two 106-bed secure detention facilities has ranged between 127 and 157 since Raise the Age went into effect on October 1, 2018.⁸

Close to Home, the collection of local group home settings for youth who are "placed" following disposition in family court as juvenile delinquents, has absorbed the 16-year-olds who were brought into the family court during the first year of Raise the Age. Monthly new admissions to Close to Home have generally been lower than in the previous three years, despite the fact that more eligible youth are in the delinquency system after Raise the Age.⁹ As of 9/30/2019, 85 youth were placed in Close to Home, down 25% from 113 at the same time in 2018.¹⁰

New York City is poised to continue successful implementation of Raise the Age for 17-year-olds, thanks to significant reductions in arrests, robust investments in community supports, alternative to incarceration programs, and continued focus on shrinking the number of youth in custody.

³ *Id.* at 8.

⁴ http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/11/Raise-the-Age-in-New-York-City_.pdf, at 17-18.

⁵ https://www.criminaljustice.ny.gov/crimnet/ojsa/rta_quarterly_oct18_sep19.pdf.

⁶ https://www.ny.gov/sites/ny.gov/files/atoms/files/NYS_RTA_Task_Force_First_Report.pdf, at 17, 22.

⁷ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2019/10.pdf>, at slide 22.

⁸ *Id.*

⁹ *Id.* at slide 24.

¹⁰ *Id.* at slide 25.

Our Concerns about Youth at Horizon Juvenile Detention Center

At the same time as the City has successfully implemented many components of Raise the Age, information reported by the federal monitor in the *Nunez* litigation for the period of January 1, 2019 to June 30, 2019 reveals very troubling conditions for youth removed from Rikers Island to Horizon under the law.¹¹ Horizon is currently jointly operated by the Department of Correction (DOC), which is responsible for youth supervision and movement and facility safety and security, and ACS, which is responsible for providing programming, case management and other types of support (e.g., food services, barbershop, building maintenance, laundry, etc.).¹²

The federal monitor reported that Use of Force by DOC staff against youth was higher in June 2019 than in any period since the adolescents were moved to Horizon in October 2018. The report states that “effective strategies are needed for supervising and supporting these youth to reduce the risk of harm they pose to other youth and staff.”¹³ As of June 2019, the monitor found that Horizon did not have an individualized behavior management program in place, facility staff lacked skills in developing effective relationships and working constructively with youth, the classification system was not properly implemented, and there was evidence that the facility was not using its room confinement policy correctly.¹⁴

Moreover, the monitor also reported that “programming records indicated that the daily schedules are not always followed” and that youth are not consistently getting the programming they are entitled to (“in addition to school, youth should receive about three hours of structured programming from Program Counselors and community partners on weekdays and about five hours on weekend days”).¹⁵ They also found that “school attendance data appeared to reveal chronic tardiness (students were late on 50-75% of school days, averaging about an hour late).”¹⁶ This is unacceptable for adolescents in our City’s care.

It is our understanding that the transition is underway to move DOC out of the facility, and that all housing areas were to be staffed by ACS by the end of November, and thereafter, DOC will only be onsite to train the specialized team that would respond to extremely serious and dangerous incidents, and provide perimeter security. As of January, DOC will only serve as security at the facility’s perimeter. With this transition, we expect to see increased fidelity to the juvenile practices that ACS champions, especially with regard to effective strategies to support young people in custody and manage youth behavior, ensure access to school and programming, and create a developmentally-appropriate setting where violence will be reduced and young people are safe.

¹¹ <http://tillidgroup.com/wp-content/uploads/2019/10/8th-Monitors-Report-10-28-19-As-Filed.pdf>

¹² *Id.* at 220.

¹³ *Id.* at 222.

¹⁴ *Id.* at 223-24. The monitor noted that STRIVE+ (the Facility’s behavior management system) was finalized, allowing it to be implemented on July 1, 2019.

¹⁵ *Id.* at 231-32.

¹⁶ *Id.* at 232.

We are, however, concerned that the presence of DOC in the facility over the last year has undermined this focus on youth facility culture, and we have questions about the role that DOC will play even in its paired-back security role. Will DOC have any contact with youth in the facility? What about with visiting family, attorneys, social workers and community partners providing programming at Horizon? How will ACS mark the complete transition to operational control, and how will it confront and change the legacy of adult correctional culture in the building? We hope that these questions will be answered as part of the testimony before the Committees today.

II. Int 1628-2019: Updating Reporting to Respond to Raise the Age

This bill is necessary to update City reporting established prior to Raise the Age, and to fill in gaps in public data that are essential to seeing how the law is working for youth in New York City. In the sections that follow, I have outlined the rationale behind certain amended data reporting requests.

a. Updating data on detention admission by facility type and youth designation (proposed Secs. 21-905(a), (b) and (f))

Detaining youth should always be a last resort because we know that detention poses significant risk to adolescents' well-being. This includes exposure to violence and abuse; disconnection from family and community supports; and increased risk of re-entering the criminal justice system. These concerns underlie the statutory presumption for release in the Youth Part of criminal court under Raise the Age.

To track pre-trial detention after Raise the Age we must update our reporting to reflect new categories of youth that were created by the law. "Adolescent Offenders" are 16 and 17-year-olds charged with felonies whose cases begin in the Youth Part of adult criminal court. In addition, because New York City was under a unique duty to remove all 16 and 17-year-olds from Rikers Island before the rest of the law applied to 17-year-olds, we have another category of youth who are detained in a city juvenile facility (Horizon), but who are not considered Adolescent Offenders under State law. We call these youth "Pre-Raise the Age" or "Gap Year Youth."

Raise the Age also created new names for the detention where youth can be held while their case is proceeding. "Specialized Secure Detention" is for Adolescent Offenders, whereas Pre-Raise the Age or Gap Year Youth are held in what is called "Specialized Juvenile Detention." Currently, Crossroads is the City's designated Secure and Specialized Secure Detention facility (for Adolescent Offenders, Juvenile Delinquents and Juvenile Offenders), while Horizon functions as our Specialized Juvenile Detention for Pre-Raise the Age Youth.

Because of restrictions on where certain youth can be detained (non-secure, secure, specialized secure or specialized juvenile detention) and regulations limiting commingling of youth in detention facilities by court designation, it is essential to track detention admissions and

average population with close attention to the type of youth and facility. The proposed amendments do this by updating the "Admission", "Demographic" and "Pre-Sentence" sections.

b. Updating detention data to reflect information about bail (proposed Secs. 21-905(b)(3))

Juvenile Offenders, Adolescent Offenders and Pre-Raise the Age Youth have their cases heard in the adult criminal court. As such, they are subject to decisions concerning bail. In order to understand the context for the number of admissions for these groups of youth, it is important to capture the terms of their remand to detention. This is even more critical because of forthcoming implementation of pre-trial and bail reform law in January 2020.

c. Ensuring we collect information on length of stay in detention (proposed Sec. 21-905(f)(2)(vi))

The proposed amendments codify this information for new sections on "Pre-sentence data" for youth by court designation (Juvenile Delinquents, Juvenile Offenders, Adolescent Offenders and Pre-Raise the Age Youth). Because some youth may be serving sentences in these facilities (this is true for both Adolescent Offenders and Pre-Raise the Age Youth), these data must be disaggregated by whether they are pre- or post-disposition. Relatedly, because of concerns about the negative impacts that detention and incarceration have on youth, and the need to make detention as rare and short in duration as possible, we need to capture the length of time youth in each of these categories of youth remains in detention, as well as the top charge at the time they entered custody.

d. Updating and expanding data on incidents in facilities (proposed Sec. 21-906(a)(1))

Existing quarterly reporting requirements include robust data around incidents in facilities because safety is a paramount concern for both youth and staff. The additions ("alarm system activity" and "response team" deployment) reflect important aspects of facility response to violence or threat of violence, which helps interpret data on the number and types of incidents occurring in facilities. Also, because the City is apparently taking the position that as long as there are Pre-Raise the Age Youth in Horizon, the DOC must have a physical staff presence in the facility, we must track the type of staff involved in incidents in order to distinguish between ACS and DOC staff.

On July 19, 2019, the court dismissed a petition by the Correction Officers Benevolent Association (COBA) seeking a "blanket order allowing [DOC correction officers working in Horizon Juvenile Detention Center] to use OC spray" (pepper spray) on youth residing there. *Correction Officers Benevolent Association, Inc. v. Sheila Poole, et al.*, Index No. 261264/2018 J. Ceresia. Moreover, it appears that the City is no longer pursuing a waiver from State regulations to permit the use of pepper spray in Horizon. Proposed section 21-906(c) "Oleoresin Capsicum Spray" reporting can be struck from the bill.

e. Creating a youth probation report (proposed Sec. 9-206)

Current public data reporting from the Department of Probation is limited, and does not distinguish youth based on the new categories and court processes established by Raise the Age.¹⁷ Because one promise of the reform is the possibility that youth formerly charged in the criminal court can now have their cases adjusted in family court, it is critical that the city report detailed adjustment data and dispositional recommendations (*see* proposed secs. 9-206(b)).

f. Enhancing data on removals of felony-charged 16- and 17-year olds from the Youth Part of criminal court to family court (proposed Sec. 9-306(par. 34-37))

While data produced by the State provides total arraignments and removals to family court (*see* discussion on page 3 above), the information does not include the type of charges (violent versus non-violent felonies), which is necessary to discern how effectively the law is working. Most felonies should transfer to the family court within a few weeks, unless the court finds there are “extraordinary circumstances.” Sixteen and seventeen year olds who have allegedly displayed a deadly weapon, caused “significant injury,” or engaged in unlawful sexual conduct, will remain in the Youth Part of criminal court, unless the prosecutor consents to remove the case to family court.

Moreover, current State reporting does not disaggregate data on removals by critical demographic information, like age, gender and race, which influences discretionary decisions like removal to family court.

III. Conclusion

Thank you again for your interest in ensuring Raise the Age is implemented with fidelity to its purpose, and your commitment to updating our data and reporting laws to better track the law’s impact on youth here in New York City. I welcome any questions you may have.

¹⁷ *See, e.g.*, <https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2019/dop.pdf>.



JUSTICE FROM COURTROOM TO COMMUNITY

**Written Comments of Kate Rubin, Youth Represent
Before the New York City Council
Committee on the Justice System and Committee on Criminal Justice
RE: Oversight - Implementation and Expansion of Raise the Age
Intro 1628 - Support
December 3, 2019**

Good morning, my name is Kate Rubin and I am the Director of Policy at Youth Represent. Thank you to Chair Powers, Chair Lancman, and the Committee members and staff for the opportunity to testify today.

Youth Represent provides holistic re-entry legal services for court-involved youth. Our mission is to ensure that young people affected by the criminal justice system are afforded every opportunity to reclaim lives of dignity, self-fulfillment, and engagement in their communities. We provide criminal and civil reentry legal representation to young people age 24 and under who are involved in the criminal justice system or who are experiencing legal problems because of past involvement in the criminal justice system. We also engage in policy advocacy and train the next generation of leaders through our Youth Speakers Institute. Our interdisciplinary approach allows us to understand the full extent of our clients' legal and practical challenges so we can effectively represent them as they make the journey from courtroom to community.

Since we opened our doors in 2007, Youth Represent has advocated for 16 and 17 year olds to be treated as children in the justice 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. The Committees on the Justice System and Criminal Justice will continue to play critical oversight roles in the coming months and years as these complex policy changes go into effect. We look forward to ongoing partnership.

The passage of Raise the Age in April 2017 was an important step towards creating a youth justice system that reflects principles of youth development. While the state dragged its feet in passing Raise the Age legislation, the City reduced incarceration of 16 and 17 year olds in the adult system and of youth under 16 in the juvenile justice system.¹ Through the implementation Close to Home and significant investments in alternatives to incarceration and other programs for court-involved youth, the City had already taken steps to address some of the worst harms of our youth justice system before Raise the Age became law. But until October of 2018, 16 and 17 year olds were still incarcerated at Rikers Island and were still automatically prosecuted in adult criminal court with no avenue to Family Court.

¹ The number of 16 and 17 year olds incarcerated in New York City decreased by 53% from December 2013 to December 2017. *Fact Sheet: Adolescents (16- and 17-Year Olds): Recent Declines and Opportunities for Further Reductions*. Mayor's Office of Criminal Justice, 5/31/2018. Available: <https://2aptr31i4knk1qo3dh464d6n-wpengine.netdna-ssl.com/wp-content/uploads/2018/09/adolescents-factsheet-v4.pdf>. Overall admission to juvenile detention decreased by 32% from FY 2014 to FY 2017. *Testimony of Felipe Franco, New York City Administration for Children's Services, New York City Council Committee on Juvenile Justice, April 18, 2018, p. 2.*

We recognize the significant investment the City has made in Raise the Age implementation efforts, including the extensive efforts of the Mayor’s Office of Criminal Justice (MOCJ) and ongoing collaboration among multiple agencies. We also appreciate that the City has stepped into the financial breach created by the State, providing full funding not only for Raise the Age implementation but for the continuation of Close to Home.

Our comments today summarize some of the most salient data about the first year of Raise the Age implementation, address ongoing issues at Horizon Juvenile Center, and outline our support for Intro 1628 which updates and expands city reporting requirements for the Administration for Children’s Services, Department of Probation, and MOCJ to respond to Raise the Age.

Preliminary Data on Raise the Age Implementation

Initial data on implementation of Raise the Age for 16 year olds is available via the NYC Mayor’s Office of Criminal Justice Report (covering October 2018 – June 2019; hereinafter the “MOCJ Report”) and the First Annual Report of the NYS Raise the Age Implementation Task Force (covering October 2018 – March 2019; hereinafter the “Task Force Report”).

Key data points from the MOCJ report include:²

- **Misdemeanor arrests of 16 year olds declined 61% and felony arrests declined 21% in New York City** in the first nine months of Raise the Age implementation, compared to the same period the previous year.
- **Misdemeanor arrests of 17 year olds declined 32% in New York City** between October 2018 and June 2019, compared to the same period the previous year, even though Raise the Age had not yet gone into effect for this group.
- In the first nine months of implementation, **776 16-year-olds were arrested on felony charges and arraigned as “Adolescent Offenders” in youth parts** across New York City. Of these, 79% of cases were removed to Family Court citywide. Brooklyn had the highest rate of removal (92%) and Queens the lowest (57%), but note that only 127 AO’s were arraigned in the Queens youth part during the period while 295 were arraigned in Brooklyn, whose population is only slightly larger.

Key data points from the Task Force Report include:

- From October 2018 – March 2019, **75% of 16 year old Adolescent Offenders arraigned in the youth parts across New York City were Released on Recognizance and 3% were released under supervision**, consistent with the statutory presumption of release in the RTA statute.³
 - **Of those not released, 4% of AO’s were remanded without bail and 16% had bail set that they could not post.**

² *Raise the Age in New York City: Trends over the past five years and the first nine months of Raise the Age implementation*, Mayor’s Office of Criminal Justice, October 2019, p. 21-22 Available: http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/11/Raise-the-Age-in-New-York-City_.pdf

³ *Raising the Age of Criminal Responsibility, First Annual Report of the New York State Raise the Age Implementation Task Force*, p. 12. August 2019. Available: https://www.ny.gov/sites/ny.gov/files/atoms/files/NYS_RT_A_Task_Force_First_Report.pdf

- In the first six months of implementation, **93% of Non-Violent Felony AO cases and 78% of Violent Felony AO cases were removed from youth parts to Family Court in New York City.**⁴
 - By comparison, outside of the City 94% of Non-Violent Felony AO cases but only 64% of Violent Felony AO cases were removed to Family Court.
- In the first six months of implementation, **86% of AO cases removed to Family Court were removed within the first 7 days after arraignment.** Of those, 59% were removed the same day or the next day.⁵
- Because the data only reports on the first six months of implementation, it reflects only 3 convictions in NYC youth parts.⁶

Horizon Juvenile Center

In addition to these reports, the Eighth Report of the Independent Court-Appointed Monitor in *Nunez v. City of New York et. al*, covering the period from January 1, 2019 – June 30, 2019, provides critical and concerning insight on experiences of 16 and 17 year olds transferred from Rikers Island to Horizon Juvenile Center (Horizon, or HOJC in the *Nunez* report) after October 1, 2018, and of 17 year olds arrested between October 2018 and October 2019 (often called “gap year 17-year-olds) and detained at Horizon. The *Nunez* litigation, and the Independent Monitor’s Reports mandated by its Consent Judgment, focus on the use of excessive and unnecessary force against youth under 19 years old detained in the custody of the Department of Correction. Horizon is under the jurisdiction of the *Nunez* Monitor because it is jointly operated by the Department of Correction and the Administration for Children’s Services, with DOC staff responsible for direct supervision of youth in the facility.

In testimony before this body in February, April, and September of 2018 we, along with dozens of other advocates, objected to the City’s decision to bring DOC Correction Officers to Horizon to supervise 16 and 17 year olds there. We argued that the choice undermined the spirit of Raise the Age and risked transferring the violent culture of Rikers to the City’s youth facilities. The Eighth *Nunez* Monitor’s Report confirms that these concerns were founded. The report notes that, “Throughout the Monitoring Period, HOJC continued to be plagued by high rates of violence and use of force, despite a declining population.”⁷ Use of force by staff against youth trended upward through the monitoring period.⁸

The Report specifically notes that “HOJC staff’s lack of skill in developing effective relationships and constructive rapport with youth, their lack of situational awareness, and their tendency to either over- or under-react to escalating tensions all contribute to the high rate of violence.”⁹ It also identifies problems with the Facility’s original behavior management system,

⁴ Id.

⁵ Id. at 13.

⁶ Id. at 14.

⁷ The Nunez Monitoring Team. *Eight Report of the Nunez Independent Monitor*, p. 221. Available: <http://tillidgroup.com/wp-content/uploads/2019/10/8th-Monitors-Report-10-28-19-As-Filed.pdf>

⁸ Id. at 222.

⁹ Id. at 223.

failure to properly implement the Facility’s classification system, and lack of effective internal controls for the appropriate use of room confinement.¹⁰

As the City shifts operational control of Horizon from DOC to ACS, we urge the Council to closely monitor the transition with particular attention to the following goals:

- i) Ensuring that the transfer progresses on time and that full operational control and supervision of all youth are shifted to ACS.
- ii) Eliminating the legacy of adult correctional culture at Horizon, particularly related to excessive and unnecessary use of force against youth.
- iii) Increasing fidelity to juvenile practices at Horizon including: full implementation of a classification system, conflict de-escalation, limited and appropriate use of room confinement, effective internal controls governing room confinement, and full youth access to school and additional programming.
- iv) Ensuring that if DOC continues to play any role at HOJC—for instance, providing perimeter security—they adopt best practices for juvenile facilities.

Updating Reporting to Respond to Raise the Age (Intro 1628-2019)

New York’s Raise the Age legislation is complex and its full implementation requires the participation and coordination of multiple city agencies and actors, including NYPD, Corporation Counsel, Mayor’s Office of Criminal Justice, and Department of Probation as well as the court system, county District Attorneys, the defense bar, and an extensive network of community-based service providers.

While the City and State have so far provided important data on Raise the Age, particularly related to arrest, arraignment, dispositions, and transfers of AO cases to Family Court, more detailed reporting is necessary to fully understand how the law is impacting 16 and 17 year olds in New York City and to identify any changes needed to better serve young people who come into contact with the justice system.

Youth Represent supports Intro 1628 of 2019, which both updates existing reporting requirements to make them consistent with RTA and fills gaps in existing data on youth justice. We specifically wish to underscore the importance of the following provisions:

a) Amendments to Administrative Code §21-905: Updates to Demographic Data.

These amendments update existing reporting requirements for the Administration for Children’s Services (ACS) to include new categories created by Raise the Age, including “Adolescent Offenders” (housed in “specialized secure detention” when they are detained) and youth transferred from Rikers Island to Horizon Juvenile Center (housed in “specialized juvenile detention”). Aggregate data about bail conditions and remand of youth in ACS custody and of length of stay in detention (required by subsections (b)(3) and (f)(2)(vi), respectively) would aid a thorough understanding of the detention population with the goal of continuing to reduce it.

¹⁰ Id. at 223-224.

We hope that such reporting will continue to document a downward trend in youth detention, but if needed it can also serve as an “early warning system” should there be any increase in detention in future years, with specific data points required by the bills aiding our understanding of any potential detention bump and identification of changes in policy, practice, or resource allocation to combat it.

b) *Amendment to Administrative Code §21-906: Expanding data on incidents in facilities.*

The proposed amendments add “alarm system activity” and response team deployment to existing reporting requirements about incidents in all ACS facilities. The requirements to report on response team deployment distinguishing between trained ACS staff and DOC crisis response teams (proposed subsections (a)(1)(xii) and (a)(2)(vii)) are particularly important as long as DOC continues to have any role at Horizon or any other ACS facility, especially given the findings in the *Nunez* Monitor’s report outlined above.

The proposed addition of subsection (a)(3) would require details about facility and reason for each reported use of the alarm system or room confinement, as well as the duration of each room confinement. This provision is crucial in light of the *Nunez* Monitor’s finding that the DOC’s current use of room confinement at Horizon does not meet “generally accepted practice or the Department’s own policy.”¹¹

Finally, the proposed changes to §21-906 include some measures which we support to increase transparency and usefulness of reported data, including disaggregation by facility, permanent storage on the ACS website, and a requirement that data be in a machine-readable format.

c) Proposed §9-206: Creation of a youth probation report.

While Raise the Age holds the promise of significantly reducing adult criminal justice involvement of 16 and 17 year olds, it also carries the potential for an unintended “net-widening” effect. When youth are arrested and processed in Family Court, they may be mandated to engage in programming and services even for relatively minor offenses. Because adjustment through the Department of Probation is the mechanism for diversion away from court, monitoring it through detailed aggregate public reporting from the Department of Probation is critical. Because Probation risk assessments are an important determinant of detention and placement of youth in Family Court, this proposed section also requires reporting on detention disaggregated by risk level score and on dispositional recommendations for placement disaggregated by race, gender, and age.

d) Amendments to §9-306 (proposed subsections 34-37): Enhanced demographic reporting on felony cases filed in the youth parts and on transfers to Family Court.

This amendment would provide crucial additional detail on race, gender, and age to supplement reporting from the state on youth part activity and removals. Data reported by the state is not disaggregated by demographic information.

¹¹ Id. at 224.

**The Bronx
Defenders**

**Redefining
public
defense**

**New York City Council
Committee on Justice System and Committee on Criminal Justice
Oversight Hearing on Implementation and Expansion of RTA
December 3, 2019**

**Testimony of The Bronx Defenders
By Stacey Kennard, Team Leader and Adolescent Defense Project Attorney,
Criminal Defense Practice**

My name is Stacey Kennard and I am a Team Leader and attorney with the Adolescent Defense Project at The Bronx Defenders. Thank you for the opportunity to testify before you today on this important matter.

The Bronx Defenders is a public defender non-profit that is transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

The Bronx Defenders forms relationships with hundreds of young clients every year. The team of specialized advocates comprising the Adolescent Defense Project (ADP) includes criminal defense attorneys, social workers, and an education attorney. We represent adolescent clients aged 17 and younger who are charged as adults, primarily young people charged with felonies as Adolescent Offenders and Juvenile Offenders. ADP attorneys and advocates are specialists in the Raise the Age (RTA) law and are trained to represent young people charged

with felonies and misdemeanors in Criminal, Supreme, and Family Court. When our clients' cases are removed from the Youth Part in Supreme Court to Family Court, whether on consent of the prosecution or after litigation, the same attorneys and advocates maintain continuous representation and advocacy through the resolution of delinquency cases. ADP advocates have also developed expertise in adolescent brain development, school discipline and education, and youth programs in the Bronx and across the city. The ADP team also serves as a resource for other advocates in our office working on cases involving young clients.

The number of teens charged with felonies in the Bronx has been significantly reduced since the implementation of RTA. For young people who are still impacted by the criminal legal system, however, there is significant room for improvement. This testimony will focus on the most pressing and harmful issues our adolescent clients face, including:

- Mistreatment by NYPD;
- Prolonged pre-arraignment detention;
- Disproportionate rates of detention for young people in foster care;
- Invasive questioning and presumption of guilt by the Department of Probation;
- Excessive time demands of court appearances and repeated Probation interviews; and
- Lack of transparency for ACS and the Department of Probation.

The momentous changes to our legal system for young people under RTA brings with it an opportunity to rethink the purpose of the system as a whole and, specifically, the way that we approach young people when they are accused of both the most serious and the most minor crimes.

I. NYPD Mistreatment

In recognition of the fact that adolescents are developmentally distinct from adults, particularly when it comes to brain development the RTA legislation put in place additional requirements for police officers dealing with young people. For instance, as we know, adolescents are more likely to take risks without thinking through consequences, more apt to follow the suggestions of authority figures, and more peer-focused than adults. To account for these differences, RTA now requires, among other things:

- Notification of a parent or person legally responsible upon arrest of a young person who will be charged as an Adolescent Offender or Juvenile Offender,

including the fact of the arrest and the location where the young person is being detained;¹

- Advising the young person and a person legally responsible for the young person of rights under Miranda prior to any questioning;² and
- Ensuring that youth charged as Adolescent Offenders or Juvenile Offenders are detained separately from adults.³

While these changes that should theoretically improve the treatment of children in police custody, the actual treatment of our young clients has been marked by systemic abuse and harm. For example:

- Our young clients are routinely held overnight in juvenile rooms of NYPD precincts while awaiting arraignment;
- While detained, our clients are almost always handcuffed to a table continuously and denied beds to sleep on; and
- Our clients are frequently handcuffed in these rooms for close to 24 hours, during which they typically are only provided with one meal and restricted access to water and a bathroom.

Following the letter of the law, the NYPD has not detained young people with adults; instead they routinely handcuff them to a bench at the precinct for hours at a time, an unnecessary and abusive practice that plainly violates the spirit and intent of RTA. Beyond the pain and physical harm of this treatment, the message sent to our clients by these practices is that they are not valuable. This inhumane treatment of children in NYPD custody is unacceptable. We ask that these issues be investigated and that steps be taken to ensure the elimination of these practices.

II. Prolonged Pre-Arrest Detention

After arrest, teenagers spend a significantly longer period of time waiting to meet a lawyer and see a judge than their adult counterparts. Overall, since the passage of RTA, we find that far too many young clients spend up to 24 hours, and sometimes longer, in precincts and courthouse cells prior to arraignment.

¹ CPL §140.20(6).

² CPL §140.20(6).

³ NYPD Patrol Guide, 210-08(5)(h). Effective October 1, 2018.

Additionally, the majority of our clients (young clients as well as adults) are arraigned on nights and weekends. This means that our ADP clients are often arraigned before an accessible magistrate rather than before a specialized judge in the Youth Part. While the Youth Part judges and court staff are well-versed and practiced on RTA, their counterparts in night and weekend arraignment parts are not. Arraignments outside of the Youth Part lead to higher rates of bail being set, more administrative errors, and often additional court appearances for our clients and their families. In many cases, our clients and their families are required to return to the Youth Part the morning after a late night arraignment appearance in front of an accessible magistrate.

Those young people who *are* arraigned in the Youth Part frequently appear before a judge late in the afternoon, leaving attorneys little to no time to meet with our new clients before arraignment. Attorneys are sometimes forced to decide whether to speak with our clients at all before going before a judge or allow our clients to wait - sometimes for multiple hours - before they can be arraigned in a night session. The prolonged arrest to arraignment process contributes to the urgency to get young people in front of a judge experienced in dealing with young people, their families, and their advocates. To be clear, in practice, when faced with this dilemma, our attorneys will ask to have our clients appear in the Youth Part as long as the District Attorney's office is consenting to release. Still, the attorney-client relationship can be harmed when young people have no opportunity to speak to their lawyer until they are standing in front of a judge.

We understand that multiple factors contribute to this delay. We have been informed that these factors include: NYPD consulting with prosecutors to assess whether a young person will be charged initially in Criminal Court or Family Court; the necessity of clearing adults out of Central Bookings to allow youth to enter the area; the District Attorney's office consulting with Corporation Counsel; and the District Attorney's office delaying filing paperwork until witnesses can sign felony complaints. Regardless of the cause, the result is unacceptable. For young people, 24 hours of waiting for arraignment means 24 hours without access to medications or adequate access to food and missed school, activities, and access to loved ones. These deprivations cause physical, emotional, and academic harm to children and often financial harm to families as parents are forced to miss work. We ask that speedy arraignment of young people be prioritized. At a bare minimum, the average arrest-to-arraignment time for young people should be equal to the average arrest-to arraignment time for adults.

III. Disproportionate Rates of Detention of Youth in Foster Care

In our representation of young people charged with felonies in Family Court, we have seen "crossover youth" (defined as young people who have contact with both the child welfare

and juvenile justice systems) unfairly subjected to punitive detention⁴ as a direct result of their status in foster care. For example, in Family Court delinquency proceedings, we often see children ordered detained by judges at the request of Corporation Counsel when ACS (serving as the young person's guardian) has not identified foster care placements for them. In our experience, we have seen young people in foster care detained when young people living at home would have been paroled to their parents. In these instances, ACS often will treat detention in ACS facilities such as Crossroads and Horizon Juvenile Centers and non-secure detention facilities as though it is a foster care placement and simply stop looking for long-term and appropriate foster care placements.

Likewise, when our clients have been kicked out of a foster home (or any home) — a circumstance beyond their control — they are significantly more likely to have bail set in Criminal or Supreme Court and are also significantly more likely to be remanded to detention or placed in Family Court delinquency proceedings. The effect is that children who have often already undergone the significant trauma of family separation and the experience of unstable housing are forced into even more destabilizing, and often dangerous, settings.

The issue of punitive confinement of so-called “crossover youth” is not unique to RTA or to 16 and 17 year olds. Younger children in foster care were prosecuted in Family Court before passage of the RTA law. We believe that the disparate treatment of “crossover youth” is likely to worsen now that our clients in Family Court include 16 and 17 year olds in addition to younger children. Older youth are more likely to be living independently by choice, out of foster care placement because of a dearth of appropriate foster care homes, or to have been kicked out of their parents' homes due to conflict. These are precisely the scenarios in which young people become more vulnerable to detention and placement in delinquency cases.

IV. Invasive Questioning and Presumption of Guilt by the Department of Probation

The passage of RTA legislation brought with it for the first time the possibility of Probation adjustment for 16 and 17 year olds. Adjustment, a period of usually two months in which a young person is monitored by Probation to support their education and employment, family and peer relationships, and substance use needs, is an incredibly valuable and powerful tool to support young people and our communities. Depending on a young person's circumstances and the nature of an arrest, adjustment can effectively redirect young people to rehabilitative resources and support while avoiding many of the punitive effects of prosecution.

⁴ Detention of a young person while their delinquency case is pending and before a finding is commonly referred to simply as “detention.”

We appreciate the efforts of the Department of Probation in supporting our clients and implementing RTA. Yet these interactions can often be traumatic for our clients, particularly when the questions asked of our clients presume guilt or re-traumatize our clients. The process leading to adjustment is deeply invasive and often completely opaque. As the Department of Probation continues to revise its processes, we look forward to working with them to increase transparency and minimize harm to young people.

Interviews with the Department of Probation tend to be invasive, tend to last for an hour or more, and tend to be repeated multiple times. Moreover, these invasive interviews often happen in quick succession. All young people charged as Adolescent Offenders are referred to the Department of Probation for intake interviews as soon as their cases are removed, or transferred, from Supreme to Family Court. These young people and their parents are questioned extensively by a Probation Officer as part of an initial intake process. If the young person is released from court under supervision of the Department of Probation through Intensive Community Monitoring, they and their parents must participate in *another* intake session where they will answer similar questions, only from a different Probation officer who will be assigned to the young person over the duration of their supervision. Those who are arrested a second time while their first case is pending will be required to complete an additional intake interview. After a finding has been made in Family Court, young people will be sent for yet another intake session with yet another Probation Officer, this time to prepare an Investigation Report (I & R).

Each of these sessions typically takes an hour or longer to complete. Questions detail the allegations against the young person, the young person's home and family life, suspected gang involvement, educational history and current progress, mental health or substance use. In total, youth whose cases have been removed to Family Court will be subjected to at least two in-depth and nearly identical intake interviews with at least two different Probation officers. Repeated rehashing of sensitive topics often has the effect of alienating our clients. The Department of Probation should make efforts to streamline this process so that, to the extent that young people have to be questioned about sensitive topics, they will only have to be subjected to this kind of questioning once.

These repeated interviews exact a toll on our clients and their families. In particular, we are concerned about the following effects of Probation interviews as they are currently implemented:

- Probation officers re-traumatize clients by questioning them repeatedly about potentially traumatic experiences, including past abuse.

- Officers subject young people and their families to invasive and sometimes embarrassing questioning with no clear purpose. Some of the questions routinely asked of our clients and their parents include:
 - Is anyone in your family on parole or Probation?
 - Has anyone in your family ever had any police involvement?
 - Have you ever been physically abused?
 - Have you ever been sexually abused?

- Similarly, parents (and sometimes our clients) are routinely asked the following questions:
 - What is your income?
 - Do you receive public assistance?

- Additionally, Probation officers communicate a presumption of guilt to young people by repeatedly asking questions that assume the young person has committed the charged conduct (even after a young person has explained that they were not involved in a charged act), routinely asking the following questions:
 - How do you think the victim has been affected?
 - How could you make things right?
 - What could you have done to avoid being arrested?

- Young people and families express confusion and frustration at being asked the same extensive list of questions by multiple representatives of the Department of Probation.

As a rule, our advocates accompany our clients to Probation intake interviews. The right to counsel at the initial post-removal Probation intake interview for a young person charged as an Adolescent Offender is mandated by statute. Because of the potential for punitive consequences at case Disposition, it is just as important, if not more so, that attorneys be permitted to attend Probation interviews with our clients after findings have been entered against them in Family Court. These post-finding interviews are the basis of the Investigation Report that courts rely heavily on for reaching a final disposition in the case. Yet attorneys have not been permitted to attend these interviews, at least in the Bronx.

V. Adverse Effects of Overscheduling and Repeated Probation Interviews and Court Requirements

In our practice, we regularly see young people being detained due to factors outside their control, including poor relationships with people in parental roles and occasions when people in parental roles are simply unable to take time off work or arrange for childcare in order to appear at court dates. These stresses and negative consequences are exacerbated by the sheer number of court appearances our clients and their parents are expected to attend. In addition to repeated Probation interviews, it is not unusual for 16 and 17 year olds — including those who are initially released on their own recognizance — to have three court dates within a week of their initial arraignment.

The cumulative effects of required appointments with the Department of Probation and repeated required court appearances within a short time frame include:

- Absences from school, missed instructional time, and the potential for academic and social disengagement;
- Absences from sports and other pro-social activities;
- Loss of wages and potential job loss for young people who are employed;
- For parents and guardians, loss of wages and risk of job loss;
- For parents and guardians, interference with caretaking duties and childcare; and
- Incurrence of expenses to travel back and forth from numerous appointments.

The cost of multiple court dates, particularly in a short period of time, can be extremely destabilizing to our clients. Fulfilling their obligations to court can derail the progress of young people in school and at home and can be an impediment to successful outcomes.

VI. Lack of Transparency and Int 1628

The Bronx Defenders supports Int 1628. Transparency is critical for accountability. Of course, it is critical that data be reported and collected in a manner that maintains the privacy rights of our clients. In particular, we believe that Int 1628 will aid in shedding light on the reasons that some young people are denied access to adjustment.

Bearing this important consideration in mind, we recommend that the Council require the collection of additional data:

- Disaggregate all data to include children with an identified disability (using the existence of an IEP or 504 plan as a proxy);
- Disaggregate the detention and placement of children in foster care specifically (and not only those with ACS history, which is overbroad);
- Disaggregate data about incidents and injuries in detention by age/gender/race/disability;
- Collect data on the specific reasons for ACS moves of young people in detention or placement from setting to setting (less restrictive to more restrictive and vice-versa); and
- Collect data on specific de-escalation measures used to prior to moves from less restrictive to more restrictive settings and moves from facility to facility at the same restrictiveness level.

The first step toward understanding the problems and issues inherent in implementation of RTA requires a shared understanding of the underlying facts and data. This bill is an important first step towards that necessary transparency.

VII. Conclusion

BxD appreciates the Council's attention to the treatment of young people arrested in New York City. We look forward to working with the Council to address the issues raised here. BxD would be happy to assist the Council in these efforts moving forward.

Thank you,

Stacey Kennard, Esq.
Team Leader and Criminal Defense Attorney
Adolescent Defense Project
The Bronx Defenders

TESTIMONY

The Council of the City of New York
Committee on Criminal Justice
Committee on the Justice System

Oversight - Implementation and Expansion of Raise the Age

December 3, 2019

The Legal Aid Society
199 Water Street
New York, New York 10007
212-577-3300

Presented by: Nancy Ginsburg
Christine Bella

The Legal Aid Society welcomes the opportunity to testify before the Committees on Justice and Criminal Justice regarding oversight of New York City's implementation of raise the age. We thank Chairs Lancman and Powers for inviting us to hear our view on the topic.

The Legal Aid Society is the nation's oldest and largest not-for-profit legal services organization. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform. Through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City, the Society provides comprehensive Juvenile, Civil, and Criminal legal services in all five boroughs of the City. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States.

The Legal Aid Society has dedicated teams of lawyers, social workers, paralegals and investigators devoted to serve the unique needs of children and youth charged as juvenile delinquents, adolescent, and juvenile offenders in the Family and Criminal Court forums. Since the implementation of raise the age, Juvenile Rights and Criminal's Adolescent Intervention and Diversion Project experts have adopted an integrated representation model to ensure uninterrupted, seamless and comprehensive representation of 16 and 17 year old youth who appear in the Youth Part and are removed to Family Court. Last year, our staff represented children on over 39, 000 matters in Family Court and handled nearly 230,000 trial, appellate, and post-conviction cases for clients accused of criminal conduct. In addition to representing many thousands of children, youth, and adults each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients. The Legal Aid Society, along with a coalition of

advocacy and other defender organizations continue to be actively engaged in the planning and implementation process of raise the age.

A. The Needs and Demographics of Court-Involved Youth

The Legal Aid Society zealously advocates for marginalized, disenfranchised and oppressed individuals and communities. Racial inequities permeate the court system. For decades, Black and Latinx young people in New York City have been unfairly and vastly overrepresented.¹ According to ACS's Detention Demographic Data, 95.4% of all New York City youth admitted to secure detention facilities in fiscal year 2019 were identified as Black or Latinx (66% identified in court documents as Black and 28% as Latinx). Similarly, 94% of all New York City youth admitted to non-secure detention were identified as Black and Latinx (67% identified as Black and 27% as Latinx).² Of youth placed by New York City Family Court judges in Close to Home non-secure and limited secure placement in fiscal year 2019, 91% were Black and Latinx (53% identified as Black and 38% as Hispanic).³ The vast majority of youth admitted to secure detention come from: Brownsville, Bedford-Stuyvesant, East New York, Harlem, the South Bronx and Far Rockaway. These communities face racial inequities and share significant problems of poverty, inadequate services to meet the high needs of its residents, low performing schools, higher than average prevalence of health and mental health issues and substandard housing stock due to structural racism.

Lesbian, gay, bisexual, transgender, non-binary, queer/questioning and intersex (LGBTNBQI+) and runaway and homeless youth in NYC are also disproportionately vulnerable

¹ https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf

² <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2019/LL44HSJCDRFY19.pdf>

³Id.

to arrest and disproportionately represented in the court system. A national survey found that 40% of youth placed in girls facilities identified as LGBTNBQI+ and almost 14% of youth in boys facilities identified as LGBTNBQI+.⁴ Additionally, LGBTNBQI+ youth make up 40% of the runaway and homeless youth population.⁵ Simply by spending more time on the street and in public places, often lacking family support, these youth have more contact with police officers. They often lack government-issued identification that match their gender identity and their affirming names, which can make interaction with law enforcement more complicated.⁶ Many homeless youth find the need to engage in sex work to secure a place to sleep or to earn income, which makes them vulnerable to sex trafficking-related arrests. Transgender young adults are often targeted by NYPD police operations for loitering and other prostitution related offenses.⁷

The mental health and educational needs of justice involved youth are far greater than those of youth in the general population. According to ACS's data in Fiscal Year 2018, 73.8% of youth in detention were screened or received mental health services.⁸ Studies show that nearly seven in ten youth involved with the justice system are experiencing a mental illness, and at least one in four of these youth exhibit severe functional impairment.⁹ The national figures are consistent with local findings. Indeed, "approximately 85% of young people assessed in secure detention intake

⁴ Irvine, Angela, and Canfield, Aisha, 2017, "Reflections on New National Data on LGBQ/GNCT Youth In the Justice System," LGBTQ Policy Journal at the Harvard Kennedy School, Volume VII.

⁵ <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf>

⁶ Youth Justice Board, "A Report on Homeless Youth and the Justice System in New York City," June 2017, at <https://www.courtinnovation.org/publications/homeless-not-hopeless-report-homeless-youth-and-justice-system-new-york-city>

⁷ Id.

⁸ <https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2019/acs.pdf>.

⁹ Mental Health Association in New York State, Inc., "Report on Juvenile Justice, Mental Health & Family Engagement", October 2013, at: https://www.mhanys.org/MH_update/wp-content/uploads/2013/11/MHANYS_Juvenile-Justice-Report-2013_Final.pdf.

reported at least one traumatic event, including sexual and physical abuse, and domestic or intimate partner violence.”¹⁰

Girls in detention and jail, in particular, suffer from complex, overlapping needs. Oftentimes, having suffered more intense and prolonged trauma than the boys, girls present with higher rates of mental illness. Standard physical intervention strategies employed in restrictive settings such as secure detention, including the use of physical restraints or isolation, frequently have the unintended effect of causing increased stress and re-traumatization, escalating self-destructive and self-harming behavior for girls.¹¹ Similarly, many commercially sexually exploited youth¹² report experiencing repeated physical and/or sexual abuse by family members, as well as their pimps and johns. These youth require immediate crisis intervention services and intensive, ongoing counseling with specially trained therapists.

B. New York City’s Experience with Raise the Age

Raising the age of criminal responsibility creates the opportunity for most court-involved youth to be treated with a rehabilitative, age-appropriate approach and to provide greater protections for both youth and communities at large.¹³ Now that Raise the Age has been fully implemented, the majority of 16 and 17 year olds arrested are processed through the family court system rather than the adult criminal system.

¹⁰ <http://www1.nyc.gov/assets/opportunity/pdf/policybriefs/detention-brief.pdf>.

¹¹ *Improving Policy and Practice for Adolescent Girls with Co-Occurring Disorders in the Juvenile Justice System*, pp. 7-8. GAINS Center.

¹² A sexually exploited child is anyone under 18 who has been subject to sexual exploitation because he or she is the victim of the crime of sex trafficking; engages in any act of prostitution; is the victim of the crime of compelling prostitution; participates in sexual performance; or loiters for the purpose of engaging in a prostitution offense. See Social Services Law §447-a; Penal Law §§ 230.34, 230.00, 230.33 and §240.37; and Article 263 of the Penal Law.

¹³ *Raising the Bar: State Trends In Keeping Youth Out of Adult Courts (2015-2017)*
http://www.campaignforyouthjustice.org/images/StateTrends_Report_FINAL.pdf p. 9.

Raising the age of criminal responsibility is a notable and key aspect of criminal justice reform. Diverting youth to the family court system rather than criminalizing their conduct is both consistent with adolescent brain development and has a positive impact on public safety.¹⁴ Treating youth in the juvenile system is humane and it strengthens our economy by ensuring that more young people enter the workforce unencumbered by criminal convictions. Additionally, by raising the age of criminal responsibility, we have increased the involvement of parents and caregivers. For instance, Raise the Age NY, now requires the NYPD to notify parents/caretakers of 16 and 17 year olds when their child is arrested. It allows the parent/caretaker to be present during police interrogation and requires parental consent to police interrogation. Finally, Raise the Age NY protects youth from the many of harms associated with adult incarceration. Since its inception, in October 2018, detained youth in New York City are no longer sent to Rikers Island.

We have seen significant improvement in NYC's treatment of young people since implementation of Raise the Age. At the front end, New York City is arresting fewer teenagers arrested for any level crime, consistent with the decrease seen throughout New York State. We believe this reflects an improvement in law enforcement's approach to teenagers and understanding that teenagers should not be arrested for age normative behavior. Data released by the City in October, 2019 comparing the first year of Raise the Age to the year prior shows a thirty percent decline in the use of detention for youth under the age of eighteen, a twenty-one percent decline in felony arrests for sixteen year olds and a sixty-one percent decline in misdemeanor arrests for sixteen year olds. We are encouraged by the significant and sustained reduction in the number of teens being arrested and entering the court system.¹⁵

¹⁴ Research shows that "including 17 year olds in the juvenile justice system (rather than charging them adults) reduces recidivism by 34 percent." Sean Smith, The Importance of Raising the Age of Criminal Responsibility (citing a Center for Disease Control Study) June 23, 2017.

¹⁵ <https://criminaljustice.cityofnewyork.us/reports/raise-the-age-in-new-york-city/> at page 4.

New York City has provided continued and enhanced funding of community-based programming which provide alternatives to prosecution, detention and incarceration for the majority of youth who do enter the court system.¹⁶ Diversion programs are an important way to ensure that young people who can succeed without court intervention are given the opportunity to do so, since contact with the justice system in and of itself can lead to a downward spiral towards further criminal justice involvement.¹⁷ Some of the programs that have been most successful with our clients provide intensive home-based individual and family counseling. This approach builds skills for the teenagers as well as improving family dynamics, leading to long term benefits and reductions in recidivism.¹⁸ Other programs provide supervision, programming, mentoring and counseling.¹⁹ Additionally, the City has increased funding for community-based supervision of youth in place of detention.²⁰

Recently, New York City expanded a number of programs to divert individuals shortly after arrest or filing of a case in criminal court. These should serve as models to be expanded throughout the City for adolescents. One such program called Project Reset, created in collaboration with the NYPD and the Brooklyn, Manhattan and the Bronx District Attorneys, diverts teens and adults who have been arrested for the first time for selected offenses. Police screen for eligibility at the point of arrest and if the client elects to participate, they are assigned to participate in restorative justice programming provided by the Center for Court Innovation. Upon successful completion, the prosecutor declines prosecution and the participant does not have to go

¹⁶ <https://criminaljustice.cityofnewyork.us/wp-content/uploads/2018/09/adolescents-factsheet-v4.pdf>

¹⁷ <http://www.calendow.org/youth-arrest-detention-bad-justice-worse-health/>

¹⁸ <https://www.esperanzany.org/what-we-do/>; <https://www.nyfoundling.org/what-we-do/our-programs/juvenile-criminal-justice/families-rising/>

¹⁹ <http://www.communityalternatives.org/programs/court-services/>; <https://bronxconnect.org/programs/>; <https://www.cases.org/youth/>

²⁰ <https://www1.nyc.gov/site/probation/services/intensive-community-monitoring.page>; <https://www.cases.org/supervised-release/>

to court. Since 2015, the program for 16- and 17-year olds has helped more than 500 teens avoid criminal court prosecutions and the collateral consequences of a criminal conviction and has a 99 percent completion rate.²¹ Project Reset could similarly be utilized to divert 16 and 17 year olds from Family Court prosecution.

Another notable diversion program targets those struggling with opioid and heroin addiction who are arrested for low-level drug offenses, the Heroin Overdose Prevention & Education (HOPE) program on Staten Island.²² Those eligible are given a desk appearance ticket and connected to a peer coach and treatment services. If the participant meaningfully engages in treatment for a short period following the arrest, the DA's office declines to prosecute their case. A related program was implemented in Staten Island, Manhattan and the Bronx post arraignment, providing dismissal of the charges and sealing of the criminal case upon successful completion.²³

In addition to diversion prior to the filing of a court case, the City has expanded the menu of diversion options once a case has been filed in court for adolescents. Programs that provide supervision in the community as well as intensive therapy and case and crisis management have provided necessary support to court-involved youth and their families. The expansion of age appropriate supervision along with family-centered supports have reduced the number of youth in detention while strengthening families and developing the skill sets of adolescents. Ensuring ongoing adequate funding of diversion programs is key to successful implementation of Raise the Age.

²¹ https://www.courtinnovation.org/sites/default/files/media/document/2019/projectreset_eval_2019.pdf, Center for court Innovation, "Project Reset," 2017, at <https://www.courtinnovation.org/node/20117/more-info>.

²² <https://knowledgebank.criminaljustice.ny.gov/heroin-overdose-prevention-and-education-hope-program>

²³ https://ww2.nycourts.gov/sites/default/files/document/files/2019-01/PR19_02.pdf

There are a few areas where implementation of Raise the Age is still struggling and deserve the focus of the Council.

I. Arrest to Arraignment times

Since the 1991 Court of Appeals decision requiring the arrest to arraignment time be limited to twenty-four hours²⁴, the City has struggled to meet this mandate. In the last few years, however, compliance has improved.²⁵ Raise the Age brought a new challenge to this mandate, as the State and City committed to a process where as many youth as possible would be arraigned in the designated Youth Parts which are staffed by specially trained judges and court personnel. In the planning phase of Raise the Age, an implementation group comprised of city agencies, court officials, prosecutors, the defense bar and other stakeholders, articulated four shared values.²⁶ Two of these values: safety and speed, were included to ensure that young people moved through the system as quickly as possible, reducing periods of detention to the shortest time possible. The Raise the Age law requires when an adolescent's case is arraigned in Criminal Court at night or on a weekend and it is not removed to Family Court, that case must again be calendared in the Youth Part the next day it is in session.²⁷

In contrast to the rest of New York State, New York City still appears to be adhering to the historical 24 hour arrest to arraignment time, which leaves the majority of adolescents arraigned on raise the age criminal court dockets at night, rather than in the Youth parts, which only operate weekdays. A report released by the New York State Raise the Age Implementation Task Force in August, 2019, showed that adolescents were much more likely to be arraigned outside of the Youth

²⁴ https://www.law.cornell.edu/nyctap/191_0035.htm

²⁵ <https://www.nytimes.com/2014/03/20/nyregion/new-york-courts-meet-elusive-goal-from-arrest-to-arraignment-in-under-24-hours.html>

²⁶ <https://criminaljustice.cityofnewyork.us/programs/raise-the-age/>

²⁷ CPL 722.20(1); 722.21(1).

Part necessitating an additional court appearance the next day in the Youth Part. Sixty-seven percent of youth were not arraigned in the Youth Part in New York City as compared to only thirty-seven percent of youth in the rest of New York State.²⁸

A snapshot of our current open cases in the four largest boroughs show that in over fifty percent of our cases, clients were arrested at a time that would have allowed for an arraignment in the Youth Part, but were instead arraigned in night court. All teenagers who are arrested during the late afternoon through the morning hours should simply be taken to the Youth Part the next day for arraignment. Instead, they are being held for the full twenty-four hour period, occasionally longer, until the arraignment takes place in night court. The next day court appearance requires the youth to miss yet another day of school and forces the parent or guardian to miss an additional day of work and/or to have to make an additional day of child care arrangements for other children in the home. The additional court appearances also raise the cost of the process for court personnel and other stakeholders who must again appear at the second, next day adjournment.

We have not been able to obtain definitive information as to the source of this delay in arraignment--whether it is driven solely by the NYPD or a combination of NYPD and prosecutorial delay. Whatever the source, the delay needs to be identified and remedied. We encourage the Council to inquire into this issue.

II. Other Court Services

No youth should have to spend one extra evening in detention, deprived of his liberty without due process of law. We find that when a youth is arraigned in the Youth Part, and the prosecutor is seeking to remand the youth, sometimes rather than transfer the case to the Family Court calendar on the same day, the Youth Part Judges will put the case over to the following day.

²⁸ <https://www.criminaljustice.ny.gov/crimnet/ojsa/NYS-RTA-Task-Force-First-Report.pdf>, p. 11.

The youth then remains in secure detention overnight awaiting court review, and family members must return to court the very next day.²⁹ We urge that all such pre-petition hearings be heard the same day that the client is remanded by the Youth Part. To ensure this, there should be a concerted effort to have these cases called first, so those youth can be seen by a Family Court judge right away. If the youth is produced too late in the day to have the case added on the Family Court calendar, the Youth Court Judge should send the case to Family Court Night Court for a pre-petition hearing (which is when the Family Court is next in session).

Time in detention is a traumatic event in a youth's life and the life of the youth's family. Every effort possible should be made to assure that once a youth's case is removed to Family Court and a youth is held in custody, the youth's case is reviewed as soon as possible. The judges designated to make these determinations are in place, both in Family Court Night Court and in Family Court itself in each borough. The City must ensure that these cases are called in a timely manner in the first instance, and that those responsible for moving the youth from one venue to another do so as expeditiously as possible.

Further, at the time of removal to Family Court from the Youth Part, upon application by either the District Attorney or Corporation Counsel, a "Bridge" Temporary Order of Protection ("TOP")³⁰ is often issued against the youth whose case is being removed. TOPs, while at times necessary, are inherently prejudicial and harmful to the youth against whom the TOP is issued. The TOP is a court order that restricts, among other things, where the youth can go and with whom the youth can have even incidental contact with. Furthermore, it is not unheard of for a complainant to use a TOP as a sword, rather than a shield, resulting in new charges against the subject of a TOP even when no offense has been committed. Lastly, Bridge TOPs can run the risk of interfering

²⁹ Family Court Act §§ 307.3 and 307.4.

³⁰ Family Court Act § 304.2.

with the youth's eligibility for diversion services, if the adjustment service proposed by the DOP conflicts in any way with the terms of the TOP, the youth may be rejected for adjustment, resulting in the matter being referred to Corporation Counsel for the filing of a petition.

Whenever a Bridge TOP is issued, the case is calendared on the Family Court docket to allow the Family Court judge to review whether or not to continue the TOP, and if so for how long. More often than not even though no case has been filed in Family Court, the TOP is continued: 1) while the case is being evaluated by the DOP for adjustment services; 2) while efforts are being made by DOP to adjust the case; and 3) even after a determination has been made that the case cannot be adjusted, and while the case is referred to Corporation Counsel for the possible filing of a petition. This time period can range from days to weeks to months. At no time during this period has either the Youth Part or the Family Court judge conducted any form of a preliminary hearing to test the integrity and reliability of the allegations against the youth. In contrast, typically, a TOP is an instrument issued by the court only after a complaint or petition has been filed against the accused.

Although the Family Court Act allows for a TOP to be issued prior to the filing of a petition in Family Court, the issuance and continuation of TOPs should be consistent with due process protections. While we recognize that these matters largely implicate state law, we nonetheless call the City Council's attention to our concerns in its oversight role because they directly arise from Raise the Age implementation.

III. Detention Issues

Three groups of youth are housed in juvenile secure detention: youth prosecuted in Family Court ("juvenile delinquents"); youth charge with crimes at age 13-15 who are prosecuted in

criminal court (“juvenile offenders”), and youth charged with crimes at age 16 or 17.³¹ The Raise the Age law required the creation of two new classifications of detention, Specialized Juvenile Detention (“SJD”), or Horizon, and Specialized Secure Detention (“SSD”), which in New York City, is Crossroads.

In New York City, all 16 and 17 year olds were moved from Rikers Island to Horizon Juvenile Center prior to October 1, 2018.³² The 16 and 17 year olds whose cases stem from incidents prior to the effective dates are not considered “adolescent offenders”, but may no longer be held in adult facilities. Current OCFS regulations do not permit the 16 and 17 year olds who are not adolescent offenders to be held in the same housing units as youth who are prosecuted after the effective dates of Raise the Age. Crossroads, which is administered by ACS DYFJ, holds juvenile offenders, adolescent offenders and the juvenile delinquents who are remanded specifically to secure detention by Family Court.

The law does not clearly delineate the role of the ACS DYFJ in the creation and administration of Horizon Juvenile Center, but rather, mandates that the agency work in conjunction with the New York City DOC. Although the term “in conjunction” is not defined by statute, the City Administration implemented a plan that gave DOC custodial responsibility and ACS responsibility for the delivery of medical and case management services, as well as recreational programming for the youth who do not fall under raise the age. Since October 1, 2018, the City has worked to increase ACS’ staffing capacity to take over supervision and security

³¹ AOs are 16 year olds charged with felonies and prosecuted in the Youth Part in Criminal Court effective October 1, 2018 and 17 year olds effective October 1, 2019. Sixteen and seventeen year olds prosecuted for offenses which occurred prior to the effective dates of Raise the Age are held in Horizon, but do not fall under the category of “adolescent offenders”.

³² N.Y. Corr. Law 500-p.

of Horizon.³³ At some point, DOC will reportedly transition to play “an advisory role with the option to retain some operational responsibilities,” the parameters and the specifics of which are unclear.³⁴

Youth have long faced dangerous conditions and poor outcomes in DOC custody at Rikers Island due to an entrenched culture of violence. Prior to moving the youngest people to Horizon, DOC had improved some services for adolescents held on Rikers Island, in large part to comply with the settlement with The Legal Aid Society and U.S. Department of Justice in *Nunez v. City of New York*.³⁵ The City increased youth programming, significantly increase staffing for youth, and provided enhanced training for staff working with youth on Rikers. The City placed trained counselors in the housing units with adolescents, and invested in mentor and gang intervention programming. Other programming now available to youth in DOC custody includes extensive, practical vocational programs, such as Cosmetology, Building Trades, Barista Training, Food Preparation, OSHA Construction and maintenance, Flagging and Scaffolding, CPR and Simulated Driving Programs.³⁶ The City has invested considerable money to implement these programs for youth on Rikers. Unfortunately, although there are many programs available in both Horizon and Crossroads, we have not seen the breadth of vocational programming move with the youth who were transferred from Rikers to Horizon.

Despite these steps forward, much work remains. The Eighth Report of the *Nunez* Independent Monitor (overseeing use of force and conditions for people under age 19 at Rikers Island), dated October 28 2019³⁷, (“Monitor Report”) documents that despite reforms, public

³³ https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/Raise%20the%20Age_BOC%20Meeting%20Presentation_7.9.18.pdf

³⁴ *Id.*

³⁵ *Nunez v. City of New York*, 11 Civ. 5845 (LTS) (S.D.N.Y.).

³⁶ *Nunez v. City of New York*, The Fourth Report of the *Nunez* Independent Monitor, dated October 10, 2017, at 216.

³⁷ https://www1.nyc.gov/assets/doc/downloads/pdf/8th_Monitor_Report.pdf

attention and resources, violence against young people held in custody has risen to historic levels at Rikers, and many of these problems have migrated to Horizon. Key findings from the Monitor Report related to the DOC's treatment of adolescents in the Horizon juvenile facility include:

- "Throughout the Monitoring Period, HOJC [Horizon Juvenile Center] continued to be plagued by high rates of violence and use of force, despite a declining population...during this Monitoring Period, the rate of youth-on-youth violence (*i.e.*, fights and assaults) remained about the same, while the use of force trended upward throughout the Monitoring Period. (Monitor Report at 221)
- The report noted, as have prior monitor reports, that a small number of youth contribute to a disproportionate share of disorder in the facility. Despite repeated recommendations by the court appointed Monitors that the DOC should develop "effective strategies...for supervising and supporting these youth"(Monitor Report at 222), the DOC has failed to take action on that recommendation.
- The report goes on further to elucidate the areas in which the DOC has failed to implement effective strategies:
 - The facility's original behavior management system, STRIVE community, did not provide an individual-level system for incentivizing positive behavior nor a continuum of options for responding to negative behavior. (Id. at 223).
 - HOJC's staff's lack of skill in developing effective relationships and constructive rapport with youth, their lack of situational awareness, and their tendency to either over- or under-react to escalating tensions all contribute to the high rate of violence. (Id. at 223).

- The Facility’s classification system was not properly implemented (*i.e.*, custody levels are not routinely updated following misconduct) and does not include protocols for supervising youth according to their risk of institutional misconduct (*i.e.*, supervision is not differentiated and maximum and minimum custody youth are sometimes housed together). (Id. at 223-24).
- “Despite being critical for restoring safety in the aftermath of an incident, the Facility’s practices regarding the use of room confinement do not include effective internal controls for the appropriate use of this essential tool (nor does the use meet generally accepted practice or the Department’s own policy).” (Id at 224).
- Significantly, the Monitor report notes that the shift of operational control from DOC to ACS is creating “stress and uncertainty...for staff [which] inevitably impacts how the building is managed”. (Id at 227).

The City must move quickly to change conditions at Horizon before the culture of violence brought from Rikers Island becomes entrenched in this new facility. Three priorities are paramount, and we ask the Council to take leadership in their implementation.

First, *DOC must cease the use of “response teams” at Horizon.* Tactical teams in DOC have long been known by various names – probe teams, “turtles” (because of their riot gear), response teams. Their role in exacerbating tension, escalating ordinary confrontations from verbal power battles to physical combat, using excessive and unnecessary force, and contributing to the hostility of the jails in DOC is well documented. They have *no place* in daily life at a juvenile facility. Yet inexplicably, DOC has not only imported this tactic to Horizon, but has informed us that DOC response teams will *remain* at Horizon long after day-to-day control has transitioned to

ACS. This is the exact opposite of what was intended in moving these teens off of Rikers Island, and should be halted now.

Second, ACS must immediately take responsibility for transporting youth to court, instead of relying upon DOC's troubled Transportation Division as it does now. The Transportation Division is the singular command in DOC with the *least* video oversight and surveillance, as there are no cameras on the buses. We are extremely troubled by the practice of placing youth into DOC hands with no ACS oversight, and ask that ACS take over this function now.

Third, the Council must provide close oversight of ACS as it takes day-to-day operational control of Horizon to ensure that the gains sought by both Raise the Age and the *Nunez* agreement are realized. ACS may need technical resources or additional support for this new task, and should be provided resources from the juvenile justice community. Prolonged reliance on DOC for operational guidance or support will undermine the culture of rehabilitation that ACS is meant to provide.

One significant effort made in both Crossroads and Horizon is the provision of age-appropriate, trauma informed care. ACS and the New York City Health and Hospitals Corporation (HHC) have a contract requiring Bellevue Hospital Center to provide psychiatric and psychological care to youth in secure detention and to JDs in non-secure detention. Immediately prior to entering this contract, Bellevue Hospital in conjunction with ACS provided trauma-informed training to the staff in the secure detention centers. This enhanced level of mental health care is particularly important due to the high rates of mental illness and emotional disturbance within the population of detained youth.

It is critical that there is coordination among the providers within the facilities to ensure maximum information sharing, planning and support for the youth. The *Nunez* Monitor

specifically notes that “[t]he generally accepted practice for juvenile facilities is to implement a more intensive strategy to impact the behavior of these difficult to manage youth...The facility was encouraged to fortify the SBC [significant behavior concerns] strategy by ensuring it is a multi-disciplinary effort. Not only is input from the full range of staff (DOC, ACS, DOE, MH) important to fully understand the youth’s challenges, but these same people also need to be informed of their roles in supporting the youth and encouraging positive behavior going forward”. (Id. at 245-46) Raise the Age was passed to ensure that youth are treated in a developmentally appropriate manner within a rehabilitative setting. We strongly support this approach in both secure facilities and encourage the Council to monitor compliance.

C. The Need for Oversight is Crucial

We urge the Committees on Criminal Justice and the Justice System to provide robust oversight of the SSDs to ensure that the SSDs are developed and managed safely, and that youth receive the age-appropriate services and care to which they are entitled. Generally speaking, we urge the Council to ensure that ACS DYFJ has the funding and the tools necessary to extend its capacity and reach to address the requirements of Raise the Age.

Independent oversight of detention facilities is also critical to ensuring youth are safely and appropriately cared for. While ACS is subject to oversight of other governmental agencies such as OCFS, the Justice Center and of course, the City Council, the mandates and resources of these oversight entities are limited and are subject to political pressures and changes. An independent monitor drives performance by providing facility administrators with leverage to secure resources and programming. External oversight enhances public trust by increasing transparency and accountability.

D. Int. No. 1628

The Legal Aid Society generally supports Int. No. 1628, which is predominantly intended to update existing ACS reporting bills and also create a reporting requirement for the Department of Probation (“DOP”). Data transparency can enhance collaboration and coordination among various juvenile justice agencies. It can also shine a light on the racial inequities that persist in the New York City juvenile justice system. Finally, data reporting can enhance ACS DYFJ’s and the Department of Probation’s ability to provide appropriate services to court-involved youth.

While the Legal Aid Society generally supports this bill, there are a number of items included in the proposed bill that will not produce information of value to the Council or the public. For example, in the realm of Raise the Age, the amount of bail that is set can be an indicator of a systemic response or it can be a reflection of the decision-making process of individual judges. Simply collecting the bail amounts set on various charges, all of which are felonies, will not produce information that is useful to the Council. In addition, there are other clarifications and improvements that will make the bill more effective.

The bill additionally requires clarification with respect to the requirement for reporting on foster care and DOP involvement. The bill requires ACS to report “whether such youth have any prior contact with ACS, including but not limited to foster care cases; and whether the youth have any prior contact with the Department of Probation” throughout. This proposed language is problematic for several reasons. First, and most importantly, a youth’s “prior contacts” with ACS and DOP are confidential.³⁸ In addition, the phrase “prior contact with ACS” is extremely vague, since ACS provides preventive services to thousands of families. As a result, it is unclear how each agency would be able to comply with these directives and we are concerned that these

³⁸ Social Services Law §§ 372(3) and (4-a) and Family Court Act §§ 308.1 and 375.1.

requirements could result in agencies compelling youth or their families to divulge otherwise confidential or sealed information in an effort to comply with this data reporting requirement. These requirements should be removed from the legislation.

As drafted, the bill provides inadequate confidentiality protections for data categories in which the numbers are extremely low. Section 21-905(b)(2) titled demographic data for detention facilities and (f)(2) titled pre-sentence data require ACS to replace the numbers 1 to 5 with a symbol when reporting on the zip code of residence for admissions to detention. This requirement is an important device to ensure that information about youth admitted to juvenile detention remains confidential. This same confidentiality protection should be required throughout the legislation for all data points.

The Legal Aid Society is additionally concerned that the proposed bill requires the collection of information about conflicts within the facilities that may prove misleading. Identifying the factors leading to conflicts within facilities requires a nuanced understanding of facility operations; the presentation of a few data points may paint a picture that is neither accurate nor useful. For example, high rates of youth on youth assaults may reflect periods of inadequate staffing, problematic supervision, or deficient service coordination or incentives, but without more information such data might be interpreted to justify solely a call for harsher disciplinary action of youth. As a result, this reporting requirement must be carefully considered.

The Legal Aid Society remains available to assist the City with developing and sustaining improved outcomes for court-involved involved youth and the implementation of Raise the Age. We again thank the Committee for providing the opportunity to offer testimony regarding this important issue. We are happy to answer any questions you may have.

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Testimony of

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Presented to the
Committee on the Justice System and the Committee on Criminal Justice

Oversight Hearing: Implementation and Expansion of Raise the Age Int. 1628

December 3, 2019

Good morning. My name is M. Mena and I am a Policy and Budget Analyst at the Citizens' Committee for Children of New York, Inc. (CCC). CCC is a 74-year-old independent, multi-issue child advocacy organization dedicated to ensuring that every New York child is healthy, housed, educated, and safe.

Thank you Chairs Rory I. Lancman and Keith Powers, and all the members of the Juvenile Justice and Justice System Committees for holding today's oversight hearing on the Implementation and Expansion of Raise the Age Int. 1628. I would also like to thank all of the members of Committees for their commitment to improving outcomes for youth in the justice system. CCC welcomes the opportunity to provide testimony backed by our fact-based advocacy and data-driven methods that prioritize, first and foremost, the safety of children, including justice-involved youth. We look forward to working closely with the Committees to create policies that ensures that each New York City youth is afforded the rights and opportunities to learn and grow from their transgressions, with minimal trauma, and to reintegrate into society with dignity.

CCC was a co-lead in the passing of the State legislation to Raise the Age of criminality for youth in New York in April 2017. These laws were several years in the making and marked a long-awaited victory for New York's children, youth, and families, especially communities of color whom we know are often over-policed and over-represented in the juvenile justice system. With the passing of Raise the Age legislation, the automatic prosecution and confinement of 16- and 17-year-olds as adults ended.¹ This legislation changed how youth are handled in New York's court system and aimed to provide "age-appropriate services and facilities that would promote an environment focused on wellbeing for young people."²

In the last two years, we have monitored its implementation, which removed all 16-year and 17-year-olds from Rikers' Island Adult Correctional facility in October 2018. Thus far, the data suggests that we are heading in the right direction. Increased reporting on all matters relating to justice-involved youth would further support the progress being made in the Juvenile Justice System. According to the Mayor's Office of Criminal Justice, which reported on the first nine (9) months of Raise the Age implementation, 80% of 16- year-olds arrested for felonies had their cases removed from the Youth Part of the State Supreme Court to Family Court. Importantly, under this legislation Youth Part judges obtain specialized training in adolescent behavioral development.³ The City has also seen a 61% decline in misdemeanor arrests for 16-year-olds, and an overall 30% decline in detention for youth under 18-years old. In this year's Mayor's Management Report⁴ we also found that, consistent with trends *before* the passing of Raise the Age, there was a decrease in the placement of youth in detention facilities, as well as a

¹ Report *Raise the Age in New York City: Trends over the Past Five Years and the First Nine Months of Raise the Age Implementation* by Elizabeth Glazer, director. NYC Criminal Justice. Mayor Bill de Blasio, The City of New York. October 2019, p. 4. http://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/11/Raise-the-Age-in-New-York-City_.pdf Accessed on October 4th, 2019.

² *Ibid.*

³ Glazer, pg. 5.

⁴ *The Mayor's Management Report*. The City of New York. Mayor Bill de Blasio. Dean Fuleihan, First Deputy Mayor and Jeff Thamkittikasem, Director Mayor's Office of Operations. September 2019. Pg. 190. https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2019/2019_mmr.pdf Accessed on December 2nd, 2019.

decrease in the length of time of confinement in said facilities. Moreover, there has been a decrease in reported youth-on-youth assaults, and while there was a slight increase in reports of youth-on-staff assaults, “the increase in the youth on staff assault rate is attributable to the consolidation of the juvenile delinquent, juvenile offender and adolescent offender populations into the Crossroads Juvenile Center during the implementation of the Raise the Age law.”⁵ To address this, the Administration of Children’s Services (ACS) is incorporating a new behavior management system which they anticipate will result in a decrease in the number of assaults.⁶ Therefore, today’s hearing to discuss the proposed required reporting on juvenile justice statistics by ACS and the Department of Probation (DOP) is timely. Reporting would offer public data to allow a fuller picture of the juvenile justice system in New York. Transparent, consistent, and on-going reporting, for example, will help us better understand:

- Who is involved in the youth justice system?
 - Key youth demographics pertaining to race, gender, age, and home zip codes, among other data can provide more information on the types of preventive services and community-based support might their communities need.
- What types of offenses have they been arrested for? And what are the terms of their disposition, including length of placement in juvenile facilities? Given that judges receive training on adolescent development, and are required to “consider a disposition of the case that represents the least restrictive and most appropriate option consistent with the needs and best interests of the youth and community,”⁷ it is imperative to keep track of what misdemeanors and felonies youth are being charged with, the duration of their placement, and more generally the terms of their disposition.
- In which facilities are youth being placed?
 - What facilities are they being transferred from? For youth who have been transferred multiple times, what facilities have they been placed in and why are they being transferred? Keeping track of justice involved youth is one important way of ensuring that they are provided with the necessary resources to complete their time in the system and to help break the cycle of recidivism.
- Additionally, the data will include incident reports involving Juvenile Justice Staff and/or altercations among youth. If we want to reduce the incidents that occur in juvenile facilities, data and reporting are key to identify trends and types of trainings and services that can be effective in minimizing disputes.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

CCC believes that these and other areas outlined in Int. 1628 will further strengthen the juvenile justice system, a system that impacts thousands of young New Yorkers. There are well-documented social, health, and life-long effects for justice-involved youth, their families, and communities.

National research has shown that youth involved in the juvenile justice system have high rates of exposure to trauma. A national study found that up to 90% of justice-involved youth report exposure to some type of trauma, 70% meet criteria for a mental health disorder, and 30% meet criteria for post-traumatic stress disorder. Another study of youth in detention in Chicago found that 93% of youth had experienced at least one trauma, 84% experienced more than one trauma, and 57% reported being exposed to trauma six or more times, with most of these traumas consisting of witnessing violence. Compared to youth in the general population, youth in juvenile justice system have much higher rates of trauma histories. Various studies have found rates that are between two (2) to four (4) times higher among juvenile justice youth than general population youth.

Girls in the juvenile justice system have even greater rates of exposure to trauma, particularly family violence and sexually-based traumatic experiences.⁸ Using a national data set of juvenile justice youth, girls were twice as likely as boys to report sexual abuse and four (4) times as likely to have experienced sexual assault.⁹ A study of youth in detention facilities found that girls and boys were equally likely to have experienced a variety of traumatic experiences, except girls were eight (8) times more likely to report sexual abuse and two and half (2.5) times more likely to report severe neglect.¹⁰ In one of the few studies to compare matched youth in the community and youth in detention facilities, girls in detention were three (3) times more likely to report being victims of rape or molestation than matched girls in community, and nearly ten (10) times more likely than boys in detention.¹¹

These alarming statistics should encourage us to continue to pursue and provide a robust network of supports for justice involved youth, a majority of whom have also experienced trauma. Fortunately, there are now several evidence-based, evidence-informed and promising practices that have demonstrated effectiveness in addressing trauma, including many that specifically target court-involved youth who have histories of trauma. An on-going list of evidence-based models and their efficacy is provided by The National Child Traumatic Stress Network and available online at <http://nctsn.org/resources/topics/treatments-that-work/promising-practices>. Empirical research into long-term outcomes from trauma services within the juvenile context is still relatively new and, like most juvenile justice research, faces challenges in measuring recidivism for juveniles, but a few studies have shown promising findings. A recent study found that justice-involved youth with histories of trauma were less likely to believe they would recidivate when they were provided mental health services.¹² More

⁸ Kerig, Patricia K. and Julian D. Ford. *Trauma Among Girls in the Juvenile Justice System*. National Child Traumatic Stress Network. 2014. Available at http://www.nctsn.org/sites/default/files/assets/pdfs/trauma_among_girls_in_the_jj_system_2014.pdf.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Jamie R. Yoder, Kelly Whitaker, and Camille R. Quinn.

generally, trauma-informed care has been found to improve mental health outcomes and has been shown to reduce suspensions and expulsions in some school contexts.¹³

In light of these facts, CCC views two major areas of concern that are directly linked to providing youth in the juvenile justice system with developmentally appropriate resources to increase their wellbeing and lead them back to a healthy and safe path. First, we want an update on **the phasing out of correctional officers and/or Department of Correctional** personnel in facilities where juvenile and adolescents are placed. And secondly, **reporting data accurately and consistently increases oversight and accountability** and ensures that every child and youth in detention is accounted for, thus keeping with the original goals of Raise the Age Legislation to “promote an environment focused on the wellbeing for young people.”¹⁴

We urge the Committees to continue to take steps to stand up for the rights and wellbeing of youth involved in the justice system.

Phasing out of correctional officers

As we approach the phasing out of correctional officers in youth justice facilities, this process raises significant concerns for CCC. Generally, the Department of Correction approaches youth in the same way they approach adults in prison with the use of excessive force, resulting in trauma. As I outlined above, a majority of youth in the juvenile justice system experience trauma while in custody. Traumatizing youth will not result in positive behaviors, but rather exacerbates a climate of fear and distrust that enables young adults to continue to act from a place of confusion and stress rather than from a place of mental and emotional stability. Youth deserve the opportunity to learn from their mistakes with services and positive interactions with well-trained staff who also have the youth’s best interest in mind. Ultimately, correctional officers are trained to extinguish any type of dispute among adult populations, however, this approach is not developmentally appropriate for youth.

Scientific research conclusively shows how a person’s brain develops slowly and takes much longer than their outward physical appearance. Studies have repeatedly shown that most people’s brains do not fully finish developing until a person is in their mid-twenties. Brain scans show that adolescents’ brains look different than adults. The parts of the brain responsible for more complex functions are the last to mature, which typically does not finish until the mid-twenties. Specifically, the prefrontal cortex (or frontal lobe), is the very last part of the brain that finishes growing and developing. The prefrontal cortex handles complex functions, like long-term thinking, properly recognizing risks, emotional regulation, reasoning, and denying instant gratification. Before this part of the brain matures, brain scans show that the parts of the brain responsible for emotions and immediate desires are the parts used most heavily when making decisions. This can explain why youth often seem to have less self-control, are drawn to higher

¹³ Stevens, J. E. “Lincoln high school in Walla Walla, WA tries new approach to school discipline—Suspensions drop 85%.” ACEs Too High. Aug. 20, 2013. Available at <http://acestoohigh.com/2012/04/23/lincoln-high-school-in-walla-walia-wa-tries-new-approach-to-school-discipline-expulsions-drop-85/>. Stevens, J. E. “At Cherokee point elementary, kids don’t conform to school; school conforms to kids.” ACEs Too High. July 22, 2013. Available at <http://acestoohigh.com/2013/07/22/at-cherokee-point-elementary-kids-dont-conform-to-school-school-conforms-to-kids/>.

¹⁴ Glazer 2019, p. 4.

levels of risk and stimulation, make decisions that are not in their long-term best interest, and are bad predictors of consequences.

An adolescent's underdeveloped brain is also, by nature, primed for change. The same immaturity of the adolescent brain that may lead to risky behavior also makes the adolescent and his/her brain more receptive to rehabilitative services. The developmental nature of 16- and 17-year-olds makes youth physiologically primed to changing their thinking and behaviors about criminogenic norms and beliefs, either for good or bad. Research shows that the adult criminal justice system harms youth development, whereas the juvenile justice system can provide the services needed for pro-social development that do not involve such extreme forms of isolation and/or excessive force.

Reporting data

As an organization focused on fact-based advocacy, CCC strongly supports Int. 1628 for greater accessibility to public data ranging from demographic information on the youth placed in facilities, to the type of facilities they are placed in, to the nature of incident reports in juvenile justice facilities, as well as data on who is staffing these facilities. CCC supports efforts to end the practice of using pepper spray (Oleoresin Capsicum spray) to discipline youth. Furthermore, we support the proposed sections that explicitly address the reporting of youth probation (9-206), including the amounts of bail and other charges for youth who have committed both violent and non-violent felonies. CCC cannot overstate the significance of data and reporting to better meet the needs of justice-involved youth. We must remember that for the thousands of youth that pass through the system every year, we have thousands returning to their home communities. Consistent and accurate data reporting allows us to better serve youth.

CCC looks forward to continued partnership with the Committees to ensure effective implementation of Raise the Age legislation in NYC.

Thank you for the opportunity to testify today.

Respectfully,

M. Mena, Ph.D.



TESTIMONY OF:

Brenda Zubay, LMSW

BROOKLYN DEFENDER SERVICES

Presented before

**The New York City Council Committees on the Justice System and Criminal
Justice**

**Oversight Hearing on Implementation and Expansion of Raise the Age
and Intr. 1628-2019**

December 2, 2019

My name is Brenda Zubay and I am a Social Work Supervisor at Brooklyn Defender Services. BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for nearly 30,000 clients in Brooklyn every year. I thank the New York City Council Committees on the Justice System and Criminal Justice, and in particular Chairs Rory Lancman and Keith Powers, for the opportunity to testify about the implementation and expansion of Raise the Age.

BDS' specialized adolescent representation unit is comprised of specialized attorneys, social workers, and youth advocates dedicated to providing legal representation, advocacy and social services to court-involved adolescents age 21 and under. Our team represents approximately two thousand adolescents ages 13-21 annually.

Introduction 1628-2019

BDS supports Int. 1628-2019, which would amend the administrative code to require ACS and the Department of Probation to report on juvenile justice statistics. Reporting is a step toward accountability, however, we urge the City Council to look critically at the information provided by ACS and the Department of Probation. We anticipate that this data will confirm what we see every day, that children of color—specifically Black and Latinx young people—are substantially overrepresented in the juvenile justice system. This information is not an indictment of youth of color, but of a system that profiles, arrests, and imprisons Black and Latinx people at greater rates than their white counterparts.

As the Governor’s Commission on Youth, Public Safety and Justice reported, Black and Latinx youth make up 33 percent of 16- and 17-year-old youth statewide, but 72 percent of all arrests and 77 percent of all felony arrests. They also receive 82 percent of sentences to confinement statewide. The overrepresentation of adolescents of color in the juvenile justice system causes significant and disparate harm to youth, their families, and communities. The long-term collateral consequences of interactions with the system reinforce a vicious cycle of poverty and disenfranchisement. Juvenile justice reforms must acknowledge disparities at all stages of the criminal process and actively seek to limit the effects of racial bias and reduce racial disparity.

Additional Recommendations

Pre-arraignment Detainment

Although the Raise the Age (RTA) implementation sought to treat older teens like those who are already seen in family court, there is no provision of “speedy arraignment” until the case is actually removed to family court. This means we often see that the arraignment process for teens is longer than for our adult clients or those who enter the system directly in family court.

It routinely takes longer for a sixteen-year-old to see a judge than an adult. In some cases, young people are held in a police precinct, in handcuffs alongside a police officer, for up to 72 hours while waiting to see a Family Court Judge. Many of these instances can be avoided if police officers issue family court appearance tickets (FCATs). This would allow youth to be released by the officer, return home, and appear at a later date in family court.

Probation

Family Court relies heavily on recommendations from the Department of Probation and in fact probation has a lot of power in the RTA implementation since their unit will determine whether a case will proceed to the presentment agency (Family Court prosecution). This has a major impact on a child and their family. If probation decides to adjust the case, the young person will never see a judge and instead will be required to successfully complete services for the case to be dismissed. However, how probation determinations are made is opaque and unclear and once the case is referred for prosecution the outcomes look quite different.

When a case does reach Family Court, judges base their sentences on a probation report that delves deep into the family history of the youth client. Clearly that family history looks much different for a youth who is in foster care, or whose family has had ACS involvement in the past

then it does for a youth who has not had these experiences. Therefore, sentencing can have much more to do with family history than what the youth actually admitted to doing. This results in disproportionate sentencing. If the sentence involves placement, or post-trial detention, there is further ACS involvement. One of the main problems with the implementation of Raise the Age, is the lack of transparency by the courts, the prosecution, and ACS. Because there is so much discretion, the attorneys who represent these youths need to know how this discretion is being applied.

Conclusion

Raise the Age has provided an opportunity for City Council to pay greater attention to how youth are treated in our criminal and juvenile justice systems. Because ACS is an arm of the juvenile justice system, this bill is a critical step toward transparency for the communities they target and other measures such as accountability for incidents in detention facilities. The reasons for youth court-involvement are diverse and often complicated and collecting data is one step that the City should use to hopefully continue to serve these young people instead of incarcerate them. However, additional steps should be taken to mitigate the long-term consequences of court contact for adolescents and young adults, including expanding youthful offender status, opportunities for sealing of prior criminal records, and the elimination of fines, surcharges and civil judgments previously imposed.

Transparency and accountability of the Raise the Age and Family Court systems are necessary in order to reduce the harm of court involvement on young people, their families, and communities. Int. 1628-2019, which would require reporting and data collection, is a start at accountability, but additional oversight remains necessary.

Thank you for considering my comments. If you have any questions, please feel free to reach out to Kathleen McKenna, Policy Social Worker, at 718-254-0700 ext. 210 or kmckenna@bds.org.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

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Name: Chotadd Floyd

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I represent: Mayor's Office of Criminal Justice

Address: _____

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jordan Stockdale

Address: _____

I represent: Mayor's Office of Criminal Justice

Address: _____

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Appearance Card

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in favor in opposition

Date: 10/3/19

(PLEASE PRINT)

Name: Gineen Gray - Deputy Comm.

Address: 33 Beaver Street - 23rd Fl

I represent: NYC Probation

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Date: _____

Name: Chief William Barnes (PLEASE PRINT)

Address: _____

I represent: Dept. of Correction

Address: _____

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Date: _____

Name: Jean Claude - Lebec (PLEASE PRINT)

Address: _____

I represent: Dept. of Correction

Address: _____

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in favor in opposition

Date: _____

Name: Sara Hemmeter, Acting Deputy Commissioner (PLEASE PRINT)

Address: ACS - 150 William St

I represent: NYC Administration for Children's Services

Address: _____

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in favor in opposition

Date: _____

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Name: Charles Parkers, Deputy Associate Commissioner

Address: 150 William St

I represent: NYC Administration for Children Services

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. 1628 Res. No. _____

in favor in opposition

Date: 12/3/19

(PLEASE PRINT)

Name: Stacey Kennard

Address: 50 W. 127th St., Apt. 1C, NY, NY 10027

I represent: The Bronx Defender

Address: 360 E. 161st St., Bronx, NY 10451

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in favor in opposition

Date: 12/3/19

(PLEASE PRINT)

Name: Kate Rubin

Address: 727 E. 10th St BK, NY

I represent: Youth Represent

Address: 11 Park Place Ste 1512 NY, NY

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Name: JULIA DAVIS

Address: 815 2d Ave, 8th Floor NY 10017

I represent: Children's Defense Fund - NY

Address: _____

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(PLEASE PRINT)

Name: Brenda Zubay

Address: _____

I represent: Brooklyn Defender Services

Address: 177 Livingston St. Brooklyn

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in favor in opposition

Date: 12/3/19

(PLEASE PRINT)

Name: Nancy Ginsburg + Christine Bella

Address: 199 Water St

I represent: Legal Aid Society

Address: _____

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I intend to appear and speak on Int. No. 1623 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: M Mena

Address: _____

I represent: Citizens' Committee for Children of NY

Address: _____

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