



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Amy Albert – Criminal Defense Practice

BROOKLYN DEFENDER SERVICES

Written with Andrea Nieves, Senior Policy Attorney

Presented before

The New York City Council Committee on Juvenile Justice

and the Committee on Justice System

Oversight Hearing on

NYC's Preparedness to Raise the Age

and

Reso. 0283-2018

April 18, 2018

My name is Amy Albert and I am a trial attorney with Brooklyn Defender Services (BDS). Our organization provides multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy in nearly 35,000 cases involving indigent Brooklyn residents every year. I thank the New York City Council Committee on Juvenile Justice and the Committee on Justice System, and in particular Chairpersons Andy King and Rory Lancman, for the opportunity to testify about recommendations to ensure successful implementation of Raise the Age (RTA) legislation in New York City.

I am the Coordinator of the Brooklyn Adolescent Representation Team (BART), a specialized unit at BDS made up of dedicated attorneys and social workers that represent over two thousand adolescents ages 13-24 annually. During my tenure at BDS, I have defended hundreds of young people accused of crimes in Brooklyn's criminal and Supreme Court. I currently carry a caseload of more than 100 16-24 year-olds charged with misdemeanors whose cases are adjudicated in Brooklyn's adolescent diversion court part – APY2. Prior to joining

BDS, I worked at the Legal Aid Society's Juvenile Rights Practice representing youth in delinquency proceedings in Brooklyn. I am grateful for the opportunity to speak today about BDS's suggestions for best practices as we move forward with a citywide implementation of Raise the Age.

Introduction

Last year, the New York State legislature passed a law to Raise the Age of criminal responsibility, a long overdue reform. The New York City Council and the Committees on Juvenile Justice and the Justice System can play a critical role in ensuring that the law is implemented effectively for the benefit of young people, their families and communities.

Below we outline a number of potential problems and suggestions for solutions.

Problem 1: Youth facing serious charges will continue to face adult consequences for adolescent behavior post-Raise the Age.

Advocates and legal service providers including Brooklyn Defender Services were deeply disappointed to learn that the bill that ultimately passed the legislature did not require "all kids, all crimes" to have their cases heard in Family Court. Instead, the legislature created a new system for so-called "Adolescent Offenders," youth charged with more serious crimes. These youth will still be exposed to adult sentencing and incarceration in facilities run by New York State Department of Corrections and Community Supervision staff.

Unfortunately, this strategy of continuing to treat the most serious offenders as adults is contrary to a wealth of scientific research on adolescent development. Scientific research confirms that high-risk youth do not benefit from "severe punishment" but they do benefit from programming aimed at pro-social behavior. For example, an August 2015 federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) study followed over 1,300 youth charged with serious crimes in Pennsylvania and Arizona for seven years after their court involvement. The researchers found no meaningful reduction in offending or arrests due to more severe punishment, such as correctional placement versus probation or longer periods of institutional placement. But they did find that the certainty of punishment can play a role in deterring future crimes. Among adolescents who commit serious offenses, "recidivism is tied strongly and directly to their perceptions of how certain they are that they will be arrested," the report said.¹ Serious offenders in placement or receiving out-of-court services benefit the most from interpersonal skills programs (involving training in social skills and anger control) and behavioral programs. Critically, even serious violent offenders can benefit from these interventions.²

While boroughs like Brooklyn have robust and successful programming in place for misdemeanors and low-level cases, the City has not sufficiently invested in the kinds of

¹ Thomas A. Loughran, Robert Brame, Jeffrey Fagan, Alex R. Piquero, Edward P. Mulvey, and Carol A. Schubert, *Studying Deterrence Among High-Risk Adolescents*, OJJDP JUVENILE JUSTICE BULLETIN (August 2015), available at <http://www.ojjdp.gov/pubs/248617.pdf>.

² Mark W. Lipsey, David B. Wilson, and Lynn Cothorn, *Effective Intervention for Serious Juvenile Offenders*, OJJDP JUVENILE JUSTICE BULLETIN (April 2000), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/181201.pdf>.

programming that will most successfully end the cycle of re-arrest and conviction that plagues a small number of youth.

In Family Court, programs for youth charged with more serious offenses are generally offered or overseen by probation. In New York City, many of these programs have a long track record in promoting best outcomes for youth. However, in adult court, there are far fewer alternative to incarceration programs, and sometimes the only available options are programs run by the District Attorneys, rather than experts in rehabilitation like probation. The new Adolescent Offender parts should look to the model in family court and encourage new programming from probation.

In my experience, there are a few really strong community-based alternatives to incarceration programs for kids charged with serious crimes: Common Justice, Families Rising and Esperanza are all programs that have made a difference for many of my clients.³ But these programs, because of their success, often have waitlists, or may have to exclude certain youth because of funding restrictions. The City Council should increase support for community-based programs like these, in addition to any programs run by the courts.

Solution A: Fund diverse and appropriate alternative to incarceration programs for adolescents in all five boroughs and increase support for existing successful programs.

Solution B: Require reporting from criminal justice stakeholders to ensure that Adolescent Offenders are, in the vast majority of cases, able to access alternatives to incarceration programs of the same quantity and quality as youth in Family Court.

Problem 2: Youth may face more intrusive interventions in Family Court for low-level adolescent behavior than they do in adult court.

Members of the Council may be surprised to learn that under New York law, youth may be exposed to more intrusive or lengthy interventions in Family Court for behavior that would be adjudicated more quickly in adult court.

In theory, more intrusive interventions may seem like a better way to address adolescent misbehavior; however, the research is clear: when it comes to youth, it is best to steer non-violent youthful offenders out of the criminal legal system as quickly as possible. Studies show that first-time offenders will never be arrested again, regardless of any intervention they receive. Almost 70 percent of youth who are arrested once are never arrested again. 20 percent of young offenders are re-arrested two or three times, with only six to eight percent falling into the category of three arrests or more.⁴ Re-arrest rates appear to mirror the reality in the streets. A

³ Learn more about these three alternative to incarceration programs on their websites, located at <https://www.commonjustice.org/> (Common Justice), <https://www.nyfoundling.org/program/juvenile-justice/> (Families Rising), and <https://www.esperanzany.org/> (Esperanza).

⁴ Center on Juvenile and Criminal Justice, "Widening the Net in Juvenile Justice and the Dangers of Prevention and Early Intervention" (August 2001), 4-6, available at <http://www.cjci.org/uploads/cjci/documents/widening.pdf>. See also [Marvin E. Wolfgang](#), [Robert M. Figlio](#), and [Thorsten Sellin](#), *Delinquency in a Birth Cohort*, Chicago: University of Chicago Press, 1972; Michael Schumacher and Gwen A. Kurz, *The 8% Solution: Preventing Serious, Repeat Juvenile Crime*, Thousand Oaks, California: Sage Publications, 1999.

recent study found that 91.5 percent of justice-involved youth reported decreased or limited illegal activity during the first three years following their court involvement.⁵ Re-offense statistics hold true whether or not first-time offenders are provided diversion interventions.⁶

Any changes to how we intervene with court-involved youth must aim to limit the potential for net widening. “Net widening” is the name given to the process of administrative or practical changes that result in a greater number of individuals being controlled by the criminal justice system. Research over the past thirty years has shown that prevention and early intervention policies in juvenile justice often subject more youth to formal justice system intervention. This results in the diversion of resources from youth most in need of interventions to youth who may require no intervention. Furthermore, because young people often fail to comply with programming or court requirements, consistent with typical adolescent behavior, longer monitoring periods set them up to fail and exposes them to more severe consequences, i.e. placement or continued monitoring, than they would receive in adult court.

For interventions to be effective, they should be swift, certain, and consistent.⁷ Such interventions allow the young person to connect the negative behavior with the punishment. It also sends a consistent message about accountability and personal responsibility. When creating APY2 – the adolescent diversion court part in Brooklyn – stakeholders designed the court part with this research in mind. The court is a successful model for best practice interventions for young people charged in low level cases.

I have represented hundreds of young people ages 16-24 charged with misdemeanors in APY2 for low-level cases ranging from marijuana possession, jumping a turnstile, shoplifting and possession of fake id cases. Through these cases I am certain that in APY2 cases, the Center for Court Innovation (CCI), defenders, the judge and court staff, and the Brooklyn DA’s office have worked hard to provide proportionate and appropriate programming and sentencing. Almost every one of the sentences in these cases ends in an adjournment in contemplation of dismissal in which the case is held open for a period of time and then dismissed. When they do not, a violation plea is taken and the young person does not have a criminal record. CCI provides one, two and three session programming to which young people are mandated. Many of the cases are resolved at arraignments and there is only one follow up court appearance six weeks later to ensure that the young person has completed the mandate.

In Brooklyn, 16- and 17-year-olds charged with misdemeanors almost never receive a jail sentence of any kind. This fact is something Brooklyn court stakeholders are very proud of, and must continue to be the objective when these cases are transferred to Family Court.

In contrast to adult court, a 15-year-old charged with possession of marijuana or fare evasion may be provided an adjournment in contemplation of dismissal in Family Court but never at arraignments. Before any disposition is considered, their life is explored intensively. The youth

⁵ Edward P. Mulvey, “Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders,” OJJDP JUVENILE JUSTICE BULLETIN (March 2011), available at <https://ncjrs.gov/pdffiles1/ojjdp/230971.pdf>.

⁶ Ted Palmer and Roy V. Lewis, *An Evaluation of Juvenile Diversion*, Cambridge: Oelgeschlager, Gunn & Hain, 1980.

⁷ Office of Juvenile Justice and Delinquency Prevention, *Combating Violence and Delinquency: The National Juvenile Justice Action Plan*, Washington, D.C.: U.S. Department of Justice, 1996.

and their family are required to report to probation for an adjustment interview, at which point the probation officer looks at their school record, their relationship with their parents, and their compliance with curfew. If any of these are of concern, a risk assessment instrument is completed, the case is sent to court, and there are a minimum of two court appearances before resolution. The adjournment in contemplation of dismissal is monitored and only awarded after another intensive interview with probation and both the young person and their parent. If the young person is found to have other concerns, the requirements are much more intensive. And if the young person continues to fail to comply, they are sometimes sent to placement for behavior that would simply not result in jail time in adult court.

Perceived fairness in the justice process is critical for a young person's success with court mandated programming and/or services. My young clients regularly say to me, "they found me smoking" (marijuana) on Ebbets Field and now they want me to do months of programming and are worried about the fact that I dropped out of school? Adults are ridiculous." When I hear my young clients say this, I know that this is often the point when we may lose their buy-in, with potentially serious consequences. The research bears this out; when young people perceive court procedures to be unfair, they reoffend at higher rates.⁸ It is crucial that the Council provide oversight of corporation counsel, probation and ACS to ensure that any interventions in low-level cases are as narrowly tailored as possible to prevent net widening.

Raise the Age is an opportunity for New York City to treat our 16- and 17-year-olds more fairly and to reduce net widening in the juvenile justice system. We offer the following recommendations to make this happen.

Solution A: Encourage the family courts to use APY2 as a model for short, targeted interventions that will minimize the potential for net widening. The Council can do this by funding new pilot programs like those created by CCI for APY2.

Solution B: The Council should make clear that placement for youth charged with misdemeanors is not acceptable. The Council should require ACS, corporation counsel and probation to report the number of 16- and 17-year-olds charged with all crimes and the dispositions in those cases, including placement. This information should be disaggregated by age, race, and borough (without confidential information). Reporting on dispositions in family court cases are critical for the city to maintain proper oversight.

Problem 3: Parents of teenagers need support in their communities and alternatives other than calling the police to resolve domestic conflict

A large percentage of my caseload involves youth who become justice-involved after a dispute with their parents, siblings or other people in the home. Young people and their families could be invaluablely served if youth had a safe place to stay while both sides had time to cool off after a disagreement. Public defenders in Brooklyn serve around 500 16- and 17-year-olds every year, a vast majority of whom are not being served by Runaway and Homeless Youth providers because of the lack of services in Brooklyn. About half of the youth are made homeless by the criminal justice system when the court issues an order of protection against the youth for 90 days after a criminal allegation involving a domestic disturbance, making it illegal for the young

⁸ Tamar R. Birckhead, *Toward a Theory of Procedural Justice for Juveniles*, 57 BUFF. L. REV. 1447, 1458-59 (2009).

person to return home.⁹ The other half disclose to their defense team that they are living with friends or significant others because of a breakdown of the relationship with their parents.

Right now, too many of our clients live in the streets, “couch surf” or sleep on the floors or couches of friends, neighbors or even strangers. Indeed, homeless youth are more likely to be arrested, engage in criminal activity to meet their survival needs, or engage in unsafe sexual relationships or the commercial sex trade because they need a place to sleep. A 2013 study by Covenant House and Fordham University found that 1 in 4 of the surveyed homeless youth became a victim of sex trafficking or was forced to provide sex for survival needs, such as food or a place to sleep. Of these victims, about half reported that the number one reason they had been drawn into commercial sexual activity was because they did not have a safe place to sleep.

Many of these youth wouldn’t have become homeless if they and their families had a neutral, safe place to go where they can mediate their differences, figure out a family member that the youth can stay with, or collaborate with a case manager about long-term placement options. Adolescent Respite Centers provide parents and youth with a safe place for the youth to stay while both parties cool off. New York State Assembly Members Andrew Hevesi and Joseph Lentol published an opinion piece in *City & State* calling for the creation of respite centers with state social services funds in 2015.¹⁰

I recently opened a respite center in Jersey City, where I live, thanks to the support of Jersey City. At Haven Adolescent Community Respite Center, we provide a three tiered intervention for youth and families in conflict. Haven provides peer based support programs for youth and parents/guardians of teens, psycho-educational interventions designed to help young people and their families to develop communication and conflict resolution skills, and we provide respite care for up to 90 days. Referrals are made as a diversion from police and court systems, from a variety of community organizations, and based on word of mouth. Our programs are focused on supporting youth and their families in strengthening their relationships and bolstering their resiliency. Rather than focusing on which party is to blame, we focus on creating proactive solutions that acknowledge racism, poverty, the role that mental health issues and substance abuse play, and the challenges that immigration, teen pregnancy and issues facing LGBTQ youth present. Most youth return home or to the home of a family member or friend with the consent of their guardians.

In addition to respite centers, we also need more beds for youth who are already homeless. The existing RHY shelter system is woefully underfunded and consequently fails to adequately meet the needs of homeless youth in boroughs like Brooklyn. Kings County alone needs at least 300 crisis shelter beds to ensure that no Brooklyn youth is forced to sleep on the street, sleep on the

⁹ As a matter of practice in Brooklyn, prosecutors regularly ask for and judges regularly issue a full order of protection in cases involving “domestic violence”, even though these are normal disputes between teenagers and their parents. Full Orders of Protection, in effect, usually render our young clients homeless. In contrast, in New Jersey, when EMT’s respond to a domestic disturbance involving a youth, they take the youth to the Emergency Room rather than arresting them. If NYC were to adopt this approach 250 youth in Brooklyn every year would avoid court-mandated homelessness.

¹⁰ Andrew Hevesi & Joseph Lentol, *Opinion: Respite Centers Would Keep Teens Off Streets, Out of Prison*, CITY & STATE, July 10, 2015, available at <https://cityandstateny.com/articles/policy/centers-would-keep-teens-off-the-street%2C-out-of-prison.html>.

train, couch surf, or trade sex for shelter. Right now there are only a handful of crisis shelter beds in Brooklyn and they are only for youth who identify as LGBTQ. The vast majority of runaway and homeless youth must seek crisis shelter beds in Manhattan where they are too often turned away for lack of beds. Runaway and homeless youth have been made homeless by failures of the education system, juvenile and adult justice systems, the foster care system, and adults who have failed to properly care for them. The City can and must address the youth homelessness crisis by opening youth crisis shelters in Brooklyn, the Bronx, Staten Island and Queens.

RFY providers have been unable to open new crisis shelters in boroughs like Brooklyn because the City currently does not fund capital investments. The City should assist RHY providers to locate and secure bed space in Brooklyn as landlords are often reluctant to lease to shelter providers. Even better, the City could renovate existing City buildings such as old hospitals or schools for this purpose and then issue RFP contracts for use of these spaces. Additionally, DYCD's RFPs should include funding for capital expenditures, a current barrier to instituting new beds under the existing DYCD funding scheme. Finally, the RFP should reflect the actual cost of running a crisis shelter bed, as opposed to the current inadequate reimbursement rate. This number must include the provision of wraparound support services for youth housed at the crisis shelter. The availability of high-quality services is critical to the ability of New York's homeless youth to break the cycle of homelessness and court involvement.

Solution A: The Council must work with your colleagues at the State legislature, DYCD, ACS and other stakeholders like BDS to establish and fund respite centers that will be available to provide support to families in crisis – both families that are already court-involved and those who are at risk of becoming so involved.

Solution B: Support the opening of RHY crisis shelters, which provide housing for homeless youth, in all five boroughs. The City must provide reimbursement for capital investments to RHY service providers to allow them to open crisis shelters in the outer boroughs.

Resolution 283-2018

BDS supports Resolution 283-2018 which calls upon the Governor to coordinate a review of cases involving persons convicted of a crime at the age of 16 or 17 years of age, before Raise the Age legislation went into effect, who are currently incarcerated or are sentenced in criminal court to ensure those sentences are equitable and just. By passing this Resolution, the Council sends a powerful message to the Governor, state lawmakers and the public that the City believes that all 16- and 17-year-olds should be treated fairly and in an age-appropriate manner, whether they were sentenced before October 1, 2018 or after.

Conclusion

Raise the Age provides an opportunity for City Council to pay greater attention to how youth are treated in our criminal and juvenile justice systems. We urge you to increase reporting requirements for relevant agencies so that the city can continue to assess the efficacy of our efforts at reform. We also urge you to increase funding for related programs such as alternative to incarceration programs, respite centers and RHY shelters. The reasons for youth court-

involvement are diverse and sometimes complicated. But we can go a long way towards minimizing harm to youth and their communities by fostering transparency and investing in alternatives to jails and prisons.

Thank you for your time and consideration of this important issue. If you have any questions, please feel free to reach out to Andrea Nieves, Senior Policy Attorney, 718-254-0700 ext. 387 or anieves@bds.org.