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Committees on Criminal Justice and Children and Youth

Oversight Hearing- Youth Decarceration Plan

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My name is Jacqueline Gosdigian and I am a supervising policy attorney and public defender, who works closely with the Adolescent Representation Team at Brooklyn Defender Services (BDS). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. I want to thank the Committees on Criminal Justice and Children and Youth, and Chairs Sandy Nurse and Althea Stevens, for hosting this hearing on decarceration of youth in the family court and adult criminal legal systems.

BDS represents approximately 22,000 people each year who are accused of a crime, facing the removal of their children, or deportation. BDS is fortunate to have the support of the City Council to supplement the services we provide as a public defender office in Brooklyn. Our Adolescent Representation Team works to eliminate contact and involvement within the criminal legal system for court-involved youth aged 18 and under. Our specialized attorneys, social workers, and youth advocates provide legal representation, advocacy, and social services in youth proceedings in Brooklyn's criminal court, Supreme Court and family court, collaborating across BDS's practices to provide comprehensive support to the youth we represent in court as well as support and guidance to their families as they help their children navigate these complex and frightening legal systems.

In addition to representing young people in family and criminal courts, BDS is home to one of the city's original parental defense offices. BDS' Family Defense Practice is the primary provider of legal representation to parents facing the removal of their children to the foster system in Brooklyn. The practice also includes an Early Defense Team, which provides advocacy to parents during the initial stages of an investigation by the Administration for Children's Services (ACS) in an effort to avoid court filings that have a harsh impact on families.

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Our team works to find temporary custody arrangements, refute false allegations and help inform parents of their rights at early stages of an ACS investigation about their family.

Incarceration Does Not Lead to Public Safety

It is well known that incarceration, even short stays in detention, is extraordinarily harmful and does not achieve public safety. For example, youth released from incarceration experience high rates of recidivism, with longer stays in confinement raising these rates even higher. This is because incarceration causes substantial long-term harm, including decreasing a young person's ability to succeed in education and employment. Incarceration reduces the likelihood of high school graduation and leads to poorer health in adulthood.

Additionally, the conditions within youth detention facilities itself are increasingly harmful. There are currently over 250 lawsuits over claims of child sex abuse in our city's juvenile jails. Sex abuse has been an issue across youth facilities nationwide, and NYC is no exception. Given ACS's continued staffing and management challenges, the potential for harm in facilities must be front of mind as we focus our efforts on minimizing young people's entry into detention.

In order to decrease the population of incarcerated youth and break the cycle of re-arrest it is imperative that we focus on alternatives to detention and keep our young people in the community with their families, while providing them with the supportive services they need.

Black and Brown Youth Are Disproportionately Impacted by NYS's Juvenile Legal and Family Policing Systems

Black and Brown communities bear the brunt of racist systems and policies. Youth from these communities often have contact with ACS and then are further traumatized by contact with the juvenile legal system. Findings released by the final Raise the Age Commission in 2020 found that in New York City nearly all youth prosecuted as adults in the youth parts in New York City's criminal courts were Black and Latine. The Raise the Age Commission reported that:

“More than 90 percent of admissions to specialized secure detention involved Black and Hispanic youth, and all [adolescents] sentenced in New York City to incarceration in a [Department of Corrections and Community Supervision] DOCCS adolescent offender facility were Black.... In New York City, white youth with delinquency cases were much more likely than Black or Hispanic youth to be adjusted by the probation department, regardless of whether the youth was charged with a misdemeanor or felony offense.... Black and Hispanic youth were similarly over-represented in all types of youth confinement settings. In New York City, more than 90 percent of admissions to juvenile detention and placements into residential treatment facilities involved Black and Hispanic youth.”



In 2023, Black and Hispanic youth made up 68.2% and 25.4% of all NYC detention admissions respectively. Together, that's about 94% of all detention admissions.

Like the criminal legal system, race and poverty are defining characteristics of the family policing system. Poor communities and communities of color are disproportionately impacted by the state's family policing system. In New York, Black children make up 40% of the children in the foster system yet make up only 15% of the children in the state, whereas white children make up 25% of the children in the foster system and 48% of the children across the state. Black children also fare far worse in the foster system and have much longer stays in placements. The trauma and instability of family separation caused by the family policing system puts youth at a greater risk for criminal legal system involvement.

Investments are Needed for Community Based Preventive Programming and Diversion Programs for Youth

The continuum of services in the juvenile legal system have largely been consolidated and are now operated entirely by ACS-from preventive services through placement and aftercare. Other city agencies, such as the Mayor's Office on Criminal Justice (MOCJ) and the Department of Youth and Community Development (DYCD), that fund anti-community violence programs, actually work with children and their communities to help young people succeed and avoid legal system involvement. However, these programs often have long wait lists and there is pressure on the programs to move youth through their programming to open up space for additional youth.

Before a child has contact with the juvenile or criminal legal system, there are preventive services offered through the ACS' Family Assessment Programs (FAP), community-based programs meant to keep young people from entering the legal system. But instead of actually assisting the needs of the family, the child and the family often get wrapped up in the family policing system. For example, when a parent is struggling to control their child's concerning behavior, FAP provide parents with assistance filing Persons in Need of Supervision (PINS) applications instead of calling the police, but parents can statutorily only file a PINS application if there is a missing persons report or after they have tried a program through FAP and get an ACS case worker. Parents shouldn't have to file legal actions against their own children to get assistance. There should be more community-based options for parents seeking counseling and services.

Additionally, ACS also oversees the city's Alternative to Detention (ATD) programming and supervision, Alternative to Placement (ATP) programming and supervision, and Aftercare [parole] programming and supervision. ACS provides the funding for non-secure detention facilities and runs the secure detention facilities. Many young people and families are reluctant to seek help from services providers who are part of ACS, because working with an ACS funded preventive program requires families to open a case with ACS. Service providers are mandated reporters and parents know that this over exposure to systems risks the possibility of their



children being removed from their care, even when they are searching for help to keep their children safe in the community.

The same agencies that serve as foster agencies are also service providers for youth and their families involved in the juvenile legal system, including respite programming. One example includes Rising Ground, the city's only respite program which offers 21-day respite for youth with open PINS or juvenile legal system involvement to avoid detention or placement. ACS and OCFS have a track record of surveilling families and operating as an arm of the family policing system, therefore participation in ACS/OCFS run programs increases the risk of family separation leaving many families with a very difficult decision and calculation to make.

Termed the *foster system-to-prison pipeline* because the data is so strong regarding the connection, children who enter the foster system are at significantly greater risk of legal system involvement. The longer the period of family separation, the higher the risk. Any intervention that targets young children and teens who could be home safely as opposed to being removed from their families will improve outcomes and help children meet their potential.

Once a young person is arrested, they may be able to access an ATD program. ATD programs are a way to keep young people in the community and at home. There is a "risk assessment" that provides guidance to the court when making a decision to remand a child into a detention facility or to parole a child and allow them to remain home and engage in community-based programs. Prior to September 15, 2023, the city's ATD programs were managed by the Mayor's Office of Criminal Justice (MOCJ). Today, ACS oversees the funding and management of the city's family court Alternative to Detention programs; with contracts being distributed in each of the 5 boroughs. In Brooklyn, Good Shepherd has an ATD program that provides mentorship, guidance and outings for our youth, but space is extremely limited. We urge the city to increase funding for ATDs and for community-based organizations that are in and led by the communities at greatest risk of system-involvement that have a proven track record of building trust with families and offering resources that meet the needs of families, not the needs and demands of the city and its courts.

Programs such as Esperanza, which operated in New York City until it lost its funding, the Youth Justice Network, Exalt, and Community Justice Innovation are effective and trusted programs that are becoming less accessible and have less resources than larger programs funded by ACS. Impacted communities need the support of programs that work within the community not supervising it. Community members in crisis need to have their voices lifted up, and those who have found success need to be able to return to their communities if they want to, by providing jobs with living wages and support for smaller community organizations.

Successful Preventive Programming

Young people want to succeed. They want to do their best. Advances in research and neuroscience shows us that if we understand adolescent brain development and behavior then we

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can provide them with the tools and support they need to succeed. For example, making mistakes, often multiple times, and taking certain risks is part of the adolescent experience and learning process. “The brain development of this age group means that the pleasure of experimenting with certain risky behaviors prevents a proper assessment of their consequences.” Additionally, many of the young people we serve are often struggling with mental health issues, educational issues, family, and community stresses. Marginalized communities do not have access to the resources that wealthier communities have to address issues as they come up and it becomes difficult to deal with all of the issues when a crisis occurs, such as an arrest.

Successful preventive programs and alternatives to detention and incarceration should provide resources that level the playing field and give young people a fighting chance. Whether it is the internet to access educational opportunities or therapy, or safe places to participate in free and accessible prosocial activities, young people should be able to live and thrive as adolescents whose brain development is on-going and should have access to programming which acknowledges this. One of the greatest differences between well resources and marginalized communities is the ability to make mistakes. Making mistakes without being monitored by ACS, its agencies or the police. Making mistakes and being given the grace for a school to deal with the issue in school and not calling the police. Making mistakes and learning how to problem solve. Making mistakes and having access to restorative justice rather than punitive and harmful systems. These are the differences between communities whose children are not criminalized in adolescence and those who are.

New York’s Raise the Age Law Have Successfully Diverted Youth into Appropriate Interventions

Raise the Age is responsible for a consistent decrease in youth crime since its implementation in 2018. In New York City alone, since 2013, there has been a 48% decrease in adolescent arrests for serious offenses. Evidence from implementation across the State clearly shows how the law has improved community safety and youth well-being. Additionally, in New York City, a lower percentage of cases were removed from Supreme Court to family court in 2022 than in 2019-2021.

The current law has built in methods to address different types of cases and circumstances. Though cases are presumptively removable to family court, in certain serious circumstances, supreme court may choose to maintain jurisdiction over a young person whether through an initial hearing or an extraordinary circumstances motion. It is important to understand that family court is not a get-out of jail free card. The juvenile legal system was created to rehabilitate youth who have committed illegal acts and ensure community safety. While sentences are shorter, services are more robust and created specifically with the needs and brain development of an adolescent in mind. There is simply no correlation between rehabilitation and lengthy prison



stays. In fact, incarceration and placement in juvenile detention facilities is more likely to lead to more legal system involvement and more serious crime in the future.

The family court model, and the work that New York has done to treat young people as the adolescents they are is incredibly important work. Holding young people accountable while recognizing that children are not smaller adults is crucial for more positive outcomes and greater public safety. Looking at behavior that actually needs to be addressed by the court system rather than community system is crucial. Keeping families together while providing individualized help that families are asking for, is the only way to truly keep communities safe.

Additionally, we must truly invest in programming to support these reforms. For example, the Youth Parts in supreme court are severely lacking the resources needed to effectively divert youth from incarceration. Judges are willing to resolve cases with Alternatives to Incarceration (ATI's), but the programming is limited in each borough, and there are significant gaps, as probation has disinvested in important diversion programming. And while ATI and ATD programming is cut and reduced, ACS plans to invest \$340 million in secure detention. Adding new beds does not address many of the conditions-related challenges that exist in secure detention – many of which are rooted in staff recruitment, training, ratios, and retention. In fact, it is unclear how ACS plans to effectively staff additional beds when the agency has been unable to safely and effectively staff their existing facilities.

Furthermore, despite making up half of the state's youth justice system population, New York City is currently excluded from accessing Raise the Age funding because the city exceeds the tax cap prescribed by state law. However, it is possible to access this funding by submitting a waiver of hardship, indicating that our city and our programs need the resources that are available through the Raise the Age law. New York City accounts for half of the state's youth justice system population and should be able to access more funding. It is critical to invest in programs and organizations that are serving our communities through youth development, violence-prevention services, and other alternatives to incarceration to prevent the necessity of further investment in the carceral system. We therefore urge the council to pressure the Mayor and the administration to submit a letter with the waiver of hardship to allow NYC to be considered for the funding.

Expanding Access to Programming for Emerging Adults

We must also look at how emerging adults are being treated within the criminal legal system. We now know that while an 18 year old may be a legal adult, their brain is not fully developed until their mid-twenties. Even if a young person at age 16 or 17 has access to programming and services in family court as a result of New York's Raise the Age law, once they turn 19 they are subjected to harsh mandatory minimum sentencing if they become involved in the criminal legal system. And the science shows us that emerging adults, like younger adolescents, are remarkably malleable and still developing impulse control and the ability to anticipate consequences of



choices. Brain development during this period means that individuals have significant capacity to make positive changes but are also especially vulnerable to trauma.

The criminal legal system needs to work in tandem with the juvenile system and streamline services for system-involved adolescents and emerging adults alike. Young people in the communities we serve are particularly vulnerable to police interaction, especially when they are still continuing to grow and mature into their mid-twenties and grappling with peer pressure and decision-making skills. Nationally and in New York, young people aged 18 to 25 make up only 10% of the population, but over 20% of all arrests. Nearly three quarters of those arrests in New York are of youth of color. A recent Sentencing Project report found that across the country, Black youth are five times more likely to be incarcerated than their white peers.

Because this disproportionality is so stark among emerging adults, reforms focused on this group are especially urgent. We ask the council to support and pass a resolution urging the enactment of the Youth Justice and Opportunities Act (YJ&O) (Myrie S3426/O'Donnell A4238). The Youth Justice & Opportunities Act would expand opportunities for programs and other alternatives to incarceration and immediate record sealing for young people up to age 25. By passing YJ&O, New York has the chance to lead the nation by protecting the futures of young people up to age 25, enhancing community well-being, and providing emerging adults the opportunity to move forward in their lives without the barrier of a criminal conviction. The Act would also reduce State and local spending on youth incarceration—money that should be invested in communities to alleviate poverty and homelessness, ensure quality education, and fund other needed resources. In turn, this bill would help stabilize communities, promote community health, and increase public safety for all.

Conclusion

We thank the City Council for holding this important hearing today and shining a light on the experiences of young people with court involvement. We urge the city to invest in real prevention by investing in young people and their families, school, and communities.

If you have any questions, please feel free to reach out to contact Jackie Gosdigian, Supervising Policy Counsel, at jgosdigian@bds.org.