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**TESTIMONY OF:**

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**BROOKLYN DEFENDER SERVICES**

**Presented before the New York City Council**

**Committees on General Welfare and Youth Services**

**Oversight Hearing on Preventative Services for At-Risk and Justice Involved Youth**

**December 14, 2023**

My name is Jacquelyn Shelton and I am a senior criminal defense attorney in 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 General Welfare and Youth Services, and Chairs Ayala and Stevens, for hosting this hearing on preventative services for youth at-risk of involvement in or targeted by the youth 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.

**DEFEND • ADVOCATE • CHANGE**

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. 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.

## **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.”<sup>1</sup>

Like the criminal legal system, race and poverty are defining characteristics of the family policing system<sup>2</sup>. 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<sup>3</sup>. Black children also fare far worse in the foster system and have much longer stays in placements<sup>4</sup>.

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<sup>1</sup> New York State Raise the Age Implementation Task Force, Final Report,, 6-7. Found at <https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL%20Report-Raise%20the%20Age%20Task%20Force%2012-22-20.pdf>.

<sup>2</sup> Many, including scholar Professor Dorothy Roberts, have come to refer to the “child welfare” system as the family regulation system, given the historical and current harms perpetuated by the system. *See e.g.*, Dorothy Roberts, “Abolishing Policing Also Means Abolishing Family Regulation”, The Imprint (June 16, 2020), found at: <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>.

<sup>3</sup> <https://ocfs.ny.gov/main/reports/maps/counties/New%20York%20State.pdf>, page 7.

<sup>4</sup> <https://www.gao.gov/new.items/d07816.pdf>, page 4.

## Families Need Support, Not Surveillance.

In order to make real and lasting change for young people in the communities most targeted by legal systems, we need to start with providing resources to individual families. A persistent challenge for lawmakers, courts and advocates is effective interventions for youth. The roots of this public health crisis run deep, and any solution aimed at mitigating these issues requires a multi-prong, holistic approach that includes expanding access to mental health interventions, education and employment training and placement, stable housing and programs that utilize community members who act as “credible messengers” and “violence interrupters.” In fact, “The chances of interacting with the criminal legal system are higher among people of color, single women and men, and individuals with less education.”<sup>5</sup> The most resourced communities have the lowest rates of system involvement.

However, instead of deepening and expanding investment in community resources, NYC has invested in programming that increases surveillance and policing through programming operated by ACS and the use of mandated reporters, removal of children and separation of families. Preventive services, as they stand now, are part and parcel of ACS’ system of surveillance and punishment. And because preventive services are run by and funded by ACS, the staff in these programs may feel heightened pressure to report indicators of poverty—like food or housing insecurity—as neglect.<sup>6</sup> This makes their ability to offer their support to families difficult and limiting. Preventive agency workers are expected to provide a level of policing and surveillance of youth and their families that is neither effective at addressing the underlying issue that led to system involvement, and creates a barrier to establishing a trusting relationship with youth and their families. If preventative services have any chance of being truly supportive, they need to be run by community-based organizations, outside of the city’s juvenile legal and family policing systems. We work with parents whose lives and families have been upended by the family policing system as a result of reports made by mandated reporters to the Statewide Central Registry of Child Abuse and Maltreatment (SCR). When a case is called into the SCR, the local family regulation agency, ACS in New York City, is notified and must conduct an investigation. Statewide, nearly 80% of these investigations are ultimately deemed unfounded<sup>7</sup>. Families are traumatized by these reports and, more often than not, left worse off by the system, even when their case was closed after an investigation without family court involvement or separation. Mandated reporting does not make families safer, but feeds tens of thousands of families into a system that causes great harm and destruction each year. We cannot continue relying on a system that does not work. The majority of allegations made to the state’s SCR are due to conditions stemming from poverty. The mandated reporters working in helping fields should be able to

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<sup>5</sup> Center for American Progress, *America’s Broken Criminal Legal System Contributes to Wealth Inequality*; <https://www.americanprogress.org/article/americas-broken-criminal-legal-system-contributes-to-wealth-inequality/>

<sup>6</sup> See, Andy Newman, Is N.Y.’s child welfare system racist? Some of its own workers say yes, New York Times, (2023, November 22.) Available at <https://www.nytimes.com/2022/11/22/nyregion/nyc-acr-racism-abuse-neglect.html>

<sup>7</sup> NYS Office of Children and Family Services, Aggregate MAPS CPS Reports Indicated by District 1995-2022, available at <https://ocfs.ny.gov/reports/maps/aggregate/2022/CPS-Reports-Indicated-by-District-1995-2022.xlsx>

support families and connect them with resources, rather than being forced to report them to a harmful system that doesn't offer the support they may need.

## **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, 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 get wrapped up in the family policing system. For example, The Family Assessment Programs (FAP) provide parents with assistance filing Persons in Need of Supervision applications (PINS), but parents can statutorily only file a PINS case 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.

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 can lead to 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. This risk of family separation is especially true for families accessing the city's only respite program, Rising Ground. The program offers 21-day respite for youth with open PINS or juvenile legal system involvement to avoid detention or placement. As with any program overseen by ACS and OCFS, participation 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 are removed from their families are at significantly greater risk if they

enter the foster system, and the longer the family separation, the higher the risk.<sup>8</sup> 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 rather than continuing to fund the Center for Community Alternatives, ACS awarded the contract to Good Shepherd Services, a foster agency that has also operated juvenile placements for youth with juvenile legal system cases. Now this organization is also responsible for monitoring young people in the community and informing the court if there are issues with curfew, schooling, or programming. The agencies also have a primary obligation to ACS and the court system. As a result, the focus is again on policing and surveillance, instead of on support and assistance.

The city must fund organizations outside of the legal system and outside of the city agencies that operate primarily to police and surveil low-income communities of color. We urge the city to invest in 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. With the consolidation of funding and programming, the voice of the community is being lost by large organizations with competing responsibilities and obligations.

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 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

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<sup>8</sup>Ashley Marie Yamat, The Foster-Care-to-Prison Pipeline, *Justice Policy Journal*, 2020, Available at [https://www.cjcj.org/media/import/documents/the\\_foster\\_care\\_to\\_prison\\_pipeline.pdf](https://www.cjcj.org/media/import/documents/the_foster_care_to_prison_pipeline.pdf)

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.”<sup>9</sup> 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.

We must also look at how our emerging adults are being treated within the criminal legal system. We now know that an 18 year old is not an adult and that the formation of the adolescent brain is not complete until mid-twenties.<sup>10</sup> 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 holistically work with 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

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<sup>9</sup><https://neurosciencenews.com/teenage-brains-risk-21757/#:~:text=Making%20mistakes%20and%20taking%20certain,proper%20assessment%20of%20their%20consequences.>

<sup>10</sup> National Institute of Mental Health, *The Teen Brain: 7 Things to Know*; <https://www.nimh.nih.gov/health/publications/the-teen-brain-7-things-to-know#:~:text=The%20brain%20finishes%20developing%20and,prioritizing%2C%20and%20making%20good%20decisions.>



report found that across the country, Black youth are five times more likely to be incarcerated than their white peers.<sup>11</sup>

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.

## **New York's Raise the Age Law Have Successfully Diverted Youth into Appropriate Interventions**

Those who want to suggest that Raise the Age is responsible for young people having more serious arrests and less serious outcomes need only to look at the numbers to know that is not true. First, higher arrests more directly coincide with the COVID-19 pandemic in 2020 than with the implementation of Raise the Age in October 2018. Additionally, in New York City a lower percentage of cases were removed from Supreme Court to family court in 2022 than in 2019-2021.<sup>12</sup>

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 young people 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.<sup>13</sup>

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

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<sup>11</sup> Joshua Rovner, Racial Disparities in Youth Incarceration Persist, February 2021. Available online at: <https://www.sentencingproject.org/fact-sheet/racial-disparities-in-youth-incarceration-persist/>

<sup>12</sup> NYS Division of Criminal Justice Services, [https://www.criminaljustice.ny.gov/crimnet/ojsa/juv\\_off/index.htm](https://www.criminaljustice.ny.gov/crimnet/ojsa/juv_off/index.htm)

<sup>13</sup> Richard Mendel, Why youth incarceration fails: And updated review of the evidence, The Sentencing Project, (2022), Available at <https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf>.

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.

## **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](mailto:jgosdigian@bds.org).