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TESTIMONY

The Council of the City of New York
Committee on Juvenile Justice
Sara M. Gonzalez, Chair

“Oversight: Should Bridges Juvenile Center Be Closed?”

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New York, New York

The Legal Aid Society
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This testimony is submitted by the Juvenile Rights Practice of the Legal Aid Society. We thank the Committee on Juvenile Justice and Chair Gonzalez for holding this hearing concerning the proposed closure of the Bridges juvenile jail. We fully support the City's closure of this facility, operated by the New York City Department of Juvenile Justice (DJJ), which is now part of the New York City Administration for Children's Services. This maximum security facility is not needed. Its closure will not only save the City money that is far better spent on keeping children *out* of juvenile justice facilities and in their communities with support, but it also sends a vital message that the City is serious about juvenile justice reform.

The Legal Aid Society is the nation's largest and oldest provider of legal services to low income families and individuals. Legal Aid's Juvenile Rights Practice provides comprehensive legal representation to children who appear before the New York City Family Courts in all five boroughs, in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Annually, our Juvenile Rights staff represents some 34,000 children, including approximately 4,000 who were charged in Family Court with juvenile delinquency, some of whom spent time in DJJ facilities. At the same time, the Society's Criminal Defense Practice is on a pace to represent clients in a projected 240,000 trial level cases this year. We have a special team of lawyers, social workers and investigators devoted to the unique needs of adolescents charged in adult court with certain enumerated crimes -- the Adolescent Intervention and Diversion Project, whose clients are often held at one of DJJ's secure facilities. Our perspective comes from our daily contacts with children and their families, as well as our frequent interactions with the courts, social service providers, and State and City agencies, including DJJ. In addition to

representing many thousands of children each year in trial and appellate courts, Legal Aid also pursues impact litigation and other law reform initiatives on behalf of our clients.

Background

Any discussion of the issues related to incarcerating children in New York City must consider the population involved. The vast majority of children and teenagers in DJJ's detention facilities are low income and African-American or Latino,¹ and live in under-resourced neighborhoods with low-performing schools and high rates of alleged child abuse and neglect, substance abuse and mental illness. Oftentimes, the primary reason for the incarceration of these children facing delinquency or criminal charges is not the severity of the crime, but rather the collateral social issues of truancy, school failure, mental illness, substance abuse, and weak family structure. Despite a statutory scheme that provides for children to be brought to court or released to their families, too many children are admitted to Bridges after court hours by the New York Police Department after an arrest.

Closing Bridges Is a Crucial Part of the City's Juvenile Justice Reform

We applaud the City's stated goal to reduce the use of detention for children who could remain safely in their communities instead. Maximizing the use of community-based services will give Family Court judges greater confidence to decide to parole a child home rather than sending him or her to detention. Improved and more relevant screening criteria will allow more children with "open" remands – whose level of detention is within DJJ's discretion – to be in non-secure settings rather than the maximum security juvenile jails. In

¹ Almost the entire detention population consistently has been composed of youth of color -- approximately 60% of those detained pre-trial are African-American and 37% are Latino. Most delinquency offenses prosecuted in New York City would be misdemeanors if committed by adults.

turn, the usage and need for secure detention space will be far less than it is now. Closing Bridges is a natural extension of this effort.

We are all aware of the great human and financial costs of detention. We urge the Juvenile Justice Committee to continue to work jointly with other Council committees including the Education, Youth Services, and General Welfare Committees, to demand accountability from our schools, police, courts, and Probation Department, as well as DJJ, toward the goal of preventing the placement of children in detention whose behavior and family issues should properly be addressed outside the juvenile justice system.

The integration of DJJ into ACS provides a great opportunity to benefit our clients and their families. We see little or no distinction between children in the custody of ACS in foster care and those in DJJ custody; in fact, a huge proportion of youth in DJJ custody has experience with both systems. We will continue to work with ACS Commissioner Mattingly to discuss how this transition should progress in a way that will best serve the young people in his care, whether they be involved in the child welfare system, the juvenile justice system, or both systems. Part of this progress must absolutely include efforts to reduce the unnecessary use of detention in general and reducing DJJ's over-reliance on secure detention, as well as addressing a history of significant health and safety concerns about DJJ's treatment of children in its care.

The Human and Financial Costs of Detention

Too many children are placed in detention facilities by Judges because the City lacks community-based alternatives. The large majority of young people detained by the Family Courts, for example, are accused of delinquent behavior involving nonviolent, misdemeanor offenses. As we have testified before, the overuse of detention comes at great

financial and human cost to the City. According to the FY 2009 Mayor's Management Report, the cost to house a child in Bridges or another secure DJJ facility is \$620 per day² (more than \$225,000 per year).

The staggering cost of detention is compounded by the fact that detention during the pendency of a case is the greatest predictor of further detention or incarceration. In New York, children who are detained in DJJ's facilities are more likely to be placed in upstate facilities operated by the New York State Office of Children and Family Services ("OCFS") at the conclusion of their cases. In turn, those placed at the OCFS juvenile prisons are significantly more likely to be rearrested than those who remain in the community following adjudication of their delinquency case. Longitudinal research shows that in New York, more than 80% of youth who spent time in OCFS facilities were arrested later in life³. Community-based alternatives, in contrast, which provide intensive services to children and their families while they remain at home and in school, have recidivism rates below 30% and cost at most between \$7000 and \$12,000 per year per child. It is hard to imagine supporting a system with a 20% success rate. In no other forum would this be acceptable. The Administration for Children's Services has recognized the importance of keeping young people at home in creating its Juvenile Justice Initiative, serving young people in their communities who otherwise were bound for post-dispositional placement. Similarly in the pre-trial context that we are discussing today, community-based alternatives should be used whenever possible. They are not only cost-effective but more

² Mayor's Management Reports, <http://www.nyc.gov/html/ops/downloads/pdf/mmr/djj>.

³ Rebecca Colman, Do Han Kim, Susan Mitchell-Herzfeld, Therese A. Shady, *Long-Term Consequences of Delinquency: Child Maltreatment and Crime in Early Adulthood*, New York State Office of Children and Family Services (2009); Bruce Frederick, Ph.D., New York State Office of Children and Family Services, Office of Justice Systems Analysis Research Report (1999).

humane. They avoid the additional trauma of breaking children apart from their families, serve children better than incarceration, and serve our City as well.

A policy brief released by the national Justice Policy Institute (JPI) showed the harm caused by the unnecessary over-incarceration of children, and called on practitioners and policymakers to reduce the number of youth needlessly or inappropriately detained. Seventy percent of youth in detention are in detention for non-violent offenses. The study concluded that incarcerating youth is not cost-effective and does not lead to safer communities, and found that community-based settings are proven to reduce recidivism and crime in a cost-effective manner⁴.

Showing the dangers of detention and incarceration, the JPI study found that detention does not deter most children from criminal behavior; congregating youth together for treatment in a group setting produces a higher recidivism rate and poorer outcomes; and youth who are incarcerated are more likely to reoffend than youth who are supervised in a community-based setting. The JPI study confirms, again, that detained youth often fail to return to school and have reduced success in the labor market. The brief calls on policymakers to stop wasting tax dollars on a failing and harmful system when there are proven alternatives that are more cost-efficient and do not jeopardize public safety.

DJJ Can and Should Release More Children to Parents

DJJ has the authority under the Family Court Act to release certain children to their families, and it is essential that DJJ expand the “release to parent initiative”. When the police take a child into custody, they have three options: release to a parent or other person

⁴ Incarcerating youth results in poorer outcomes while incurring higher costs. Justice Policy Institute (Holman & Ziedenberg), *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Facilities*, November 2006.

legally responsible for the child's care; take the child directly to court unless it is necessary to first question the juvenile at a suitable facility; or, only when the court is closed, take the juvenile to a detention facility. FCA § 305.2(4). The Family Court Act expresses a preference for releasing children, and then goes on to provide that if the police have brought a child to detention, *the detention agency may release the juvenile on its own initiative "[w]hen practicable."*⁵ DJJ's "release to parent" initiative falls short of satisfying this standard because it includes a long list of disqualifying charges (automatically excluding from consideration all children who are arrested by the police for nearly 200 specified offenses, many of which are misdemeanors), and thus restricts release to a very narrow set of circumstances.

Another crucial partner in the City's efforts to reduce its over-reliance on detention must be the Police Department. The NYPD routinely brings children to Bridges rather than ensuring that all children who can be, are released to family members while the City decides whether or not to prosecute a delinquency case.

DJJ must be an active participant in identifying the service needs of children in its care, and devoting resources to moving, or supporting the transfer of, as many children as possible into non-detention settings while their cases are pending. Many more children should and could be released by DJJ. Evidence for this conclusion is found in the stunning statistics compiled since New York City began weekend and holiday arraignments for juvenile delinquency arrests. The same children whom DJJ refused to release and were held overnight in a maximum security DJJ facility, were released *the next day* by any one of the following entities: Probation, the Corporation Counsel's office (the prosecutors) and

⁵ N.Y. Family Court Act § 307.3(2).

Judges. Since city-wide weekend arraignments began in late May 2008, of the 2010 children admitted to DJJ on weekends and holidays by police, DJJ released only 14 children to their parents (less than 1%). In stark contrast, Probation released 257 children (13%) through its adjustment process, and the prosecutors released 1139 children (57%). Of those few young people who actually appeared before a Judge, only 31 (less than 2%) were remanded to DJJ's secure detention facilities by Judges and 89 (4%) were given "open" remands.⁶ DJJ can and should do more to release more children to their families after arrest.

"Open" Remand Screening Must Be Reformed

During pending juvenile delinquency proceedings, when a Family Court Judge remands a child to DJJ's custody and detention, the Judge often designates that remand as "open," meaning that the Court entrusts DJJ with evaluating whether the child should be held in a secure or non-secure (group home) setting. DJJ has been using an obsolete screening instrument that does not reflect relevant criteria, and that results in far too many children being locked up in secure detention – including the Bridges facility – who could be maintained safely in a non-secure setting. We applaud DJJ's stated intention to reform the screening instrument and support making it relevant and thereby preventing the over-use of Bridges and the City's other two secure juvenile facilities.

Alternatives to Detention Must be Expanded

The development and maintenance of community-based alternative to detention (ATD) programs is a vital piece of allowing children charged with delinquency to be treated as we would want our own children to be treated. For years, Legal Aid and other children's

⁶ Statistics provided by Mayor's Office of the Criminal Justice Coordinator.

advocates have been repeating the mantra of community-based alternatives. We are pleased that the City has replaced the limited, ineffective ATD programs that were closed, and launched a continuum of new community-based ATD programs, which should, if used as intended, continue to decrease significantly the use of detention. With these programs, children charged with delinquency in Family Court who might otherwise have been ordered detained, will be able to remain at home in their communities, and participate in after-school and intensive community monitoring while their cases are pending. Such models have been proven to have great success in other cities and states, and we fully support the use of these programs for children who otherwise would have been removed from their families and detained in jails or group homes.

DJJ Can Support Moving Children to the Community When Appropriate

DJJ can be far more active in reducing its population by evaluating the service needs of the children in its care and working hard to ensure that children who could be served in a community-based setting while their cases are pending are released from DJJ's custody into such programs. Devoting resources to evaluating children's needs, and to making recommendations to the Probation Department, juvenile prosecutors and the courts, are appropriate efforts for this agency. As an example, DJJ could devote staff and resources to routinely preparing for Judges positive adjustment reports that recommend release when children do well in detention, rather than only when ordered to do so, as is the agency's current practice.

Thank you for the opportunity to present this testimony.