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TESTIMONY

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

“Oversight: The Mayor’s Proposal
to Overhaul the New York State Juvenile Justice System”

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Good morning. I am Tamara Steckler, the Attorney in Charge of the Juvenile Rights Practice of the Legal Aid Society. I submit this testimony on behalf of the Legal Aid Society, and thank the Committee on Juvenile Justice and the Committee on General Welfare for inviting the Legal Aid Society to speak about this important topic and for holding this oversight hearing to address the mayor's proposal to overhaul the New York State juvenile justice system.

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. Last year, our Juvenile Rights staff represented some 34,000 children, including approximately 4000 in juvenile delinquency proceedings. At the same time, the Criminal Defense Practice represented clients in nearly 240,000 trial and post-conviction cases in the last year, many of whom are aged 14-21. Our Criminal Defense staff includes 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. Our perspective comes from our daily contacts with children and their families, and also from our frequent

interactions with the courts, social service providers, schools, and State and City agencies, including the Police Department, Department of Probation, Administration for Children's Services, the Division of Youth and Family Justice (formerly DJJ) and New York State Office of Children and Family Services. In addition to representing many thousands of children each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

As I am confident that the City has provided the Council members present with a detailed analysis of the economic savings their reform plan will produce, I will not reiterate those positive aspects of the reform effort. I will instead focus on what we at LAS know best, the day to day issues affecting our clients and the workings of the juvenile justice system. It should be noted that I am also a member of the New York City Dispositional Reform Committee which has been discussing the mechanics of the Mayor's plan to overhaul the juvenile justice system in New York State.

It is irrefutable that the children placed with the Office of Children and Family Services (OCFS) on delinquency petitions have not been well-served by their time in State facilities. Not only have these facilities or prisons failed these children in every basic way: by allowing endemic abuse, both physical

and emotional, failing to provide them with the most basic of necessary mental health services and providing a sub-standard education, they have also failed wholly in that an astonishing 81% of these children re-offended post-release. In no other segment of society would we allow a practice to continue that maintained a success rate of less than 20%: in other words, an abject social failure. But year in and year out, children are placed with OCFS when it has been determined by the court that they are unable to be treated or supervised within their own communities.

It is no surprise to anyone who works within the juvenile justice system that the vast majority of the children prosecuted and placed are children of color, from the poorest communities in New York City: children whose families are overstressed, underserved and in need of social service assistance to meet their most basic needs.

What Our Clients Experience

Most of the children that pass through the Family Court system have been arrested for allegedly committing low level crimes such as shoplifting, trespass, marijuana possession, simple assaults, graffiti and the like. In the communities where our clients live a school fight quickly turns into a police matter, an argument among family members morphs into a matter for State

intervention and children observed in front of a building or on a corner are perceived as sinister and results in resisting arrest charges with no underlying crime. It is important in any conversation regarding the juvenile justice system to recognize the abomination when normative adolescent teen behavior becomes criminalized and more importantly, when children are jailed more readily than adults for exactly the same crimes.

Once the decision is made to arrest and process the juvenile, a door has opened that is difficult to close. Starting with the Probation Department that child's life is poked and prodded in an astonishing manner. In making the decision whether to adjust a case or not, the Probation Department, does not just look at the crime the child is alleged to have committed, it also looks at the child's school attendance and behavior, the caretaker's assessment of the child for better or worse, and the complainant's willingness to allow adjustment to occur. Whether the child committed a misdemeanor trespass or a burglary, this initial assessment will determine whether or not a case is referred for prosecution. So much riding on so little. As the case progresses and the child falls deeper and deeper into the system, every facet of that child's life becomes relevant, almost to the point of making the arresting event irrelevant. Social issues become of paramount importance, and all the issues that surround this child---a school that has failed to address learning issues, a waitlist for

services that has lasted for months, a family that is frustrated and looking for support---all fall to the wayside as the juvenile justice system places the blame squarely on the shoulders of the 14 year old. It is as if this child has developed and grown in a vacuum with no accountability placed on any system or adult that has neglected to provide the appropriate care and education.

In the end, it seems clear that the juvenile justice system which was put in place to rehabilitate children who truly needed rehabilitation has not only failed, it has become completely unfocused, expensive and dangerous to children. The negative impacts of confinement are too obvious to ignore: it increases recidivism, it does not meet the mental health and developmental needs of youth, it leaves youth educationally bereft and with fewer future employment opportunities, therefore robbing them of a productive adulthood, and it sanctions the disproportionate number of minority youth that are taken from their communities and families. And as if there are not enough negative effects to warrant a shift in the manner in which we treat children who are charged with committing a crime, the cost of incarceration in no way correlates with success. In fact, we spend an inordinate amount of funding to produce such negative results.

Thankfully, it appears the winds of change are beginning to blow in juvenile justice. This new wave of reform is a growing force based in two realities, both equally significant. First, there is a growing recognition that OCFS confinement is not getting the job done when it comes to achieving positive results for young people, and second, there is a growing body of evidence that a fundamentally different approach produces far better results, by favoring cost-effective, community-based youth development programming and, only when absolutely necessary, smaller, more child-friendly facilities for confinement only of children deemed a true public safety risk, a significantly smaller number than currently incarcerated.

LAS Supports the City's Reform Efforts

While reform is clearly necessary, and while LAS supports the City's plan for realigning the system, three controlling questions must be answered when evaluating any juvenile justice system whether run by the State or by the City. One, do children need to be prosecuted or can the issues that arise from an arrest be addressed utilizing a non-court, family friendly, non-punitive method that employs youth-development informed thinking? Two, when children are prosecuted, do they need government intervention or can their issues be addressed within their communities, outside of the juvenile justice system,

utilizing instead the child welfare, social service and educational systems?

Three, if children require confinement, what should these facilities look like,

both physically, in terms of services provided and in terms of length of stay?

As the City planning process continues it will be important to consider the following in order to effectuate meaningful reform.

Reducing Confinement by Supporting Children and Families :

Alternatives to Prosecution, Detention and Placement

While New York City has been working to improve its Probation adjustment numbers, what seems clear to LAS, which represents these children, is that many of the cases that end up being prosecuted, and not adjusted, could be handled in a variety of different ways. First and foremost, alternatives to arrest should always be explored to determine whether other programming could alleviate the issues giving rise to the troubling behavior. The police hold the key to whether a child is arrested and referred to court, and their decisions are discretionary and not subject to any external review. In any true reform effort there needs to be a system in place that monitors and measures the reasons why a child is arrested, processed and referred instead of being released. A child whose parents simply refuse to retrieve the child from the precinct should not be referred to Family Court absent any other reason for the referral.

There should also be a mechanism in place whereby families that are struggling with adolescent behavior can access assistance when it seems an arrest or referral to Family Court is imminent. In the same vein police decision-making during this process should be transparent to permit analysis of the issues that led to a Family Court referral so they can be alleviated through programming or other community options. One option that has gained some traction are the Youth Courts currently in place. These courts use peer involvement and decision-making as the tool for addressing negative behavior, and remove the matter from the realm of the juvenile justice system. It appears that this type of intervention has had a positive impact.

Once a child is referred to Family Court, he is then subjected to the Probation Department's adjustment process. For this process to be successful, it must be freed from the required consent of institutional complainants—many of the crimes for which children are arrested depend solely on police complainants or large retail shops like Macy's. Complainants such as these should rely on the Probation assessment rather than maintain control as to whether a child is prosecuted. A robust Probation adjustment process, or another assessment process, would best determine whether a child should be offered a chance to avoid prosecution. And while New York City utilizes the Probation Department to effectuate such assessments, they are not as valuable as they

could be since they involve a trip to the courthouse for the youth and his family, when a community-based assessment should be possible and would be more effective. If the purpose of adjustment is to determine whether a pre-prosecution alternative can be utilized, a community-based organization would be in the best position to effectuate a successful plan with both the family and the young person. Additionally, since most of the crimes committed by the juveniles arrested occur in their own communities, this process would be better placed within the communities where mediation or restorative justice practices would be best administered.

The majority of cases that are adjusted are done so successfully, illustrating the fact that prosecution has no added value, and that counseling or restorative action could or would be all that would be required to resolve the issue. Every child who enters into the system, regardless of the crime allegedly committed, should have an opportunity to be part of a true “adjustment” assessment that would result in a less punitive, quicker and more service-focused resolution. In the end, a successful “adjustment” process is far better not just for the young person charged, but for the victims as well. It would provide a speedy resolution in which court appearances would be unnecessary and could provide the type of accountability that is important to victims.

If a case is not adjusted and it proceeds in Family Court, the juvenile faces the possibility of detention while the case is going forward. Over the past few years with input from all stakeholders in the system, including LAS, the City has developed both an evidence-based Risk Assessment Instrument and a continuum of alternatives to detention in an effort to provide a mechanism to maintain young people in the community as well as provide them with services or supervision that match their risk level. Continued reform in this area would require an even more robust system of services, a constant and critical examination of the youth that are still being detained and the engagement of Judges who determine the status of youth at arraignment and are not bound by the RAI score. While the majority of children score low risk on the current instrument, thereby indicating they are not a risk for re-offense or flight (the two remand prongs of the Family Court Act) there is still a significant number of low risk children maintained in detention pending a trial. In an effort to address this issue, the Division of Youth and Family Justice created an additional screening instrument that would move children from secure detention to non-secure detention. While this type of screening will allow for the movement of children within the detention system, the goal of the system should be to ensure that no low risk child spends time in detention.

In some cases low risk children are consigned to detention when a parent is unwilling to take a child home as expressed to Probation during the initial questioning or to the Court at arraignment. While this is of serious concern, no child, particularly a child who would not otherwise be detained, should be jailed simply because a parent has decided to relinquish the responsibility of parenting that youth. A more robust alternatives system that works not only with the youth but with their families would be critical in deterring this type of detention. Moreover, the use of respite (short-term) placement should be considered when no other alternative exists. Additionally, while the RAI measures risk utilizing an evidence-based protocol, low risk children are still dispatched to detention when Judges are concerned with the severity of the crime, the young person's truancy or other reported information, even if those factors do not contribute to the risk score as presented. Any true system of reform would have to ensure that children that are deemed low risk for the statutory remand determination are not detained, but are released with or without an alternative program.

Building on the success of pre-trial alternatives to detention, one area that is being addressed by the New York City Dispositional Reform Committee is the area of alternatives to placement, which would include developing a validated risk assessment instrument and providing a continuum of dispositional or

sentencing alternatives for children post-adjudication. This is a critical piece of reform as it will prevent youth from further penetrating the juvenile justice system and maintain them close to their communities and homes. The plan currently being discussed would include a graduated response system, that would provide meaningful assessments that encourage behavior change. The current system of assessment, supervision, programming and monitoring, very simply, is ineffective and does not serve children or their communities.

Critical in this type of reform is a “success” mindset that focuses on family and youth strengths instead of the current weakness-based assessments. In any supervision or monitoring the agency responsible must be held accountable for youth failures, and must constantly reassess how and why youth are not succeeding. Only a model which focuses on success and not violations, and which takes into account all facets of the youth’s life including family support, financial hardships, educational obstacles, and adolescent brain development should be utilized.

Home Is Where the Help Is

One of the most disturbing aspects of our current juvenile justice system is the complete lack of family and community partnerships when working with children. Children placed in facilities hundreds of miles away from home have

very little family or community contact, yet are expected to adjust smoothly when released home. Oftentimes, many of the issues that caused the placement to occur have not been resolved, leaving the child and family vulnerable to continued state or city intervention. If the goal of every placed child is to return to a home or family environment it is essential that families remain involved in the child's life and committed to his rehabilitation. Models that currently succeed in integrating family into a juvenile's treatment plan have been most successful at ensuring re-offense does not occur. It makes perfect sense. Ultimately children are the responsibility of their families and any system that purports to help children should ensure that family involvement is paramount. As soon as a young person is placed in a facility, whether temporarily or more long term, the family or a responsible adult connected to the child should be engaged. All treatment and services provided should be provided to both the young person and his family, and families and their children should be encouraged to take ownership of the issues and problems as active participants and not bystanders.

Families or other significant adults in the young person's life should also be involved in community based programs. No child is an island, or should be an island, and any good programming should include the adults that are going to take responsibility for a child's success long after the programming is

completed. Oftentimes, it is the family members themselves that need treatment and/or services, and community programming should recognize this fact as well. ACS' Juvenile Justice Initiative as well as the Blue Sky program both treat the entire family unit, recognizing the importance of helping the family to create a supportive environment for the youth to grow.

Moreover, one of the most beneficial aspects of a reformed system that maintains children close to their communities would be the involvement of the citizens, businesses, colleges or universities and community organizations within those communities to assist in a positive trajectory for these children. Placements away from home should be short and release-focused and these connections will be invaluable to youth and their families in helping to create opportunities for youth during and after confinement and to help youth see their value in the larger society. A good relationship between the facility personnel and the community partners will benefit both the youth and the communities, as each assumes responsibility for the other. If successful, these partnerships can help youth view themselves more positively and help them develop confidence about their future.

Education: A Grade of F

It must be said that one of the biggest issues for youth involved in the juvenile justice system is education. Almost all the youth in the New York City system come from the City's lowest-income communities and some of the most ineffective middle and high schools. Many of the youth that end up in court have significant educational delays or other educational needs that have not been met. Many have given up on the idea of earning a degree and have not been encouraged to remain in school; the tension between these adolescents who are having difficulties and the schools themselves has reached a fever pitch.

Illustrative of this fact is the way in which these schools utilize the police to resolve issues and provide discipline, and the manner in which the school safety agents interact negatively with youth in these schools. Critical to any reform plan is not only educational advocacy but the efforts of the school staff, rather than the police, to positively engage students who have difficulties and may require creative strategies. The education system has truly become a pipeline to the juvenile justice system. Simply placing these children in a class where they are unable to perform, a class where they are overage or a class where every student is suffering from similar issues is ineffective and

irresponsible. To hold the education system accountable for young people, especially those embroiled in the juvenile justice system, is not only key to youth success, but key to creating a population of young people who are able to succeed as adults.

While the school system continues to struggle to provide appropriate services to the youth who are not placed or detained, those children that are placed away from home actually fare even worse. As OCFS is not an accredited school district, and a young person's educational credits are often not transferable to their home school, there is little lasting value in an OCFS education. Children in placement deserve an education specific to their needs while in placement and a re-entry plan that allows for the smooth transfer of both school records and credits. The failure to provide both increases the odds that children will not attend, fail to graduate and narrow their options for their future considerably.

The Problem with Public Safety

While the call for confinement is often couched in terms of public safety, a true look at the types of crimes with which these young people are charged does not suggest a real threat. By defining these young people in this way, we are not only doing them a disservice, but we also are not being honest with the

general public. A significant number of children prosecuted in Family Court are charged with low level crimes that do not truly put the public at risk. These children are, in large part, no different than their more affluent, white counterparts. They make the same mistakes, suffer from faulty adolescent decision-making and take risks that result in unintended consequences. The reality is that these children are just like any other children: they love their families, play sports, like to dance, write poetry, are filled with hope and promise, and want a chance to succeed.

The difference is we paint their transgressions with the broad brush of public safety and imply that these children are much more dangerous group of children than they actually are, and arrest and prosecute them for behaviors that are only charged as crimes when committed by an adolescent of color.

Why is it that Black and Latino youth are held accountable for poor adolescent behavior through the juvenile justice system, while white youth are held accountable in a more age appropriate, more-just and less prosecutorial ways?

This discrepancy cannot be alleviated by simply not placing these children, this inherent discrimination must be addressed at the very front of this system, in other words, we must begin to judge low-income children of color by the same standards with which all children are judged.

Adding fuel to the fire is this notion that children in confinement are there because they are dangerous. A good number of the children confined are placed due to social issues: families that feel they are not in position to support the child at home, or are unable to support the child at home due to their own unresolved issues, truancy when schools fail to properly place, educate and encourage children to succeed, and a social services system that is overwhelmed with the myriad of issues that face these children and their families and only begins to scratch the surface of what needs to be addressed. When all these systems fail, and the child ends up at the courthouse door, somehow we see the child in need of placement as opposed to their support systems in need of reform or emergency care. The Family Court system is based on the recognition that a child who is getting in trouble requires a different kind of intervention than an adult because children do not live in a vacuum and do not create their own environments. Accordingly we should treat these cases as civil entities with the understanding that adolescents take risks, and need the support and guidance of adults to learn to better assess those risks, and that these children should not be subject to the adult correctional model which is punishment based. While public safety is an important consideration, it has been grossly overstated.

Homes not Prisons: Creating Community

Although it is clear that community-based programming more successfully assists children and families and is more economically feasible, any plan to confine or jail children should follow three main principles:

1. Any institution for children should be small, with a home-like environment. Large, impersonal institutions such as Highland or Tryon are inappropriate for children no matter what their issues may be. These facilities must be close to home to encourage and allow meaningful family involvement. Caretakers should be seen and treated as partners in the process. From the moment a youth enters a facility, staff and parents or caretakers should be working together to facilitate a seamless reentry to the community. In order to ensure this occurs, any placement facility must be close to the home and community of the youth.

2. There must be a mandate that isolation and a correctional approach and hardware (i.e., handcuffs, razor wire, etc.) will not be used but that safety will be maintained through the use of relationship building and effective supervision of both staff and children. Children should receive extensive counseling when necessary and meaningful educational and/or vocational

skills. There is no better way to teach children appropriate behaviors and decision-making than by example.

3. Staff all facilities for children with youth development specialists who are culturally competent and specifically trained to work with children who share the range of issues that children in confinement manifest. A facility for children should not use a correctional model of supervision. Children in confinement should be free from physical abuse, but should also be free from humiliation and emotional abuse. Youth cannot meaningfully change if they are fearful of physical or sexual abuse, excessive use of force and isolation, teased, humiliated or ostracized by other youth. Paramount to the issue of safety is the abolishment of the use of prone restraints which have caused the death of youth and should be deemed completely unacceptable.

It is also clear that if we want smaller and more effective facilities, we need to reduce the number of children who are detained pending trial or ordered to be placed at disposition. One way to do this is through a more robust and effective system of diversion programs whether through community-based organizations or probation, and a better system or alternatives to incarceration. It has been shown that a rich continuum of effective alternatives is most successful in dealing with the issues that children present when involved in a

delinquency matters. Moreover, incarceration should be used sparingly, and only for those children who are deemed to be dangerous, not for children whose only transgression is a failure to go to school or attend a counseling program.

The More Eyes the Better

In order to ensure the safety of the children in the care of any system, a robust structure of an independent oversight must be developed. It is not enough to trust in the rhetoric of reform as an antidote to the abuse and failures of the current system. While it certainly appears that the City plans a more child-friendly system, one with a focus on rehabilitation, certainly no system is immune from problems, no matter how well-intentioned.

Certainly, placing young people close to home is critical to any meaningful oversight. There is, very simply, nothing more chilling to possible abusers than the knowledge that family members or the youth's attorneys have access to youth on a regular basis and, at times, with short notice. While LAS sends teams of attorneys and social workers to visit with and interview confined youth upstate the distance is significant and affects our ability to do so. In the

same vein, many families of youth cannot travel the long distances to visit them, resulting in many issues that affect rehabilitation and also their ability to be watchful of their own children.

Additionally, even with the oversight being close to home will provide, and acknowledging that internal oversights are critical, there needs to be an objective, independent and comprehensive formal oversight system in place that allows for regular review of the policies and practices of the facilities to ensure the safety of these youth. Moreover, as New York moves forward with this continuing reform effort, all practices, policies and data related to these facilities and to the alternative programs should be available to the public for review and comment, including the various stakeholder groups who can provide a wealth of experience and knowledge.

Conclusion

Juvenile justice reform is long overdue, and the City's plan, while still being developed, touches on some of the most important concerns. As the plan moves forward, the following must be considered strongly. First and foremost, children should be served and/or confined close to their homes and communities to maximize family participation and create a more seamless re-entry. Second, children should be served by a robust continuum of community

programming that adjusts accordingly to meet their needs and the needs of their families, there is no “one size fits all” remedy. Of primary importance is the engagement of the educational system in a meaningful and positive way. Third, if determined that a child should be confined, it should only be for a short period of time with the focus being substantive service provision and return to their community with supports in place. Once confined it must be made clear that abuse of any kind will not be tolerated. Fourth, there must be acceptance by every stakeholder that is involved in the juvenile justice system that a robust continuum of community programming will be the disposition of choice and that we will allow children to fail sometimes while they mature without revoking their freedom. Fifth, there must be a recognition that public safety concerns, while important, should not control the decision-making. And last but not least, there must be an true understanding that when normative adolescent development is criminalized children of color will be held to a different standard than their white counterparts and will be arrested, prosecuted and imprisoned at an unacceptable rate.