TESTIMONY

Oversight: Division of Youth and Family Justice’s Services and Programs for Remanded Youth

The Council of the City of New York
Committee on Juvenile Justice
Fernando Cabrera, Chair

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New York, New York

The Legal Aid Society
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The Legal Aid Society thanks the Committee on Juvenile Justice and Chairperson Cabrera for inviting us to provide testimony about this important topic.

The Legal Aid Society is the nation’s largest and oldest provider of legal services to low income families and individuals. The Society’s Juvenile Rights Practice provides comprehensive legal representation to children who appear before the Family Courts in all five boroughs, in abuse, neglect, juvenile delinquency, and other proceedings affecting children’s rights and welfare. Last year, our staff represented some 34,000 children, including approximately 4,000 who were charged in Family Court with juvenile delinquency, some of whom spent time in facilities under the aegis of the NYC Administration for Children’s Services’ (ACS) Division for Youth and Family Justice (DYFJ). During the last year, our Criminal Practice handled nearly 230,000 trial, appellate, and post-conviction cases for clients accused of criminal conduct. The Criminal Practice’s Adolescent Intervention and Diversion Project has a dedicated team of lawyers, social workers and investigators devoted to the unique needs of adolescents charged in adult court—some of whom spend lengthy periods of time in DYFJ secure detention pending trial.

Our perspective comes from our daily contacts with children and their families, and also from our frequent interactions with the courts, social service providers, community based organizations, State and City agencies, including DYFJ, and the NYS Office of Children and Family Services (OCFS).
Recent Changes to the Juvenile Justice System

The Legal Aid Society is pleased with the significant reforms which have been adopted by the juvenile justice system in New York State in recent years, including the implementation of a continuum of alternatives to detention leading to an overall reduction in the number of youth detained and placed by the Family Courts; the increased use of diversion services by the NYC Department of Probation; the 2010 merger of the former Department of Juvenile Justice with ACS; as well as the landmark 2012 Close to Home initiative providing that all New York City youth placed by the Family Court as juvenile delinquents be placed in facilities within the City under the aegis of ACS. As you know, NYC youth sentenced to non-secure placement are now placed with ACS, and NYC youth placed limited secure will be placed with ACS beginning in the spring. As a result, these youth will benefit from being close to their families, communities, and lawyers, which will enable them to transition back into their communities more successfully. In light of this reformed system, it is an opportune time to ensure that we provide programs and services to youth detained and placed in ACS facilities to both reduce recidivism and improve life outcomes for impacted youth.

Characteristics of Court-Involved Youth

Stabilizing the lives of adolescents charged with committing offenses is a crucial component to effective representation and to successful outcomes. All of our young clients are low-income, and many have experienced trauma and at least one significant social issue beyond poverty that causes instability in their lives. We strongly believe that with enhanced access to effective programs and services, including mental health services, many fewer young people would enter the court system.
The vast majority of individuals processed through the juvenile and adult courts come from five New York City communities: Harlem, Bedford-Stuyvesant, Brownsville, East New York and the South Bronx.\(^1\) South Jamaica and the Rockaways also have high representation in this category. These neighborhoods also share significant problems of poverty, inadequate services to meet the high needs, low performing schools, higher than average prevalence of health and mental health issues and substandard housing stock.

The needs of detained and placed youth are far greater than those of youth in the general population. Children and teenagers in New York City jails are almost exclusively poor, African-American or Latino, and live in under-resourced neighborhoods with low-performing schools and high rates of child abuse, neglect, substance abuse and mental illness.

A recent study published by the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, reported the results of the National Survey of Children’s Exposure to Violence, a national study that is large and comprehensive in its assessment of victimization and delinquency. Its findings of most relevance to today’s inquiry are as follows:

- Boys with histories of delinquency and victimization are considerably more likely to be further victimized than the boys who were victims but who are not delinquent. These boys had particularly greater percentages of sexual victimization (40% for delinquent-victim boys vs. 13% for primarily victim boys), and witnessing family violence (26% for delinquent-victim boys vs. 12% for primarily victim boys).

- Girls with histories of both delinquency and victimization were more victimized than those girls who were victims, but who were not delinquent. The girls in the delinquent-victim category had higher victimization rates, particularly for sexual victimization, than the primarily victim girls. The rate of sexual victimization

\(^1\) http://gothamist.com/2013/05/01/these_interactive_charts_show_you_w.php
among delinquent-victim girls (58%) was more than twice that among the primarily victim girls (27%).

- Among both boys and girls, delinquent-victims tended to experience more life adversities and mental health symptoms than other groups. They also received less social support. The girls experienced higher rates of inconsistent/harsh parenting.

- Importantly, there were few significant differences among the primarily delinquent, primarily victim and delinquent-victim groups on features such as socioeconomic status, ethnicity, family structure, disability status, school performance or physical features.²

These national figures are consistent with our local findings. Indeed, “approximately 85 percent of young people assessed in secure detention intake reported at least one traumatic event, including sexual and physical abuse, and domestic or intimate partner violence. Furthermore, one in three young people screened positive for Post-Traumatic Stress Disorder (PTSD) and/or depression.”³ Exposure to trauma can also lead to substance abuse, mental illness and other self-harming behaviors.

The Legal Aid Society encourages the redirection of some percentage of funds dedicated to traditional law enforcement to preventive services and services and programs for youth in detention and placement. In recent years, this City has seen significant reduction in the number of people incarcerated, while crime rates have remained low. The cost savings from the reduced use of incarceration should be dedicated to programs and services for youth, including mental health services,

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supportive of safer, healthier, more productive communities. This redirection would potentially divert children and adolescents from entry into the court system.

**Mental Health Services in Detention**

Not surprisingly, the mental health needs of the youth in detention and placement in ACS facilities are significant. Indeed, according to ACS’s data in Fiscal Year 2013, 58% of youth in detention and placement were referred for and received mental health services.\(^5\) Studies show that nearly seven in ten youth involved with the justice system are experiencing a mental illness, and one in four of these youth exhibit severe functional impairment.\(^6\)

While a greater percentage of youth in the Family Courts have been diverted to community-based, alternative to detention and alternative to placement programs, the needs of the population of youth in detention has intensified. Just a few years ago, 90% of youth in secure detention were charged with offenses in Family Court, and only 10% were charged in Supreme Court as juvenile offenders.\(^7\) Currently, secure detention\(^8\) holds an almost equal split of juvenile delinquents and juvenile offenders. A recent tally of the average length of stay of juvenile offenders in secure detention was 143.2 days\(^9\), significantly longer than the average stay of children detained from Family Court. Often,

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\(^7\) Juvenile delinquents are children over 7 and less than 16 years of age who are charged in Family Court with the commission of acts that would constitute a crime if committed by an adult. FCA §301.2(1). Juvenile offenders are youth aged 13-15 who are automatically charged in the adult criminal court system for an enumerated list of violent felonies. PL §10(18).

\(^8\) There are two secure detention facilities in New York City: Crossroads in Brooklyn and Horizon in the Bronx.

\(^9\) Profile of Juvenile Offenders in Detention, NYC ACS, DYFJ, January 2014.
youth who are held the longest have the most serious set of needs. For those youth with serious mentally illness who are awaiting placement in a residential mental health facility, where beds are scarce, the wait while detained can be as long as 8 months.

In October, 2014, ACS and the New York City Health and Hospitals Corporation (HHC) entered into a contract providing that Bellevue Hospital Center would provide psychiatric and psychological care to youth in secure and non-secure detention. In the two years prior to entering this contract, Bellevue Hospital in conjunction with ACS provided trauma-informed training to the staff and adolescents in the secure detention centers in Brooklyn and the Bronx. This initial training set the necessary groundwork for the collaborative work we have seen since October in the provision of mental health services to our clients in detention.

Since so many of our clients in detention enter with depression and trauma histories, this initial trauma screening is critical to quickly identifying who requires mental health attention from the outset. We are encouraged by the proficiency and dedication of the doctors and clinicians providing these services. Additionally, the clinical services provided by START appear to have improved and there is much needed communication between the START and Bellevue clinicians. We have advocated for enhanced mental health services for many years and we are pleased to report that the implementation has been impressive. We have met with the clinical teams at both secure facilities and are energized about the level of care that is now available to our clients, many of whom present great need.
Mental Health Services in Placement

With regard to youth with significant mental illness placed with ACS, ACS staff should refer such youth for treatment and placement with the NYS Office of Mental Health (OMH) rather than attempt to maintain these youth in ill-equipped placement facilities. For example, August Aichorn is the only OMH residential treatment facility with beds dedicated for youth in the juvenile justice system placed with the Office of Children and Family Services. These beds are few relative to the need and only available to youth who have been placed with OCFS, not to youth placed with ACS through Close to Home. ACS should collaborate with OMH to ensure that RTF beds are made available to New York City youth.

Youth Safety, Restraints and Room Confinement

The Legal Aid Society remains deeply concerned regarding ACS’ use of physical restraints and room confinement of youth in detention. In particular we are greatly concerned that some DYFJ staff use physical restraints as a behavioral tool, and that in the course of being restrained by multiple adult staff, youth are sometimes injured.

Indeed, in 2012 OCFS placed ACS DYFJ on a Corrective Action Plan to reduce its high rate of restraints and room confinement. It is undisputed that “all forms of physical restraint come with inherent risk due to the hazardous circumstances in which restraints are applied.”10 It cannot be emphasized enough, “[t]he use of restraints [must be] an intervention of last resort.”11 Such risks to children during the restraint process may include exposure to trauma and serious physical injury or death. Exposure to

10 “Behavior and Management: Coordinated Standards for Children’s Systems of Care,” Final Report to the Governor September 2007, developed by the Committee on Restraint and Crisis Intervention Techniques p. 11.

11 Id. at 19.
trauma for a population with a documented high rate of trauma prior to detention is particularly troubling. Additionally, the detrimental effects of isolation on youth are well documented. Isolation is particularly harmful to youth with mental health needs and can exacerbate mental health conditions. As previously stated, quality mental health treatment is essential not only to addressing the needs of young people in ACS custody but also to preventing problematic behavior that may lead to physical restraints and room confinement.

Apart from school, we have been consistently informed that there is essentially no ACS funding for programming in DYFJ detention facilities. This is true even though it is well-accepted that keeping youth actively engaged is not only educational, but it is key to reducing violence and re-offending. Indeed, in the aforementioned 2012 Corrective Action Plan, OCFS directed DYFJ to “expand the availability of programming . . . and increas[e] the assortment of recreational activities, social and cultural programming, educational and vocational programming etc. . . . thereby reducing the idle time that appears to contribute to restraints.” We are encouraged that ACS has made strides in expanding programming for detained youth and hope that these efforts are realized. Such programming can be very meaningful, providing needed self-esteem and opportunities for positive feedback, family engagement and personal growth.

**Services for Young Women**

As the Council is aware from recent testimony, the number of girls entering juvenile detention and placement has been on the rise. In Fiscal Year 1997 girls were 15% of the detention population; by Fiscal Year 2013 girls were approximately 25% of
that population (23% of secure detention, 25% of non-secure detention).\textsuperscript{12} In Fiscal Year 2013 girls in non-secure placement comprised 28 percent of the overall ACS non secure placement population.\textsuperscript{13} Many of the young women detained or placed with ACS have shown clear signs of abuse and maltreatment. They suffer from complex, overlapping needs, and end up in the Family and Criminal Courts simply because the other systems have failed them. Standard intervention strategies employed in restrictive settings, including the use of physical restraints and isolation, frequently have the unintended effect of causing increased stress and re-traumatization, thereby escalating self-destructive and self-harming behavior for girls.\textsuperscript{14}

We urge ACS to emphasize services and programming to address the particular and specialized needs of girls. Treatment should include “strength based” approaches rather than “deficit based or punitive models.”\textsuperscript{15} One such promising model is the use of Dialectical Behavior Therapy.\textsuperscript{16} ACS detention and placement sites for girls should be small and provide trauma-informed care aimed at preventing their re-entry into the system and future victimization. Such placements must also provide them with programs and services to enable them to break free of their abusive pasts, to become independent and self-sufficient. Many girls need a safe place to live as alternative to detention and placement or upon release—consequently there is a pressing need for supportive housing specifically dedicated to guiding these young women in making the transition to independent living.

\textsuperscript{15} \textit{Improving Policy and Practice for Adolescent Girls with Co-Occurring Disorders in the Juvenile Justice System}, pp. 7-8. GAINS Center.
\textsuperscript{16} \url{http://www.cdc.ca.gov/Reports_Research/docs/DBT_Evidence_Draft_04_06_2011.pdf}
Additionally, commercially sexually exploited girls face many challenges in detention and placement.\(^\text{17}\) Many commercially sexually exploited girls have experienced repeated physical and sexual abuse at the hands of family members, as well as their pimps and johns. Commercially sexually exploited youth need immediate crisis intervention services, and intensive, ongoing counseling by therapists who have been specially trained to work with this vulnerable population and particularized discharge planning unique to the challenges they face.

**Educational Services**

We encourage DYFJ to improve collaboration with the N.Y.C. Department of Education ("DOE") to improve educational programming for youth in detention and placement. First, all schools serving youth in detention and placement must provide students with 12-month schooling. This does not always happen. It is inexcusable that the DOE would fail to guarantee annual summer school services for students who have fallen behind and need additional time to regain lost ground. Second, DYFJ must demand that the DOE expand opportunities for court-involved youth to engage in career and technical education. Many youth in detention and placement who do not thrive in traditional classroom environments, show great interest in and need for vocational education. Third, DYFJ must demand that the DOE ensure that all students with disabilities are provided with all of the special education supports and services mandated by their Individualized Education Programs. Presently, these students are

\(^{17}\) The term sexually exploited child is defined as any person under the age of eighteen who has been subject to sexual exploitation because he or she is the victim of the crime of sex trafficking; engages in any act of prostitution; is the victim of the crime of compelling prostitution; participates in sexual performance; or loiters for the purpose of engaging in a prostitution offense. See Social Services Law §447-a, Penal Law §230.34, Penal Law §230.00, Penal Law §230.33, Article 263 of the Penal Law; and Penal Law §240.37.
often provided with only a subset of their mandated services. This is a violation of the Individuals with Disabilities Education Act and should not be tolerated. Students with disabilities do not lose the right to a free, appropriate, public education when they have been remanded or placed on a juvenile case.

We also urge DYFJ to take additional steps to ensure the successful transition of youth in secure detention and non-secure placement back to community schools. All youth in secure detention and most youth in non-secure Close to Home placement go to school at Passages Academy, which is a school run by the DOE. As a result, the DOE has access to their school records during their time at Passages Academy, and is able to ensure that high school students receive credit for school work completed there. Middle school students still face challenges however, when returning to their home schools from Passages Academy, as the receiving community schools often refuse to acknowledge work completed by the student at Passages. DYFJ and the DOE must work together to devise a clear policy to ensure that middle school students are not penalized academically for time spent in detention or placement. Youth in certain non-secure Close to Home placements that attend non-DOE schools also experience problems with credit transfer, resulting in youth who are already at risk of dropping out being further discouraged from continuing school. Further, non-secure placements with non-DOE schools fail to ensure that records reflecting special needs are timely shared upon transition back to DOE community schools. This reentry process is the subject of a lawsuit brought by The Legal Aid Society and Advocates for Children known as J.G. v. Mills, against the NYC DOE, which has been settled and is currently in monitoring.
However, while the core responsibilities lie with the DOE, DYFJ has a role to play in ensuring that complete records are timely provided to the DOE upon discharge.

**After-Care Services for Youth**

Transition back to community schools needs to be improved for youth coming from both Passages Academy and non-Passages schools. The fact that a youth is system-involved is a potential indicator that such youth is at high risk of dropping out of school and that his or her needs were not being adequately addressed in their prior educational setting. As a result, detention or placement of a particular youth presents as an opportunity for re-assessment of their educational needs and the appropriateness of their school placement. DYFJ can encourage and help to facilitate this re-assessment by working with the youth, the DOE and the youth’s family to ensure a smooth transition back to community schools. Each youth should be assigned a single education transition specialist to oversee educational transition planning and support across all settings and during aftercare. DYFJ should demand that the DOE amend its regulations to allow for more liberal school transfers for students who are court-involved and would benefit from an opportunity to resume their education in a different, more supportive setting. In addition, the DOE must expand opportunities for court-involved youth to engage in career and technical education, and must ensure adequate programming options for middle school and high school students who are significantly over-age and under-credited.

Mental services and programming options should be provided to youth upon discharge. Transitions home should be coordinated and supportive and allow youth to continue to benefit from the services and programs they were provided while in custody.
Proven and promising models of treatment exist, both here and in other parts of the country, that are cost-effective and evidence based, and that also reduce the likelihood of recidivism. Other effective models include the use of Multisystemic Therapy and Multidimensional Treatment Foster Care.\(^\text{18}\)

Our cases highlight the need for more alternatives to abusive and neglectful home situations upon discharge from ACS detention and placement facilities. Such housing alternatives include foster care placements, residential treatment facility (RTF)\(^\text{19}\) placement (through the Office of Mental Health), substance abuse treatment programs, mother child placements and supportive independent living housing programs.

**Needs of LGBTQ Youth in DYFJ**

Over the past year or so, in accordance with its 2012 updated LGBT policy, ACS has made strides in training its contract agencies on LGBT cultural competency with the expectation that all of its Close to Home placements be able to provide a safe and affirming environment for LGBT youth. Unfortunately, the only LGBT specific Close to Home program closed in 2014. A new program will open in 2015 that will not serve LGBT youth exclusively but will have a strong emphasis on best practices working with these populations. Despite ACS’s efforts, LGBT youth still struggle to be affirmed in DYFJ placements including receiving gender affirming health care when they seek it. As such, ACS must do more to measure how programs are serving LGBT youth and to hold those programs not meeting the best practices standard accountable for their


\(^{19}\) A residential treatment facility providing long-term intensive treatment for children and adolescents operated by the NYS Office of Mental Health.
failings. Finally, the Prison Rape Elimination Act (PREA) requires that protections and support also be extended to the intersex community. ACS needs to do more to educate its staff and its contract staff on issues facing the intersex youth community and ensure that these youth are equally supported and affirmed in their gender identity.

**Conclusion**

Thank you for the opportunity to testify about this important topic. We urge the Council to continue its oversight to ensure effective services and programming for youth in DYFJ detention and placement settings for our youth.

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