



The Legal Aid Society

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TESTIMONY

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

“Overview of the Department of Juvenile Justice:
Core Services for Remanded Youth”

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The Legal Aid Society
Juvenile Rights Practice and
Criminal Defense Practice
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Good afternoon. I am Nancy Ginsburg, the director of the Adolescent Intervention and Diversion Project in the Legal Aid Society's Criminal Defense Practice. My unit specializes in the legal representation of children who are prosecuted in the Criminal and Supreme Courts. With me is Christine Bella, a staff attorney in the Special Litigation & Law Reform unit of the Legal Aid Society's Juvenile Rights Practice. I submit this testimony on behalf of the Legal Aid Society, and thank the Committee on Juvenile Justice for inviting us to speak about this important topic and for holding this hearing to examine the need for and the expansion of core services provided to remanded youth by the Department of Juvenile Justice (DJJ).

The Legal Aid Society is the nation's largest and oldest provider of legal services to poor 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 staff represented some 34,000 children, including approximately 4000 who were charged in Family Court with juvenile delinquency. At the same time, the Criminal Defense Practice represented clients in nearly 227,000 cases in the last 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, and also from 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 set forth, at the outset, a definition of the population involved. The vast majority of children and teenagers in New York City jails are poor, African-American or Latino¹, and live in under-resourced neighborhoods with low-performing schools and high rates of child abuse, 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. Children should not have to be incarcerated in secure settings while awaiting placement in rehabilitative services. Children should not face long periods of incarceration because of a lack of community-based rehabilitative services.

Times of financial crisis further exacerbate these problems. As government budgets shrink, the capacities of schools, rehabilitative programs, educational programs, after-school programs and alternative to incarceration programs are diminished in kind. Reduced capacity to provide supervision and services in the community will likely lead to increased rates of incarceration for the children and adolescents in New York City, despite the fact that this is a much more costly practice. As such, it is crucial that the City Council continue to be vigilant

¹ Although the New York City Department of Juvenile Justice no longer posts statistics related to race on its website, 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.

about its oversight of the services provided in the jails and to maintain adequate funding for alternatives.²

We testify today to urge the Council to ensure that DJJ continues to improve its efforts to provide young people in its custody with necessary services to keep them safe and to address the behavior and family issues that may have led to the young person being detained. Certainly we are all aware of the great human and financial costs of detention. Too many children are placed in detention facilities by judges because the City lacks coordinated services designed to meet the needs of children in school and in the community both before and in the event of arrest. Providing true rehabilitative services to children and their families requires both resources and oversight, from within and outside the system. Certainly, these services must be made available to children and families before detention becomes a reality. Hearings such as this one shine a bright spotlight on a system that time and time again fails poor children and families and responds by causing further harm. We urge the Juvenile Justice Committee to continue to work jointly with other committees including Education, Youth Services, and General Welfare, to continue to demand accountability from our schools, police, courts, and probation department, as well as DJJ.

We first provide the Committee with a framework of the needs of children who are detained, then suggest ways in which DJJ can keep children out of detention who need not be

² One expenditure that we urge the Committee to oversee is DJJ's increased spending on intrusive searches of children. The Mayor's Management Report for FY 2008 reports that searches increased by 47% in one year, have become a part of daily life in DJJ facilities, and yield contraband in only a minuscule one-tenth of one percent of all searches. DJJ staff conducted 208,793 searches last year of 5490 children admitted – an average of 38 searches per child with an average length of stay per child of 28 days in detention.

there, and improve how they can safeguard the health and safety of this traumatized, needy population.

The Needs of Children in Detention

What do we know about this population and how must the City meet their needs? In fiscal year 2008, the City housed an average of 290 children arrested between the ages of 10 and 15 and remanded by courts in three maximum security juvenile jails, and 137 children in non-secure detention group homes.³ We know that the majority of children in detention have mental health needs, many have substance abuse problems, and a majority have special educational needs – both of these statistics are far greater than the numbers in the general population. *DJJ reports that 83% of the children incarcerated in their facilities received mental health services in FY2008.*⁴ *Additionally, DJJ has previously reported that the majority of their youth are in need of special education services and 90% of the students, whose average age is 15, read below the 7th grade level while 25% read below the 4th grade level. Eighty-three percent of these students have math skills below the 7th grade level.*

As previously stated, we also know that the majority of young people detained by the Family Courts are accused of delinquent behavior involving nonviolent, misdemeanor offenses.⁵

³ Fiscal Year 2008 New York City Mayor's Management Report, www.nyc.gov.

⁴ Fiscal Year 2008 New York City Mayor's Management Report, www.nyc.gov

⁵ While juvenile arrests and detention usage in New York City increased in 2006 as compared to 2005, for example, the largest increases were in misdemeanor arrests (11% increase) and usage of non-secure detention (NSD) group homes (11% increase). Data provided on March 12, 2007 to the Legal Aid Society by the NYC Mayor's Office of the Criminal Justice Coordinator.

Further, the staggering cost of detention -- \$588 per day, \$214,620 per year⁶ -- is compounded by the fact that detention during the pendency of a court case is the greatest predictor of further detention or incarceration.⁷ And in New York State, we know that children who are detained in DJJ's facilities are more likely than those in the community 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. DJJ can and should play a crucial role in keeping children in their communities by releasing children who may lawfully be released, protecting the health and safety of those children who are remanded to their custody by courts, and taking an active role in bringing to light the needs of children who cannot be adequately cared for in a detention setting. The human and financial costs of detention make it imperative that the City avoid every single day of jailing children who could instead be at home in their communities receiving rehabilitative services at much lower cost and higher rates of demonstrated success..

DJJ Should Release More Children to Parents When Admitted by the Police

DJJ's "release to parent initiative" is welcome but should be expanded. When the police take a child into custody, they have three options: release to a parent or other person legally responsible for the child's care; take the child directly to Family 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

⁶ Fiscal Year 2008 New York City Mayor's Management Report, www.nyc.gov

⁷ Justice Policy Institute (Holman & Ziedenberg), *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Facilities*, November 2006.

detention, *the detention agency may release the juvenile on its own initiative "[w]hen practicable.*"⁸ 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), and thus restricts release to a very narrow set of circumstances.

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 maximum security DJJ facilities, were released *the next day* by Probation, the Corporation Counsel's office (prosecutors) and judges. *Since city-wide weekend arraignments began in late May 2008, of the 583 children admitted to DJJ on weekends and holidays by police, DJJ released only 4 children (1%) to their parents. In stark contrast, Probation released 70 children (12%) through its adjustment process, and the prosecutors released 275 children (47%).* Of those few young people who actually appeared before a judge, only 17 (3%) were remanded to DJJ's secure detention facilities by judges.⁹ Clearly DJJ can and should do more to release more children to their families after arrest.

Mental Health and Medical Services in Detention

While we have seen an improvement in the delivery of medical and mental health services to young people in DJJ custody in recent years, the City must remain vigilant in ensuring the health and well-being of these children. There is no dispute that young people come into DJJ custody with a variety of special needs -- needs that have not been effectively identified

⁸ N.Y. Family Court Act § 307.3(2).

⁹ Statistics provided by Mayor's Office of the Criminal Justice Coordinator.

or addressed in their communities or by their schools. According to DJJ, 83 percent of youth detained by DJJ last year received mental health services.¹⁰ Those numbers are consistent with what we know about the juvenile justice population nationally. Additionally, in the State's post-adjudication residential facilities, where many of DJJ's detained youth end up, OCFS has declared that more than 80% of its population have mental health needs of clinical significance and thus require treatment.

Children with serious medical and mental health needs whom DJJ simply cannot care for adequately continue to be remanded to DJJ's custody by some Family Court judges. In these cases, we urge DJJ to take an active role, submitting information to the court about the needs the agency cannot handle and urging the court to find a less harmful alternative. To illustrate, we provide two case examples from the past year:

- In July 2008, our teenaged client, who had been arrested and charged with a property crime, was diagnosed with Stage 2 lymphoma. Despite his recent cancer diagnosis, the New York City law department prosecutor asked the Family Court to remand the boy to DJJ detention while the case was pending. Our client was set to begin daily chemotherapy at Sloan Kettering cancer center (including blood transfusions), yet the prosecutor represented in court that he had spoken with DJJ, and that DJJ had said they could care for him adequately in secure detention. Unable to understand how DJJ could do this in a maximum security jail setting, Legal Aid argued strenuously against detention. The child's parents wanted their son at home, and eventually the judge paroled him to his parents with community monitoring.

- In May 2008, Legal Aid's teenaged client with documented serious mental health issues was in DJJ's custody related to a case pending in the Bronx Family Court. Because our client had been recently discharged from a psychiatric hospitalization and has a history of self-harming behavior, LAS contacted DJJ's legal department to ask how the agency planned to keep our client safe, including where she was being housed and what staffing and services she would receive. DJJ counsel initially refused to give the child's lawyer any information without a release. DJJ had housed her in their Special Housing Unit but without personal supervision and without psychotherapy. Later, our client embedded a piece of shower tile in her arm, yet she was not transported to the hospital by DJJ until the next day, after the urging of her attorney. It was only after this hospital visit that she was placed on one-to-one supervision and provided with

¹⁰ *see*, note 4.

psychotherapy. Significantly, the child was placed with OCFS in an Office of Mental Health hospital setting .

Family Court judges should be utilizing the Family Court Act provisions which permit placement of children facing delinquency charges with the Administration for Children's Services (ACS) so that they can receive true rehabilitative services. Family court judges can also request that the Department of Education conduct evaluations for special education services, an option that is rarely utilized.¹¹ The Family Court Act further states that “[t]he court is authorized to seek the cooperation of, and may use, within its authorized appropriation therefor, the services of all societies or organizations, public or private, having for their object the protection or aid of children or families, including family counseling services, to the end that the court may be assisted in every reasonable way to give the children and families within its jurisdiction such care, protection and assistance as will best enhance their welfare”.¹² Family court judges should be more proactive to achieve the stated goal of Article 3 of the Family Court Act in designating the “least restrictive available alternative...which is consistent with the needs and best interests of the respondent and the need for protection of the community”.¹³

Moreover, City agencies such as ACS and the DOE should be involved in planning for court- involved youth in a systematic way so that coordinated services can be provided in the community or a more therapeutic residential setting. DJJ and OCFS should not be the default placements for children with identified needs who could receive services from other agencies which would provide greater short-term and long-term benefits to the child and the community.

¹¹ FCA § 255.

¹² *Id.*

¹³ FCA §352.2(2)(a).

Safety of Children in DJJ Custody

We appreciate DJJ's recent increased willingness to meet with and invite us into discussions and listen to our concerns about client care. DJJ has devoted much attention to improving conditions and increasing administrative oversight of staff and available services.

We remain concerned, however, that DJJ staff use physical restraints on children as a behavioral tool, and that in the course of being restrained by multiple adult staff members, children are sometimes injured. While DJJ policy is that each such restraint is reported and investigated as a mandated report concerning child abuse or neglect, these reports are after the fact. We encourage DJJ to use physical restraints only as a last resort, if ever. We also urge the City Council to have DJJ provide the Committee regularly with data concerning the numbers of restraints, reports of injuries to children in DJJ's custody, reports to the State Central Registry for Child Abuse and Neglect and the Department of Investigation, and the results of those reports.

In December 2008, a long-time DJJ staff member was arraigned for allegedly raping a 15- year-old girl in DJJ detention space in the Manhattan Family Court. When DJJ found out in July, the agency immediately suspended the employee. We understand that DJJ is looking into whether the agency's policies, practices and configuration of the physical detention spaces need be changed. We applaud this response – a single staff member must never be alone with a resident in a confined space.

LGBTQ Youth in Detention

Once detained with DJJ, lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth face an unsupportive, hostile, or even dangerous environment. A lack of clear policies against discrimination, guidelines, and training to promote staff sensitivity to the needs of

LGBTQ youth has resulted in a system that not only fails to support the healthy development of these youth, but actually perpetuates the loss of self-esteem and trauma many LGBTQ youth have experienced elsewhere in their lives. While DJJ has now issued a written policy concerning these youth, the policy does not mandate an environment that respects and supports the development of all young people in their care, regardless of sexual orientation, and DJJ has not instituted mandatory and ongoing training to enable its staff to interact and respond appropriately to this vulnerable population.

Ombudsman / Resident Advocacy Program Should be Independent

In July 2008, DJJ replaced its Ombudsman Program with the current Resident Advocacy Program (RAP). We are greatly concerned that the DJJ RAP staff working in each of the secure facilities (Bridges, Crossroads and Horizon) are not entirely independent, given that they are employed by DJJ and report directly to the facility directors and the Commissioner. On the website, DJJ promises that with the RAP, “youth will have more access to [their] Ombudsman, and families will be able to make complaints to the ombudsman on behalf of a child.”¹⁴ We have recently expressed concern to DJJ, however, that the ombudsmen are instructed to take all inquiries from children’s attorneys directly to DJJ’s counsel. This system makes the RAP staff far from independent.

With the new RAP, DJJ has “created a uniform system of reporting and maintaining records.”¹⁵ DJJ further reports that all such data gathered will be forwarded to DJJ’s Office of Strategic Planning on a monthly basis for “review, analysis and validation,” thus enhancing the RAP’s identification and response to trends.” We urge this Committee to request this data from

¹⁴ www.nyc.gov/nycdj.

¹⁵ www.nyc.gov/nycdj.

the Commissioner regularly, to ensure that the RAP is: allowing youth more access to the ombudsmen, operating effectively and independently, ensuring that young people's complaints are being heard and resolved, holding staff accountable when appropriate, and identifying and promptly addressing trends through the development and implementation of appropriate policies and services. While we anticipate that for a variety of reasons many youth will not avail themselves of the RAP program to air their concerns, complaints or fears, a survey of the reports made to the ombudsmen by detained youth and their families is clearly one starting point from which to identify some of the problems youth in detention face and the need for appropriate services to address these complaints.

DJJ Should Cease Automatic Screenouts in Open Remand Assessment

When Family Court judges remand children to DJJ's custody while juvenile delinquency cases are pending, they may designate detention in a non-secure group home, a secure setting, or a so-called "open" remand. The latter means that DJJ must make an assessment, using the Family Court Act's framework of housing children in the least restrictive setting, of whether the child should be housed in a non-secure or a secure detention setting. When DJJ assesses a child as appropriate for non-secure detention, the agency must move that child to a non-secure group home. DJJ screens each child using a screening tool designed by DJJ which is not a research-validated tool. The screening tool is flawed and we urge the agency to modify the screening to omit "automatic screenouts" for group home settings.

Because DJJ's NSD Assessment Form automatically exempts some open-remanded children from non-secure settings, many children end up in the maximum security DJJ jails for the duration of their time in detention. We believe that children should never be automatically

screened out and that the factors DJJ uses to do that are inappropriate and inconsistent with the law. The Family Court Act includes a presumption against detention altogether: “The court shall not direct detention unless it finds . . . a substantial probability that [the child] will not appear in court on the return date; or there is a serious risk that [the child] may before the return date commit an act which if committed by an adult would constitute a crime.”¹⁶ The DJJ NSD Assessment Form, however, instead of looking at the statutory factors of risk of nonappearance and likelihood of delinquent activity, automatically screens children as inappropriate for NSD group homes based on “three or more admissions to DJJ (including current admission)”. This factor is unfair and is applied regardless of the reason – for example, a judge could remand a child multiple times for missing a few days of school or for being in need of and waiting for a treatment program. Neither of these reasons relates to a need for high security. Moreover, a child can certainly be remanded three times on a single case and quite possibly a minor, nonviolent misdemeanor case, because judges have the opportunity to review remand status at every court appearance on delinquency cases. Similarly, DJJ finds children automatically inappropriate for NSD group homes based on a list of “top charges,” which only refer to charges asserted by prosecutors before there is any fact-finding by a court. Neither of these factors – which mean the difference between a non-secure group home and a maximum security juvenile jail, often for many months – is consistent with the law’s intent.

Thank you for this opportunity to testify. We are happy to answer any questions the chairs and committee members have.

¹⁶ Fam. Ct. Act § 320.5(3).

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