

Joint Legislative Hearing on Public Protection
2021-2022 Executive Budget Proposal

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Testimony of Youth Represent

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Youth Represent is dedicated to improving the lives and futures of young people affected by the criminal legal system. When the justice system creates barriers to success for youth, we use the law to help them leave the stigma of a criminal record behind. We provide criminal and civil reentry legal representation to young people age 24 and under, assisting them with everything from rap sheet review to school suspensions to employment discrimination and any other legal needs they identify. We also engage in policy advocacy and youth leadership development through our Youth Speakers Institute. Our interdisciplinary approach allows us to understand our clients' legal and practical challenges so we can effectively represent them from courtroom to community. We appreciate the opportunity to submit this written testimony on the Governor's Executive Budget for State Fiscal Year 2021-2022.

About Youth Represent

At any point of contact with the criminal legal system—whether it be arrest, conviction, or incarceration—lasting consequences arise. Employers, landlords, and colleges all run criminal background checks, and a conviction—even from one's teenage years—can be used as a reason to deny someone a job, a home, or an education. Justice-involvement can also harm a young parent's ability to reconnect with their family and can interfere with custody or visitation rights. Even minor criminal matters—such as summonses for so-called quality-of-life crimes or bench warrants for a missed court date—can end up having a harmful impact on a young person's liberty.

Together, these results of the mass criminalization of young people of color serve as potentially lifelong impediments to the cornerstones of stability we all need. New York City boasts scores of community-based organizations dedicated to helping lift youth out of poverty, but even their best efforts can be thwarted by an arrest or conviction. With critical support from Judiciary Civil Legal Services (JCLS) funding and the IOLA Fund, Youth Represent fills this gap by providing reentry legal services for young people, and we do so in their own communities.

Our clients are overwhelmingly youth of color, and all are low-income:

- 49% Black and 30% are Latinx.
- The average age of the clients we serve is 20 years old.
- 94% lack full-time employment.
- 25% live in subsidized housing and 16% live in shelters or supportive housing.
- 14% are parents.
- 35% have no high school diploma (or equivalent).
- 13% are currently or previously on parole or probation.

Raise the Age legislation passed by the legislature in 2017 extended protections to most 16- and 17-year olds by ensuring that that, if arrested, their cases would be heard in the family court, where cases are confidential and records are sealed from the public. But Raise the Age did not extend any protections to youth and emerging adults past the age of 18. Each year, tens of thousands of young people 18-25 are arrested and prosecuted in adult court and exposed to lifelong criminal records.

The young people we serve have been some of the hardest hit by the Covid-19 crisis. They have faced economic hardship, the stress of lockdown, the difficulty of remote learning, and severely disproportionate rates of infection and loss of life. Some are navigating pregnancy and parenting young children during the pandemic. Many have faced pressure to continue working in unsafe conditions, putting them, their families, and everyone they interact with at risk. Finally, soaring

unemployment has tightened the labor market, increasing the likelihood of discrimination against system-involved youth. Throughout the past year, Youth Represent has continued to provide critical, client-centered support to young people facing legal issues:

Criminal / Family Court

Our partners at The Door recently connected us with “Walter,” a Spanish-speaking Legal Permanent Resident. When Walter discovered that police were looking to question him, he wanted to surrender immediately as the allegations were baseless and false. We advised Walter of the potential repercussions of an arrest, especially in light of his immigration status. Walter’s main concern, though, was losing his job and being unable to provide for his child. Youth Represent was able to invoke Walter’s rights, arrange with the detective a later date for the surrender, and provide his employer advance notice of his absence from work. We gathered letters of support ahead of Walter’s appearance for submission to the judge. He was subsequently released on his own recognizance under supervised release and kept his job.

Employment

When we met Justin and ran his criminal history, we found that he had just been granted an Adjudgment in Contemplation of Dismissal (ACD), which would appear as an open arrest for six months. But Justin was protected by a law passed by this legislature in 2019 that bars employers from denying a job on the basis of a pending ACD. We conducted legal research to confirm that this law would apply to FDIC-regulated institutions, and assured Justin he would be legally eligible for the position in his chosen career track of Financial Operations. When Justin was selected for a position at a major bank, the bank discovered his open arrest and asked him for information about it. We provided Justin with this information and explained the change in New York law that prohibited the bank from taking adverse action against him. As a result, Justin was able to begin working right away. Our representation enabled us to resolve this matter without resorting to litigation and to help Justin reach his career goal of starting a job at a financial institution.

As the pandemic wore on over the past year, Youth Represent used technology to continue to provide robust services while working remotely. We launched a chatbot to allow young people to start the intake process just by visiting our website; started a citywide legal hotline in collaboration with Community Service Society; and have relied on word of mouth and social media to spread the word about our services to young people who are disconnected from traditional service providers. We also shifted resources to respond to immediate client needs and launched an emergency fund that has covered expenses ranging from groceries to cleaning supplies to cab rides so a pregnant client could travel safely to prenatal appointments. We thank the legislature for your strong support for these critical legal services.

2021-2022 Budget Priorities

Along with our colleagues in the Raise the Age – NY campaign, we applaud the Governor’s proposal to move swiftly to close four juvenile placement facilities and reduce the State’s investment in youth incarceration. Institutional settings can pose significant risk to young people’s well-being, and have been shown to neither reduce future contact with the system or promote community safety. Moreover, juvenile placement facilities are the site for extreme racial disproportionality. During 2019, almost 75% of children admitted to Office of Children and Family Services (OCFS) custody were Black or Latinx, while they represent only 40% of New York’s children. Closing facilities is a crucial step for youth justice reform and racial equity in New York.

The savings associated with closing these four youth facilities – estimated at over \$21 million in operational and \$14 million in capital costs – should be reinvested in targeted communities that are driving use of state placements, and in other communities that have been targeted by policing and youth incarceration. A partnership with stakeholders in these communities including impacted youth and families, service providers, child welfare and mental health system administrators, attorneys, judges and probation, should drive local solutions supported with these dollars.

We are encouraged to see that the Governor’s budget continues to set aside \$250 million for Raise the Age implementation, but we are concerned by cuts to other programs that support youth by preventing contact with the legal system, and serving young people who become court involved. The proposed consolidation of Community Optional Preventive Services (COPS) and Supervision and Treatment Services for Juveniles Program (STSJP) would result in a 20% reduction in funds available to communities state-wide. Coupled with 5% cuts in State funding for costs associated with placement and detention, the State is increasing the burdens on local communities to pay for the juvenile justice system at a time of extreme economic stress. We urge the Governor and the Legislature to work together to restore these funds in the final budget.

Legislative Priorities for Expanding Youth Justice

The death of George Floyd at the hands of police in Minneapolis in May 2020 brought hundreds of thousands of people to the streets across the U.S., calling for racial justice and a divestment from carceral systems. In New York, young people are leading movements demanding transformative changes to the legal system and community investment that de-centers policing from community safety. More recently, the pepper-spraying and handcuffing by police in Rochester of a 9-year-old Black girl suffering a mental health crisis became national news and renewed calls to address mental health and other basic needs with services and resources rather than criminalization and further trauma.

Raise the Age was a critical step toward advancing youth justice in New York. With the law fully in effect as of October 2019, arrests of 16- and 17-year-olds have declined significantly; the vast majority of 16- and 17-year-olds who are arrested have their cases heard in family court; and no children under 18 are held in adult jails or prisons. However, children as young as 7 can still be prosecuted as juvenile delinquents and our system denies any age-based protections to young people after their nineteenth birthday. New York has the opportunity to lead the nation by enacting legislation to end the prosecution of children under 12, limit police contact with our youngest children, and protect older youth and emerging adults from lifelong consequences of arrest and conviction.

Developmentally Appropriate Responses to Children in Crisis

- **Legislation to Prohibit the Use of Chemical Agents by Police Against Minors.** Introduced a few days after the recent incident in Rochester where a 9-year-old girl was pepper-sprayed, S4002 (Brouk) would prohibit the use of chemical agents by police against children. We would suggest amending this bill to increase its protections, limiting the use of mechanical restraints (like handcuffs).
- **Legislation to End the Arrest and Prosecution of Children Under 12 as Juvenile Delinquents.** S4051 (Bailey) would end the arrest and prosecution of children as young as 7 years old, and instead, provide linkages to local community-based services through existing child welfare and behavioral health systems. The majority of children who have contact with the justice system have significant mental health needs. For too long, New York has relied on the juvenile justice system to deliver mental health services for vulnerable youth whose families lack access to those services in their communities. Moreover, in 2019, 94% of all children under 12 who were arrested in New York City were Black, Latinx or Asian. This bill paves the way for communities to provide children and families with the services they need in their own communities, without the trauma of arrest and family court processing.

Expanded Protections for Older Youth & Emerging Adults

- **Youth Justice & Opportunities Act.** Youthful offender status is among the most powerful tools we have to promote reentry and second chances for youth in the justice system, but thousands of young people each year are not able to access it because of eligibility bars or because they were charged with an offense after their 19th birthday. A3536 (O'Donnell) increases opportunities for youth by creating a new "Young Adult" (YA) status that gives judges the discretion to replace a criminal conviction with a non-criminal adjudication for young people aged 19-25; expands YO eligibility for young people under 19; gives judges the discretion to sentence young people to services in the community, rather than incarceration, where some of the most extreme racial disparities in the system exist; allows judges to waive fees and surcharges for all young people up to age 25; and allows young people with a criminal record to petition the court to be "resentenced" and granted YO or YA status retroactively, which will open future employment and earning opportunities.
- **"Second Look" for Youthful Offender Status.** S282 (Myrie) expands the opportunity for Youthful Offender Status to those who were eligible, but instead were convicted of a crime, allowing them to apply to the court for a "second look" five years after the sentence was imposed or the person was released from prison or jail. Under the proposed law, a judge would make the decision as to whether a criminal conviction should continue to burden an individual for life after their sentence is served. For communities to recover and thrive in the face of the pandemic and its attendant economic hardship, we must embrace policies that center young people's participation and opportunities to grow and contribute.

Conclusion

New York has made important strides in our youth justice system over the past decade, notably in the overall reduction in youth arrests and incarceration and the enactment of Raise the Age. But there is more work to do, especially to ensure that we are providing effective and developmentally appropriate treatment to both very young children and older youth, and to shift resources away from youth incarceration and towards services and resources in the community. We applaud the Governor's proposal to close four juvenile facilities. Dollars saved from these closures must be reinvested in communities that have driven youth incarceration and used to stave off any potential cuts to preventative or reentry services for youth. We also underscore the need for legislation that ends prosecution of children under 12 and limits police contact with those children, including the use of pepper spray and restraints, and that expands and strengthens protections for older youth and emerging adults in the system. We are eager to work with you and your colleagues to implement a youth justice agenda for this session. Thank you for considering our testimony. If you have any questions or you would like further information, please contact Kate Rubin, Director of Policy, at (646) 759-8079 or krubin@youthrepresent.org.