



Testimony by

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Committee on Juvenile Justice and
Committee on Justice System

*Oversight:
NYC's Preparedness to Raise the Age*

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Good afternoon. My name is Grant Cowles and I am the Senior Policy and Advocacy Associate for Youth Justice at Citizens' Committee for Children of New York (CCC). CCC is an independent, multi-issue child advocacy organization dedicated to ensuring that every New York child is healthy, housed, educated, and safe.

I would like to thank Council Member Andy King and Council Member Rory Lancman as chairs of the Juvenile Justice and Justice System Committees respectively for holding today's oversight hearing to examine the preparedness of New York City to implement Raise the Age. I would also like to thank all of the members of the Juvenile Justice and Justice System Committees for their commitment to improving the support and outcomes for justice-involved youth.

The State legislation to Raise the Age of criminality is a long-awaited victory for New York's children, youth, and families. The law will finally become effective for 16 year olds in October of this year, and all 16 and 17 year olds will need to be off of Rikers Island by October 1st of this year – less than six months away. It is thus very timely to hold today's hearing to discuss the steps underway to prepare for implementation to ensure New York City is prepared to effectively Raise the Age.

All the changes associated with Raising the Age will need to be well-resourced and juvenile-focused. CCC looks forward to continuing to partner with the Juvenile Justice and Justice System Committees, the City Council, and the Administration to ensure the city is prepared to implement Raise the Age for the benefit of justice-involved youth and community safety.

We believe that the juvenile justice system, and the youth who are touched by it, is a joint state and city commitment. We are deeply disappointed that the State Adopted Budget SFY 18-19 eliminates all state funding for Close to Home and fails to provide any state funding for raise the age expenses. We at CCC commit to continuing to advocate at the State level for State support for the City's juvenile justice system. That said, we appreciate the City Council Preliminary Budget response calling on the Mayor to ensure the upcoming Executive Budget includes the funding for these unfunded state mandates.

CCC offers the following testimony to highlight some of the critical components that must be considered, as well as to make recommendations for implementation. Raise the Age will impact the entire continuum of juvenile justice services and systems.

NEW YORK CITY POLICE DEPARTMENT (NYPD)

Raise the Age legislation will require all 16 and 17 year olds who are arrested to be treated as juveniles at the time of arrest. This includes a requirement to make "every reasonable effort" to notify the youth's parent or guardian, waiting for the parent or guardian to be present before beginning any questioning, and conducting all questioning in juvenile-appropriate settings.¹ This will ensure 16 and 17 year olds have the support of their parents or guardians during a potentially traumatic and vulnerable moment, having their parents or guardians' input about using their constitutional rights while being

¹ New York Family Court Act § 305.2.

questioned, and lets parents or guardians know where their child is and what is happening.

CCC Recommendations Related to the NYPD:

- Employ Techniques to Engage Parents of Older Youth – It is of paramount importance that parental notification procedures encourage parents to meaningfully support their children. The NYPD will need to encourage the parents of these older youth to come meet their child and assist the youth in the legal process. Engaging parents when a youth is arrested is mutually beneficial to the youth and NYPD as support from a youth’s parents and family can often be one of the most effective ways to address youth needs and behavior. In contrast, an arrest can be a dividing moment between a youth and their family support if parents are not promptly involved or are discouraged from helping their child.
- Ensure 16 and 17 Year Olds Who Do Not Need to be Brought to Detention are Picked up or Driven Home – Currently, many 16 and 17 year olds are released by the police with desk appearance tickets. We do not want to see an inability to engage parents lead to youth needlessly being brought to detention.

PROBATION

Probation will have a large and important role in implementing Raise the Age, to ensure 16 and 17 year olds receive effective services and that adjustment opportunities are robustly utilized. Probation responsibilities include intake assessment, adjustment, and supervision.

Adjustment is a hallmark of the juvenile justice process and is one reason why the juvenile justice system has been much more successful than the adult system. The adjustment process allows eligible arrested youth to participate in services and sets certain requirements. If the youth is successful in this program, their case can be closed without any further actions or any legal record. This adjustment period is two months long with an additional two months available upon court approval. Over a quarter of current youth, especially youth charged with lower level crimes, are able to utilize the adjustment process for a successful outcome.² Adjustment often provides youth with services and supervision that helps them get back on track while quickly ending their justice-involvement without court involvement.

Probation supervision, which can be pre-adjudication or post-adjudication, is also an important service where juvenile probation officers set requirements for the youth while the youth lives in the community. For example, a youth’s probation supervision case plan might require a certain level of attendance at school, the participation in a credible-messenger mentorship program, and meeting with the juvenile probation officer weekly. Nearly all youth receive probation supervision pre-adjudication and thirty-one percent of

² Id.

adjudicated youth are currently mandated to participate in probation supervision after court adjudication.³

CCC Recommendations Related to Probation:

- Increase Juvenile Probation Capacity – Probation will have to serve 16 and 17 year olds through their juvenile probation staff instead of their adult probation staff. Juvenile probation services include smaller caseloads, which is one fundamental reason why juvenile probationary services are much more effective. Raise the Age will thus require additional juvenile probation officers to handle the additional juveniles.
- Use Effective Services - Raise the Age will mean that Probation will serve a slightly older population with some different types of needs and characteristics. Probation is responsible for developing and supervising the case plan for a youth that can address the youth’s particular circumstances, and the foundation of this probation process is partnering the youth with effective services. This can include services like one-on-one mentoring with credible adults, clinical therapy, 24/7 crisis intervention specialists, academic tutoring, community-improvement projects, art programs, vocational training, and employment. Probation must have effective services to serve this new slightly older population of youth with services that both appeal to these youth’s motivations and address these youth’s needs.
- Utilize Adjustment for Appropriate Youth – Adjustment is the important opportunity where a youth’s case can be closed before extensive legal action and without a record if a youth successfully participates in Probation services. CCC emphasizes the importance of Probation using adjustment as much as possible for the new youth who will be in the juvenile system under Raise the Age, and we are encouraged by Probation’s statements that they intend to do this. Providing adjustment services to 16 and 17 year olds is one of the key purposes of the entire Raise the Age legislation as it provides dramatically improved outcomes for the youth and for public safety. Using adjustment as much as appropriately possible will also greatly assist the City’s capacity needs in detention, court, and placement, as those youth who are not adjusted will instead move further along the justice continuum.

DETENTION

Raise the Age will impact juvenile detention in a number of ways, including adding more youth of a slightly older age and the need to create new “specialized secure detention” for Adolescent Offenders (and the youth being moved from Rikers). In sum, CCC urges the City to ensure the new detention capacity is adequately funded, that alternatives to detention are used as much as appropriately possible, and that the city find an alternative

³ “New York City Juvenile Justice Profile – 2016.” New York State Division of Criminal Justice Services. September 1, 2017. Available at <http://www.criminaljustice.ny.gov/crimnet/ojsa/jj-reports/newyorkcity.pdf>.

to their stated plan to use Department of Corrections (DOC) staff for the specialized secure detention units.

Currently in New York City, most detained 16 and 17 year olds are held on Rikers Island. Under the Raise the Age legislation, all detained 16 or 17 year olds will instead be in an ACS detention facility or one contracted by ACS. This will be effective on October 7, 2018 for 16 year olds and October 7, 2019 for 17 year olds. Additionally, all 16 and 17 year olds must be off of Rikers Island by October 7, 2018.

ACS oversees non-secure detention facilities and currently administers two secure detention facilities for juveniles. After Raise the Age, most 16 and 17 year olds will be treated as juveniles under the Family Court Act and will use these same type of detention facilities. However, 16 and 17 year olds who are charged with certain more serious crimes and who are not able to have their case transferred to Family Court, will be charged in adult court as “Adolescent Offenders.” Sixteen or 17 year old Adolescent Offenders will be detained in new detention units known as specialized secure juvenile detention centers for older youth. These units are to be operated by ACS but must also be operated in conjunction with DOC. No additional information is mandated in the statute about what it means to operate in conjunction. These new specialized secure juvenile detention centers may be in the same building as current secure detention facilities as long as Adolescent Offenders and other youth are kept separate.

CCC Recommendations Related to Detention:

- Limit Unnecessary Detention - As mandated by the Family Court Act, detention should be used only when there is a substantial probability that the youth will not appear in court on the return date or there is a serious risk that the youth commit a delinquent act.⁴ Placing a youth in detention has a large impact on a youth’s life, and often increases the likelihood of future delinquent behavior while negatively impacting mental well-being, physical well-being, education, and employment.⁵ The isolation from natural supports and positive opportunities, combined with negative peer associations and incarceration settings, can reinforce a youth’s self-association with criminal identity. It is thus vital that detention only be used when absolutely necessary.

The City has made remarkable improvements to only use detention when appropriate and to utilize alternatives to detention, but there continues to be room for more improvement. 68% of youth detentions occur before a Family Court Judge hears a case, and 52% of youth detentions end up being for three days or

⁴ NYS Family Court Act. Section 320.5(3).

⁵ See http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf (Conducting a literature review to find detention leads to negative outcomes for youth’s mental and physical well-being, education and employment. Cites studies in Wisconsin, Arkansas, and Oregon that found higher correlations for recidivism and detention.)

less.⁶ Many youth are sent to a detention facility after an arrest but are released as soon as a Family Court Judge reviews the case. These detentions are likely not necessary as demonstrated by a Family Court Judge soon thereafter releasing the youth because they do not present an ongoing flight or criminal risk. Moreover, these detentions are unnecessarily harmful to the youth's well-being and very often only serve to worsen the youth's conditions and behavior.

Police, ACS, the Family Court system, and other City agencies should continue to work together to avoid the use of unnecessary detention, especially for those youth who will be detained for only very short stays before being released by the Court. One way this can be done is to increase training about when detention is appropriate, the negative outcomes of unnecessary detention, and feedback about how often an youth's detention is overruled once a Judge reviews the case.

Furthermore, many detentions occur because it may be considered more convenient to bring a youth to detention if there is resistance from the family for youth returning home, when the underlying issue involves family dispute, or when it is logistically convenient. These issues may likely become even more prevalent for the slightly older population of 16 and 17 year olds. When there is family conflict or the parent does not support the youth coming home, the City must not use detention as a convenient solution but must instead use assistive services and alternative programs. Detention should never be a tool of convenience and should be avoided when at all possible. ACS, Probation and the NYPD will need to work collaboratively to ensure there are policies, procedures and staff in place to transfer youth home rather than keep them overnight in detention.

- Ensure Detention Capacity is Adequate – ACS will need to be able to provide additional capacity in their non-secure detention facilities and secure detention facilities for the additional 16 and 17 year olds who will be under their care after Raise the Age, as well as the youth who will be transferred from Rikers. Likely the most challenging aspect will be the new capacity challenges for secure detention as these facilities require much greater infrastructure and resources, and youth in these facilities will likely have the greatest needs. This expanded capacity need will include the need for specialized secure detention facilities for Adolescent Offenders.

The City's plan to implement Raise the Age heretofore has included the use of the State's Ella McQueen juvenile facility. Despite advocacy from CCC, the City and other partners, the final State Budget did not include a provision to allow this facility to be transferred to the City in an expedited timeframe; therefore, state law still requires the state to give 12 months notice prior to closing this facility. This seems to make it impossible for the City to use this facility as a detention facility

⁶ "New York City Juvenile Justice Profile – 2016." New York State Division of Criminal Justice Services. Accessed on April 10, 2018. Available at <http://www.criminaljustice.ny.gov/crimnet/ojsa/jj-reports/newyorkcity.pdf>. (27% of probationary cases are successfully adjusted.)

in time for the first implementation deadline of October, 2018. Though this setback undoubtedly adds further challenges, CCC emphasizes that any solution should not sacrifice quality for youth detained, and in fact further emphasizes the importance of adjustment and alternatives to detention.

- Review and Update Policies to Accommodate 16 and 17 Year Olds – 16 and 17 year olds, though still adolescents like those under 16, may also have some different needs compared to younger youth that should be considered. These might include a higher number of youth who have children, different educational needs and objectives, different maturity levels, and different behavior needs. Policies, procedures, and staff training should be provided that ensure these youth are still provided a juvenile, rehabilitative environment, while also adapting to any unique needs.
- USE JUVENILE STAFF FOR ALL DETENTION – The new specialized secure detention facilities will need to have staff, and the City has stated its plan to use DOC staff for up to two years due to staffing challenges within ACS. CCC is deeply concerned with this plan and urges the City to find an alternative so that the adult correctional model is not installed in juvenile facilities.

While CCC appreciates that the City’s plan will be for ACS to have case-planning responsibilities and that ACS and DOC are to jointly create a vision for the operation of the facility with the intent of a youth-centered model, these measures cannot mitigate the risks of using DOC staff to oversee 16 and 17 year olds. CCC is concerned that even if ACS transitions to primary staffing after two years, the negative culture that dominates at Rikers will be replicated in the new facilities, a damage that will be extremely difficult to undo and which risks negatively impacting the culture at ACS and the youth they serve, including the younger children.

Though DOC leadership has undertaken noble efforts to address the extremely negative experience of people within Rikers, much of the culture within DOC has not changed. DOC has been mandated by the Court in *Nunez v. City of New York* to address the serious maltreatment of 16 to 18 year olds in Rikers since 2015.⁷ Despite a court order, sincere commitment from many in DOC leadership, and new policies over the past two years, the culture of abuse, mistreatment, and confrontation remains. The most recent independent court-appointed monitor for *Nunez vs. City of New York*, published in October 2017, found continued mistreatment for youth at the hands of DOC staff, including the observation that “serious and problematic issues involving Staff use of force continue in an

⁷ *Fourth Report of the Nunez Independent Monitor, January 1, 2017 through June 30, 2017*. The Nunez Monitoring Team. October 10, 2017. Available at <https://assets.documentcloud.org/documents/4173501/Fourth-Monitor-Report-as-Filed-Nunez.pdf>.

unabated fashion.”⁸ The monitor report notes that “[t]he cultural dynamic that permeates so many encounters between Staff and inmates in DOC is quite simply a consequence of Staff actions and behaviors that too often engender, nurture, and encourage confrontation.”⁹ This type of wide-spread culture cannot be allowed into juvenile facilities. Indeed, DOC labor representatives have clearly stated they do not want their DOC staff to be used for these juvenile positions.¹⁰

One of the core purposes of Raise the Age was to give youth the benefit of age-appropriate juvenile services instead of the adult correctional model. All of the great work ACS has done in its detention facilities is threatened by bringing DOC staff to ACS detention facilities. Removing youth from Rikers Island but failing to remove youth from the direct control of DOC staff would be a terrible misstep. In short, we do not want to simply move Rikers to Horizons.

CCC appreciates the need for urgency in planning for the implementation of Raise the Age and we understand the enormous challenge of hiring and training sufficient staff to handle the increased capacity in youth facilities. CCC urges the City nonetheless in the strongest terms to reconsider its decision to have DOC staff in juvenile detention facilities.

CCC believes that if the City wants to ensure that ACS has juvenile justice counselors employed by ACS by the October deadline, hiring this staff is possible if it is a priority. The City was able to find and train staff in an expedited manner for its dramatic expansion of prekindergarten classes. For example, perhaps the City could put out an emergency civil service test or contract out the services to a juvenile justice provider with this type of experience.¹¹

- If DOC Staff are Nonetheless Used, Reduce Negative Impact – In the event that DOC staff are used, CCC strongly recommends that every precaution is taken to ameliorate the threats that DOC staff might have on the juveniles in a specialized secure detention facility. CCC recommends that:
 1. No DOC staff be permitted to come into contact with youth under 16 or any non-DOC-supervised youth under any circumstances;

⁸ *Fourth Report of the Nunez Independent Monitor, January 1, 2017 through June 30, 2017*. The Nunez Monitoring Team. October 10, 2017. Available at <https://assets.documentcloud.org/documents/4173501/Fourth-Monitor-Report-as-Filed-Nunez.pdf>.

⁹ Id.

¹⁰ *Hearing Transcript – Juvenile Justice Committee, February 28, 2018*. New York City Council. February 28, 2018. Pages 92-94. Available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3321582&GUID=CCA292D6-595D-48F7-AB37-795A79DDF948&Options=&Search=>. (President of Social Services Employees Union Local 371 noting the negative culture of Rikers and the desire to not use staff from Rikers in juvenile units.)

¹¹ For example, Westchester County contracts out secure detention to Leake and Watts (and soon Children’s Village).

2. A selection process be used that identifies DOC staff that have a true interest and ability to work with youth, and the selection process does not only consider seniority;
3. The selection process begin immediately so that the staff could receive extensive training;
4. Training includes teaching staff in appropriate ways to interact with youth (for example, DOC staff would need to learn juvenile-appropriate practices to deescalate situations without using pepper spray or handcuffing youth to desks which are currently allowed in Rikers but not in juvenile facilities), as well as training in the background of adolescent development and juvenile justice best practices like trauma-informed care; and
5. All DOC staff are supervised by ACS and have ACS staff present within these detention units.

PLACEMENT

When a youth's case proceeds to court, a judge may order placement in a residential facility if the judge determines the youth committed the alleged act and needs supervision. ACS supervises all non-secure and limited-secure placement facilities through the Close to Home program, which represents the vast majority of juvenile placements. ACS works with local child-serving providers to use small, residential facilities within or near to New York City that provide an array of evidence-based services while keeping most youth enrolled within the New York City Department of Education. Close to Home facilities have partnered with a remarkable number of programs to bring services into the facility and to provide supervised visits with pro-social programs located outside of the facility. The facilities themselves all utilize research-based models of supervision that support youth needs, teach youth positive behavior skills, and provide safe environments where youth can stabilize and begin the process of successful rehabilitation and reentry back to the community.

Close to Home, like all placement services in New York, had been funded by both the State and the City. The recent State Adopted Budget, however, cut all State funding for the Close to Home program – a loss of \$31 million that the City had been budgeted in previous year. CCC had worked tirelessly to save this funding and appreciates the partnership from the City Council and the Administration to restore the State's funding for Close to Home. We are extraordinarily disappointed the final State Budget does not include this funding, even though Close to Home will be essential to successfully implementing Raise the Age.

CCC Recommendations Related to Placement:

- Expand Close to Home Capacity – Raise the Age will impact Close to Home placements by increasing the number of youth placed. The City must now be prepared by ensuring it has the capacity to accommodate these additional youth, and that these facilities have the services and staff that can meaningfully support this population of slightly older youth. Though State funding was cut, CCC strongly recommends that the city nonetheless continues to invest in the existing

facilities and increases their funding to open additional facilities to accommodate any increased need for additional beds.

- Ensure Services are Robustly Available – The Close to Home program has been a great success in large part due to having many different types of services readily available to support youth needs. Close to Home services address many youth needs, such as individual mentoring, clinical therapy, teaching behavior skills, academic support, artistic development opportunities, vocational training, recreation, employment, and many other positive programming partnerships. Additionally, Close to Home has also utilized staff that can provide transformational support through relationships and practices grounded in promoting adolescent development. Close to Home must continue to provide these types of qualitative services and supports to ensure Raise the Age can provide opportunity and successful outcomes for the new population of youth.
- Improve Feedback on Outcomes for Providers – Close to Home providers care for youth with evidence-based programming and utilize many of the best practices to support youth development, but they are not provided with adequate feedback or reporting about the mid- to long-term outcomes for their youth. After a youth leaves a Close to Home provider, the provider is not provided any information from ACS or other City agencies about the status of that youth. Providers have indicated their desire for this information so they can ensure their work is providing long-term benefits. Many providers go out of their way to stay connected to their youth on their own time and through their own means using the positive relationships they have developed with the youth. This is not possible though in many circumstances and does not provide a data-informed feedback loop that could otherwise help Close to Home providers improve their work. ACS and other City agencies oftentimes have access to how a youth is doing for months, and sometimes years, after a youth leaves a Close to Home provider, and the City should explore opportunities to give providers more information about how youth are doing after leaving their facilities.

CITY FUNDING

Though Raise the Age will not add new individuals to the justice system (it will instead treat 16 and 17 year olds in the juvenile system instead of the adult system), Raise the Age will need additional funding for transitional changes and to create the continuum of services and youth-specific opportunities that are part of the juvenile justice system. Simply changing the legal labels but not providing the full continuum of juvenile services would be a tragic failure.

The recently passed State budget regrettably did not help New York City with the needed new funds. It not only restricts New York City from accessing any of the allocated \$100 million of funds available to implement Raise the Age, it cut all \$31 million of budgeted funds for Close to Home. CCC is deeply disappointed with the final outcome.

City Funding Recommendation:

- Fully Invest in Close to Home and Raise the Age – In light of the State shirking its responsibility to New York City’s youth absence, the City will need to commit to funding raise the age expenses (as well as Close to Home for younger youth and 16 and 17 year olds). CCC looks forward to seeing the funding in the Executive Budget that supports all of the transitional changes associated with Raise the Age as mentioned in this testimony, including training for NYPD, Probation services and increased numbers of juvenile officers, detention capacity, and placement capacity. Each of these are not only vital to implement Raise the Age, but will have manifold benefits by giving 16 and 17 year olds the support for bright futures that they are lacking all too often in the adult system. CCC will continue to advocate for state support, but urges the City to ensure its youth receive the care and services they need.

CONCLUSION

CCC is excited for the potential of dramatically improved outcomes by finally Raising the Age. Though there will be a time of transition with many changes, including an urgent need for funding in this year’s Executive Budget, CCC remains confident that youth, their families, public safety, and our entire city will reap manifold rewards for this long-awaited improvement. To ensure this success is possible, CCC once again urges the City to rethink its plans to bring DOCs staff into the juvenile detention centers, as this will change the culture and negatively impact the great strides that ACS has made- for decades to come.

Thank you for the opportunity to testify.