

**New York State Budget Hearing:
Testimony of
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Director, Juvenile Justice Project
The Correctional Association of New York**

**Submitted to the
New York State Senate Finance Committee
and
New York State Assembly Committee on Ways and Means**

**Regarding the New York State Executive Budget Proposals
for Human Services
State Fiscal Year 2012-2013**

**Testimony of Gabrielle Prisco, M.A., Esq.
Director, Juvenile Justice Project of the Correctional Association of New York
(Revised on February 23, 2012)**

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My name is Gabrielle Prisco. I am the Director of the Juvenile Justice Project of the Correctional Association of New York and an attorney who has previously represented children in New York City's Family Court. The Correctional Association of New York is an independent, non-profit organization founded by concerned citizens in 1844 and granted unique authority by the New York State Legislature to inspect prisons and to report its findings and recommendations to the legislature, the public and the press. Through monitoring, research, public education and policy recommendations, the Correctional Association strives to make the administration of justice in New York State more fair, efficient and humane. The Correctional Association does not provide direct services other than leadership training programs and does not engage in litigation or represent a sector or workforce. The Juvenile Justice Project is committed to transforming New York's youth justice system such that children in the system are treated as children, the legal remedies applied to children match relevant risk levels, racial inequalities are eliminated, and evidence-informed best practices become the norm. The Project is further committed to working toward a youth justice system that is transparent and accountable to children and their families and communities, legislators and policy-makers and the public. The system we envision and work toward is one in which no child is abused and harmed while in the care and custody of a locality or the state, where children are given the tools and skills they need to succeed, and where positive youth development principles translate into increased public safety outcomes.

Thank you Chairmen DeFrancisco and Farrell and the other distinguished members of the Ways and Means and Finance committees for the invitation to testify today. We value this opportunity and also look forward to working closely with the Chairwomen Savino and Paulin and the members of the Children and Families Committee in the future.

Introduction

The CA has, for many years, advocated for keeping children in custody closer to their homes and communities. We have also long advocated for ensuring that all youth justice programs and facilities, regardless of who operates them, promote positive outcomes while keeping youth and communities safe. The Close to Home Initiative (CTHI) represents a unique and powerful opportunity to re-create the youth justice system for New York City's youth and communities. Details of the plan are, however, of paramount importance.

Youth justice systems, whether operated by a local social service district or the state, face significant challenges both in keeping children safe and secure and in meeting the complex treatment and service needs of young people in custody. Serving and, in very limited circumstances, confining children close to home is an essential first step but it alone does not guarantee successful outcomes.

We sit at the drawing board, before us is the blueprint of a new system that will serve approximately 600 youth.¹ There is an opportunity for this system to serve as a model for the rest of New York State and for the nation. We must design and execute this blueprint with attention

¹ See presentation by Ron Richter, the Commissioner of the Administration for Children's Services (ACS), at the New School for Social Research's Center for New York City Affairs, *Ties That Bind: Reimagining juvenile justice and child welfare for teens, families and communities*, February 2, 2012. Video available at: <http://www.newschool.edu/eventdetail.aspx?id=77619>

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to detail and sustainability. The lives of children and the safety and success of communities hang in the balance.

These following legislative and policy recommendations are predicated on the reality that current administrations at both the city and state level are transient, as all governmental administrations are. In order to truly realize the vision of a new and effective youth justice system for New York City's youth, close to home must be coupled with a durable system of protections and checks and balances.

This testimony focuses on ten sets of legislative and policy recommendations:

1. Independent external oversight mechanisms;
2. Community and family engagement mechanisms;
3. Comprehensive standards for the protection and treatment of children;
4. Analyzing the capacity of private agencies;
5. Performance based data and the on-going evaluation of the Close to Home Initiative;
6. Performance review of the Close to Home Initiative prior to transfer of authority for Limited-Secure Placements;
7. Ensuring that all facilities in the Close to Home Initiative are within New York City;
8. Ensuring an adequate timeframe for the devolution of power;
9. The fiscal infrastructure of the Close to Home Initiative; and
10. New York City's proposed Structured Decision Making Grid.

These ten sets of recommendations are grounded in an understanding of both the complexities of the task before us and the magnitude of its importance.²

I. Independent External Oversight Mechanisms:

As an organization that has served as an independent outside monitor of New York's adult prison system for nearly two centuries, the Correctional Association is well aware of the myriad risks faced by people in custody. Children in the youth justice system, particularly those in residential facilities are uniquely susceptible to abuse and mistreatment. "Since 1970, systemic violence, abuse, and/or excessive use of isolation or restraints have been documented in the juvenile corrections facilities of 39 states (plus the District of Columbia and Puerto Rico)."³ The federal Department of Justice has documented constitutional violations of the rights of children, including the excessive use of force against children in multiple jurisdictions, not just New York State.⁴ Although placing children closer to their homes may increase the likelihood that a child's

² A number of the recommendations in this testimony (including those related to independent external oversight, community and family engagement, and fiscal incentives to fund what works) as well as some of the research on racial and ethnic disparities in the youth justice system, draw on research and recommendations from *When the Cure Makes You Ill: Seven Core Principles to Change the Course of Youth Justice*, an article written by the author of this testimony, forthcoming in the New York Law School Law Review.

³ *No Place for Kids: The Case for Reducing Juvenile Incarceration*, Richard Mendel, The Annie E. Casey Foundation (2011).

⁴ In August 2009, the federal Department of Justice concluded a two-year investigation of four New York State-operated juvenile prisons, finding routine incidents of physical abuse and excessive use of force, a complete lack of staff accountability, and woefully inadequate mental health services. *Investigation of the Lansing Residential Center, Louis Gossett, Jr. Residential Center, Tryon Residential Center, and Tryon Girls Center*, U.S. Dept. of

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family member or attorney will learn of abusive conditions, it alone does not guarantee children's safety. Children and adolescents in New York City's secure pre-trial detention facilities (for youth in the juvenile delinquency system and juvenile offenders) and in New York City's jails (for 16 and 17-year olds in the adult criminal justice system) face serious harm and injuries, even though these placements are close to home.

The Administration for Children's Services' Division of Youth and Family Justice Services (ACS-DYFJ) currently operates secure and non-secure detention serves for NYC. ACS is the same agency that will oversee Non-Secure Placements and Limited-Secure Placements under the proposed Close to Home Initiative.⁵ Large numbers of children in ACS's custody have recently been injured by the use of physical restraints and mechanical restraints.⁶ Between July 1, 2011 and September 30, 2011 (the most current data available), there were 55 reported physical restraints by staff on youth in custody resulting in injury and 7 mechanical restraints by staff on youth in custody resulting in injury. This roughly translates to one injured youth every other day. Additionally, during this same period, there were 3 reported physical restraints by staff on youth in custody resulting in "injuries requiring clinical treatment beyond what could be provided by a layperson with over-the-counter products." Between April 1, 2011 and June 30, 2011, there were 168 injuries to youth as a result of restraints by staff (110 injuries from physical restraints and 58 injuries from mechanical restraints). During this time there were 4 physical restraints and 1 mechanical restraint resulting in injuries requiring clinical treatment beyond what could be provided by a layperson with over-the-counter products.

Further, in Fiscal Year 2011, there were 114 child abuse allegations regarding children in the city's secure detention facilities, non-secure group homes, and in "court services/transportation." 13 of these child abuse allegations were indicated.⁷

In 2010, Alexis Cirino-Rodriguez, died in an upstate privately run foster care placement after a restraint by staff. Alexis was placed in the William George Agency, a private residential facility near Ithaca. Although, we believe this agency does not currently serve youth from New York City, Alexis's death highlights that the risks to children in custody are not limited to OCFS-

Justice, August 2009. The DOJ has similarly investigated and made findings against a host of jurisdictions. See www.justice.gov.

⁵ It is our understanding that ACS will be contracting with private providers who will actually operate the placement facilities. On January 27, 2012, ACS issued a negotiated acquisition for operation of Non-Secure Placement facilities. The negotiated acquisition documents are available at: <https://a068-aprodapp15.nyc.gov/rfponline/jsp/index.jsp>.

⁶ Introduction 153-A and 37-A passed by the New York City Council, requires Children's Services to post a quarterly Incident Report, an annual demographic report and an annual report of child abuse allegations. These documents are available at: http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml (last accessed 2/9/2012).

⁷ For information on how an alleged child abuse or neglect case is determined to be "indicated," see A Guide to New York's Child Protective Services System, 2001 Revised Addition, available at: <http://assembly.state.ny.us/comm/Children/20011016/html/doc.html#fn32> (last accessed 2/9/2012). "By evaluating information gathered during the investigation, the protective caseworker determines whether there is some credible evidence to indicate the report of abuse or maltreatment. This determination is based on certain signs or indicators... Credible evidence is evidence that is 'worthy of belief.' If the protective caseworker does not find some credible evidence substantiating the report, the report is considered unfounded." *Id.*

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operated facilities and extend to privately operated agencies (the city will contract with private agencies for the operation of placements under the Close to Home Initiative).

All agencies and facilities that, by design, isolate children from the general public are in need of well-funded, robust, and independent external oversight, regardless of how close to home children are placed.⁸ Robust oversight can play a role in improving conditions of confinement as well as facilitating systemic change. Effective and consistent monitoring and inspection empowers an agency to immediately address problems as they arise. This process can help to highlight the good work that is being done in institutions and to ensure its sustainability. Instead of presuming wrongdoing, a strong oversight body can create a proactive mechanism that ensures quality services and objective evaluation through regular facility inspections the consistent review of policies, programs, and services, and regular reporting.⁹ Independent oversight can also play a strong role in securing public accountability for systems of confinement.

The American Bar Association (ABA) outlined twenty standards for effective youth and adult prison oversight including the following essential points. These points include that the overseeing entity must be:

- 1) Independent, specifically meaning that it must not be located within the agency it oversees and it must operate from a separate budget;
- 2) Statutorily guaranteed the right to conduct unannounced and unfettered visits including the ability to have confidential conversations with youth in the facilities and programs;
- 3) Granted the power to subpoena witnesses and documents and have the power to file suit against the agency operating a facility(ies);
- 4) Assigned the power and duty to report its findings to the executive, legislative, and judicial branches, and also to the public;
- 5) Allocated adequate funding and appropriate staffing levels necessary for effectiveness; and
- 6) Facility administrators must be required to respond publicly to monitoring reports.¹⁰

⁸ For more information on effective oversight, see: Deitch, Michele, *Opening Up a Closed World: What Constitutes Effective Prison Oversight?* Pace Law Review, Volume 30, Number 5, p. 1397-1410, Fall 2010 and Michele Deitch, *Distinguishing the Various Functions of Effective Prison Oversight*, Pace Law Review, Volume 30, Number 5, Fall 2010. Additionally, Governor Paterson's Task Force on Transforming Juvenile Justice made a number of key recommendations for youth justice reform in New York State including the need to "(e)stablish and fund an independent, external oversight body to monitor and report on OCFS' juvenile justice policies and practices." The Task Force was charged with looking at the OCFS state-system although their analysis and conclusions regarding the need for an independent, oversight body are applicable to a city-run system and to private agencies. The Task Force report is available at: <http://www.vera.org/download?file=2944/Charting-a-new-course-A-blueprint-for-transforming-juvenile-justice-in-New-York-State.pdf>.

⁹ This section of testimony on independent oversight and monitoring draws heavily from a one-page memorandum that this group wrote and distributed to Department of Probation Commissioner Vincent Schiraldi, and, in slightly revised forms, to ACS Commissioner John Mattingly, Division of Youth and Family Justice Executive Deputy Commissioner Larry Busching, and the State Strategic Plan Steering Committee (the author of this testimony sat on this Steering Committee). This memorandum was signed by Community Connections for Youth, the Correctional Association of New York, the Children's Defense Fund New York, the Institute for Juvenile Justice Reform and Advocacy, a project of the Center for NuLeadership. Riverside Church Prison Ministry later joined as a signatory.

¹⁰ The American Bar Association Criminal Justice Committee, Report to the House of Delegates (2008).

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Comprehensive public transparency over system outcomes and operations is also essential to the protection of children and to positive system outcomes. Members of the public and legislators, including this body, should have easy access to aggregated (de-identified) data about the youth in the system.¹¹ Public transparency helps ensure that the public is aware of what is happening to its children so that the public can effectively and appropriately respond when children are being harmed. Additionally, the public transparency of data, including fiscal data, increases the likelihood that public finances are used effectively and responsibly. Finally, the more educated policymakers and citizens are, the more likely it will be that youth justice policy will be made on facts and not on biases, stereotypes, or myths.

The Office of the Public Advocate, the New York City Council, and attorneys for children have important roles to play, but their existence does not obviate the need for independent external monitoring

Although the Office of the Public Advocate and the New York City Council have important functions to play and can each help advance the rights of children in care, neither body is designed to or capable of providing the kind of oversight that national experts agree is necessary for the safety of children. For example, these bodies are not designed to routinely speak to children in custody and their families, routinely review individual and aggregate case records, and routinely speak to staff across the system. Neither the City Council nor the Office of the Public Advocate has been successful, for example, in remedying harms to youth in city custody at Riker's Island or in secure detention facilities currently operated by ACS' Division of Youth and Family Justice or in ACS' current child welfare placements.

Similarly, while children who are placed closer to home will have easier and more regular access to their attorneys, attorneys for children are not a substitute for a robust oversight body. Attorneys for children are ethically mandated to zealously advocate for their clients and are, except in limited circumstances, legally bound by attorney-client confidentiality with regard to a lot of the information they learn from clients. Furthermore, attorneys for children generally cannot speak to children they do not represent and generally cannot inspect facilities. Attorneys for children are also not mandated to issue public reports based on their visits to facilities, nor is the government mandated to publicly respond to any such reports. Although attorneys for children in New York State can and do file important class-action lawsuits on systemic issues, including conditions of confinement, this ability does not eliminate the need for independent external oversight. The American Bar Association, the national professional organization for legal professionals, itself recognized the need for independent external oversight of all residential facilities above and beyond the very important assistance provided to children in confinement by their attorneys.

In sum, while other system stakeholders including the Office of the Public Advocate, the New York City Council, and attorneys for children, have meaningful roles to play in assuring that children in the youth justice system are safe, these stakeholders are not proxies for a strong independent external oversight body.

¹¹ Concerns about the confidentiality of records may be raised when the public dissemination of data is discussed. These recommendations are specifically limited to aggregate data where the names and identifying information of young people, complaining witnesses, and others are removed.

OCFS's oversight as currently outlined in the Close to Home Initiative does not obviate the need for independent external oversight

The Close to Home Initiative, as outlined in the Executive Budget, authorizes the Office of Children and Family Services to play an oversight role with regard to a new city-based system. It is our understanding that there will be 30 or 31 full time employees working on this oversight in year one of the Initiative. There is, however, no permanent, or even multi-year, resource commitment despite the fact that there are specific allocations for block grants from the state to the city for the Initiative's operation through FY 2014-2015.¹² At a minimum, there should be an analogous commitment to funding 31 full-time employees for OCFS oversight through this same time period (through FY 2014-15) and permanent minimum staffing and resource commitments should be established and codified. An argument may be made that 31 full-time employees are not necessary and that OCFS currently has far fewer staff as part of their child welfare oversight function. The reality is that the resources for OCFS's oversight of the child welfare system are woefully inadequate and problems in the city's child welfare system are profound and persistent. An inadequate oversight system does not make a good yardstick.

Additionally, it is difficult to fully analyze OCFS's new potential oversight structure, as details have not yet been released. Release of model details is necessary so that this body, the public, and other system stakeholders can assess and respond to it.

Independent External Oversight Mechanisms Recommendations:

1. The state should require a mechanism for independent external oversight and monitoring consistent with the American Bar Association's standards to be built into the Close to Home Initiative.

2. The Legislature should mandate OCFS to release specifics of its planned oversight mechanism. The authorizing legislation describes OCFS's oversight role in only general terms.¹³ This should include, at a minimum: a comprehensive set of oversight standards and a framework that is tailored to the administration of the youth justice system and not simply a replication of OCFS's child welfare oversight framework and mechanisms. OCFS should specifically articulate the role it will play with regard to oversight of both facilities and non-residential services and programs.

3. The Legislature should mandate the Administration for Children's Services to release for its consideration and for public consideration a detailed plan for any internal oversight mechanisms (at either the ACS or contract provider level) that they will have in place under the Close to Home Initiative, including oversight mechanisms for both programs and services and residential facilities.

4. Permanent minimum staffing and resource levels for the Office of Children and Family Service's oversight function should be mandated. Although there could and should be built-in flexibility to account for future system downsizing and changes, there is a need for permanent

¹² See Section 8 (a)(i), p. 73.

¹³ See Sections 10(a,b), 11 and 12, pp. 79-80.

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resourcing beyond this budget cycle. At a minimum, the oversight mechanism should be funded through the end of FY 2015; this time period aligns with the fiscal timeframe for state grants to the city under the Initiative.¹⁴

II. Community and Family Engagement Mechanisms:

New research on evidence-based practice demonstrates that families¹⁵ must be viewed as partners and collaborators in order to ensure the best outcomes for court-involved youth.¹⁶ The people who are most impacted by the system and their allies in the advocacy community need to be involved in a substantial way in the design, review, and on-going operation of the city's new plan. The voices and experiences of system-involved children and their families and communities are a rich source of data for reform efforts. These individuals and communities often have powerful insight into how young people get off-track, what could help them get back on, and the ways in which the system could improve both youth and community safety outcomes.

We are pleased that Governor Cuomo included provisions in his initiative that give the public an opportunity to comment on the city's plan. The legislation, however, requires a minimum of only one public hearing after the city's proposed plan has been posted for at least 30 days. The existence of as few as one public hearing is not a substitute for meaningful community engagement. The parents, families, and community members most impacted by youth justice policies and systems generally come from 15 neighborhoods in New York City: South Jamaica, East New York, Bedford-Stuyvesant, Harlem, Tremont, University Heights, Brownsville, Eastchester, Morris Heights, Saint George, East Harlem, Soundview, Bedford Park, the South Bronx, and Far Rockaway.¹⁷ These same neighborhoods are marked by poverty, poor educational outcomes, and limited resources. It is unlikely that the majority of community and family members most impacted by this proposal will, without a specific and detailed community engagement plan, learn of the city's proposal let alone be available to speak at a single community hearing, which will likely be held during working hours. Many people with lower-wage jobs are not afforded paid personal or vacation time that could be used for this kind of event. Additionally, there is no requirement for public distribution of the plan short of website posting and publication in "a newspaper of general circulation within the jurisdiction for which the social services district is located."¹⁸ This barebones requirement poses additional challenges for community notification and engagement given the tremendous wealth-based disparities in Internet literacy and access and the fact that New York City is a large jurisdiction with many newspapers of general circulation. There is also no requirement that the plan be posted and distributed in Spanish, the primary language of a significant number of parents, families, and community members impacted by youth justice policies.

¹⁴ See Section 8(a)(i), p. 73.

¹⁵ It is crucial to note that "family" can and should be defined broadly and in no way limited to a child's biological family. Instead, the term family should be broadly defined to encompass those whom youths see as their family group, whether based on biological, social, foster, or adoptive ties.

¹⁶ *Family Involvement in Pennsylvania's Juvenile Justice System*, Models for Change: Systems Reform in Juvenile Justice, 15, 2009.

¹⁷ NYC Department of Juvenile Justice, 2009, available at:

http://www.nyc.gov/html/djj/pdf/adm_by_community_district_of_residence.pdf.

¹⁸ Part G, Section 3, pp. 68-69.

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Further, the city has yet to release a plan to the public for review and feedback although many substantive and important operational decisions have already been made. The fact that key decisions have already been made is evidenced by the multiple documents released as part of the Negotiated Acquisition. These documents include a 117-page document outlining Non-Secure Placement Quality Assurance Placement Standards, including standards on the use of restraints and hardware in facilities, services in facilities, support services for families, client grievance procedures, and staff training.¹⁹

These documents have not been publicized nor distributed to communities and are available only after navigating multiple links and registering on the ACS website. There is simply no reasonable way to assume that the average parent, family member, or community member would know to look for this document or understand its relevance within the scheme of the Close to Home Initiative, let alone be aware of a mechanism for responding to it. In fact, the Correctional Association has spoken with the staff of a New York City Council member and many advocates and other stakeholders deeply involved in youth justice work who were unaware these documents were released. Further, even if a stakeholder were aware of these documents and able to give feedback, given the extremely short timeframes before the issuance of the Negotiated Acquisition (January 27, 2012), the proposal due dates (February 27, 2012), there is functionally no meaningful opportunity for community, legislative, and stakeholder feedback to be incorporated before contracts are issued.

Beyond the distribution of the plan and a single community hearing, the Governor's authorizing legislation does not require the city's proposal to follow any minimum criteria with respect to the engagement of families and communities.

A different model is possible. "Real system-community partnerships are those in which system stakeholders and community members share information and evaluate and analyze data together for the purpose of identifying the best way to solve problems."²⁰ In community-systems partnerships, both qualitative and quantitative data about system operations and outcomes should be valued.²¹ Decision makers should make deliberate spaces to listen to, reflect on, and respond directly to the stories, experiences, and policy recommendations of families and communities. Actual system-community partnerships also rely on shared decision-making power, whereby both communities and institutional stakeholders "have shared authority to define what strategy and responses are chosen as interventions."²² Successful community engagement also relies on

¹⁹ See Negotiated Acquisition documents, available at: <https://a068-aprodapp15.nyc.gov/rfponline/jsp/RFPPublicView.jsp?rfpid=131&caller=current>

²⁰ Community Connections for Youth, *Building Community Capacity for Juvenile Justice Reform, A community-centered approach to bringing New York City's children Close to Home*, on file with the author.

²¹ *Id.* (Community Connections for Youth, *Building Community Capacity for Juvenile Justice Reform, A community-centered approach to bringing New York City's children Close to Home*), discussing how traditional system stakeholders may have access to more quantitative data while community members may have more access to qualitative data accumulated from living and working in neighborhoods where children in the system come from).

²² *Id.* (Community Connections for Youth, *Building Community Capacity for Juvenile Justice Reform, A community-centered approach to bringing New York City's children Close to Home*).

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the sharing of resources whereby there is a financial investment in the ideas and strategies generated by community-system information sharing and joint decision-making.²³

Community and Family Engagement Mechanisms Recommendations:

1. New York State should mandate that New York City invest in programs with strong family and community engagement components. Some states are beginning to invest in more family-focused interventions. For example, the “Missouri Model,” which is structured around small, therapeutic, and treatment oriented programs close to home, involves a variety of community and family-oriented practices that have become a model for best practices in other states.²⁴ The Office for Children Services (OCFS) has drawn on the Missouri Model in the development of its “Brooklyn to Brooklyn” Initiative, a limited-secure residential facility for youth from Brooklyn. In reviewing the city’s plan, New York State should ensure that there are concrete mechanisms for family and community engagement.

2. The Legislature should mandate that New York State and New York City should outreach and listen to families and communities. Community and family members must have meaningful and substantial input in the design, implementation and evaluation of services for youth.²⁵ The Close to Home Initiative offers a unique, perhaps once in a lifetime, opportunity for agencies to return to the drawing board and build a new youth justice system largely from scratch. Policymakers must genuinely collaborate with family and community members to ensure that their perspectives and insights are recognized. New York State and New York City should, for example, hold listening sessions where families can present research findings and draw on their own experiences when articulating concerns and offering ideas for system improvement.²⁶ New York State and New York City should hold multiple community hearings. Additional recommendations related to these recommended public hearings on the CTHI are included in Section VIII (Timeframe of the devolution of power) below.

3. New York City’s plan should contain provisions for community and family engagement.²⁷ As part of a national research project, Justice for Families conducted research with families in New York. A “consistent concern raised by families in New York was the lack of clear communication and information about what families can expect during the court process.”²⁸ Based on this research, they suggest that families in New York would benefit from the provision of clear information about the court process and from peer-to-peer supports (where families learn from other families who are in or have been similarly involved in the system).²⁹

²³ *Id.* (Community Connections for Youth, *Building Community Capacity for Juvenile Justice Reform, A community-centered approach to bringing New York City’s children Close to Home*).

²⁴ Richard A. Mendel, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*, The Annie E. Casey Foundation, 2010.

²⁵ Pennell, Shapiro, and Spigner, *Safety, Fairness, Stability: Repositioning Juvenile Justice and Child Welfare to Engage Families and Communities*, (2011), p. 17, available at: <http://cjjr.georgetown.edu/pdfs/famengagement/FamilyEngagementPaper.pdf>.

²⁶ Justice for Families, *Toward a Family Centered Justice System* (2012), on file with the author.

²⁷ *Id.* (Justice for Families, *Toward a Family Centered Justice System*).

²⁸ *Id.* (Justice for Families, *Toward a Family Centered Justice System*).

²⁹ *Id.* (Justice for Families, *Toward a Family Centered Justice System*), discussing examples of peer-to-peer supports including a county-supported family partner program in King County, Seattle and the Child Welfare Organizing Project in New York City.

4. New York State should review New York City’s plan to ensure that it gives families and communities access to the levers of change.³⁰ Sharing the “levers of institutional change” with families is a critical component of actual family engagement.³¹ Families and communities should be actively recruited and involved in the design of programs, services, and any facilities that New York City will open. For example, Calcasieu Parish’s Children and Youth Planning Board (the Planning Board) in Calcasieu, Louisiana is comprised of children, two parents of children who are in the justice system, professional advocates, members of faith-based communities and lay citizens along with prosecutors, defense attorneys, judges, law enforcement and other more traditionally empowered stakeholders.³² The Planning Board assists in the “assessment, alignment, coordination, prioritization, and measurement of all available services and programs that address the needs of children and youth.”³³ The Planning Board participates in conditions of confinement inspections.³⁴ It has also partnered with community-based groups to advocate for legislation aimed at improving detention conditions.³⁵ New York City should develop clear mechanisms for sharing power with families and communities and New York State should review the city’s plan to this end.

5. The Legislature should mandate that New York City’s plan include robust provisions for family access to detained and incarcerated youth. The placement of children closer to their homes is an essential step toward increasing opportunities for children in confinement and their families to see one another. In addition, frequent and consistent opportunities for detained and incarcerated youth to engage with their families and other support should be created, realizing that geographic proximity alone is not enough and that some children’s family members and other supports may be outside of New York City. Opportunities can include “increased telephone contact, use of video conference technology, and more frequent family visits.”³⁶ Withholding family visits is not an appropriate behavior modification technique for children; all children, regardless of their behavior should have a right to see their family. New York State should ensure that New York City’s plan does not allow for this sanction.

6. The Legislature should mandate that all facilities and programs operated under the Close to Home Initiative be open to routine public inspection by family and community members along with other outside monitors.³⁷ One example is the monitoring being done by Families and Friends of Louisiana’s Incarcerated Children (FFLIC) in collaboration with local and state youth justice authorities.³⁸ FFLIC participated in the monitoring of a local detention center and is now also participating in monitoring of the state’s residential facilities.³⁹

³⁰ This suggestion draws heavily on the work and suggestions of Justice for Families. *See Id.*

³¹ *Id.*

³² *See* the Planning Board’s website, available at: <http://www.calcyfb.org/faqmembership.php>, last accessed 2/12/12.

³³ *Id.*

³⁴ FN 29 (Justice for Families, *Toward a Family Centered Justice System*).

³⁵ *Id.* (Justice for Families, *Toward a Family Centered Justice System*).

³⁶ FN 28 (Pennell, Shapiro, and Spigner, *Safety, Fairness, Stability: Repositioning Juvenile Justice and Child Welfare to Engage Families and Communities*).

³⁷ FN 29 (Justice for Families, *Toward a Family Centered Justice System*), discussing how any facilities in New York City should be open to regular public inspection that includes family members.

³⁸ *Id.* (Justice for Families, *Toward a Family Centered Justice System*), at 5.

³⁹ *Id.* (Justice for Families, *Toward a Family Centered Justice System*).

7. The Close to Home Initiative should invest financial resources in families and communities. The Close to Home Initiative involves a tremendous allocation of financial resources, but none have been allocated for community reinvestment. In January 2012, the Administration for Children’s Services released a Negotiated Acquisition for the operation of non-secure placements only. According to the Negotiated Acquisition, contracts awarded under the Acquisition will total \$56,760,000.00.⁴⁰ It is our understanding that an additional Negotiation Acquisition will be issued for Limited-Secure Placement contracts. As outlined in the Governor’s Executive Budget, substantial funding for the Close to Home Initiative will come from New York State. In order to support the programs and opportunities that have been demonstrated to keep children out of the youth justice system entirely, at least some portion of these funds should be invested in communities themselves.

Much has been said in recent times about the concept of ‘justice reinvestment’ but the actual practice of such reinvestment has been limited.⁴¹ Justice for Families, a national network of local organizations working to empower families as leaders of the youth justice movement, offers the following conceptual distinction between *intra-institutional reinvestment* and *inter-institutional reinvestment*:

Intra-institutional reinvestment consists of changes that can be made *within institutions* to move justice practice away from an overreliance on incarceration toward the use of more effective and often less costly alternatives... These efforts are admirable, but still more could be done to keep youth out of residential placements. By investing in community and family centered safety solutions (*inter-institutional reinvestment*), justice systems can reduce their footprint and increase the informal community controls that make the safest communities safe. For example, transferring specified probation department duties to paid community and family partners through the use of peer support programs can help create a more collaborative-minded department and strengthen disadvantaged communities (parenthetical notation added).⁴²

Such inter-institutional reinvestments in communities are an important part of true system transformation.

III. Comprehensive Standards for the Protection and Treatment of Children:

As stated earlier in this testimony, children in the youth justice system, particularly those in residential settings are uniquely susceptible to abuse and mistreatment, this risk is not inherently eliminated when children are placed close to their homes. Standards for children in non-residential programs are also needed, as is the public release and evaluation of compliance with those standards.

⁴⁰ February 8, 2012, Addendum #3 to Negotiated Acquisition, available at: <https://a068-aprodapp15.nyc.gov/rfponline/jsp/index.jsp>.

⁴¹ FN 29 (Justice for Families, *Toward a Family Centered Justice System*), at 6.

⁴² *Id.*

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Well-articulated minimum baseline standards of care for the protection and treatment of children in custody should be required for both New York City and New York State. These standards should govern key issues that can significantly impact the safety of children including but not limited to: the use of physical and mechanical restraints; the use of punishments; the provision of mental health and substance abuse services; crisis de-escalation techniques; and the use of police interventions. These city and state standards should be developed with attention to the standards developed by the Department of Justice (DOJ), as part of a settlement agreement with OCFS.⁴³ The DOJ standards comprise only *minimum constitutional standards* and should be used only as a *baseline* starting point for the development of more comprehensive standards. Standards should also be developed and implemented for children in non-custodial programs and services.

These comprehensive standards should regularly be evaluated and revised as necessary to reflect the growing body of knowledge about best practices and achieving positive outcomes for youth and community outcome. Data on how these standards are being implemented and met or not met should be routinely collected, analyzed, and publicly released.

Additionally, more details about the city's proposed program models, particularly for residential facilities are needed and these details should be evaluated by an independent outside expert evaluator who has not been involved in developing the Initiative. Again, close to home is in and of itself not enough to guarantee positive youth and community outcomes- programmatic details are of the utmost importance. The Non-Secure Placement Negotiated Acquisition states that providers must **“operate a facility where all sleeping rooms for the accommodation of more than one child shall contain a minimum area of 60 square feet per child and a minimum floor space of two feet between beds (emphasis added).”**⁴⁴ These barrack-style measurements are inconsistent with best practices for youth justice placements and should be independently measured against such practices.

In addition, best practices exist with regard to determining the types of facilities children are housed in, including but not limited to the architecture of facilities and the maximum number of children per facility. It is crucial that any facilities opened under the CTHI not replicate some of the same harms of current OCFS facilities. Both Non-Secure and Limited-Secure facilities should be small, home-like facilities and should not replicate adult corrections-like settings. As stated earlier, ample research demonstrates that placing children in small home-like settings as opposed to adult correctional style facilities decreases recidivism and increases positive youth outcomes. For example, the Missouri Model is commonly recognized as America's gold standard model for children in confinement.⁴⁵ The Missouri Model is operated by the state of Missouri, although children are required to be placed in facilities in their home jurisdiction. The model is marked by: small home-like facilities where children stay in dorm-like rooms, wear their own clothes, and call staff by their first names; family engagement; and a strong therapeutic approach.

⁴³ See settlement agreement between the Department of Justice and OCFS, available at: <http://www.justice.gov/opa/documents/agreement-07142010.pdf>.

⁴⁴ New York City Administration for Children's Services Division of Youth and Family Justice (DYFJ) Negotiated Acquisition: Operation of Non-Secure Delinquency Placement Services, PIN: 06812N0001, p. 5.

⁴⁵ See Annie E. Casey Foundation, *The Missouri Model, Reinventing the Practice of Rehabilitating Youthful Offenders* (2010), available at: <http://www.aecf.org/upload/publicationfiles/MOFullreportwebfinal.pdf>. See also Missouri's Department of Social Services website, available at: <http://dss.mo.gov/dys/>; and Missouri Division of Youth Service's Programs and Services summary, available at <http://www.dss.mo.gov/dys/articles/progservice.pdf>.

While the model is not perfect, Missouri's success illustrates a number of things. First, state jurisdiction is not in and of itself problematic-- the use of a therapeutic and non-punitive program model is what appears to be of the utmost importance. Second, placing kids close to home is essential but not inherently sufficient to achieve low recidivism rates and positive youth outcomes. It is Missouri's program model, with an emphasis on small home-like facilities, therapeutic services, and comprehensive community engagement, which has been demonstrated to drive success.

Comprehensive Standards for the Protection and Treatment of Children
Recommendations:

- 1. The Legislature should mandate that the Office of Children and Family Services promulgate regulations within 180 days of passage of the Close to Home Initiative legislation that detail comprehensive standards for the protection and treatment of children under the Close to Home Initiative.**
- 2. The Legislature should mandate that the Office of Children and Family Services regularly collect and publicly release data about the safety of youth in custody under the Close to Home Initiative, including but not limited to: the number of physical and mechanical restraints used; the number of injuries to youth and staff; any use of isolation; any use of force; the provision of mental health services; the provision of substance abuse services; and the provision of educational services. This data should be publicly released on a monthly basis.**
- 3. The Legislature should mandate that New York City's Close to Home Initiative plan (prior to submission to OCFS and the New York State Division of Budget (DOB) for approval) include comprehensive details about how the city will ensure the safety and well-being of children in all placements and programs under the Close to Home Initiative, including but not limited to copies of all proposed policies with regard to the use of force and the use of restraints on children. These details should also be publicly released prior to the submission of the plan to OCFS and DOB.**
- 4. The Legislature should mandate that joint New York State-New York City public hearings on the standards for the protection and treatment of children be held on a quarterly basis for the duration of the Close to Home Initiative.**
- 5. The Legislature should mandate that the city's plan for Non-Secure Placements be submitted to at least one independent national expert on best practices for youth justice placements.**
- 6. The Legislature should mandate that the accommodations for children in residential custody, including the minimum area of personal space children are allowed and the maximum number of children confined in facilities, meet national best practice standards.**

IV. Analyzing the Capacity of Private Agencies:

New York City intends to contract the operation of Non-Secure Placements and Limited-Secure Placements to “authorized agencies,” those agencies already licensed by OCFS for the residential care of children. The issue of concern is not whether these are “good” agencies; it is whether a thorough analysis of the capacity of these agencies to operate these new placements has been done and released publicly for decision-maker and public review.

No private agency in New York State has run the type of facility that they will if the Close to Home Initiative is enacted. These private agencies generally have operated residential facilities for children in foster care or other social services placements and/or residential facilities for youth in the youth justice system found to be in need of a less restrictive setting than an OCFS-operated facility.

Analysis of the capacity of authorized agencies to operate the types of placements required by the Close to Home Initiative will also help ensure that agency capacity is infrastructural and codified and that successes can transcend a particular agency head or members of staff.

Analyzing the Capacity of Private Agencies Recommendations:

1. New York State and New York City should release publicly and to the Legislature a detailed analysis of the capacity of authorized private agencies⁴⁶ to implement the Close to Home Initiative, including a detailed program model documenting how these agencies will meet the needs of the population of youth currently being “modified” from private agencies to OCFS. A very high percentage of children currently in OCFS-operated non-secure and limited-secure placements are there because they have been “modified” from a private agency placement- meaning that their needs could not be met in a private placement and a determination was made that they had to move into OCFS’s custody. The Close to Home Initiative relies on these very same private providers to care for the needs and safety of this same population for youth. It is unclear how the new Close to Home Initiative placements will meet the needs of the population of children currently being modified to OCFS custody from private placements. It is possible that new program models will be designed under the Close to Home Initiative to better the needs of these youth, but details on any such model have not been released. New York State and New York City should release publicly and to the Legislature a detailed analysis of the capacity of the private agencies to serve the population of youth currently being modified from private agencies into OCFS custody and of any proposed program models to address the needs of this population under the Close to Home Initiative.

2. New York State and New York City should release publicly and to the Legislature a

⁴⁶ Given the expedited timeframe of the Close to Home Initiative and the small number of agencies currently eligible to compete for Non-Secure Placement contracts under the Initiative (the Negotiated Acquisition is limited to agencies already authorized by OCFS for the provision of residential youth services), this data should be analyzed for all authorized agencies unless it can be documented that a particular agency (ies) will not be competing for contracts under the Close to Home Initiative. Given that proposals under the Negotiated Acquisition are due February 27, 2012 and agencies are expected to have facilities operational by August 1, 2012, waiting until these contracts are awarded is not a viable option.

detailed analysis of the capacity of authorized private agencies to implement Safe Crisis Management, the restraint model ACS stated in their Negotiated Acquisition will be required in all Non-Secure Placements.⁴⁷

It is our understanding that this model, Safe Crisis Management, will be a new model for at least some agencies. Unfortunately, some agencies may be required to maintain multiple models as a result of mandates from other agencies/systems they contract with for the provision of non-youth justice residential services. For example, it is our understanding that prone restraints are not allowed for youth placed under contracts with the Office for People with Developmental Disabilities (formerly OMRDD) and that the favored restraint model for child protective (foster care) placements is the Therapeutic Crisis Intervention (TCI) model. In questions posed to ACS by agencies invited to respond to the Negotiated Acquisition, at least one agency stated that it may be challenging for agencies to simultaneously operate multiple models and that a different model is preferred for children in foster care.⁴⁸ Specifically, in a document released by ACS as part of the Negotiated Acquisition (which includes questions from potential bidders and ACS's answers), this challenge was highlighted by a potential agency bidder. Unfortunately, the ACS response did not indicate what, if any, assistance ACS would provide to ameliorate it:

6. Q. Can you confirm that Safe Crisis Management is the required intervention? Therapeutic Crisis Intervention (TCI) is not an acceptable intervention? If youth are integrated with foster care placed children where TCI is the preferred intervention, it will be a challenge to operate both models simultaneously for different children in the same facility.

A. Safe Crisis Management is the required intervention.⁴⁹

The Correctional Association is overall very concerned about the use and over-use of restraints on children in custody and takes no position at this time on the benefits or challenges of the Safe Crisis Management model. We are concerned instead with ensuring that agencies have access to adequate training and resources to implement any required model. The failure to appropriately implement restraint models can lead to higher injury rates for both children and staff.

3. The Legislature should mandate that the New York City Close to Home Initiative plan specifically articulate the training and other resources that will be available to agencies for implementing Safe Crisis Management. In addition, the Legislature should require the New York City CTHI plan to articulate the mechanisms it will use to ensure the staffing ratios at private agencies meet the requirements of the Safe Crisis Management model (different restraint models require different staff to youth ratios).

4. New York State and New York City should release publicly and to the Legislature a detailed analysis of the capacity of authorized private agencies to operate locked residential

⁴⁷ See Negotiated Acquisition documents, available at: <https://a068-aprodapp15.nyc.gov/rfponline/jsp/RFPPublicView.jsp?rfpid=131&caller=current>

⁴⁸ Administration for Children's Services, February 8, 2012, Addendum #3
Negotiated Acquisition: Operation of Non-Secure Delinquency Placement Services, PIN: 06812N0001, p. 3., available at: <https://a068-aprodapp15.nyc.gov/rfponline/jsp/RFPPublicView.jsp?rfpid=131&caller=current>

⁴⁹ *Id.* (Administration for Children's Services, Negotiated Acquisition, Addendum #3, p. 3).

facilities. There is a particular unknown with regard to the capacity of authorized private agencies to operate residential Non-Secure and Limited-Secure facilities. These agencies do have experience operating less restrictive residential facilities but, as indicated above, when those placements fail, children are often “modified” to a more restrictive level of OCFS-operated custody. Even successful operation of a lower level of care does not inherently mean that an agency is ready to provide more restrictive care. Our position is not that these agencies are inappropriate for operating Non-Secure and Limited-Secure placements. Our position is instead that a detailed capacity analysis must be released so that the public, advocates, this legislative body and other policymakers can meaningfully analyze their capacity to do so and can appropriately respond to any challenges that may become apparent in the course of this analysis.

V. Performance Based Data and the On-going Evaluation of the Close to Home Initiative:

While Section 10(b) of the proposed CTHI legislation mandates that performance data be shared with OCFS, there is no requirement that this information be shared publicly, with this Legislature, or with other system stakeholders and policymakers.⁵⁰ Similarly, Section 11 mandates that the social services district (the city) shall “submit a report to the office of children and family services annually, in the format required by such office, detailing overall initiative performance,” yet there is no mandate that this annual report be released to this Legislature, the public, or other system stakeholders.⁵¹

Sustainable long-term positive outcomes depend on the development of a strong performance-based evaluation rubric and on on-going performance evaluations. We expect this kind of on-going assessment with many goods, services, and contracts. There are few places it is as crucial as with regard to children in government custody.

Performance Based Data and the On-going Evaluation of the Close to Home Initiative Recommendations:

- 1. The state should devise an evaluation and accountability system with clear and coherent standards for the residential care of children in the youth justice system. These standards should apply to OCFS-operated facilities, ACS-operated facilities, and all private providers contracting with the city and state.**
- 2. The Legislature should mandate that performance-based data about the system’s operation be collected and shared on a quarterly basis with the New York State Legislature, New York City’s City Council, the Administrative Judge for the New York City Family Court and the public.** Data measures should include but not be limited to: the overall number of youth in the system (broken down by offense level); recidivism rates; educational outcomes (including grade levels, promotion rates, and graduation rates); permanency outcomes; staff training data; permanency data; restraint data; the number of movements of youth between facilities and levels of service and care; recidivism data; injuries to youth; injuries to staff; modifications to more restrictive levels of care; number of youth arrested while in ACS’ custody; and number of children referred to the adult system. Whenever possible and applicable, data

⁵⁰ Part G, Section 10(b), p. 79.

⁵¹ Part G, Section 11, p. 79.

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should be broken down by REGGO- race, ethnicity, gender (sex), geography and offense⁵² and, when possible and appropriate, LGBTQ status.⁵³ The data should also be broken down by agency and type of program/facility.

3. The Legislature should expand Section 10(b) of the CTHI to include the release of required performance data to elected officials, the judiciary and the public.

Section 10(b) should be amended as follows:

The social services district shall provide each juvenile delinquent with an appropriate level of services designed to meet his or individual needs and to enhance public safety and shall provide the office of children and family services with specific information as required by the office, in the format and at such times as required by the such office, on the youth participating in the initiative and the programs serving such youth. Such information shall be provided to the office of children and family services on a monthly basis for the first twelve months immediately following the implementation of the programs for each level of care and shall be provided to such office on a quarterly basis thereafter. *This information shall also be released to the New York State Legislature, the New York City's City Council, and the Administrative Judge for the New York City Family Court. This information shall also be prominently posted on the websites of both the Office of Children and Family Services and the Administration for Children's Services* (recommended additional language in italics).

4. The Legislature should expand Section 11 of the CTHI to include the release of required performance data to elected officials, the judiciary and the public.

Section 11 should be amended as follows:

The social services district shall submit a report to the office of children and family services annually, in the format required by such office, detailing overall initiative performance. *This report shall also be released to the New York State Legislature, the New York City's City Council, and the Administrative Judge for the New York City Family Court. This information shall also be prominently posted on the websites of both the Office of Children and Family Services and the Administration for Children's Services* (recommended additional language in italics).

VI. Performance Review of the Close to Home Initiative Prior to Transfer of Authority for Limited-Secure Placements:

⁵² Advocacy for the "REGGO" data collection technique whereby data is collected by "Race, Ethnicity, Gender, and Offense" originates with the Haywood Burns Institute, a national leader in reducing racial and ethnic disparities for youth in the justice system. In this methodology, gender is generally used to refer to biological sex. The Correctional Association recommends that data also be broken down by gender identity, when available.

⁵³ For information on the harms faced by LGBTQ youth in the youth justice system, see: Himmelstein, K and Bruckner, H., *Criminal Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*. Pediatrics 127(1) (2011) and Majd et al, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009), available at: http://www.equityproject.org/pdfs/hidden_injustice.pdf.

Under the proposed CTHI legislation, the city will be authorized to submit two distinct plans to OCFS and DOB, one for the operation of Non-Secure Placements and one for the operation of Limited-Secure Placements. It is our understanding that, if this legislation is passed and their plans approved, the city will gain authority to operate Non-Secure Placements on or before September 1, 2012 and the authority to operate Limited Secure Placements between April and June 2013.

Once this body votes on the CTHI legislation, there is no mechanism or opportunity for it to review the city's performance prior to the transfer of authority for Limited-Secure placements. Elected officials, families, community members, and other system stakeholders should be able to review the city's performance with regard to Non-Secure Placements prior to authorizing the city to operate Limited-Secure placements.

Performance Review of the Close to Home Initiative Prior to Transfer of Authority for Limited-Secure Placements Recommendation:

1. The Legislature should amend the CTHI legislation to include a specific mechanism for this body to review the performance of the city and any of its CTHI contract agencies with regard to Non-Secure Placements and other programs and aspects of the CTHI that have been implemented prior to authorizing the transfer of powers related to Limited-Secure Placements.

VII. Ensuring that all Facilities Within the Close to Home Initiative are Within New York City:

In the February 8th addendum to ACS's Negotiated Acquisition, ACS states:

Applicants that propose facilities outside of New York City must submit a plan to move the slots to a location within the five boroughs of New York City within two years of the contract start date. The plan does not need to be submitted as part of the response to the negotiated acquisition (underline added).⁵⁴

The February 8th addendum to the Negotiated Acquisition addendum further states:

ACS may allow an additional two year extension on the movement of the slots to New York City, if diligent efforts to effectuate the move have been made and demonstrated to ACS during the first two years of the contract. ACS will not provide assistance in locating or securing a site...⁵⁵

If ACS is not requiring the plan to be submitted as part of the response to the Negotiated Acquisition, it is unlikely that New York State (in reviewing the city's plan) and New York City

⁵⁴ See February 8, 2012, Addendum #3. Negotiated Acquisition documents, available at: prodapp15.nyc.gov/rfponline/jsp/RFPPublicView.jsp?rfpid=131&caller=current.

⁵⁵ *Id.*

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will be able to effectively evaluate whether an agency has the capacity to move the slots to the five boroughs within two years. The primary stated goal of this legislation is to move children close to home. It is of the utmost importance that the ability of authorized agencies to expeditiously effectuate this goal be verified. The myriad of complexities that attach to securing real estate in New York City, particularly for the purposes of running locked residential facilities for children in the youth justice system, should not be understated. It is easy to anticipate that agencies are likely to run into a host of challenges including the extremely high cost of New York City real estate (particularly for a non-profit agency); “Not in My Backyard” opponents to facilities; and complex land-use and zoning regulations and requirements.

In addition, even if real estate is secured within this two-year time period, it is reasonable to expect that many facility sites will need to undergo substantial renovation in order to meet the needs of housing up to 25 young people (the maximum size as outlined in the Negotiated Acquisition) as well as the security requirements of these placements. It is, therefore, reasonable to expect that additional architectural and city code reviews will be necessary, which will likely increase the length of time of this process.

In order to ensure that the Close to Home Initiative means that children are actually placed within their communities, more is required than what is currently embodied by the CTHI legislation and by ACS’s Negotiated Acquisition documents.

Ensuring that all Facilities Within the Close to Home Initiative are Within New York City Recommendations:

1. The Legislature should mandate that, prior to the awarding of CTHI residential contracts, authorized agencies submit detailed plans to move any CTHI residential slots not within New York City to the five boroughs of New York City within two years, and that the feasibility of these plans be a factor in awarding contracts. Prior to the award of contracts under this Initiative, agencies should demonstrate their ability to open facilities within New York City. If agencies are unable to fully document and meet this need, New York State and New York City should design a plan for assisting them. Failure to pro-actively address this issue makes it likely a significant percentage of children in the new system may remain outside of New York City for some or all of their placements.

2. The Legislature should mandate that OCFS retain oversight over ACS and authorized agency efforts to effectuate the movement of all CTHI residential slots to within the five boroughs of New York City.

VIII. Ensuring an Adequate Timeframe for the Devolution of Power:

The timeframe of the authorizing legislation functionally allows almost no time for meaningful review of the city’s plans (the plan for Non-Secure Placement and the plan for Limited-Secure Placement) by the public, elected officials including members of this body, and other system stakeholders including family and community members. This is because 1) it is our understanding that the authorizing legislation will be voted on prior to the city’s release of a plan; 2) as stated earlier, it is evident by the Negotiated Acquisition that a large number of key operational decisions have already been made, at least with regard to the Non-Secure Placements,

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and will be written into the contracts with the authorized agencies; 3) the Non-Secure Placement Negotiated Acquisition states that proposals are due February 27, 2012, contracts are anticipated to begin by June 1, 2012, and facilities must be operational no later than August 1, 2012.⁵⁶ A public hearing or review period has nonetheless yet to be announced. Furthermore, in order to be ready for these imminent deadlines, OCFS, ACS, and the eligible authorized agencies are clearly already making decisions about what programs, services, facilities, and conditions for youth-including conditions related to use of force and restraints- will look like in the new system.

We applaud Governor Cuomo for including a provision in the legislation requiring the city to issue a written assessment in response public commentary. The proposed legislation states that, at a minimum, the city shall submit with its plan, “a summary and analysis of the issues raised and significant alternatives suggested;” “a statement of the reasons why any significant alternatives were not incorporated into the plan;” and “a description of any changes made the plan as a result of such comments.”⁵⁷

This is an important step, but is not nearly enough. The fact is that the train has long left the station. The time constraints related to the issuance of contracts and opening of facilities combined with the aforementioned insufficiencies with regard to the public notice requirement⁵⁸ and the requirement that only a single public hearing be held means that, in practice, a new system will be built by government officials and agencies without a sufficient opportunity for public review and input. In fact, the blueprint for the system, at least for Non-Secure Placements, appears to have been substantially developed and encapsulated in the Negotiated Acquisition documentation.

Additionally, although the aforementioned requirement requires the city to respond in writing to the comments raised at the single (at a minimum) community hearing, there is no opportunity for the public to engage beyond this single hearing. For example, there is no mandate that the city’s written assessment of the public’s commentary be publicly released and there is no opportunity for the public to respond to that assessment.

Further, given the fact that the vast majority of community members whose children will be impacted by CTHI have never been notified about this legislation, it is reasonable to assume that a single hearing on a minimum of thirty days notice is not sufficient to gather true community input.

Further, government officials have been working on this proposal and plan for well over a year and the fact that the city and state’s timeframe requires contracts to be issued quickly, should not be a barrier to community engagement. In approximately December 2010, Mayor Bloomberg publicly announced plans to seek authority for operating the youth justice system for children from New York City. On January 26, 2011, the Correctional Association testified before New York City’s City Council on the Mayor’s proposal and called for more intentional public engagement in the development and review of the plan.⁵⁹ The Correctional Association also

⁵⁶ See January 27, 2012 Negotiated Acquisition, EPIN: 06182N0001, page 7, available at: <https://a068-aprodapp15.nyc.gov/rfponline/jsp/RFPPublicView.jsp?rfpid=131&caller=current>

⁵⁷ See Part G, Section 4(a, b, c), p. 69.

⁵⁸ See Section II, *supra*, on community and family engagement mechanisms.

⁵⁹ A copy of the Correctional Association’s written testimony before the New York City Council is available at: <http://www.juvenilejusticechange.com/?p=189>.

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submitted testimony to this legislative body on February 16, 2011 in response to last year's proposed Executive Budget, similarly calling for a public release of details, including fiscal details, about the city's plan. Other advocates for children have made similar requests since Mayor Bloomberg's initial announcement approximately fourteen months ago. The point is that neither this city's proposal in the general sense or the call from some advocates for community engagement and public hearings is new. The fact that there is now a very short window of time before the proposed devolution of authority is not a sufficient justification for the lack of public review and public engagement.

The authorizing legislation also greatly circumscribes the amount of time available to OCFS and DOB to review the plan and approve, disapprove, or request amendments.⁶⁰ The proposed legislation states:

The office of the children and family services and the state division of budget, in consultation with the office of mental health, shall be authorized to request any amends to any plan prior to approval. For any plan that covers only juvenile delinquents placed in non-secure settings, the office and the division shall *within thirty days of receiving the plan*, either approve or disapprove the plan or request amendments to the plan. If any amendments are requested to the plan, the office and the division shall approve or disapprove the plan *within fifteen days of its resubmission with the requested amendments*. For any plan that covers juvenile delinquents placed in limited secure settings, the office and the division shall *within sixty days of receiving the plan, either approve or disapprove the plan or request amendments to the plan*. If any amendments are requested to the plan, the office and the division shall *approve or disapprove the plan within fifteen days of its resubmission with the requested amendments* (italics added).⁶¹

Although it is our understanding that OCFS and ACS are currently working together to develop details of the plan, the extremely expedited nature of this timeframe combined with the fact that the city has yet to publicly release its plan means that the state's ability to effectively evaluate the city's proposal and to work with the city to address any concerns will be curtailed.

There are two distinct but inter-related sets of challenges. With regard to Non-Secure Placements, as stated earlier, key decisions have clearly been made and, if this legislation passes, contracts are expected to be awarded in approximately three and a half months. With regard to Limited-Secure Placements, there has similarly been no public release of a plan. Although the timeframe for the devolution of Limited-Secure Placements is longer, the needs of the population of children in Limited-Secure placements are generally greater and more complex and the gap between what authorized agencies have previously done and what they will be expected to do with this population is likely to be greater. The proposed legislation lacks any mandates for community engagement and community notice/review beyond the barebones structure already described. This is true for both Non-Secure and Limited-Secure Placements, despite the fact that there is more time between now and the anticipated devolution of Limited-Secure placement authority.

⁶⁰ See Part G, Section 5, pp. 69-70.

⁶¹ Part G, Section 6(a), p. 70.

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In sum, there has been no public review of the plan although significant operational decisions have been made as evidenced by the Non-Secure Placement Negotiated Acquisition documents. The proposed legislation does not sufficiently remedy this lack of public review.

Ensuring an Adequate Timeframe for the Devolution of Power Recommendations:

1. The Legislature should amend the legislation to mandate that a minimum of 10 public hearings must be held prior to the devolution of power from the state to the city. There should be a minimum of ten public hearings on the Close to Home Initiative prior to any devolution of power from the state to the city. A minimum of one hearing should be held in each borough of the city and a minimum of one additional hearing should be held in each of the five neighborhoods most impacted by the youth justice system. Each community hearing should have two sessions, one during working hours and one during the evening or on a weekend. Spanish interpreters should be available for these hearings. The city's plan should, at a minimum, be available in both English and Spanish at least sixty days before the hearing. The purpose of these hearings should be for the relevant agencies to hear feedback from the public, and the format and structure of the hearings should reflect this purpose. Thirty-day notice about these hearings should be posted in local businesses, community-based organizations, all community schools, transit hubs, well-traveled public spaces, in a wide range of types of houses of worship (including as many faiths and denominations as possible), and with a range of local service providers. Thirty-day notice of these hearings should also be given to local leaders including local community leaders and local elected officials including members of City Council and local Community Boards.

2. The Legislature should amend the legislation to expand the amount of time available to OCFS and DOB to review and make decisions on the city's plans.

- **With regard to Non-Secure Placement: OCFS and DOB should have sixty days review the city's plan before approving, disapproving, or requesting amendments. If any amendments are requested to the plan, OCFS and DOB should further be allotted thirty days to review any amendments prior to approving or disapproving of the plan.**
- **With regard to Limited-Secure Placement: OCFS and DOB should have ninety days review the city's plan before approving, disapproving, or requesting amendments. If any amendments are requested to the plan, OCFS and DOB should further be allotted thirty days to review any amendments prior to approving or disapproving of the plan.**

3. The Legislature should amend the legislation to ensure that the devolution of Limited-Secure Placement authority is contingent upon OCFS and DOB approval as well as on the following conditions:

- **After the city's public release of a plan (for Non-Secure Placement, Limited-Secure Placement, or both), the public shall have a period of no less than ninety days to review and comment on the plan.**
- **The completion of a minimum of ten community hearings as outlined in recommendation one above.**

- **The completion and *public release* of the city’s assessment of all comments received from members of the public during the public comment period.**
- **The public release of a draft of the Negotiated Acquisition for Limited-Secure Placements at least 60 days prior to its finalization and release to potential bidders.** The Limited-Secure Negotiated Acquisition and supporting documents should be clearly posted on ACS’s main website, should be available without registration (a separate registration section can be included for potential bidders), and should be distributed to the New York State Legislature, the New York City Council, and to communities through local community-based organizations, schools, community leaders, houses of worship, and local service-providers. Documentation should clearly state instructions for submitting commentary and feedback, and should be available, at a minimum, in both English and Spanish.

IX. The Fiscal Infrastructure of the Close to Home Initiative:

Decades of research demonstrates that children who have committed a crime or delinquency⁶² and then interact with the system—particularly those who are detained and/or incarcerated—commit *more* future acts of crime and violence as compared to children who commit similar crimes or delinquencies and never become system involved or those who are not detained or incarcerated and instead receive community-based services.⁶³

Involvement in the youth justice system has been shown to increase future rates of both childhood delinquency and adult penal system involvement.⁶⁴ This negative impact increases as the type of intervention used becomes more restrictive, isolating, and punitive in nature.⁶⁵ An

⁶² An act of delinquency is generally defined as an act that would be considered a criminal act but for the age of the person committing the act. In other words, a twelve-year-old who is found by law to have committed the act of robbery is said to have committed an act of “delinquency” or of “juvenile delinquency,” whereas a twenty-five-year-old who is found by law to have committed the act of robbery is said to have committed a crime. States differ in terms of the youngest and oldest ages at which children can be prosecuted for acts of juvenile delinquency. New York prosecutes children as young as seven for acts of juvenile delinquency. See N.Y. Family Ct Act § 301.2.

⁶³ See, e.g., Gatti, Tremblay, and Vitaro, *Iatrogenic effect of juvenile justice*, *Journal of Child Psychology and Psychiatry* 50:8 (2009), pp 991–998. Finding that youth who are “poor, impulsive, poorly supervised by their parents, and exposed to deviant friends are more likely, for the same degree of antisocial behavior, to undergo intervention by the Juvenile Court, and that this intervention greatly increases the likelihood of involvement with the penal system in adulthood” at 991. This research also found that juvenile court interventions involving placement had the most negative impact. Although the research sample used in this analysis was from Canada, much of the reasoning applies to the United States. Similar outcomes have been found in other jurisdictions both inside and outside of the United States. See, e.g., *Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending* (finding that those who faced a juvenile hearing were nearly twice as likely to admit engaging in serious offending (forty-eight percent versus twenty-eight percent) in the following year as youth with identical backgrounds and prior self-reported offending behavior who did not face court hearings); *The Effect of Juvenile Justice System Processing on Subsequent Delinquent and Criminal Behavior*, (a 2003 study tracking youth in Denver and in Bremen, Germany and finding that “those arrested and sanctioned display higher frequencies of involvement in crime at later stages in their life than do their delinquent age mates who were not so sanctioned.”)

⁶⁴ A 2010 report on twenty-nine experiments involving 7300 youth over a thirty-five-year period determined that involvement in the juvenile justice system actually increases delinquency. See Anthony Petrosino, Carolyn Turn-Petrosino, Sarah Guckenburger, *Formal System Processing of Juveniles: Effects on Delinquency*, *Campbell Systematic Reviews*, 37, Jan. 2010.

⁶⁵ A Canadian study by Uberto Gatti, Richard E. Tremblay, and Frank Vitaro, which followed over 1000 boys from youth to adulthood, illustrated that involvement in the justice system has iatrogenic effects on youth. The strongest predictor was placement in an institution, illustrating that the more restrictive the punishment the more damaging the

ever-increasing body of evidence demonstrates that incarcerating children leads to increased violence, recidivism, and poor life outcomes for youth (even when controlling for severity of offense).⁶⁶ Youth with mental health concerns, detention (pretrial) and incarceration (posttrial) have been shown to exacerbate mental health symptoms and increase the likelihood that youth will engage in self-harm and commit suicide.⁶⁷ Youth who have experienced secure detention or incarceration are also less likely to return to school.⁶⁸ Economists have shown that incarcerating youth decreases both the chance that they will remain in the labor market and their future earning potential.⁶⁹

The current proposal does not contain sufficient fiscal incentives to encourage the city to fund what has been demonstrated to reduce recidivism and increase positive youth outcomes. Under the proposed legislation, New York City will receive a block grant from New York State, this grant can be spent on residential placements or on community-based supervision and treatment programs. Given the very large size of the grant (\$35,200,000 in FY 2013-14 and \$41,400,000 in FY 2014-15) and the fact that there are no restrictions on its use, there are insufficient fiscal incentives to use the money to reduce incarceration other than the simple fact that community programs cost less than placement. An argument may be made that a fiscal incentive to use community programs exists because all the state funding is tied together in one block grant and if the city uses it all on placements, none will be left. The challenge with that argument is that this legislation guarantees the city such a large amount of state funding that the city could conceivably maintain or even increase placement rates and still spend less of its own money than

long-term effects. Their research was consistent with previous theories on the concept and effects of labeling: that being labeled as “delinquent” has the effect of altering one’s self perceptions, reducing social opportunities, and, in turn, becoming more susceptible to the influence of deviant groups and behaviors. The authors also note that those subjects who were poor, deprived, and members of minority groups, and therefore already at an increased level of vulnerability, were more likely to be arrested in the first place and subsequently labeled as deviants. As a result, they were more likely to become more deeply involved in the justice system in the long run. Gatti, Tremblay, and Vitaro, *Iatrogenic effect of juvenile justice*, *Journal of Child Psychology and Psychiatry* 50:8 (2009).

⁶⁶ See Holman, Barry, and Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2007), p. 5. See also Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform*, (2007); Arya, Neelum, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, Campaign for Youth Justice, (2007); Task Force on Community Preventive Services, “*Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System A Report on Recommendations of the Task Force on Community Preventive Services*,” *Morbidity and Mortality Weekly Report*, Department of Health and Human Services Centers for Disease Control and Prevention (2007); Justice Policy Institute, *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense*, Appendix A (May 2009).

⁶⁷ *Id.* Holman, Barry and Ziedenberg, Jason. *The Dangers of Detention: The Impact of incarcerating Youth in Detention and Other Secure Facilities* (2007), citing Mace, D. et. al., *Psychological Patterns of Depression and Suicidal Behavior of Adolescents in a Juvenile Detention Facility*, *Journal of Juvenile Justice and Detention Services* Vol. 12 No. 1 18-23 (1997); Justice Policy Institute, *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense*, Appendix A (2009); Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform*, (2007); and Arya, Neelum, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, Campaign for Youth Justice, (2007). Additionally, youth who have been detained or incarcerated also have a significantly higher mortality rate than the general population, including homicide-related deaths; this increase in mortality rate disproportionately impacts youth of color and female youth, with the highest mortality rate found among African-American male youth. See Teplin, Linda A. and McClelland, Gary M., Karen M. *Early Violent Death Among Delinquent Youth: A Prospective Longitudinal Study*. *Pediatrics* (2005).

⁶⁸ *Id.* (Holman and Ziedenberg), pp. 9-10.

⁶⁹ *Id.* (Holman and Zeidenberg), p. 2.

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it does in the status quo. This undercuts the argument that a block grant for both placement and community programs is an inherent fiscal incentive to use community programs.

The current administrations of the relevant city agencies have expressed a commitment to community-based supervision and treatment. Indeed, New York City has recently demonstrated a commitment to reducing detention and placement rates.⁷⁰ However, as previously stressed in this testimony, a brand new system cannot and should not be built on the good will and successes of current administrations. If this authorizing legislation is passed, this legislative body will have little opportunity to ensure that the system that is created is both excellent and capable of transcending particular political and administrative moments.

In sum, the new city-based system as proposed will cost roughly the same as the current state system without sufficiently incentivizing a decreased reliance on facilities and an increased use of evidence-informed⁷¹ interventions. This legislative body codified specific fiscal incentives (such as a higher reimbursement rate for community-based supervision and treatment) in last year's Executive Budget. In doing so, last Year's Executive Budget recognized that fiscal incentives *beyond* the issuance of a block grant available for use toward the costs of either detention *or* community-based alternatives is a sound fiscal and youth justice policy.

Additionally, a cap on detention and placement costs is the strongest policy driver for ensuring that any new system is funding what has been shown to work by increasing the use of community-based supervision and treatment and decreasing the use of confinement. It is our understanding that significant forecasting by (a) professional researcher(s) has been done as part of the Close to Home Initiative. This forecasting, to the best of our knowledge, included projected offense rates and projections about the kinds of services that would be necessary under the Initiative. The city and state should, therefore, have robust data to use when determining an appropriate cap on detention and placement costs eligible for state reimbursement. There can, of course, be a built-in safety valve for ensuring that, if offense rates significantly change from these projections, the amount available to the city from the state can increase accordingly. This type of safety valve should offense rates change from current projections is already recognized in the proposed legislation with regard to the overall state reimbursement rates to the city.⁷² For example, Section 8(iii) states:

The reimbursement rates set forth in paragraph (i) of this paragraph shall be increased or decreased if either the population of alleged juvenile delinquents who receive a probation intake or the number of youth with a disposition from the family court who

⁷⁰ See Division of Criminal Justice Services Office of Justice Research and Performance, Juvenile Justice Annual Update for 2010 (2011) available at: <http://dpc.state.ny.us/pdfs/jjagpresentation16jun11.pdf>.

⁷¹ For the purposes of this testimony, "evidence-informed" is defined as a methodology by which the outcomes of a particular program or intervention are clearly measured and are used to inform subsequent changes to that program or intervention. Evidence-informed is not limited to only "evidence-based practices" (those practices that have undergone clinical trials). Although measuring performance and outcomes are important, it is crucial to note that funding only "evidence-based practices" may lead to the elimination of many community-based programs and other small programs that may not be able to afford the intensive scientific study necessary to be labeled "evidence-based." There are, however, evidence-informed interventions that can be implemented by local organizations. Additionally, at the systems-level, an evidence-informed approach is one that is based on the vast body of research documenting which types of youth justice outcomes are most likely to result in decreased recidivism and increased positive youth and community outcomes.

⁷² See Part G, Section 8.

are determined to be high risk...increases by at least ten percent over the respective population in the annual baseline year...In each successive year, the population of the previous July first through June thirtieth period shall be compared to the baseline year for determining any adjustments to a state fiscal year appropriation. When either population increases by ten percent or more, the reimbursement will be adjusted by a percentage equal to the larger of the percentage increase in either the number of probation intakes for alleged juvenile delinquents or the number of high risk youth.⁷³

A similar formula can be devised and incorporated into a cap on detention and placement costs.

Fiscal Infrastructure of the Close to Home Initiative Recommendations:

1. A “Maintenance of effort” clause should be required of New York City. New York City has recently proposed severe cuts to funding for programs serving children and families, including for alternatives to incarceration. There was a \$3.4 million cut in funding for alternatives to incarceration in the Mayor’s Proposed Budget for FY 2013.⁷⁴ This cut was part of a tremendous \$118.32 million cut in services for children and families.⁷⁵ It is our understanding that the funding for the Close to Home Initiative depends on funding streams from both the city and state. The legislation, however, codifies and commits many, many millions of dollars of state funding without a parallel codification and commitment to city funding.

The legislation should mandate that New York City cannot reduce in its investment in the system. The state will, if this legislation passes, be required to maintain its investment in programs and services. The same should be required of the city.

2. Fiscal incentives for alternatives to placement should be codified in the legislation, including:

a) a capped allocation on the amount of funds that can be spent on detention placement;
and

b) a higher reimbursement rate for alternatives to placement than for placement. The latter would essentially mirror legislation passed by this body as part of last year’s Executive Budget. The Adopted FY 2011-12 Budget changed detention reimbursement from open-ended support shared equally by the localities and New York State to an approximately \$76.2 million block grant. Notably, the FY 2011-12 Adopted Budget allowed counties to also use this funding for community-based supervision and treatment programs (alternatives-to-detention and alternatives-to-incarceration) and included a built-in additional fiscal incentive to encourage the use of community-based supervision, treatment, and programs. Specifically, under the FY 2011-12 Adopted Budget the county match required for use of this block grant for detention services is fifty-one percent and the county match for the use of this block grant for community-based supervision, treatment, and programs is only thirty-eight percent. A similar fiscal incentive should be built into the Close to Home Initiative.

⁷³ Part G, Section 8(iii), p. 74.

⁷⁴ Citizens’ Committee for Children of New York, Inc, Fiscal Year 2013 Preliminary Budget for New York City Proposes \$118.32 Million Reductions to Services for Children and Families, available at: <http://www.cccnewyork.org/publications/prelimchart2013.pdf>

⁷⁵ *Id.*

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X. New York City's Proposed Structured Decision Making (SDM) Grid:

Both the proposed legislation and a proposed draft of a new Department of Probation too, the Structured Decision Making (SDM) Grid codify the use of top *arrest* charge when determining risk level for children post-finding (a finding is the Family Court equivalent of sentencing). Although it may be appropriate to use what is functionally an accusation- an arrest- to help evaluate risk level *prior* to a legal finding, to use arrest/accusation *after* an actual finding has been entered by a judge and to do so for only one class of children and not others may raise serious due process and equal protection constitutional concerns. Additionally, as will be described below, this practice is likely to disproportionately impact children of color and LGBTQ youth in New York City.

The proposed legislation indicates that the New York City Department of Probation will be using a Structured Decision Making Grid to determine youth's risk level at disposition (the Family Court equivalent of sentencing) and that this categorization will impact reimbursement rates to the city from the state."⁷⁶

Section 8(iii) states:

The reimbursement rates set forth in subparagraph (i) of this paragraph shall be increased if either the population of alleged juvenile delinquents who receive a probation intake or the number of youth with a disposition from the family court who are determined to be high risk, as defined in clause (A) of this subparagraph, increases by at least ten percent over the respective population in the annual baseline year.⁷⁷

Section 8(a)(iii)(A) states:

For the purposes of this subparagraph, high risk youth shall mean youth who are categorized by the New York City department of probation structured decision making grid (or any successor risk assessment tool approved by the office of children and family services in consultation with the division of criminal justice services) as either high risk for re-arrest in cases where the most serious current arrest charge is a class I or II or at medium risk for re-arrest in cases where the most serious current arrest charge is a class I.⁷⁸

Further, it is our understanding, based on a draft of the Department of Probation's SDM Grid (see attachment), that the NYC Department of Probation intends to use the most serious arrest charge instead of the most serious actual legal finding (a finding is roughly the Family Court equivalent of a conviction) when determining risk level for purposes of its dispositional recommendations for those youth for whom a finding is entered as part of a plea agreement but not for those children for whom a finding is entered after a trial.⁷⁹ A Department of Probation dispositional recommendation represents the position the Department formally takes at the disposition (sentencing) stage of a Family Court proceeding with regard to what disposition (sentence) a young person should receive. The Department may, for example, recommend that a

⁷⁶ See Section 8(a)(iii)(A), pp. 74-75.

⁷⁷ Section 8(iii), p. 74.

⁷⁸ Section 8(iii)(A), pp. 74-75.

⁷⁹ See attached Draft of Structured Decision Making Grid.

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child be placed on Probation, receive community-based services, or be placed out of home. Although the Department makes only a recommendation and it is the judge who ultimately determines the disposition (sentence), statistics show that approximately 80% of the time judicial orders follow the Department's recommendation.

Due process constitutional concerns may attach to using what is fundamentally an accusation (an arrest charge) *after* a legal finding has been entered. Equal protection concerns may attach to doing so only for one class of children (those whose findings are a result of a plea) and not for others (those whose findings are a result of a trial and potentially those who are outside of New York City).

In addition, serious concerns arise around the potential disproportionate impact on children of color in New York City. Strong racial and ethnic disparities characterize police arrest practices and patterns in New York City. In the period between 2005 and the fall of 2010, the NYPD conducted two and a half million stops.⁸⁰ In the year 2009 alone, they stopped over half a million people.⁸¹ "Of that group, 90% were people of color and nine out of 10 persons stopped were released without any further legal action taken against them."⁸²

Racial and ethnic disparities exist also in the type of stops used by the NYPD, including the level of force employed. Data analysis done by the Center for Constitutional Rights found that "officers frisked more people in 2009 than a year earlier but that the rate of frisks for blacks and Latinos was much higher than it was for whites. It found that the police used force in 24 percent of stops — drawing a weapon, say, or throwing people to the ground. The police used force in 19 percent of the stops involving whites but in 27 percent of stops against Latinos and in 25 percent of those involving blacks."⁸³

Given these documented disparities in policing practices, it is reasonable to assume that children of color are more likely to be over-charged by police officers in the course of an arrest, will subsequently fall into higher risk categories, and may thus be ordered to undergo more serious interventions, including placements away from home, than white children.

This risk is particularly concerning given the extensive documentation that children of color are more likely to be confined than their white counterparts, even when offense severity is controlled for. For example, research clearly demonstrates that white youth use drugs at a slightly higher rate than African American youth, and are more than thirty-three percent more likely to sell drugs than African American youth.⁸⁴ Despite the clear fact that white youth use and sell drugs more frequently than youth of color, African American youth are arrested for drug offenses at approximately twice the rate of white youth and represent nearly half (forty-eight percent) of all

⁸⁰ Judge Barry Kamins, *New Criminal Justice Legislation*, NYSBA Journal, November/December 2010. Judge Kamins is Administrative Judge for Criminal Matters for the 2d Judicial District.

⁸¹ *Id.* (Judge Barry Kamins, *New Criminal Justice Legislation*, NYSBA Journal, November/December 2010).

⁸² *Id.* (Judge Barry Kamins, *New Criminal Justice Legislation*, NYSBA Journal, November/December 2010), p. 30.

⁸³ Al Baker, *New York Minorities More Likely to be Frisked*, N.Y. Times, May 13, 2010, at A1.

⁸⁴ Results from the 2004 National Survey on Drug Use and Health: National Findings. (2005; Substance Abuse and Mental Health Services Administration, NSDUH Series H-28, DHHS Publication No. SMA 05-4062). Accessible at <http://oas.samhsa.gov/nsduh/2k4nsduh/2k4results/2k4results.htm#2.7>. Last accessed 7/26/11 and National Household Survey on Drug Abuse, 1999. D.C.: Substance Abuse and Mental Health Services Administration, Table G. 71, 2000. "Rates of current illicit drug use... were 8.1 percent for whites, 7.2 percent for Hispanics, and 8.7 percent for blacks. Asians had the lowest rate at 3.1 percent."

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the youth incarcerated nationally for a drug offense in the youth justice system.⁸⁵ In addition, African American youth are more likely to be processed, detained, and waived into criminal court and sentenced to out-of-home placement for drug offenses than white youth.⁸⁶ Research indicates that these inequities are cumulative and worsen the deeper a child moves into the system.⁸⁷

LGBTQ youth may also risk more serious arrest charges than their non-LGBTQ counterparts regardless of actual offense committed. Research indicates that LGBTQ youth are disproportionately represented in the youth justice system and face stiffer sanctions than their heterosexual peers as a result of their perceived or actual sexual orientation, gender expression, or gender identity. A 2011 national longitudinal study found that non-heterosexual youth are more likely to be stopped by the police, expelled from school, arrested, convicted as juveniles, and convicted as adults.⁸⁸ These disparities were not explained by greater engagement in illegal or transgressive behaviors.⁸⁹

Although using the actual legal finding as opposed to the arrest charge for purposes of dispositional recommendations will not eliminate system disparities for children of color and LGBTQ youth (most of whom are also children of color), using arrest charge as a proxy for legal finding makes it more likely that children of color and LGBTQ youth will face more serious sanctions, including confinement, than their white and heterosexual counterparts even when actual offense severity is controlled for.

Additional concerns also exist around whether, given the complexity of this process and the number of variables involved, children and their parents or legal guardians will fully understand, even with the assistance of counsel and a plea allocution by a judge, the impact of this SDM grid policy when they are deciding whether or not to accept a plea agreement.

New York City's Proposed Structured Decision Making (SDM) Grid Recommendations:

1. The Legislature should mandate that the Office of Children and Family Services, in consultation with the Division of Criminal Justice Services, withhold approval of any pre-dispositional SDM Grid or other pre-dispositional risk assessment instrument that uses arrest charge as a substitute for legal finding. As stated earlier, this mandate would apply only to pre-dispositional risk assessment tools and instruments. At the pre-dispositional stage, a legal finding has been entered by a judge and the arrest charges should no longer be relevant. If an arrest charge has not been substantiated and a finding has not entered by a judge corresponding to that arrest charge, then the charge is no more than an accusation. A child's disposition (sentence) should not be based on an unproven accusation.

⁸⁵ *Crime in the United States, 2001*. (2002) Washington, DC: U.S. Justice Department, FBI. Puzzanchera, C., Finnegan, T. and Kang, W. (2005); and *Easy Access to Juvenile Populations*, Available: <http://www.ojjdp.ncjrs.org/ojstatbb/eza> pop; and Sickmund, Melissa, Sladky, T.J., and Kang, Wei. (2004) *Census of Juveniles in Residential Placement Data book*, available: <http://www.ojjdp.ncjrs.org/ojstatbb/cjrp>.

⁸⁶ Sickmund, Melissa, and Puzzanchera, Charles. *Juvenile Court Statistics 2005*. Report. National Center for Juvenile Justice. July 2008, available at: <https://www.ncjrs.gov/pdffiles1/ojjdp/224619.pdf>.

⁸⁷ Pope, Carl E. and Feyerherm, William. (1995) *Minorities and the Juvenile Justice System: Research Summary*. Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice: Washington, D.C.

⁸⁸ Himmelstein, K and Bruckner, H. 2011. Criminal Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study. *Pediatrics* 127(1): 49-57.

⁸⁹ *Id.* (Himmelstein and Bruckner).

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2. The Legislature should mandate that no SDM Grid or other pre-dispositional risk assessment instrument used in the Close to Home Initiative or anywhere in New York State may use arrest charge as a substitute for legal finding.

Conclusion:

In conclusion, ensuring that children in the youth justice system remain close to home is an important step and one that the Correctional Association has long advocated for. Given the unique vulnerability of children in the youth justice system and the complexity of their needs, it is equally crucial that the Close to Home Initiative include the specific, comprehensive, and durable protections recommended in this testimony.

The proposed Close to Home Initiative presents this legislative body and other system stakeholders with a unique and important opportunity to create a new youth justice system from the ground up. This system has the potential to serve as a model state- and nation-wide. The ultimate success of the Close to Home Initiative and the success of the children and communities impacted by the new system depend on more than jurisdictional and geographic shifts. Amending the proposed Close to Home Initiative to include the aforementioned recommendations will help ensure that any new city-based system is poised for excellence, both now and during the tenures of future city and state administrations.

We welcome this opportunity to work together with New York State, New York City and communities to build a sustainable system that ensures robust protections for children and communities and offers a wide range of community-based services, programs and treatment options for the young people in its care. Thank you.

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**Attachment:
Proposed Structured Decision Making Grid for New York City**

PROPOSED SDM GRID FOR NEW YORK CITY

MOST SERIOUS CURRENT ARREST CHARGE	LIKELIHOOD OF RE-ARREST		
	HIGH	MEDIUM	LOW
CLASS I: A, B felonies (violent & non-violent), violent C felonies	Out of Home Placement (range of security options)	Out of Home Placement or Alternative to Placement	Alternative to Placement or Probation
CLASS II: Non-violent C felonies, violent D felonies	Out of Home Placement or Alternative to Placement	Alternative to Placement or Level 3 Probation	Level 1 or 2 Probation
CLASS III: Non violent D, All E felonies, misd assault and misd weapons possession	Alternative to Placement or Level 3 Probation	Level 2 Probation	Level 1 Probation or CD
CLASS IV: A misdemeanors except assault and weapons and all B misdemeanors	Level 1 Probation or CD	ACD	ACD or short term one time consequence or Dismissal
MANDATORY OVERRIDES:			
<ol style="list-style-type: none"> 1. Must consider CD or ACD for youth with no unsealed priors. Decision is based on the circumstances of the case. 2. If case goes to trial, use finding offense 			
DISCRETIONARY OVERRIDES:			
POs have discretion to recommend either a more or less restrictive option than the grid provides. However, all overrides - up or down - must be submitted with justification for approval by the PO's supervisor.			

DRAFT

SAMPLE CONTINUUM OF INTERVENTIONS

	Day Program	AIM	ECHOES	JJI	Placement
	Description: Day and evening treatment program for youth disconnected from school, followed by level of probation to be determined via assessment during transitional planning phase prior to completion of Day Treatment	Description: An "advocate" from within the youth's own community who works w/ the youth & family several times per week. Followed by level of probation to be determined via assessment during transitional planning phase prior to completing AIM	Description: Highly intensive level of probation (5 weekly contacts including Saturday work group; life coaching model) focused explicitly on promoting change in its participants so that they can fully participate in society and can forge a successful transition into adulthood	Description: In home family services followed by level of probation to be determined via assessment during transitional planning phase prior to completion of JJI	Description: Continuum of lim. secure and options
Prob. 3	Description: Contact: 4 per month (3 individual and one group). Monthly home visits. Added curricula TBD, plus referral to services as needed. 8 add'l contacts per quarter (phone and field visits regarding case plan), including at least 1 home visit.	Description: Contact: 4 per month (3 individual and one group). Monthly home visits. Added curricula TBD, plus referral to services as needed. 8 add'l contacts per quarter (phone and field visits regarding case plan), including at least 1 home visit.	Description: Contact: 2 mtgs per mo. plus referral to services as needed. 8 add'l contacts per quarter (phone and field visits regarding case plan), including at least 1 home visit.		Target Group: Class I - Low Class II - Med Class III - High
Prob. 2	Description: Contact: 1 indiv mtg per mo. for 1st 6 mo. plus referral to services as needed. Then collateral and home contacts as needed. 1 home visit.	Description: Contact: 1 indiv mtg per mo. for 1st 6 mo. plus referral to services as needed. Then collateral and home contacts as needed. 1 home visit.	Description: Contact: 2 mtgs per mo. plus referral to services as needed. 8 add'l contacts per quarter (phone and field visits regarding case plan), including at least 1 home visit.		Target Group: Class I - Low Class II - High Class III - High Class IV - High
Prob. 1	Description: Contact: 1 indiv mtg per mo. for 1st 6 mo. plus referral to services as needed. Then collateral and home contacts as needed. 1 home visit.	Description: Contact: 1 indiv mtg per mo. for 1st 6 mo. plus referral to services as needed. Then collateral and home contacts as needed. 1 home visit.	Description: Contact: 2 mtgs per mo. plus referral to services as needed. 8 add'l contacts per quarter (phone and field visits regarding case plan), including at least 1 home visit.		Target Group: Class I - Low Class II - High Class III - High Class IV - High
ACD/ CD	Description: Adjournment in Contemplation of Dismissal/ Consent Decree	Description: Adjournment in Contemplation of Dismissal/ Consent Decree	Description: Adjournment in Contemplation of Dismissal/ Consent Decree		Target Group: Class I - Low Class II - High Class III - High Class IV - High
	Description: Target Group: Class I - Low Class II - Low Class III - Low Class IV - High	Description: Target Group: Class I - Low Class II - High Class III - High Class IV - High	Description: Target Group: Class I - Low Class II - High Class III - High Class IV - High	Description: Target Group: Class I - Low Class II - High Class III - High Class IV - High	Description: Target Group: Class I - High Class II - High Class III - High Class IV - High
	Average Duration: 6 mos/1 yr	Average Duration: 4-6 months in AIM; 6-18 on probation	Average Duration: 4-6 months in AIM; 6-18 on probation	Average Duration: 6 months in JJI; 6-18 months probation	Average Duration: 6 months in JJI; 6-18 months probation
	Capacity: N/A	Capacity: 45 slots	Capacity: 50 slots	Capacity: 200 slots	Capacity: 70 slots