



Youth Justice in the COVID-19 Pandemic

New York City

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Acknowledgements

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New York City

When the COVID-19 pandemic hit the United States in March 2020, New York City was less than one year into full implementation of Raise the Age, which ended the automatic prosecution of all 16- and 17-year-olds as adults and laid the foundation for several other reforms that undergirded the city's response to the pandemic.¹ Stakeholders in New York, including the Department of Probation, the Administration for Children's Services, and the Law Department (who are Family Court prosecutors in juvenile delinquency matters), were already working together to safely reduce the number of young people entering the formal legal process and to expand alternatives to detention. Following the onset of COVID-19, stakeholders came together to identify additional ways to further reduce youth detention and post-adjudication placement, several of which have become a "new normal" for youth justice processing in New York City. In addition, zealous legal advocacy in individual cases resulted in the early release of several young people from detention.

Despite increases in arrests and arraignments of young people committing serious crimes in New York City, detention admissions fell each year between 2019 and 2021. However, court processing

¹ As discussed further below, full implementation of Raise the Age in New York occurred on October 1, 2020, following a phased approach wherein 16-year-olds were brought into the new law on October 1, 2018, and 17-year-olds were brought in on October 1, 2019. Under Raise the Age in New York, all 16- and 17-year-olds charged with felonies originated in the Youth Part of the Superior Court; however, most of those cases are removed to family court. Misdemeanors are heard in family court.

METHODOLOGY

This project is a collaborative effort of the Center for Children's Law and Policy, Justice for Families, the Justice Policy Institute, and the National Juvenile Justice Network. The project team collected information for this report using the following methods:

- Analysis of aggregate data on youth justice trends in each site;
- A roundtable with approximately 20 family members directly impacted by the youth justice system in jurisdictions across the country;
- Individual interviews with family members directly impacted by the youth justice system;
- A survey of National Juvenile Justice Network members to explore policy and practice changes during the pandemic;
- Focus groups with advocates in each site; and
- Semi-structured interviews with system stakeholders in each project site.

Findings not cited to a specific written source were drawn from insights collected through qualitative data collection activities.

slowed significantly, resulting in young people spending more time in detention and placement facilities. Understanding the impact of the pandemic in New York City is also complicated because planned implementation of Raise the Age reforms expanded the types and number of cases processed through the youth justice system. This was a huge win in New York, and it allowed stakeholders to move young people from deplorable conditions at Riker's Island jail² to more appropriate facilities solely for youths. Ultimately, however, that shift – along with slowed case processing – contributed to an increase in the average daily population in detention and state commitment placements, which returned to pre-pandemic levels in 2021.

This report summarizes changes in youth incarceration following the onset of COVID-19, the key factors that drove and supported New York City's shift away from incarceration, and work that the jurisdiction still must do to sustain and build on these successes.

Analyzing youth justice trends in New York City is uniquely complicated and requires an understanding of reforms implemented over the past five years. In 2017, New York passed legislation to raise the age of juvenile jurisdiction to 18 for misdemeanors and create a pathway for adolescents charged with felonies to have their cases removed to Family Court, which changed the process by which 16- and 17-year-olds moved through the court system and created new case categories that are relevant for understanding the full picture of youth justice in the city.³ Raise the Age was phased in over a two-year period, with changes taking effect for 16-year-olds on October 1, 2018, and for 17-year-olds on October 1, 2019, just six months prior to the onset of the COVID-19 pandemic. As summarized in the New York State Office of Children and Family Services' "Juvenile Justice Detention Monitoring Reports," since 2019 New York State administers justice to young people in four categories:⁴

- **Adolescent Offender (AO)** – *An Adolescent Offender is a person 16 years of age charged with a felony on or after October 1, 2018, and a person 17 years of age charged with a felony on or after October 1, 2019. AO cases are heard in the Youth Part of adult Criminal Court; however, they may be removed to Family Court for processing. Adolescent Offenders whose cases are removed to Family Court are treated as Juvenile Delinquents.*
- **Vehicle Traffic Law (VTL) Misdemeanant** – *A VTL Misdemeanant is a person 16 years of age charged with a misdemeanor under the Vehicle and Traffic Law on or after October 1, 2018, and a person 17 years of age charged with a misdemeanor under the Vehicle and Traffic Law on or after October 1, 2019. Although **these cases are heard in local Criminal Court**, VTL*

² See, e.g., Jonah E. Bromwich and Jan Ransom, "10 Deaths, Exhausted Guards, Rampant Violence: Why Rikers Is in Crisis," *The New York Times*, updated November 8, 2021, <https://www.nytimes.com/2021/09/15/nyregion/rikers-island-jail.html>; Rebecca McCray, "What It's Like at Rikers, According to People Who Just Got Out," *Curbed*, September 23, 2021, <https://www.curbed.com/2021/09/rikers-jail-conditions.html>.

³ Raise the Age legislation was enacted on April 10, 2017 (Part WWW of Chapter 59 of the Laws of 2017). For more information, see: <https://www.ny.gov/programs/raise-age-0>.

⁴ The descriptions of the four categories can be found in New York State Office of Children and Family Services, "Juvenile Justice Detention Monitoring Report (Quarter 2, 2022)," <https://ocfs.ny.gov/reports/detention/monitoring/Detention-Monitoring-Report-2022-Q2.pdf>, 19. See also <https://raisetheage.ny.org/raising-the-age/>.

Misdemeanants sentenced to a term of imprisonment before age 21 are served in Specialized Secure Detention (SSD) facilities.

- **Juvenile Offender (JO)** – *A Juvenile Offender is a person 13 to 15 years of age charged with a serious violent felony pursuant to Section 1.20(42) of the NYS Criminal Procedure Law. **JO cases are heard in the Youth Part of adult Criminal Court.***
- **Juvenile Delinquent (JD)** – *A Juvenile Delinquent is a person 7⁵ to less than 16 years of age who has committed an act which would be considered a crime if the person were old enough and capable of being treated as an adult. Sixteen-year-olds charged with a misdemeanor (except those charged under the NYS Vehicle and Traffic Law) on or after October 1, 2018, and 17-year-olds charged with a misdemeanor (except those charged under the NYS Vehicle and Traffic Law) on or after October 1, 2019, are also Juvenile Delinquents. **JD cases are heard in Family Court.***

These categories are important because they define whether a young person's case moves through Family Court as part of the juvenile system or the newly created Youth Part of Superior Court. In addition, different data is captured in the different court systems.

To briefly summarize, AO cases begin in the Youth Part of Superior Court, although most are removed to Family Court. AOs charged with non-violent felonies and most violent felonies will have their case removed to Family Court unless the prosecutor can show "extraordinary circumstances" upon which the Court finds merit for retaining the case in the criminal court system, where adult sentencing applies. Those 16- and 17-year-olds charged with allegedly displaying a deadly weapon, causing "significant injury," or engaging in unlawful sexual conduct will remain in the Youth Part of Superior Court, unless the prosecutor consents to remove the case to Family Court. JD cases are heard in Family Court. The result of the Raise the Age reform is that most 16- and 17-year-olds, whether initially charged with misdemeanors or felonies, will have their cases proceed in Family Court, even if they were first heard in the Youth Part of Superior Court. The JO law, which applies to younger adolescents aged 13 to 15 charged with a smaller set of violent felonies, was unchanged by Raise the Age.

Throughout this report, we disaggregate data by category in all analyses, interpret trends separated for each group where necessary, and flag where there might be overlap in populations. Notably, there were zero VTL misdemeanor cases in New York City between 2019 and 2022, and therefore that case category was excluded in the graphics in this brief.

YOUTH INCARCERATION DECLINED FOLLOWING THE ONSET OF COVID-19

Following the onset of the COVID-19 pandemic, New York City saw an increase in the number of young people referred to the justice system, but a decrease in youths detained. However, lengths of stay in detention and commitment have increased, and new categories of young people are eligible for placement in local detention centers rather than Riker's Island because of planned implementation of Raise the Age. Though Raise the Age was a huge win for young people in New

⁵ New York recently passed legislation excluding most children under 12 from prosecution as juvenile delinquents in family court. The new law went into effect in December 2022.

York, those two factors have contributed to increases in detention and post-adjudication populations in 2021 and 2022.

MORE YOUNG PEOPLE ENTERED THE NEW YORK CITY YOUTH COURT SYSTEM EARLY IN THE PANDEMIC

In contrast with many other localities, New York City saw an increase in the number of young people entering the court system for serious offenses following onset of the pandemic. Between 2019 and 2020, there was a 17 percent increase in JO/AO arrests and a 12 percent increase in JO/AO arraignments in New York City. Though both arrests and arraignments subsequently declined in 2021, they remained above 2019 levels. In contrast, the city saw a decrease in petitions to court for young people entering on less serious JD offenses between 2019 and 2020, followed by an increase between 2020 and 2021. Despite these increases, JD petitions remained below 2019 numbers.

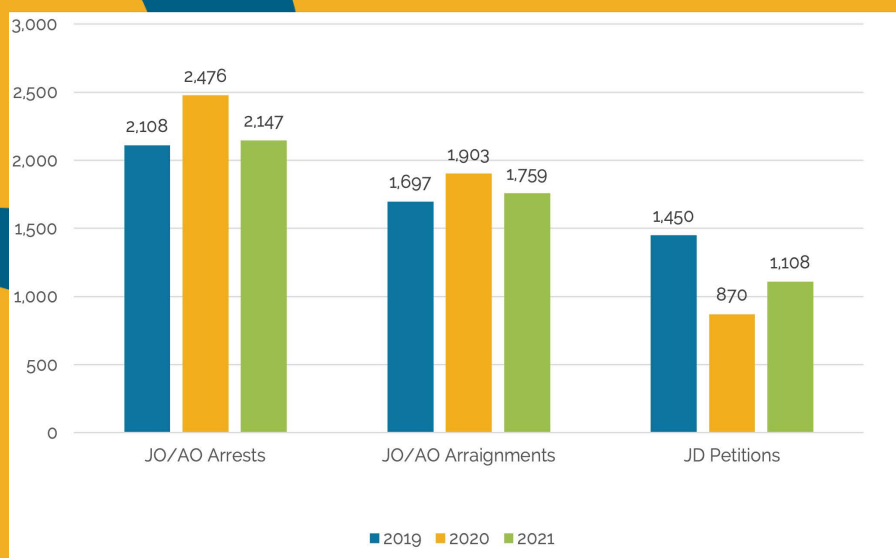


FIGURE 1

NEW YORK CITY JO/AO YOUTH ARRESTS AND ARRAIGNMENTS AND JD PETITIONS FILED BY YEAR

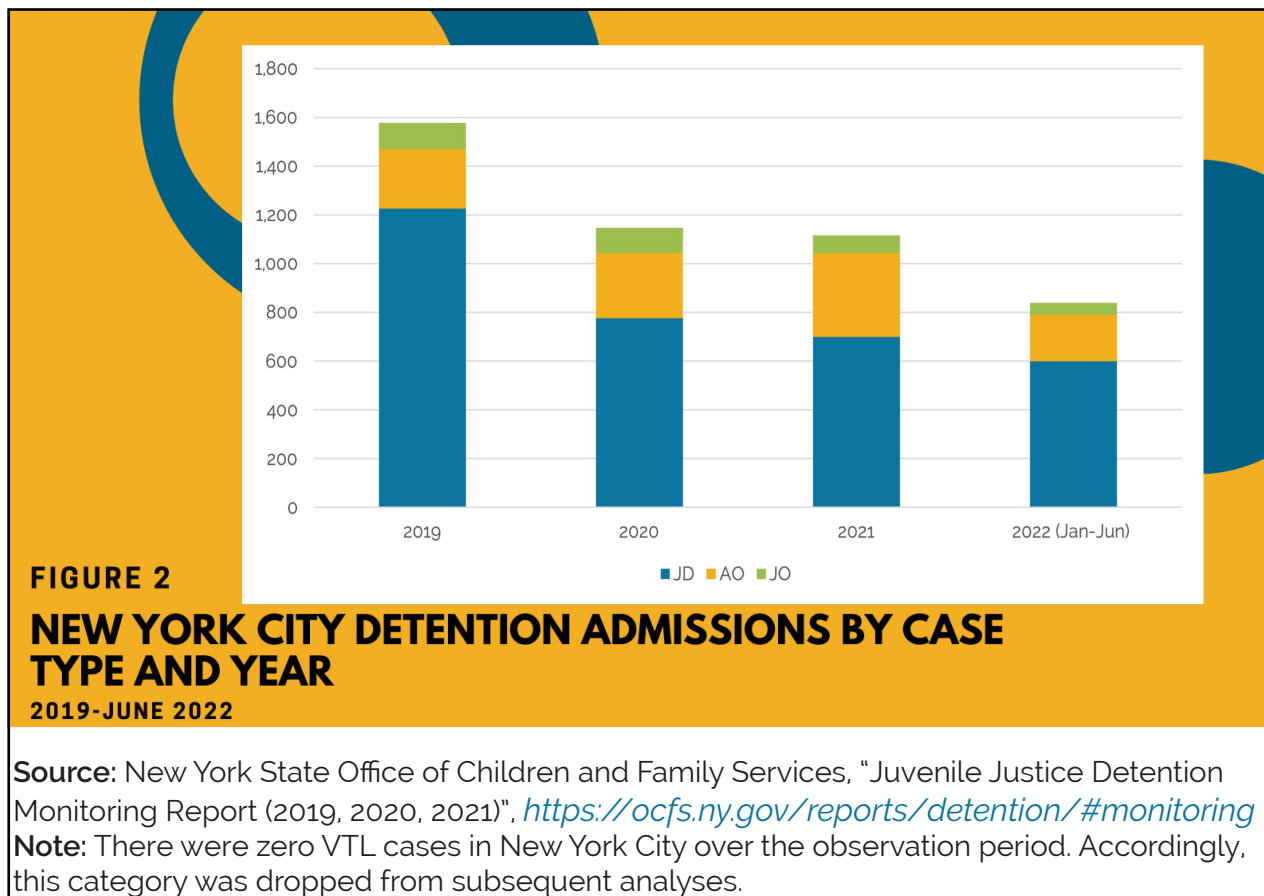
2019-2021

Source: New York State Division of Criminal Justice Services, "Juvenile Offender (JO) and Adolescent Offender (AO) Arrests, Court Case Outcomes and Youth Part Activity," https://www.criminaljustice.ny.gov/crimnet/ojsa/juv_off/index.htm.

Note: New York does not capture misdemeanor arrests of youths under 18 following implementation of Raise the Age. The closest proxy to arraignment is juvenile delinquent petitions filed in Family Court. There is some overlap between JO/AO arraignments and JD petitions, however, because AO youth who were arrested and arraigned on a felony could show up in both courts once the matter is moved to Family Court. Data for 2022 were not available.

FEWER YOUNG PEOPLE WERE DETAINED AND INCARCERATED IN NEW YORK CITY FOLLOWING THE ONSET OF COVID-19

Despite increases in the number of young people entering the justice system, admissions to detention decreased sharply following the onset of the pandemic and remained lower throughout 2021 than they had been prior to the pandemic, because only the most serious offenses were detained. However, preliminary data through the first six months of 2022 suggest that detention admissions may increase in 2022 compared to prior years, as the city saw 840 admissions (or three-quarters of total admissions in 2021) between January and June alone.



Yet, although detention admissions generally declined, the average time youths spent in detention increased each year between 2019 and 2022, which contributed to an increase in the average number of young people in detention in 2022 (Figures 3 and 4). Increases were particularly high for AO cases compared to other categories, because these were 16- and 17-year-olds charged with felony offenses (with 17-year-olds eligible on October 1, 2019) and held for longer spans of time who were newly eligible for placement in youth detention facilities in the past few years as Raise the Age was implemented. But all case types showed increases, likely due at least in part to slowed case processing in court during the pandemic.

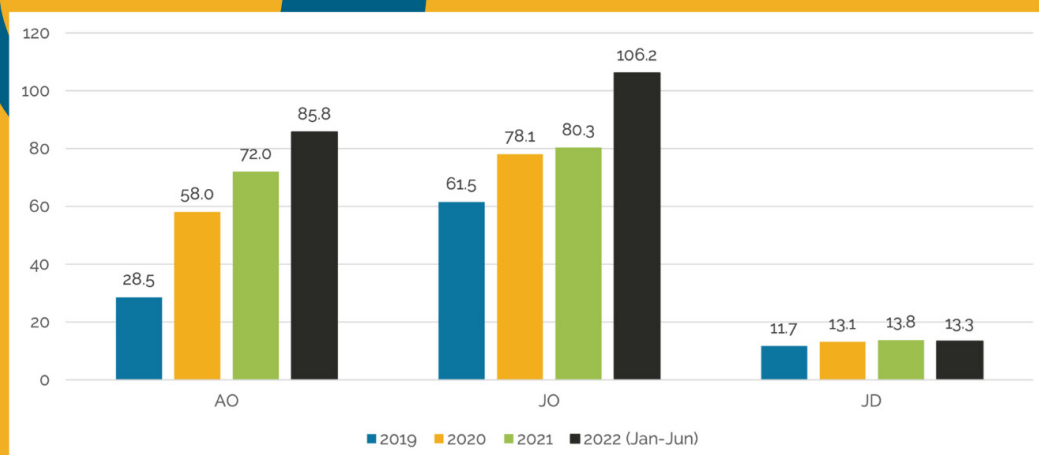


FIGURE 3

AVERAGE LENGTH OF STAY IN DETENTION BY CASE TYPE AND YEAR (IN DAYS)

2019-JUNE 2022

Source: New York State Office of Children and Family Services, "Juvenile Justice Detention Monitoring Quarterly Reports (2019-2022)," <https://ocfs.ny.gov/reports/detention/#monitoring>.

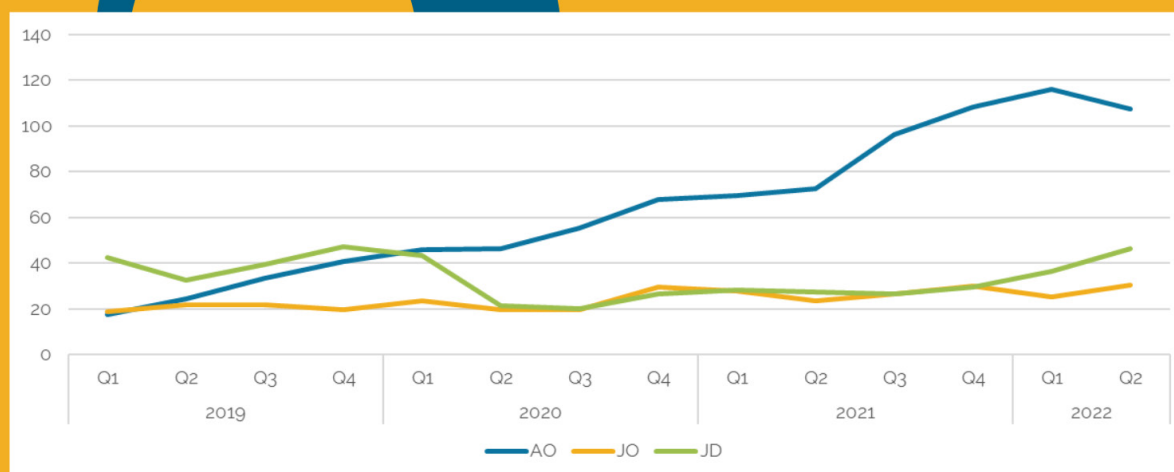


FIGURE 4

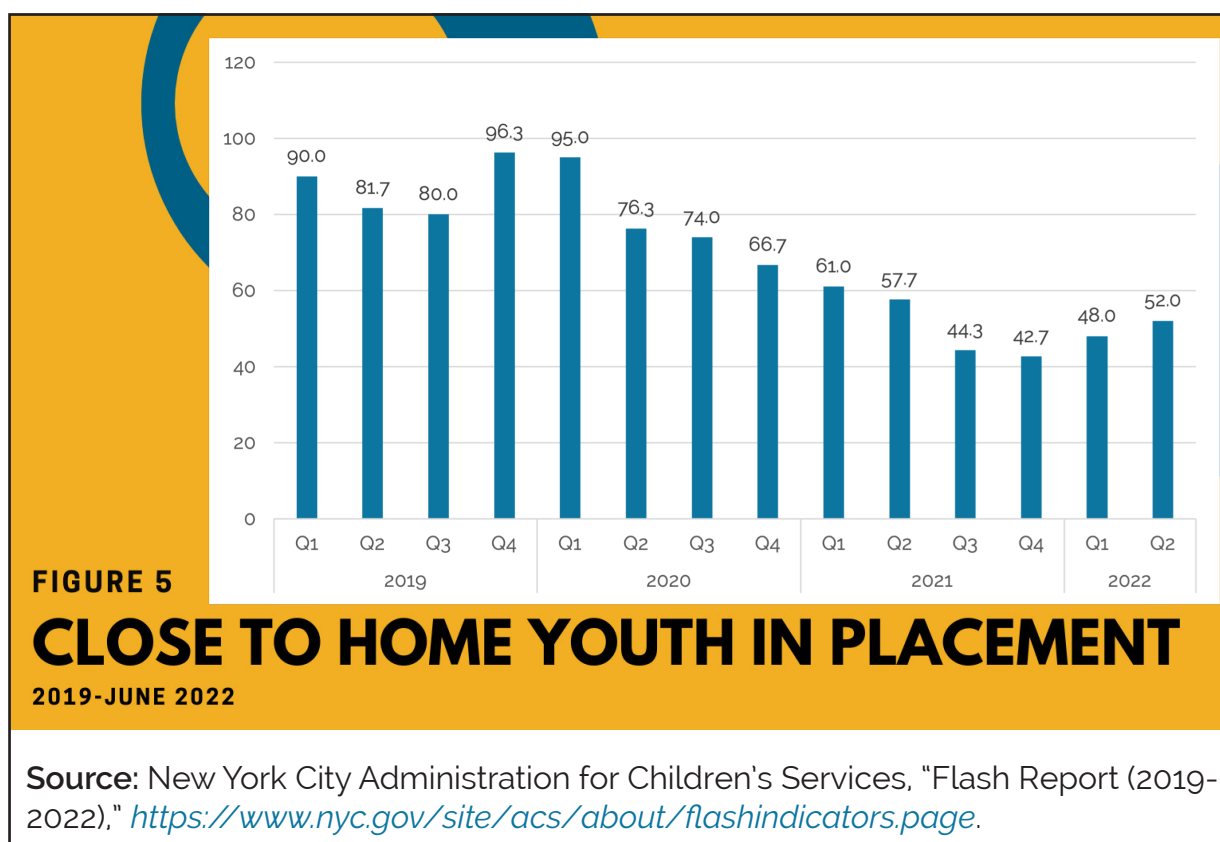
AVERAGE DAILY POPULATION IN DETENTION

2019-JUNE 2022

Source: New York State Office of Children and Family Services, "Detention Facility Average Daily Population (ADP) Report," <https://ocfs.ny.gov/reports/detention/#adp>.

FEWER YOUNG PEOPLE WERE PLACED IN CONGREGATE CARE FACILITIES IN NEW YORK CITY FOLLOWING THE ONSET OF COVID-19

Between 2019 and 2021, New York City saw a decline in the population of young people in Close to Home placements, but then there was an uptick in the first two quarters of 2022. These include young people adjudicated delinquent and placed in local residential care facilities through the Close to Home initiative (Figure 5). Close to Home is a youth justice reform initiative designed to keep young people closer to their home communities by allowing some young people adjudicated delinquent to be placed with the New York City Administration for Children Services for residential and aftercare.⁶



Overall, the number of young people committed to Office of Children and Family Services (OCFS) state custody increased over the course of the COVID-19 pandemic, but that increase was largely driven by AO cases, many of which were newly eligible for placement in OCFS facilities in 2021.

⁶ "Close to Home," New York State Office of Children and Family Services, <https://ocfs.ny.gov/programs/rehab/close-to-home/>.

As Figure 6 shows, while overall numbers increased in 2021 and 2022 due to AO cases, the disaggregated number of JO youth committed to state placements declined through the third quarter of 2021 and then increased through the first six months of 2022.

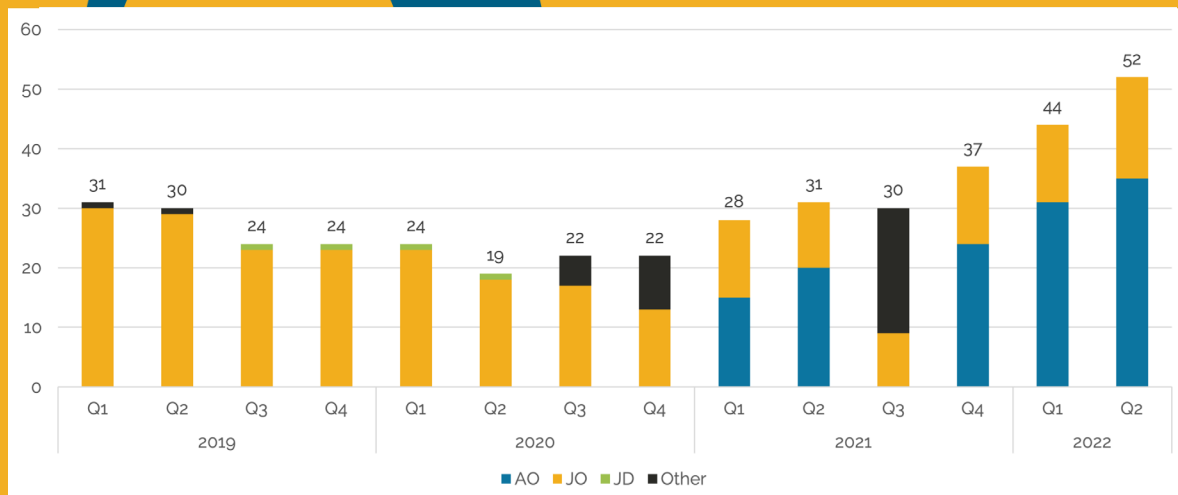


FIGURE 6
OCFS STATE COMMITMENT IN CARE PLACEMENTS BY CASE TYPE AND YEAR
2019-JUNE 2022

Source: New York State Office of Children and Family Services, "Juvenile Justice Quarterly Reports (2019-2021)," <https://ocfs.ny.gov/reports/custody/#jjStats>.

Note: Data includes only cases processed through Family Court and committed to OCFS state custody and excludes AO and JO cases processed in the Youth Part of criminal court and subject to criminal sentences under the New York State Department of Corrections and Community Supervision.

It is also important to note that these data do not include AO and JO cases processed in the Youth Part of Superior Court and placed with the Department of Corrections and Community Supervision. As a result, the data below undercounts the total number of youths under 18 who were incarcerated or sent to placement after case disposition in New York City over the period.

NEW YORK CITY'S YOUTH JUSTICE SYSTEM CONTINUES TO DISPROPORTIONATELY IMPACT YOUNG PEOPLE OF COLOR

It is important to underscore that the disproportionate impact of COVID-19 generally, and the youth justice system's response to it more specifically, on young people and families of color, particularly those residing in historically under-resourced communities, persisted unabated. The latest data suggest young people who are Black, Latino, or American Indian continue to be at

greater risk of hospitalization and death from COVID-19 compared to white people.⁷ Young people of color – particularly Black youths – are also disproportionately impacted by the youth justice system, in that they are more likely than white youths to be arrested, referred to court, petitioned in court, and placed out of their homes.⁸

This is particularly relevant in New York City, where more than 9 in 10 young people arrested, detained, petitioned, arraigned, adjudicated, sentenced, and sent to placement between 2019 and 2022 were either Black or Latinx, a group that makes up less than half of the total youth population.⁹ The period following the onset of the pandemic did not see reduced disproportionality, and there is no evidence that it has improved in 2022. In practice, the youth justice system in New York City overwhelmingly impacts young people and communities of color.

WHAT DROVE CHANGES IN YOUTH INCARCERATION DURING THE PANDEMIC?

Like other jurisdictions, New York City was engaged in juvenile justice reforms prior to the onset of the pandemic, and that impacted the city's response during the crisis. As noted above, in 2017 the state of New York passed legislation to end the automatic criminal prosecution of all 16- and 17-year-olds as adults. In planning for Raise the Age, the New York City Law Department (the city's Family Court prosecutors' office) created the position of Diversion Coordinator. The diversion coordinators played a critical role during the pandemic, referring young people to services in the youth's borough of residence, finding programs that could be attended virtually, and reducing the number of cases referred to Family Court. The city had also worked to expand community-based alternatives to detention as part of reform efforts. In addition, arrests were down significantly even prior to COVID-19, due in part to a shift in the Department of Education policies. Schools stopped relying on police to address school-based infractions, and there were also decreases in arrests for trespassing and marijuana offenses.

Conversations with system stakeholders and advocates in New York City revealed a few key drivers of the decline in youth incarceration prior to and, initially, during the COVID-19 pandemic.

- **The Governor's executive order temporarily suspending court operations¹⁰ and subsequent Chief Judge's administrative order limiting filings to a short list of essential matters¹¹ slowed court referrals and processing.** Beginning March 22, 2022, through July 2021, prosecutors could not file a case unless the case involved an "essential matter" which

⁷ "Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity," Centers for Disease Control and Prevention, updated Nov. 8, 2022, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

⁸ "Racial and Ethnic Disparity in Juvenile Justice Processing," U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention, retrieved Aug. 3, 2022, <https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/racial-and-ethnic-disparity>.

⁹ Schuyler Center for Analysis and Advocacy, *The State of New York's Children: Data Book January 2020*, <https://scaany.org/wp-content/uploads/2020/02/SONYC-DATA-BOOK-2020-FINAL-1.pdf>, 4.

¹⁰ <https://nysba.org/app/uploads/2020/03/EO-202.8-rotated-1.pdf>.

¹¹ <https://nysba.org/app/uploads/2020/03/AO-78-2020.pdf>.

the Chief Judge defined as one involved detention. This ensured that only the most serious cases were filed in court.

- **Dedicated legal advocacy on behalf of individual youths significantly contributed to detention declines.** In 2020, the Juvenile Rights Project filed a writ with the New York Supreme Court on behalf of 22 detained youths, arguing for categorical release of all young people, given the increased risk of exposure to COVID-19 in congregate care. Although the writ was not successful, it created pressure for system stakeholders to think differently about secure detention decisions and resolve as many cases as possible without detention. Spurred by the writ, defense counsel advocated zealously for release. Several youths were released from detention on a case-by-case basis because of individual advocacy efforts by their attorneys.
- **Strong cooperation between family court prosecutors, defense attorneys, probation, and other system stakeholders supported keeping youths out of lockup when possible.**
 - Beginning early in the pandemic, key stakeholders in New York City began meeting for “emergency management” of juvenile and criminal justice populations. The **New York City Law Department** obtained a list of all detained youths and reviewed cases one by one to identify opportunities for release, including medical release plans for some youths convicted of serious offenses. The Law Department also leveraged a recent major practice change to better serve families in conflict during the COVID-19 pandemic. Based on consensus that 1) young people should not be in detention simply because they do not have a resource available at that moment; 2) parents should not be vilified because they are not able to house a youth in a conflict crisis; and 3) family conflict is best managed when court involvement is avoided, the Law Department re-evaluated its approach to families in crisis and even changed how these cases are referred to; instead of family violence cases, they are family conflict cases. Every conflict case referred to the agency is assigned a case support team tasked with supporting harmed family members and connecting them with resources to support healing and address conflict. During the pandemic, new resources were also added, including at least one alternative to detention option for youths involved in family conflicts who could not return home, called Covenant House. The Law Department has also developed partnerships with service providers who support youths at risk of running away or those without a home and is engaging in thoughtful discussions and planning aimed at expanding alternatives to detention.
 - The **New York City Department of Probation** and the **Law Department** also leveraged their partnership with the **New York Police Department (NYPD)** to develop a new protocol for processing young people arrested on JD offenses. Prior to COVID-19, all youths were sent to a central processing hub on Centre Street in Manhattan and then either detained or released from that location. When things went virtual, probation officers made themselves available to conduct a quick virtual

screening to assess whether a young person was appropriate for release, and NYPD developed a plan for releasing those who could be returned to the community directly from the police station. As a result, only youths who need to be detained or have an upcoming hearing move forward to the Centre Street hub, while all others return home much more quickly. This process was still in place as of spring 2022.

- **Increased monitoring and service options supported youths in their community.** Existing alternatives to detention programs in New York City stepped up services to maintain support in the community for Family Court youths who would have been detained prior to COVID-19. In addition, the Legal Aid Society developed individualized, community-based plans for monitoring and supervision for youths who were eligible for detention in some cases. Virtual service opportunities expanded service options for young people across the city. For the first time, youths could be referred to services across boroughs, thereby ensuring access to high quality supports and services for some youths that had not been available prior to the health crisis.

CHALLENGES AND NEXT STEPS

Although New York City stepped up to limit youth incarceration during the pandemic, the city continues to struggle in key areas, and both detained and committed populations are on the rise in 2022. Interviewees for the study noted several areas in need of attention:

- **Address racial disparities.** Nearly all young people in New York City's youth justice system are Black or Latinx – particularly those in detention or local post-adjudication placements. Stakeholders must develop and implement new ideas for safely supporting young people of color at home, rather than subjecting them to detention and out-of-home placement.
- **Identify opportunities to expedite court processing and develop alternatives to detention for serious offenses to reduce lengths of stay.** Increased length of stay is particularly stark in New York City, and stakeholders should examine what is driving increases, particularly for AO cases, and develop and implement strategies to shorten incarceration time. Further, like many urban centers, New York City has seen an uptick in serious and violent offenses committed by young people, which often involve detention. There is a real need to develop and implement alternative strategies to safely hold young people accountable and supervise them outside of detention when it is not needed for public safety reasons. Research is increasingly documenting effective strategies to hold young people – even those who have committed serious and violent crimes – accountable and support positive development in community settings (see, e.g., the Justice Policy Institute's 2021 report, *Smart, Safe, and Fair II: Creating Effective Systems to Work with Youth Involved in Violent Behavior*).
- **Expand placement options for youths and families in conflict or in need of services.** Given the potential harms of detention and incarceration, it is critical to find alternative homes or residences for young people involved in domestic disputes, or those who cannot return

home. Detention should never be used to house young people who simply have nowhere else to go. This struggle is a common one across the country and demands attention.

- **Develop and implement strategies to sustain declines in youth incarceration.** Despite declines in the months following the onset of COVID-19, both detention and placement populations began to creep back up in 2021. While this is due at least in part to the planned implementation of Raise the Age reforms and the inclusion of new cases in the youth justice process, New York City should continue to analyze all the factors driving increases, develop targeted strategies to address them and build momentum for continued reduced reliance on detention and out-of-home placement for youth.
- **Ensure a safe and supportive environment for young people in detention and placement.** Although we are more than two years into the pandemic, the virus is still a significant threat, particularly for unvaccinated young people in congregate care. At the same time, strategies to mitigate the harm of the virus, such as suspending family visits and putting young people in isolation, can also be harmful and inflict trauma on young people. Moving forward, it will be critical to ensure that New York City (and all jurisdictions) limit the use of isolation, improve accessibility for parents and family members, and find opportunities to promote education, connection, and opportunity within social distancing requirements.

FAMILY RECOMMENDATIONS TO BETTER SUPPORT JUSTICE-INVOLVED YOUNG PEOPLE AND THEIR FAMILIES

In September 2021, a diverse group of parents came together from across the United States to discuss the impact of the COVID-19 pandemic on their justice-involved children. Their insights and recommendations were captured in a separate brief, *Youth Incarceration During the COVID-19 Pandemic: Insights from Impacted Families*, but an abbreviated list of their specific suggestions is included here for quick reference, given the central importance of their ideas for improved policy and practice:

- Strengthen services, supports, and connection for young people in congregate care facilities. Families recommended that facility administrators create a family liaison position, prioritize in-person visitation, increase medical personnel, and strengthen oversight and accountability to ensure that young people's needs are met and to better support connection with caregivers, siblings, and other support people.
- Maximize opportunities for, and expedite release from, facilities. Given the added public health risk to people in congregate settings during this pandemic as well as other less widespread crises, parents unanimously called on agencies to explore all opportunities to promote and expedite release, with individualized and robust support, of young people from facilities, particularly those who have not yet been adjudicated and proven to have committed a crime.
- Expand community-based mental health, trauma, and healing supports for youth and families. Families noted that the COVID-19 pandemic exacerbated existing issues and increased the need for mental health, trauma, and healing supports for justice-involved young people and their families. They recommended multisensory and culturally responsive approaches to trauma healing, resilience and well-being for all family members to ensure that everyone's needs are met, and caregivers are best positioned to support their young people who might be struggling.

In 2020, four national research and advocacy organizations — the *Center for Children's Law and Policy*, *Justice for Families*, the *Justice Policy Institute*, and the *National Juvenile Justice Network* — came together to study state and local policy and practice changes that effectively reduced reliance on youth incarceration during the COVID-19 pandemic. The collaborative released a series of publications illustrating how agencies across the country can safely reduce reliance on youth incarceration and invest in more effective community-based strategies to support justice-involved youth and families.

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