



Joint Legislative Budget Hearing on 2026 Executive Budget Proposal: Human Services

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Testimony of The Legal Aid Society's Juvenile Rights Practice

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The Legal Aid Society

The Legal Aid Society represents the majority of children and youth prosecuted in New York City’s Family Courts and Criminal Courts and has been a tireless advocate for those least able to advocate for themselves. Our mission is simple: we believe that no child or youth in New York City should be denied their right to equal justice because of poverty. We have dedicated teams of lawyers, social workers, paralegals and investigators devoted to serving the unique needs of children and youth, including those charged as Juvenile Delinquents (JDs), Juvenile Offenders (JOs), and Adolescent Offenders (AOs). The Legal Aid Society’s Juvenile Rights Practice (JRP) represents the majority of youth prosecuted as JDs in Family Court in New York City. The Legal Aid Society’s Criminal Defense Practice (CDP) represents the majority of youth charged as JOs and AOs across New York City. The Juvenile Rights Practice and the Criminal Defense Practice’s Adolescent Intervention and Diversion (AID) Unit have adopted an integrated representation model to ensure seamless and comprehensive representation of JO and AO youth prosecuted in the Criminal Court’s Youth Part. In addition to representing our clients in trial and appellate courts, we also pursue impact litigation and other law reform initiatives.

We address two distinct areas in which the practices of the New York State Office of Children and Family Services (OCFS) cause profound and lasting harm to children. First, we press for urgent attention to OCFS’s barbaric use of solitary confinement on youth in its secure placement facilities. As noted in recent press coverage¹ these OCFS facilities are engaging in what staff themselves call “human rights violations,” driven in part by a severe staffing crisis. Second, we address the need for action by OCFS to ensure that the federal Social Security benefits orphaned

¹ *NYS Focus*: “I’m a Human Rights Violator’: Staff at Youth Prison Recount Lockdowns, Turmoil, 24-Hour Shifts,” available at <https://nysfocus.com/2026/02/04/ocfs-industry-youth-solitary-staff-prison>

and disabled children in foster care are entitled to as a result of the death of a parent or their own disability are used and conserved for the individual child and not diverted to fund the foster care system. We thank you in advance for your close attention to these urgent concerns.

I. OCFS MUST IMMEDIATELY END ITS USE OF SOLITARY CONFINEMENT IN SECURE PLACEMENT FACILITIES

Despite decades of scientific research confirming that even short periods of solitary confinement are dangerous for youth, OCFS routinely and unlawfully subjects youth to solitary confinement in its five secure placement facilities, locking youth as young as 12 years old alone in small, barren cells for extended periods. The conditions youth face in OCFS secure facilities demand urgent action.

Youth that OCFS is obligated to care for are routinely placed in near-total, around-the-clock isolation; deprived of education, programming, and mental stimulation; permitted “recreation” only alone in empty gyms; provided unreliable access to drinking water; and subjected to toilet restrictions so severe that youth are often forced to defecate and urinate in buckets and bottles in their cells.

The harm these youth experience as a result of these practices is real and long-lasting. Solitary confinement profoundly increases the risk to youth of mental illness and suicide. Indeed, suicidal gestures by youth in OCFS care increased by more than 667% from 2019 to 2022.² Recognizing these risks, mental health organizations and correctional associations alike have called for an end to this practice across the nation. New York State itself banned the use of solitary

² *Office of Children and Family Services: Oversight of Juvenile Justice Facilities*, Off. of the N.Y. State Comptroller at 9 (Report No. 2022-S-13, Apr. 2024), https://www.osc.ny.gov/files/state-agencies/audits/pdf/sga-2024-22s13.pdf?utm_medium=email&utm_source=govdelivery (“Comptroller’s Report”).

confinement on youth and young adults in adult facilities when it enacted the Humane Alternatives to Long-Term Solitary Confinement Act in 2021.³

The federal government likewise prohibits solitary confinement of youth in the federal prison system. A U.S. Department of Justice (“DOJ”) report found that “[n]owhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement.”⁴

Despite this widespread consensus about the serious and lasting harm of solitary confinement, OCFS continues to impose this dangerous practice on youth in its care. OCFS imposes solitary confinement as punishment for alleged rule infractions or, at times, for minor misbehavior, including manifestations of youth’s disabilities. OCFS also imposes solitary confinement as a way of operating its facilities with dangerously low staffing levels.

OCFS Is Violating the Law, Regulations, And Its Own Policies

Pursuant to regulations and its own policies, OCFS is mandated to provide supervision, rehabilitative services, recreation, and humane conditions to youth in its care.

OCFS is required to supervise the youth in its care to ensure their safety, including supervisory visits at least every 30 minutes and the continuous placement of staff on the units.⁵ OCFS is also mandated to provide youth treatment and rehabilitation at its secure placement facilities, and there are extensive regulations mandating the provision of various services to youth in OCFS custody.⁶

³ Humane Alternatives to Long-Term Solitary Confinement (HALT) Act, Ch. 93, 2021 N.Y. Laws 93.

⁴ Robert L. Listenbee, Jr. et al., *Report of the Attorney General’s National Task Force on Children Exposed to Violence* 178 (Dec. 12, 2012).

⁵ 9 NYCRR § 7404.2.

⁶ N.Y. EXEC. LAW § 504; see, e.g., 9 NYCRR §§ 7416 (education); 7418.2 (recreation); 7422.3 (visitation); 7415.6 (counseling).

- OCFS is required to provide at least five and a half hours per day of educational instruction “that is appropriate for each resident’s age, educational needs, and interests,” as well as other General Educational Development (“GED”) classes, vocational training, and college courses for those eligible.⁷ OCFS is also required to provide two to three hours per day of “structured recreational and leisure-time activities” designed to “promote physical, emotional, and social development of youth.”⁸ Forty-five minutes of this time must be outside.⁹
- OCFS is required to allot youth a minimum of two and a maximum of four hours per day for outgoing phone usage.¹⁰ Facilities are also required to provide for two hours of visitation per week.¹¹
- OCFS is required to provide formal counseling services to youth, which may include a combination of individual and group sessions, for not less than three hours per week.¹²
- OCFS must also perform several medical and mental health evaluations and screenings to assess the current status of the youth.¹³ Because these youth “often have a history of physical health challenges and are far more likely to have mental health problems. . . . [it] is important to ensure they are receiving required physical and mental health assessments in a timely manner.”¹⁴

Youth are intended to have free access to the common area and be permitted to enter and exit their cells during daytime hours. As reflected in the requirements listed above, much of that

⁷ OCFS Policy and Procedures Manual (“PPM”) 3273.06, 3273.08.

⁸ PPM 3274.00.

⁹ 9 NYCRR §§ 7418.1, 7418.2; PPM 3274.00.

¹⁰ PPM 3423.00.

¹¹ 9 NYCRR § 7422.3.

¹² PPM 3270.00.

¹³ PPM 3243.18; 3243.33.

¹⁴ Comptroller’s Report at 11.

time is supposed to be used for education, recreation, programming, counseling, meals, showers, socializing with other youth on the unit, and calls to or visitation with parents and family. Yet, OCFS is routinely failing to abide by these requirements, and instead locking youth into their cells for up to 24 hours a day in some cases for periods of weeks and even months at a time.

OCFS's Use Of Solitary Confinement Is Dehumanizing And Dangerous

Nearly every aspect of solitary confinement is dehumanizing. Many cells are filthy with fecal matter and old food, not cleaned between occupants. Many cells have also fallen into disrepair, with vents and sockets partially dislodged, holes or carvings in the walls, or flooring ripped up. The solitary confinement cells in Wing 11 at Brookwood lack working radiators, leaving residents without adequate heat in the winter.

The typical cell door is solid with one plexiglass window. In some cells, that window is obstructed so the youth cannot see out, and staff cannot adequately see inside. Other cells have no windows, and the doors are only equipped with a slot for food to slide in and out. The cells have no telephones, radios, or televisions, and youth are restricted in what personal property they can have.

Almost none of the cells in which youth are routinely held have toilets or sinks. As a result, youth must ask to be released from their cells to use the bathroom or be forced to use garbage pails, water bottles, food containers, or buckets to relieve themselves. The smell of urine and feces can permeate these units. This is also where youth in solitary confinement are required to eat their meals.

OCFS staff are often absent from the units for hours at a time, leaving youth locked in their cells without supervision or access to basic necessities. As a result, youth are forced to bang on their doors or yell to get staff attention in order to use the bathroom, get water, or seek help.

Youth are regularly subjected to solitary confinement in response to OCFS's failure to maintain proper staffing. At times, entire units are placed in solitary confinement for days or even months, with conditions ranging from brief out-of-cell time in small groups of two or three for limited recreation and bathroom use up to three times per day, to "one-in-one-out" practices in which youth are individually removed from their cells, one at a time, to use the bathroom. All youth are denied meaningful human interaction. In some instances, youth are confined to their cells continuously and not taken out at all.

In addition, when staffing is insufficient, youth who staff perceive as 'difficult' or a 'problem,' often due to a manifestation of their disabilities, are kept locked in their cells indefinitely because staff are concerned that they do not have the capacity to manage these youth without additional staffing support.

OCFS's practices are disproportionately harming Black or Latinx youth. As of December 2024, 95% of youth in OCFS secure placement were male. And, even though only 16% of the youth population in New York State is Black, 63% of youth in secure placement are Black, and 28% are Latinx.¹⁵

In addition, over half of youth in New York's juvenile justice system, including in secure placement, have mental illness.¹⁶ While OCFS does not track education data, the majority of youth in other areas of New York's juvenile justice system have diagnosed disabilities and are performing grossly below grade level in reading proficiency.¹⁷

¹⁵ *2024 Annual Report Youth in Care*, Off. of Child. & Fam. Servs., <https://ocfs.ny.gov/reports/jj-yic/Youth-In-Care-Report-2024.pdf>; *Youth (0-17) population profile by race/ethnicity and State, 2020*, Off. of Juv. Just. & Delinq. Prot., <https://www.ojjdp.gov/ojstatbb/population/qa01103.asp?qaDate=2020&text=yes> (last visited Jan. 3, 2026).

¹⁶ Clara Hemphill, *Where the Sick Get Sicker: As the juvenile correctional centers empty, the mentally ill remain*, Ctr. for N.Y.C. Affairs, <https://www.centernyc.org/cww-wherethesickgetsicker> (last visited Jan. 3, 2026).

¹⁷ See Alex Zimmerman, *NYC students in juvenile detention often denied the education support they need, report finds*, Chalkbeat (Nov. 17, 2025), <https://www.chalkbeat.org/newyork/2025/11/17/students-struggle-in-nyc-juvenile-detention-passages-academy/>.

OCFS Has Had An Acute Staffing Shortage In Its Secure Placement Facilities For Years

OCFS has been experiencing a staffing crisis in its juvenile placement facilities since at least 2021. Less than half of many of the staff positions in OCFS secure facilities are filled at any given time. In April 2024, the Office of the New York State Comptroller provided its report to OCFS documenting problems at OCFS placement facilities, including the staffing crisis and the resultant failures in oversight of youth care. The Comptroller noted that staffing issues were “particularly acute at secure facilities, which were operating, on average, 38% below full staffing levels.”¹⁸

Staff vacancies for positions that provide critical daily care to youth are dangerous and alarming. Youth Support Counselors (“YSCs”) guide and mentor youth, and facilities’ staffing levels of YSCs are 25-50% below capacity. Positions for Youth Support Specialists (“YSSs”), the staff who directly supervise youth to ensure physical and emotional safety, are currently vacant by 65 to 83 percent at secure facilities. To put that in perspective, at Brookwood, where YSS positions were 81 percent vacant in August 2024, 41 staff were doing the work of 220 people.¹⁹

The Public Employees Federation Has Been Ringing Alarm Bells About the Staffing Crisis

The Public Employees Federation (PEF), the union representing a portion of OCFS staff at secure placement facilities, has been ringing alarm bells for over a year about staffing shortages

¹⁸ Comptroller’s Report at 9.

¹⁹ For example, there should be at least 49 YSCs at Industry, yet in October 2024 there were only 22. Similarly, half the required YSC positions at MacCormick were vacant, as were two-thirds at Goshen and Brookwood. As of May 2025, there were only 10 YSC positions filled at Industry. Likewise, secure placement facilities have shockingly low numbers of YSS staff. In August 2024, 83% of YSS positions were vacant at Industry, 81% at Brookwood, 70% at Goshen, and 65% at MacCormick. At Brookwood, for example, that amounts to 41 staff being available to do the work of 220 people.

and the resulting isolation of youth. PEF has raised these issues with Commissioner Harris-Madden and her executive team, specifically highlighting the harm to youth held in isolation in these facilities. No significant change has occurred.

Regarding a tour of Industry in September 2024 in which the union brought state legislators, the union noted that “[c]ritical therapeutic programs, education, and mental health counseling were suspended due to inadequate staffing.”²⁰

In June 2025, after OCFS had taken no meaningful action to address these issues in the interim, PEF reached out to state legislators, writing, “Youth [in OCFS secure placement are] reportedly confined to their rooms for up to 23 hours a day, often denied basic access to restrooms and served food in unsanitary conditions. A suicide attempt occurred under these conditions; only the quick action of a PEF member, who cut down the youth in time, prevented tragedy. *The fact that these youth—predominantly Black and Brown—are forced to live in squalid, dehumanizing conditions is unconscionable.*”²¹

OCFS’ Budget Priorities Must End Solitary Confinement And Support Initiatives That Invest In Youth Development Rather Than Youth Incarceration

OCFS’s staffing crisis must be addressed immediately, however, the solution is not simply to add additional staff. Instead, OCFS should advocate within the state government to prioritize initiatives that reduce youth incarceration and expand vital community programming to support youth to thrive in their communities and improve public safety. OCFS should be working with local county governments to ensure that they are applying for Raise the Age dollars that fund alternatives to incarceration. New York State has allocated \$1.71 billion dollars through state fiscal

²⁰ June 18, 2025 letter from Wayne Spence, President, New York State Public Employees Federation to Senator/Assemblymember.

²¹ Id.

year 2025 to help counties implement Raise the Age, however, as of May 2025, less than half of that money had been disbursed.²² Another important step OCFS could take is to support the Youth Justice Innovation Fund (S643/A8491), which would move \$50 million dollars of the funds allocated under Raise the Age to support effective community-based youth programming, reducing the population in OCFS's placement facilities.

II. NEW YORK STATE MUST PROPERLY FUND FOSTER CARE SO THAT ORPHANS AND DISABLED CHILDREN DO NOT HAVE TO SUBSIDIZE THE FOSTER CARE SYSTEM

For decades, Local Social Services Districts (LSSDs) across the nation screened children when they entered foster care for eligibility for Social Security and other federal benefits, applied for those benefits on behalf of children in foster care, and retained the money. This egregious practice turned children--often poor, Black and Latinx children--into sources of revenue for the state. This was first brought to light through reporting by National Public Radio and the Marshall Project in 2021²³ which elevated the stories of children and young people who lived through this practice and had tens of thousands of dollars secretly taken from them and used to pay for the foster care system.

In New York State, some LSSDs, including the Administration for Children's Services (ACS) have taken Social Security benefits belonging to orphaned and disabled children in the foster care system and kept the money to pay for foster care itself. Children pulled into the foster care system in New York State are disproportionately children of color and are often from the

²² *Economic and Policy Insights; Spending on Raise the Age Programs in New York*, Off. of the N.Y. State Comptroller at 9, May 2025, <https://www.osc.ny.gov/files/reports/pdf/spending-on-raise-the-age-programs-in-new-york.pdf>

²³ State Foster Care Agencies Take Millions Of Dollars Owed To Children In Their Care, NPR/WNYC, April 22, 2021, [States Take Social Security Benefits Of Foster Care Children To Pay For Services : NPR](https://www.npr.org/2021/04/22/991111111-states-take-social-security-benefits-of-foster-care-children-to-pay-for-services).

poorest, most vulnerable families. This unethical and surreptitious practice deprives children and families across the state of millions of dollars – often without their knowledge.

The U.S. Administration for Children and Families (ACF) recently sent letters to 39 states, including New York State, calling for the immediate termination of this deeply problematic practice.²⁴ The Commissioner of ACF, Alex Adams, has stated that "[e]very earned benefit dollar belongs to these foster youth, not the government agencies or bureaucrats."²⁵ and that "[t]here is no moral justification for why orphans should have to pay their own way. They are not in foster care by any fault of their own. And they certainly should not be asked to pay their own bill."²⁶ He has called the taking of Survivors' Benefits an "orphan tax" on foster kids and defined the practice as "morally corrupt."²⁷

OCFS must recognize the wisdom of these powerful repudiations of this harmful practice and ensure that all federal Social Security benefits are used to support the individual youth to whom they belong, rather than diverted by the government to reimburse itself for the cost of care. This development follows growing national attention to the need for greater transparency and child-centered use of these funds and mirrors our own work to pass legislation to protect the economic futures of kids in care. To date, eleven states (Arizona, Illinois, Kansas, Maryland, Massachusetts, Missouri, Nevada, New Jersey, New Mexico, Ohio, and Oregon) and the District of Columbia have enacted legislation or issued rules to prohibit or limit this egregious practice.

Studies show that families who receive adequate and effective economic supports have lower rates of family separation, a shorter time to reunification for children who have been

²⁴ ACF Notifies 39 Governors That States Are Diverting Foster Youths' Earned Social Security Survivor Benefits, HHS, December 11, 2025, available at [ACF Notifies 39 Governors That States Are Diverting Foster Youths' Earned Social Security Survivor Benefits | HHS.gov](#).

²⁵ Id.

²⁶ Trump administration tells states to end 'orphan tax' on foster kids, NPR/WNYC, January 12, 2026, available at [Trump administration tells states to end 'orphan tax' on foster kids : NPR](#).

²⁷ Id.

removed from their parents, decreased rates of subsequent abuse or neglect, and enhanced child and family wellbeing.²⁸ OCFS must ensure that children’s social security benefits are available to be used as economic supports that are critical to their family stability, and that children in foster care have meaningful voice and choice about how those funds are used and conserved on their behalf.

Children who are not reunified with their families and age out of foster care to live on their own also face myriad difficulties, at significantly increased rates from their peers. Youth and young adults leaving the system typically have much higher rates of homelessness,²⁹ shelter stays,³⁰ unemployment,³¹ arrest and incarceration,³² and face challenges paying for education, childcare, transportation, and basic needs.

Having access to their own benefits can serve as a lifeline for children transitioning out of the foster care system, and economic stability can reduce future involvement in the foster care system, as well as the juvenile and criminal justice systems. Federal benefits conserved on behalf of a former foster youth could pay for housing, education, and transportation, as well as costs

²⁸ Weiner, D., Anderson, C., & Thomas, K. (2021). System transformation to support child & family well-being: the central role of economic and concrete supports. Chapin Hall Policy Brief.

²⁹ NFYI: Housing and Homelessness, available at <http://nfyi.org/issues/homelessness/#>; see also Gypen, L., Vanderfaeillie, J., De Maeyer, S., Belenger, L., & Van Holen, F. (2017). Outcomes of children who grew up in foster care: Systematic-review. *Children and Youth Services Review*, 76, 74-83; Curry, S., & Abrams, L. (2015). Housing and social support for youth aging out of foster care: State of the research literature and directions for future inquiry. *Child & Adolescent Social Work Journal*, 32(2), 143-153.

³⁰ Park, J. M., Metraux, S., Brodbar, G., & Culhane, D. P. (2004). Public shelter admission among young adults with child welfare histories by type of service and type of exit. *Social Service Review*, 78(2), 284-303.

³¹ Fostering Careers, Center for an Urban Future, p. 4, 2011 (https://nycfuture.org/pdf/Fostering_Careers.pdf).

³² Jaxzia Perez, The foster care-to-prison pipeline: A road to incarceration, American University Washington College of Law: The Criminal Law Reporter, Feb 24, 2023, Updated Oct 18, 2023, available at <https://www.crimlawpractitioner.org/post/the-foster-care-to-prison-pipeline-a-road-to-incarceration#:> (“By age 17, over 50% of foster children will have an encounter with the juvenile legal system through arrest, conviction or detention. In addition, 25% of youth in foster care will be involved with the criminal legal system within two years of leaving foster care.”)

related to their disabilities.

Protecting benefits on behalf of children would allow them to:

- Purchase necessary items not covered by foster care maintenance payments, such as specialized medical equipment, technology (including laptops, iPads, and tablets for academic work, and entertainment), and equipment for participating in extracurricular activities;
- Establish savings for post-high school education opportunities;
- Pay for medical services (including mental health care) not covered by Medicaid, or from a private provider to avoid lengthy waitlists for services;
- Practice financial literacy while still in the supportive care of ACS; and
- Transition to economic independence after discharge from care, including being able to afford a stable apartment.

While New York State has long engaged in this practice of taking children's benefits, it now has the opportunity to lead the nation in addressing the systematic economic disenfranchisement of vulnerable children in foster care. In the long run, reducing foster care stays, reducing returns to foster care, and creating a strong economic foundation for children and their families to reduce reliance on public service institutions will ultimately save New York State money. The critical task is for OCFS to properly fund the foster care system now, so that orphaned and disabled children do not bear the brunt of serving as a revenue stream for the foster care system.

The OCFS Executive Budget must allow for all Social Security Benefits to go directly to the children who are entitled to them and who desperately need them. Children entitled to Survivors and Disability Benefits must be permitted to use and conserve these benefits; they can provide critical, possibly life-altering funds to this most vulnerable population.

OCFS must ensure that LSSDs are meeting their obligations to provide foster care, free of charge, to all children who need it, as well as complying with the federal law, regulations, and policies requiring that Social Security Benefits be used on behalf of the specific child entitled to receive them.

The 2026 Executive Budget must earmark the funds necessary to stop this unethical practice that perpetuates cycles of poverty.

CONCLUSION

OCFS must commit to breaking cycles of intergenerational poverty which lead to repeated child welfare involvement for families, particularly for New York State's Black and Latinx families. Economic justice is a critical step, and OCFS must ensure that federal Social Security benefits are used and conserved on behalf of individual children, as intended, and must provide additional funds to realize that obligation, as necessary.