

**Written Comments of Youth Represent
New York City Council
Hearing of the Committee on Public Safety
Re: Criminal Justice Reform Act of 2016:
T2016-4001, T2016-4002, T2016-4003, T2016-4004, T2016-4005, T2016-4006,
and Intros 639 and 662 of 2015
January 25, 2016**

Youth Represent is a holistic youth defense and advocacy organization. Our mission is to ensure that young people affected by the criminal justice system are afforded every opportunity to reclaim lives of dignity, self-fulfillment, and engagement in their communities. We provide criminal and civil reentry legal representation to young people age 24 and under, citywide, who are involved in the criminal justice system or who are experiencing legal problems because of past involvement in the criminal justice system. Our interdisciplinary approach allows us to understand the full extent of our clients' legal and practical challenges so we can effectively represent them as they make the journey from courtroom to community. We have represented hundreds of youth charged with low-level offenses in criminal and summons courts, and hundreds more dealing with the civil repercussions of such arrests, from school suspension to job denials to public housing termination. Thank you to the committee for the opportunity to provide this testimony.

The eight pieces of legislation before the Council today take important steps towards addressing the wide-ranging harms that "Broken Windows" policing policy have wrought in low income communities of color for the past two decades. By creating and encouraging a civil enforcement option for a range of low-level offenses, they have the potential to reduce two of the most significant categories of harm for all New Yorkers, and especially the young people we serve: 1) Civil legal consequences of arrest and conviction, including eviction, job-loss, and even deportation; and 2) The proliferation of summons warrants, which already number over 1 million

in New York City. We appreciate that the legislation before the Council today is the result of many months of analysis by City Council staff, conversation with multiple city agencies, and input from constituents from across the five boroughs.

The proposed measures are promising, but some details must be addressed to ensure long-term positive impact. Our reservations and technical suggestions are detailed in this testimony. More importantly, we emphasize that the Council must not stop here. The legislation before you today will not address the underlying problems of racial disparity in enforcement of low-level offenses, nor the tremendous and persistent gap in trust between the NYPD and communities of color. And while these bills encourage civil enforcement of some minor offenses, they leave open the possibility of criminal enforcement and the resulting severe civil consequences. Finally, even those who are subject to civil penalties may be at risk of severe financial penalties and credit problems that lock them into a cycle of poverty. Our young clients may find themselves buried in civil justice debt before they even begin their adult lives. For these reasons, we urge the Council to pass the Right to Know Act in conjunction with the Criminal Justice Reform Act and to fully decriminalize the lowest-level offenses in the Administrative Code.

Youth of Color and Law Enforcement in New York City

As we know from the excellent *Summons Report* issued by John Jay last April, young people in this city bear the brunt of summons enforcement, with 18-24 year-olds receiving summonses at the highest rates, followed closely by 16- and 17-year olds. While the City does not yet collect reliable race and ethnicity data about summons issuance, we can extrapolate from misdemeanor enforcement data and from robust anecdotal evidence from community members,

attorneys, and even some judges to conclude that rates of summons issuance are vastly disproportionate among Black and Latino youth. Our first concern is that just as youth of color have been disproportionately targeted for everything from marijuana possession misdemeanors to disorderly conduct and open container violations, they will also be disproportionately targeted with criminal as opposed to available civil enforcement under the proposed legislation.

The problem of racial disparity is exacerbated by what we know from the summons data: In 2013 more than half of all summonses issued were legally insufficient, dismissed outright, or adjourned in contemplation of dismissal. In the ten years prior to 2013 the dismissal rate was even higher—consistently above 60%. These high rates of legal insufficiency and dismissal—like the low rates of arrest and conviction among people stopped and frisked—suggest widespread problems with the law enforcement actions that lead to summonses. And we know that these law enforcement actions disproportionately target Black and Latino youth. If the proposed legislation is implemented, some of these youth will continue to go through criminal summons court and face potentially severe civil legal consequences, warrants, or even jail time. Some will be sent to civil administrative proceedings and face fines and community service. But the message to all of these young people of color will be the same: *these systems exist to punish you, more often and more harshly than other young people engaged in the same behavior.*

Concerns about Civil Enforcement of Low Level Offenses

Especially because of the high rates of legal insufficiency and dismissal in summons court, civil enforcement brings with it its own set of challenges to ensuring fairness and due process. Unlike in criminal summons court, there is no right to counsel in civil proceedings. Furthermore, as the Office of Administrative Trials and Hearings (OATH) absorbs some of the

large number of cases currently being heard in the summons court, the sheer volume will make it difficult for litigants with or without counsel to have their cases heard. Just like in summons court, people will have to miss days of school and work to attend administrative proceedings, and if those proceedings are adjourned because of backlog and delay then those who wish to challenge their charges will miss more work and school.

Those who are found guilty of civil violations could face significant fines under the proposed legislation. While we appreciate the presumption of a community service offer in lieu of a \$250 fine, it is only available as an offer of settlement. Those who wish to fight their charges—which we can predict based on prior years’ data will have a significant rate of legal insufficiency—may not benefit. Furthermore, only those who meet a poverty standard will qualify for the community service offer. For 2013 (the most recent year available on the Center for Economic Opportunity website) the poverty threshold for a single childless adult in New York City was \$14,424, an amount low enough to effectively exclude thousands of working poor people for whom a \$250 fine may well mean missed meals, rent, or deepening debt.

Regardless of the penalty imposed, it is imperative that litigants—the vast majority of whom will be appearing without counsel—fully understand them. This is especially critical for youth. We urge the Council to work closely with OATH and other relevant Mayoral agencies to see that this legislation, if enacted, is implemented with attention to fairness and due process. Measures should be put in place to provide language access; ensure that information about the process and penalties are communicated clearly to all litigants, especially youth; and to provide access to OATH and to community service placement in the evenings and on weekends so that litigants can minimize missed days of work and school.

Specific Concerns and Technical Issues with Pending Legislation

We have the following specific concerns and suggestions about the proposed legislation:

- **T2016-4001 (in relation to the enforcement of criminal and civil offenses):** The formal, publicly available guidance for NYPD officers regarding the determination of whether to use civil or criminal enforcement contemplated by this proposal is an important step towards transparency. But explicit measures must be taken to ensure that the intent of the legislation is met and to address the potential for racial disparity. These measures include input from directly affected communities and police reform advocates in the development of the guidelines, inclusion of a broader range of low-level offenses, specific disciplinary outcomes in instances where the guidelines are not followed, and robust collection and public reporting of data.
- **T2016-4002 (in relation to the penalties for littering):** The addition of language prohibiting spitting to the Administrative Code unnecessarily creates a new criminal liability for spitting, which is already prohibited by Health Code (Section 181.03 of the Rules of the City of New York). Rather than add a new prohibited activity to the Administrative Code, the Council should consider amending subsection e of section 558 of the New York City Charter so that violations of the health code are punished as violations, rather than misdemeanors.
- **T2016-4003 (in relation to penalties for excessive noise):** The penalty of \$1,000 and imprisonment of up to 20 days for the newly proposed section 24-218.2 is unreasonably severe, especially given that it can be charged merely based on a prior *instruction* by a police officer, with no requirement of proof of an actual prior noise violation.

- **T2016-4006 (in relation to permitting ECB to use community service as an alternative to fines):** Setting the eligibility criteria for the presumptive community service offer at the poverty standard will exclude thousands of working poor people. At minimum, the Council should consider the standard used by the federal Legal Services Corporation, but linked to the poverty threshold for New York City established by the Center for Economic Opportunity. The Legal Services Corporation criteria is set at 125% of the poverty line, with authorized exceptions that consider factors such as seasonal variation in income, unreimbursed medical expenses, and fixed debts. In addition, the Council should either amend the charter or work closely with the Center for Economic Opportunity to ensure that the New York City poverty threshold is updated and posted publicly on their website annually.

Technical issues:

1. The current draft of T2016-4006 refers to the “standards for poverty as determined by the center for *employment* opportunity” rather than the center for *economic* opportunity.
 2. The current draft of T2016-4006 states that the presumption of the offer of community service shall apply to subsections 18-142 and 18-143 of the administrative code, rather than subsections 18-146 and 18-147.
- **Intro 639 (in relation to requiring the police department to submit quarterly reports relating to the issuance of summonses):** In addition to requiring quarterly reports from the NYPD regarding summons enforcement, the legislation should require OATH to report publicly on all penalties levied, disaggregated by race, age, and gender.