



Testimony of

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Oversight Hearing – The Juvenile Justice System During COVID-19

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My name is Katherine de Zengotita and I am a Senior Trial Attorney with the Juvenile Defense Unit at New York County Defender Services (NYCDS). We are a public defense office that represents New Yorkers in thousands of cases in Manhattan’s Criminal Court and Supreme Court every year, and our Juvenile Defense Unit represents children in felony “Raise the Age” cases in both Supreme Court and Family Court. I have been a New York City public defender for a decade. Thank you to Chair Levin for holding this hearing on COVID-19 in the Juvenile Justice System.

My team represents some of the most vulnerable people in our city – children charged with crimes, some of whom are incarcerated, and many of whom are in dire need of support, services, and resources. These needs have increased exponentially during the COVID-19 pandemic, and the city’s response has been woefully inadequate. The pandemic has presented new and harrowing obstacles for system-involved youth, and has worsened the many challenges they already faced. For purposes of this testimony, we have chosen to focus on one particular issue, which seems to have failed to capture meaningful attention from the city government, but which is of the utmost important to our clients in these unprecedented times: the confiscation of electronic devices, particularly cell phones, by the police.

The vast majority of court appearances in criminal and delinquency proceedings against adolescents in New York City are occurring virtually. Both Supreme Court and Family court use the “Microsoft Teams” application to conduct all kinds of appearances, ranging from arraignment to evidentiary hearings to sentencing and dispositional hearings. If a child does not “appear” in court virtually, a warrant can be issued for his or her arrest. Our clients are often required to participate in a variety of monitoring and service programming as part of their cases, and these programs are occurring virtually as well. These programs are not simply offered for the betterment of our clients lives, they are court requirements that often determine, for example, whether a child will earn Youthful Offender treatment and avoid a lifelong felony record, or whether the child is permitted to remain in the community at all. This new virtual world creates a variety of challenges for all system players, but it presents particular obstacles for youth, and it is crucial that the city address these obstacles if the criminal and juvenile justice systems are going to uphold basic values of fairness and equity during these unprecedented times.

We grapple every single day with children whose cell phones or other devices were confiscated by the NYPD during their arrest processing. In almost every case, months upon months go by and neither our clients nor we can manage to get their phones back for them. Without a phone, young people cannot log into their court appearances. They also cannot, for example, call their attorneys, their probation officers, the programs they are mandated to attend virtually, the remote therapy sessions they are required to complete, or conduct their court-ordered curfew checks. The inability to do all of these things can have grave repercussions for a young person, and there is nothing they can do about it. Some youth are able to borrow a phone or another device from a parent, but many parents work all day and take their phones with them. If parents stay home from work so that their child can fulfill his court or other court-ordered obligations – which many do – they lose money to support their family and sometimes even put their jobs at risk. Moreover, the vast majority of young people in the criminal and juvenile justice systems come from low-income families. Often the phone that was confiscated was the only phone the family had, and therefore not only can the young person not borrow a phone from a family member, the entire family is left disconnected. Just recently a 16-year-old client of mine was arrested in his home and every electronic device in the house was confiscated, and now multiple siblings have no way of logging in to remote school. Combined with the DOE’s abysmal provision of functional laptops or tablets to its students, this family has now been floundering for months. For a 14-year-old client, whose case has been pending for almost a year with literally no action on the prosecution’s part to move it forward, and where there is no apparent relationship between the phone and the case against him, this confiscation is a maddening financial hardship. His mother is in a binding service contract for this phone, and she continues to pay it each month despite not having the phone itself – she has had to do this through a house fire that destroyed everything she owned, through a hospitalization for COVID that kept her from work, and with no end in sight or answers about when they will get the phone back.

In some cases, of course, a phone is legitimate arrest evidence, and in those cases it makes sense that the NYPD would need to keep and access it for a period of time. These scenarios represent a fraction of the cases we see where our clients lose their phone to the police, often permanently. In theory, when someone is arrested, their phone should be “vouchered” either for safekeeping or as arrest evidence, and the owner should receive a paper voucher explaining which category their property falls into. If a phone is vouchered for safekeeping, the owner should be able to retrieve it

as soon as he is released. If a phone is vouchered as arrest evidence, the owner should obtain a release, generally from the prosecutor's office and typically not until the case is over, to retrieve the property. But none of this goes as it "should." The NYPD often provides young people with no paperwork at all, and the youth has no idea whether they are permitted to get their phone back and if so, how. In many instances, phones are vouchered as arrest evidence when they have no discernable connection to the criminal case whatsoever, though prosecutors routinely refuse to release these items. My colleagues and I spend hours on the phone with local precincts, One Police Plaza, and prosecutors' offices trying to figure out where our clients' phones are and how we can get them back. We instruct our clients according to the information we are given, and they hit dead ends, spending hours and days traipsing around the city, negotiating with property clerks and police officers to no avail. Even for us – competent adults with a working knowledge of the system—it is a wild goose chase with no guide or instructions. Months go by and neither they nor we can manage to get their phones back.

In "normal" times, a phone getting inexplicably vouchered as arrest evidence and remaining unobtainable until the completion of a months-long case is hardship enough. But in a time when that phone represents a young person's entire ability to engage with family, school, work, and, most relevant here, court appearances and obligations, and when cases are dragging on for many months longer than usual, that confiscation is completely unjust and unacceptable. We urge City Council to take up and investigate this issue further, and to ensure that the NYPD and prosecutors' offices (Both District Attorneys' offices and Corporation Counsel) are only preventing a young person from retrieving their property when it is a genuine piece of evidence in a case, and that this confiscation lasts for only as long as it is absolutely necessary. In all other instances, The NYPD needs to properly categorize property as simply vouchered for safekeeping, and young people and their families need to receive clear, easy-to-follow instructions for how to get that property back as soon as possible. Young people and their families are struggling unnecessarily, and this messy and flawed system is preventing our youth from being able to comply with court proceedings and directives, despite the demand that they do so. This problem must be tackled immediately.

Thank you again for your attention to this important issue for our city's most vulnerable young people. If you have any questions about my testimony, please contact me at kdezengotita@nycds.org.