

Testimony of  
**Commissioner Joe Ponte,**  
**New York City Department of Correction**  
before the  
**New York City Council committees on**  
**Fire and Criminal Justice Services and Juvenile Justice**  
regarding  
**Examining the Treatment of Adolescents in New York City Jails and Reviewing the United States**  
**Department of Justice's Report on Violence at Rikers Island**  
October 8, 2014

Good morning Speaker Mark-Viverito, Chairs Crowley and Cabrera, and members of the City Council committees on Fire and Criminal Justice Services and Juvenile Justice. I am Joe Ponte, Commissioner of the Department of Correction (DOC). Thank you for letting me testify before you today. Beside me are Acting Chief of the Department, Martin Murphy, and Deputy Commissioners Errol Toulon, Michael Blake, and Erik Berliner. As you know, I joined the Department of Correction in April of this year. I have a 40 year corrections career. Most recently, I served as Commissioner of the Maine Department of Corrections where I instituted substantial reforms that impacted the management of the correctional system there.

Since my first testimony before the City Council six months ago, I have undertaken a top to bottom review of the Department's policies, personnel, and practices, with special attention to a review of conditions for adolescents. As I have said repeatedly, the challenges that DOC faces will not be resolved with a few memos, partial policy revisions, and a staff meeting. It will take fundamental change to undo years of declining conditions and that takes time.

This hearing is specific to the management of the adolescents in our custody and the recent report by the Department of Justice. I am pleased to note that the management of the adolescent population is among the areas in which we have seen recent improvement. Just days after I arrived in New York City and before I ever read the Department of Justice report, it was clear to me that we needed to re-think the ways in which we manage this population. I immediately identified a working group that has spent several months carefully assessing and implementing changes to our approach to adolescent inmates. This working group includes RNDC Warden James Perrino, who joins me today, Assistant Commissioner Winette Saunders-Halyard of Community Partnerships and Program Development, uniform and civilian staff of various ranks, including union representatives, and staff from DOE and DOHMH.

We are seeking support and partnership in this planning, locally and nationally, and have called in the highly regarded McKinsey Consulting Group to conduct an independent outside analysis of our operation. Additionally, this week, DOC hosted a *Brainstorming Session on the Future of Adolescent and Young Adult Services*, which was attended by national experts, local stakeholders, and city officials from

MOCJ, ACS, DOHMH, and DOE, including; Barry Krisberg, UC Berkeley; Ned Loughran, Council of Juvenile Correctional Administrators; among others.

Because of the pending status of the DOJ matter it is not appropriate for me to speak about our responses to its recommendations. However, I do want to make clear that we take DOJ's criticisms and concerns very seriously. Meaningful and necessary reforms are already underway, based on recent and ongoing planning, and we expect to and must take the necessary steps to satisfy the concerns raised in the DOJ report. We believe that our reform agenda will systematically address issues concerning recruitment, training, staffing, programming, use of force, and investigations.

Fundamentally, the problem is that for at least a hundred years, adolescent inmates were treated the same way as adult inmates. In the recent past we have seen the emergence of brain science that shows that young people's development may continue into their mid-twenties and yet, at DOC, we have historically acted as though 16 year olds are able to abide by rules and navigate jails as though they were fully fledged adults.

As you know, New York is one of only two states to treat 16 year olds as adults in the criminal justice system and one of just 11 to do so with 17 year olds, so there were not many models to study. Instead, we focused on reasonably successful juvenile justice approaches from across the country, visiting nearby systems in Maine, Massachusetts and Connecticut and those as far away as Washington State. We have seen and learned from the different approaches these systems take toward better managing their juveniles and have worked to adapt those principles to our own facilities.

The working group integrates many perspectives, uniformed and civilian, command staff and line staff. They have been engaged at every rank ensuring clarity and commitment about both the mission and the expectation that we will reform this facility. In addition, the working group sought participation from key stakeholders such as the unions representing our workforces, the Department of Health and Mental Hygiene and the Department of Education. The goal is not a short-term fix but rather a comprehensive solution.

Reforms emerging from this initiative focus on five main areas: staff recruitment and training; custody management; educational services; program and reentry services; and family engagement. And these reforms have resulted in a significant reduction in Uses of Force (A, B and C) at RNDC. In April we had 28 UOFs, in May: 27, in June: 15 in July: 13 and August: 18. This represents a significant reduction from the previous year. Our goals are to foster positive youth development where possible, reduce violence among adolescents and assist adolescents in their transition back home after they are discharged.

### **Staff Recruitment**

We have developed a questionnaire to identify staff best suited for working with young inmates, such as those who have experience working with these populations before coming to DOC. We have created a new training curriculum focused on youth brain development, crisis prevention and management, and trauma-informed care for adolescents and young adults, which was integrated into the Academy's curriculum in September.

Already, RNDC, the jail in which the adolescent males are housed, feels like a different place. We reduced the inmate-to-staff ratio in the housing areas from 33-to-1 down to 15-to-1, as of September 2. This follows best practices from the juvenile justice field. The numbers mentioned above bear out that our approach is working. We view this as a significant step toward proving that the approach we are taking to managing RNDC differently is having the desired impact and that we are going to be able to sustain that impact.

### **Custody Management**

In addition to changes in recruitment, training and staffing, we are revising policies. The Use of Force (UOF) policy is being revised, which will serve as a road map for all future training, including changes to the training curriculum. As I have noted at the Board of Correction and in other forums, we have made gains in violence reduction despite a commitment to ending the use of punitive segregation for adolescent inmates by the end of the year. In August, the average adolescent punitive segregation census was thirty; today it is twenty. We are actively working toward having no adolescents in punitive segregation. I believe that we can effectively maintain the good order and security of our facility without the use of this tool, but must do so in a way that keeps the staff and inmates safe. We are evaluating our alternatives and expect to implement them before the end of this year.

### **Educational Services**

We are also focusing on developing programming since those opportunities that reduce inmate idleness have been shown to reduce incidents and also help prepare inmates to succeed and stay out of custody following their release. These include case management, a review of adolescents' needs, and the provision of mentoring services to assist with their successful transition back to the community.

All 16 and 17 year olds are required to attend school. We have worked closely with Timothy Lisante, DOE District 79 Superintendent, and other partners to reshape the school schedule for this academic year. Under our new approach we are able to provide each student with their education while also making additional services and recreation opportunities available to them.

### **Program and Reentry Services**

We are supplementing our educational reform with programming and reentry services. The ABLE program, funded by the social impact bond, continues to provide a cognitive behavioral therapy program to all adolescents each weekday and includes additional opportunities for enhanced recreation or access to a game room and/or movie night as an incentive for program achievement and prosocial behavior.

Efforts to further expand the program offerings include a partnership with the nonprofit organization Friends of Island Academy to develop a discharge planning model that aims to ensure that every youth in the Department's custody receives a needs assessment and support during incarceration and upon discharge. Starting in August of this year, reentry services have included collaboration with existing

service providers located on Rikers Island as well as community-based organizations. These services begin during incarceration and continue after release in an effort to reduce recidivism. We have also partnered with community-based agencies and individuals to develop a robust program schedule for adolescents to engage in positive behaviors and meaningful programs that are conducive to their overall development during the summer months, as well as throughout the year. The main tenets of these initiatives are violence intervention and prevention programming which became operational in July 2014, and include:

- Partnership with Life Camp to introduce violence intervention and prevention programming.
- Partnership with two non-profit organizations: Animal Care and Control and Instinct Dog Behavior and Training, as well as DOHMH, to train dogs at risk of being euthanized. We also partnered with Rescue Dogs Rescue Soldiers to use therapy dogs to encourage pro-social behaviors for adolescents.
- And implemented a 1:15 custody management model for (male inmates age 16 and 17) which costs \$4.4 million annually.

Additionally, we have implemented a **family engagement** model:

Guided by research showing that inmates who maintain strong family ties are less likely to return to custody, DOC has also implemented a “Next of Kin” initiative to increase opportunities to engage the families of adolescents by contacting parents/guardians, and conducted focus groups with parents of adolescent inmates aimed at developing a toolkit to assist families with incarcerated adolescents. This toolkit will be completed by the end of this year. This represents just a partial list of recent accomplishments.

We are taking a series of steps needed to ensure safety and accountability. We have also prioritized camera installations in RNDC in the places where blind spots remain, such as the school and the clinic. We are revamping our Investigation Division to include additional investigators and new leadership. In fact, beginning next week, an investigative team consisting of one supervisor and four investigators and will be assigned at RNDC fulltime to investigate all uses of force and ensure staff integrity. We are also in the process of implementing a new case management system which will assist us in developing an early warning system to improve the Department’s ability to manage its investigative caseload and better manage its workforce.

Life in RNDC for 16-17 year olds is different today than it was six months ago. Since the 18-year-olds were pulled from the adolescent population, the number of adolescents in the facility has been cut in half. Housing areas are half the size they used to be. Adolescents’ days are scheduled almost completely with schooling and programming. The facility staff are trained and dedicated to working with the adolescent population specifically.

Taken together, these reforms form the base of a better approach to our adolescents. But perhaps the most important reforms we are making are cultural. We emphasize that managing adolescents is different than managing adults. We have made it clear that there is no place in our organization for the small percentage of staff who may use excessive force. The majority of my staff are committed to DOC

and perform their duties in a professional manner in such an environment that challenges them every day.

I have discussed the problems I see openly with my staff and have asked agency leadership to do the same with their staff at each rank and in each division—especially as relates to general issues of violence in the jails. The DOC needs to radically change to be a high functioning system and we are committed to achieving that goal. We will not stop until the New York City Department of Correction becomes a national correction leader in the management of adolescents.

I would now be happy to answer any questions you may have.



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Michael J. Regan

Amanda Masters, Esq.  
*Acting Executive Director*

**BOARD OF CORRECTION**  
**CITY OF NEW YORK**  
51 CHAMBERS STREET, RM 923  
212 788-7840 (Office)  
212 788-7860 (Fax)

TESTIMONY OF THE HONORABLE BRYANNE HAMILL  
CHAIR OF ADOLESCENT COMMITTEE  
MEMBER OF THE BOARD OF CORRECTION

New York City Council Oversight Hearing - Examining the Treatment of Adolescents in New York City Jails and  
Reviewing the United States Department of Justice Report on Violence at Rikers Island

BEFORE THE JOINT COMMITTEES OF  
THE COMMITTEE ON FIRE AND CRIMINAL JUSTICE SERVICES, AND  
THE COMMITTEE ON JUVENILE JUSTICE

OCTOBER 8, 2014

Good morning Chairpersons Crowley and Cabrera, and members of the committees. I am Judge Hamill, the Chair of the Adolescent Committee of the New York City Board of Correction, examining areas for reform and revision of our regulations concerning conditions of confinement. I am a retired NYC Family Court Judge, former Assistant District Attorney and psychiatric nurse. Thank you for the opportunity to testify today regarding incarcerated adolescents in the New York City jail system.

The Board of Correction (BOC) establishes and ensures compliance with minimum standards regulating conditions of confinement and health and mental health care in all City correctional facilities. The Board monitors conditions in the City's jails, investigates serious incidents, evaluates the performance of the Department of Correction (DOC), and makes recommendations in critical areas of correctional planning.

Additionally, the City Charter authorizes BOC to promulgate "minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction of the department."<sup>1</sup> The Minimum Standards are codified under Title 40 of the Rules of the City of New York, and may also be found on our website at [www.nyc.gov/boc](http://www.nyc.gov/boc). We are in rule making now regarding these standards, including discipline and the imposition of solitary confinement.

In 1978 the Board adopted the first set of Minimum Standards to provide the basic elements necessary to promote safe, secure and humane jail environments. The original Standards provisions sought to ensure non-discriminatory treatment of prisoners, and regulated classification, personal hygiene, overcrowding, lock-in, access

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<sup>1</sup> See *id.* § 626(e).

to recreation, practice of religion, access to courts, visiting, telephone calls, correspondence, packages, publications, and access to media. The original Standards remained substantially unchanged until 1985, when the Board promulgated three important amendments to Standards provisions regulating overcrowding, law libraries, and the variance process. The Board promulgated additional amendments to the Standards in 2008.

Spurred by its longstanding concern about inmate suicides, the Board held public hearings in the early 1980s to explore the quality and availability of mental health services provided to prisoners. Thereafter, the Board developed Mental Health Minimum Standards for the City's jails. The Board also promulgated Health Care Minimum Standards in 1991, which require that the quality of services provided to prisoners be consistent with "accepted professional standards and sound professional judgment and practice".

The Board of Correction is a non-mayoral agency created by the City Charter, and is independent of the Department of Correction (DOC). The City Charter provides for nine BOC Board members, three of whom are appointed by the Mayor, three by the City Council, and three are nominated jointly by the presiding justices of the appellate division of the Supreme Court for the first and second judicial departments.<sup>2</sup> Board members serve for terms of six years, and the Mayor designates the Chair from among the members.<sup>3</sup>

Turning our attention to the subject of this hearing, as of Monday, October 06, 2014 the inmate population in the City's jails was 10,963 which is more than a thousand fewer than the same date last year. The Robert N. Davoren Complex (RNDC) is the building designated for adolescents. Adolescents are currently defined as 16 and 17 years old. Young adults are now defined as 18 -21 years old.

However, many of the RNDC housing areas are populated with adult prisoners. The capacity of the facility is listed as 1,453, which is large enough to house nearly all of the adolescents and young adults. The board has not been successful in convincing DOC that the better policy would be to remove all of the adults from the building. The current percent of capacity for RNDC is 61%. As a result of the fact RNDC houses both adolescents and adults, the federal Prison Rape Elimination Act (PREA) appears to be violated regularly through sight and sound contact between adolescents and adults in the intake pens, buses to court, special housing, and utilizing adult suicide prevention aides.

For the month of September, system-wide, there was an average of 271 adolescents aged 16-17 and 232 18 year olds in the jail system. 18% of the adolescents are in solitary confinement, and 22% of the young adults are in solitary. Of the total population, both adults and the young, 4.9 % are held in punitive segregation (solitary confinement).

From 2007 through June 30, 2013, the number of punitive segregation beds in the City jail system had grown from 614 to 998, a 61.5% increase. On January 1, 2004, 2.7% of the inmate population was in punitive segregation. By June 30, 2013 the percentage had jumped to 7.5%. During the same time period, the rate of use of force incidents more than tripled. In fact in the first six months of 2013, there were 1,427 uses of force incidents compared with 1,402 for all of 2004, despite the fact that the average daily population was lower by more than 2,000 inmates. This is at a time when the level of crime and violence in the city as a whole has been declining, whereas the percentage of mentally ill inmates in the Rikers Island jail has been steadily increasing. The increased use of punitive segregation appears to correlate to increased violence.

After a multi-year investigation, on August 4, 2014, the Department of Justice issued a scathing report about violence experienced by the adolescents who are detained on Rikers Island. During this investigation, the BOC provided documents, data, and assistance to the DOJ. Some of their conclusions were as follows:

We conclude that there is a pattern and practice of conduct at Rikers that violates the constitutional rights of adolescent inmates. In particular, we find that adolescent inmates at Rikers are not adequately protected from harm, including serious physical harm from the

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<sup>2</sup> See *id.* § 626(a).

<sup>3</sup> *Id.*

rampant use of unnecessary and excessive force by DOC staff. In addition, adolescent inmates are not adequately protected from harm caused by violence inflicted by other inmates, including inmate-on-inmate fights. Indeed, we find that a deep-seated culture of violence is pervasive throughout the adolescent facilities at Rikers, and DOC staff routinely utilizes force not as a last resort, but instead as a means to control the adolescent population and punish disorderly or disrespectful behavior. Moreover, DOC relies far too heavily on punitive segregation as a disciplinary measure, placing adolescent inmates—many of whom are mentally ill—in what amounts to solitary confinement at an alarming rate and for excessive periods of time.

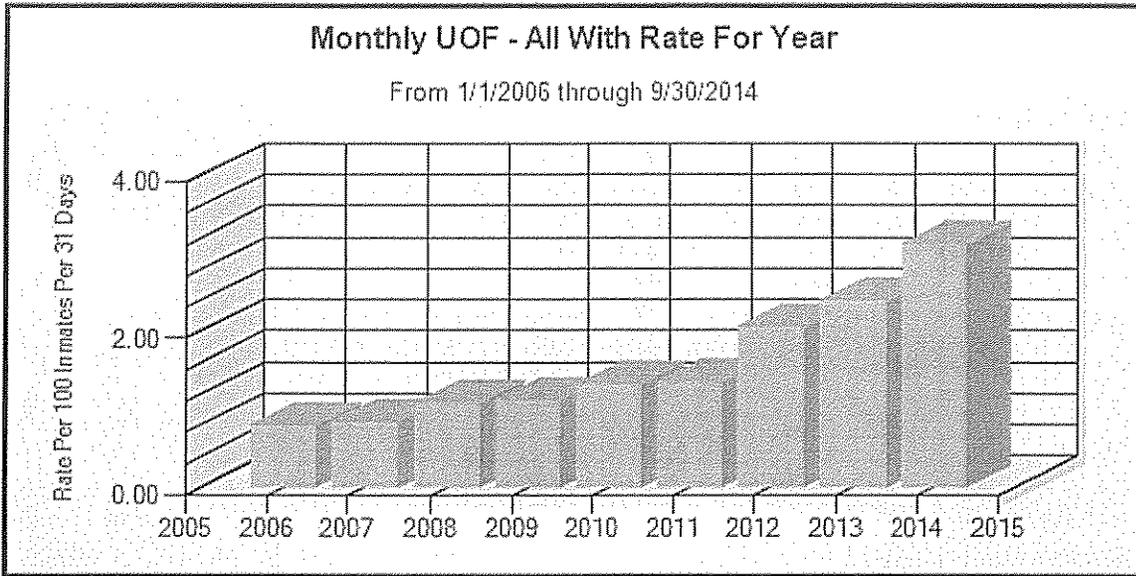
... these conditions have resulted in serious harm to adolescent inmates at Rikers. As a result of staff use of excessive force and inmate violence, adolescents have sustained a striking number of serious injuries, including broken jaws, broken orbital bones, broken noses, long bone fractures, and lacerations requiring sutures.

....Our focus on the adolescent population should not be interpreted as an exoneration of DOC practices in the jails housing adult inmates. Indeed, while we did not specifically investigate the use of force against the adult inmate population, our investigation suggests that the systemic deficiencies identified in this report may exist in equal measure at the other jails on Rikers.

Through resolution at our September meeting, the Board of Correction adopted the findings of the DOJ CRIPA report re RNDC and urged the city and DOC to carefully weigh and consider implementing the remedial measures and best practices contained therein as reasonable means to address the culture of violence and remedy the pervasive constitutional rights' violations of incarcerated adolescents

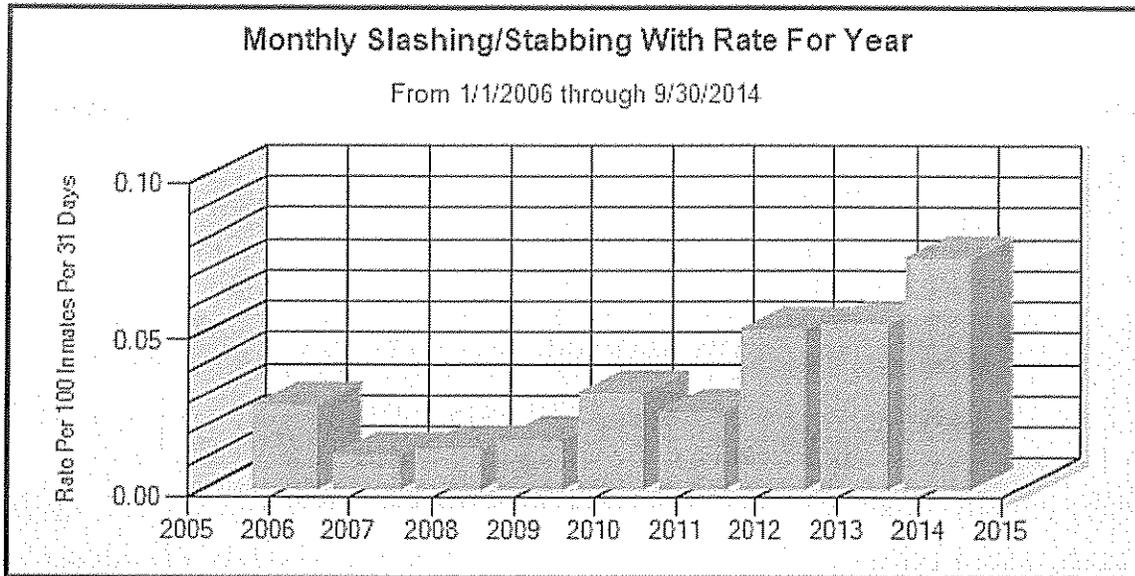
The Board of Correction knows, based upon its own investigations, and as the DOJ CRIPA report suggested, that the findings regarding the "culture of violence" apply to all of Rikers Island, not just RNDC. Slashing and stabbing incidents system-wide are up for the year. There are 72 so far this year with three months to go. Last year there were a total of 73. In the last seven months, there have been seven or more slashings and stabbings in each month. The last time that there were seven consecutive months with seven or more such incidents was 1998. The Department's imposition of a 9 pm curfew (locking inmates in the cells a couple of hours earlier) has not resulted in any diminution of violence among the inmates. Numbers continue to climb.

Uses of force by staff on inmates have continued to climb at an alarming rate. In the entire calendar year of 2004 there were 961 staff uses of force on inmates, an average of 80 per month. In just September of 2014, we had 405 uses of force.



Year	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL	Rate	Census	Days
2006	88	84	115	105	115	114	124	106	102	130	102	114	1299	0.800	13,789	365
2007	112	80	134	131	97	111	107	122	110	148	144	106	1402	0.847	14,060	365
2008	130	107	107	133	176	129	148	136	144	156	174	197	1737	1.086	13,545	366
2009	148	132	142	158	150	149	147	143	126	141	155	151	1742	1.121	13,194	365
2010	168	146	160	190	168	175	186	169	168	176	166	158	2030	1.324	13,023	365
2011	139	136	152	174	190	155	172	160	190	173	156	178	1975	1.351	12,419	365
2012	219	204	217	229	259	257	291	242	252	287	245	230	2932	2.056	12,078	366
2013	241	230	253	239	252	212	255	282	301	352	304	364	3285	2.387	11,687	365
2014	382	334	330	264	291	324	347	342	405				3019	3.117	10,999	273

The frequency of Use of Force incidents continue at an unexplainable rate. The average daily population has decreased every year since 2007 yet the number of incidents has increased from 1,402 to 3,285 in 2013 and 3,019 in just nine months of 2014. The 405 incidents in September represents the highest monthly total ever.



Year	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL	Rate	Census	Days
2006	1	3	3	3	4	3	8	7	2	3	3	4	44	0.027	13,789	365
2007	1	1	1	3	2	3	4	0	1	1	1	1	19	0.011	14,060	365
2008	1	2	1	1	1	5	2	2	2	0	2	2	21	0.013	13,545	366
2009	1	1	5	1	1	2	3	2	2	1	3	3	25	0.016	13,194	365
2010	2	6	4	3	1	4	5	3	8	3	4	5	48	0.031	13,023	365
2011	2	3	0	7	2	1	4	5	4	3	1	4	36	0.025	12,419	365
2012	7	7	3	2	7	10	10	4	4	9	6	4	73	0.051	12,078	366
2013	9	6	1	4	7	4	5	3	7	6	8	13	73	0.053	11,687	365
2014	4	3	8	8	11	14	7	8	9				72	0.074	10,999	273

Although the number of slashing/stabbing incidents is low compared to use of force incidents, the number of incidents doubled from 2011 when there were 36 to 73 in both 2012 and 2013. This year there have been 72 through the first nine months. When factoring in the decline in population, the rate has increased another 50% this year.

The culture of violence, which is most harmful to youth during their formative years, continues unabated. While the Department of Correction attempts to reduce this violence, the youth must be removed from this environment for their own safety and well being.

Further, the DOJ report finds there is an overreliance on the imposition of punitive segregation for the adolescent population, many of whom are mentally ill, which is also extremely harmful to the youth. Even now, for the 259 inmates ages 16-18 at RNDC this past week, 62 were in some form of solitary confinement as punishment for rule infractions, most commonly fighting. Of those 259 inmates, nearly 100 of them are documented to have special education needs.

On September 9, 2013, the Board unanimously approved a motion to initiate rule-making on the heavy use of punitive segregation. The lengthy rule-making process examines conditions for inmates in punitive segregation, including adults, and our vulnerable populations such as adolescents and those with mental illness. Pending

conclusion of our rule-making early next year, the Board of Correction supports prohibiting solitary confinement for all incarcerated youth under the age of 19, and commends Commissioner Ponte's plan to end it for adolescents by the end of this year.

By nature, youth have immature, not fully formed brains, less capable of impulse control and good reasoning and decision making power, and thus, less capable of following rules. Further, the youth incarcerated in the city jail system more often than not suffer emotional and mental health problems, alcohol and substance abuse, and have developmental disabilities, and histories of trauma and traumatic brain injury. They may or may not have been in mental health services beforehand. Most of the youth incarcerated are in need of mental health services while in jail. Furthermore, there is insufficient mental health services available to adolescents in general population, and even specialty housing. Minor rule infractions result in solitary confinement of adolescents, which causes substantial harm to them developmentally, emotionally, mentally, educationally, socially and physically, and will likely result in greater incidence of self-harm and violence.

In addition to being subjected to violence and isolation, the basic needs of detained adolescents at Rikers are often unmet during their months and years of waiting for trials. I urge the state of NY to raise the age of criminal responsibility to age 18. However, until then, the adolescents in the adult system are entitled to, and should, be treated the same as adolescents in the juvenile justice system. Unquestionably, RNDC is an adult facility in an adult jail system that houses some adolescents, with a linear layout that cannot be converted to a juvenile justice model as recommended by DOJ. This facility should contain small housing units with large community areas conducive to direct supervision and engagement of clinical and custodial staff, which is community based with easy access for family and friends, programming, education, and recreation.

So long as adolescents are housed in the city jails, I recommend implementing youth appropriate programming with incentives and a graduated sanctions disciplinary system; appropriate educational services, including special education services; expanding recreation; building a therapeutic community and culture of respect; the assignment of steady, committed, and well trained custodial and clinical staff; expanding mental health services for the adolescents in general population; providing richly staffed and robust specialized intensive mental health units and mental health services overseen by an adolescent psychiatrist specialized in adolescent psychopharmacology with adolescent psychologists and psychotherapists expert in assessment, diagnosis, and treatment for this adolescent population. For an extensive study of best practices for our adolescent population, I incorporate by reference Cardozo Law School's "Rethinking Rikers" report, prepared for the BOC and attached to my written testimony today.

Simply put, the current Rikers facilities are not conducive to the recommended reforms by DOJ and national best practices. However, the DOC facilities off Island, like Manhattan and Brooklyn Houses of Detention, are widely acknowledged to have a calmer culture and better morale. As officers tell me, such plum assignments off Island would reward excellent officers and incentivize others to seek training and steady assignments with adolescents. We cannot wait till the age of criminal responsibility is raised but must create a calmer culture of a therapeutic community in a safe, secure community based environment sensitive to the unique needs of adolescents and supportive of officers who work with them now.

We are fortunate that our new administration, commissioners and wardens are committed to reform. But, as the DOJ has said, this reform must be meaningful, lasting, and enforceable for the future.

On a final note, regarding Commissioner Ponte's young adult initiative of housing 18-21 year olds together, we support and commend this innovative initiative. However, in light of the DOJ report and findings, we recommend cameras be installed wherever they may be and certainly in their housing units. We support their need for additional staffing, a "C" officer, as initially requested by the Wardens of GMDC and GRVC, as necessary to support the initiative for safety in the housing areas. As informed by psychiatric experts during our rule making, we must be mindful that the neurobiology of youth and young adults under 25 is such that violence is much more likely when incarcerated and movement restricted. And thus, extensive programming, education, recreation and robust mental health services are critical to their wellbeing while incarcerated.

Thank you for the opportunity to testify, and I would be happy to answer any questions.



**THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER**

TESTIMONY OF NEW YORK CITY COMPTROLLER  
SCOTT M. STRINGER

BEFORE MEMBERS OF THE  
COMMITTEE ON JUVENILE JUSTICE AND THE  
COMMITTEE ON FIRE AND CRIMINAL JUSTICE SERVICES  
OF THE NEW YORK CITY COUNCIL

OCTOBER 8, 2014

Thank you, Chairperson Cabrera and Chairperson Crowley, for holding this hearing today on an issue of critical importance to our City: the treatment of young people at our City jails.

Recent months have made clear the disturbing treatment of juvenile prisons in City facilities. Reports by the United States Attorney and by investigative journalists at the New York Times have exposed persistent and pervasive patterns of brutality and force, dealt out to offenders as young as 16. According to the US Attorney, 43% of young men in custody as of 2012 were subjected to use of force by Rikers staff. These are young men and women who are awaiting trial and not yet convicted of any crime.

The fact that our children are jailed at all makes New York an outlier among our states. Today, New York is one of only two states that continues to prosecute 16- and 17-year olds through the adult criminal justice system.

- According to Chief Judge Lippman, up to 50,000 16- and 17-year-olds are arrested annually in New York, mainly for minor, non-violent crimes, and prosecuted as adults in criminal courts;
- New York spends roughly \$266,000 per child yearly to house young offenders in detention facilities;
- And the return on that investment is horrendous: an 89% recidivism rate for boys and an 81% recidivism rate for girls over a 10-year period.

This system imposes huge costs on our City and State—not just in terms of taxpayer dollars, but also in the opportunity lost when young people are unable to learn from their mistakes and find that the doors of rehabilitation and redemption are closed to them.

As a result, I supported the State bill raising the age of criminal responsibility to 18 years-old, S1409/A3668A, in Albany this year and I urge the Council to pass Resolution 378, which calls on the State Legislature to pass and the Governor to sign this bill into law.

As we support legislation raising the age for criminal responsibility, we must also address the urgent crisis facing adolescents in New York City jails.

My office recently issued a ClaimStat report showing that Personal Injury Correctional Facility claims rose 37 percent between FY 2013 and FY 2014 and have risen 114 percent since FY 2009. This rise in claims not only highlights the increase in violence at Rikers, but has also led to a rise in settlements and judgments against the City, costing taxpayers millions of dollars.

The subsequent ClaimStat Alert also provides a facility-by-facility breakdown, showing how claims activity at certain jails has soared in recent years.

At the Robert M. Davoren Center, where most adolescents are held, claims rose 72 percent in the last fiscal year alone. In addition, claims have risen by 174 percent over the past five years at the Otis Bantum Correctional Center, which includes the largest segregation unit, where inmates are held in solitary confinement.

While other jurisdictions have reduced solitary population, New York City has gone the other way. That's bad for public health and costly to the public purse.

We've known this for centuries.

In 1831, Alexis de Tocqueville visited the United States for a ten-month tour of penitentiaries, including Auburn prison near the Finger Lakes.

What Tocqueville witnessed at Auburn was a system of solitary confinement that caused grave harm to individuals. "[T]his absolute solitude, if nothing interrupts it, is beyond the strength of man; it destroys the criminal without intermission and without pity; it does not reform, it kills."<sup>1</sup>

Tocqueville's eloquent testimony has been buttressed by modern scientific study and current jurisprudence. Solitary confinement has been demonstrated to have an insidious and lasting effect on the psychology and wellbeing of minors. Punitive solitary confinement can even exacerbate the rate of violence incidents and self-harm in a prison.<sup>2</sup> Consequently, it comes as no surprise that other states that have sharply limited solitary confinement, such as Mississippi, have witnessed a steep decline in prison violence and significant monetary savings.<sup>3</sup>

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<sup>1</sup> Alexis de Tocqueville and Gustave de Beaumont, "On the Penitentiary System in the United States and Its Application in France," available: [http://www.correctionhistory.org/tocqueville/html/B&T\\_report1.html](http://www.correctionhistory.org/tocqueville/html/B&T_report1.html).

<sup>2</sup> <http://www.jstor.org/stable/10.1086/500626>;

<https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf>.

<sup>3</sup> <http://www.nytimes.com/2011/08/02/opinion/cruel-isolation-of-prisoners.html>; Mississippi reduced its solitary population from nearly 1,000 to about 150.

In recent years, the Supreme Court of the United States has issued a series of rulings limiting criminal punishment of adolescents. The Court has distilled scientific studies about youth psychology and brain development into a clear and unambiguous conclusion: youth matters.

The same conclusion applies to the treatment of the hundreds of adolescents at Rikers Island—which include some of the most troubled and vulnerable youth in New York City. Together, we can root out the culture of violence at Rikers and make sure that these teenagers have the opportunity to continue their education and have access to the support they need to succeed.

In June, City Hall responded to the increase in violence at Rikers and concerns about mental health treatment by forming the Task Force on Behavioral Health and the Criminal Justice System, which is charged with developing a plan to “transform the city’s criminal justice system, so that it addresses the needs of individuals with behavioral and mental health issues more appropriately and effectively.”

Thus, while I am encouraged by the recent announcement of the Department of Correction (DOC) that it will end the use of solitary for 16- and 17-year-old inmates by the end of 2014, the DOC should engage in a broader review of its use of solitary at Rikers.

We believe that our ClaimStat report is yet another tool—along with the groundbreaking report by U.S. Attorney Bharara—for Commissioner Ponte to use to craft reform that makes Rikers safer for inmates and corrections officers alike.

Thank you.



DANIEL SQUADRON  
SENATOR, 26TH DISTRICT

THE SENATE  
STATE OF NEW YORK

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CODES  
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COMMITTEES  
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& COMMISSIONS  
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INVESTIGATIONS AND  
GOVERNMENT OPERATIONS  
JUDICIARY  
SOCIAL SERVICES  
TRANSPORTATION

**Testimony of State Senator Daniel Squadron**  
**to New York City Council Committee on Fire and Criminal Justice Services on the**  
**Treatment of Adolescents at Rikers Island**  
**October 7, 2014**

My name is Daniel Squadron, and I represent the 26th District in the New York State Senate. My district includes the Manhattan neighborhoods of Tribeca, Battery Park City, the Lower East Side, Chinatown, the Financial District, Greenwich Village, Little Italy, SoHo and the East Village and the Brooklyn neighborhoods of Greenpoint, Williamsburg, Vinegar Hill, DUMBO, Fulton Ferry, Brooklyn Heights, Cobble Hill, and Carroll Gardens. I am the ranking member of the Senate Codes Committee. Thank you for the opportunity to testify at this hearing on the treatment of adolescents at Rikers Island, and I thank the Fire and Criminal Justice Services Chair Elizabeth Crowley for convening it.

Many of the problems at Rikers can, unfortunately, be seen in a single case recently chronicled in the *New Yorker*. Kalief Browder was 16 years old when he was arrested in May 2010, accused of stealing a backpack. He was sent to Rikers and spent three years in pre-trial detention.

Kalief was taken to Rikers to await trial because New York State is one of only two states nationwide (the other is North Carolina) where the age of adult criminal responsibility is 16.

Many studies have shown that locking kids up doesn't make us safer. In fact, the recidivism rate of first time offenders released from adult prisons is near 80 percent. In addition, studies have clearly indicated that youth jailed in adult systems are at greater risk of physical violence, including sexual violence, both by inmates and by guards. In addition, in the 2013 fiscal year, about 51 percent received a mental illness diagnosis, compared with about 38 percent for the overall population

As a 16-year-old, Kalief would have been in high school were he not awaiting trial at Rikers. Instead he spent more than 700 days in solitary confinement. He wanted an education, but because he spent so much time in solitary, much of his education consisted of filling out a worksheet that a correction officer would slide under the door, and at times, not even bother to pick up.

Even if he weren't in solitary, the options would have been dismal. A recent report issued by the U.S. Attorney for the Southern District of New York highlighted the problematic school environment for those trying to gain an education on Rikers. The report found that a disproportionate amount of violence against adolescents occurs at the island's schools. A frequently cited analysis by the RAND Corporation found inmate participation in correctional education programs reduced the chance of recidivism by 43 percent.

This is particularly disturbing since the U.S. Attorney's report also focuses on the developmental harm that solitary confinement can cause adolescents. I commend Commissioner Ponte for his decision to eliminate solitary confinement for 16 and 17 year olds by the end of this year, and the City Council for passing Intro 292 by Councilmember Dromm, which will increase reporting requirements on the Department of Correction's use of solitary confinement.

Also troubling is the use of solitary confinement as a punitive measure against those with a mental illness. On July 23, 2013, 140 adolescents (or 25.7% of the adolescent population) were in some form of punitive segregation housing, and 102 (or 73%) of those inmates were diagnosed as seriously or moderately mentally ill and development. Not only is the increased use of solitary confinement contrary to the national policy direction of diminishing reliance on solitary, but solitary heightens the risk of mental health problems, including suicide; and increases levels of inmate and detainee violence.

As of October 30th, 2012, 43 percent of adolescent males in custody were subject to the use of force at least once during their time at Rikers. While the adolescent population of Rikers is only 6 percent of the total population, they represent a disproportionate 21% of all incidents that are reported as use of force or serious injury. Adolescents were twice as likely to suffer blows to the heads as adult inmates. As the report notes, "staff appear to be poorly versed in conflict resolution and de-escalation skills."

Kalief Browder spent three years in pre-trial detention at Rikers -- not because he was convicted of a crime or found guilty, but because, despite a Constitutional guarantee of a speedy trial, he couldn't get one.

While awaiting the promise of a basic, foundational American right, Kalief had 31 court dates on his case, and grew from a 16 year old boy into a 20 year old man. He was offered plea deals repeatedly, but he asserted his innocence and refused to plea to a lesser charge.

Unfortunately, Kalief's case is not an outlier. A 2013 report showed that 8,063 felony cases had been pending more than six months, a 203 percent increase since 2000. That's more than half of all pending felony cases in the city. In the Bronx, where Browder was arrested, the median length of a case from arrest to disposition was 517 days, and 70 percent of felony cases surpassed the state's "speedy trial" guidelines.

And we don't know how many innocent people have pleaded guilty to a crime they didn't commit because they could no longer endure an indefinite confinement at Rikers, the consequence of a delayed trial.

Any system that jails the innocent for years at a time is both unjust and un-American. Kalief Browder spent three years locked up at Rikers because the system failed him. Broad reforms to the entire system are clearly necessary, and as the ranking member of the Senate Codes Committee, I intend to undertake a thorough review to identify changes that can address these crucial issues.

These kinds of conditions and policies are unacceptable in any case, but let's be clear who we are talking about here. As detailed in the U.S. Attorney's report, the vast majority of inmates are awaiting trial because they have not been convicted on the charge that brought them there or a

smaller fraction are serving one year or less, a sentence shorter than the maximum allowable for a misdemeanor.

The problems at Rikers Island are many and real, and must be addressed. The solution lies in a City focus on culture and internal policies, as well as reforms to State laws that have contributed to the conditions at Rikers today. The system must work better for everyone.

Thank you again for the opportunity to testify.

# RETHINKING RIKERS:

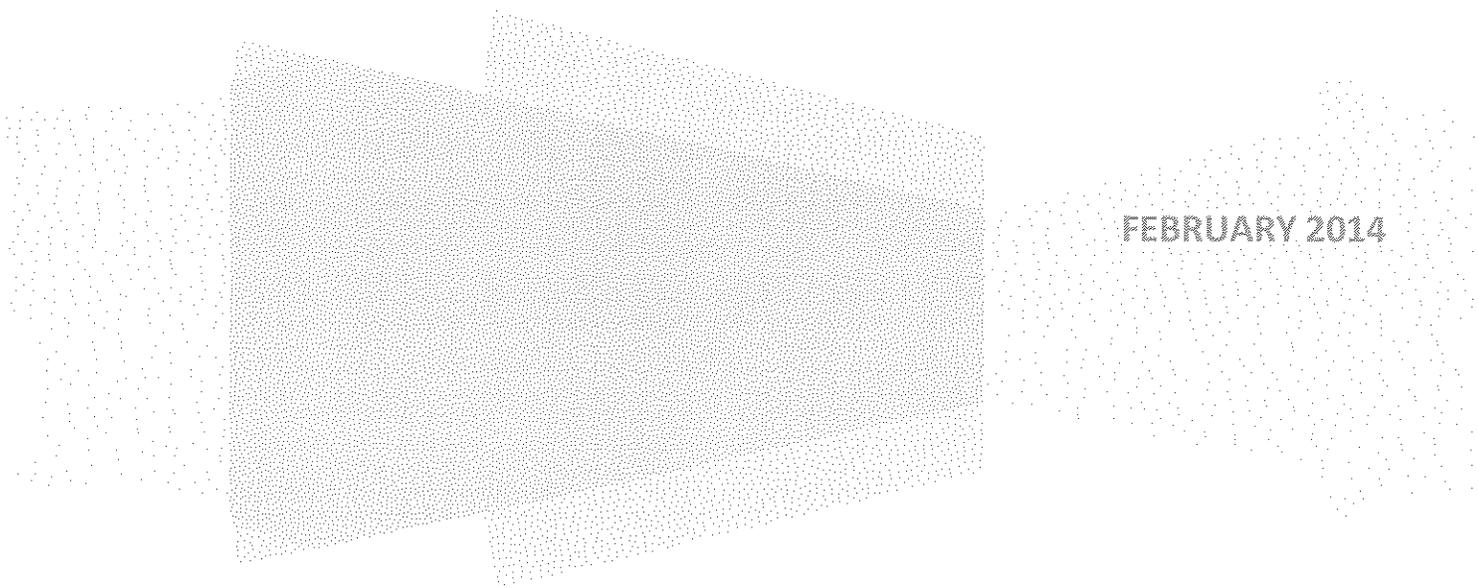
MOVING FROM A CORRECTIONAL TO A THERAPEUTIC  
MODEL FOR YOUTH

*Proposal for Rule-Making  
Report for the NYC Board of Correction*

Professor Ellen Yaroshefsky

*Prepared by:*

Melody Berkovits  
Dinisha Fernando  
Nadia Jean-Francois  
Michelle Kornblit  
Lindsay Melworm  
Casandra Tolentino  
Karina van Ginkel



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## 1. Executive Summary

“Children are not little adults . . . neurological research has made that clear.”<sup>1</sup> Consequently, a different system, or a different set of responses, is necessary to address the needs of young adults in the criminal justice system.<sup>2</sup> Yet, New York City has lagged behind other jurisdictions, including New York State, in modernizing its treatment and punishment of youth offenders. Significantly, New York remains one of only two states in the country to treat 16 and 17-year olds as adults in its courts.

More than 500 youth languish in New York City’s Department of Correction facility on Rikers Island and over 75% of them are awaiting trial. Such a system of large-scale youth correctional facilities provides little benefit for long-term public safety. On the contrary, it wastes vast sums of taxpayer dollars, and more often than not, harms the well-being and dampens the future prospects of the youth behind bars. Each year, the United States invests 6 billion dollars to incarcerate youth, and within two to three years of their release, 70-80% of these youth are rearrested on a new offense.<sup>3</sup> New York City spends \$167,000 per year to hold a young person on Rikers Island.

Instead of existing costly and ineffectual practices, policymakers should be working towards narrowing the pipeline of youth entering the criminal justice system. For those that do enter, New York City should adopt effective charging and bail policies, change case processing methods, and increase alternatives to incarceration and other services to improve outcomes for individuals. These practices would significantly reduce the number of youth in detention. Implementation of these necessary practices, however, is not within the control of the Board of Correction and is beyond the scope of this report.

This report addresses effective practices for those youth who will be detained in secure facilities. Effective policy requires a fundamental shift to a therapeutic approach with practices that are specialized for and dedicated to youth rehabilitation. This begins with the pressing need to eliminate the use of solitary confinement.

Solitary confinement for incarcerated youth across the United States has increasingly captured public attention. Although the definition varies, for purposes of this report, solitary confinement consists of extreme isolation for 22-24 hours a day with minimal human contact. The severe emotional, mental and physical harm caused by such practices is well documented. While isolation might be sparingly utilized for short periods of time in some circumstances,

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<sup>1</sup> Graham Kates, *Getting Youth Out of Adult Court*, THE CRIME REPORT, available at <http://www.thecrimereport.org/news/inside-criminal-justice/2013-11-getting-youths-out-of-adult-court> (citing Marian Wright Edelman of Children’s Defense Fund, Keynote Speech at the John Jay College of Criminal Justice “Raise the Age: Turn the Page” Conference (Nov.19, 2013)).

<sup>2</sup> *Id.* (citing Vincent Schiraldi, Commissioner of New York City’s Department of Probation).

<sup>3</sup> Missouri Model, *infra* note 78.

solitary confinement for lengthy periods is detrimental. Moreover, the practice itself has proven to be unnecessarily costly and a substantial contributor to *increased* recidivism rates.

Some states have eliminated solitary confinement altogether. Others, including New York, continue to utilize solitary confinement for adults and children alike, irrespective of the burgeoning scientific data highlighting its harmful effects. Research in the past three decades demonstrates that heavy reliance on solitary confinement and more generally, on punitive-based models for incarceration of youth, is counterproductive. It does not work to reduce aggressive, violent, impulsive, or disobedient behaviors. In fact, solitary confinement increases these behaviors.

Overall, the Rikers Island correctional model is damaging and in need of significant change. Solitary confinement is but the most extreme of the harmful practices. New York's current political climate provides an ideal opportunity to redesign the current youth detention system on Rikers Island. New York City should look to the flourishing success of models and practices in other jurisdictions and follow a fundamentally different approach to its treatment of youth in detention. We must embrace a shift from the traditional and oft-ineffective correctional facility model to the proven success of a residential treatment facility model.

This report examines the emerging research and the characteristics and models adopted by other states that are effective in the treatment of youth. It makes recommendations to change existing practices for youth on Rikers Island. These include placement of youth into closely supervised small groups, access to group therapy and positive behavioral management, extensive staff training and reorientation of staff to a therapeutic approach, alternatives to discipline, procedural safeguards and methods to carefully assess and evaluate the programs.

## 2. Recommendations at a Glance

This report presumes that by narrowing the school-to-prison pipeline, the population of youth on Rikers Island will be reduced significantly. The following recommendations and strategies, while based on this presumption, can also be implemented and adapted for the current population size.

### CHANGE FROM A PUNITIVE TO A THERAPEUTIC MODEL

#### SMALL GROUPS

*Develop small groups that establish mini communities.*

- Group youth in teams of approximately 10-12; teams should sleep in a dormitory style room and spend a significant amount of the day together, including during meals, classes, exercise and group therapy.
- Assign a youth specialist to regularly supervise and engage with a particular team.
- Implement group discussions where youth are asked to explore their feelings and address their actions.

#### THERAPY

*Adopt treatment and rehabilitation mechanisms that are proven to reduce future instances of criminal conduct and reform delinquent behavior.*

- Establish an environment to promote desirable behaviors. This includes creation of calming living quarters, as well as adopting de-escalation and other techniques that allow staff to reliably predict conduct that precedes a problem behavior.
- Develop individualized profiles for behavior management for each youth.
- Use techniques, such as a token economy, to alter the environment so that undesirable maladaptive behaviors are ignored or punished, and desirable prosocial behaviors are met with positive reinforcement.
- Embrace evidence-based therapeutic approaches, such as cognitive-behavior therapy, in ways that maximize effectiveness. Such approaches have been successfully implemented in post-incarceration settings (e.g., by including the family in therapeutic sessions and post-release planning).
- Initiate skill-building programs, such as communication and job readiness, to equip youthful offenders with adaptive skills to succeed upon release.

#### ALTERNATIVE DISCIPLINE

*In a youth corrections model where youth are placed into closely supervised small groups, with group therapy and behavior management facilitated by trained staff, the most serious types of disciplinary methods can be avoided.*

- Ban solitary confinement (absolute social and physical isolation for 22-24 hours per day).
- Individualize the disciplinary policies and procedures by considering factors such as the youth's age and mental health status.
- Employ de-escalation techniques soon after a young person acts out or misbehaves. This includes discussion with the youth to determine the root causes to help identify more appropriate responses.
- Use short-term isolation only as a last resort to interrupt current acting-out behavior or to separate youth in circumstances where the youth poses an immediate threat to others or to him/herself. Isolation should be used only after graduated sanctions and lesser restrictive discipline techniques have proven ineffective. Before separating the youth, explain the reasons why separation is required and that he or she will be released upon regaining self-control. Short-term isolation must end as soon as the youth has regained self-control and **cannot exceed 4 hours**.
- Utilize room confinement only in extreme situations where a major rule violation has occurred and lesser restrictive discipline techniques have been exhausted or proven ineffective. Room confinement of more than 24 hours is reserved for the most serious violations, and **never imposed for more than 72 hours**. Youth in room confinement must receive out-of-cell access to education services and other programming, including physical recreation for at least **4 hours per day**.
- Require supervisory review before isolation or room confinement is used.
- Provide feedback to staff on how to improve incident responses, including supervisory review of incidents with staff to determine if a youth's time in isolation or room confinement could have been shorter or avoided entirely.
- Initiate regular training to facility staff on the appropriate use of, and alternatives to, isolation and room confinement.
- Create access to information about isolation and room confinement to independent oversight boards and staff.

#### **PROCEDURAL SAFEGUARDS**

*The consequences of solitary confinement on youth are severe; therefore, a jurisdiction utilizing confinement must implement appropriate and necessary procedural safeguards that ensure constitutional due process rights are protected.*

- Develop a system where each occurrence of isolation or room confinement is documented, reviewed by facility administrators, and regularly reported publicly.
- Document ground rules for the use of confinement, clearly describing the type of infractions that result in sanctions.
- Provide entering youth with a copy of a rulebook that lists the circumstances that may result in confinement.
- Provide youth with an opportunity to be heard in an administrative hearing within a reasonable period of time.
- Provide additional procedural safeguards where confinement occurs before a hearing.

- Implement rules that encourage informed and adequate representation, especially when the youth is representing him/herself.
- Youth must be afforded an opportunity to appeal any administrative decision.

### **TRAINING**

*Changing the culture of a detention facility from a punitive to a rehabilitative one requires attention to four systemic areas: the organizational structure, the institution's policy, job descriptions, and staff training.*

- Seek the services of the Missouri Youth Services Institute to aid in the administration of a culture transformation at Rikers Island.
- Transform the traditional corrections officers into rehabilitative-focused youth specialists.
- Require youth specialists to have extensive training and undergo a rigorous interview process.
- Screen youth specialists for a personal commitment to helping youth succeed. The staff need good listening skills, capacity for empathy, and the ability to command respect.
- Require youth specialists to complete over 200 hours of training, including extensive training in conflict management, positive reinforcement and group facilitation.
- Require supervision of youth specialists until over 100 hours of core training has been completed.
- Require additional in-service training for 40 hours per year to update specialists on the newest concepts and treatment techniques.

### **EVALUATION AND REPORTING**

*Reporting and data collection must be systematic.*

- Collect and evaluate the disciplinary measures used in youth correctional facilities.
- Prepare annual reports of findings relating to room confinement and use of solitary confinement to be made available to the public.
- Independent and qualified reviewers should routinely monitor and review the use of discipline in correctional facilities housing youth.
- Participate in the Performance-Based Standard Initiative (PBS) by submitting information about the youth facility twice a year.
- Revise practices to better comply with national best-practice standards.

# Rikers Island: Proposals for Rule-Making

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## 3. Background and Methodology

*Imagine that you're locked in a small room like a bathroom 23 hours a day. You're handcuffed when you're moved outside of it. Your food is thrown under the door and you have five books per week. It's noisy outside with some [inmate] or another yelling, screaming, banging on his door at ALL HOURS; it smells worse than the monkey house at the older zoos no matter how hard you clean your own cell... In seg [regation] you either implode or explode; you lose touch with reality, hear voices, hallucinate, and think for hours about killing yourself, others, or both. The anger and hurt gets so intense that you suspect everyone and trust no one and when someone does something nice for you, you don't understand it.<sup>4</sup>*

Cardozo's Youth Justice Clinic initiated this research seeking to address solitary confinement for youth on Rikers Island. Solitary confinement on Rikers is termed "punitive segregation"<sup>5</sup> and is used to punish behavioral infractions. It consists of 23 hour a day confinement in a locked single unit cell, each with a bed and toilet. There is one hour for recreation in a fenced in area of the yard. Food is eaten in the cell. The punitive segregation unit has a shower.<sup>6</sup>

In September 2013, the Clinic toured youth facilities on Rikers Island with Board of Correction staff and representatives of the Department of Correction. Students visited intake facilities, holding cells, health and general facilities and the Robert N. Davoren Complex (RNDC) that houses male youth. Within RNDC, students visited its punitive segregation units and the Restricted Housing Unit (RHU). Clinic students spoke with facility supervisors and staff but had minimal contact with inmates.

It did not take long to realize that the practice of solitary confinement is merely one aspect of necessary reform to the treatment of youth on Rikers Island. Consequently, after the tour, the Youth Justice Clinic obtained existing data and conducted research about the facility. Students undertook a 50 state survey of systems,

"Even when you do go outside you're in a cage all over again . . . My [cell] is bigger than the cage. So to go outside from my cell to the [recreation cage, you just feel more captive in there."

-Jimmy, age 18, served 200+ days in Rikers punitive segregation  
*BOC Staff Report (Oct. 2013)*

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<sup>4</sup> *Growing Up Locked Down*, HUMAN RIGHTS WATCH & AMERICAN CIVIL LIBERTIES UNION 58 (Oct. 2012) [hereinafter *Growing Up Locked Down*] (citing Letter from Douglas C. [pseudonym], to Human Rights Watch (April 17, 2012)), available at <https://www.aclu.org/files/assets/us1012webwcover.pdf>.

<sup>5</sup> It is also known as "solitary confinement," "isolated confinement," the "box" or the "bing." CITY OF NEW YORK BOARD OF CORRECTION, STAFF REPORT III (Oct. 2013). It will be referred to herein as solitary confinement. It is to be distinguished from short-term use of "isolation."

<sup>6</sup> *Id.*

practices and procedures for youth in correctional facilities.<sup>7</sup> After initial research, the Clinic narrowed its inquiry to about 25 states and, after in depth research and interviews, identified a handful of states with the best practices. This report focuses upon the systems perceived to be the most effective in reducing recidivism and reigning in programmatic costs. Detailed descriptions of these programs are included at the end of this report.

This report begins by focusing on the need to reduce the Rikers Island youth population. It follows with the damage caused by solitary confinement and then, more broadly, identifies programs and strategies in other jurisdictions that have proven successful in assisting youth while also enhancing public safety. Finally, it makes recommendations for the necessary components of systemic reform for New York City.

## A. CONTEXT OF REFORM AND DATA

A foundational concept within the criminal justice system is that young people are different from adults and, as such, should be treated differently. The U.S. Supreme Court stated:

The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them. Legal disqualifications on children as a class – e.g., limitations on their ability to marry without parental consent – exhibit the settled understanding that the differentiating characteristics of youth are universal.<sup>8</sup>

Nevertheless, our criminal justice system treats youth in punitive ways that exacerbates mental, emotional and physical abuse and increases the likelihood of re-offense. It fails our youth. It fails our City, State and our society. From “zero tolerance” of youth behaviors in schools, to arrest and criminal charges for minor activity and pretrial incarceration for unnecessarily extended periods of time, the system needs fundamental revision.

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<sup>7</sup> The research was significantly aided by the survey of juvenile justice systems in the 50 states conducted by the Lowenstein Sandler law firm in New Jersey. Catherine Weiss, Natalie J. Kraner & Jacob Fisch, LOWENSTEIN SANDLER, *51-Jurisdiction Survey of Solitary Confinement Rules in Juvenile Justice Systems* (Oct. 2013), available at <http://www.lowensteinprobono.com/files/Uploads/Documents/solitary%20confinement%20memo%20survey%20--%20FINAL.pdf>. It was challenging, yet essential, to examine both the juvenile justice and adult systems in other jurisdictions because 48 of them treat 16-18 year olds in juvenile courts.

<sup>8</sup> Petition for Rulemaking from American Civil Liberties Union of New Jersey et. al., to Kevin Brown, Dir., Juvenile Justice Comm’n, 1,4 n.4 (July 15, 2013)[hereinafter ACLU-NJ Petition for Rulemaking] (citing *In re Medley*, 134 U.S. 160, 168 (1890)), available at [http://www.aclu-nj.org/files/3913/7389/2778/2013\\_07\\_15\\_juve.pdf](http://www.aclu-nj.org/files/3913/7389/2778/2013_07_15_juve.pdf).

## 1. REDUCING THE RIKERS YOUTH POPULATION

All stakeholders need to reimagine effective methods and programs so that many 16-18 year olds in New York City are not processed through the criminal justice system. This has been successfully accomplished elsewhere. Illinois reduced its misdemeanor cases significantly by developing alternate programs for youth and working with the police to revise the arrest protocol.<sup>9</sup> Roughly 40% of juvenile arrests in Cook County never go to court and in 2010, 31.8% of the arrests of youth were diverted at the police station.<sup>10</sup> In New York, implementing similar models where police and community groups work together to develop and refer youth to community-based programs in lieu of arrest for a range of minor crimes, would significantly reduce the population of 16-18 year olds in the criminal justice system.

For situations requiring criminal charges, case processing needs to be overhauled.<sup>11</sup> First, the bail system needs revision.<sup>12</sup> New York City needs to develop a continuum of options, ranging from a new risk assessment instrument geared specifically to young inmates,<sup>13</sup> followed by supervision programs in every borough; a funded bail expediting process; and a bail fund for those who cannot meet conditions of release in another manner.<sup>14</sup> Such refocus would reduce the jail population significantly, thereby allowing for more individualized programs focusing on rehabilitation for those who are incarcerated.

Moreover, case processing systems need fundamental change.<sup>15</sup> The city, led by the judiciary, needs to engage in a major case expediting effort. Hundreds of millions of dollars can be saved by reducing the average time between arrest and resolution.<sup>16</sup> If NYC were to enact such reforms, better outcomes would ensue for youth and for public safety. Fewer 16-18 year olds would be on Rikers Island. For those who will be incarcerated, this report addresses necessary reforms.

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<sup>9</sup> *Raising the Age of Juvenile Court Jurisdiction*, ILL. JUVENILE JUSTICE COMMISSION, available at [http://www.dhs.state.il.us/OneNetLibrary/27897/documents/CHP/Reports/JuvenileJustice/IJC\\_Raising\\_the\\_Age\\_Report\\_w\\_covers.pdf](http://www.dhs.state.il.us/OneNetLibrary/27897/documents/CHP/Reports/JuvenileJustice/IJC_Raising_the_Age_Report_w_covers.pdf). See also *Arresting Justice: A Report About Juvenile Arrests in Chicago, 2009 & 2010*, ARREST JUSTICE, available at [http://arrestjustice.wordpress.com/about/#\\_ftnref1](http://arrestjustice.wordpress.com/about/#_ftnref1).

<sup>10</sup> *Id.*

<sup>11</sup> Michael Jacobson, *End Lengthy and Costly Pretrial Imprisonment*, N.Y. TIMES (Aug. 22, 2013), available at <http://www.nytimes.com/roomfordebate/2013/08/22/how-the-next-mayor-should-deal-with-crime-in-new-york/the-next-mayor-should-help-end-extensive-pre-trial-imprisonment>

<sup>12</sup> Russ Buettner, *Top Judge Says Bail in NY Isn't Fair or Safe*, NY TIMES, Feb 5, 2013 Lauds

<sup>13</sup> Office of Children and Family Services created such a risk assessment instrument for Family Court along with a network of pretrial supervision/support in both probation and thru CBO contracts. It not only substantially reduced the detention population but rearrests declined in every category (i.e. for high, medium, and low risk youth). <http://www.ocfs.state.ny.us/main/rehab/drai/>

<sup>14</sup> Joel Stashenko, *Lippman Lauds Bronx Group's Non Profit Approach to Bail Defenders*, NY LAW JOURNAL, Feb 11, 2013.

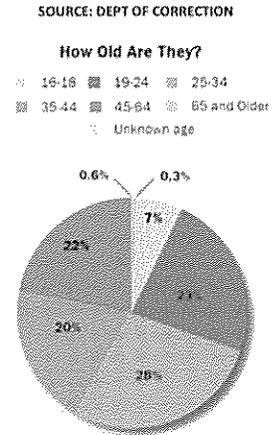
<sup>15</sup> Jacobson, *supra* note 11.

<sup>16</sup> *Id.*



and 17 year olds as adults in the criminal justice system,<sup>22</sup> youth are placed on Rikers Island. In September 2013, there were 496 males and 30 females, ages 16-17 years old, housed in their respective facilities.<sup>23</sup> Data documenting the bail conditions, prior convictions and current charged offense for youth detainees on Rikers is not readily available but it appears that a number of the charges that result in detention do not involve any degree of violence.<sup>24</sup>

More than 12,000 New York City students are incarcerated every year and attend school behind bars.<sup>25</sup> Black and Hispanic youth make up an overwhelming 95% of students in New York City jails.<sup>26</sup> On Rikers Island, school attendance is compulsory and a security guard is assigned to every classroom.<sup>27</sup> The average student reads at a fifth-grade level and almost 50 percent of the students are diagnosed as having special educational needs.<sup>28</sup> An estimated 90% of the correctional facility's youth are re-arrested by the time they are 28.<sup>29</sup>



A report issued in September 2013 by New York City's Independent Budget Office provided internal Rikers Island data, specifically pertaining to incidents of violence.<sup>30</sup> As will be discussed herein, one of the most highly cited reasons for placing inmates in solitary confinement is varying levels of involvement in jail "incidents." The NYC Department of Correction ("DOC") Quarterly Report highlights that several high need/risk populations in DOC custody are disproportionately involved in jail incidents.<sup>31</sup> Adolescents, ages 16 to 18 comprise only 7-8% of the daily population, yet make up 24% of those involved in jail incidents. Inmates with a mental health diagnosis comprise 37% of the daily population, and yet make up 51% of those involved in jail incidents.<sup>32</sup>

Unfortunately, Rikers Island-specific data relating to the use of solitary confinement is sparse. It would appear the only data-tracking related to the use of solitary is limited to internal records maintained on-site on Rikers. Consequently, there is a pressing need for increased transparency of the prevalence of its use on Rikers Island. That said, when Cardozo's Youth Justice Clinic visited the jail in September of 2013 the majority of the facility's approximately

<sup>22</sup> North Carolina is the only other state and it is poised to change its laws.

<sup>23</sup> Cardozo's Youth Justice Clinic visited Rikers Island on Friday, September 13, 2013.

<sup>24</sup> Data report prepared by Board of Correction using Department of Correction data (Dec 2013) (on file with author).

<sup>25</sup> Alan Singer, *Rikers Island – Last Stop on the New York City School-to-Prison Pipeline*, HUFFINGTON POST (Feb. 3, 2012), available at [http://www.huffingtonpost.com/alan-singer/rikers-island-prison\\_b\\_1252325.html](http://www.huffingtonpost.com/alan-singer/rikers-island-prison_b_1252325.html).

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> *Fiscal 2012 Second Quarterly Report*, New York City Dep't of Correction, available at [http://www.nyc.gov/html/doc/html/about/032812DOC\\_at\\_a\\_Glance\\_single\\_page.pdf](http://www.nyc.gov/html/doc/html/about/032812DOC_at_a_Glance_single_page.pdf).

<sup>31</sup> Id.

<sup>32</sup> Id.

15-20<sup>33</sup> solitary confinement cells were occupied by inmates. Notably, of these inmates, several were facing upwards of 130 days in the 23-hour per day lockdown cells.

Of the scant disciplinary data that has been reported by the New York City DOC, 14.4% of adolescents between the ages of 16 and 18 spend part of their pre-trial detention in solitary confinement.<sup>34</sup> Data from fiscal year 2012 has shown that on an average day in 2012, approximately 7% of the Rikers population consisted of 16-18 year olds.<sup>35</sup> This is significant as the department is one of the largest jail systems in the country. The most common disciplinary infraction for adolescents between the ages of 16 and 18 in the New York City Department of Correction is for fighting.<sup>36</sup>

### COMPARATIVE CORRECTIONAL SYSTEM COSTS

The annual total operating expenses of the Department of Correction is \$2 billion. This includes salaries and staff benefits, payments for judgments and claims, as well as debt service for jail construction and repairs.<sup>37</sup>

About \$30.3 million is spent annually on transportation costs alone.<sup>38</sup> Different bus services are used to usher inmates to and from court throughout the five boroughs (261,158 inmates were transported to court in 2012)<sup>39</sup> as well as transportation to bus staff from a central parking lot over the bridge to Rikers and visitors to and around the island. Cost is but one of the reasons why there has been a push towards replacing Rikers Island with jails in each borough that are closer to the corresponding courthouses.<sup>40</sup>

New York's annual costs dwarf the annual per-inmate costs in other big cities.<sup>41</sup> Los Angeles spent \$128.94 a day, or \$47,063 a year, for 17,400 inmates in fiscal year 2011-12.<sup>42</sup> Chicago spent \$145 a day, or \$52,925 a year, for 13,200 inmates in 2010, the most recent figures available from that county's sheriff's office.<sup>43</sup> Those costs included debt-service and fringe

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<sup>33</sup> This is a rough estimate based on Cardozo Youth Justice Clinic's visit in September 2013.

<sup>34</sup> Growing Up Locked Down, *supra* note 4, at 64

<sup>35</sup> *New York City by the Numbers*, NEW YORK CITY INDEPENDENT BUDGET OFFICE, available at <http://ibo.nyc.ny.us/cgi-park2/?p=516>.

<sup>36</sup> Growing Up Locked Down, *supra* note 4, at 64.

<sup>37</sup> *Id.*

<sup>38</sup> Pearson, *supra* note 18.

<sup>39</sup> *Id.*

<sup>40</sup> *Fiscal 2012 Second Quarterly Report*, New York City Dep't of Correction, available at [http://www.nyc.gov/html/doc/html/about/032812DOC\\_at\\_a\\_Glance\\_single\\_page.pdf](http://www.nyc.gov/html/doc/html/about/032812DOC_at_a_Glance_single_page.pdf).

<sup>41</sup> Pearson, *supra* note 18.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

benefits.<sup>44</sup> Implementation of the reforms proposed in this report would save a significant amount of money.

## 2. SOLITARY CONFINEMENT

*I try . . . not to think when I'm in my cell, because when I think I start to stress out because of all my problems . . . Now that I'm here, all the time I'm doing in that cell, 'cause we're boxed in 24/7, everything gets to me. I try not to overthink the situation . . . [punitive segregation is a] jail behind another jail . . . [it] makes me feel like less of a human being.<sup>45</sup>*

Despite conclusive documentation of the damage caused by solitary confinement, New York is one of the many states that continue to utilize it for youth (and adults). Even more detrimental, New York, a state which stands virtually alone<sup>46</sup> in treating 16 and 17-year olds as adults, continues to treat young people accused of committing crimes in the same manner they treat adults, irrespective of burgeoning scientific data highlighting the harmful effects of doing so.

Critique of solitary confinement in jails, specifically of youth in solitary confinement, is not novel. Countless organizations have rallied against the practice and have issued reports replete with persuasive evidence of harm and recommendations for better practices. Human Rights Watch and the American Civil Liberties Union estimate that in 2011, more than 95,000 youth were held in prisons and jails nationally.<sup>47</sup> A significant number of these facilities use solitary confinement—for days, weeks, months, or even years—to punish, protect, house, or treat some of the young people who are held there.

In recent years, legislators and corrections officials in a number of states have begun to reexamine the use of prolonged solitary confinement to manage adult inmates. This change in perspective has emerged after recognition that as the practice of solitary confinement increases, subsequent violence actually *increases*, rather than decreases.<sup>48</sup> As a result, the practice is counterintuitive, harmful to the individual, and not cost-effective. Moreover, it contributes to increased recidivism rates.<sup>49</sup>

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<sup>44</sup> A.P., *NYC's Yearly Cost Per Inmate Almost as Expensive as Ivy League Tuition*, Fox News (Sept. 30, 2013), available at <http://www.foxnews.com/us/2013/09/30/nyc-cost-per-inmate-almost-equals-ivy-league-education-expenses-tied-to-rikers>.

<sup>45</sup> *Staff Report: Three Adolescents with Mental Illness in Punitive Segregation at Rikers Island*, CITY OF NEW YORK BD. OF CORRECTION (Oct. 2013), available at [http://www.nyc.gov/html/boc/downloads/pdf/reports/Three\\_Adolescents\\_BOC\\_staff\\_report.pdf](http://www.nyc.gov/html/boc/downloads/pdf/reports/Three_Adolescents_BOC_staff_report.pdf).

<sup>46</sup> North Carolina is the only other state that treats 16 and 17 year olds as adults.

<sup>47</sup> *Growing Up Locked Down*, *supra* note 4, at 2.

<sup>48</sup> *Id.*

<sup>49</sup> ACLU-NJ Rule Making Petition, *supra* note 8.

Undoubtedly today, solitary confinement of youth is a serious and widespread problem in the United States.<sup>50</sup> Nevertheless, the fact remains: the use of solitary confinement is not only active, but also pervasive, right here in our own backyard on Rikers Island.

### **REASONS FOR SOLITARY CONFINEMENT**

Jail or prison officials frequently subject young people to solitary for a myriad of reasons:

1. To punish a youth when he/she breaks the rules, such as: talking back to guards, possessing contraband, or fighting<sup>51</sup> (this is often called disciplinary segregation).
2. To manage the inmate either because their classification is deemed to require isolation (often called administrative segregation) or because they are considered particularly vulnerable to abuse (often called protective custody).
3. To protect them from adults or from one another.
4. To treat inmates, such as after a threatened or attempted suicide (often called seclusion).<sup>52</sup>
5. To simply seclude the inmate because officials do not know how else to manage them.

### **NATIONWIDE REDUCTION OF THE USE OF SOLITARY CONFINEMENT**

The state of Mississippi recently reduced the population of inmates in long-term administrative solitary confinement by 75.6%, and closed the state's adult super-maximum security prison.<sup>53</sup> The state reduced the segregation population of one institution from 1000 to 150 and eventually closed the entire unit. By diverting the prisoners from solitary confinement, the Mississippi Department of Correction estimates that prison violence decreased significantly by 70%, and about \$8 million was saved annually in the process.<sup>54</sup>

Rhode Island, Connecticut, and Maine have also begun taking steps to reduce the number of inmates confined in long-term isolation. State Success Stories: A-D, discussed herein, provides detailed information about reforms in these states.

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<sup>50</sup> Growing Up Locked Down, *supra* note 4, at 2.

<sup>51</sup> *Id.* at 3.

<sup>52</sup> *Id.* at 20.

<sup>53</sup> *Id.* at 59.

<sup>54</sup> ACLU-NJ Petition for Rulemaking, *supra* note 8, at 5.

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**SNAPSHOT OF SOLITARY CONFINEMENT REFORM ACROSS THE COUNTRY<sup>55</sup>**

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<b>ALASKA</b>	Blanket prohibition on solitary confinement of juveniles as a disciplinary sanction.
<b>CONNECTICUT</b>	Prohibits the solitary confinement of juveniles by statute.
<b>MAINE</b>	Isolation and solitary confinement may be used as a form of punishment for adults, subject to certain conditions, but is not authorized in juvenile facilities.
<b>OKLAHOMA</b>	Prohibits punitive solitary confinement and places tight limits on other forms of isolation for juveniles.
<b>WEST VIRGINIA</b>	In 2012, the Division of Juvenile Services Director ordered an end to the use of punitive solitary confinement of juveniles.
<b>MISSISSIPPI</b>	Juveniles cannot be held in “disciplinary cell confinement” for periods longer than 72 hours. Those held are entitled to protections to reduce its harms and reporting is required whenever a child is placed in cell confinement.
<b>MISSOURI</b>	Juveniles may not be subjected to room restrictions for more than 24 hours without the approval of the facility superintendent. Whenever solitary confinement exceeds one day, the juvenile has an automatic right to appeal.
<b>MONTANA</b>	Litigation led to limitations on juvenile solitary confinement. The legislature is now considering more comprehensive limitations and broad reporting requirements.

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## **B. EMERGING RESEARCH AROUND THE COUNTRY**

Significant scientific research highlights a marked difference between a fully developed adult brain and the brain of an adolescent and between the brains of traumatized children and those who have not experienced trauma. Effective programs for youth require an understanding of the developmental, neurological, and historical causes of their behavior and an incorporation of this knowledge into a comprehensive rehabilitative service-plan designed to provide youth with the skills necessary to become successful, law-abiding adults.

### **NEURODEVELOPMENT**

A smart approach to reforming juvenile offenders requires that those who devise and implement programs understand adolescent brain development and its impact on juvenile conduct. Though they may look, talk, and sometimes act like adults, the brains and personalities of adolescents are distinct from those of adults.

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<sup>55</sup> Id at 9.

Emerging research indicates that adolescents undergo significant neurodevelopment in regions of the brain that are responsible for:<sup>56</sup>

1. Executive function: includes conflict resolution, problem solving, planning, and decision making
2. Behavior/Emotion regulation: includes inhibiting impulses and controlling emotions

During the critical years of adolescence, the areas of the brain responsible for impulse control, problem solving and smart decision-making are amidst neurological growth and transformation.<sup>57</sup> These changes correspond to long-standing psychological findings demonstrating that adolescents generally engage in risk-taking behaviors, give disproportionate weight to the possibility of pleasure/reward when making decisions, and are especially susceptible to peer influence.<sup>58</sup> Because adolescents are still developing their ability to self-regulate, they may be impulsive, use poor judgment, or lack mature decision-making ability, especially in emotionally charged settings.<sup>59</sup> As a result, they frequently engage in reckless, ill-advised, often criminal conduct, without recognizing the potential consequences of their actions.<sup>60</sup> Further, because of their developmental immaturity, adolescents are especially vulnerable to peer pressure that encourages anti-social behavior, a vulnerability that persists at least until youth turn 18 years old.<sup>61</sup> Younger adolescents who have not fully developed the ability to think abstractly or engage in logical reasoning may also exhibit cognitive deficits.

For all of these reasons, the expectation that adolescents just “control” themselves and behave “appropriately” is unrealistic. Moreover, adolescents require assistance in developing the skills and ability to defer gratification, problem-solve, make smart decisions, regulate their emotions, and communicate effectively. Because of their susceptibility to outside influence, acquiring these skills and staying out of trouble is difficult, if not impossible if the adolescent is surrounded by criminal activity (e.g., at home, in school, or in a juvenile detention facility). Luckily, the very factors that make adolescents susceptible to anti-social or criminal behaviors (i.e., ongoing brain development and increased vulnerability to outside influences) also make them more amenable to reform. Thus, it behooves the criminal justice system to capitalize on the malleability of adolescent development and implement programs to actively support adolescents in their acquisition of prosocial behaviors.

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<sup>56</sup> Dustin Wahlstrom et al., *Developmental Changes in Dopamine Neurotransmission in Adolescence: Behavioral Implications and Issues in Assessment*, 72 *BRAIN & COGNITION* 146, 150-151 (2010), available at [www.cehd.umn.edu/icd/cnbd/academic/documents/Research/Collaborative%20Publications/2010%20Collaborative%20Pubs/Wahlstrom%20et%20al%20Developmental%20changes%20in%20dopamine 2010.pdf](http://www.cehd.umn.edu/icd/cnbd/academic/documents/Research/Collaborative%20Publications/2010%20Collaborative%20Pubs/Wahlstrom%20et%20al%20Developmental%20changes%20in%20dopamine%202010.pdf).

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> Brief for the American Psychological Ass'n, American Psychiatric Ass'n & National Ass'n of Social Workers as Amicus Curiae Supporting Petitioners, *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

## **CHILDHOOD TRAUMA**

Experts estimate that a staggering 25% of children directly experience trauma in the form of interpersonal or community violence before the age of 18.<sup>62</sup> These numbers triple in communities where violence and poverty dominate daily living.<sup>63</sup> In one study of youth aged 10-18 years, 75% of children reported witnessing a murder, robbery, or shooting, and 45% of these children reported witnessing more than one violent incident.<sup>64</sup> The devastating effects of trauma persist long after the threat to the child's well-being is gone, and are evidenced in physiological abnormalities, behavioral reactions, and criminal justice involvement.

Children who live in chronic fear of abuse activate a set of survival responses in the brain that begins to predominate over other less urgent responses. The more unpredictable or ongoing the abuse, the more automatic the defensive response becomes and the more other responses atrophy. As a result, children become hyper-vigilant and may experience psychological and physiological responses including relentless stress, high blood pressure, sleep disruption, anxiety, depression, hyperactivity, and aggression.<sup>65</sup>

Childhood trauma has been linked to the onset of numerous psychological disorders, including:

- Schizophrenia
- Conduct disorders
- ADD/ADHD
- Dissociative disorders
- Personality disorders
- Anxiety disorders
- Substance abuse (often the result of attempted self-medication of PTSD symptoms)
- Post Traumatic Stress Disorder (PTSD)<sup>66</sup>

A study of juvenile offenders on death row found that each adolescent had suffered severe sexual and physical abuse (resulting in brain damage), often of a repetitive nature, and perpetrated by more than one family member.<sup>67</sup> Other studies, like the Rochester Youth Study, indicate that children, who are raised in a home full of violence and hostility, are nearly

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<sup>62</sup> Bruce D. Perry, *Effects of Traumatic Events on Children: An Introduction*, THE CHILD TRAUMA ACADEMY (2003), available at <http://www.mentalhealthconnection.org/pdfs/perry-handout-effects-of-trauma.pdf>.

<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> Id.

<sup>66</sup> For some children who have been abused and are now incarcerated, shouting, handcuffs, or solitary confinement can all trigger past traumatic memories and elicit conditioned responses of aggression or disregulated behavior.

<sup>67</sup> J. David Hawkins, et al., *Predictors of Youth Violence*, OJJDP BULLETIN (April 2000), available at <https://www.ncjrs.gov/pdffiles1/ojdp/179065.pdf>; Terrence P. Thornberry, *The Relationship Between Childhood Maltreatment and Adolescent Involvement in Delinquency*, 33 CRIMINOLOGY 451 (1995).

twice as likely to exhibit serious violent behavior compared to children raised in non-violent homes.<sup>68</sup>

The criminal justice system's overrepresentation of children who have directly experienced a traumatic event obligates our courts and juvenile justice system to actively seek out and implement trauma-informed approaches for treatment. In order to effectively address delinquent behavior, we must first recognize it for what it is. If an adolescent's criminal activity is but a symptom of deeper traumatic turmoil, the trauma must be treated before there can be hope for lasting behavioral change.<sup>69</sup>

### C. DAMAGE OF SOLITARY CONFINEMENT

In the field of behavior modification, punishment is a technical term that refers to any consequence of a behavior that results in a future decrease of that behavior.<sup>70</sup> Thus, if a consequence does not result in the decrease or ultimate elimination of the behavior that it is meant to address, it cannot be considered a punishment. From this perspective, current incarceration practices, with their corresponding high recidivism rates, simply cannot be said to be punishing the majority of offenders.

There are a number of factors that influence the likelihood that a given consequence will effectively punish behavior; these include:

- the immediacy of the consequence
- the magnitude of the consequence
- the certainty of the consequence
- whether the consequence is directly contingent on the behavior
- the individual differences of those receiving the consequence<sup>71</sup>

Current incarceration practices can hardly be said to take these factors into account.

Even when implemented correctly, punishment is generally considered to be a last resort in the field of behavior modification because the procedure may evoke unintended psychological side effects.<sup>72</sup> Behavior analysts who rely on punishment procedures, generally exhaust less restrictive treatment alternatives first, and only then implement a punishment program with intensive training and ongoing peer review/supervision.

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<sup>68</sup> Thornberry, *supra* note 67.

<sup>69</sup> Judge Michael L. Howard & Robin R. Tener, *Children Who Have Been Traumatized: One Court's Response*, 59 JUVENILE & FAMILY CT J. 4, 21–34 (2008), available at [http://www.throughtheeyes.org/files/2012\\_ncs\\_materials/A1\\_handout3.pdf](http://www.throughtheeyes.org/files/2012_ncs_materials/A1_handout3.pdf).

<sup>70</sup> RAYMOND G. MILTENBERGER, BEHAVIOR MODIFICATION: PRINCIPLES AND PROCEDURES. (3d ed. 2004).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

Little research has been conducted on the impact of solitary confinement on adolescent inmates, possibly because such confinement has been condemned as torture by the United Nations and violates international human rights law.<sup>73</sup> Whatever the reason for the lack of data, it stands to reason that research on the effects of solitary confinement in adults should be applicable to youth who are especially vulnerable to social isolation.

The research on adults in jails and prisons across the country that rely on solitary confinement as a means for punishing adult inmates, demonstrates significant dangers of such practices. Research shows that solitary confinement often results in adverse psychiatric effects including:<sup>74</sup>

- Perceptual and cognitive impairments
- Emotional disturbances; depression
- Psychosis characterized by intense agitation, fearfulness, disorganization, confusion, paranoia, hallucinations, and random, impulsive, often self-directed violence

Harm caused by solitary confinement may be long lasting or permanent, and generally exacerbates any existing mental health condition. These effects substantially reduce an inmate's ability to be reintegrated into the general jail/prison environment or into society upon release.

Scholarly literature documents the deleterious effect of solitary confinement upon youth.<sup>75</sup> In a recent extensive report on solitary confinement, the American Civil Liberties Union (ACLU) interviewed over 125 incarcerated juveniles, and reported on the severe psychological impact of solitary confinement. Specifically, they report that juveniles in solitary confinement struggled with:<sup>76</sup>

- Suicidal ideation and self-injurious behaviors
- Acute anxiety and sleep disturbances
- Symptoms of PTSD
- Onset of psychosis, including visual and auditory hallucinations
- Uncontrollable rage

The ACLU reports that juvenile inmates subject to solitary confinement were denied interactions with peers and visits with families – the very supports crucial to proper adolescent

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<sup>73</sup> Official Statement of the American Academy of Child & Adolescent Psychiatry, *Solitary Confinement of Juvenile Offenders* (Apr. 2012), available at

[http://www.aacap.org/AACAP/Policy\\_Statements/2012/Solitary\\_Confinement\\_of\\_Juvenile\\_Offenders.aspx](http://www.aacap.org/AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx)

<sup>74</sup> Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POL'Y 325 (2006), available at <http://digitalcommons.law.wustl.edu/wujlp/vol22/iss1/24>.

<sup>75</sup> Richard J. Hazler & Sharon A. Denham, *Social Isolation of Youth at Risk: Conceptualizations and Practical Implications*, 80 JOURNAL OF COUNSELING AND DEVELOPMENT 403 (2002).

<sup>76</sup> Growing Up Locked Down, *supra* note 4.

development.<sup>77</sup> In addition, they were denied access to education, books, exercise, proper nutrition, and mental health services. In fact, the conditions of solitary confinement were such that they incentivized psychopathology. Adolescents were often denied access to a mental health counselor unless they exhibited severe self-harm, and even then, mental health treatment was not always a given. There were reports of at least six instances in recent years of youth who have committed suicide while in solitary confinement.

Simply put, solitary confinement is an ineffective behavioral punisher. This may be because the behaviors that result in solitary confinement are caused by deep-seated trauma responses or normal immature adolescent neurodevelopment. Whatever the reason, solitary confinement does not work to reduce aggressive, violent, impulsive, or disobedient behaviors, and has in fact resulted in an *increase* of these behaviors. Moreover, the solitary confinement of adolescents poses extreme risks to their long-term psychological health and well-being.

Of the juvenile inmates incarcerated on Rikers, 76% are pre-trial detainees (see [Rikers Island Data](#)). They are subject to the same disciplinary measures as adjudicated inmates, and are equally subject to solitary confinement. It is unfortunate that youth who are “innocent until proven guilty” should be subjected to a dangerous and ineffective practice that may cause them irreparable damage. It is time for NYC to join other jurisdictions in implementing developmentally appropriate, humane, evidence-based treatments to rehabilitate our youth.

#### **D. OVERVIEW OF PREVAILING MODEL: THE MISSOURI MODEL**

The Missouri Model<sup>78</sup> emerged 30 years ago in response to the knowledge that the state’s continuing reliance on large youth corrections facilities for inmates under the age of 17 was ineffective, frequently abusive, and unnecessarily expensive. These facilities are routinely found to be unsafe, unhealthy, unconstitutional and unproductive. There is a need for dramatic changes in organization, programs and staffing, including the need to prohibit the use of solitary confinement. Moreover, the average cost per bed per year in correctional facilities throughout the country exceeds \$200,000.<sup>79</sup>

The high cost and counterproductive results plaguing Rikers Island should alarm policymakers and propel them to implement policies that better meet the needs of youth and create lasting

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<sup>77</sup> For a discussion on the importance of familial and social support to healthy adolescent development, see Jennifer A Hall-Lande et al., *Social Isolation, Psychological Health, and Protective Factors in Adolescence*, 42 ADOLESCENCE 166, 265-86 (2007), available at <http://facweb.northseattle.edu/lchaffee/PSY100/Journal%20Articles/Hall-Lande%20et%20al%202007.pdf>.

<sup>78</sup> Richard Mendel, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*, THE ANNIE CASEY FOUNDATION (2010) [hereinafter Missouri Model], available at [http://www.aecf.org/~media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO\\_Fullreport\\_webfinal.pdf](http://www.aecf.org/~media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/MOModel/MO_Fullreport_webfinal.pdf).

<sup>79</sup> Id at 2.

changes in their behavior. Thankfully, the Missouri approach offers a promising therapeutic and rehabilitative alternative.

Missouri's interactive approach has garnered excellent results: it has a far lower recidivism rate than other states, an impressive safety record, and positive youth outcomes, all at a modest budget far smaller than that of many states with less-productive outcomes. It has been adopted in varying forms in many states (See *infra* pp. 51 *et seq.*).

It should be noted, however, that the Missouri Model is one of two complementary changes that should be implemented for youth. The first significant change involves narrowing the pipeline of youth entering the detention system by eliminating inappropriate or unnecessary reliance on secure pretrial detention. This can be accomplished through differing policing practices, effective bail programs, the use of diversion programs, probation adjustments and other alternatives to incarceration. Second, adoption of aspects of the Missouri Model should be aimed at the small minority of youthful offenders who must be removed from their homes to protect public safety.

In pursuing its commitment to helping court-involved youth make deep and lasting changes that enable them to avoid negative behaviors and embark on a pathway to success, the Missouri Model employs six core features:<sup>80</sup>

1. Missouri places youth who require confinement into smaller facilities located near the youths' homes and families, rather than incarcerating delinquent youth in large, far-away, prisonlike training schools. This is similar to the recent Close to Home initiative in New York that is discussed herein.
2. Missouri places youth into closely supervised small groups of 10-12 and applies a rigorous group treatment process offering extensive and ongoing individual attention, rather than isolating confined youth in individual cells or leaving them to care for themselves among a crowd of unfamiliar delinquent peers.
3. Missouri places great emphasis on keeping youth safe from physical aggression, but also from ridicule and emotional abuse through constant supervision and engaged staff as well as supportive peer relationships, rather than through coercive techniques that are commonplace in most youth corrections systems.
4. Missouri helps confined youth develop academic, pre-vocational, and communication skills that improve their ability to succeed following release, along with crucial insights into the roots of their delinquent behavior and new social competence to acknowledge and solve personal problems.

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<sup>80</sup> *Id* at 13.

5. Missouri reaches out to family members and involves them from day one as both partners in the treatment process and as allies in planning for success in the aftercare transition, rather than keeping families at a distance and treating them as a source of the delinquent youths' problems.
6. Missouri provides considerable support and supervision for youth transitioning home from a residential facility by conducting intensive aftercare planning prior to release, monitoring and mentoring youth closely in the first crucial weeks following release, and working hard to enroll them in school, place them in jobs, and/or sign them up for extracurricular activities in their home communities.

Missouri's results utilizing these characteristics have been so positive that Mark Steward, the visionary former director of the Missouri Division of Youth Services, founded the Missouri Youth Services Institute (MYSI) to help other jurisdictions across the country do what Missouri has done.<sup>81</sup> So far, the Missouri Model has been studied and replicated successfully in other cities and states, including Washington, D.C.; San Jose, California; New Mexico; and Louisiana.

The Missouri Model is addressed to post-conviction youth serving specified time periods in custody. The program moves young people through six stages that span a six to nine month time frame. In that model, staff view themselves as youth counselors and are highly trained; facilities are smaller and more like a home environment and everyone in the facility (i.e. maintenance staff, administration cooks etc.) are all part of the "treatment team." Aspects of this program could be implemented on Rikers Island even for the 75% of pretrial youth whose time at the facility is not predetermined.

The remainder of this report will highlight the core features of the Missouri Model, and discuss its potential application on Rikers Island.

## **E. STRIDES IN NYC: CLOSE TO HOME**

Close to Home is part of a juvenile justice reform initiative that began in 2011-12, and was included in Governor Cuomo's 2012-2013 Executive Budget Proposal. The collaborative effort between New York City and New York State provides more appropriate placements for youth who come from New York City.<sup>82</sup> Under the initiative, New York City youth previously placed in the Office of Children and Family Services (OCFS) limited-secure and non-secure facilities, often at a great distance from the youth's home, move to smaller local settings operated by the Administration for Children's Services (ACS). ACS oversees their educational, mental health, substance abuse and other service needs.<sup>83</sup> Youth in close-to-home facilities benefit from the

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<sup>81</sup> *Leadership & Staff Development Modules*, MISSOURI YOUTH SERVICES INSTITUTE, <http://mysiconsulting.org/training.php> (last visited January 30, 2014).

<sup>82</sup> *Close to Home: Plan for Non-Secure Placement*, NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES (June 8, 2012), available at [http://ocfs.ny.gov/main/rehab/close\\_to\\_home/](http://ocfs.ny.gov/main/rehab/close_to_home/).

<sup>83</sup> *Id.* at 8.

ability to remain closer to their families while they receive the services and support they need. Seven of the eleven providers with whom ACS contracted with use the Missouri Model.<sup>84</sup>

OCFS, with consultative assistance from the MYSI, developed a therapeutic, rather than punitive, program tailored to New York City adolescents convicted of crimes. The system aims to reinforce and support the ties between a youth and his/her community to foster a positive rehabilitative environment. The program enhances the ability of the adolescent to be connected to a variety of activities and opportunities, to develop vocational skills and to engage in community service close to their homes.<sup>85</sup> The adolescent can remain in school and receive credits from NYC public schools. The New York City Department of Education (DOE) schools they attend upon their release automatically accept those credits; the educational program prepares the student to successfully reenter society post-detainment/incarceration.<sup>86</sup>

A foundational premise of Close to Home is that these restorative measures are likely to reduce recidivism rates, in great measure because youth and their families are given tools to participate in a youth's rehabilitation. Additionally, the program places importance on oversight by government, advocates, families, and communities.<sup>87</sup> First, ACS has developed an Independent Oversight Board, consisting of individuals from diverse backgrounds who are knowledgeable about the issues facing court-involved youth in residential care. The Independent Oversight Board is responsible for reviewing and reporting on conditions throughout the residential placement system. In addition to the Independent Oversight Board, ACS will develop an Office of Residential Care Advocacy, which will oversee all residential placement facilities.<sup>88</sup> The Office of Residential Care Advocacy is responsible for responding to complaints and concerns of youth, identifying systemic issues, and tracking data related to conditions of care.<sup>89</sup>

It stands to reason that if the Close to Home initiative can be used for youth convicted of crimes, such a program should be well suited for 16-18 year old pre-trial detainees. Each of the following aspects of Close to Home could be implemented for youth on Rikers Island.

### **PLACEMENT ASSESSMENT**

Under the Close to Home initiative, objective pre-dispositional risk assessment instruments (RAIs) and processes are used to help guide the family courts in determining proper placement for youth in juvenile delinquency cases.<sup>90</sup> The RAI for New York City is developed by the New York City Department of Probation and is subject to the approval of OCFS. The RAIs are used as part of all probation investigation and diagnostic assessments performed on youth who are

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<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> Id at 9.

<sup>87</sup> Id.

<sup>88</sup> Id at 51.

<sup>89</sup> *Close to Home: Plan for Non-Secure Placement*, *supra* note 82, at 51.

<sup>90</sup> Id at 8.

adjudicated to be juvenile delinquents.<sup>91</sup> If placement is necessary, the RAI helps the court ascertain what level of care is appropriate for a particular youth based on the risk the youth poses to the community.<sup>92</sup> Family court judges must give the results of the RAI due consideration in determining the appropriate disposition for youth.

### **GUIDING PRINCIPLES FOR FACILITIES**

All of the ACS contracts for services as part of the Close to Home initiative implement programs rely on evidence-based research. A majority of the providers of residential services plan to implement programs based on the Missouri Model.<sup>93</sup> Other programs intend to use models that are based on other best practices and informed by proven outcomes (e.g. Boys Town Model).<sup>94</sup> Every program is required to develop a detailed manual that includes a description of its program model, as well as descriptions of how the provider will comply with various aspects of the Quality Assurance Standards and other policies.<sup>95</sup>

Many youth at Rikers have mental health disorders ranging from conduct disorders to psychotic disorders. Many youth also have substance abuse issues and histories of being in the child welfare system. The Close to Home Initiative adequately addresses these issues and other needs of juvenile delinquent youth who require residential care through the following components:<sup>96</sup>

- Residential care should be part of a continuum of care, providing an effective continuum of diversion, supervision, treatment and confinement to ensure that the most appropriate level of care is provided for all youth, consistent with public safety;
- Facility management should be guided by a coherent approach and/or model of care that has a greater likelihood of achieving positive outcomes. Facilities should provide accountability to ensure that both internal and external oversight is maintained;
- Any implemented programs must be based on evidence-informed practices to ensure that programs and services have improved outcomes for youth, maintained public safety, and reduced recidivism and unwarranted racial/ethnic disparities;
- Comprehensive case management should support successful adjustment to residential care and reintegration to the community;
- Family should be engaged and included in the treatment process, and aftercare should be planned from the point of admission to start as soon as youth can be safely released;
- Facilities should be located in or close to New York City;
- Youth staff and local communities should be safe and focused on common objectives;
- Facilities and programs should be culturally responsive;

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<sup>91</sup> Id at 52.

<sup>92</sup> Id at 43.

<sup>93</sup> Id at 84.

<sup>94</sup> Id.

<sup>95</sup> *Close to Home: Plan for Non-Secure Placement*, supra note 82, at 42.

<sup>96</sup> Id at 56.

- Outcomes should be measured on a regular basis, and data should be used to inform program changes; and
- Facilities should provide effective reintegration services to ensure youth remain connected to appropriate educational services and positive behavioral supports and/or treatments when they transition out of placement.

### **PUBLIC SAFETY CONCERNS**

The Close to Home initiative is implemented in a manner that protects community safety and meets the residential services needs of youth. As such, OCFS continues to operate secure facilities to serve youth statewide who are in need of secure placement, as well as the limited secure and non-secure facilities for youth in need of placement with OCFS in settings from counties outside of New York City.<sup>97</sup> Further, RAI's help maintain public safety by requiring the courts to use an objective assessment of the risk a youth poses to the community as a guide post for determining the youth's disposition.

### **ALTERNATIVES TO PLACEMENT**

The Close to Home initiative includes the introduction of new alternatives to residential placement.<sup>98</sup> The following programs are aimed at reducing unnecessary placements and recidivism:

1. **Juvenile Justice Initiative Alternative to Placement (JJI ATP):** Provides intensive, home-centered, evidence-based treatment in lieu of OCFS placement. Services include Multisystemic Therapy – Substance Abuse Adaptation (MST-SA), Multisystemic Therapy-Psychiatric Adaptation (MST-PA), FFT, and Multidimensional Treatment Foster Care (MTFC). Youth who receive JJI ATP services have mental health diagnoses similar to those among youth in placement, including conduct disorder, oppositional defiant disorder, attention deficit hyperactivity disorder, post-traumatic stress disorder, mood disorder, bipolar disorder, and various psychotic disorders.<sup>99</sup>
2. **Juvenile Justice Initiative Intensive Preventative and Aftercare Services (JJI IPAS):** Provides case management, transitional services, and aftercare to youth in private placement with OCFS' provider agencies.<sup>100</sup>
3. **Esperanza:** Operated by the Department of Probation, provides intensive in-home family-focused therapeutic services, case management, and crisis management for placement-bound youth. Like JJI participants, Esperanza youth are similar to OCFS-

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<sup>97</sup> Id at 74.

<sup>98</sup> Id at 20.

<sup>99</sup> Id at 21.

<sup>100</sup> Id at 22.

placed youth in terms of their mental health diagnoses, substance abuse histories, histories of detention, and family strife.<sup>101</sup>

4. **Way Home:** Home-based treatment program designed to work with youth who have caregivers who are reluctant to allow the youth to return back home while a delinquency case is pending, or whose caregivers are not able to provide a viable home without social service support. Following a Family Team Conference, Way Home staff members provide Brief Strategic Family Therapy, an evidence-based therapy for youth involved in juvenile justice.<sup>102</sup>
5. **Boys Town:** Provides for an assessment of the youth's risk and needs to be reported to the court followed by in-home family services to youth and their families using the Boys Town model.<sup>103</sup>

In the first year of Close to Home, the NYC Department of Probation ("Probation") added three other programs, Advocate Intervene Mentor (AIM), Each Child Has An Opportunity to Excel and Succeed (ECHOES) and Pathways to Excellence, Achievement and Knowledge (PEAK)<sup>104</sup> that substantially dropped the population of youth in placement. These programs demonstrate that New York City has been able to create better, decent and rehabilitative programming and still create alternatives that result in fewer young people being deprived of their liberty. Additionally, the Department of Probation created non-mandatory support programs for young adults on probation (ages 16-24). Those are Arches, Young Adult Justice, Young Adult Communities, and Community Education Pathways to Success (CEPS).<sup>105</sup>

#### **COST ANALYSIS**

When fully implemented in state fiscal year 2014-15, the initiative is projected to save the State and local governments a combined total of approximately \$12 million.<sup>106</sup>

### **4. Recommendations and Strategies**

The Youth Justice Clinic's state survey of correctional facilities identified systems, practices and procedures that are effective in reducing recidivism while controlling programmatic costs. These practices, many of which are based upon the Missouri Model, provide useful guidance for necessary changes on Rikers Island. Even though the Missouri Model is a post-conviction one, it

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<sup>101</sup> *Close to Home: Plan for Non-Secure Placement*, *supra* note 82, at 22.

<sup>102</sup> *Id.* at 31.

<sup>103</sup> *Id.*

<sup>104</sup> *Young Men's Initiative*, NYC DEP'T OF PROBATION,

[http://www.nyc.gov/html/prob/html/young\\_men/young\\_men.shtml](http://www.nyc.gov/html/prob/html/young_men/young_men.shtml) (last visited Jan. 30, 2014).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

can be adapted for pre-trial and most post-trial detainees on Rikers Island. The principles and practices for the Missouri Model are discussed below.

## **A. REDUCE THE RIKERS ISLAND POPULATION**

Many aspects of the Close to Home Initiative, based on the Missouri Model, can be adapted for youth on Rikers Island. Initially, New York City needs to develop risk assessment tools and other mechanisms to assure public safety without incarceration of youth. The existing RAI's in the Close to Home Program that are geared toward post-conviction placements can be readily tailored to the Rikers Island population. Such modifications were made by the NYC Department of Probation. Spurred on by the Close to Home Initiative, Probation adopted similar tools -- the Youth Level of Risk (YLS) tool to guide placement recommendations for juveniles and the Level of Risk Inventory - Revised (LSIR) risk assessment-- to guide probation recommendations for adults. Thus, NYC has essentially already adopted two new *post-conviction*, state-of-the-art risk assessment instruments.

New York City should focus upon a similar pre-trial instrument to assess which youth are a pretrial flight risk, and the system should offer a continuum of options such as supervision, bail expediting and a non-profit bail bond system. Education of all system stakeholders about the utility of the pre-trial risk assessment is essential. These measures, along with a concentrated effort to accelerate court-processing time will significantly reduce the pretrial population of youth. Because pre-trial detainees have yet to be found guilty of any charges, weight should be given to their pre-trial status when making this assessment. The nature of the charges and prior convictions may also be taken into consideration.

Such instruments can effectively downsize the Rikers Island population thereby conserving significant financial resources, some of which can be used for effective programming for youth.

## **B. SMALL GROUPS**

Not all youth need separation from their communities. Where public safety or other concerns necessitate such separation, the most effective model to change conduct and, therefore, reduce recidivism is the "small group model." Establishing such a mini community is frequently cited as valuable in reinforcing positive behavior. The small group model is a critical component of the Missouri Model.<sup>107</sup>

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<sup>107</sup> Missouri Model, *supra* note 78, at 20.

## **BASIC PRINCIPLES FOR THE SMALL GROUPS MODEL**

- Youth are grouped in teams of approximately 10-12, who sleep in the same dormitory style room and spend a significant amount of the day together (during meals, education, exercise, and therapy).<sup>108</sup>
- Youth remain under the regular supervision of youth specialists.<sup>109</sup> Part of the benefit of these groups is that the structured consistency does not allow for a young person to withdraw because they receive support from staff and their peers. Youth develop accountability for any inappropriate behavior that is destructive.
- An alternative to isolation or punishment when youth misbehave is that youth discuss their feelings. They are asked to, “explore how the current misbehavior relates to the law breaking that resulted in their incarceration,”<sup>110</sup> while also addressing how their actions have an effect upon other individuals.
- Youth are encouraged to communicate with the other group members.<sup>111</sup> “[A]t any time, youth are free to call a circle - in which all team members [residents] sit or stand facing one another - to raise concerns or voice complaints about the behavior of other group members (or to share good news). Thus, at any moment, the focus can shift from the activity at hand— education, exercise, clean up, a bathroom break—to a lengthy discussion of behaviors and attitudes. Staff members also call circles frequently to communicate and enforce expectations regarding safety, courtesy, and respect, and also to recognize positive behaviors.”<sup>112</sup>

### **C. THERAPY**

Facilities that use therapeutic models rather than traditional correctional models have shown more success with incarcerated youth. Specifically, therapeutic models decrease the likelihood of re-offense.<sup>113</sup> Thus, in 2011, violence reduction experts published a resource for policy makers advising them on proper implementation of treatment and rehabilitation for criminal offenders.<sup>114</sup>

***“The less [you] treat a young person like a criminal, the less likely he or she will be to feel and behave like a criminal.”***  
**- Missouri Model**

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<sup>108</sup> Id at 21.

<sup>109</sup> Id.

<sup>110</sup> Id at 20.

<sup>111</sup> This is in addition to the structured times throughout the day that they are required to check in with one another.

<sup>112</sup> Missouri Model, *supra* note 78, at 29.

<sup>113</sup> JOEL A. DVOSKIN ET AL., USING SOCIAL SCIENCE TO REDUCE VIOLENT OFFENDING (Oxford Univ. Press 2011). See also Using Social Science to Reduce Violent Offending: A Briefing Paper for Public Policymakers, REDUCING VIOLENCE, available at <http://reducingviolence.com/storage/BriefingPaper.pdf>.

<sup>114</sup> Id.

## **REHABILITATIVE INTERVENTIONS**

Several therapeutic interventions have shown success with reforming delinquent behavior. Such therapies include:

### 1. *Antecedent Manipulations*

This technique chooses an aspect of the environment that reliably precedes a problem behavior, and alters it in such a way as to make desirable behaviors more likely. Such aspects include:

- Environmental Designs: calming living environments that maximize warmth, light and openness, and minimize obvious security measures.<sup>115</sup>
- Assessing inmates for a history of trauma. Avoiding individual trauma triggers.
- Decreasing the response effort needed for desirable behavior (e.g., having books readily accessible in inmate living quarters).
- De-escalation procedures (e.g., avoiding touch and using a validating, calming tone). (See Alternative Discipline).

### 2. *Consequence Manipulations*

Consequence manipulations alter the environment so that undesirable maladaptive behaviors are ignored or punished, and desirable prosocial behaviors are met with positive reinforcement. Consequence manipulations include:

- Punishment
  - Response Cost: loss of privileges for engaging in a predetermined list of maladaptive behaviors.
  - Time-out
- Positive Reinforcement
  - Blended sentence alternatives provide youthful offenders with rehabilitative treatment and the ability to void adult prison sentences if significant progress is demonstrated in treatment.
  - Indeterminate sentencing allows the length of confinement to be determined by youth themselves (i.e., progress in treatment decreases sentence length).
  - Positive management programs reward good behavior with privileges.
  - Token Economies are organizational incentive systems that manage behavior using tokens, points, checkmarks, or other conditioned reinforcers. Participants earn tokens for engaging in targeted prosocial behaviors and lose tokens for engaging in targeted maladaptive behaviors. Tokens can be

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<sup>115</sup> Such design was employed at the Ferris School for Boys in Delaware (e.g. through the use of security glass instead of bars and electronic access cards instead of keys) and in Missouri (e.g., through the use of residential housing in the community, replete with artwork, plants, and pets).

traded in for a multitude of backup reinforcers.<sup>116</sup> Rikers is particularly well suited for implementing a token economy, since it already has a large recreational facility that has been shown to be reinforcing for youth. If access to the recreation center were only available in exchange for tokens, staff at Rikers could implement a token economy as a positive means of managing behavior.

### 3. *Therapy*

- Trauma-Informed treatment to youth who have survived abuse or other traumatic experiences, before addressing behavioral issues.
- Cognitive-Behavior Therapy (CBT) is a therapeutic approach based on the principle that by changing the way we react to the world around us we can decrease anger, anxiety, and depression, even if the upsetting events themselves cannot be changed. CBT may be especially helpful for incarcerated youth who have few choices and often feel victimized and wronged.<sup>117</sup>
- Dialectic Behavior Therapy (DBT) is a modification of CBT that has been particularly effective for individuals with chronic suicidal ideation, as well as those with borderline personality disorder (BPD) who exhibit self-injurious behaviors. Incarcerated youth, especially those who have been subject to solitary confinement, often engage in self-mutilation or suicidal behavior, making them prime candidates for DBT.
- Family Therapy incorporates families in therapeutic sessions. When youthful offenders are housed in the community, families can easily be integrated into treatment. For youth housed on Rikers, family therapy can be offered on visiting days, and mandated preceding release.
- Group Therapy provides treatment to multiple youth in one session. Group therapy can be especially important in assisting youth to navigate group-living while incarcerated, and to provide them with important communication skills in preparation for release to the community.
- 24-7 Therapeutic Environment

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<sup>116</sup> RAYMOND G. MILTENBERGER, *BEHAVIOR MODIFICATION: PRINCIPLES AND PROCEDURES*. (3d ed. 2004) (discussing successful implementation of token economies in prisons, using items sold in the canteen as backup reinforcers).

<sup>117</sup> *What is Cognitive-Behavior Therapy (CBT)*, THE COLUMBIA UNIVERSITY CLINIC FOR ANXIETY AND RELATED DISORDERS, [www.anxietytreatmentnyc.org/CBT.html](http://www.anxietytreatmentnyc.org/CBT.html) (last visited January 30, 2014).

#### 4. Skill-Building

Skill-building programs operate on the premise that all youth wish to be “good”, and thus, misbehavior is not willful but usually stems from a skill deficit. To this end, programs should equip youthful offenders with the following adaptive skills to succeed in the outside world.

- Communication
- Emotion Regulation/Anger Management
- Collaborative Problem Solving (CPS)
- Education
- Job Readiness

### D. ALTERNATIVE DISCIPLINE

The model of closely supervised small groups, with group therapy and behavioral management facilitated by trained staff, can avoid the need for the most serious types of discipline methods. The extensive individual attention afforded by this model and positive behavior management programs often obviate the need for isolation practices entirely.<sup>118</sup>

Rikers Island and other correctional facilities housing youth throughout New York State need to reduce the reliance on harmful isolation practices and follow the lead of youth correctional facilities in other jurisdictions. Other states have standards that strictly regulate the use of isolation; they utilize alternative discipline practices to separate and discipline youth in ways that neither undermine the rehabilitative goals of the facility nor endanger the mental and physical health of youth. Several national initiatives provide a clear framework of standards that represent best practices drawn from extensive research and data submissions from participating youth facilities. The standards supplied by the Juvenile Detention Alternatives Initiative (JDAI) and the Performance-Based Standards Initiative (PbS) have been able to effect widespread youth justice reform, improving outcomes for incarcerated youth.

- The **Juvenile Detention Alternatives Initiative (JDAI)** has created a comprehensive set of standards to reduce reliance on secure detention of youth, ensure appropriate and safe conditions of youth in secure facilities, and redirect taxpayer money to successful reforms.<sup>119</sup> A core JDAI strategy for youth justice reform centers around improving conditions of detention by applying robust and ambitious standards that strictly regulate the use of isolation, recommending that isolation only be used after a graduated system

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<sup>118</sup> Missouri Model, *supra* note 78, at 27. Director of Missouri Youth Services, Tim Decker, says that the agency uses isolation cells fewer than 25 times per year statewide.

<sup>119</sup> *Juvenile Detention Alternatives Initiative*, THE ANNIE E. CASEY FOUNDATION, <http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/CoreStrategies.aspx> (last visited Nov. 19, 2013).

of interventions or lesser restrictive techniques have proven ineffective.<sup>120</sup> The requirements to become a JDAI site are rigorous. To be a JDAI site, a youth facility must demonstrate a strong commitment to the initiative's goals and agree to implement all standards of the model.<sup>121</sup> JDAI standards are currently replicated in more than 200 jurisdictions in 39 states, including the District of Columbia.<sup>122</sup> In fact, in New York State, the counties of Albany, Erie, Monroe, Nassau, Onondaga and Orange are currently utilizing JDAI standards.<sup>123</sup>

- The **Performance-Based Standards Initiative (PbS)** is a nationally recognized improvement program of the Council of Juvenile Correctional Administrators that focuses on gathering and disseminating reportable data to promote best practices in youth facilities.<sup>124</sup> PbS provides a strong set of national standards to guide operations in youth facilities and monitors compliance with these standards through a rigorous data reporting process in order to improve conditions and services provided to incarcerated youth.<sup>125</sup> PbS has led to a reduction of incidents of isolation and room confinement in participating facilities.<sup>126</sup>

The disciplinary policies and procedures of any correctional facility housing youth must be individualized and consider factors<sup>127</sup> such as the:

- Youth's age
- Mental health status or the presence of special needs
- History of adjustment in the facility

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<sup>120</sup> Facility Site Assessment Instrument, JUVENILE DETENTION ALTERNATIVES INITIATIVE (JDAI) [hereinafter JDAI Facility Assessment Instrument], available at <http://www.cclp.org/documents/Conditions/JDAI%20Standards.pdf>. This document includes the set of standards and comprehensive facility assessment instrument used to evaluate and improve conditions of youth confinement. The document is commonly referred to as both the "standards" and the "instrument."

<sup>121</sup> *Two Decades of JDAI 11*, JUVENILE DETENTION ALTERNATIVES INITIATIVE 11 (2009), available at, [http://www.aecf.org/~media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/TwoDecadesofJDAIFromDemonstrationProjecttoNat/JDAI National final 10 07 09.pdf](http://www.aecf.org/~media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/TwoDecadesofJDAIFromDemonstrationProjecttoNat/JDAI%20National%20final%2010%2007%2009.pdf).

<sup>122</sup> *Sites and Contacts*, JUVENILE DETENTION ALTERNATIVES INITIATIVE, <http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/SitesAndContacts.aspx> (last visited Nov. 7, 2013).

<sup>123</sup> *JDAI Sites*, JDAI HELP DESK, <http://www.jdaihelpdesk.org/SitePages/jdai-sites.aspx> (last visited Nov. 7, 2013).

<sup>124</sup> *Safety and Accountability for Juvenile Corrections and Detention Facilities*, PBS LEARNING INST. (2012), available at [http://pbstandards.org/uploads/documents/PbS\\_Li\\_MarketingPacket.pdf](http://pbstandards.org/uploads/documents/PbS_Li_MarketingPacket.pdf).

<sup>125</sup> *PbS Goals, Standards, Outcome Measures, Expected Practices and Processes*, PBS LEARNING INST. (2007) [hereinafter *PbS Standards*], available at <http://sccounty01.co.santa-cruz.ca.us/prb/media%5CGoalsStandardsOutcome%20Measures.pdf>.

<sup>126</sup> *Reducing Isolation and Room Confinement*, PBS LEARNING INST. 2,4 (2012) [hereinafter *PbS Reducing Isolation and Room Confinement*], available at [http://pbstandards.org/uploads/documents/PbS\\_Reducing\\_Isolation\\_Room\\_Confinement\\_201209.pdf](http://pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf). From October 2008 to April 2012, aggregated data from corrections facilities participating in PbS showed that facilities more than cut in half the average time a youth spent in isolation and room confinement. *Id.* The all-time high in October 2008 was an average time of about 32 hours. *Id.* In April 2012, that average time decreased to 14 hours. *Id.*

<sup>127</sup> ACLU-NJ Petition for Rulemaking, *supra* note 8, at app. A(a).

- Involved youth’s account
- Rehabilitative goals set for the youth

Procedural safeguards are required to guarantee youth due process prior to the imposition of any disciplinary management.<sup>128</sup>

The following are the operational standards recommended by both the JDAI and PbS models.

### 1. BAN SOLITARY CONFINEMENT

Solitary confinement, absolute social and physical isolation for 22-24 hours per day used to punish rule breaking, should be completely banned in facilities housing youth.<sup>129</sup>

This level of isolation for such extended periods of time can cause serious psychological and physical harm to youth.<sup>130</sup> When isolated, youth are deprived of the therapeutic and educational programming they need for healthy growth and development. With regard to isolation, the Department of Justice has stated that “[i]solation is a severe penalty to impose upon a juvenile, especially since this sanction is to assist in rehabilitation as well as punish a child . . . After a period of time, room confinement begins to damage the juvenile, cause resentment toward the staff, and serves little useful purpose.”<sup>131</sup>

Although certain forms of strictly regulated isolation may be acceptable to separate individual youth in extreme circumstances where the youth poses an immediate threat to others or to themselves, youth should never be subjected to isolation practices involving significant levels of prolonged physical and social isolation.<sup>132</sup>

### 2. ALTERNATIVE FORMS OF DISCIPLINE AND STRICTLY REGULATED ISOLATION PRACTICES

In youth facilities, the most effective youth management techniques rely on positive, rewards-based practices.<sup>133</sup> However, where disciplinary measures are necessary, procedures should always favor sanctions that do not require isolation of youth from the general population.

As a general matter, disciplinary policies must always distinguish between major and minor rule violations with sanctions designed to be immediate and proportionate to the offending

<sup>128</sup> See *infra* Part 4.E, Procedural Safeguards.

<sup>129</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez) (“the imposition of solitary confinement, of any duration, on juveniles is cruel, inhuman or degrading treatment”), available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

<sup>130</sup> See *supra* Part 3.C, Damage of Solitary Confinement.

<sup>131</sup> *Standards of the Administration of Juvenile Justice*, DEP’T JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION 4.52 (1980), available at <http://catalog.hathitrust.org/Record/000127687>.

<sup>132</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 44.

<sup>133</sup> Missouri Model, *supra* note 78. See *supra* Part 4.C, Therapy.

behavior. A range of disciplinary measures can be employed, that in certain situations, may involve separating youth from others. However, this separation should never constitute the level and duration of social and physical isolation of solitary confinement. Any use of isolation for youth must be strictly regulated, used for the shortest duration possible, and only to the extent absolutely necessary to maintain the safety of the group or individual youth. At all times, the goal of any isolation should be to return the individual youth to the general population as soon as possible.

#### a. De-Escalation Techniques

An important alternative to punitive discipline begins with de-escalation techniques. These include trained staff or peers speaking with volatile youth in an effort to diffuse a tense situation.<sup>134</sup> When a young person acts out or misbehaves, staff should speak to the youth and ask questions to determine the root causes of the issue and help the youth identify more appropriate responses.

An example of a communication skills building approach that serves to de-escalate or preempt a more volatile situation is the Collaborative Problem Solving Approach (CPS). Developed by Dr. Stuart Ablon of Massachusetts General Hospital, CPS is a brainstorming approach where the youth and adult staff identify the youth's concern about an issue, then identify the adult's corresponding concern, and together, discuss how to address both of their concerns.<sup>135</sup> CPS has successfully reduced the use of isolation for youth in a range of institutional environments.<sup>136</sup>

Referral to mental health professionals can also help defuse a situation; the professional can prescribe an appropriate program or treatment regimen.

Staff should encourage youth to take a voluntary time out for a short period of time at the youth's request.<sup>137</sup> In a voluntary time out, youth can choose to remove themselves from programming to "cool off," and return automatically without needing staff permission when they regain control over themselves.

#### b. System Of Graduated Sanctions

PbS standards require that facilities housing youth should implement a system of graduated sanctions that enable the least restrictive disciplinary response to rule breaking. This may entail

***In the Missouri Model, isolation is never used as a punishment. Whenever a young person requires a cooling off period or separation, they are placed into a room with a staff member just outside the door and rarely spend more than an hour or two before rejoining their small group and resuming regular programming.***

<sup>134</sup> *PbS Standards*, *supra* note 125, at 6; *Missouri Model*, *supra* note 78, at 27.

<sup>135</sup> Alisha R. Pollastri et al., *The Collaborative Problem Solving Approach Outcomes Across Settings*, 21:4 HARV. REV. OF PSYCHIATRY 190-91 (2013).

<sup>136</sup> *Id.* at 195. After implementation of CPS in the Mountain View Youth Development Center in Maine, the rates of assault and the use of force decreased by more than 50%, and time spent in isolation decreased by 89%.

<sup>137</sup> *JDAI Facility Assessment Instrument*, *supra* note 120, at 46.

a removal of certain programming opportunities or recreational privileges.<sup>138</sup> For example, in Rikers Island's RND complex, which houses males ages 16 to 18, a recreation room has been outfitted with several Nintendo Wii stations. Restricting access to a coveted recreational activity, such as Nintendo Wii, may have a powerful impact on managing youth behavior.

Other examples of sanctions can include:

- Removal of privileges granted from positive behavior management system, such as extra visits, extra telephone calls, or attendance at special events
- Loss of telephone, radio, television privileges
- Loss of certain recreation privileges
- Required restitution or repair for any damage, alteration or destruction of state/city property or the property of another youth prisoner.

However, sanctions should not include deprivation of a youth's meals, regular snacks, mail privileges, court appearances or regular family visits.<sup>139</sup>

### c. Short-Term Isolation

When graduated sanctions and lesser restrictive discipline techniques have proven ineffective, it may be necessary to separate individual youth to interrupt current acting-out behavior or to address situations where the youth poses an immediate threat to others or to him/herself.<sup>140</sup> However, given the risk of harm posed by any physical and social isolation—the use of isolation must be used as a last resort, strictly limited to address a specific penological objective and subject to oversight.

According to JDAI standards, before separating the youth, staff must explain to the youth the reasons why isolation is required, and that he or she will be released upon regaining self-control.<sup>141</sup> During the time that a youth is in isolation, staff must provide constant, one-on-one observation and interaction as appropriate.<sup>142</sup> The staff member should either be in the room with the youth or directly outside the room.<sup>143</sup>

JDAI and PbS standards require that any use of isolation be carefully monitored. Standards provide that a juvenile inmate subject to isolation shall be assessed in person, face-to-face (not through a cell door) by a mental health professional within thirty minutes after placement. Both JDAI and PbS standards require a medical health professional to monitor any youth in isolation

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<sup>138</sup> *PbS Standards*, *supra* note 125, at 8, 24; Missouri Model *supra* note 78, at 27.

<sup>139</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 46.

<sup>140</sup> *PbS Reducing Isolation and Room Confinement*, *supra* note 126, at 2.

<sup>141</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 44.

<sup>142</sup> *Id.* at 45.

<sup>143</sup> *Id.*

at least every 15 minutes.<sup>144</sup> If a youth is in isolation for longer than one hour, the mental health professional must *directly* monitor the youth at least once every hour.<sup>145</sup>

In JDAI facilities, short-term isolation practices are strictly limited to a maximum of 4 hours.<sup>146</sup> Isolation must end as soon as the youth has regained self-control and no longer poses a threat.<sup>147</sup> As soon as the current need for isolation has concluded, the youth must be immediately released back to regular programming.

If a mental health professional determines that a youth requires isolation for longer than 4 hours, JDAI standards require that staff transport the youth to a medical or mental health unit.<sup>148</sup> When a youth exhibits suicidal behavior or commits acts of self-harm, the youth must be handled through procedures for youth on suicide watch and closely monitored by mental health professionals.<sup>149</sup> If the suicide risk is not resolved or if medical or mental health professionals believe that the services required are not available in the current environment, the youth must be moved to a medical or mental health unit, or a facility where those services can be readily obtained.<sup>150</sup>

#### d. Room Confinement

In extreme situations of a major rule violation where lesser restrictive discipline techniques, including short-term isolation, have been exhausted or proven ineffective, isolation for longer periods of time may be necessary.<sup>151</sup> However, this type of separation and room confinement must be reserved for the most serious threats to the safety of others and dangerous behavior.

- **Major Rule Violations.** Major rule violations can include murder, attempted murder, non-consensual sexual intercourse, acts of violence likely to result in a serious injury or death to another prisoner or staff, escape, and hostage taking.<sup>152</sup> Facilities should also document situations in which confinement cannot be used. Confinement should never be imposed on youth for the following types of activities: property violations, nuisance contraband, horseplay, gang-related gestures, signs or writings, refusal to obey, lying/willful deceit, disrespect or profanity, and littering.<sup>153</sup> Prior to the imposition of

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<sup>144</sup> *Id.*; *PbS Standards*, *supra* note 125, at 2.

<sup>145</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 45; *PbS Standards*, *supra* note 125, at 2.

<sup>146</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 45.

<sup>147</sup> *Id.*; *PbS Standards*, *supra* note 125, at 10.

<sup>148</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 45.

<sup>149</sup> *Id.* at 45.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 48.

<sup>152</sup> Consent Decree, *C.B., et al. v. Walnut Grove Corr. Auth.*, No. 3:10cv663, (S.D. Miss. Feb. 3, 2012), IV(a)(3), available at [http://www.aclu.org/files/assets/68-1\\_ex\\_1\\_consent\\_decree.pdf](http://www.aclu.org/files/assets/68-1_ex_1_consent_decree.pdf) [hereinafter Mississippi Consent Decree].

<sup>153</sup> Disciplinary Reports and Hearings: Policy 16.5 GEORGIA DEPARTMENT OF JUVENILE JUSTICE III (2012) [hereinafter Policy 16.5], available at, <http://www.djj.state.ga.us/Policies/DJJPolicies/Chapter16/DJJ16.5DisciplinaryReportsandHearings.pdf>.

room confinement, staff must satisfy due process requirements and heightened supervisory review is required.<sup>154</sup>

- **Time Limitations.** Facilities should only reserve room confinement for extreme situations and it should not be routinely imposed.<sup>155</sup> According to the JDAI standards, room confinement for more than 24 hours is reserved for the most serious violations, and never imposed for more than 72 hours.<sup>156</sup>
- **Monitoring.** A youth prisoner subject to room confinement shall be assessed in person, face-to-face (not through a cell door) by a mental health professional within 30 minutes after placement.
  - According to JDAI standards, youth in room confinement must be closely observed by staff, at intervals not to exceed 15 minutes, with one-on-one observation and interaction as appropriate.<sup>157</sup>
  - Where a youth is in room confinement for longer than 24 hours, they must be evaluated by a medical and mental health professional at least once every 24 hours.<sup>158</sup>
  - If a youth exhibits suicidal behavior or commits acts of self-harm, the youth must be handled through procedures for youth on suicide watch and closely monitored by a mental health professional. If the suicide risk is not resolved or where medical or mental health professionals believe that the services required are not available in the current environment, the youth must be moved to a medical or mental health unit or facility where those services can be readily obtained.
- **Mandatory Out-Of-Cell Time.** Youth in room confinement must receive out-of-cell access to education services and other programming, including physical recreation (including the opportunity to recreate outdoors, weather permitting), for at least 4 hours per day.<sup>159</sup>
- **Conditions of Room Confinement.** Notification and consultation with family members, as well as counsel for represented youth must occur when youth are placed in room confinement. Notification must occur within 24 hours of the youth's placement in room confinement. Youth cannot be denied the opportunity for parental and attorney contact through visits, phone calls, and letters.<sup>160</sup> Youth in room confinement must receive the

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<sup>154</sup> See *infra* Part 4.E, Procedural Safeguards; JDAI Facility Assessment Instrument, *supra* note 120, at 48.

<sup>155</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 48.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 49

<sup>158</sup> *Id.* at 48.

<sup>159</sup> Mississippi Consent Decree, *supra* note 152, at IV(c)(1).

<sup>160</sup> *Id.* at IV(c)(2).

same meals, snacks, clothing, access to drinking water, medical treatment, educational services and opportunity to exercise provided to other youth inmates.<sup>161</sup>

- **Programming and Counseling.** Daily assignments and specialized counseling sessions shall be given to a youth in room confinement. Such assignments and group sessions should enable the youth to recognize the behavior in order to develop and reflect upon more appropriate responses.<sup>162</sup> Additionally, upon assignment to room confinement, youth should be provided with an individualized plan outlining specific objectives that must be met to work their way out of room confinement, such as through completing certain programming or activities.<sup>163</sup> Successful completion of the individualized plan would immediately return the youth to the general population.
- **Review.** JDAI standards require that if a youth is in room confinement for longer than 24 hours, the facility administrator or a designee who was not involved in the incident must review and determine whether it is appropriate to authorize release at least once every 24 hours.<sup>164</sup> If a particular youth repeatedly engages in behavior that results in room confinement, staff must convene a multi-disciplinary team in order to develop an individualized behavior plan for the youth with strategies to address underlying reasons for the behavior.<sup>165</sup> A repeated use of room confinement for a particular youth should trigger a review of the existing disciplinary procedures.

### 3. SUPERVISORY REVIEW

Notification of supervisory staff is required before isolation or room confinement is used. JDAI standards mandate that youth must not be kept in isolation or room confinement for longer than one hour without the explicit approval of the facility administrator or their designee.<sup>166</sup>

According to PbS standards, each occurrence must be documented, consistently reviewed by facility administrators, and publicly reported regularly.<sup>167</sup> The facility administrator, along with the medical and mental health staff, must regularly review all uses of isolation and room confinement to identify violations of policy and to provide feedback to staff on how to improve incident responses. All incidents that result in isolation or room confinement should be

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<sup>161</sup> Id at IV(a)-(h); See also JDAI Facility Assessment Instrument, *supra* note 120, at 46-48.

<sup>162</sup> See COURAGE Program, ALTERNATIVE TREATMENT PROGRAM, CPOM 04.11(document on file with author). The Alternative Treatment Program (ATP) is designed for offenders who violate rules specific to the program or policies set forth by the Texas Department of Criminal Justice (TDCJ). See also *supra* Part 4(C), Therapy.

<sup>163</sup> *No Child Left Alone: Campaign to Stop the Solitary Confinement of Youth In Adult Jails and Prisons Model Stop Youth Solitary Act*, AMERICAN CIVIL LIBERTIES UNION §9, available at <http://www.truah.org/images/stories/No%20Child%20Left%20Alone%20Toolkit.pdf>.

<sup>164</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 48.

<sup>165</sup> Id at 49.

<sup>166</sup> Id at 45, 48.

<sup>167</sup> *PbS Standards*, *supra* note 125, at 10.

evaluated to determine whether the isolation or room confinement could have been shorter or avoided entirely.<sup>168</sup>

Facility staff must document all incidents in which a youth is placed in isolation or room confinement. JDAI standards require incident reports to include the following information:<sup>169</sup>

- Name of the youth
- Date and time the youth was placed in isolation or room confinement
- Name and position of the supervisory staff individual authorizing placement of the youth in isolation or room confinement
- Names of the staff involved in the incident
- Description of the circumstances leading to the use of isolation or room confinement
- Description of the lesser restrictive alternative actions attempted and found unsuccessful, or reason that alternatives were not possible
- Contacts with medical and mental health staff, including the date, time and person contacted
- Date and time the youth was released from isolation or room confinement

Medical and mental health staff must document all contacts with youth placed in isolation or room confinement. JDAI standards require reports to include the following information:<sup>170</sup>

- Name and position of medical or mental health staff
- Date and time of initial contact
- Date and times of all subsequent monitoring
- Pertinent findings
- Instructions to staff
- Follow up required after the incident

Facility staff shall receive regular training on the appropriate use of, and alternatives to, isolation and room confinement.

Independent oversight boards, such as the New York City Board of Correction, should be privy to this information as soon as it becomes available to the Facility Administrators. Oversight boards should have full and complete access to all the facility records (including medical and mental health records).

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<sup>168</sup> Id.

<sup>169</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 45-46, 48-49.

<sup>170</sup> Id at 46.

## **E. PROCEDURAL SAFEGUARDS**

Solitary confinement has severe consequences for youth. Therefore, a jurisdiction that utilizes confinement must implement appropriate and necessary procedural safeguards to protect constitutional due process rights. First and foremost, detention facilities must provide youth with a list of prohibited behaviors and the sanctions or consequences imposed for such behaviors.<sup>171</sup> Under no circumstance can staff use group punishment as a sanction for the misbehavior of an individual youth.<sup>172</sup> Second, youth must be provided with an opportunity to be heard in an administrative hearing. These hearings must be conducted in a fair and routine manner, providing youth with assistance when requested. Finally, youth must receive a written decision and given the opportunity to appeal any administrative decision.<sup>173</sup>

### **CONFINEMENT RULES AND NOTICE**

Facilities must document the ground rules for the use of confinement and ensure that all youth are aware of the sanctions imposed for disciplinary infractions. Upon entering a facility, all youth should be provided with a rulebook listing prohibited behaviors and their corresponding sanctions. These rules should also be posted in all living units.<sup>174</sup> If a youth is accused of violating a rule, he/she must be provided with written notice of the alleged violation within a reasonable amount of time.<sup>175</sup>

### **BASIC RIGHTS**

All youth are afforded basic rights even if punishment is imposed for a rule violation. Basic rights include:<sup>176</sup>

- A place to sleep (e.g., a mattress, pillow, blankets and sheets)
- Full meals and evening snacks
- A full complement of clean clothes
- Parental and attorney visits
- Personal hygiene items
- Daily opportunity for exercise
- Telephone contacts with attorney
- The right to receive and send mail
- A regular daily education program
- An opportunity for daily shower and access to toilet and drinking water as needed.
- An opportunity to attend religious services and/or obtain religious counseling of the

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<sup>171</sup> Id at 46.

<sup>172</sup> Id at 48.

<sup>173</sup> Id at 46.

<sup>174</sup> Id.

<sup>175</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 46.

<sup>176</sup> Id at 47.

- youth's choice
- Clean and sanitary living conditions
- Access to reading materials

### **PRE-HEARING CONFINEMENT**

The JDAI standards place an absolute prohibition on pre-hearing confinement.<sup>177</sup> However, some jurisdictions allow for pre-hearing confinement under extremely limited circumstances where misbehavior presents an imminent threat to others or the security of the facility, and other strategies are inappropriate given the seriousness of the rule violation.<sup>178</sup> Youth in pre-hearing confinement must have a disciplinary report filed within a specified time period.<sup>179</sup> It is equally important that a youth placed in pre-confinement is informed of the disciplinary violation. Therefore, a youth in pre-hearing confinement must be provided with a copy of the disciplinary report when it is filed. If the disciplinary report is dismissed for any reason, the youth must be removed from pre-hearing confinement at the time of the dismissal.<sup>180</sup>

### **DISCIPLINARY INVESTIGATION**

An investigation should begin as soon as possible after a report of alleged rule violation. It must begin within 24 hours, unless exceptional circumstances exist for delaying the investigation.<sup>181</sup> The reason for delay must be clearly documented and approved by the facility director.<sup>182</sup>

The facts of the incident must be clearly and completely summarized in an investigation summary report. Moreover, investigators should compile any staff and youth witness statements pertaining to the incident. During the investigation the youth should be given the opportunity to name any witnesses that he/she wishes to be called for the hearing.<sup>183</sup> After the investigation is complete, an investigator may recommend that a disciplinary hearing be held or that the disciplinary report be dismissed. The hearing officer will make the final decision.

Staff should be trained to appropriately investigate matters. A staff member who did not file the report or witness the infraction must conduct the investigation to ensure it is performed in an impartial manner.<sup>184</sup>

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<sup>177</sup> Id.

<sup>178</sup> Disciplinary Reports and Hearings: Policy 16.4 , GEORGIA DEPARTMENT OF JUVENILE JUSTICE II (2013), [hereinafter Policy 16.4] available at <http://www.djj.state.ga.us/Policies/DJJPolicies/Chapter16/DJJ16.4Pre-HearingConfinement.pdf>.

<sup>179</sup> Id at 16.4 III D.1.

<sup>180</sup> Id.

<sup>181</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 47.

<sup>182</sup> Policy 16.4, *supra* note 178, at III D.3.

<sup>183</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 47.

<sup>184</sup> Id.

## HEARINGS

During confinement hearings, youth must receive similar rights afforded to criminal defendants: an opportunity to present information to rebut any allegations, a written statement of findings in the matter and the evidence relied upon by the decision maker, and a right to a final decision before receiving confinement time.<sup>185</sup>

### **1. Timing of Hearing**

When a disciplinary report is filed, the youth should be afforded a disciplinary hearing within 24 hours of the alleged rule violation.<sup>186</sup> Youth in pre-hearing confinement should receive a disciplinary hearing as soon as possible, never exceeding this 24-hour period.

### **2. Staff Training**

All staff should receive training about the disciplinary process, including the rules of conduct prior to supervising.<sup>187</sup>

### **3. Youth Advocate**

Youths should be allowed to request that any staff member represent him/her in the disciplinary process.<sup>188</sup> If the youth is a mental health patient, his/her primary clinician should be present at the hearing to serve as an advocate.<sup>189</sup>

The advocate must meet the youth at least four hours prior to the disciplinary hearing.<sup>190</sup> If the requested staff member is unavailable, the hearing officer should appoint another staff member to serve as an advocate. Hearing officers should also appoint a staff member to serve as an advocate if it is determined that the youth is unable to understand the proceedings or present a defense because of disability.<sup>191</sup>

### **4. Disciplinary Hearing Officers**

The designated disciplinary hearing officer must receive adequate instruction about the facility's policies and due protections. It is the officer's responsibility to issue recommendations for sanctions based on evidence presented at the hearing.

Fairness and impartiality are a crucial aspect of any administrative hearing. Therefore, the disciplinary hearing officer should not be a person who filed the report or witnessed the infraction.<sup>192</sup> To prevent a conflict of interest, behavioral health staff, health care

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<sup>185</sup> *Id.*

<sup>186</sup> *Id.* at 47.

<sup>187</sup> Policy 16.4, *supra* note 153, at III B.5.

<sup>188</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 47

<sup>189</sup> Policy 16.4, *supra* note 153, at III F.2.

<sup>190</sup> *Id.* at III F.3.

<sup>191</sup> *Id.* at III F.5.

<sup>192</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 47.

staff and the debriefing facilitator should not be disciplinary hearing officers.<sup>193</sup>

## **APPEAL**

Youth must be advised of the right to appeal the findings of the hearing officer and be given an explanation of the appeals process.<sup>194</sup> The facility director should handle any appeal, and if rejected by the director, youth should be afforded the opportunity to appeal disciplinary sanctions to the highest-ranking administrator at a facility.<sup>195</sup> Youth may request that a staff member assist them in writing an appeal. Any staff member functioning as an advocate must perform this function as well.<sup>196</sup>

## **F. TRAINING**

Any effective and successful model to reduce recidivism requires a fundamental change in the culture of the institution. This begins with significant change in the environment and the quality of interaction between staff and youth. Systemic improvement requires alterations in four major areas: organizational structure, institutional policies, job descriptions for staff, and staff training.

The Missouri Youth Services Institute (MYSI), led by former director of Missouri's Division of Youth Services (DYS) Mark D. Steward, provides extensive consulting services to jurisdictions, including New York, to evaluate their systems, make recommendations for changes, and train their staff to successfully adopt Mississippi's rehabilitative approach.<sup>197</sup> MYSI organizes its programmatic suggestions and training around the needs of youth, rather than staff, adhering to two central principals: (1) invest in youth by training corrections staff rather than focusing on mental health and social workers and (2) indoctrinate the concept that peers are responsible for each other.<sup>198</sup> The Institute implements a structured program that transforms a facility's culture from a disciplinary-centered focus to a rehabilitative atmosphere. First, it breaks down the facility into smaller sub-groups. This transformation then has eleven steps:

1. Pre-assessment phase where consultants meet with leaders, identify the interests, challenges/strengths of the current system, and educate leaders about the Missouri approach;
2. Site visit to conduct interviews with leaders, staff, and youth;
3. Presentation of in-depth overview of MYSI's basic tenets and implications;
4. Continual assessment of the system, including meeting weekly with youth to find out

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<sup>193</sup> Policy 16.4, *supra* note 153, at III B.1.

<sup>194</sup> JDAI Facility Assessment Instrument, *supra* note 120, at 47.

<sup>195</sup> Policy 16.4, *supra* note 153, at III K.3.

<sup>196</sup> *Id.* at III K.4.

<sup>197</sup> *About MYSI*, MISSOURI YOUTH SERVICES INSTITUTE, <http://mysiconsulting.org/about.php> (last visited Nov. 19, 2013).

<sup>198</sup> Telephone Interview with Dr. Pili J. Robinson, LPC, Director of Consulting Services, Missouri Youth Services Institute (Nov. 8, 2013).

- what parts of the system work and what parts are problematic;<sup>199</sup>
5. Creation of a strategic implementation plan, administering retreats and debriefing with leaders;
  6. Implementation of the plan;
  7. Final addressing of any critical factors and prompting of any important decisions;
  8. Training of representatives from executive leadership, program management, start-up staff team, team leaders, and training team;<sup>200</sup>
  9. Continual provision of one-on-one coaching with staff;
  10. Stabilization of the start-up site;
  11. Continual coaching and stabilization of the next group/dorm.<sup>201</sup>

### **ALTERATIONS IN ORGANIZATIONAL STRUCTURE AND POLICY**

MYSI's services have contributed to the success of New York's Close to Home facilities as well as to the NYC Administration for Children's Services. A team of consultants worked for eight months with Close to Home, dividing a 120-person facility into smaller groups, rearranging the structure of youth, supervision, identifying staff that successfully adjusted to the cultural transformation, and working with management to reorganize and transform the facility. This transformation took eight months.

MYSI's program has also had great success in Washington, D.C.<sup>202</sup> The number of youth in secure facilities was reduced from 240 to 60 individuals.<sup>203</sup> These 60 youth received the care needed in a therapeutic setting. The remaining youth were sent to community-based services where their needs were better served. This and similar programs significantly dropped recidivism rates.<sup>204</sup>

In Washington, D.C., the consulting team worked with organizations and community leaders like the Annie E. Casey Foundation and the then director of Washington, D.C.'s Department of Youth Rehabilitation, Vincent N. Schiraldi. Today, Schiraldi is the Commissioner of New York City's Department of Probation. He has commended the work of MYSI in D.C. stating: "For anyone honestly seeking to transform their juvenile justice system from a correctional model to a positive youth development model, there is no group better than MYSI to help effect that change. MYSI staff truly understood the dynamic of making that kind of huge cultural change in an entrenched system. They handled their technical assistance/training/coaching role with

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<sup>199</sup> Id.

<sup>200</sup> *Leadership & Staff Development Modules*, MISSOURI YOUTH SERVICES INSTITUTE, <http://mysiconsulting.org/training.php> (last visited Nov. 19, 2013).

<sup>201</sup> *Our Process*, MISSOURI YOUTH SERVICES INSTITUTE, <http://mysiconsulting.org/process.php> (last visited Nov. 19, 2013).

<sup>202</sup> Telephone Interview with Dr. Pili J. Robinson, *supra* note 198.

<sup>203</sup> Id.

<sup>204</sup> Barry Krisberg, *The Long and Winding Road, Juvenile Corrections Reform in California* (May 2011), available at [http://www.law.berkeley.edu/files/Long\\_and\\_Winding\\_Road\\_Publication-final.pdf](http://www.law.berkeley.edu/files/Long_and_Winding_Road_Publication-final.pdf).

great skill and sensitivity. We would be nowhere near as far along in our reform efforts without MYSI.”<sup>205</sup>

### **TRANSFORMATION OF JOB DESCRIPTIONS**

Modification of a correctional focus to a rehabilitative focus is attained by changes to the caliber of staff and the focus of staff skills. The program’s safety measures for youth are credited to the environment of “trust and respect” fostered by “intensive supervision by highly motivated, highly trained staff constantly interacting with youth to create an environment of trust and respect.”<sup>206</sup> Missouri’s Division of Youth Services (DYS) replaced the traditional prison guard corrections officers with rehabilitation-focused youth specialists. Not only does DHS require its youth specialists to have extensive training; it also requires its applicants to undergo a rigorous interviewing process. In fact, hires are required to have at least 60 hours of college experience and 84% of its youth specialists have either graduated from college or accumulated over 60 hours of college in addition to having 2 years of DHS experience.<sup>207</sup>

DYS recruits many of its staff from the state’s college campuses, screening for personal commitment to helping youth succeed, listening skills, capacity for empathy, clarity and conciseness in conversation, and ability to command respect.<sup>208</sup>

### **STAFF TRAINING**

In their first two years of training in Missouri, youth specialists must complete 236 hours of training. Training includes “multiple sessions on youth development, family systems, and groups facilitation, including extensive practice applying these concepts through role playing and other participatory exercises.”<sup>209</sup> Specialists are trained to elicit and validate the feelings of inmates and help them decipher thoughts from emotions, channeling the emotions into constructive behavior and decision-making.<sup>210</sup> Further, specialists are given extensive training in conflict management and are familiarized with multiple techniques to restore a safe environment when conflict arises.<sup>211</sup> They are not even allowed to be alone with youth unsupervised until they have completed 103 hours of the core training.<sup>212</sup> Additional 40 hours per year in-service training is provided 40 hours per year to update specialists on the latest concepts and treatment techniques.<sup>213</sup>

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<sup>205</sup> *What People are Saying*, MISSOURI YOUTH SERVICES INSTITUTE, <http://mysiconsulting.org/index.php> (last visited Nov. 19, 2013).

<sup>206</sup> Missouri Model, *supra* note 78, at 28.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* at 29.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> Missouri Model, *supra* note 78, at 29.

<sup>213</sup> *Id.* at 28.

The ACLU's model legislation highlights the importance of proper training. This legislation, geared to ending solitary confinement,<sup>214</sup> recommends at least 40 hours of initial training, in addition to 12 hours of annual training, with an emphasis on being well equipped to work effectively with youth with mental illness or impairment.<sup>215</sup> Training topics include positive reinforcement; adolescent development; health and behavioral effects of solitary confinement; de-escalation techniques; mental illness/impairment detection; management of youth with mental illness/impairment; proper administration of psychotropic medication; suicide detection; suicide intervention; and additional training on correctional care of youth with mental illness/impairment.<sup>216</sup>

The Annie E. Casey Foundation's Juvenile Detention Alternatives initiative (JDAI) standards are even more rigorous, requiring 40 hours of pre-hire training, 120 hours of training during the first year of employment, and 40 hours of annual training after the first year of employment on policies and practices regarding discipline; basic rights of incarcerated youth; crisis intervention services; conflict management and de-escalation techniques; appropriate use of physical force/restraint; suicide prevention; youth victimization prevention; adolescent development; needs of specific populations by race, gender, sexual orientation, language ability, and ethnicity; nondiscrimination; CPR/first aid; safety precautions for HIV, hepatitis and tuberculosis; and emergency procedures pertaining to the facility.<sup>217</sup>

The Rhode Island Training School, a JDAI facility, requires all to staff undergo a criminal background check at the time of hiring and the population is sufficient to provide adequate security and continuous supervision of residents. Each staff member receives 180 hours of pre-service training on topics including "crisis intervention, youth disciplinary policies and procedures, conflict management, first aid, safety precautions for blood borne pathogens, and facility safety and security procedures." In 2011, staff in fact requested the self-inspection team for more training in "adolescent development, counseling techniques, and working with specific populations (ex: gender, race ethnicity, sexual orientation, and disability)," supporting the finding that it is crucial that detention center staff be provided proper training for these salient issues.

Various jurisdictions and advocacy groups emphasize the importance of proper staff training in rehabilitative, conflict-diffusing methods. The Texas Criminal Justice Coalition recommended that Texas amend its staff qualification requirements to ensure staff are (1) able to empathize with youth, foster cooperation among youth, communicate effectively with youth and their families; (2) have basic knowledge of child development and the role of family; (3) have basic knowledge of the causes of juvenile delinquency; (4) have an awareness of current treatment

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<sup>214</sup> *No Child Left Alone*, *supra* note 163 at §8.

<sup>215</sup> *Id.* at § 8(a).

<sup>216</sup> *Id.*

<sup>217</sup> *Detention Facility Self-Assessment: A Practice Guide to Juvenile Detention Reform, Juvenile Detention Alternatives Initiative*, ANNIE E. CASEY FOUNDATION 64 (2006), available at <http://www.aecf.org/upload/PublicationFiles/jdai0507.pdf>.

methods for juvenile offender; and (5) have a basic understanding of general techniques of communicating with and counseling adolescents.<sup>218</sup>

Connecticut trains its corrections staff in Therapeutic Crisis Intervention (TCI) to deescalate conflicts and maintain a positive organizational culture. TCI stresses the importance of (1) maintaining a calming physical environment; (2) encouraging positive relationships; (3) focusing on each youth as individuals; and (4) equipping youth with methods to cope with stress in a constructive manner.<sup>219</sup>

## **RESOURCES FOR REFORM IN NEW YORK**

We strongly suggest that the New York Department of Correction seek the services of MYSI to aid in the administration of a much-needed cultural transformation on Rikers Island. MYSI has already demonstrated success with systems in New York State, Louisiana, California, New Mexico, and the Cayman Islands.

Other states use various training programs that offer alternatives to the traditional correctional method. For instance, North Dakota uses services and trainings provided by the Mandt Program and the National Institute of Corrections' Effective Communication/Motivational Strategies in Assessing and Overcoming Resistance to Change. For more information about equipping leaders with the necessary resources to implement change in their communities, the Center for Juvenile Justice Reform offers certificate programs that focus on policies, programs, and practices to improve rehabilitation of youth.<sup>220</sup> The Juvenile Corrections Council of the National Partnership for Juvenile Services<sup>221</sup> as well as the National Center for Youth in Custody<sup>222</sup> and The National Juvenile Detention Association (NJDA) offer trainings to help implement rehabilitative goals for the juvenile justice system.

## **G. EVALUATION AND REPORTING**

### **AGENCY EVALUATION AND REPORTING**

Each state or local agency overseeing facilities that house youth prisoners must review all incident data collected and aggregated concerning youth discipline in order to evaluate the use

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<sup>218</sup> Jennifer Carreon, *Written Response To the Sunset Advisory Commission Staff Report: The Current Issues of Incarcerated Youth in Texas' Adult Criminal Justice System 4*, available at [http://www.texascjc.org/sites/default/files/uploads/Written%20Response%20to%20Sunset%20-%20Current%20Issues%20of%20Youth%20in%20TX%20Adult%20CJ%20System%20\(June%202012\).pdf](http://www.texascjc.org/sites/default/files/uploads/Written%20Response%20to%20Sunset%20-%20Current%20Issues%20of%20Youth%20in%20TX%20Adult%20CJ%20System%20(June%202012).pdf).

<sup>219</sup> *Therapeutic Crisis Intervention Training* RESIDENTIAL CHILD CARE PROJECT AT CORNELL UNIVERSITY (6th ed. 2009) (on file with Author).

<sup>220</sup> *Certificate Programs*, CENTER FOR JUVENILE JUSTICE REFORM, <http://cjjr.georgetown.edu/certprogs/certificates.html> (last visited Nov. 19, 2013).

<sup>221</sup> *Corrections*, NATIONAL PARTNERSHIP FOR JUVENILE SERVICES, <http://npjs.org/corrections/> (last visited Nov. 19, 2013).

<sup>222</sup> NATIONAL CENTER FOR YOUTH IN CUSTODY, available <http://npjs.org/ncyc/> (last visited Nov. 19, 2013).

of short-term isolation and room confinement of youth in each facility.<sup>223</sup> Each state or local agency must prepare an annual report of its findings that will be available to the public upon redacting individual identifying information. The report should be made available to the public on the Department of Correction website.

Information available to the public should include:<sup>224</sup>

- All disciplinary rules, policies and procedures related to incarcerated youth
- The dates and duration of any form of short-term isolation and room confinement
- Reasons why youth are subjected to short-term isolation and room confinement

Data evaluation and reporting should also concern changes in policies and practice that may lead to further decreases in the use of short-term isolation and room confinement. The annual report should focus on best practices, with further investigation and review mandated for facilities with high levels of isolation and room confinement usage.

The highest ranking administrator of each facility housing youth should certify by affidavit that no youth prisoner in his or her custody has been subject to solitary confinement and that any use of isolation or room confinement has complied with the appropriate state or local procedures and regulations.

### **INDEPENDENT EVALUATION AND REPORTING**

Independent and qualified reviewers should routinely monitor and review the use of discipline in correctional facilities housing youth.<sup>225</sup> Reviewers should pay particular attention to short-term isolation and room confinement policies, practices, and procedures concerning incarcerated youth. Independent reviewers must have full access to the correctional facilities, correctional data, staff and incarcerated youth.

In addition to identifying critical issues and violations, independent oversight should focus on potential improvements to the discipline system for youth in corrections and identify solutions. Confidentiality may be granted to both staff and incarcerated youth who voice complaints and concerns.

The reports and analysis of data generated from these reviews must be made available to the public. A key program that Rikers Island should join is the PbS initiative described below.

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<sup>223</sup> PbS Standards, *supra* note 125, at 10.

<sup>224</sup> Growing Up Locked Down, *supra* note 4, at 92.

<sup>225</sup> *Resolution 104B: Prison Oversight and Monitoring of Juvenile and Adult Facilities*, American Bar Association, AMERICAN BAR ASSOCIATION (2008), available at <http://www.abanet.org/crimjust/policy/am08104b.pdf>. The American Bar Association (ABA) issued a resolution calling for all governments to establish independent, public bodies to regularly monitor and report publicly on prison and jail conditions within their respective jurisdictions.

## **PERFORMANCE-BASED STANDARDS (PBS)**

PbS is “ a [national] program for agencies and facilities to identify, monitor and improve conditions and treatment services provided to incarcerated youths using national standards and outcome measures.”<sup>226</sup>

PbS is a voluntary membership program with participants submitting information about the youth facility twice a year.<sup>227</sup> At the end of each data collection period, the information is analyzed and reported back in the form of outcome measures that indicate how well the facilities meet certain best-practice standards.<sup>228</sup> The outcome data identifies what is working in each facility and what needs to be improved. Participants in PbS have the ability to compare themselves to the performance of a facility of similar type, size or population and to other facilities in their jurisdiction.<sup>229</sup> Each facility is assigned a PbS coach to develop a Facility Improvement Plan (FIP) to meet the best-practice standards.<sup>230</sup> To aid implementation, there is a web-based application for self-assessment.<sup>231</sup>

The data measured is both quantitative—measuring performance of staff and youth—and also qualitative from the participation of youth and staff in climate surveys.<sup>232</sup> PbS asks youth about their experiences in the facility, conditions, safety, staff-youth relationships and quality of services in order to provide a comprehensive picture of life in the facility.<sup>233</sup> PbS data collected between 2004 and 2010 continually showed “that the greatest predictors of victimization and safety in facilities are youths’ perceptions of the rules, staff, school and reports of whether or not they have been confined due to misbehavior.”<sup>234</sup>

Facilities that participate in PbS report that “PbS [is] a tool that helps them chart clear, measurable paths toward improvement and document what occurs in a facility on a daily basis to assess whether services and practices have a positive impact on the youths. PbS enables facilities to improve the quality of the services provided and thereby, improve the outcomes for the youths.”<sup>235</sup>

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<sup>226</sup> *Performance-Based Standards (PBS)*, PbS LEARNING INST., <http://pbstandards.org/initiatives/performance-based-standards-pbs> (last visited Nov. 10, 2013).

<sup>227</sup> *Data Primer*, PbS LEARNING INST. 4 (2013) [hereinafter *PbS Data Primer*], available at [http://pbstandards.org/cicaresources/158/PbS\\_DataPrimer\\_201303.pdf](http://pbstandards.org/cicaresources/158/PbS_DataPrimer_201303.pdf).

<sup>228</sup> *Id.*; *Safety and Accountability for Juvenile Corrections and Detention Facilities*, PbS LEARNING INST. (2012), available at [http://pbstandards.org/uploads/documents/PbS\\_Li\\_MarketingPacket.pdf](http://pbstandards.org/uploads/documents/PbS_Li_MarketingPacket.pdf).

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *PbS Data Primer*, *supra* note 227, at 1.

<sup>233</sup> *What Youths Say Matters*, PbS LEARNING INST. 2 (2013), available at [http://pbstandards.org/cicaresources/158/PbS\\_What\\_Youths\\_Say\\_Matters\\_20131030.pdf](http://pbstandards.org/cicaresources/158/PbS_What_Youths_Say_Matters_20131030.pdf).

<sup>234</sup> *Id.* at 3.

<sup>235</sup> *Safety and Accountability for Juvenile Corrections and Detention Facilities*, PbS LEARNING INST. (2012), available at [http://pbstandards.org/uploads/documents/PbS\\_Li\\_MarketingPacket.pdf](http://pbstandards.org/uploads/documents/PbS_Li_MarketingPacket.pdf).

## 5. State Success Stories

### A. CONNECTICUT

*Connecticut is a great example of how juvenile justice systems can evolve to improve the lives of both the juveniles under their supervision and their communities. By statute, Connecticut prohibits the use of solitary confinement.*

#### I. STATE LAW AND POLICY

**Connecticut prohibits the use of solitary confinement by statute**

- **By Statute, Connecticut prohibits the solitary confinement of juveniles.**<sup>236</sup> The Court Support Services Division of the Connecticut Judicial Branch, effective January of 2010, developed a Juvenile Motivation Program to more positively deal with disciplinary issues for juveniles in detention.<sup>237</sup>

#### II. MODEL FOR REFORM: THE CSSD JUVENILE DETENTION CENTERS

**Behavior Motivation Program**

- The Court Support Services Division's (CSSD) Juvenile Detention Centers implemented the use of a Behavior Motivation Program (BMP), which includes a rules system supporting a safe and stable environment for detained juveniles. The BMP was created to make certain that every detention center in CT:
  - 1) provides juveniles with a safe and stable environment, and
  - 2) provides opportunities to receive rewards and benefits for positive program participation and behavior.<sup>238</sup>

**Gender responsive behavior motivation models for juveniles and training for staff**

- Community Residential Programs (CRP) have implemented both the gender responsive Teach, Reach and Inspire (TRI) Behavior Motivation Model, for juveniles, and Therapeutic Crisis Intervention Training (TCI), for staff, to move forward the BMP.

**Procedures in Detention Centers**

- **General Procedures in Detention Centers**  
Each Detention Center develops a handbook in English and Spanish of local rules, expectations, violations and possible interventions. It is explained and provided to each juvenile as part of his or her admission process. A Juvenile Discipline Log will be kept for all who are disciplined.

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<sup>236</sup> CONN. GEN. STAT. ANN. § 46b-133(e) (what states that "no child shall at any time be held in solitary confinement").

<sup>237</sup> Juvenile Residential Services Behavior Motivation Program, Conn. Judicial Branch Court Support Services Division Policy and Procedures (January 2010) (on file with Author).

<sup>238</sup> Id.

**Program  
Orientation Sessions  
for Juveniles**

- **Program Orientation Sessions for Juveniles:**  
Upon admission, a juvenile receives a routine orientation. They are assigned an intake officer within one hour and that person explains the BMP.
- Within one hour of this meeting (unless the admission occurs in the evening), the Juvenile Detention Officer (JDO) will meet with the juvenile and explain a juvenile point system,<sup>239</sup> how the system works, and how to be successful within the BMP framework.
- In 24 hours, an assigned Classification and Program Officer (CPO) will meet with the newly admitted juvenile. The CPO will assist in individualizing the system to the juvenile's needs.

**Intervention  
Procedures**

- **Intervention Procedures:**  
"Are designed to help juveniles understand the impact on themselves and others...these interventions are intended to decrease rule violations from occurring. Staff should utilize skills learned through the TCI training in determining when to begin using the Life Space Interview (LSI)."<sup>240</sup>

**Limits to Room  
Confinement**

- **Room Confinement Limits**  
"Confinement to room may only be used when all other interventions have failed or when a Class A or a Class B violation has occurred. The amount of confinement time will be determined on a case-by-case basis and justified by the specific behavior.

- **Room Confinement Procedures**  
Staff recommending confinement to room may place the juvenile in a room immediately if it is a permitted restriction for the violation that is charged.

**Room Confinement  
Procedures**

- Upon initiating any disciplinary process, staff will immediately notify the Shift Supervisor/Lead Detention Officer, explain the incident, and discuss potential sanctions. The Shift Supervisor/Lead Detention Officer will schedule (within one hour of the intervention), an Incident Review with the juvenile."<sup>241</sup>

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<sup>239</sup> Point sheets include evaluations of In Room Behavior, Mealtime behavior, Interactions with staff and peers, Following Directions, Routines, and Programming.

<sup>240</sup> Juvenile Residential Services Behavior Motivation Program, *supra* note 237.

<sup>241</sup> *Id.*

**Ranges of  
Detention  
Center  
Violations and  
Correlating  
Restrictions**

- **Detention Center Violation/Restriction Ranges**  
Juveniles who commit a Class A Violations/Restrictions are subject to all disciplinary sanctions up to room confinement<sup>242</sup> not to exceed 48 hours. These are the most serious violations including arson, assault, riot and possession of contraband.

Juveniles who commit Class B Violations/Restrictions are subject to all disciplinary sanctions up to room confinement of 24 hours. These include fighting and refusal to attend school.

Juveniles who commit a Class C Violation are subject to room time of up to 6 hours contingent upon juveniles first receiving a Verbal Warning, a Time Out, and Loss of Structured Recreation. These include disrespectful interactions with others, disruptive behavior, and possession of unauthorized items.

**III: CURRENT DEVELOPMENTS**

**Reduction of  
residential  
commitments**

- Over the last decade, Connecticut has reduced residential commitments from 680 in 2000 to 216 in 2011 (nearly 70%), even though most 16 year-olds, who were previously treated as adults, are now handled in the juvenile system.
- The average daily population in Connecticut's pretrial detention centers fell from 132 in 2006 to 94 in 2011, the year after 16-year-olds entered the juvenile system, allowing the state to close one of its three state-operated detention centers.
- The under 18 population in Connecticut's adult prisons fell from 403 in January 2007 to 151 in July 2012.<sup>243</sup>

**Evidence Based  
Non-Residential Programs**

- **Evidence Based, Non-Residential Programs**  
In Fiscal Year 2012, 955 youths on probation supervision participated in intensive evidence-based family therapy programs and 652 in evidence-based cognitive behavioral therapy.

**Improved Conditions of  
Juvenile Facilities**

- **Improved Conditions of Juvenile Facilities**  
Connecticut vastly improved detention programming, education and mental health services, and physical conditions in detention.

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<sup>242</sup> Id. Room Confinement may only be used when all other interventions have been used or when a Class A or B violation has occurred.

<sup>243</sup> JUSTICE POLICY INSTITUTE, JUVENILE JUSTICE REFORM IN CONNECTICUT: HOW COLLABORATION AND COMMITMENT HAVE IMPROVED PUBLIC SAFETY AND OUTCOMES FOR YOUTH (October 2012).

After a series of investigations revealed severe deficiencies in the new \$57 million Connecticut Juvenile Training School from 2001-2004, Connecticut permanently closed a high-security unit where violent incidents had been commonplace, temporarily suspended new admissions, provided intensive retraining of staff on behavior management, reformed disciplinary practices, and vastly improved programming and treatment throughout the facility.

**Diverted Status Offending Youth From the Court System and Locked Detention Centers**

- **Diverted Status Offending Youth From the Court System and Locked Detention Centers**

Since 2005, Connecticut has eliminated admission of youth to detention centers for status offenses and opened Family Support Centers statewide that offer community based treatment and other services for status-offending youth and their families, rather than probation supervision.

The state reduced judicial processing (formal petition) of status offender referrals from 50% of those filed in 2006-07 to just 4.5% in 2010 and 2011. Since 2006, the number of youth with a status offense who were rearrested or convicted of crimes fell by more than 70%.

**Reduction in Arrests for Youth at School For Routine and Non-Serious Misbehavior**

- **Reduction in Arrests for Youth at School For Routine and Non-Serious Misbehavior**

Nine Connecticut school districts have signed agreements with police limiting the circumstances under which students can be arrested at school.

In one pilot district (Manchester), by the spring of 2012, arrests and expulsions both fell by more than 60% compared to the prior school year. The School-Based Diversion Initiative (SBDI) also is working in nine sites to promote mental health treatment rather than disciplinary or justice responses to misbehavior by emotionally disturbed students. An independent evaluation found that SBDI decreased the number of students arrested and/or suspended, and reduced subsequent misbehavior.

In 2011, juvenile courts began rejecting referrals involving youth arrested for minor misbehavior. Of the first 221 cases the courts refused to prosecute, more than half involved school arrests. Connecticut schools have also sharply reduced out-of-school suspensions in the past five years.<sup>244</sup>

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<sup>244</sup> Id.

**Cost benefits of implementing new programs and procedures**

- **Cost Benefits**  
Overall spending on juvenile justice (after adjusting for inflation) has not increased despite the implementation of many new programs and services, and the state’s juvenile crime rate has dropped considerably even as confinement rates plummeted.<sup>245</sup>

The cost for a juvenile to be housed in a detention facility for six months is \$133,920. The cost for community intervention programming is \$8,210.<sup>246</sup>

**B. MAINE**

*By statute, Maine does not authorize solitary confinement for juveniles. Recidivism is reduced, guards have been re-trained to handle youth effectively, and the system has overhauled its culture and implemented a mentality that better serves youth. Stemming from success in banning the use of solitary in youth settings (specifically in South Portland’s Long Creek Youth Development Center), Commissioner Joseph Ponte adopted similar policies and procedures in adult settings.*

**I. STATE LAW AND POLICY**

**By Statute, Maine does not allow solitary confinement as a form of punishment for juveniles**

Maine’s statute, **34-A M.R.S.A. §3032(5)**, does not allow solitary confinement as a form of punishment for juveniles; rather it employs a “loss of privileges” model.<sup>247</sup>

Maine clearly recognizes a difference between youth and adults. Statutes allow isolation and solitary confinement as a form of punishment for adults, but not for youth.

- **Juveniles:** *“Punishment at juvenile correctional facilities and any detention facility may consist of warnings, restitution, labor at any lawful work and loss of privileges.”*<sup>248</sup>

Maine’s regulations allow for punitive room restrictions for up to 30 hours for “major misconduct.”<sup>249</sup> Youth in room restriction are allowed to leave their rooms for educational and treatment programs, regularly scheduled visits, and meals.<sup>250</sup>

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<sup>245</sup> *Id.*

<sup>246</sup> William Carbon, *Reducing Commitment and Improving Outcomes: The Connecticut Experience*, Reducing Commitments and Placements Connecticut Conference (2013).

<sup>247</sup> ME. REV. STAT. ANN. TIT. 34 § 3032(5).

<sup>248</sup> *Id.*

<sup>249</sup> Catherine Weiss, Natalie J. Kraner & Jacob Fisch, *supra* note 7.

<sup>250</sup> *Id.*

**Appointment of a new commissioner and a study conducted by corrections officials brought about sweeping change for the system**

Reforms in Maine came about after a grassroots political campaign and the appointment of Commissioner Ponte.<sup>251</sup>

Legislators issued a report about solitary confinement that offers recommendations to reduce its use and make SMUs more humane.

## II. INDIVIDUAL MODEL FOR REFORM: LONG CREEK YOUTH DEVELOPMENT CENTER

Much of the reform in Maine is attributable to the changes implemented by Rodney Bouffard, the superintendent of the South Portland Long Creek Youth Development Center.<sup>252</sup>

### THE CENTER AT A GLANCE:

- LCYDC has a population capacity of 163 and 195 total staff members.<sup>253</sup>
- Between 15-20% of youth at the Center are youth of color or from minority communities, and ¾ of those are immigrants or refugees.<sup>254</sup>
- Youth held at LCYDC have “indeterminate sentences.” The Center has the power to release them whenever they feel it’s appropriate.<sup>255</sup>
- 98% come in with major substance abuse issues.<sup>256</sup>
- 30-40% of the youth have major mental illness other than a major behavior disciplinary disorder. 60% are special education students.<sup>257</sup>
- Female youth have an even higher rate of mental illness and trauma.<sup>258</sup>
- Maine juvenile recidivism rates are comprised of mostly property crimes. The second category of recidivism offense was drug and alcohol related offenses.<sup>259</sup>

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<sup>251</sup> Lance Tapley, *Maine’s Dramatic Reduction of Solitary Confinement*, THE CRIME REPORT (July 20, 2011), available at <http://www.thecrimereport.org/news/inside-criminal-justice/2011-07-maines-dramatic-reduction-of-solitary-confinement>.

<sup>252</sup> Lance Tapley, *Prison Reforms Under Maine’s New DOC Commissioner*, PRISON LEGAL NEWS, [https://www.prisonlegalnews.org/\(X\(1\)S\(rikzfx45jgwchp5541eua055\)\)/displayArticle.aspx?articleid=24890&AspxAutoDetectCookieSupport=1](https://www.prisonlegalnews.org/(X(1)S(rikzfx45jgwchp5541eua055))/displayArticle.aspx?articleid=24890&AspxAutoDetectCookieSupport=1).

<sup>253</sup> *Long Creek Youth Development Center*, STATE OF MAINE DEPARTMENT OF CORRECTIONS, <http://www.state.me.us/corrections/juvenile/Facilities/LCYDC/index.htm> (last visited Nov. 21, 2013).

<sup>254</sup> *Long Creek Youth Development Center – Reported Culture Shift Supports Rehabilitation Over Punishment*, ACLU MAINE (August 18, 2010), available at <http://www.aclumaine.org/long-creek-youth-development-center-reported-culture-shift-supports-rehabilitation-over-punishment>.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

Long Creek has sought to bring about an overall culture shift from a correctional facility model to a residential treatment facility model.

**The Center focuses on policy, training, practice and programs in its residential treatment facility model**

- **Policy:** Maine uses PbS standards. It also revised Behavior Management System that includes a Phase System. This creates opportunities for residents to demonstrate the capacity to function with increased independence.
- **Training:** Staff receives training in Behavior Management System and Motivational Interviewing; staff and youths receive training in Collaborative Problem Solving; and agency leadership participates in training in the “teamwork model.”<sup>260</sup> “Leadership is critical.”<sup>261</sup>
- **Practice:** Use of isolation operates in the context of the “unit team” and youth cannot be moved away from the staff he has a relationship with. If isolation is necessary, the unit manager accompanies the youth to the isolation unit to understand the events that transpired and work with youth to solve the problem. As soon as all threats are believed to be gone, the resident is returned to programming.<sup>262</sup> “De-escalation” or talking to the youth causing issues is used in lieu of the restraint chair or confinement.<sup>263</sup>
- **Programs:** Units use collaborative problem solving and motivational interviewing techniques. After release from the isolation unit, the team and the resident develop a new program plan.<sup>264</sup>

**Long Creek Development Center has seen a one-year recidivism rate drop from 75% to between 15-20%, where at the national average is around 60% for youth**

As a result of the changes at Long Creek Youth Development Center, isolation is only used in response to situations where the youth poses a danger to themselves or others and when other forms of de-escalation have failed. It is never used as a form of discipline.

- According to PbS data collected after Maine began its

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<sup>259</sup> THE MAINE JUVENILE JUSTICE TASK FORCE, AN INTEGRATED APPROACH TO TRANSFORMING MAINE’S JUVENILE JUSTICE SYSTEM, UNIVERSITY OF SOUTHERN MAINE, MUSKIE SCHOOL OF PUBLIC SERVICE (June 2010), available at [http://muskie.usm.maine.edu/justiceresearch/JuvenileJusticeTaskForce/Documents/JJTF\\_Task\\_Force\\_Report.pdf](http://muskie.usm.maine.edu/justiceresearch/JuvenileJusticeTaskForce/Documents/JJTF_Task_Force_Report.pdf)

<sup>260</sup> *Reducing the Use of Isolation: Maine Division of Juvenile Services*, COUNCIL OF JUVENILE CORRECTIONAL ADMINISTRATORS [hereinafter *Reducing the Use of Isolation*] (on file with Author).

<sup>261</sup> Tapley, *supra* note 252.

<sup>262</sup> *Reducing the Use of Isolation*, *supra* note 260.

<sup>263</sup> Tapley, *supra* note 252.

<sup>264</sup> *Reducing the Use of Isolation*, *supra* note 260.

campaign to reduce the use of isolation, data shows that Maine's use of isolation is infrequent and only for short periods of time. This is well below the use and duration of isolation compared to other PbS facilities.<sup>265</sup>

- Nationally, recidivism rates for youth are around 60%, whereas statewide Maine reports 20-25%. There was a reduction in two years from 419 to 15 annual instances of increasingly brief solitary confinement.<sup>266</sup> The center, specifically, has seen a one-year recidivism rate drop from 75% to between 15-20%.<sup>267</sup>

### III. STATEWIDE REFORMS

*As a result of the success of Long Creek, beginning in Spring 2011, the Maine DOC has made sweeping reforms related to isolation and super-max usage.<sup>268</sup> The progress, that addressed system-wide failures for youth and adults alike, has been significant.*

**Special Management Units used to house inmates in isolation have been slashed in half**

- Special Management Units, or SMUs, are used to house inmates in isolation. The number of SMUs was slashed in half, from a consistent 132 to 69, roughly 60%.<sup>269</sup>

Many inmates were placed in SMU for small infractions, but were subsequently spending increasing periods of time in SMU as a result of lashing out against the isolation.<sup>270</sup> Inmate's rage or mental problems created a vicious cycle after isolation and protests only further added time to super-max stay.

**Inmates may not be placed in isolation longer than 72 hours without the Commissioner's approval**

- Inmates are not to be placed in isolation longer than 72 hours without Commissioner Ponte's personal approval.<sup>271</sup>
- There is a seven-day limit on super-max stays for inmates being investigated for in-prison crimes.<sup>272</sup>

**There has been a stop to the brutal process of "cell extractions"**

- Reclassification and movement of out of super-max for many inmates.<sup>273</sup>
- The previously frequent and brutal process of "cell extractions"

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<sup>265</sup> Id.

<sup>266</sup> Tapley, *supra* note 251.

<sup>267</sup> Id. See also FAQ, SOLITARY WATCH, available at [www.solitarywatch.com/facts/faq](http://www.solitarywatch.com/facts/faq) (last visited Jan. 30, 2014).

<sup>268</sup> Tapley, *supra* note 251.

<sup>269</sup> FAQ, SOLITARY WATCH, available at [www.solitarywatch.com/facts/faq](http://www.solitarywatch.com/facts/faq) (last visited Jan. 30, 2014).

<sup>270</sup> Id.

<sup>271</sup> Tapley, *supra* note 251.

<sup>272</sup> Id.

<sup>273</sup> Id.

for uncooperative and often mentally ill inmates has been eradicated.<sup>274</sup>

- Guards are required to use “informal sanctions” to discipline unruly prisoners as alternatives to isolation. These alternatives to “the hole” include taking away commissary or recreation privileges.<sup>275</sup>

#### IV. COMBATING IMPEDIMENTS TO CHANGE

##### Overcoming cost and resistance of re-educating guards

- **Re-educating guards:**<sup>276</sup> There is a cost in re-educating guards and overcoming resistance among the staff. Commissioner Ponte has addressed this with a fearless approach to firing staff that are unable to approach inmates with the newly implemented training techniques and instead resorting to violence and aggression.

##### Dealing with Resistance in Releasing Inmates with Mental Health Issues

- **Resistance for Mental Health Inmates:** With the decrease in solitary confinement, there is resistance about releasing inmates with isolation-exacerbated behavioral programs back into the general population.

##### Cost Issues

- **Finances:**<sup>277</sup> Three times as much money is spent annually per-prisoner at Long Creek (\$149,000) than at the state prison (\$47,000).<sup>278</sup> In part this is attributed to the fact that Long Creek is a smaller institution with higher overhead. Moreover, the psychotherapy and academic coursework that contributes to its success and lower recidivism numbers also contributes to its financial burden. Commissioner Ponte has suggested, however, that (1) reducing super-max incarceration will open up money that can be redirected to the mentally ill, and (2) staff may be redirected to fill different roles.<sup>279</sup> This can circumvent the need to hire new and costly staff.

#### V. LOOKING FORWARD

*Commissioner Ponte has expressed interest in creating a Youthful Offender Program at the Mountain View Youth Center in Charleston, ME. Ponte believes that what works for people under 18 will similarly work for those aged 18 to 25. As a result, this program is intended to house the 60-80 “most challenging” prisoners in that age group.<sup>280</sup> Currently he has asked the legislature to authorize it, but pending new funding sources it cannot be implemented.*

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<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> Tapley, *supra* note 251.

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> Tapley, *supra* note 252.

## C. RHODE ISLAND

*The Rhode Island Training School (hereinafter "RITS") has been a Juvenile Detention Alternatives Initiative (JDAI) site since 2009.*

Rhode Island's statutes and administrative codes provide special protections for youth in detention settings

### I. STATE LAW AND POLICY:

- **Children's Bill of Rights (Gen. Laws 1956, § 42-72-15):** calls for specific regulations and reporting mechanisms by corrections facilities concerning correspondence allowance, seclusion, restraint, education, as well as the right to visit with family, religious officials, and family members. It provides the claim for children aggrieved by violations of the bill to petition to family court for "appropriate equitable relief."<sup>281</sup>
- **The Children's Right to Freedom From Restraint Act (Gen. Laws 1956, § 42-72.9):** addresses use of restraints, seclusion, recording, training and policies, penalties, and rules and regulations for young inmates. Involuntary placement of a child in seclusion is prohibited with the exception of an "emergency intervention to prevent immediate or imminent risk of injury to the physical safety of the child, staff, or other individuals in the facility and may not be used for discipline, convenience, or as a substitute for a less restrictive alternative."<sup>282</sup>
- **Rhode Island Administrative Code—Lock Up Procedures (R.I. Admin. Code 14-2-1200.1307):** The Rhode Island Administrative Code also details an extensive set of rules for the RITS, which includes policies on Lock Up, which is the equivalent to solitary confinement. As mandated by the Children's Right to Freedom From Restraint Act, segregation is considered a last resort, used in a limited fashion with limits imposed by many due process measures. Physical restraints are never used for purposes of punishment but are only used to ensure the safety of students, staff and the public. They are used only when transporting residents on or off grounds.<sup>283</sup> The procedures also provide detailed expectations and prohibitions for staff when disciplining inmates.<sup>284</sup>

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<sup>281</sup> R.I. GEN. LAWS § 42-72-15(m) (1956).

<sup>282</sup> R.I. GEN. LAWS § 42-72.9-5(a) (1956).

<sup>283</sup> R.I. ADMIN. CODE §14-2-1200.0832.

<sup>284</sup> R.I. ADMIN. CODE §14-2-1200.1300(E).

## II. INDIVIDUAL MODEL FOR REFORM: THE RHODE ISLAND TRAINING SCHOOL

*The current Training School is housed in a building that was built in 2008 and is subject to a 160-inmate cap.*<sup>285</sup>

*JDAI mandates inspection of facilities by teams made up of local volunteers from various professional backgrounds to ensure that all JDAI standards are met. In 2011, the team conducted a self-inspection visit over two days where they reviewed records and documentation, were given unlimited access to the facility, and were able to observe the facilities and interview inmates.*<sup>286</sup> *The information below reflects the team's findings on this visit.*<sup>287</sup>

**Proper medical, mental health, and dental treatment for residents**

**Opportunity to reach out to family and advocates**

**Opportunity to work towards GED, finish high school, and continue education through community college**

- **Healthcare:** RITS hosts an on-site health facility for its residents. All youth are given a brief medical and mental health screening upon their arrival, and medical attention continues to be readily available throughout their stay in addition to dental treatment every six months. Within their first week of admission, youth are screened for medical, dental, and mental health assessment.
- **Access:** Inmates have unlimited access to sending and receiving mail, and mail is only screened if there is a reasonable suspicion of criminal activity or a security threat. They also have “adequate” access to legal counsel, the courts, and public officials, and have a right to privately contact attorneys, guardians, clergy member, or representatives of the Office of the Child Advocate (who also have an office on site). Telephone access and visitation right are determined by an incentive program, but JDAI has minimum standards that every inmate is entitled to.
- **Programming:** Residents are screened for school status, special education status, and grade level and begin attending school as soon as they arrive at RITS. Youth may choose from three educational programming tracks: secondary education, GED preparation, and post-secondary education provided by the local Community College. Physical education or recreational activity is mandated for two hours per day in the gym, weight room, or outdoor area. Inmates have a right to attend religious services and access clergy members of their religious faith.
- **Environmental Issues:** The facility is in operable and clean condition. Although the physical structure RITS appears to be a detention center, staff and administration try to create a non

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<sup>285</sup> Lynn Ardit, *Fewer Youths at Training School*, Providence Journal, available at [http://www.jdaihelpdesk.org/News/Fewer%20Youths%20at%20Training%20School%20\(Providence%20Journal\).pdf](http://www.jdaihelpdesk.org/News/Fewer%20Youths%20at%20Training%20School%20(Providence%20Journal).pdf).

<sup>286</sup> Telephone Interview with John Neubauer, LICSW, Policy Analyst, Rhode Island KIDS COUNT (Oct. 10, 2013).

<sup>287</sup> id.

**Casual clothes,  
personalized living spaces,  
and functioning facilities**

penal environment by taking steps such as wearing casual clothes rather than law-enforcement or military-style uniforms; allowing youth to decorate their rooms based on their level status; celebrating important holidays and birthdays; and providing most youth with casual uniform sweat suits.

**Safety from staff and  
residents**

- **Safety:** Youth reported to being safe from physical assault, sexual assault, and harassment by staff. The female unit is kept separate from the male unit, with limited interaction between the two sexes. Female residents reported that they did not feel in any way threatened or harassed by male residents.

### III. STATE-WIDE APPLICATION

*RITS accommodates all youth inmates under 18 (with the exception of juveniles who have been waived into the adult system), which include both pre-trial and post-trial inmates.*

### IV. FUTURE AND CURRENT DEVELOPMENTS

#### PROGRESS TO DATE:

**Inmate population  
decreased**

- **Reduction in the population of detained youth:** Between 2009 and 2012, the population of youth detained in RITS has declined by 32%.<sup>288</sup> Of the 606 youth who stayed at RITS at some point in 2012, 16% were admitted at least twice that same year and 2% were admitted three or more times.<sup>289</sup> In fact, a wing in one of the buildings has been closed due to the decline in inmates overall.<sup>290</sup>

**Community involvement  
increased**

- **Engagement of system stakeholders and community-based partners:** Stakeholders including the Family Court; Department of Children, Youth and Families; Attorney General's Office; Public Defender's Office; Providence Police Department; the Child Advocate; the state's juvenile justice advisory group; and community-based program providers participate in the transformation efforts initiated by the JDAI.<sup>291</sup>

**Alternatives to detention  
facilities on the rise**

- **Costs prompting the formation of alternatives to secure detention:** While there has been a 47% decrease in the population of inmates over the past 5 years, the cost of running the training

<sup>288</sup> 2013 Rhode Island Kids Count Factbook, RHODE ISLAND KIDS COUNT (2013), available at [http://www.rikidscount.org/matriarch/documents/13\\_Factbook\\_Indicator\\_40.pdf](http://www.rikidscount.org/matriarch/documents/13_Factbook_Indicator_40.pdf).

<sup>289</sup> Id.

<sup>290</sup> Arditi, *supra* note 285.

<sup>291</sup> Telephone Interview with John Neubauer, LICSW, Policy Analyst, Rhode Island KIDS COUNT (Oct. 10, 2013).

school has only declined 6%, resulting in a cost of \$201,572 per occupant.<sup>292</sup> This high cost serves as a deterrent for unnecessarily detaining youth who have not committed serious crimes, leading to the emergence of more appropriate alternatives to secure detention.

**More community-based  
detention alternatives**

**FURTHER REFORM:**

**Less racial disparity**

- **Further expand alternatives to detention and incarceration:** The overall perception that incarceration is effective for youth, as a deterrent for the crime rate must be dispelled. Over-reliance on incarceration leads to higher rates of recidivism than proper community-based alternatives to incarceration, and is unnecessary when many inmates do not pose a danger to public safety<sup>293</sup> Continuing to expand these alternatives is crucial for continuing to promote the downward trend of incarcerated youth.

**Better risk assessment  
instruments**

- **Address racial disparities:** Rhode Island KIDS COUNT is also concerned about the wide racial disparity between inmates and the state's demographics—last year, Black youth, who make up 6% of the child population in Rhode Island, accounted for 29% of the population in the training school.<sup>294</sup>
- **Risk assessment instruments to ensure appropriate detention:** Appropriate detention is a concern. Under the JDAI standard, a Risk Assessment Instrument should be used to limit detention eligibility to youth who are likely to commit a serious offense pending resolution for their case, likely to fail to appear in court, and those held pursuant to a court order. This will take the collaboration of the judicial system, police department, and community service providers.

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<sup>292</sup> Arditi, *supra* note 285.

<sup>293</sup> 2013 Rhode Island Kids Count Factbook, *supra* note 288.

<sup>294</sup> *Id.*

## D. MISSISSIPPI

### I. CLASS ACTION LITIGATION

As a result of class action litigation settled via consent decree in February 2012, the Mississippi Department of Correction (MDOC) profoundly changed its policies for incarcerated youth, including a prohibition on solitary confinement of youth and strict regulation of all forms of isolation.<sup>295</sup>

The February 2012 consent decree provides a model for regulations of incarcerated youth, as well as an illustration of collaboration between government agencies and plaintiffs in class-action lawsuits. In fact, Plaintiffs' expert witnesses in a prior class action lawsuit challenging solitary confinement in Mississippi's adult supermax were appointed as monitors of the 2012 youth consent decree, working with the MDOC as consultants to promote compliance with terms of the consent decree.<sup>296</sup> The MDOC Commissioner Epps has stated "the smartest decision I made was utilizing recognized corrections experts provided by the National Institute of Corrections and the American Civil Liberties Union. My staff and I began to collaborate with the plaintiffs' attorneys to cease a previous attitude of conflict and discord and jointly determine strategies that would achieve a common goal of improved conditions while providing safety and security."<sup>297</sup>

### II. CONSENT DECREE

#### Establish a Youthful Offender Unit

- The MDOC agreed to establish a Youthful Offender Unit (YOU) to house all youth ages 17 and under diverted from adult MDOC facilities.<sup>298</sup> The MDOC Commissioner has discretion to house 18 and 19 year olds in the YOU who have been classified as vulnerable.<sup>299</sup>

#### Prohibit the Solitary Confinement of Youth

- Cell confinement for more than 20 hours a day is prohibited.<sup>300</sup>

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<sup>295</sup> Consent Decree, *C.B., et al. v. Walnut Grove Corr. Auth.*, No. 3:10cv663, (S.D. Miss. Feb. 3, 2012) at IV(a)(3) [hereinafter Consent Decree]. available at [http://www.aclu.org/files/assets/68-1\\_ex\\_1\\_consent\\_decree.pdf](http://www.aclu.org/files/assets/68-1_ex_1_consent_decree.pdf) [hereinafter Consent Decree]. The lawsuit was filed by the American Civil Liberties Union and the Southern Poverty Law Center.

<sup>296</sup> *Id.* at V(1).

<sup>297</sup> *Reassessing Solitary Confinement the Human Rights, Fiscal, and Public Safety Consequences, Public Hearing Before the S. Comm. on the Judiciary, Subcomm. on the Constitution Civil Rights and Human Rights 2* (June 19, 2012) (written Testimony of Mississippi Commissioner of Corrections, Christopher B. Epps), available at <http://www.judiciary.senate.gov/pdf/12-6-19EppsTestimony.pdf>.

<sup>298</sup> Consent Decree, *supra* note 295, at III.

<sup>299</sup> *Id.* at IV(A)(2).

<sup>300</sup> *Id.* at IV(C)(1).

- Every effort must be made to avoid the placement of youth in cell confinement and whenever possible, staff must first use less restrictive techniques.<sup>301</sup> The consent decree allows only two exceptions:

**Strictly Regulate All Forms of Isolation**

- **Emergency Cell Confinement:** Youth presenting an immediate, serious threat to the safety of others may be placed on emergency cell confinement until the youth has regained self control.<sup>302</sup> Emergency Cell confinement is strictly limited to a time period not to exceed **24 hours**.<sup>303</sup>
  - **Disciplinary Cell Confinement:** Youth who violate a major facility rule may be placed on Disciplinary Cell Confinement for a period of time not to exceed **72 hours**.<sup>304</sup> Under no circumstances can Disciplinary Cell Confinement last longer than 72 hours unless an extension is approved by the Deputy Commissioner or their designee, and only granted in extraordinary circumstances when a youth presents a continuous direct threat to the safety of others.<sup>305</sup>
- Youth in either form of cell confinement must receive at least 4 hours a day of out-of-cell programming in any 24 hour period.<sup>306</sup>
  - In either form of cell confinement, youth must be visually checked by staff at least 4 times an hour, not more than 15 minutes apart, and interviewed by medical and mental health staff at least every 24 hours.<sup>307</sup>
  - Youth cannot be subject to Disciplinary Cell Confinement without due process protections.<sup>308</sup>
  - Youth in either form of cell confinement cannot be denied basic educational programming, the opportunity for daily

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<sup>301</sup> Id at IV(C)(7).

<sup>302</sup> Id at IV(C)(4).

<sup>303</sup> Id at IV(C)(2).

<sup>304</sup> Consent Decree, *supra* note 295, at IV(C)(2).

<sup>305</sup> Id at IV(C)(6).

<sup>306</sup> Id at IV(A)(3).

<sup>307</sup> Id at IV(C)(8).

<sup>308</sup> Id at IV(C)(6).

out-of-cell and outdoor exercise (at least one hour of large muscle exercise), or opportunity for weekly contact with family through visits, phone calls and letters.<sup>309</sup>

- Youth in either form of cell confinement must be provided the same meals, clothing, access to drinking water, medical treatment, educational services, exercise, correspondence, privileges, contact with parents and legal guardians, and legal assistance provided to other youth in the facility.<sup>310</sup> Visitation will not be restricted as a form of punishment and will not be withheld from youth unless the Warden determines that such a visit will seriously compromise security.<sup>311</sup>

**Strict  
Regulation Concerning  
the Use of  
Force**

- Mechanical, physical or chemical restraints will not be used to punish youth.<sup>312</sup> If any use of force is necessary, the force must be the minimum amount required to safely contain the youth and removed as soon as no longer necessary.<sup>313</sup> Force will not be used unless staff first attempted verbal de-escalation techniques, except in emergency situations.<sup>314</sup> Except in emergency situations, the Shift Commander or Warden will be notified and their consent obtained prior to the use of force.<sup>315</sup>

A log will be maintained recording efforts made to obtain consent and presence of the Shift Commander or Warden or mental health professional prior to the use of force.<sup>316</sup>

**Implement  
Incident  
Review  
Procedures**

- MDOC will implement procedures for generating monthly reports on the use of force.<sup>317</sup> Incident documentation will include a detailed description of alternative intervention and de-escalation attempts that occurred prior to the use of force.<sup>318</sup> An Incident Review Committee (“IRC”) will be developed to conduct review of incidents in order to analyze

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<sup>309</sup> Id at IV(C)(3).

<sup>310</sup> Consent Decree, *supra* note 295, IV(C)(3).

<sup>311</sup> Id at IV(H)(1).

<sup>312</sup> Id at IV(B)(3).

<sup>313</sup> Id at IV(B)(3), (4).

<sup>314</sup> Id at IV(B)(3), (4).

<sup>315</sup> Id at IV(B)(6).

<sup>316</sup> Consent Decree, *supra* note 295, at IV(B)(6).

<sup>317</sup> Id at IV(B)(5), (7).

<sup>318</sup> Id at IV(B)(7).

patterns of the use of force to reduce incidents.<sup>319</sup>

**Institute  
Age-Appropriate Programming  
and Positive Behavior  
Management**

- MDOC will provide youth with the opportunity for the appropriate mix of interactive and structured rehabilitative and educational programming.<sup>320</sup> Programming will be tailored to the developmental needs of youth. MDOC will not institute programming that could be considered “paramilitary” or contain elements of a “boot camp.”<sup>321</sup> MDOC will develop a system of positive behavior management, including guidelines for imposing graduated sanctions for rule violations and positive incentives for good behavior.<sup>322</sup>

**Adopt  
Suicide  
Prevention Policy**

- MDOC will develop a suicide prevention policy that includes a prohibition on placing youth on suicide watch in isolation.<sup>323</sup> To the extent clinically allowed, youth on suicide watch should engage in normal programming.<sup>324</sup>

**Enforcement  
and Monitoring**

- Monitors have been appointed as responsible for tracking MDOC’s compliance with the terms of the consent decree and submitting reports to counsel every 4 months.<sup>325</sup> The monitors will have full and complete access to the YOU, as well as all facility records (medical and mental health records included), and to staff.<sup>326</sup>

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<sup>319</sup> Id at IV(B)(8).

<sup>320</sup> Id at IV(D)(1).

<sup>321</sup> Id at IV(D)(1).

<sup>322</sup> Consent Decree, *supra* note 295, at IV(D)(1).

<sup>323</sup> Id at IV(F).

<sup>324</sup> Id at IV(F).

<sup>325</sup> Id at V(1).

<sup>326</sup> Id at V(2).

### III. CURRENT DEVELOPMENTS

Since signing the consent decree in February 2012, Plaintiffs' class counsel and the court-appointed monitors have indicated that the MDOC has made a clear good faith effort to comply with the terms of the consent decree.<sup>327</sup> In fact, the first monitoring report documented a number of "very positive achievements" in a relatively short time frame.<sup>328</sup>

#### **Youthful Offender Unit opened on December 12, 2012**

- The YOU opened on December 12, 2012.<sup>329</sup> As of July 9, 2013, 34 youths were housed at the YOU, 14 of which have mental health diagnoses.<sup>330</sup> MDOC is currently renovating a permanent location for the YOU that will provide improved security and safety for the youth, as well as more robust compliance with the consent decree's provisions.<sup>331</sup>

#### **A positive behavior management system is in place**

- A positive behavior management system is in place.<sup>332</sup> Youth can "purchase" items with good behavior points from the canteen and can earn privileges such as extra phone calls.<sup>333</sup>
- The YOU staff is committed to limiting the use and duration of disciplinary isolation consistent with the consent decree.<sup>335</sup> The monitor reported that security and program staff handle most behavioral issues without resorting to room confinement.<sup>336</sup>

#### **Most behavioral issues resolved without resorting to room confinement<sup>334</sup>**

The majority of disciplinary measures were the loss of good behavior points or earned incentives.<sup>337</sup> Youth who are

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<sup>327</sup> Youth Justice Clinic telephone call with Margaret Winter, Plaintiff Counsel, The National Prison Project of the ACLU Foundation, Inc., October 30, 2013.

<sup>328</sup> First Monitoring Report To the Court Re: YOU Consent Decree, at 3, *C.B., et al. v. Walnut Grove Corr. Auth.*, No. 3:10cv663, (S.D. Miss. April 4, 2013) [hereinafter First Monitoring Report] (on file with Author). See also Second Monitoring Report To the Court Re: YOU Consent Decree, at 3, *C.B., et al. v. Walnut Grove Corr. Auth.*, No. 3:10cv663, (S.D. Miss. Nov. 1, 2013) [hereinafter Second Monitoring Report] (on file with Author).

<sup>329</sup> Press Release, Mississippi Department of Corrections, MDOC Opens Youthful Offender Unit, (Dec.12, 2012), available at <http://www.mdoc.state.ms.us/PressReleases/2012NewsReleases/New%20MDOC%20Youthful%20Offender%20Unit.pdf>.

<sup>330</sup> Second Monitoring Report, *supra* note 328, at 1.

<sup>331</sup> *Id.* at 1.

<sup>332</sup> *Id.* at 4.

<sup>333</sup> *Id.*

<sup>334</sup> *Id.* at 2, 3.

<sup>335</sup> *Id.*

<sup>336</sup> Second Monitoring Report, *supra* note 328, at 2, 3.

<sup>337</sup> *Id.* at 4, 5.

charged with a major disciplinary infraction have a formal due process hearing before any disciplinary action takes place.<sup>338</sup> As of February 15, 2013, all YOU youth who had been held in room confinement for a major disciplinary infraction, had received a due process hearing and no youth spent more than 24 hours total in room confinement.<sup>339</sup>

**An Incident Review Committee has been established**

- An Incident Review Committee (IRC) has been established to review and analyze the use of force and restraint, and incidents events.<sup>340</sup> Minutes of the meetings are recorded.
- The YOU has implemented an effective grievance system that youth can readily access.<sup>341</sup>

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<sup>338</sup> Id at 4.

<sup>339</sup> First Monitoring Report, *supra* note 328, at 6.

<sup>340</sup> Youthful Offender (YOU) Monitoring Checklist, at 4, *C.B., et al. v. Walnut Grove Corr. Auth.*, No. 3:10cv663, (S.D. Miss. April 4, 2013) (on file with Author).

<sup>341</sup> Second Monitoring Report, *supra* note 328, at 3.

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**Center for Court Innovation Testimony**  
**New York City Council**  
**Committee on Fire and Criminal Justice Services**  
**Committee on Juvenile Justice**  
**October 8, 2014**

Good Afternoon Chairperson Crowley, Chairperson Cabrera, and Members of the Committees. My name is Chris Watler and I am the Project Director of the Harlem Community Justice Center, a project of the Center for Court Innovation. As you know, the Center is an independent not-for-profit organization that works with the justice system and NYC neighborhoods to reduce crime, reduce incarceration, and increase public confidence in justice.

Under the leadership of Greg Berman, and with the active support of the City Council, we are committed to conceiving, planning and implementing meaningful alternatives to incarceration. And we are committed to engaging New Yorkers in taking care of their communities and preventing crime before it happens. We are doing this out of courthouses in the Bronx and Brooklyn. And we are doing this in neighborhoods like Jamaica and Red Hook and Brownsville and the community that I represent, Harlem.

New York City criminal and family courts are overwhelmed by high caseloads, many driven by individuals with serious problems like drugs, mental illness, and homelessness. Conventional courts typically approach cases by tackling only the legal issues, failing to adequately address the underlying problems that lead people into the court system in the first place. Those who are incarcerated, either pending trial or as a sentence, rarely receive services that address these underlying problems; to the contrary, confinement all too often contributes to trauma, behavioral health problems, unemployment, housing instability, and family dysfunction.

As a consequence, many of the persons committed to our juvenile correctional facilities, adult jails and prisons are likely to return home far worse-off than when they were initially confined, and recidivism rates are startlingly high. These issues are highlighted in the Department of Justice's report on conditions at Rikers Island. Courts and justice system stakeholders must

identify safer, less costly, and more effective approaches to address the challenges presented by the people caught up in the justice system.

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A particular need among the justice-involved population is for trauma-informed services. The vast majority of youth and adults in the justice system have experienced some form of trauma. The prevalence of trauma is increasingly a topic of concern for us at the Center for Court Innovation. Each year, we provide direct services to tens of thousands of justice-involved individuals in New York City. Some Center programs have reported that up to 70 percent of their clients have had exposure to significant violence, loss, or trauma.

Recognizing this, we have sought to expand trauma-focused services that are age appropriate and informed by extensive research on adolescent and young adult development. For example,

- The Center runs alternative-to-detention programs in Queens and Staten Island which combine youth development programming with supervision and court monitoring for young people with cases pending in Family Court. These projects also save taxpayer dollars: the average cost of detention is \$651 per youth, per day, while the Center's ATD programs operate at a fraction of that cost and produce better results. A rigorous quasi-experimental evaluation of the Center's mental health services for participants in the Queens alternative-to-detention program showed a significant reduction in re-offending, including felony offenses, compared to young people in a similar ATD program whose mental health needs were not addressed.
- One of the truths about the criminal justice system that rarely makes its way into the newspapers is that three out of four cases in New York City are misdemeanors – a total of more than 235,000 cases in 2012. With Brooklyn Justice Initiatives, launched in 2013, the Center for Court Innovation is providing an expanded array of options for judges in Kings County Criminal Court in Brooklyn. Brooklyn Justice Initiatives includes a supervised release program which replaces pre-trial detention with vigorous monitoring and links to voluntary services to ensure misdemeanor defendants' return to court while avoiding the negative impact of detention.

- The Center operates alternative to incarceration programming in Brooklyn and the Bronx, ~~that links low-level offenders to community service and social services. The City of New~~ York credited our Bronx program (Bronx Community Solutions) with reducing the use of jail by more than a third for misdemeanor offenders. Independent evaluators documented that our Red Hook Community Justice Center reduced the number of defendants receiving jail sentences and also reduced reoffending. Significantly, the researchers documented that Red Hook achieved these goals by changing the way that the justice system treated individual defendants. Put simply, if you treat people with dignity and respect, you can change the way that they perceive the system and encourage them to be law-abiding citizens.
- Finally, I would be remiss if I didn't spend just a second on the program that I run, the Harlem Community Justice Center, which is located at 121<sup>st</sup> and Lex. We do a range of different work with justice-involved populations in Harlem, including an innovative reentry court that has been documented to reduce reoffending by 19 percent. We also operate the Harlem Justice Corps, an intensive program for justice-involved young people, ages 18-24, seeking employment, education services, and meaningful opportunities to serve their community.

In all due modesty, the Center for Court Innovation is not the only organization that is attempting to nudge the justice system to make greater use of alternatives to detention and incarceration. New York is blessed with a range of good non-profits who are all pointed in a similar direction. But those of us outside government are only as good as our partners in government. We need more cases. We need more referrals. And we need more support if we are to work at the kind of scale that will make a meaningful dent in the number of kids and young adults that are currently being housed on Rikers. Speaking on behalf of all of my colleagues at the Center for Court Innovation, we look forward to working with you in the days to come to make this a reality.



The Fortune Society  
*BUILDING PEOPLE, NOT PRISONS*

**TESTIMONY OF  
THE FORTUNE SOCIETY**

The New York City Council

Committee on Fire and Criminal Justice Services

Jointly with the Committee on Juvenile Justice

**RE: Oversight: Examining the Treatment of Adolescents in New York City Jails and Reviewing  
the United States Department of Justice's Report on Violence at Rikers Island**

October 8, 2014

Presented by: Barry Campbell

The Fortune Society  
29-76 Northern Blvd.  
Long Island City, NY 11101  
Phone: 212-691-7554

Good Afternoon. My name is Barry Campbell. I am testifying today on behalf of the Fortune Society, but I would like to first start by thanking the various Councilmembers and the Committee for convening this important hearing to examine the treatment of adolescents in New York City jails and to review the U.S. Department of Justice (DOJ) report on violence at Rikers Island. I would especially like to thank the Committee for allowing The Fortune Society (“Fortune”) an opportunity to testify.

I’d like to share with you a bit about Fortune’s history. In 1967, David Rothenberg produced the off-Broadway play “*Fortune and Men’s Eyes*.” Written by John Herbert, a formerly incarcerated playwright, the play captured the experience of people living in prison. Since its founding shortly after the off-Broadway play, Fortune has served as a primary resource for New Yorkers released from jails and prisons seeking to build constructive lives in their communities; it now serves some 4,000 men and women with criminal justice histories annually. All of our programs are designed and implemented to meet the unique needs of this population through skilled, holistic and culturally competent assessments, and appropriate service provision. We build an initial relationship with clients that fosters trust and safety to begin the healing; often a crucial prerequisite to providing service for people with justice involvement; this is further reinforced by the degree to which our staff reflects many shared life experience of our clients. 70% of our staff are themselves either formerly incarcerated and/or in recovery. We believe in the importance of this cultural competency; however, it is this same cultural competency, specifically, the narratives told by our staff and clients regarding their experience within solitary confinement units across New York City and State, that allows us a deeper understanding of the degradation and inhumanity experienced in such settings. As such, we started the David Rothenberg Center for Public Policy (DRCPP) seven years ago to “officially” utilize this unique understanding of the criminal justice system to shape and inform humane policy and practices.

First, I would like to share my personal experience of Rikers Island in the 1980s and make some comparisons to the situation today:

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I was an adolescent in the 1980s incarcerated on Rikers Island. I know it is an environment where you are quite literally either “**predator or prey**” – a place where you cannot trust authority to protect you from danger. However, at least back at that time, there were many more programs available – beyond just education and GED classes. For example, there were substance abuse treatment programs, tutoring programs, and more opportunities for positive engagement and interactions.

I had direct experience in solitary confinement – **being isolated while incarcerated is a nightmare!** Human contact is essential for all of us. We need to be connected to others. That type of isolation can have a life-long impact on anyone, but especially on adolescents. I spent the time by reading books. I read the autobiography of Anne Moody and another book about Malcolm X multiple times. In isolation, you start talking to yourself, replaying events – anything except acknowledging the fact that you are alone. For adolescents on Rikers Island today, many of whom have had traumatizing experiences of abuse and neglect throughout their childhoods, the experience of being incarcerated and subjected to further violence, abuse, isolation, and limited opportunities for positive engagement and stimulation is devastating to their development.

**Fortune commends the NYC Department of Correction (DOC) for its announcement that it will eliminate solitary confinement for 16- and 17-year-olds by the end of the year.** However, it has been far too long a wait for this change and thousands of lives – including my own – have been negatively impacted by this horrific practice for so many years. And, 18-year-olds are very vulnerable as well, but this new policy will have no positive benefit to them.

On the issue of violence and other forms of mistreatment directed at adolescents on Rikers Island, the U.S. DOJ report spells out what we at Fortune already knew from the countless stories of clients who walk through our doors on a daily basis. Specifically, the report concludes that “there is a pattern and practice of conduct at Rikers that violates the constitutional rights of adolescent inmates. In particular, we find that **adolescent inmates at Rikers are not adequately protected from harm, including serious physical harm from the rampant use of unnecessary and excessive force by DOC staff.**”<sup>1</sup>

Fortune is deeply troubled by the findings of this report – we operate two major programs on Rikers Island, including a program for individuals with HIV/AIDS preparing for release and the Individualized Corrections Achievement Network (I-CAN) program for detainees and sentenced men and women, and we serve thousands of individuals with criminal histories, many of whom have spent time on Rikers Island at some point in their lives. We are trying to help these individuals rebuild their lives in the community through reentry services, as well as alternatives to incarceration (ATI) and alternatives to detention (ATD). However, the devastating impact of Rikers Island makes our work so much harder than it should be, because the trauma, violence, isolation, and limited opportunities that they have behind those walls does huge damage and is, itself, a reinforcement for criminogenic behavior.

**There are still far too many adolescents incarcerated on Rikers Island today** – many of them could be far better served in the community through ATI/ATD programs, saving taxpayer dollars and improving public safety. We know that far too many adolescents linger on Rikers Island because their families cannot afford bail. Incarceration separates these young people from their families and exacerbates any mental health issues that they may already have. We also know that the human brain is still in development up through the age of 25, and the importance of positive stimulation and human engagement is essential for all young people between the ages of 16-24.

For those adolescents who have had negative experiences during their childhoods, programs that allow for creative expression are an excellent form of therapy, learning, and artistic development. At Fortune, we are expanding our arts, music, theater, and creative writing programs, and we strongly encourage NYC DOC to invest funding into these types of programs for adolescents on Rikers Island. These arts programs, along with greater access to substance abuse treatment, GED classes and structured education, will help to facilitate a positive transition back into the community and give youth the caring support and stimulation they so desperately need.

We agree with many other service providers that eliminating adolescent solitary as a positive first step. However, the violence recognized in the U.S. DOJ report is still unacceptable. The report made several factual determinations that are absolutely shocking, including:

- Force is used against adolescents at an alarming rate and violent fights and assaults are commonplace, resulting in a striking number of serious injuries.
- Correction officers resort to “headshots,” or blows to an individual’s head or facial area, too frequently.
- Force is used as punishment or retribution.
- Force is used in response to individuals’ verbal altercations with officers.
- Use of force by specialized response teams within the jails is particularly brutal.
- Correction officers attempt to justify use of force by yelling “stop resisting” even when the adolescent has been completely subdued or was never resisting in the first place.
- Use of force is particularly common in areas without video surveillance cameras.<sup>2</sup>

With so many adolescents being detained on Rikers Island solely because their families are too poor to afford bail, we have to consider the fact that we are now brutalizing far too many of our young people simply because of their parents' economic status. This is the equivalent of doubling or tripling the cruelty that the world has already shown most of these young people – the majority of whom are African-American or Latino, and as such, are also subjected to structural racial discrimination in many areas of life.

As a society, we at Fortune believe that we can do better than this. Specifically, we must make a commitment to drastically reducing the numbers of adolescents on Rikers Island by expanding ATI/ATD programs, and by exploring options for incarcerating adolescents closer to home when incarceration is necessary. We must put a STOP to the violence on Rikers Island that is directed toward adolescents, including the routine force that is used unnecessarily as a means to control this especially vulnerable population. We must ensure that youth receive the supports and services they need, including more educational opportunities, job training programs, substance abuse and mental health treatment, and creative arts classes and workshops.

**Fortune is eager to work closely with the City Council and NYC DOC officials to be part of the solution to this entrenched problem.** With programs both inside and outside Rikers Island for those impacted by the criminal justice system – and with a recent development and expansion of programs that meet the unique needs of young adults – Fortune stands ready to provide many of the supports that these adolescents need. With increased funding for positive programming directed for this population, we could do even more.

We urge ALL City Council Members to learn more about the young people impacted by visiting our ATI/ATD, discharge planning, and other reentry programs and interacting directly with the adolescents who have been on Rikers Island. Listen to the trauma and pain that we at the Fortune hear every day doing this work. Then, let's work together to make things better for the young people who desperately need SOME adults to care and do what's right for them.

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Respectfully Submitted,

**Barry Campbell**

Special Assistant to the President/CEO, JoAnne Page

The Fortune Society, Inc.

29-76 Northern Blvd.

Long Island City, NY 11101

[bcampbell@fortunesociety.org](mailto:bcampbell@fortunesociety.org)

<http://www.fortunesociety.com/>

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<sup>1</sup> <http://www.justice.gov/usao/nys/pressreleases/August14/RikersReportPR/SDNY%20Rikers%20Report.pdf>.

<sup>2</sup> Ibid.

**Written Comments of The Bronx Defenders  
New York City Council  
Joint Meeting of the Committee on Fire and Criminal Justice Services and the  
Committee on Juvenile Justice  
October 8, 2014**

Good afternoon. My name is Dave Casellas, and I work as a client coordinator at The Bronx Defenders. In this role, I help Bronx Defenders clients and their families navigate and understand the Bronx Criminal Court system. I would like to thank the Council for the opportunity to testify.

I am here today because I was once held in solitary confinement. For three months, I endured the most intense physical and psychological violence that I have ever experienced. There is no question in my mind that this inhumane practice has no place on Rikers Island. I hope that my testimony will spare others from the torment that I endured. I represent the voices that are never heard – the people who, as we speak today, are looking out of the windows of their cells and into the sky.

I was only 20 years old when I went to the box. While incarcerated at a correctional facility in upstate New York, I was jumped by four inmates. After correction officers arrived at the scene, I was brought to a sergeant's office, where I was questioned about why I had been attacked. When the officers decided that they did not like my answers to their questions, they began slapping me forcefully and repeatedly while I was seated in a chair with my hands in my pockets.

The officers then brought me to the Secure Housing Unit and made me press my head against the door to the unit so that I tumbled in face-first as soon as the door swung open. For the next three months, I spent approximately 23 hours per day confined to a small cell. My window often would not open, and the air was stifling. Almost immediately, I could feel the

psychological toll of solitary confinement. My mind was filled with violent thoughts of hurting others and of hurting myself. I never received enough food, and I lost a lot of weight as a result. On many occasions, I was unable to go outside for recreation because officers would avoid taking us to the yard.

The behavior of the correction officers in the Secure Housing Unit was the worst part of being in solitary confinement. There are no cameras in the cells, and I lived in constant fear of being attacked by the people who were supposed to protect me. On two occasions, I was severely beaten by correction officers. I had bruises and marks all over my face; I have never been touched that way in my life. Everyone in my housing area was beaten by correction officers, but there is no way to report these incidents without risking retaliation. Once, an inmate told his mother about the abuse, and officers trashed his belongings while he was at a program.

Solitary confinement did not help me, and it is not helping the hundreds of people on Rikers Island who are held in extreme isolation each day. It produces only pain and abuse. As my organization, The Bronx Defenders, revealed in its report on solitary confinement, the Department of Correction's use of this practice is rampant, particularly against young people. Out of the 59 Bronx Defenders clients interviewed for the report, twenty were teenagers and over half were between the ages of 16 and 20. Their experiences mirrored my own, and in many cases were even worse. At least 16 of the clients interviewed for the report experienced suicidal thoughts and at least five clients attempted to commit suicide. Sadly, over 70% of the clients suffered from mental illnesses that were exacerbated and under-treated during the time they spent in the box.

The extreme suffering brought on by solitary confinement cannot be justified by claims of safety and security; there are better ways to treat people and to create safe environments. The

Department of Correction took small steps in the right direction by piloting its Clinical Alternative to Punitive Segregation (CAPS) program and by pledging to end the use of solitary confinement for adolescents, but it must go further. The Department of Correction must eliminate or drastically reduce the use of solitary confinement by exploring graduated punishments and the use of programs such as CAPS that create controlled settings without the use of extreme isolation. Most of all, the Department of Correction must take steps to establish accountability for correction officers, who too often brutalize and abuse individuals who are already in the custody of the state. With the Department of Justice's investigation still ongoing, now is the time for the City Council to act on this important issue and rectify the injustices that have plagued Rikers Island for too long. It is time for an end to solitary at Rikers. Thank you.

## TESTIMONY

The Council of the City of New York

Committee on Fire and Criminal Justice Services and  
Committee on Juvenile Justice

Oversight: Examining the Treatment of Adolescents in New York City Jails  
and Reviewing the United States Department of Justice's  
Report on Violence at Rikers Island

October 8, 2014  
New York, New York

The Legal Aid Society  
199 Water Street  
New York, NY 10038

Presented by: Nancy Ginsburg, Director  
Criminal Practice Adolescent Intervention and Diversion Project  
William Gibney, Director  
Criminal Practice Special Litigation Unit

Good morning. I am Nancy Ginsburg, Director of the Legal Aid Society's Adolescent Intervention and Diversion Project in the Criminal Practice, a specialized unit dedicated to the representation of adolescents aged 13 to 18 who are prosecuted in the adult criminal courts, and I am joined by William Gibney, the Director of the Criminal Practice Special Litigation and Law Reform Unit. We submit this testimony on behalf of the Legal Aid Society, and thank Chairpersons Crowley and Cabrera and the Committees on Fire and Criminal Justice Services and Juvenile Justice for inviting our thoughts on the issue of conditions of incarceration for our teenage clients held on Rikers Island.

The Legal Aid Society is the nation's oldest and largest provider of legal services to low-income families and individuals. As you know, from offices in all five boroughs, the Society annually provides legal assistance to low-income families and individuals in more than 300,000 legal matters involving civil, criminal, and juvenile rights issues. During the last year, our Criminal Practice handled nearly 230,000 trial, appellate, and post-conviction cases for clients accused of criminal conduct. Many thousands of our clients with criminal cases in Criminal Court and Supreme Court are teenagers who are treated as if they are adults. The Criminal Practice has a specialized unit of lawyers and social workers dedicated to representing many of our youngest clients prosecuted in the criminal system. The Adolescent Intervention and Diversion Project provides enhanced representation for our most vulnerable clients who are often involved in many systems in addition to being court-involved: foster care, special education, mental health, substance abuse. Our Criminal Practice also provides services for clients challenging punitive segregation sentences while in City custody.

Our Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our Juvenile Rights staff represented more than 34,000 children, including approximately 4,000 who were charged in Family Court with juvenile delinquency. In addition to representing these children each year in trial and appellate courts as well as school suspension hearings, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

The Prisoners' Rights Project ("PRP") of The Legal Aid Society has addressed problems in the New York City jails for more than 40 years. Through advocacy with the Department of Correction ("DOC") and the Department of Health and Mental Hygiene ("DOHMH") as well as individual and class action lawsuits, PRP has sought to improve medical and mental health care and to reform the systems for oversight of the use of force and violence in the jails. Each week PRP receives and investigates numerous requests for assistance from individuals incarcerated in the City jails. Years of experience, including daily contact with inmates and their families, has given The Legal Aid Society a firsthand view of problems in the New York City jails.

Our perspective comes from our daily contacts with adolescents and their families, and also from our frequent interactions with the courts, social service

providers, and City agencies, including the New York Police Department, the Department of Education, the Department of Youth and Family Justice, the Department of Correction, the Department of Health and Mental Hygiene, the Department of Probation as well as the Administration for Children's Services.

Because of the breadth of The Legal Aid Society's representation, we are uniquely positioned to address the issue before you today. We currently represent the vast majority of teenagers prosecuted in the Family, Criminal and Supreme Courts in New York City. We have more than 50 years of experience assessing the cases of teenagers, identifying diversion programs, and advocating for alternatives to incarceration. We have developed effective advocacy relationships in the courts, with prosecutors, and with City and State agencies, which have resulted in connecting our teenage clients with the services that best meet their needs as well as those of the community.

Our extensive experience indicates that community safety is best protected when appropriate services are identified and accessed for court-involved teenagers so that they are treated safely and humanely while in the system and less likely to be entangled again in the criminal or juvenile justice systems. The Legal Aid Society strongly supports the call to improve conditions for incarcerated teenagers, including moving these adolescents off of Rikers Island and significantly improving conditions in the facilities which house our youth.

## **Introduction**

New York State is one of two remaining states in America to prosecute all 16 and 17 year olds as adults for all crimes. Almost all of the 16 and 17 year olds, like those younger and older in New York City, who are prosecuted for the commission of crimes are African-American or Latino, poor, and living in underserved neighborhoods. When a Court orders that a 16 and 17 year old adolescent is to be incarcerated in a local jail, that teenager is placed on a bus to Rikers Island, ripped away from their community, services and family. They are housed in a facility ill equipped to provide proper services, health care and safety. The US Department of Justice recently issued a report concluding that "there is a pattern and practice of conduct at Rikers that violates the constitutional rights of adolescent inmates. In particular, we find that adolescent inmates at Rikers are not adequately protected from harm, including serious physical harm from the rampant use of unnecessary and excessive force by DOC staff."

The time has come to implement significant changes in the way we treat our youth. Sixteen and seventeen year olds do not transform into adults merely by calling them such. They are not adults under New York State law for any purpose except criminal prosecution. Nevertheless, the City incarcerates 16 and 17 year olds in buildings designed for adults, with programming designed for adults, where they are brutally beaten *by adult staff or under the watch of complicit adult staff*. The Legal Aid Society has been ringing this clarion for decades. Now the federal government has joined the chorus. We ask that the City Council demand that New York City remove

teenagers and young adults from Rikers Island to a site where they can be treated humanely and consistently with constitutional standards.

### **A Brief Historical Perspective Of The Prosecution Of Teenagers**

New York State first grouped 16 and 17 year olds with adults for purposes of criminal prosecution in the late 1800s. During the first 25 years of the 20<sup>th</sup> century, great reform took place throughout the country. Embracing social work and child psychology findings, States recognized that children were different than adults, and juvenile courts were established to address the needs of children and teenagers. Despite the fact that almost every State set the age of adult criminal prosecution at 18, New York maintained that 16 and 17 year olds were adults for purposes of criminal prosecution. A 1931 report of the New York State Crime Commission criticized drawing the jurisdictional line of demarcation for criminal prosecution at 16, but no corrective action was taken. The age of criminal responsibility was again discussed in detail at the 1961 Constitutional Convention, which established the New York State Family Court. The Convention deferred a decision to raise the age from 16, but no further action was ever taken.<sup>1</sup> As a result, for over 100 years New York State has set its jurisdictional age as low as 16. There is no evidence whatsoever that this outdated policy has led to lower rates of crime or recidivism by adolescents. Given recent social science and neuroscience findings, the time is ripe for reconsideration of this issue.

In 2011, Chief Judge Lippman first called for New York State to raise the age of criminal jurisdiction, introducing legislative language to facilitate that process.<sup>2</sup> In April of this year, Governor Cuomo convened a Commission to examine raising the age of criminal jurisdiction, stating "It's time to improve New York's outdated juvenile justice laws and raise the age at which our children can be tried and charged as adults. New York is one of only two states that charges 16 and 17 year olds as adults. It's not right and it's not fair."<sup>3</sup> The Commission is expected to issue a report at the end of 2014.

While we hope that the Commission on Raise the Age will bring New York State in line with the rest of the country, we believe New York City must finally take swift action to protect this young and vulnerable population.

### **Most Adolescent Offenders Do Not Continue Their Behaviors Into Adulthood**

In 2008, the United States Department of Justice's Office of Juvenile Justice and Delinquency Prevention published a report that analyzed the most comprehensive data set currently available about serious adolescent offenders and their lives in late adolescence and early adulthood. The most significant finding of the study is that *"[m]ost youth who commit felonies greatly reduce their offending over time, regardless of the intervention. Approximately 91.5 percent of youth in the study [aged 14-18]*

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<sup>1</sup> Merrill Sobie, *Pity the Child: The Age of Delinquency in New York*, 30 Pace L. Rev. 1061 (2010).

<sup>2</sup> See also, <https://www.nycourts.gov/ctapps/news/SOJ-2013.pdf>

<sup>3</sup> <https://www.governor.ny.gov/press/04092014-commission-ypsj>

reported decreased or limited illegal activity during the first 3 years following their court involvement."<sup>4</sup> Additionally, the study found that "longer stays in juvenile facilities did not reduce reoffending; institutional placement even raised offending levels in those with the lowest level of offending. The DOJ report concluded that the "practice of transferring juveniles for trial and sentencing in adult criminal court has produced the unintended effect of increasing recidivism, particularly in violent offenders, and thereby of promoting life-course criminality".<sup>5</sup>

### **Issues Facing the Young People Jailed as Adults**

Young people incarcerated in our City jails have profound needs and are in desperate need of therapeutic interventions. Social scientists posit that young people who are criminal court involved are not on a trajectory to become lifelong criminals, but incarceration can push them in that direction. Adolescence is a critical developmental stage. Placement in a correctional setting can disrupt educational and social development. These disruptions, in turn, can undermine prospects for pursuing an academic path, finding a job and rejoining or creating their own families. Studies show that successful programs follow the lessons of developmental psychology by providing young offenders with supportive social contexts, authoritative adult figures and help to acquire the skills necessary to change problem behavior and to become psychologically mature.<sup>6</sup>

#### *Prior Neglect and Abuse*

We have found that close to one third of our clients in the delinquency and criminal system are, or have been, in foster care. Many of these youth have been in multiple foster care placements by the time they reach their mid-teens. Some feel disconnected from a system which has not met their needs. The transitional planning services often fall short of ensuring a stable entry into adulthood. Some have emotional disabilities stemming from neglect or abuse which are not identified or addressed. Many youngsters who were victims of sexual abuse suffer from mental illness or low self-esteem and can turn to substance abuse to dull the memories and the resulting pain. A percentage of these youngsters turn to prostitution to support themselves. This further exposes them to trauma and violence.

#### *Mental Health Needs*

Many incarcerated youth suffer from mental illness. The most prevalent diagnoses of court-involved youth are attention deficit disorder, post-traumatic stress disorder, depression and bipolar disorder. Teenagers with these diagnoses may respond disproportionately to actions that they perceive as aggressive. Their symptomatic behavior, which seems justifiable to them, is often solely interpreted as

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<sup>4</sup> Edward P. Mulvey, *Highlights From Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, March 2011..

<sup>5</sup> *Id.*

<sup>6</sup> Elizabeth S. Scott and Laurence Steinberg, *Adolescent Development and the Regulation of Youth Crime*, 18 *Future of Children*, Juvenile Justice 25-27, (Fall 2008) (available at [www.futureofchildren.org](http://www.futureofchildren.org).)

hostile or aggressive. Their conditions are further exacerbated by punishments meted out which place them in punitive segregation where they are locked alone in a cell for up to twenty-three hours a day. Without consistent treatment, structure and services, these teens cannot complete their education or hold meaningful jobs. Additional treatment resources in the community, including residential beds will reduce the number of incarcerated youth.

### *Trauma*

According to a study conducted by the VERA Institute, “[approximately 85 percent of young people assessed in secure detention reported at intake at least one traumatic event, including sexual and physical abuse, and domestic or intimate partner violence. Furthermore, one in three young people screened positive for Post-Traumatic Stress Disorder (PTSD) and/or depression.”<sup>7</sup> ACS reports that 48% of youth in detention were referred for mental health services.<sup>8</sup> OCFS reports a similar number in the population admitted in 2004-2013, noting that 42% of admitted youth had mental health service needs.<sup>9</sup>

A history of trauma can also affect brain development and increase the harm to youth from isolated confinement. Exposure to trauma can create a near-constant state of fight-or-flight mode for anyone. For traumatized youth, this survival mode supersedes typical brain development. These traumatized youth are thus even less able to control their mood swings and impulses.<sup>10</sup>

In 2013, the New York City Board of Correction (BOC) commissioned a report by outside experts, two clinical professors of psychiatry, to assess whether the City is in compliance with the current Mental Health Minimum Standards. The report is extremely critical of the DOC’s policies and practices, particularly those with a psychiatric diagnosis and juveniles.<sup>11</sup> Drs. Gilligan and Lee chillingly detailed the violent culture in the NYC jails: “[a]ll too many of the officers that we observed appeared to us to make it

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<sup>7</sup> Innovations in NYC Health and Human Services Policy: Juvenile Detention Reform, Vera Institute of Justice, January 2014. available at <http://www.vera.org/sites/default/files/transition-brief-juvenile-detention-reform.pdf>.

<sup>8</sup> 2013 Mayor’s Management Report, Administration for Children’s Services, p. 165.

<sup>9</sup> NYS Office of Children and Family Services, Division of Juvenile Justice and Opportunities for Youth, 2013 Annual Report.

<sup>10</sup> American Academy of Pediatrics, Policy Statement: Health Care for Youth in the Juvenile Justice System, 128 PEDIATRICS 1219, 1223-24 (2011), available at <http://pediatrics.aappublications.org/content/early/2011/11/22/peds.2011-1757.full.pdf> (reviewing the literature on the prevalence of mental health problems among incarcerated youth); OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, NATURE AND RISK OF VICTIMIZATION: FINDINGS FROM THE SURVEY OF YOUTH IN RESIDENTIAL PLACEMENT 4 (June 2013), available at <http://www.ojjdp.gov/pubs/240703.pdf> (finding that 56 percent of youth in custody experience one or more types of victimization while in custody, including sexual assault, theft, robbery, and physical assault).

<sup>11</sup> Gilligan, James, Dr., Lee, Bandy, Dr., *Report to the New York City Board of Correction*, September 5, 2013. available at <http://www.nycjac.org/storage/Gilligan%20Lee%20Report%20%20Final.pdf>.

clear that they were quite willing to accept an invitation to a fight, or to regard it as a normal response within the cultural norms of the jail.”<sup>12</sup> During their investigation they witnessed an adolescent in the RHU becoming increasingly agitated in his cell – first banging his arms and legs on his cell door then his whole body, ripping up a sheet, wrapping his arms, legs and then neck as if preparing to hang himself. No NYC DOC staff responded until Drs. Gilligan and Lee intervened. Shockingly (since the RHU is supposed to be a therapeutic alternative to solitary confinement for individuals with mental illness), the officer staff’s first response was to pull out a can of chemical agent (mace). The doctors had to intervene and insist that this was not necessary and that mental health staff should be notified. The violent response of staff to the individuals in their care, followed by severe punishment with solitary confinement, was identified by Drs. Gilligan and Lee as “the mutually self-defeating vicious cycle that develops between inmates and correction officers, in which the more violently an inmate behaves, the more seriously he is punished, and the more seriously he is punished, the more violent he becomes.” It is a perpetual vicious cycle that fuels continued violent conduct. In the face of overwhelming lack of appropriate care and treatment, the doctors’ report calls for significant changes in policy, culture and training of staff.

### *Poor Family Support*

Often lack of family support is caused by parents who are seriously mentally ill, suffering from addiction or are incarcerated. These young people really have no support system to turn to and once they become court-involved, can show no stability in the community and often face incarceration as a result. Over the past few years, we have seen an increasing number of parents filing charges against their children for various reasons and the adolescents are rendered homeless due to a court ordered order of protection keeping them from living with their parents.

### *LGBTQ Youth*

Teenagers who identify as lesbian, gay, bisexual, transgender or questioning are often disproportionately harassed or attacked in jail. Many of these young people have been rejected by their families based on their sexual orientation and have been pushed out of their homes—some, at a very early age. Unfortunately, many of these youth experience their first contact with the court system on charges of prostitution, trespass and loitering. Lack of family support and insufficient residential options results in needless incarceration.

### *Education*

Many youth arrive in adult jails with severe educational deficits: about 40-50% are classified as in need of special education services, and large numbers have reading and math proficiency four or five grades below grade level. Education in jail is of paramount importance not only to ensure their successful reintegration to the community upon release, but also to provide them with rehabilitative activities while in custody. Idleness breeds violence, and leaving adolescents to languish in housing areas rather than engage in productive school activities is a recipe for trouble.

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<sup>12</sup> *Id.* at p. 16.

The Department of Education provides high school education on Rikers Island to youth who are under 21 and do not have a diploma or GED. In 2000, in a lawsuit brought by the Legal Aid Society, a federal court found that these programs were so deficient that they violated the Constitution and federal laws. A monitor, appointed over the City's vigorous opposition, issued highly critical reports detailing serious failures in the Rikers schools, and the federal court again in 2002 ordered the City to come into compliance. After an appeal to the Second Circuit, which did not disturb the findings that education is constitutionally deficient, the case is now back in the federal courts to determine what relief will be imposed on the City finally to bring the education on Rikers Island up to the legal minimum. The court has appointed a nationally-recognized expert in correctional education. Dr. Peter Leone, who is currently visiting the Rikers schools, and will make recommendations to the Court. Dr. Leone's expertise could provide the City with an excellent resource for improving the Rikers schools.

While the City has made numerous changes to the schools on Rikers Island in response to our lawsuit, some of the most glaring problems identified by the Court and monitor remain unchanged. Although youth in need of special education are vastly over-represented in jail, the Rikers schools largely ignore their individual needs – not to mention the federal laws governing special education -- and instead provide a “one size fits all” approach that is the antithesis of special education.

Placement in an isolated or segregated housing unit essentially cuts off all education. Many of these students have very low literacy rates, and the monitor found that 65% of those in punitive segregation were classified as needing special education. The City claims to provide “cell study” to these students, but that consists at best of a generic, mimeographed packet of written material, and an occasional phone call (that a student must initiate) to a teacher. This is not education, and it is shocking that the New York City Department of Education takes the litigation position that it is. Moreover, we have been informed that even these minimal services are offered intermittently at best, as there are not always telephones nor teachers to provide them.

#### *Challenges Facing Girls in Adult Jails*

Although this hearing focuses on the conditions in RNDC where boys are housed, it is important to remember that teenaged girls also are held on Rikers Island at the Rose M. Singer Center. While girls charged with crimes or delinquency face many of the same issues as boys, several areas of concern affect girls in particular. Most of the girls who enter the criminal justice system have experienced sexual, emotional and/or physical abuse in their past, suffer from mental health problems, and/or are substance abusers. One or any combination of these factors can contribute to the conduct resulting in criminal or delinquency proceedings. Indeed, research indicates that abuse (sexual, emotional and/or physical) may be the most significant underlying cause of such high-risk behaviors for girls.<sup>13</sup> Victimization can lead to an increase in violent

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<sup>13</sup> *Adolescent Girls with Co-Occurring Disorders in the Juvenile Justice System*, at 3, The National GAINS Center for People with Co-Occurring Disorders in the Justice System, December 1997.

behavior, substance abuse and other self-harming behaviors, poor self esteem, early sexual activity and prostitution.<sup>14</sup>

In fact, the National Mental Health Association estimates that more than 70% of incarcerated girls nationwide report sexual and physical abuse. Due to repeated exposure to trauma and violence, up to 50% of incarcerated girls fit the criteria for a diagnosis of post traumatic stress disorder (PTSD) as well.<sup>15</sup> The extent of mental health problems among these girls is staggering. Almost 70% of girls in the juvenile justice system have histories of physical abuse, compared to a rate of about 20% for teenage females in the general population.<sup>16</sup> A 1997 study of boys and girls in juvenile justice facilities found that 84% of girls needed mental health assistance, compared to 27% of boys.<sup>17</sup> It is certain that many of these mental health issues stem from histories of abuse so many of the girls have endured. Yet the juvenile and criminal justice systems traditionally focus on the girls' actions instead of the trauma they have endured and how that trauma might be related to the behavior for which they are charged.

### **Environment of Violence and Decades of No Remedies**

The Legal Aid Society has sat before this Council many times before detailing much of what has been set forth in the August 4, 2014 U.S. Department of Justice (DOJ) letter pursuant to its powers under the Civil Right of Institutionalized Persons Act (CRIPA) demanding that the NYC DOC address a culture of violence in its facilities housing adolescents 16-18 and the excessive use of isolated confinement. While our testimony today and the DOJ report focuses on the issue of violence against incarcerated teenagers, the problem is not so limited. The DOJ report stated that their "investigation suggests that the systemic deficiencies identified in this report may exist in equal measure at the other jails on Rikers".<sup>18</sup> The evidence we have gathered in our pending class action addressing staff violence and excessive force throughout the Department, *Nunez v. City of New York*, S.D.N.Y., 11 Civ. 5485 (LTS). is entirely consistent with the DOJ's findings. We encourage the Council to continue ongoing oversight of the conditions for all individuals incarcerated on Rikers Island regardless of age.

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<sup>14</sup> *Id.*

<sup>15</sup> *Mental Health and Adolescent Girls in the Justice System*, National Mental Health Association (1999).

<sup>16</sup> Laurie Schaffner, *Female Juvenile Delinquency: Sexual Solutions, Gender Bias, and Juvenile Justice*, 9 *Hastings Womens L.J.*, 4 (1998)

<sup>17</sup> *Adolescent Girls with Co-Occurring Disorders in the Juvenile Justice System*, at 5, The National GAINS Center for People with Co-Occurring Disorders in the Justice System, December 1997. In New York City Fiscal Year 2006, the NYC Department of Juvenile Justice reports that 68% of children admitted to DJJ facilities required mental health services. Mayor's Management Report.

<sup>18</sup> The Department is currently the subject of a class action lawsuit brought by current and former inmates at Rikers alleging system-wide, unconstitutional use of force by staff against inmates. See *Nunez v. City of New York*, 11 Civ. 5845.

The New York City jails have long been tremendously violent. Inmates, staff, and sometimes visitors are seriously injured—and some have died—as a result. This past summer we settled our lawsuit on behalf of the family of a man who was beaten to death by NYC DOC staff at the North Infirmary Command, for which the City paid \$2.75 million in compensation. (*Daniels v. New York*, S.D.N.Y., 13 Civ. 6286 (PKC)). We also recently settled a lawsuit on behalf of a teenager assaulted by several officers in the visit search area of RNDC, from which he suffered a skull fracture and multiple lacerations. (*Stanford v. City of New York*, S.D.N.Y., 13 Civ. 01736 (ALC)). In the last few years we have represented numerous other individual victims of staff brutality. These clients suffered a constellation of severe injuries such as a fractured orbital wall; facial bruising; severe bruising all over the body; a facial laceration requiring many sutures; a broken nose; and a skull laceration requiring many staples.

These assaults by Department staff cost the City tremendous amounts of money. Because such judgments are paid by the City, and not out of the DOC budget, the DOC is effectively outsourcing the costs of its failure—or unwillingness—to rein in its rogue staff.

In 2013 through mid-2014, the Prisoners' Rights Project interviewed and wrote to DOC seeking investigations on behalf of 25 adolescent inmates injured in incidents in RNDC in violent, and often unprovoked, encounters with uniformed staff. The frequency and severity of injuries, confirmed by medical records, was astounding, with the prevalence of injuries to inmates' faces and heads being most disturbing and notable. **Notably, 5 of the 25 or 20% of the staff inflicted injuries upon youth occurred in the school area.** For example, the injuries which we confirmed in use of force incidents with DOC uniformed staff, include:

- **M.M., RNDC**, fractured nose, laceration over lip. M.M. was denied permission to call his family and held his hand in the slot of his door saying he would keep it there until he was allowed to call his father. A probe team was called and pushed him on his bed where his hands were held behind his back and he was punched, kicked and kneed by the officers on his body and face.
- **S.C., RNDC**, head injury-contusions to face and loss of consciousness, ankle swelling and pain, elbow swelling, rib and jaw pain. S.C. fell and went to the medical clinic where COs wanted him to wait until morning for treatment. He was placed in a pen and punched by the CO and then taken to Bellevue for facial injuries.
- **S.C., RNDC**, Hit in forehead with handcuffs, 7mm laceration on forehead closed with dermabond, abrasion and numbness in wrist due to tight cuffing. S.C. threw water at a CO who responded by hitting him in the head with handcuffs. The probe team entered the cell, handcuffed SC with

metal cuffs, bending his wrists to an extreme angle and banged his head against the wall.<sup>19</sup>

- **E.O., RNDC**, wrist pain and swelling. While being escorted down the hall, the CO bent his wrist and ordered him to kneel where he continued to bend his wrist so much it popped. E.O. was not taken to see medical staff until the following day despite complaining of pain.
- **S.C., RNDC**, hit by a CO with a chair in the face. Jaw fracture. Oral surgery at Bellevue placing plate and 6 screws. Eye hemorrhage 5mm diameter. Mild deviated septum. SC was attacked by 4 or 5 COs after he was believed to have taken a pen from school. He returned the pen and the COs brought him into the classroom and punched him multiple times in the face, kicked and maced him. He was not taken to the clinic until 6 hours later and not taken to Bellevue for another 5 hours.
- **S.B., RNDC**, wrist fracture, swelling and tenderness.
- **E.O., RNDC**, wrist pain, swelling and tenderness.
- **E.A., RNDC**, nasal fracture, facial and chest abrasions, ear canal filled with blood, abrasion across mid-thoracic spine.
- **N.W., RNDC**, contusions to eye, legs and arms and swollen knee. N.W. had a verbal altercation with a CO a few days before a family visit. On the way to the family visit, the CO did not allow NW to walk through the magnetometer, bringing him to a side room where he put on his gloves and punched him in the face. Three other COs entered the room and began punching and kicking him before he was maced and briefly lost consciousness.
- **M.D., RNDC**, contusion to wrist, bruises and abrasions on arm. M.D. had been beaten by 2 inmates and requested that he be moved. He was taken to a holding pen, but then returned to his cell. He asked not to be left there and would not let the officers close the door, so they rear cuffed him and hit in the back with a stick and his arms were twisted and bent all the way back.
- **J.G., RNDC**, wrist contusions from handcuffing. He was handcuffed extremely tightly after a food fight among many youth at lunch and one of the of Officers instructed the crew to leave the cuffs on because his hand wasn't "blue enough".
- **M.M., RNDC**, scalp and lip contusions. M.M. was sitting with 2 boys at lunch in school. One boy threw food and one threw ice. The COs came over saying that they were only going to hit the other two youth because they threw the food. A short while later, they were all instructed to stand in front of their classroom, where MM was punched in his head by multiple officers who claimed that MM was the aggressor..

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<sup>19</sup> DOJ found that "probe team members too often quickly resort to the use of significant levels of force. (DOJ 8/4/2014 Report, p. p. 19.)

- **E.S., RNDC**, multiple contusions jaw, face and ribcage. During a strip search conducted in the school, E.S. asked an officer if he had to take off all his clothes. He was then slapped and punched in the head and asked if he was ready to cooperate.
- **D.P., RNDC**, head injury-bruises and swelling to back of head on both sides, contusion/hemorrhage to eye, bruises and swelling to eye and lips, lower back pain. After an incident where another student took a book out of a teacher's bag in school, a CO came into the room and threatened to take money out of the student's commissary if they did not say who took the book. D.P. began to argue with the CO who slapped and punched him in the head. Other COs entered the room, the other students were escorted out and after placing paper on the room window, one CO maced DP whereupon he was punched by other officers.
- **T.J., RNDC**, 1 cm abrasion on cheek. Neck abrasion, chest bruising. In a classroom, a CO asked the students to pick up a book from the floor. When they failed to do so, the officer closed the windows and he and other COs sprayed the room with chemical spray and held the door closed. In a second incident, the students were instructed to strip search and when TJ looked to the side, he was slapped and hit in the head and chest and kicked in the back. He was then instructed to "hold it down" and did not go to the clinic until 2 weeks later.<sup>20</sup>
- **J.G., RNDC**, 1 cm laceration to lip—sutured. Bruises to face and head. Chipped tooth and cuffmarks on wrist. JG did not immediately get out of bed and after getting dressed, he was flex cuffed, taken to intake and punched in the face, head and body.
- **M.W., RNDC**, Tenderness and swelling to orbital bones, tenderness to jaw, contusions shoulder and arm. MW was searched prior to court during which his commissary bag of food was taken to be searched. When he did not receive the bag of food after the search, the CO told him to go back to the search room where the CO pushed him and instructed him to "come off camera". MW moved into another stall without a camera hoping to get his food back and instead was punched and kicked by multiple officers. The attack stopped when one of the COs said a captain was coming. MW was then told to "hold it down" before the Captain came in.
- **E.H., RNDC**, scalp laceration, laceration over eyebrow dermabonded. E.H. was groggy waking up for school because of sleep medication and after moving too slowly for the CO, his face was pushed against the wall

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<sup>20</sup> The DOJ report notes that "[i]n interviews with dozens of adolescent inmates, our consultant found that violence ranging from casual and spontaneous to premeditated and severe is often accompanied by the officers warning inmates to "hold it down". According to our consultant, this phrase was familiar to almost every inmate he interviewed, as well as inmates he spoke with informally as he toured the jails. The warning may come from officers immediately following a beating, or sometimes day or weeks after an incident. Officers may even delay taking inmates to clinics for medical attention as they try to convince them to "hold it down." If the inmate indeed "holds it down" and declines to report a use of force, the staff also then do not report it. (DOJ 8/4/2014 Report, p. 23.)

and then he was punched in the forehead. A teacher brought EH to a CO saying he needed medical attention and CO said he needed a tissue. EH then told another CO, after which he was brought to an empty classroom where he was asked what he would say at the clinic. At first he said he would tell the truth. The CO closed the door and asked again. EH agreed to say he fell.

- **T.W., RNDC**, nasal bone fracture, hemorrhage in left eye, face abrasions and swelling. TW went to take his own radio on his way into his cell after taking his medication and the CO locked him out of his cell and punched him in his face. Other COs came and punched and kicked him. The COs then discussed how they would report the incident and warned TW that they would tell other inmates he was a snitch if he complained about the incident.
- **E.A., RNDC**, nasal fracture, deviated nasal septum, abrasion across mid-thoracic spine.
- **D.J., RNDC**, multiple swelling on skull and forehead, left knee bruises, arm swollen and tender.
- **J.C., RNDC**, multiple swelling and bruises on scalp, bruises on arm, hand swelling.
- **K.G., RNDC**, multiple facial contusions, rib tenderness and back tenderness with thoracic region swelling.
- **C.D., RNDC**, left side of face swollen and tender. During a room search, CD was instructed to drop to his bed and he complied. A CO then pinned his hands on his bed against the box springs. He asked that they stop but he was told to shut up. He was then sprayed with pepper spray, he was escorted out of the room to a hallway outside the housing area where there are no cameras. He was once again sprayed with pepper spray and punched by multiple COs on his body, arms, back, stomach and face. He was charged with threatening staff, disorderly conduct and not following directions and placed in punitive segregation.
- **A.S., RNDC**, hand laceration. AS was cut by a CO by what looked like a metal blade removed from a razor. He waited for 3-4 hours until he was taken to the clinic despite the fact that his hand was bleeding freely.

This is not even a comprehensive list—but reflects merely injuries suffered by those individuals who were brave or scared enough to reach out to our office for assistance, and for whom we have obtained medical records. Our findings are consistent with those in the DOJ investigation, which noted that “[h]eadshots are commonplace at Rikers. We have identified numerous incidents where correction officers struck adolescents repeatedly in the head or face, often causing significant injuries ... Our consultant reported that headshots are far more common at Rikers than at any other correctional institution he has observed. In many instances, correction officers readily admit hitting inmates but claim they acted in self-defense after being punched first by the inmate. As a threshold matter, even when an inmate strikes an officer, an immediate retaliatory strike to the head or face is inappropriate. Moreover,

there is often reason to question the credibility of the officer's account." (DOJ 8/4/2014 Report, p. 12.)

Because so many detainees and sentenced inmates are suffering needless injury at the hands of uniformed staff, and because the problem of uniformed staff brutality is widespread throughout the system, we believe a systemwide reform of policy and practice is necessary to bring an end to this reign of violence. To achieve that end, on May 24, 2012, the Prisoners' Rights Project, together with the law firms of Ropes & Gray and Emery Celli Brinckerhoff and Abady, filed a class action lawsuit, *Nunez v. City of New York*, S.D.N.Y., 11 Civ. 5485 (LTS), on behalf of all New York City inmates held in commands not subject to court orders. The lawsuit seeks to end the pattern and practice of unnecessary and excessive force in the City jails.

In a challenge to excessive force in the prison wards of New York City hospitals, a consent judgment provided for, *inter alia*, screening measures for correction officers to ensure that those with disciplinary records connected to use of force were assigned elsewhere. *Reynolds v. Sielaff*, 81 Civ. 101 (PNL), Order and Consent Judgment Approving Class Settlement at ¶¶ 43-48 (S.D.N.Y., Oct. 1, 1990). Complaints of use of force dropped significantly, providing an important lesson: active supervision of staff, and careful screening and assignments to marginalize those officers whose conduct is more suspect than others, will yield results. The DOC central office must exercise leadership in staff assignments and promotions, and send the message that an officers' *entire* use of force history will be scrutinized in all promotion decisions.

Later litigation challenged excessive force and inmate on inmate violence at the jail for sentenced misdemeanants on Rikers Island. The court found that DOC uniformed staff engaged in a pattern that sounds familiar today: "1) use of force out of frustration in response to offensive but non-dangerous inmate goading; 2) officers' use of excessive force as a means of obtaining obedience and keeping order; 3) force as a *first* resort in reaction to any inmate behavior that might possibly be interpreted as aggressive; and 4) serious examples of excessive force by emergency response teams." *Fisher v. Koehler*, 692 F. Supp. 1519, 1538 (S.D.N.Y. 1988), *aff'd*, 902 F.2d 2 (2d Cir. 1990). The court found that DOC's "failure to monitor, investigate and discipline misuse of force has allowed—indeed even made inevitable—an unacceptably high risk of misuse of force by staff on inmates." *Id.* at 1558 (emphasis supplied). After the court ordered significant changes in the investigation of use of force and discipline of staff members, the use of force in that jail declined precipitously.

In 1998, in *Sheppard v. Phoenix*, the City and Legal Aid negotiated a comprehensive settlement addressing the horrific brutality by uniformed staff at the CPSU, which houses teenagers and adults who have committed disciplinary offenses. The warden of the CPSU testified at his deposition that brutality was "ingrained in the culture" of the Department. *Sheppard*, Declaration of Plaintiffs' Counsel, June 26, 1998. To address this culture at its core, the City agreed to blanket the CPSU with recording videocameras, and to weed out the "bad apples," or officers whose use of force histories were troublesome. Two expert joint consultants in security, including a former head of the Federal Bureau of Prisons, provided technical assistance in transforming

the “culture of violence” in the CPSU, with remarkable success. For example, from 1997 (the last year before the settlement) to 2001, the number of serious and injurious use of force incidents in the CPSU dropped from 177 to 15—an over 90% decline.

Even though these remedies proved that DOC *could* reduce the injuries suffered by inmates if it chose to do so, those reforms were not rolled out systemwide. Instead, the excessive force against inmates continued unabated in the other City jails. Legal Aid then filed its first system-wide brutality case, *Ingles v. Toro*, to address excessive force in all of the remaining jails which had not been under Court order. *Ingles* settled in 2006. Central to the settlement were requirements for significantly more camera coverage in the jails, and the development and promulgation of new procedures to govern the Investigation Division, which had a history of merely whitewashing investigations of use of force incidents, rather than functioning as a genuinely investigative body. That settlement agreement terminated on November 1, 2009.

The DOJ noted that “In 2004, Steve Martin, the consultant retained in [Ingles]..issued a scathing report decrying the frequency with which DOC staff punched inmates in the face. Mr. Martin wrote that ‘there is utterly no question that the Department, by tolerating the routine use of blunt force headstrikes by staff, experiences a significantly greater number of injuries to inmates than the other metropolitan jail systems with which I am familiar’. It is troubling that, ten years later, this practice continues.” ((DOJ 8/4/2014 Report, p. 13.)

We observed some significant improvements in the Department’s management of use of force while the *Ingles* settlement was in effect and permitted us to monitor systematically. However, the Department did not maintain its efforts once the spotlight was off, and the number of complaints of serious, injurious, and unjustified use of force again began to increase. We saw that we had to renew our systemic litigation efforts.

When we filed the *Nunez* class action, we were thus not writing on a blank slate. The Department knew steps that could work to curb violence in the jails, and refused to implement or sustain them system-wide. The incidents that have occurred within the last year—both the circumstances in which they have occurred (i.e., staff retaliation for inmate complaints or verbal annoyance) and the highly injurious nature of force used—are simply inexcusable in a system that has had ample opportunities to reform.

## Recommendations:

### **I. Remove Youth from Rikers Island and other Adult City Jails**

The New York Sentencing Commission recommended that “No youth shall be detained in any prison, jail lockup, or other place used for adults convicted of crime or under arrest...” Alternatives to detention, alternatives to incarceration, pre-trial community supervision and presumptive release bail policies for our youth should be utilized in all but the rarest of circumstances. However, if pretrial detention or jail as a sentence is the only option, youth must be in a safe, well-maintained facility which provides ample space for: separate housing for youth with special needs, classrooms conducive to learning, private treatment areas for medical and mental health care, space for additional agency contact, programming space, large indoor and outdoor recreation areas for congregate activity and housing areas with individual rooms. We believe this cannot be achieved in any facility on Rikers Island and requires the City to relocate the detention of these adolescents to another location.

Until such time as New York State implements any recommendation of the Commission on Raise the Age, The Legal Aid Society joins the following DOJ recommendation that the:

“Department should develop a plan to house adolescents at a DOC jail not located on Rikers Island that will be staffed by experienced, competent officers and supervisors who will receive specialized training in managing youth with behavioral problems and mental health needs ... The Department should employ a “direct supervision” management style in the adolescent facility. Direct supervision refers to an inmate management strategy in which, among other things, staff continuously interact with and actively supervise inmates from posts within housing areas, as opposed to being stationed in isolated offices. Direct supervision has been shown to reduce rates of violence, lead to better inmate behavior, lower operating costs, and improve staff confidence and morale. Frontline housing officers and first line supervisors are afforded substantial decision-making authority so they feel empowered and responsible for the effective management and supervision of the unit. To effectively employ the direct supervision approach, the jail should be designed to reduce the physical barriers between inmates and staff, and ensure clear sightlines to all housing areas. *It would be difficult to implement direct supervision at RNDC due to its linear design and layout. Housing adolescent inmates at an alternative facility located off Rikers Island will put DOC in a better position to develop a new paradigm for effectively managing the adolescent inmate population.*”

(DOJ 8/4/2014 Report, p. 52.)

The Department of Correction should consider keeping 18 year olds in the same facility as 16 and 17 years olds, but in a separate housing area. Certainly, no young person doing well in the youth facility should be transferred on their 18th birthday.

## **II. Increase the placement of cameras**

The DOJ investigation specifically noted that “[t]he most egregious inmate beatings frequently occur in locations without video surveillance...a number of areas with no video surveillance still remain. A disproportionate number of the most disturbing use of force incidents occur in these areas...**In particular, an astonishing number of incidents take place in the RNDC school areas, including classrooms and hallways.** It is unclear why the Department has not installed additional cameras in these areas. Other locations that did not have security cameras during the time period of our investigation include some search locations, the clinics, intake holding pens, and individual cells.” (DOJ 8/4/2014 Report, p. 20.)

**For any facility housing these adolescents, it is imperative that cameras be placed and maintained in school areas, classrooms<sup>21</sup>, hallways, search locations, clinics, intake holding pens and individual cells.** Cameras on should have recording capacity, and the recordings shall be kept for 90 days in order to facilitate investigations of allegations of incidents which may not have been reported initially. Any tape which does record a fight, staff use of force or staff misconduct, including officers off-post, should be preserved for three years.

## **III. Immediately End the Use of Punitive Segregation and Implement an Appropriate Disciplinary Process**

We agree with the DOJ that “DOC relies far too heavily on punitive segregation as a disciplinary measure, placing adolescent inmates – many of whom are mentally ill – in what amounts to solitary confinement at an alarming rate and for excessive periods of time.” (DOJ 8/4/2014 Report, p. 3.) According to the DOJ, in one 21 month period 3,158 adolescents received a total of 8,130 infractions, resulting in a total of 143,823 punitive segregation days with the most common infractions for non-violent conduct. (DOJ 8/4/2014, p. 49.) We also agree that “based on the volume of infractions, the pattern of false use of force reporting, and inmate reports of staff pressuring them not to report incidents, ... the Department should take steps to ensure the integrity of the disciplinary process.” (DOJ 8/4/2014 Report, p. 49 fn. 45.). As stated by the DOJ, DOC

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<sup>21</sup> Images of students captured on security videotapes that are maintained by the school's law enforcement unit are not considered education records and therefore not considered confidential under the Federal privacy laws applicable to schools (FERPA). US Department of Education, Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools. October 2007, available at <http://www2.ed.gov/policy/gen/guid/fpco/brochures/elsec.html>.

must “[d]evelop and implement an adequate continuum of alternative disciplinary sanctions for rule violations that do not involve lengthy isolation, as well as systems to reward and incentivize good behavior.” (DOJ 8/4/2014, p. 62)

In the wake of the DOJ report the DOC announced the decision to eliminate punitive segregation for 16 and 17 year-olds by the end of the year.<sup>22</sup> **There is no reason to wait. There is simply no excuse for continuing to harm youth in custody through the use of punitive segregation.** The harmful use of isolation in punitive segregation should be ended now for all 16 and 17 year-olds and that reform should be extended beyond 16 and 17 year-olds to include other youth and other vulnerable populations in our jails. Moreover, while we welcome the proposed change, we are concerned with the lack of detail about how DOC will implement alternative disciplinary measures and create a fair and impartial disciplinary process.

In addition, consideration should be given to the NYC Jails Action Coalition Petition for Rule-Making for reforms of the disciplinary system and additional limitations on harmful long-term isolation including for individuals aged 18-25.<sup>23</sup> The NYC Board of Correction is currently in the midst of a rule-making initiative on punitive segregation which should be informed and supported by Council. In addition, we urge a close watch on any reforms that are instituted to ensure that they are operating as planned and are not undermined by old bureaucratic habits and staff resistance to change.

**To further make the point, it should be noted that New York State does not use punitive segregation for juveniles who are charged with violent felonies and many of whom are the same age as youth on Rikers**

#### **IV. Services, Family Engagement and Agency Integration**

Social services to incarcerated teenagers must be increased, both to protect them during their incarceration and facilitate their re-entry to society upon release. The DOJ report specifically recommended that adolescents should be offered “enhanced programming and activities, especially in the evenings and on weekends, to engage them and reduce idleness.” (DOJ 8/4/2014 Report, p. 58.) The period of incarceration for a teenager presents an opportunity to teach social skills, enhance academic skills, to

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<sup>22</sup> Michael Schwartz, *Solitary confinement to End for Youngest at Rikers Island*, The New York Times, September 28 2014. [http://www.nytimes.com/2014/09/29/nyregion/solitary-confinement-to-end-for-youngest-at-rikers-island.html?\\_r=0](http://www.nytimes.com/2014/09/29/nyregion/solitary-confinement-to-end-for-youngest-at-rikers-island.html?_r=0).

<sup>23</sup> The JAC Petition proposes significant limits on the use of solitary confinement (limited to incidents of serious violence), places a 15 day limit on each sentence with no more than 60 consecutive days permitted, provides for 4 hours out-of-cell in solitary confinement, excludes vulnerable populations (under 25 years old, and individuals with mental, physical or medical disabilities), provides for alternative safety restrictions for vulnerable populations which require 8 hours out-of-cell daily and a program of positive incentives, enhanced due process requirements at disciplinary and other hearings, and public reporting on the use of solitary confinement and alternative safety restrictions. The JAC Petition specifically requires that all youth are permitted to attend school regardless of restrictions and that due process protections at disciplinary hearings will include the assistance of counsel or other trained and competent advocate who is not employed by DOC. The JAC Petition for Rule-Making is available at: <http://www.nycjac.org/storage/JAC%20Petition%20to%20BOC.pdf>.

expose youth to new possibilities for their future. We should seize this opportunity rather than continuing to keep violence as the only option on the menu.

Sports, both indoors and outdoors, tutoring, vocational training, homework help, counseling, yoga, music, dance and theater are among the many types of programming that have been used with success throughout New York City and State and elsewhere with incarcerated teenagers.

Most incarcerated teenagers return home within a matter of weeks or months. It is critical that they have the opportunity to maintain their relationships with family members to aid their community re-entry. Families should feel welcome to visit their children while incarcerated and encouraged to do so.

Additionally, the Office of Mental Health should provide liaisons to facilitate assessment and treatment of youth with mental illness and the Administration for Children's Services should enhance its capacity to identify youth in foster care who are incarcerated and develop protocols for planning for release and ideally, diversion.

## **V. Education**

The Department of Education and Department of Correction should implement reforms to the education system so that teenagers can consistently attend school in a safe environment, appropriate for learning regardless of classification or housing unit.

## **VI. Training and Staff Ratio**

Train all DOC, DOHMH and DOE in Think Trauma, a program in use in the juvenile secure facilities in NYC and available from the National Child Traumatic Stress Network. Over the last year, mental health professionals from Bellevue Hospital have trained staff and youth in the juvenile secure detention facilities run by ACS/DYFJ in a curriculum entitled "Think Trauma". This training provides an overview for juvenile justice staff of how to work towards creating a trauma-informed juvenile justice residential setting. Creating a trauma-informed setting is a process that requires not only knowledge acquisition and behavioral modification, but also cultural and organizational paradigm shifts, and ultimately policy and procedural change at every level of the facility.<sup>24</sup> This curriculum, paid for by SAMSHA funding, helped the staff to better relate to the youth, and helped to identify a greater number of youth in need of mental health services.

Our treatment of adolescents in our justice system should reflect our understanding of these differences and the ways they affect an adolescent's behavior and well-being. For example, because of the impulsivity of youth, the threat of punishment will not have the same deterrent effect on a young person as it would on an adult. Thus, the extent of punishment should be limited in recognition of an adolescent's limited ability to make decisions that accurately calculate consequences and reasonably respond to the threat of punishment.

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<sup>24</sup> <http://www.nctsn.org/products/think-trauma-training-staff-juvenile-justice-residential-settings>

It is critical that the correction officers who have daily contact with incarcerated young people understand adolescent development and behavior and have the tools to interact with teenagers in a constructive way. Jail is an inherently stressful environment. Exposure to overly punitive conditions while incarcerated can exacerbate teenagers' prior life experiences. We believe that if the staff is better trained and given the tools to understand the context of the teenagers' behavior, their behavior would improve and the remedies would be less punitive and more effective.

Improve the quality of identification and treatment available to youth with mental illness.

Train department staff to recognize and accommodate mental illness so as to reduce the number of violent encounters with mentally ill inmates. The Department of Correction and relevant other agencies should provide enhanced training focusing on adolescent development, mental health and educational issues for officers working with adolescents.

The Annie E. Casey Foundation launched a multi-year, multi-site project known as the Juvenile Detention Alternatives Initiative (JDAI). JDAI's purpose was to demonstrate that jurisdictions can establish more effective and efficient systems to accomplish the purposes of juvenile detention. The initiative had four objectives and the last was to improve conditions in secure detention facilities. Many of the findings and recommendations in that part of the study can be used in formulating policy for juvenile correctional facilities. The findings of this study are encapsulated in a report, "Improving Conditions of Confinement in Secure Juvenile Detention Centers" and is available at <http://www.aecf.org/upload/publicationfiles/improving%20conditions.pdf>. The JDAI materials also recommend staff to inmate ratios of 1:8 while the youth are awake.

This is the ratio that exists in the secure juvenile detention facilities in NYC.

## **VII. Meaningful Investigation, Supervision and Discipline**

The Department already has extensive written policies governing use of force; an Investigation Division tasked with investigating and reporting on staff misconduct; overlapping systems for tracking which officers have been involved in use of force incidents; and a disciplinary system leading to formal charges against officers who break the rules. But these systems serve only to whitewash misconduct if they lack integrity, and if there is no ongoing vigilance by correctional leadership to ensure integrity.

In our experience, the Investigation Division of the Department has not been held accountable for its longstanding failures to conduct unbiased, even-handed investigations of use of force incidents. The default mode seems to be that the task of the investigation is to exonerate staff of wrongdoing, unless there is video evidence that precludes such a finding. This should not be, as ID has an excellent manual, created by the Department itself pursuant to the *Ingles* settlement, that, if followed, would guide investigations and evaluation of conflicting testimony and evidence. But in our

experience, these requirements are not being followed in many cases. Key eyewitnesses are not interviewed; critical forensic medical evidence is not, as required, discussed with the Office of the Medical Examiner, but rather is examined simply by jail clinicians not trained in the interpretation of such evidence; and inmate accounts are more or less automatically dismissed when they conflict with officers' accounts of disputed facts. It is imperative that the Investigation Division conduct its investigations meaningfully, thoroughly, and even-handedly if staff misconduct is truly to be discovered and addressed, and that end can only be accomplished through strong leadership and supervision from above in order to overcome an entrenched culture of bias and lack of thoroughness and professionalism.

There must also be an effective staff disciplinary system to enforce compliance with Departmental policies and ensure staff professionalism. The Department's disciplinary system necessarily depends on the investigative system to identify cases calling for disciplinary prosecution, and the above described deficiencies in the investigative system severely compromise internal staff discipline. Even in those cases that are identified for prosecution, the disciplinary system seems to move extraordinarily slowly in use of force incidents, and thus the deterrent value—or message sent—by discipline is so temporally removed from the misconduct itself that it is often meaningless. We encourage the Department to identify the obstacles to speedy yet just resolution of the charges it brings against officers it believes have violated the rules.

Even effective investigative and disciplinary systems cannot by themselves create a culture of professionalism in the jails. Active and effective daily supervision of staff is also essential. Departmental managers—especially wardens and supervisors in specific jails—can and should learn their staff's use of force histories, *not* to impose discipline, but rather to assess whether a staff member is properly assigned; whether he or she has repeatedly been involved in the same questionable scenarios; and whether his or her involvements with inmates should be more actively supervised. In our experience, the identity of the "head beaters" or "bad apples" in a jail is usually an open secret. Providing staff with impunity for their misconduct not only perpetuates the occurrence of serious injury, but also encourages other staff, such as new recruits, to join the company of rogue actors. The leadership from top to bottom must make clear that use of force histories will not be swept under the rug, but rather staff will be held accountable.

### **VIII. Oversight and Reporting**

Exercise municipal and correctional leadership, and hold staff members who misuse force accountable for their misconduct through meaningful discipline.

Revise the Department of Correction's management and promotion policies so that staff members' use of force is addressed in assignment and promotion of staff.

Overhaul the Department's Investigation Division to ensure that it complies with the Investigation Manual and conducts bona fide, competent investigations.

Review the Department of Correction's systems for maintaining and utilizing information about violence against inmates, and for holding accountable staff who foster inmate violence.

### **Conclusion**

We thank the Committee for this public forum. The City Council plays and must continue to play an important role in understanding, monitoring and tracking the conditions of confinement for individuals incarcerated in the City jail system. We encourage the Council to use its powers of oversight to regularly visit Rikers Island and hold the Department of Correction to the reforms that are necessary to safeguard incarcerated teenagers.

Dated: October 8, 2014



Testimony of

Stephanie Gendell, Esq.  
Associate Executive Director  
For Policy and Government Relations  
Citizens' Committee for Children

Before the  
New York City Council  
Committees on Juvenile Justice and Fire and Criminal Justice Services

Oversight Hearing:  
Examining the Treatment of Adolescents in NYC Jails and Reviewing  
United States Department of Justice's Report on Violence at Riker's

October 8, 2014

Good morning. My name is Stephanie Gendell and I am the Associate Executive Director for Policy and Government Relations at Citizens' Committee for Children of New York (CCC). CCC is a 71-year-old independent, multi-issue child advocacy organization dedicated to ensuring every New York child is healthy, housed, educated and safe.

I would first like to thank Chairs Rodriguez and Crowley and the members of the City Council Fire and Criminal Justice and Juvenile Justice Committees for holding this important hearing and providing us with the opportunity to testify. We are also extremely grateful to Preet Bharara and the United States Department of Justice for their attention to the unacceptable violence adolescents are experiencing at Rikers Island. We are also pleased that Governor Cuomo created a Commission that is currently devising a plan to raise the age of criminal responsibility in New York.

Before elaborating on the care and treatment of adolescents at Rikers, the data, or our recommendations, it needs to be stated at the outset—adolescents (i.e. children ages 16 and 17 years old) should not be incarcerated on Rikers Island. Period. The facility was not created for children; the staff are not trained to work with children; the facility is not developmentally appropriate for children; and children should be treated differently from adults in part because their brains are not fully developed until they are 21-25 years old.

On August 4, 2014, Eric Holder, the US Attorney General, and Preet Bharara, the US Attorney for the Southern District of New York, released a report documenting their multi-year civil investigation into the conditions of care for adolescent male inmates at Rikers Island. The report concluded that there is a pattern and practice of conduct that violates the Constitutional Rights of the adolescents (the 8<sup>th</sup> and 14<sup>th</sup> Amendments).

The report stated the following:

... we find that adolescent inmates at Rikers are not adequately protected from harm, including serious physical harm from the rampant use of unnecessary and excessive force by DOC staff. In addition, adolescent inmates are not adequately protected from harm caused by violence inflicted by other inmates, including inmate-on-inmate fights. Indeed, we find a deep-seated culture of violence is pervasive throughout the adolescent facilities at Rikers, and DOC staff routinely utilize force not as a last resort, but instead as a means to control the adolescent behavior and punish disorderly or disrespectful behavior. Moreover, DOC relies far too heavily on punitive segregation as a disciplinary measure, placing adolescent inmates—many of whom are mentally ill—in what amounts to solitary confinement at an alarming rate and for excessive periods of time.”

(Page 3)

The text of the report is jarring—reading page after page of the violence and injuries being inflicted on NYC's youth. These are our City's youth. Yet they are subjected to “headshots”, broken jaws and orbital bones, beatings as retribution, painful escort techniques, solitary confinement in six by eight foot single cells for 23 hours a day, etc. etc. It is unacceptable.

The report includes 73 recommendations in 10 categories and then concludes stating that the City has 49 days to work with the Attorney General to cooperatively address the findings or the US DOJ might file a lawsuit. On September 22, 2014—the 49<sup>th</sup> day—US Attorney Preet Bharara issued a release expressing concern about the City’s progress in meeting its constitutional obligations. The release also expressed concern regarding reports that some of the information his office received was inaccurate because data had been manipulated to indicate violence had declined.

On September 29, 2014 it was widely reported that the de Blasio Administration had decided that by the end of the year, solitary confinement would be eliminated for 16 and 17-year olds at Rikers.

We believe that the conditions described in the DOJ Report including the violence between both inmates and guards and inmates and inmates and the lack of mental health services (or lack of ability to properly care for those with mental illness) is inhumane for any person incarcerated at Rikers Island. As indicated in the DOJ report, the fact that the report focused on the adolescent male unit does in no way indicate that the same conditions of confinement are not found in the adult population (male and female) or female adolescent unit.

That said, because of our mission, CCC’s recommendations focus on children and youth at Rikers. CCC appreciates the continued interest the City Council has taken with regard to the systemic and egregious conditions for inmates at Rikers Island and particularly your interest in the adolescent units. We look forward to working together to dramatically reform this system.

We respectfully submit the following recommendations:

1) **Remove all 16 and 17-year old children from Rikers Island**

CCC’s first recommendation is the same as that of the US Attorney and Department of Justice. Rikers Island is not an appropriate facility for children and they should not be placed there.

Raise the Age of Criminal Responsibility and Ensure Youth are Not Placed in Adult Facilities:

As many are now aware, New York is one only two states (the other is North Carolina) where all 16 and 17 year olds alleged to have committed a crime are treated as adults, regardless of the crime.

This means that when a 16 or 17-year old youth is arrested, the police department does not notify his/her parents and the youth can waive his/her Miranda Rights without parental consent. This means that these youth have their cases heard in the adult criminal court system, rather than the family court system and that the Family Court Act does not apply. This means that these children are housed in adult facilities like Rikers, even though federal law precludes them from having sight or sound contact with adults. This

means that 16 and 17 year olds do not have an adjustment process nor dispositional options that enable them to avail themselves of the services proven to reduce recidivism and help youth turn their lives around. This means that these youth can end up with their youthful discretions on their permanent criminal record, impacting their future ability to go to college, get a job, or find an apartment.

Luckily, Governor Cuomo has determined that New York must raise the age of criminal responsibility. He has created a Commission to develop a plan, which should be released this winter. CCC looks forward to the details of this plan and hopes to advocate for its passage as part of the upcoming state budget process. We also hope that the State's plan will prohibit placing 16 and 17 year olds in adult facilities, like Rikers.

We hope that if the State's plan to Raise the Age is in the best interest of children, families and communities, that the City Council and the de Blasio Administration can be partners in advocating for the passage of the plan to raise the age of criminal responsibility.

#### Remove 16 and 17 Year Olds from Rikers Immediately

While CCC appreciates the de Blasio Administration's commitment to ending the use of solitary confinement for 16 and 17-year olds at Rikers by the end of the year, we believe that the better course of action would be to ensure no youth is still at Rikers at the end of the year.

It is very likely that the Cuomo Administration and the Raise the Age Commission will be recommending that 16 and 17-year olds not be placed in adult facilities. There is no reason for the City to wait for the final report from the State while implementing band-aid solutions at Rikers. The City should develop a plan now to remove the youth as soon as possible.

It is important to note that there are fewer than 300 16 and 17 year old youths at Rikers at any given time. This means that the population needing to be moved and housed elsewhere is quite manageable.

In addition, a substantial number of those 300 young people need not be incarcerated. Some of the youth are at Rikers because they were unable to make bail. (Note that in Family Court there is no bail and determinations about detaining a youth pre-trial is based on whether the young person is a danger to the community or at risk of flight.) Thus, the City could create a process to adjust some of these bail cases and allow the youth to remain in the community pending their trials. Furthermore, many of the youth actually have mental illnesses and would be better served by mental health services (either in the community or in a facility). Thus, the total number of youth needing a new placement will not be overwhelming.

While the Department of Justice recommended that the new facility off of Rikers Island be part of the Department of Corrections, we urge the Administration and the City Council to strongly consider that they be supervised and staffed by a child-serving agency like the Administration for Children's Services (ACS). At a minimum, the staff at the new facility MUST be trained in working with youth.

**2) Improve the Conditions of Care at Rikers (and at any new facility for youth)**

The additional recommendations in the DOJ report should be implemented both at Rikers and at any new facility for 16 and 17 year olds.

It is worth noting that the adolescent brain is not fully developed until a young person is 21-25 years old. Thus, even once 16 and 17-year olds are no longer placed at Rikers, there will still be adolescents at the facility. Not only do they deserve to have their Constitutional Rights protected, but it will better serve them as well as society if their needs are tended to while they are at Rikers in a manner that ultimately helps them to better re-engage into society rather than remain in a life of crime.

Until very recently, 18 year olds were housed with the 16 and 17 year olds in the adolescent unit at Rikers. Federal law prohibits states from incarcerating youth under 18 with adults 18 and over. So to be in compliance with the federal Prison Rape Elimination Act (PREA), the state passed a law moving the 18-year olds into the adult population. While we appreciate the compliance with federal law, we believe that 18-21 year olds (or 18-24 year olds) should also be treated differently by the justice and corrections systems. We urge the de Blasio Administration to consider this as part of any reform plan for Rikers.

We appreciate the City Council's interest in improving the conditions of confinement at Rikers Island.

Thank you for the opportunity to testify.

*The City University of New York*

**CUNY SCHOOL OF LAW**

**New York City Council  
Committee on Juvenile Justice & Committee on Fire and Criminal  
Justice Services**

***Joint Oversight Hearing, October 8, 2014: Examining the Treatment of  
Adolescents in New York City Jails and Reviewing the United States  
Department of Justice' Report on Violence at Rikers Island***

**Written Testimony by: The Juvenile Justice Project of  
the International Women's Human Rights Law Clinic,  
City University of New York School of Law**

**FOR THE RECORD**

Thank you for the opportunity to submit public testimony to the New York City Council's Committees on Juvenile Justice and on Fire and Criminal Justice Services for their joint oversight hearing regarding adolescents in New York City jails and the recent United States Department of Justice (DOJ) report on Rikers Island. Widely recognized for its expertise and contributions to gender jurisprudence and human rights practice, the International Women's Human Rights Law Clinic at the City University of New York School of Law (IWHR) advocates before international and regional human rights bodies and national and local courts and legal institutions, to expand human rights protections internationally and domestically. Its juvenile justice project collaborates with legal, academic, and community-based organizations throughout the United States, encouraging compliance with human rights law and standards for youth, including by ensuring that youth in conflict with the law are treated as youth.

Along with the many New York City community organizations working for rights and dignity for youth, IWHR believes that minimizing or phasing out the use of imprisonment and jails and increasing available educational and developmental services will best serve youth and will comply with international standards. It also believes that if youth are to be detained, this must occur in conditions that serve their unique developmental needs and that grant them respect and recognition of their inherent dignity as human beings. This testimony outlines key international human rights standards regarding detention of juveniles and administration of juvenile justice, which call for diminishing the use of detention, increasing services, and creating conditions of detention that help youth flourish. These standards are widely accepted internationally, and represent the culmination of findings on best practices by human rights experts in international human rights treaty bodies, the United Nations (UN) General Assembly and the UN Human Rights Council. Our hope is that the New York City Council will strive to meet and exceed these standards in creating policies that impact the city's treatment of youth.

### ***I. Youth Should Only Be Detained as a Measure of Last Resort***

Under international human rights standards, youth<sup>1</sup> should only be deprived of their liberty as a measure of last resort, and for the minimum period possible.<sup>2</sup> Rehabilitation and restorative justice, instead of repression and retribution, should remain central in the administration of juvenile justice;<sup>3</sup> as should the best interest of the youth in question.<sup>4</sup> Further, international human rights law recognizes the right of youth to receive

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<sup>1</sup> While international human rights standards make clear that youth under eighteen years of age must be treated as youth in criminal processing and in detention, international human rights bodies also call for governments to apply juvenile justice rules and regulations to people aged 18 up to at least 21. *See infra*, § II.

<sup>2</sup> Convention on the Rights of the Child art. 37(b), Nov. 20, 1989, 1577 U.N.T.S. 3.; *See also* Inter-American Commission on Human Rights, Report No.41/99, Case 11.491 (Honduras), *Minors in Detention*, March 10, 1999, para. 117. "Generally speaking, international human rights law favors reserving those penalties that most severely restrict a minor's fundamental rights for only the severest of crimes. Hence, even in the case of criminalized offenses, laws protecting the child must advocate some form of punishment other than imprisonment or deprivation of liberty"; Standard Minimum Rules for the Administration of Juvenile Justice, Article 19; Rules for Protection of Juveniles, Article 2.

<sup>3</sup> Committee on the Rights of the Child, General Comment 10, CRC/C/GC/10 para. 10.

<sup>4</sup> *Id.*

treatment that promotes reintegration and assumption of a constructive role in society,<sup>5</sup> and that is consistent with their sense of dignity and worth.<sup>6</sup> The wellbeing of youth, as well as case disposition in a manner that remains proportionate to their age, circumstances and the offence must remain the chief considerations.<sup>7</sup> These standards are based on a recognition that the particular developmental, emotional and educational needs of youth call for distinct treatment and a supportive approach.<sup>8</sup>

Thus, to meet international standards, before trial and post-sentencing, alternatives to imprisonment or detention must be available for all youth.<sup>9</sup> It should be a well-established practice that child offenders be removed from the criminal or juvenile justice system and referred to alternative, namely, social services; instead of undergoing judicial proceedings.<sup>10</sup> Models of such alternative measures include “care, guidance and supervision orders; counselling; probation; foster care; [and] education and vocational training programmes.”<sup>11</sup>

## II. Youth Should Be Treated as Youth, Not as Adults

Both in the administration of justice and in detention, international human rights law makes clear that youth should be treated as youth, and not as adults. Prosecuting youth as adults and jailing or imprisoning youth with adults violate U.S. obligations under multiple human rights treaties,<sup>12</sup> as well as under the international *corpus juris* on children’s rights.<sup>13</sup> Jailing youth in adult facilities also gives rise to other serious violations of the Convention Against Torture because children in adult prisons and jails tend to face higher rates of physical<sup>14</sup> and sexual assault,<sup>15</sup> placement in solitary

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<sup>5</sup> *Id.*, para. 23; Convention on the Rights of the Child art. 40(1).

<sup>6</sup> Committee on the Rights of the Child, General Comment 10, CRC/C/GC/10 para. 13.

<sup>7</sup> *Id.*, para. 23.

<sup>8</sup> *Id.*, para. para. 10

<sup>9</sup> *Id.*, para. para. 80.

<sup>10</sup> *Id.*, para. para. 24.

<sup>11</sup> Convention on the Rights of the Child, art. 40(4). *See also* Committee on the Rights of the Child, General Comment 10, CRC/C/GC/10 para. 27 (offering “community service, supervision and guidance by for example social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of victims” as among the array of alternatives to incarceration that governments have implemented.)

<sup>12</sup> *For example*, International Covenant on Civil and Political Rights (ICCPR), art. 10(2)(b), U.N. Doc. A/6316 (1966).

<sup>13</sup> The international *corpus juris* on children’s rights includes the Convention on the Rights of the Child and its General Comment No. 10, the UN Standard Minimum rules for the Treatment of Prisoners, the UN Standard Minimum Rules for the Administration of Juvenile Justice, the UN Standard Minimum Rules for the Non-custodial Measures, the UN Rules for the Protection of Juveniles Deprived of their Liberty, the UN Guidelines for the Prevention of Juvenile Delinquency, and Principle XIX of the Inter-American Commission on Human Right’s Principles and Best Practices on People Deprived of Liberty in the Americas.

<sup>14</sup> Martin Forst, Jeffrey Fagan and T. Scott Vivona, Youth in Prisons and Training Schools, *Perceptions and Consequences of the Treatment-Custody Dichotomy*, JUVENILE AND FAMILY COURT JOURNAL, 40 (1) (1989).

<sup>15</sup> *See, e.g.*, U.S. Department of Justice, Bureau of Justice Statistics, Sexual Victimization in Prisons and Jails Reported by Inmates, Survey 2011-12 (May 2013), <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

confinement,<sup>16</sup> and suicides<sup>17</sup> than children in youth facilities. Just this year, both the UN Human Rights Committee<sup>18</sup> and the UN Committee on the Elimination of Racial Discrimination<sup>19</sup> called on the U.S. to ensure that juveniles are not transferred to adult courts and are separated from adults during pre-trial detention and after sentencing. In 2006, the UN Committee Against Torture criticized the practice in some parts of the U.S. of incarcerating youth in adult jails and prisons.<sup>20</sup>

International and regional human rights experts additionally encourage governments to apply juvenile justice rules and regulations to persons aged 18 up to at least 21.<sup>21</sup> This includes youth who attain the age of majority while serving a custodial sentence.<sup>22</sup> The Inter-American Commission on Human Rights (IACHR) also recommends that children who are aged 18 to 21 should not necessarily be confined with adults and that an appropriate standard in deciding where a youth in custody who turns 18 will serve any remaining period of confinement is to consider the best interest of the youth.<sup>23</sup> The IACHR recommends that states undertake a hearing to determine whether youth who attain the age of majority while serving a custodial sentence “should remain incarcerated or be released, or whether the remaining portion of the custodial sentence can be commuted and replaced with a non-custodial measure.”<sup>24</sup> New York City has several alternatives to incarceration programs funded by New York State, New York City, and local foundations.<sup>25</sup> Expanding these would allow for youth to avoid custodial sentencing while receiving appropriate services and treatment.

### **III. Youth Detention Should Occur in Conditions that Respect Their Inherent Dignity as Human Beings and Meet Their Unique Developmental and Emotional Needs**

#### **Programming, Education and Recreation**

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<sup>16</sup> HUMAN RIGHTS WATCH & AMERICAN CIVIL LIBERTIES UNION, GROWING UP LOCKED DOWN: YOUTH IN SOLITARY CONFINEMENT IN JAILS AND PRISONS ACROSS THE UNITED STATES, (2012), *available at* <http://www.aclu.org/criminal-law-reform/growing-locked-down-youth-solitary-confinement-jails-and-prisons-across-united>; New York Civil Liberties Union, Boxed In: The True Cost of Extreme Isolation in New York’s Prisons (2012), [http://www.nyclu.org/files/publications/nyclu\\_boxedin\\_FINAL.pdf](http://www.nyclu.org/files/publications/nyclu_boxedin_FINAL.pdf)

<sup>17</sup> ARYA NEELUM, CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA (2007).

[http://www.campaignforyouthjustice.org/documents/CFYJNR\\_JailingJuveniles.pdf](http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf).

<sup>18</sup> Human Rights Committee, *Concluding Observations: United States of America*, U.N. Doc. CCPR/C/USA/CO/4 (2014), ¶¶ 6, 7, 20, 23.

<sup>19</sup> Committee on the Elimination of All Forms of Racial Discrimination, *Concluding Observations: United States of America*, U.N. Doc. CERD/C/USA/CO/7-9 (2014)

<sup>20</sup> Committee Against Torture, *Concluding Observations: United States of America*, U.N. Doc. CAT/C/USA/CO/2 (2006), ¶ 34.

<sup>21</sup> Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 38.

<sup>22</sup> *Id.*, at para. 86.

<sup>23</sup> INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, JUVENILE JUSTICE AND HUMAN RIGHTS IN THE AMERICAS, OEA/SER.L/V/II. DOC 78 (12 JULY 2011), 132 para. 427. (*hereinafter* “IACHR”)

<sup>24</sup> IACHR, *supra* note 23, at para. 433.

<sup>25</sup> See Vera Institute of Justice, How New York City Reduced Mass Incarceration: A Model for Change? 25 (January 2013), *accessed at* <http://www.vera.org/sites/default/files/resources/downloads/how-nyc-reduced-mass-incarceration.pdf>; *see also*, [http://www.criminaljustice.ny.gov/opca/ati\\_description.htm](http://www.criminaljustice.ny.gov/opca/ati_description.htm).

The “treatment model” advocated by Cardozo Law in its recent report<sup>26</sup> to the New York Board of Corrections on alternative treatment for youth at Rikers is in line with international human rights standards regarding programming for detained youth. Youth are to be provided access to formal education, job and vocational training, and recreational activities.<sup>27</sup> Recreation should be designed to ensure contact between youth and their families and communities, and should include activities outside secure facilities.<sup>28</sup> Education and job training must take cultural diversity into account and be applicable to and recognized outside the institutional setting.<sup>29</sup> Human rights bodies and experts emphasize these standards because the deprivation of adequate education “limits [youths’] chances of actually rejoining society and carrying forward their life plans.”<sup>30</sup>

### Conditions of Confinement

Conditions under which youth are detained should ensure respect for the human rights and inherent dignity of youth deprived of their liberty.<sup>31</sup> International human rights standards call for the physical space of juvenile facilities to be one of the State’s primary obligations.<sup>32</sup> To ensure a child’s right to physical integrity, particular attention should be paid to floor space, natural and artificial lighting, heating, and ventilation.<sup>33</sup> They should have regular access to and sufficient space and equipment for meaningful recreational activities and programs.<sup>34</sup>

Accommodations provided for youth must ensure their dignity and meet their health and development requirements.<sup>35</sup> Under international human rights standards, youth should have access to the facilities and resources to maintain proper hygiene for general health and cleanliness, including being allowed a regular bath or shower.<sup>36</sup> Food prepared for youth should be of nutritious quality and quantity to satisfy their dietary requirements, which are distinct from those of adults.<sup>37</sup> Human rights experts recognize that youths’ right to food that is “adequate for health and sufficient for strength” is

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<sup>26</sup> CARDOZO LAW, RETHINKING RIKERS (2014), available at [https://cardozo.yu.edu/sites/default/files/YJCFeb2\\_1.pdf](https://cardozo.yu.edu/sites/default/files/YJCFeb2_1.pdf).

<sup>27</sup> IACHR, *supra* note 23, at para. 492.

<sup>28</sup> *Id.*, at 511.

<sup>29</sup> *Id.*, at 493.

<sup>30</sup> *Id.*, at 495.

<sup>31</sup> UNITED NATIONS, RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY, (14 DECEMBER 1990), 2 at paras. 12-13, available at <http://www.un.org/documents/ga/res/45/a45r113.htm>

<sup>32</sup> IACHR, *supra* note 23, at para. 520.

<sup>33</sup> UNITED NATIONS, STANDARD MINIMUM RULES FOR TREATMENT OF PRISONERS, 2 (13 MAY 1977), available at: <http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf>; see also IACHR, *supra* note 23, at para. 522.

<sup>34</sup> UNITED NATIONS, RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY, (14 DECEMBER 1990), 2 at para. 12-13, available at: <http://www.un.org/documents/ga/res/45/a45r113.htm>, [hereinafter “UNRPJDL”]; see also COMMITTEE ON THE RIGHTS OF THE CHILD, GENERAL COMMENT NO. 10, CHILDREN’S RIGHTS IN JUVENILE JUSTICE, CRC/C/GC/10, 25 APRIL 2007, PARA. 89.

<sup>35</sup> IACHR, *supra* note 23, at para. 520; see also UNRPJDL *supra* note 34, at paras. 12-13, 87(f).

<sup>36</sup> IACHR, *supra* note 23, at para. 522; EUROPEAN RULES FOR JUVENILE OFFENDERS SUBJECT TO SANCTIONS OR MEASURES, paras. 65.2 and 65.3.

<sup>37</sup> UNRPJDL *supra* note 34, at para. 37

essential because they are still growing.<sup>38</sup> Youth should receive at least three meals a day and at reasonable intervals,<sup>39</sup> and the reduction of diet should be prohibited for any purpose, including as a disciplinary measure.<sup>40</sup>

Under international human rights standards, youth should be permitted to communicate with and receive frequent visits from family and friends.<sup>41</sup> To accommodate such rights, detention facilities must be both geographically accessible and have visiting facilities that allow for privacy.<sup>42</sup> The restriction or denial of contact with family members should be prohibited.<sup>43</sup>

## **Health and Mental Health Care and Treatment**

International human rights standards require that juveniles in custody have the right and access to health services, including mental health care, tailored to their particular needs according to their age.<sup>44</sup> The International Convention on Civil and Political Rights (ICCPR) requires that all prisoners receive treatment to socially rehabilitate them and that juvenile offenders should receive treatment that is appropriate to their age and legal status.<sup>45</sup> The Human Rights Committee, which oversees compliance with the ICCPR, has explicitly charged states to guarantee the rights of juvenile detainees to be treated humanely and with respect for their dignity, particularly their right to live in hygienic facilities and to have access to health care.<sup>46</sup> Article 24 of the CRC requires states to ensure that no child, including those deprived of liberty, is deprived of his or her right of access to healthcare services, including mental healthcare.<sup>47</sup> The recent U.S. Department of Justice investigation into Rikers revealed serious concerns about the quality of mental health services offered and found that troubled youth often do not receive the mental health services they need.<sup>48</sup> It is imperative for the wellbeing of these youth that New York adhere to international standards by supplying consistent, adequate mental health treatment for youth in conflict with the law.

## **Solitary Confinement; and Cruel, Inhuman or Degrading Treatment**

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<sup>38</sup> IACHR, *supra* note 23, at para. 469.

<sup>39</sup> IACHR, *supra* note 23, at para. 473; see also EUROPEAN RULES FOR JUVENILE OFFENDERS SUBJECT TO SANCTIONS OR MEASURES, PARAS. 68.1 AND 68.2

<sup>40</sup> UNRPJDL *supra* note 34, at para. 67.

<sup>41</sup> UNRPJDL *supra* note 34, at para. 59-60.

<sup>42</sup> IACHR, *supra* note 23, at para. 393; see also UNRPJDL *supra* note 34, at paras. 30, 60.

<sup>43</sup> UNRPJDL *supra* note 34, at para. 67.

<sup>44</sup> Standard Minimum Rules for the Treatment of Prisoner's, at paras 22(1), 25(1), 62, 66(2); The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Part II, at para 13.5; United Nations Rules for the Protection of Juveniles Deprived of Liberty ("The Havana Rules") paras 28 and 49.

<sup>45</sup> International Covenant on Civil and Political Rights, Art. 10 at para 3.

<sup>46</sup> UN Human Rights Committee, *Concluding Observations, Benin*, U.N. Doc. A/60/40 vol. I (2004) at para. 83(17).

<sup>47</sup> Convention on the Rights of the Child, Art. 24 at para 1; Committee on the Rights of the Child, *Concluding Observations, Albania*, U.N. Doc. CRC/C/ALB/CO/2-4 (2012) at para. 84(b) and (e); Committee on the Rights of the Child, *Concluding Observations, Cameroon*, U.N. Doc. CRC/C/15/Add.164 (2001) at para 44 and 45.

<sup>48</sup> Preet Bahara, CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island, US Department of Justice, US Attorney, Southern District of NY, p. 2, footnote 2 and pg. 47 (2014).

The UN Committee on the Rights of the Child has found that placing people under eighteen in solitary confinement violates prohibitions against torture and cruel, inhuman or degrading treatment.<sup>49</sup> The UN Special Rapporteur on Torture also condemns the use of solitary on people under eighteen due to its harmful physical and psychological effects and the particular vulnerability of youth.<sup>50</sup> The UN Human Rights Committee recently called on the U.S. to abolish the use of solitary confinement for those under the age of 18 and for people with mental illness.<sup>51</sup> International law calls for every youth deprived of liberty to be treated with humanity, and in a manner that takes into account the distinct needs of a person of his or her age.<sup>52</sup> Isolation has a range of harmful effects, including moral suffering and emotional trauma, and it has a particularly devastating impact on youth.<sup>53</sup> Not only is solitary confinement considered cruel, inhuman or degrading treatment in violation of international law, but it also goes against the objectives of institutional care.<sup>54</sup>

In addition to solitary, youth face other violence in New York City jails. Under international human rights standards, detained youth should never be subjected to violence or other cruel, inhuman or degrading treatment; and governments should facilitate access to justice for all people who suffer human rights abuses,<sup>55</sup> including abuses that occur while the victim is detained.

#### **IV. Recommendations**

\* Expand access to diversion from judicial proceedings and to other non-incarceration alternatives for youth in conflict with the law, both pre-trial and post-conviction, with the aim of relying on detention only as a last resort.

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<sup>49</sup> U.N. Committee on the Rights of the Child, 44th Sess., General Comment No. 10, Children's rights in juvenile justice, U.N. Doc. CRC/C/GC/10 (2007).

<sup>50</sup> Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶¶ 78-85, Annex (Istanbul Statement on the Use and Effects of Solitary Confinement), U.N. Doc A/63/175 (July 28, 2008) (by Manfred Nowak) available at <http://www.unhcr.org/refworld/pdfid/48db99e82.pdf>; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez) available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

<sup>51</sup> UN HUMAN RIGHTS COMMITTEE (HRC), INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS CONCLUDING OBSERVATIONS : UNITED STATES OF AMERICA, CCPR/C/USA/CO/4 ¶ 20 (23 APRIL 2014).

<sup>52</sup> UN GENERAL ASSEMBLY; *CONVENTION ON THE RIGHTS OF THE CHILD*, ARTICLE 37 (20 NOVEMBER 1989), 10

<sup>53</sup> IACHR, *supra* note 23, at para. 262.

<sup>54</sup> COMMITTEE ON THE RIGHTS OF THE CHILD, GENERAL COMMENT NO. 10, CHILDREN'S RIGHTS IN JUVENILE JUSTICE, CRC/C/GC/10, 25 APRIL 2007, PARA. 89

<sup>55</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. 40/34, annex, 40 U.N. GAOR. Supp. (No. 53) at 214, U.N. Doc. A/40/53 (1985); Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005). See also AMERICAN CIVIL LIBERTIES UNION, SLAMMING THE COURTHOUSE DOOR 6, 12-13 (2010).

- \* End solitary confinement. While ending the practice for 16-17 year-olds will represent a positive step, the next immediate step should be to account for young age in decisions about disciplinary measures for 18-21 year-olds, and ultimately to abolish solitary for that population.
- \* Ensure that all staff assigned to work with youth in detention—including security staff, programming staff, health and mental health professionals, and counselors—are properly trained and qualified to work with and meet the special needs of adolescents in conflict with the law.
- \* End the practice of trying youth under eighteen as adults and of detaining youth in adult facilities.
- \* Expand access for 18-21 year-olds to juvenile justice administration, facilities and programming
- \* Ensure all youth, no matter where held, have access to uninterrupted, high-quality, age-appropriate education, including education tailored to special-needs youth, and including vocational training and higher education where appropriate.
- \* Provide and increase age-specific programming for all detained youth, including community-oriented recreation and educational programs that allow youth to participate as members of the population outside of the jail, without being identified as detained youth.
- \* Incorporate a therapeutic model in facilities where youth are detained, and ensure youth have access to adequate health care, including mental health treatment.
- \* Facilitate youths' access to justice for abuses committed against them while detained, including by providing clear, accessible instructions and means for filing complaints; providing independent legal counsel and hearings; and ending impunity for officials who commit abuses against youth, including excessive use of force.



# NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street  
New York, NY 10004  
212.607.3300  
212.607.3318  
www.nyclu.org

## TESTIMONY OF THE NEW YORK CIVIL LIBERTIES UNION<sup>1</sup>

before

THE NEW YORK CITY COUNCIL  
COMMITTEE ON FIRE AND CRIMINAL JUSTICE SERVICES  
& COMMITTEE ON JUVENILE JUSTICE

on

The treatment of adolescents in New York City Jails and the United States Department of Justice's report on violence at Rikers Island  
October 8, 2014

### I. Introduction

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony regarding the City Council's consideration of the treatment of adolescents (prisoners ages 16-18<sup>2</sup>) in New York City Jails, and the United States Department of Justice's (DOJ) report on violence at Rikers Island, which found a "pattern and practice of conduct that violates the constitutional rights of adolescent inmates."<sup>3</sup>

With 50,000 members and supporters, the New York Civil Liberties Union is the foremost defender of civil liberties and civil rights in New York State. Our mission is to defend and promote the fundamental principles and values embodied in the Constitution, New York laws, and international human rights law, on behalf of all New Yorkers, including those incarcerated in jails and prisons. The NYCLU is an outspoken advocate for evidence-based corrections practices that improve public safety and respect fundamental human dignity.

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<sup>1</sup> This testimony was researched and co-written by Deandra Khan and LeAnn Sharpe.

<sup>2</sup> The DOJ report defines "adolescents" as male inmates between the ages of 16 and 18 housed at Rikers; we add all prisoners age 16-18 to this category; even though young women comprise a smaller portion of the adolescent population, they experience many of the same conditions as males and warrant intensive support services. Transgender prisoners also face serious barriers to safety and rehabilitation in jail. *See* National Mental Health Association (2004). *Mental Health Treatment for Youth in the Juvenile Justice System*.

<sup>3</sup> U.S. Department of Justice. (August 4, 2014). *CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island*, p. 1.

We are pleased to support the City Council in bringing much-needed oversight to the treatment of adolescents in New York City jails. We hope this hearing is the first step toward comprehensive reform of the myopically punitive and harmful conditions and practices that have persisted in New York City jails for far too long. On a given day, nearly 700 young people ages 16 through 18 are held in New York City jails.<sup>4</sup> Many of these teens are pre-trial detainees unable to make bail, and all of them are automatically charged as adults (making New York one of two states with such an outdated policy). Half the adolescents at Rikers are diagnosed with mental illness, and many more lack economic resources and social supports both in and outside of jail, leading to longer stays and high recidivism rates.<sup>5</sup>

The report issued by the DOJ this summer highlighted the devastating ways in which the constitutional rights of this extremely vulnerable population are violated daily, focusing on the excessive use of physical force and punitive segregation, and indicating deficiencies in medical, mental health, and education services that warrant in-depth investigations. The report found that “while adolescents made up only about 6% of the average daily population at Rikers, they were involved in a disproportionate 21% of all incidents involving use of force and/or serious injuries.”<sup>6</sup> We support the report’s key recommendations, which aim to shift the culture on Rikers Island from one of punishment and force to rehabilitation and treatment. This includes, but is not limited to: clarifying ‘use of force’ policies, providing practical training for staff on use of force and on interacting with adolescents, increasing accountability for improper staff conduct, and developing alternatives to segregation.

In addition to ensuring that people on Rikers are protected from excessive use of force, New York City should abolish punitive segregation immediately for young people and other vulnerable populations like individuals with mental illness and those with disabilities. While we applaud the recent decision to eliminate the use of solitary confinement for 16- and 17-year-old prisoners, we expect New York City to critically examine the use and overuse of segregation for all populations on Rikers Island. Ultimately, solitary confinement should be abolished for all incarcerated people and replaced with evidence-based alternatives that have been proven to be safer, more effective, and more humane.

One key rehabilitative track that has the power to improve a teenager’s development both inside and outside of jail is education; we ask that the City Council consider our recommendations below, which call for raising the education standards for youth on Rikers (or in other New York City correctional facilities). In conjunction with comprehensive reform of discipline practices, increased education programming will lead to lower recidivism rates and better outcomes for youth.

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<sup>4</sup> Annual Reporting. (2013). NYC Board of Correction Minimum Standards, Section 1-02, *available at* 2013.[http://www.nyc.gov/html/doc/downloads/pdf/ANNUAL\\_REPORT\\_FY2013\\_ADOLESCENT.pdf](http://www.nyc.gov/html/doc/downloads/pdf/ANNUAL_REPORT_FY2013_ADOLESCENT.pdf)

<sup>5</sup> U.S. Department of Justice. (August 4, 2014). CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island, p. 6.

<sup>6</sup> *Id.*, p. 8.

## II. Education Access, Recidivism, and the School-to-Prison Pipeline

Youth who leave high school before graduation often enter the criminal justice system—roughly one in every 10 young male high school dropouts is in jail or juvenile detention, compared with one in 35 young male high school graduates.<sup>7</sup> The increasingly close connection between the criminal justice system and struggling schools only adds to this problem.<sup>8</sup> For years, the NYCLU has studied the causes and effects of the school-to-prison-pipeline—a combination of education policies that push students out of school and into the criminal justice system. Youth on Rikers, an overwhelming majority of whom are black<sup>9</sup>, are often a product of this complex system, which underscores the rehabilitative significance of providing education in jail. Many of these young men were students in New York City public schools, where their academic or special education challenges could have contributed to their removal from classrooms and from supportive programs. Many of them probably faced long-term suspensions with few academic supports.

Yet, countless studies have demonstrated that education in correctional settings is crucial to reducing recidivism. A recent study found that on average, inmates who participated in correctional education programs had a staggering 43 percent lower rate of recidivism than those who did not.<sup>10</sup> Research also shows that education in juvenile justice facilities is the most economically efficient crime prevention technique.<sup>11</sup>

The City has a fundamental responsibility, backed by the law, research, and the experiences of incarcerated youth, to focus on alternatives to incarceration and to mitigate its harmful effects by supplying as robust an education for adolescents in jail as possible. The benefits of personal academic, emotional, and psychological growth, lower recidivism rates, smoother transitions into the community, and a safer city are undeniable. In addition, the City must closely examine the other end of the pipeline, limiting the powers and responsibilities of

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<sup>7</sup> Sum, A., Khatiwada, I., McLaughlin, J., Palma, S. (2009). *The Consequences of Dropping Out of High School: Joblessness and Jailing for High School Dropouts and the High Cost for Taxpayers: 22% Daily Jailing Rate for Young Black Men Who Drop Out of High School.*

<sup>8</sup> Indeed, the DOJ and U.S. Department of Education issued joint guidance earlier this year identifying the disproportionate impact of school discipline policies on students of color, many of whom spend more time out of school and on the streets due to the overuse of suspensions. U.S. DOE and DOJ, “School Climate and Discipline Guidance Package,” Jan, 2014. Available at <http://www.ed.gov/news/press-releases/us-departments-education-and-justice-release-school-discipline-guidance-package->. Students who are suspended from school are more likely to be arrested, and the overrepresentation of black students and students with disabilities in the school discipline system is directly reflected in the population of young people on Rikers Island. *See e.g.*, Justice Center, Council of State Governments & Public Policy Research Institute, “Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement,” July 2011.

<sup>9</sup> Black students are far more likely to be suspended from school than students of other races. *See, e.g.*, Office of Civil Rights Data Collection. (2011). <http://ocrdata.ed.gov/Page?t=s&eid=474638&syk=6&pid=732>, NYCLU, “ABCD, STPP: How School Discipline Feeds the School to Prison Pipeline,” October 2013.

<sup>10</sup> RAND Corporation. (2013). *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults.* Retrieved from [https://www.bja.gov/Publications/RAND\\_Correctional-Education-Meta-Analysis.pdf](https://www.bja.gov/Publications/RAND_Correctional-Education-Meta-Analysis.pdf) (last visited Sept. 29, 2014).

<sup>11</sup> *Id at 11.* *See also* ACLU, ACLU Fact Sheet on the Juvenile Justice System (July 5, 1996). Available at <http://www.aclu.org/crimjustice/juv/10091res19960705>.

law enforcement personnel to enforce school discipline. Keeping kids out of the system must be as much of a priority as addressing their conditions inside.

### **III. Barriers to Education**

In 2000, the Second Circuit held that education services on Rikers Island were not fulfilling the constitutional mandate to provide equal education programming for youth.<sup>12</sup> Recent changes brought about by that decision have resulted in a 50 percent increase in attendance in educational programming on Rikers, laying the groundwork for broader education access amongst the adolescent and young adult population; however, major challenges remain.

#### **a) Unequal Minimum Standards**

Sixteen and 17-year-olds are currently required to receive a minimum of three hours of education programming per day, or 15 hours a week (excluding lunch), at East River Academy on Rikers Island, in order to fulfill the constitutional mandate that minors receive a public education.<sup>13</sup> Two-thirds of their instruction must include reading, mathematics and oral and written communication, with other activities including life skills education. Three hours is significantly lower than the requirement for traditional public schools, which requires that students receive a minimum of 5.5 hours of instruction a day, creating a major barrier to full and equal education access.<sup>14</sup>

This discrepancy puts students at Rikers at a disadvantage; many enter the system facing serious educational challenges, indicating that they need more, not less, instruction. Additionally, superintendents, correction officers, and prisoners alike point to cuts in educational programming and the resulting increase in idle time as a leading problem in their facilities.<sup>15</sup> The DOJ report supports this connection, finding that “limited programming and structured activities available at [Rikers] in part contribute to the extraordinary level of inmate-on-inmate violence.”<sup>16</sup>

#### **b) Deficient Education in Punitive Segregation**

Young people in solitary confinement on Rikers Island face the most serious barriers to continuing their education. Youth in solitary are not allowed to attend school, and are instead given workbooks or instruction via telephone; these services can be inconsistent and rely on the students’ own motivation to complete work. Of course, research has made clear that solitary

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<sup>12</sup> Handberry v. Thompson, 446 F.3d 335 (2d Cir. 2006)

<sup>13</sup> N.Y. Comp. Codes R. & Regs. tit. 8, §118.2.

<sup>14</sup> *Id.* § 175.5(a)(3)

<sup>15</sup> Elizabeth Cate, Teach Your Children Well: Proposed Challenges to Inadequacies of Correctional Special Education for Juvenile Inmates, 34 N.Y.U. Rev. L. & Soc. Change 1, 31 (2010), *See* Prison Visiting Comm., Corr. Ass'n of N.Y., State of the Prisons 2002-2003: Conditions of Confinement in 14 New York State Correctional Facilities 8 (2005) [http://www.correctionalassociation.org/wp-content/uploads/2012/05/State\\_of\\_prisons\\_02-03.pdf](http://www.correctionalassociation.org/wp-content/uploads/2012/05/State_of_prisons_02-03.pdf)

<sup>16</sup> U.S. Department of Justice. (August 4, 2014). CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island, p. 9.

confinement increases depression and risk for self-harm,<sup>17</sup> and is in no way conducive to self-teaching and learning.<sup>18</sup>

The NYC Department of Correction (DOC) recently announced it would end the use of solitary confinement for 16- and 17-year-olds by the end of 2014. While removing this vulnerable population from solitary confinement is not a substitute for comprehensive reforms to the practice in its entirety, the importance of taking immediate steps to protect these individuals is undeniable. We applaud DOC's decisive action in addressing this issue and we look forward to monitoring the impact of the new policy. State law, however, guarantees a young person's right to attend school until the age of 21 if they have not received a diploma. DOC must still establish a meaningful process for educating prisoners 18-21 years old who want to attend classes while in segregation.

We echo the DOJ's concerns about the educational services offered to youth who are in solitary on Rikers, particularly those young people with special education needs; the report found that "the educational services offered to youth in punitive segregation units may not comply with the requirements of the Individuals with Disabilities Education Act."<sup>19</sup>

#### **IV. Recommendations**

We have three primary recommendations for the City Council and DOCs to consider today with regard to increasing access to meaningful education for young prisoners in New York City facilities.

##### **a) Increase Minimum Standards for General Education**

With adolescent brain development continuing through age 25, it is imperative that a young person's time at Rikers is rooted in a comprehensive and rehabilitative education at least equal to that of their peers in other public schools. We therefore recommend that the minimum standard for education programming on Rikers Island be raised from three hours to five and one-half hours for 16 through 21-year-olds who are enrolled in school (all 16- and some 17-year-olds must attend school subject to city and state compulsory attendance laws<sup>20</sup>; students older than compulsory age should be encouraged to remain enrolled and must receive adequate supports to

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<sup>17</sup> See Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL'Y 325, 336 (2006) (noting impulse control and self-harm are psychiatric symptoms associated with solitary confinement); Craig Haney, *Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement*, 49 CRIME & DELINQ. 124, 131 (2003) (noting the association of suicide and self-mutilation with isolated housing); Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIM. & JUST. 441, 492-493 (2006) (noting problems with impulse control, violent reactions, self-mutilation, suicide associated with prolonged isolated confinement).

<sup>18</sup> See Nicole Flatow, *Teen Jailed at Rikers for 3 Years Without Conviction or Trial*, THINK PROGRESS, Nov. 25, 2013 (explaining that a teenager, Kalief Browder, spent three years in jail without charge or trial, including more than 400 days in solitary confinement).

<sup>19</sup> 20 U.S.C. §§ 1400 *et seq.*

<sup>20</sup> N.Y. Educ. Law §3205. In New York City, students are required to attend school until they have completed the school year in which they turn 17 years of age. NYC Dep't of Educ. Chancellor's Reg. A-210 (I).

do so). Increasing access to education has the added benefit of reducing idle time, and combined with additional recreational programming like the Adolescent Behavioral Learning Experience<sup>21</sup> will extend prisoners' productive time further into the day. Keeping young people engaged in meaningful educational programming during the day has the potential to reduce violence and other offenses in the jail.

### **b) Improve Minimum Standards for Education in Punitive Segregation**

In order to reform the hugely deficient learning conditions of youth in solitary confinement, we recommend that the DOC create out-of-cell educational instruction groups for juveniles housed in punitive segregation housing areas; this would mirror practices for providing group therapy for prisoners in Clinical Alternatives to Punitive Segregation (CAPS) and Restricted Housing Units (RHUs), while asserting the fact that education is as necessary and rehabilitative for incarcerated youth as mental health services.<sup>22</sup>

Teachers should also be allowed to provide educational assistance in person in the housing areas, as opposed to through intermittent phone calls. While we recognize the DOC has in place a plan to eliminate solitary confinement for 16- and 17-year-olds, this problem will persist for 18 to 21-year-olds enrolled in school. We urge the City to seriously consider the needs of older students as well by addressing in-cell instruction and by eventually abolishing punitive segregation altogether.

### **c) Improve Education Screening Process for All Students**

New York correctional education standards require that teachers create an education plan for each eligible youth within 10 school days of their admission into Rikers, including modified services for students with disabilities.<sup>23</sup> For 18 to 21 year-olds, access to special education services are particularly limited, since students can only receive services if they were classified as having a disability by their school prior to arrest.<sup>24</sup> For students whose disabilities went undetected in school, it is unclear whether and how they would receive a specialized education plan. Since most students arriving at Rikers are in need of intensive learning services, the Department should amend its regulations to include screening of *all* youth (ages 16-21) for

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<sup>21</sup> ABLE is a privately funded social impact bond program that provides evidence-based cognitive behavioral intervention, skill-building recreational activities, and reentry planning for youth during the day, before or after DOE coursework. See Osborne Association (2012). About the Adolescent Behavioral Learning Experience (ABLE). Available at <http://www.osborneny.org/programs.cfm?programID=43>

<sup>22</sup> City of New York Department of Correction (2014). Clinical Alternatives to Incarceration / Restricted Housing Units (RHU). Available at <http://www.nyc.gov/html/doc/html/press/caps-rhu.shtml>

<sup>23</sup> N.Y. Comp. Codes R. & Regs. tit. 8, § 118.3.

<sup>24</sup> Elizabeth Cate, Teach Your Children Well: Proposed Challenges to Inadequacies of Correctional Special Education for Juvenile Inmates, 34 N.Y.U. Rev. L. & Soc. Change 1, 17-18 (2010). "As young students' disabilities are often undetected--especially in low-income school districts, from which incarcerated youth are predominantly drawn--this provision has the potential to deny special education to a large number of incarcerated youth. The prevalence of unidentified disabilities makes it likely that a youth with disabilities who is over the age of eighteen will not receive special education services if she enters the criminal justice system. Given the strong relationship between disabilities and criminal activity, it follows that a significant number of youth with disabilities are being denied the protections of IDEA."

disabilities in conjunction with establishing the education plan. In addition, staff should be instructed to initiate Individualized Education Plans (IEP) and special education services as needed in accordance with federal and state law. The City must fulfill its obligation to provide youth with an equal education, regardless of whether they receive classes in a general education classroom, alternative school, or in segregation, and from ages 16-21.

## **V. Conclusion**

We thank the Council for providing this opportunity to share our recommendations for reforming the conditions and treatment of adolescents in city jails. As the Department of Justice's report showed, the extreme use of force and solitary confinement at Rikers Island is at least partly attributable to the absence of robust programming for juveniles and proper training for correctional and civilian staff. These are issues with serious human costs.

We must view the students at East River Academy as part of the New York City public school system, young people whose life outcomes rely in part on access to an equal, comprehensive, and individually appropriate education. We look forward to having additional conversations with the Council and the administration about reforming education services and other ways to improve health and safety in New York City jails and across the City as incarcerated people are released back into the community.

City Council Hearing  
"Examining the Treatment of Adolescents in New York City Jails and Reviewing the United States Department of Justice's Report on Violence at Rikers Island."

October 8, 2014

Testimony by Jane Sung E Bai  
646-210-0193 | [jsbai2007@gmail.com](mailto:jsbai2007@gmail.com)  
c/o Jennifer Parish, Urban Justice Center

**FOR THE RECORD**

On August 10, 2013, a 17-year old student of mine, AT, was arraigned in Brooklyn Criminal Court and taken to Rikers where he stayed until June 2014 when he was then taken to another facility to serve out his 1-3 year sentence for a non-violent crime, he ran off with a fellow high school student's cellphone.

During AT's almost 1 year at Riker's youth facility, he was given 180 consecutive days in "the box," or solitary confinement.

To understand the depth and breadth of the incredibly unjust conditions AT endured, I will lift up a few salient points:

- 1) AT was remanded to Riker's, not because he was found guilty of a crime, but because he did not have the resources to pay the bail or bond which was \$10,000 / \$1,000. AT has been in the foster care system for most of his life. Though he has relationships with some extended relatives, his church, and with me, none of us have the means to provide this money.
- 2) As soon as AT arrived at Rikers, he was often "tested" by other inmates and Correction Officers. Survival there means having to prove yourself. As he called me almost every other day until he was put in the box, I heard directly from him about the types of ordeal that he was going through—from having hot water thrown on him, to being approached by an inmate and asked: Are

you ready to fight? It was after one of these incidences that AT and the person who approached him were put in the box.

- 3) While in the box, AT was unable to call me regularly. During his time there, he might have been able to call me only half a dozen times. He told me that there are times when one person in the box will hold the phone and nobody would get to use it, or for reasons he never understood, they would be on locked down. I was the main person he was in touch with and he couldn't reach me.
- 4) An additional consequence of being in the box was that AT was charged a fine—for being in the box! This meant that any money that I had been putting in his commissary fund for phone calls and basic items like soap, would first go to pay for his fines. He knew that I didn't have money, so he told me to stop putting money in his account because he felt bad for me.
- 5) Prior to being put in the box, AT was attending classes at the East River Academy. His counselor told me that he was doing extremely well. Once he was put in the box, he no longer was able to attend classes.
- 6) Finally, the biggest travesty that solitary confinement, especially such an extensive amount of time, incurs is that the mental and emotional state of the person is clearly affected. After over 60 days in the box, AT was exhausted. He no longer felt the will to fight for the unfair prosecution (which was charging him for an assault that witnesses affirm he wasn't even physically present for). His 18B attorney refused to speak with me, his step-grandfather, and his social worker and, according to AT, was pressuring him to take a plea to the false charge. AT wanted to get out of Rikers, he wanted to get out of the box.

AT was a young man who was dealt some unfair circumstances—like being put in the foster care system--and while he has had missteps along the way, I knew him to be a funny, smiling and kind-hearted soul. While his experiences at Rikers is not responsible for the path that led him there, the experience should also not be responsible for draining this young man of his youth, emotional development, and intellectual growth.

The most egregious point that haunts me til this day is that everything I describe happened while AT was not convicted of any crime. This happened because he didn't have the money to be out on bail or bond.

**Oversight: Examining the Treatment of Adolescents in New York City Jails  
and Reviewing the United States Department of Justice's Report on  
Violence at Rikers Island**

**Testimony before the New York City Council's Fire and Criminal Justice and Juvenile  
Justice Committees**

**October 8, 2014**

**The Correctional Association of New York  
Testimony presented by Gabrielle Horowitz-Prisco  
Director, Juvenile Justice Project**

My name is Gabrielle Horowitz-Prisco. I am the Director of the Juvenile Justice Project of the Correctional Association of New York and an attorney who previously represented children in Family Court. The Correctional Association of New York (CA) 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 report its findings and recommendations to the legislature, the public and the press. Through monitoring, research, public education and policy recommendations, the CA strives to make the administration of justice in New York State more fair, efficient, and humane. We also operate youth leadership development programs for young people impacted by the justice and child welfare systems. Our unique access to prisons combined with our policy and legislative expertise and direct work with system-involved youth inform our perspective on criminal justice issues.

Thank you to the distinguished Chairs and members of the Fire and Criminal Justice Services and Juvenile Justice Committees for the invitation to testify today. We value this opportunity, and look forward to working with you this session.

Over the past decade, the reported use of force by correctional officers at facilities on Rikers Island rose by nearly 240 percent, while the daily population declined by about 15 percent.<sup>1</sup>

The federal Department of Justice's investigation into conditions for adolescent males on Rikers found a pervasive culture of brutal violence against children. In the words of U.S. Attorney Preet Bharara:

As our investigation has shown, for adolescents, Rikers Island is a broken institution. It is a place where brute force is the first impulse rather than the last resort; where verbal insults are repaid with physical injuries; where beatings are routine while accountability is rare; and where a culture of violence endures even while a code of silence prevails. The adolescents in Rikers are walled off from the public, but they are not walled off from the Constitution. Indeed most of these young men are pre-trial detainees who are innocent until proven guilty, but whether they are pre-trial or convicted, they are entitled to be detained safely and in accordance with their constitutional rights – not consigned to a corrections crucible that seems more inspired by Lord of the Flies than any legitimate philosophy of humane detention. These young men, automatically charged as adults despite their age under New York law, may be on an island and out of sight, but they can no longer remain out of mind. Attention must be paid immediately to their rights, their safety and their mental well

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<sup>1</sup> Michael Schwartz, "Rikers Island Struggles With a Surge of Violence and Mental Illness", New York Times, March 18, 2014. <http://www.nytimes.com/2014/03/19/nyregion/rise-in-mental-illness-and-violence-at-vast-jail-on-rikers-island.html>

being, and in the wake of this report we will make sure that happens one way or another.<sup>2</sup>

The Department of Justice is not alone in their observations. Dr. James Gilligan, a psychiatric expert visiting Rikers juvenile solitary confinement unit witnessed, “young kids who had been really beaten to a pulp.”<sup>3</sup> Dr. Gilligan reported that one young person was “handcuffed by correction officers, who then banged his head against the floor.” The youth suffered a concussion, lost a tooth, and was vomiting and urinating blood.<sup>4</sup>

These horrors are not anomalies, but rather evidence of a culture of violence endemic to Rikers. Children on Rikers Island are experiencing taxpayer funded child abuse. There are many urgently needed reforms, including but not limited to those outlined by the federal Department of Justice. For the purpose of this hearing, the Correctional Association will focus on three recommendations:

1. **New York City should immediately remove all 16- and 17-year-olds from Rikers Island. The detention of all children in New York City should be limited exclusively to facilities within the youth justice system. If a change in state law is necessary before youth can be moved to the custody of the youth justice system, the city should temporarily hold 16- and 17-year-olds off-island in a separate facility, while pressing for such change;**
2. **New York City should immediately end the solitary confinement of 16- and 17-year-olds; and**
3. **New York City should deepen its investment in the continuum of non-residential community based services, programs, and treatments that keep kids out of jail and prison, and have been proven to improve youth outcomes and public safety while saving taxpayer money.**

In discussing the sheer brutality children and adults on Rikers face day in and out, we want to acknowledge that these problems long preceded the current Department of Correction (DOC) and city administration. We recognize that Mayor Bill de Blasio and DOC Commissioner Joseph Ponte have committed to reform and that critically important changes- such as ending the solitary confinement of 16- and 17-year-olds- have been announced. We are heartened by Commissioner Ponte’s long history of correctional reforms. And we applaud the current administration for their commitment to change, and stand fully ready to aid them in their efforts.

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<sup>2</sup> United States Department of Justice, U.S. Attorney for the Southern District of New York Finds Pattern and Practice of Excessive Force and Violence at New York City Jails on Rikers Island That Violates the Constitutional Rights of Adolescent Male Inmates, August 4, 2014, <http://www.justice.gov/opa/pr/us-attorney-southern-district-new-york-finds-pattern-and-practice-excessive-force-and>.

<sup>3</sup> *Ibid* (New York Times)

<sup>4</sup> *Ibid* (New York Times)

It is also essential to note that the culture of jails and prisons often transcend individual administrations and leaders. The Department of Justice report is shocking not for its revelations—the violence on Rikers, including that against children, was made public long ago. What is shocking is how little has been done to protect the children and adults on Rikers, despite this knowledge.

In October 2008, on Rikers Island, detained individuals murdered 18-year-old Christopher Robinson as guards looked the other way. The Correction Department investigated.<sup>5</sup> According to the Village Voice, “(t)he agency interviewed hundreds of teen inmates and concluded that under a practice known as ‘the Program,’ guards were deputizing inmates, often in the teen jail, and pitting them against one another in fights as a way to keep order and extort them for phone, food, and television privileges. In the wake of the scandal, two guards, Khalid Nelson and Michael McKie, were convicted of complicity in the Program and sentenced to short prison terms. A third officer (at the time of publication) was awaiting sentencing. Twelve inmates were also indicted in the case, with five pleading guilty. Meanwhile, Correction Department officials claimed they had taken a series of steps that dealt with the problem, including staffing dayrooms with officers and reducing the guard-inmate ratio.”<sup>6</sup>

On May 9, 2012, the Village Voice ran an investigative piece about the violence and slashings on Rikers with photos that were so graphic and chilling, I circulated the article to staff with a warning.<sup>7</sup> The photos show many detained individuals with their cheeks literally slashed open, with gaping flesh wounds. As reported in that article, the photos confirmed what the Voice had reported *four years* before that “fight club” style violence by and against detained people on Rikers was promoted by correctional staff.<sup>8</sup> As also reported, this behavior continued even after two members of correctional staff went to prison.<sup>9</sup> On January 30, 2011, New York Magazine published “Lords of Rikers” offering chilling details about the culture in the adolescent units on Rikers. The piece opens with “One Main, House of Pain,” the name given by detained people to the Robert N. Davoren Center or RNDC, the building on Rikers housing adolescent males.<sup>10</sup>

It is in part because the tentacles of brutality are historic and deep, that we offer the following recommendations:

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<sup>5</sup> The Village Voice, Graham Rayman, Rikers Violence: Out of Control, May 9, 2012, <http://www.villagevoice.com/2012-05-09/news/rikers-violence-out-of-control/>.

<sup>6</sup> *Ibid* (Village Voice, italics added)

<sup>7</sup> *Ibid* (Village Voice)

<sup>8</sup> *Ibid* (Village Voice)

<sup>9</sup> *Ibid* (Village Voice)

<sup>10</sup> New York Magazine, Geoffrey Gray, *The Lords of Rikers*, January 30, 2011, <http://nymag.com/news/features/70978/>

1. New York City should immediately remove all 16- and 17-year-olds from Rikers Island. The detention of all children in New York City should be limited exclusively to facilities within the youth justice system. If a change in state law is necessary before youth can be moved to the custody of the youth justice system, the city should temporarily hold 16- and 17-year-olds off-island in a separate facility, while pressing for such change.

All 16- and 17-year-olds must immediately be removed from Rikers Island. Maintaining children on Rikers Island is indefensible, as the rampant violence, abuse, and torture of children on the Island cannot be reformed sufficiently or quickly enough. The Department of Justice recommends that 16- and 17-year-olds currently in Rikers be moved off-island to a separate facility operated by the New York City Department of Correction (DOC). It is profoundly challenging to envision how the same agency and employees responsible for creating and maintaining the brutal culture at Rikers over a long period of time will have the capacity and commitment to create a new culture of safety attuned to the unique developmental needs of children. Should a change in state law be required to move youth into the youth justice system, 16- and 17-year-olds should temporarily be moved into an off-island facility operated by DOC, while the city and other stakeholders press for legislative reform. This solution must be temporary, and a plan for fully integrating children into the youth justice system must be developed.

In a recent New York Times article DOC Commissioner Ponte discussed the national trend of reform-minded jails moving away from punishing young people and focusing instead on treatment through programs. The Commissioner said: “We’ve never done that in New York” and “How do you take officers that were hired and trained to deal with adult inmates, to manage the juveniles? That is a major cultural shift for staff to go through.” “What exists currently is an adult model in an adolescent facility,” he added.<sup>11</sup> The Commissioner is exactly right, and there is little evidence to believe that New York can train its current staff to appropriately serve young people, particularly when many of those current staff members either actively engaged in or tacitly allowed the culture of brutal violence documented in the media and DOJ report to flourish.

Fortunately, there is no need for New York City to enter this uncharted territory where failure is likely. New York City’s youth justice system is already designed to serve young people, and it is better-equipped meet their educational, treatment, and program needs. Consequently, the youth justice system is better poised to improve youth outcomes, reduce recidivism, and improve public safety than is DOC.

Additionally removing 16- and 17-year-olds from DOC custody will allow the Department to focus its energy and resources on improving conditions for detained adults on Rikers.

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<sup>11</sup> New York Times, *New York Hires Consultant to Create Rikers Island Reform Plan*, September 8, 2014, <http://www.nytimes.com/2014/09/09/nyregion/new-york-hires-consultant-to-create-rikers-island-reform-plan.html>.

Although the DOJ report focused on adolescent males, the conditions for the adult men and women on Rikers are as brutal, inhumane, and unconscionable as those for children. The New York Times has extensively reported on the grievous and permanent harms being inflicted on those with mental illness on Rikers,<sup>12</sup> and reliable information documenting the sheer brutality against adults on Rikers abound in both the media and litigation. The agency can wait no longer to stop the brutality against adults, and removing kids from DOC custody will allow its focus to sharpen and deepen.

Although not without its own flaws, New York City's current youth justice system is the result of many years of sustained reform efforts by this Council and other elected officials, agency officials, and advocates. In December 2010, in recognition of the overlap between the child welfare and youth justice populations, the former NYC Department of Juvenile Justice merged with the Administration for Children's Services (ACS).<sup>13</sup> ACS operates two secure youth detention facilities, contracts with private providers who operate non-secure detention facilities, and manages the Close to Home initiative, including contracts with private providers for the placement of youth post-sentencing. ACS and the New York City Department of Probation also operate and support a myriad of interventions specifically designed to keep kids out of facilities, instead providing the kinds of robust community based options proven to improve outcomes for youth and families and reduce recidivism, all at a fraction of the cost of lock-up. Staff members in the city's youth justice system are aware when hired that they will be working with children, and have applied specifically to do so. Many youth justice staff have specialized training in critically important areas such as positive youth development<sup>14</sup> and trauma-informed care. ACS is currently partnered with NYU Langone and Bellevue Hospital to operate grants totaling more than seven million dollars to treat childhood trauma, including for youth in the city's detention system.<sup>15</sup> Additionally, the measurement and behavioral management tools used in the youth justice system are specifically designed for youth. ACS also has landmark protections for lesbian, gay, bi-sexual, transgender, and questioning (LGBTQ) youth, including an anti-discrimination policy and guidelines that is a national model. Research demonstrates that LGBTQ youth are over-represented in the youth justice system and are particularly vulnerable to routine and systemic

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<sup>12</sup> See FN 1 (New York Times), and see New York Times, *Rikers: Where Mental Illness Meets Brutality in Jail*, July 14, 2014, <http://www.nytimes.com/2014/07/14/nyregion/rikers-study-finds-prisoners-injured-by-employees.html>.

<sup>13</sup> [http://www.nyc.gov/html/acs/html/pr\\_archives/pr10\\_12\\_07.shtml](http://www.nyc.gov/html/acs/html/pr_archives/pr10_12_07.shtml).

<sup>14</sup> An increasing number of practitioners and advocates in the youth justice field are adopting a positive youth development (PYD) perspective and other strengths-based strategies that focus on youths' assets rather than their weaknesses or problems. PYD can be described as a youth's development of a sense of competency, usefulness, belonging, and influence. National Juvenile Justice Network, Policy Platform: Approaching Juvenile Justice With a Focus on Positive Youth Development 1 (2010) (citations omitted) (internal quotation marks omitted), [http://www.njjn.org/uploads/digital\\_library/resource\\_1427.pdf](http://www.njjn.org/uploads/digital_library/resource_1427.pdf).

<sup>15</sup> <http://www1.nyc.gov/office-of-the-mayor/news/060-13/mayor-bloomberg-partnership-nyu-langone-medical-center-bellevue-hospital-to>

mistreatment<sup>16</sup> and sexual abuse in detention. It is also worth noting that ACS currently houses youth convicted of “juvenile offenses” (a statutorily enumerated set of more serious crimes, including some violent crimes) in its secure detention facilities.

By contrast, the DOC system is, in Commissioner Ponte’s own words, designed for adults. The agency, staff and system generally lack the training, expertise, skill set, and concrete tools to effectively work with youth. As the DOJ report makes clear in no uncertain terms, staff is not adequately trained or supported to understand adolescent brain development and respond to youth in a developmentally appropriate manner. There is also notorious staff resistance to working with adolescents on Rikers. New York’s adult criminal justice system currently provides LGBTQ youth, including those on Rikers, with no specific protections. There is a voluntary transgender women’s housing unit on Rikers, but it is restricted only to adult transgender women and no similar option exists for transgender girls or boys or transgender adult males. It is wholly unclear how the same agency and staff that brought us the conditions documented in appalling detail over the span of years will suddenly, even with the support of a resource-rich outside consultant, be able to appropriately serve the unique developmental needs of children in the justice system. Additionally, it would be a tremendous waste of taxpayer dollars and city resources to recreate a youth justice oriented facility within the adult jail system when New York City already has a robust youth justice agency—one that this body and others have already invested significant resources in reforming. Finally, removing youth from DOC custody would, as detailed above, also allow DOCS to focus its energy and monies on bringing desperately needed reforms to the adults currently suffering on Rikers.

## **2. New York City should immediately end the solitary confinement of 16- and 17-year-olds.**

The Correctional Association is heartened by the city’s announcement that it will end solitary confinement for 16- and 17-year-olds on Rikers by the end of this calendar year. We look forward to learning more about the city’s plan for doing so. And we urge the city to delay not one more day in ending this abusive, ineffective, and inhumane practice.

In New York, children in adult jails and prisons are often placed in solitary confinement for up to 23 hours a day- where they are fed through a small slot in the door and are denied the most basic human contact. Children in solitary do not leave their cells to go to school, and can stay for months at a time or longer. They also cannot make phone calls, including to their parents. Children in solitary confinement may spend only one hour a day out of their cells, with their “recreation” taking place alone in an outdoor pen.<sup>17</sup> Extended isolation can be psychologically shattering for anyone, but it is especially harmful for developing adolescent

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<sup>16</sup> See Majd, et. al., *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009), and see Prisco, *When the Cure Makes You Ill: Seven Principles for Changing the Course of Youth Justice*, (56 N.Y.L. Sch. L. Rev. 1413).

<sup>17</sup> New York Civil Liberties Union, *Boxed In: The True Cost of Extreme Isolation in New York’s Prisons* (2012), <http://www.boxedinny.org/>.

minds.<sup>18</sup> Solitary confinement has been shown to both cause and exacerbate mental illness in adolescents.<sup>19</sup> A United Nations expert on torture- himself a torture survivor- has stated that children and other vulnerable persons should not be subject to solitary confinement under any conditions, and that 15 days of solitary confinement is torture for any human being, noting scientific studies establishing that some lasting mental damage is caused after social isolation of just a few days.<sup>20</sup> The average length of stay for adolescents in solitary confinement inside city jails is 43.1 days.<sup>21</sup>

According to a one-day data snapshot issued by the New York City Board of Corrections, almost 27% of the youth held on Rikers Island were in solitary confinement, and 71% of those youth were diagnosed with a mental illness.<sup>22</sup>

In a memorandum dated September 25, 2014, the New York City Department of Correction announced a plan to end the solitary confinement of 16- and 17-year-olds on Rikers Island by the end of this calendar year.<sup>23</sup> This announcement is an essential first step, but its implementation must be immediate.

I used to represent children in child abuse and neglect cases in New York City's Family Courts. If a parent locked their 16- or 17-year-olds child in a bathroom size room for 23-hours a day, pushing food through a slot in the door, not allowing their child to go to school, and letting them out for only an hour or a few hours a day to stand on an outside balcony for recreation, that child would immediately be removed from its parent's custody and placed with ACS. In addition, all other children in that parent's home would be removed to ACS, and the parent would be charged with child abuse in Family Court and would likely be arrested and criminally prosecuted. That parent would not be given a several month period in which to develop an alternative method of discipline, regardless of how out of control they claimed their child to be, or how severe that child's mental health and behavioral needs. The practice of solitary confinement for children is child abuse, and children cannot wait another

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<sup>18</sup> American Civil Liberties Union and Human Rights Watch, *Growing Up Locked Down, Youth in Solitary Confinement in Jails and Prisons Across the United States* (2012).

<sup>19</sup> *Id.* (Growing Up Locked Down), at 23 citing Maureen L. O'Keefe et al., Colorado Department of Corrections, "One Year Longitudinal Study of the Psychological Effects of Administrative Segregation," October 31, 2010, <https://www.ncjrs.gov/pdffiles1/nij/grants/232973.pdf> (accessed August 27, 2012); Peter Scharff Smith, National Institute of Corrections, "The effects of solitary confinement: Commentary on One Year Longitudinal Study of the Psychological Effects of Administrative Segregation," June 2011, [www.community.nicic.gov/cfs-filesystemfile.ashx/\\_key/CommunityServer.CommunityServer.Components.PostAttachments/00.00.05.95.22/Supermax\\_2Doo\\_-T\\_2Soo\\_-Smith.pdf](http://www.community.nicic.gov/cfs-filesystemfile.ashx/_key/CommunityServer.CommunityServer.Components.PostAttachments/00.00.05.95.22/Supermax_2Doo_-T_2Soo_-Smith.pdf) (accessed August 27, 2012).

<sup>20</sup> [http://www.un.org/apps/news/story.asp?NewsID=40097#.VDK\\_rfldUbg](http://www.un.org/apps/news/story.asp?NewsID=40097#.VDK_rfldUbg).

<sup>21</sup> Growing Up Locked Down.

<sup>22</sup> New York City Board of Corrections, Staff Report, *Three Adolescents with Mental Illness in Punitive Segregation at Rikers Island*.

<sup>23</sup> New York Times, Michael Schwartz, *Solitary Confinement to End for Youngest at Rikers Island*, September 28, 2014,

[http://www.nytimes.com/2014/09/29/nyregion/solitary-confinement-to-end-for-youngest-at-rikers-island.html?\\_r=0](http://www.nytimes.com/2014/09/29/nyregion/solitary-confinement-to-end-for-youngest-at-rikers-island.html?_r=0).

day for it to end. Delay is not a standard that would be allowed in this city's courts, and it is not a standard we should allow in its policies.

3. **New York City should deepen its investment in the continuum of non-residential community based services, programs, and treatments that keep kids out of jail and prison, and have been proven to improve youth outcomes and public safety while saving taxpayer money.**

Although a full exploration of this topic is beyond the scope of this hearing and testimony, the Correctional Association urges the Council to further explore and support how the city can deepen its investment in the continuum of non-residential, community-based services, programs, and treatments that keep kids out of jail and prison, are proven to work to reduce recidivism and improve youth outcomes, and drastically save resources.

An 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).<sup>24,25</sup> 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.<sup>26</sup> Youth who have experienced secure detention or incarceration are also less likely to return to school.<sup>27</sup>

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<sup>24</sup> The section of this testimony focusing on community-based services draws heavily on a piece I authored, *When the Cure Makes You Ill: Seven Principles for Changing the Course of Youth Justice*, (56 N.Y.L. Sch. L. Rev. 1413) (FN 16).

<sup>25</sup> See NEELUM ARYA, CAMPAIGN FOR YOUTH JUST., *JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA* 1 (2007), [http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing\\_Juveniles\\_Report\\_2007-11-15.pdf](http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf); AMANDA PETTERUTI ET AL., JUST. POL'Y INST., *THE COSTS OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES MAKE GOOD FISCAL SENSE* 1, app. A, at 16-9 (2009), [http://www.justicepolicy.org/images/upload/09\\_05\\_REP\\_CostsOfConfinement\\_JJ\\_PS.pdf](http://www.justicepolicy.org/images/upload/09_05_REP_CostsOfConfinement_JJ_PS.pdf); see also BARRY HOLMAN & JASON ZIEDENBERG, JUST. POL'Y INST., *THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES* 1, 4-5 (2006), [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf); see also *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform*, CAMPAIGN FOR YOUTH JUST. 1 (Liz Ryan & Jason Ziedenberg eds., 2007), [http://www.campaignforyouthjustice.org/documents/CFYJNR\\_ConsequencesMinor.pdf](http://www.campaignforyouthjustice.org/documents/CFYJNR_ConsequencesMinor.pdf); 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*, 32 AM. J. PREV. MED. S7 (2007), <http://www.thecommunityguide.org/violence/mcgowanarticle4.pdf>.

<sup>26</sup> HOLMAN & ZIEDENBERG, *supra* note 11, at 2. See PETTERUTI ET AL., *supra* note 11, at 18. 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 Linda A. Teplin, et al., *Early Violent Death Among Delinquent Youth: A Prospective Longitudinal Study*, 115 PEDIATRICS 1586, 1586 (2005).

<sup>27</sup> HOLMAN & ZIEDENBERG, *supra* note 11, at 9.

Economist have shown that incarcerating youth decreases their future earning potential and the chance that they will remain in the labor market.<sup>28</sup>

As my colleague Angelo Pinto noted recently in the Crime Report: “For many children under 16, New York State has made tremendous strides in improving youth justice. The state closed 28 youth facilities since 2009. Fewer kids are locked up and more are receiving the kinds of community-based rehabilitative and therapeutic services that reduce recidivism. The Close to Home Initiative means that many New York City youth are no longer being sent to facilities hours from their homes and are instead being served in either programs or facilities closer to family and community supports, making it more likely they will succeed upon release. And New York State has dramatically reduced the number of youth who spend time in pre-trial detention by expanding the range of community-based programs that keep kids home with the help and services they need. All of these reforms have been accomplished without compromising public safety: youth crime in New York continues to decline.”<sup>29</sup>

The time is ripe for New York City to continue to deepen this investment in what works, with a particular focus on expanding the capacity of programs and services for 16- and 17-year-olds in the justice system. For too long, the focus on community-based options has centered on the needs of younger youth. While some strong programs exist to work with the population of older youth, more is needed, particularly as New York prepares to raise its age of criminal responsibility, a topic I will now turn to.

### **Raising New York State’s Age of Criminal Responsibility**

New York is one of only two states to automatically prosecute 16- and 17-year-olds as adults, and automatically house them in adult jails and prisons. In most other legal contexts, New York State recognizes the developmental differences between children and adults. New York State does not allow 16- and 17-year-olds to get a tattoo,<sup>30</sup> enter into a cell-phone contract, or purchase cigarettes.<sup>31</sup> A 16-year-old cannot use a fake tanning booth at all, and a 17-year-old can only do so with parental consent.<sup>32</sup> Yet New York State’s criminal justice system is far behind a robust body of scientific research about brain development in young people and their ability to make fully informed choices. The Supreme Court recognized and relied on this research in a recent series of cases in which they found that youth under 18 must be treated differently under the law because of developmental differences.

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<sup>28</sup> *Ibid.* at 2.

<sup>29</sup> The Crime Report, Angelo R. Pinto, *Freeing Youths from Solitary Isn’t Enough*, October 7, 2014, <http://www.thecrimereport.org/viewpoints/2014-10-freeing-youths-from-solitary-isnt-enough>.

<sup>30</sup> [http://www.health.ny.gov/community/body\\_art](http://www.health.ny.gov/community/body_art).

<sup>31</sup> [https://www.health.ny.gov/prevention/tobacco\\_control/current\\_policies.htm](https://www.health.ny.gov/prevention/tobacco_control/current_policies.htm).

<sup>32</sup> <http://www.health.ny.gov/environmental/indoors/tanning>.

Prosecuting children as adults has repeatedly been shown to harm youth and increase recidivism and future violence.<sup>33</sup> The reality—proven in a robust body of social scientific research—is that youth charged with violent and serious crimes processed in the adult criminal justice system engage in *more* future violence and recidivate at far higher rates as compared to youth charged with the same crimes processed in the youth system. A rigorous study by Professor Jeffrey Fagan compared New York and New Jersey youth charged with robbery (1<sup>o</sup> and 2<sup>o</sup>), burglary (1<sup>o</sup>) and assault (1<sup>o</sup> and 2<sup>o</sup>). The NY cases originated in adult criminal court and the NJ cases originated in juvenile court. The research found that New York youth were *100% more likely to be rearrested for a violent offense* and *47% more likely to be rearrested for a property offense*. The New York youth also had a greater number of re-arrests for such offenses and a 26% greater chance of being reincarcerated.<sup>34</sup>

Similarly, the independent, nonfederal Task Force on Community Preventive Services conducted a systematic review of published scientific evidence concerning the effectiveness of laws that transfer youth to the adult system, finding a “34% relative increase in subsequent violent or general crime” for youth transferred to the adult system as compared to youth prosecuted in the juvenile system. The report concludes that transferring young people to the adult system—including for serious crimes—is “*counterproductive* to reducing juvenile violence and enhancing public safety.”<sup>35</sup>

Young people housed in adult prisons and jails are in grave danger, facing serious and elevated risks of sexual abuse, suicide, armed attacks, and emotional abuse. Children in adult facilities are nearly fifty percent more likely to face an armed attack when inside, and nearly 100% as likely to be beaten by staff as compared to young people in youth facilities.<sup>36</sup> Also, as previously discussed, youth in adult jails and prisons generally do not receive the kinds of age-appropriate treatments and services proven to improve their lives and reduce recidivism.

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<sup>33</sup> Robert Hahn, Angela McGowan, Akiva Liberman et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review*, Department of Health and Human Services, Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report*, November 30, 2007 / Vol. 56 / No. RR-9 (The independent, nonfederal Task Force on Community Preventive Service’s review of published scientific evidence concerning the effectiveness of laws and policies that facilitate the transfer of juveniles to the adult criminal justice system. The report found that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth and recommends against laws or policies facilitating the transfer of juveniles to the adult criminal justice system for the purpose of reducing violence); Office of Juvenile Justice and Delinquency Prevention, Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* (June 2010), <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>; and Jeffrey Fagan, Aaron Kupchick and Akiva Liberman, *Be careful what you wish for: The comparative impacts of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders*, Columbia Law School, Pub. Law Research Paper No. 03-61, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=491202](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=491202).

<sup>34</sup> *Ibid* (Fagan, Kupchick and Liberman).

<sup>35</sup> *Ibid* (Hahn, McGowan, Liberman).

<sup>36</sup> Martin Forst, Jeffrey Fagan and T. Scott Vivona, “Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy,” *Juvenile and Family Court Journal*, 40 (1) (1989).

Additionally, programs and services for 16- and 17-year-olds are not currently eligible for the same kind of state-based fiscal incentives that exist for working with youth in Family Court. For example, the New York State FY 2011-12 Budget included the Supervision and Treatment Services for Juveniles Program (STSJP), a new, permanent funding stream to support community based services for youth in the Juvenile Delinquency and Juvenile Offender systems, with the goal of diverting youth from detention or residential care.<sup>37</sup> This funding stream can provide: support for youth with mental health disorders, substance abuse problems, and/or learning disorders; temporary respite care, family therapy/support, or alternative housing options for youth who are at risk for detention or residential placement due to the absence of an available home; post-release support to youth in the community; and programs and services to reduce arrest rates or recidivism.<sup>38</sup> Additionally, the FY 2011-12 State Budget capped state funding for the pre-adjudication detention of youth, and included a local option to shift detention funds from reimbursement for detention expenses to community-based services.<sup>39</sup> Prior to this change, counties were reimbursed by the state solely for detention costs. As a result of this important reform, between April 1<sup>st</sup> 2011 and March 31<sup>st</sup> 2013, \$3,215,319 has been invested in community-based programming as opposed to detention.<sup>40</sup> There are also federal monies not available to programs serving 16- and 17-year-olds in the justice system as these children are considered legal adults under New York State's criminal justice law. Including 16- and 17-year-olds in the youth justice system would increase the resources available to effectively work with this population.

The Correctional Association applauds Judge Lippman, Councilperson Joseph Lentol, Councilman Daniel Dromm and other policymakers for their leadership on bringing this crucial issue to public attention. We are excited that Governor Cuomo featured raising the age of criminal responsibility in his 2014 State of the State, and created the Commission for Youth, Justice and Public Safety. The Commission is empowered to make comprehensive recommendations on how New York should raise the age of criminal responsibility and engage in other youth justice reform efforts. The Commission is tasked with delivering its recommendations by December 31, 2014. The Commission is co-chaired by the CA's Executive Director Soffiyah Elijah and Jeremy Creelan, and is staffed by the Vera Institute of Justice. Jacqueline Greene of the NYS Division of Criminal Justice Services serves as its Executive Director. Commission members represent a diverse range of stakeholders, including the judiciary, the prosecution, criminal justice agencies, law enforcement, a service provider and advocates. The Commission has held extensive focus groups and individual interview

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<sup>37</sup> See Office of Children and Family Services (OCFS) Summary of STSJP/Detention Legislation and Budget, [http://ocfs.ny.gov/main/detention\\_reform/assets/FINAL%20Summary%20of%20STSJP-Detention%20Legislation%20and%20Budget.pdf](http://ocfs.ny.gov/main/detention_reform/assets/FINAL%20Summary%20of%20STSJP-Detention%20Legislation%20and%20Budget.pdf).

<sup>38</sup> *Id.* (OCFS Summary of STSJP/Detention Legislation and Budget).

<sup>39</sup> *Id.* (OCFS Summary of STSJP/Detention Legislation and Budget), and See [http://ocfs.ny.gov/main/detention\\_reform/assets/FINAL%20Summary%20of%20STSJP-Detention%20Legislation%20and%20Budget.pdf](http://ocfs.ny.gov/main/detention_reform/assets/FINAL%20Summary%20of%20STSJP-Detention%20Legislation%20and%20Budget.pdf) and See OCFS presentation, [http://ocfs.ny.gov/main/detention\\_reform/Brief%20Detention%20Reform%20in%20NYS.pdf](http://ocfs.ny.gov/main/detention_reform/Brief%20Detention%20Reform%20in%20NYS.pdf).

<sup>40</sup> The Office of Children and Family Services provided this information on funding shifts in 2011 and 2012.

with many stakeholders and public forums both in the city and upstate. The Commission's work provides us with a unique opportunity to consider raising the age of criminal responsibility within the context of broader system operations and reform. According to the Executive Order establishing the Commission:

"1. The Commission shall (a) develop a plan to raise the age of juvenile jurisdiction, and (b) make other recommendations as to how New York's justice systems can improve outcomes for youth while promoting community safety. In carrying out this purpose, the Commission shall ensure that protecting communities and preventing victimization remains the top priority and shall:

a. Develop a plan, structure, process and timeline to raise the age of juvenile jurisdiction;

b. Identify any needed revisions to statutes, regulations, policies, programs and practices to achieve these goals, taking into account community safety, science, evidence, best practices most likely to reduce recidivism, cost-benefit analysis and other factors, including the service needs of court-served youth (including needs based on gender), and the implementation capacity and structure of the juvenile justice, criminal justice, child welfare and human services systems; and

c. Make additional short-, mid- and long-term recommendations to better serve youth, improve outcomes, protect communities, prevent victimization, address harm reduction among the small percentage of youth who repeatedly commit serious violent crime, and ensure New York's place as a national leader in addressing youth justice and public safety."<sup>41</sup>

We, therefore, urge this body to support the immediate removal of all 16—and 17-year-olds from Rikers Island while briefly holding off on supporting a particular approach to the larger issue of raising the age of criminal responsibility until the Commission has issued its recommendations (before the end of this calendar year).

One of the most treasured of quotations is John Donne's: "No man is an island." For far too long, this city has turned a willful and blind eye to the suffering of the children and adults on Rikers Island. The children and adults detained on Rikers have literally been cast aside on a separate island- geographically close, but a vast chasm away- where they are subject to unspeakable taxpayer-funded violence. But we must speak this suffering, we must fully acknowledge it in our city's hearts, minds and policies, and we must end it now.

Thank you for your consideration.

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<sup>41</sup> Governor Andrew Cuomo, Executive Order, <http://www.governor.ny.gov/executiveorder/131>.

**New York City Council's  
Committee on Fire and Criminal Justice Services & Committee on Juvenile Justice  
Oversight Hearing: Examining the Treatment of Adolescents in New York City Jails and  
Reviewing the United States Department of Justice's Report on Violence at Rikers Island  
October 8, 2014**

**Testimony of Victoria Sammartino, Executive Director of Voices UnBroken  
(Testifying on behalf of the Juvenile Justice Coalition)**

Before I begin, I want to thank the members of both the Committee on Fire and Criminal Justice Services and the Committee on Juvenile Justice for convening today's hearing to discuss this urgent issue.

My name is Victoria Sammartino and I am testifying before you today on behalf of the Juvenile Justice Coalition's Conditions of Confinement Work Group, of which I am a member. I am also the Executive Director of Voices UnBroken, an arts and youth development organization that makes creative writing workshops accessible to vulnerable youth and has worked extensively with youth on Rikers Island since our inception in 2000.

The Juvenile Justice Coalition (JJC) is a network of child advocacy groups, legal service providers, alternative sentencing programs, and community-based organizations working to make the justice system in New York more fair and effective for young people. The JJC is coordinated by the Correctional Association of New York 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 report its findings and recommendations to the legislature, the public and the press. The JJC works to decrease the number of New York youth going to jails and prisons; reduce the disproportionate incarceration of youth of color; ensure the legal rights of all court-involved youth; improve outcomes for young people confined in youth justice institutions; and promote a youth development approach to youth justice. The bulk of our work is done through a working group structure. The Coalition's Conditions of Confinement work group advocates for improved conditions for youth who are confined, including reductions in the use of force and violence, and improvements in programs and treatment. This statement reflects the views of our individual members, but does not necessarily reflect those of their respective organizations.

We are here today because we are very concerned about the abusive conditions of confinement for youth on Rikers Island that were described in detail by the recent Department of Justice report. The Juvenile Justice Coalition wants to express its support for widespread and urgent reform for young people who are currently on Rikers Island. In particular, we wanted to highlight a few key points on behalf of the Coalition:

- 1) **Removing youth from DOC custody.** The United States Department of Justice (DOJ) report recommends removing youth from Rikers Island. The JJC believes that, rather than transferring youth to a different New York City Department of Correction-operated jail, they should be transferred to the custody of New York City's youth justice system, which is better equipped to account for the unique developmental needs of young people.
- 2) **Two populations that were not mentioned in the DOJ report require urgent attention:**
  - a. **Adolescent Girls & Young Women.** We urge the City Council to remember that harsh conditions that are documented in the DOJ report extend to the girls and young women who are currently housed in the Rose M. Singer Center on Rikers Island. The Council should work to ensure these young women are safe, and receive the age-appropriate, gender-responsive services they need and deserve. We think it is especially important for the Council to request information from DOC about the conditions of confinement and services available for pregnant girls and young women at Rikers.
  - b. **LGBTQ Youth.** The JJC supports the NYC DOC's decision to open a voluntary Transgender Housing Unit (THU) for transgender women. This voluntary option is not, however, available for 16- or 17-year-old transgender girls or transgender boys. We would like to see this same option extended to all lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth on Rikers Island. Extending the availability of this option is likely to increase the safety of this population, who are at heightened risk for sexual abuse in detention. The Council should also request that DOC publicly report information about the conditions of confinement for LGBTQ youth at Rikers.

The recommendations to focus on these populations comes, of course, with the acknowledgement that young women and LGBTQ youth on Rikers Island would, like all youth, be better served if youth were removed from DOC's custody as suggested above. Their needs would be more readily met if they were placed in NYC's youth justice system and/or served by other youth-serving agencies. In the meantime, however, it is important that Council ensure that these groups of youth are also protected and their unique needs are met.

- 3) **Mechanism for non-DOC staff to report incidents.** The DOJ report recommends that, "non-DOC staff, such as medical personnel and teachers, report any use of force that they witness," and goes on to emphasize that the NYC Department of Correction should, "[c]learly communicate this requirement to all non-DOC staff, emphasizing that failure to report such incidents, or false reporting related to such incidents, may lead to

administrative or legal sanctions<sup>1</sup>,” but does not acknowledge the practical and logistical difficulties inherent in this recommendation. The Juvenile Justice Coalition believes that clearer and more protective mechanisms must be developed, implemented, and sufficiently monitored to make it possible for non-DOC staff who work on Rikers Island to report incidents of abuse they witness without fear of retaliation.

In conclusion, on behalf of the Juvenile Justice Coalition and service providers/community members like myself who share your genuine concern for the youth on Rikers Island, I thank you for your leadership around this pressing issue.

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<sup>1</sup> US Department of Justice. *CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island*. August 4, 2014. Pg. 56



Committee on Fire and Criminal Justice & Committee on Juvenile Justice  
**Examining the Treatment of Adolescents in New York City Jails and Reviewing the  
United States Department of Justice's Report on Violence at Rikers Island**

**Testimony of**  
Rukia Lumumba, Director of Youth Programs

**CASES**  
Wednesday, October 8, 2014

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Good afternoon. Today's hearing Examining the Treatment of Adolescents in New York City Jails and Reviewing the United States Department of Justice's Report on Violence at Rikers Island is critical to the continued development of New York City's Justice System, the creation of safer communities, and detained person's total successful re-integration into society. The Council's recognition of the need for this hearing and its ongoing commitment to improving the justice system should be applauded and continued.

I am Rukia Lumumba, the Director of Youth Programs for CASES, which is a member of the ATI / Reentry Coalition<sup>1</sup>. At CASES we believe there are better solutions than incarceration to keep communities safe. Drawing upon 40 years of experience innovating programs for youth and adults with special needs in New York City's courts, CASES has helped thousands of individuals build productive lives. Our programs allow judges to offer alternative sanctions that cost significantly less than incarceration and lead to better long-term outcomes for individuals and their communities. I thank the Council for your ongoing support of CASES and the ATI / Reentry Coalition<sup>2</sup>. Your support has allowed us to leverage support many times over, all of which has allowed the eight organizations that comprise the ATI/Reentry Coalition to serve **tens of thousands** of women, men and children.

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<sup>1</sup> The ATI/Reentry Coalition includes CASES, Center for Community Alternatives (CCA), Center for Employment Opportunities (CEO), EAC New York City TASC, Fortune Society, Legal Action Center (LAC), Osborne Association and Women's Prison Association (WPA).

<sup>2</sup> The ATI/Reentry Coalition includes CASES, Center for Community Alternatives (CCA), Center for Employment Opportunities (CEO), EAC New York City TASC, Fortune Society, Legal Action Center (LAC), Osborne Association and Women's Prison Association (WPA).

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New York City stands out as a national model for the quality and array of its alternative to incarceration programs. Yet, New York City continues to suffer from a mass criminalization epidemic. The U.S. Department of Justice Report on the Violence at Rikers Island exposes the horrific crimes against teenagers that have occurred for decades. The report does not provide new information, it affirms what many people of color and poor people have known for years. That their children exit Rikers worse than when they went in. The report further exposes the striking number of teenagers on Rikers Island with mental health needs.

- **In FY 2013, approximately 51% of adolescent inmates at Rikers were diagnosed with some form of mental illness.**<sup>3</sup>
- **Approx. 19% of youth on Rikers have a mental illness diagnosis *and* are in punitive segregation.**<sup>4</sup>
- **46% of adolescents have the M designation (Mental Health Illness).**<sup>5</sup>
- **40% of *all* Rikers inmates have a diagnosed Mental Illness.**<sup>6</sup>

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<sup>3</sup> As compared with the adult inmate population, far more adolescents suffer from mental illness and more adolescents are awaiting trial on felony charges. ~~These 2 sentences are directly quoted from the investigation of adolescents on Rikers report released in August. CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island. See p. 6 of~~  
<http://www.justice.gov/usao/nvs/pressreleases/August14/RikersReportPR/SDNY%20Rikers%20Report.pdf>

<sup>4</sup> [http://www.nyc.gov/html/boc/downloads/pdf/reports/Three\\_Adolescents\\_BOC\\_staff\\_report.pdf](http://www.nyc.gov/html/boc/downloads/pdf/reports/Three_Adolescents_BOC_staff_report.pdf)

<sup>5</sup> A New York City Board of Correction meeting in March of 2012 noted that 46% of adolescents on Rikers have the "M" designation. ~~Though~~ However this statistic should be considered with caution as we know there are a number of reasons why this "M" designation alone is not the most meaningful measure of mental health needs and it is not always based on a thorough assessment, but only observation of behavioral health issues which is at least partly based on chance.  
[http://www.nyc.gov/html/boc/downloads/pdf/Minutes/BOCMinutes\\_20120312.pdf](http://www.nyc.gov/html/boc/downloads/pdf/Minutes/BOCMinutes_20120312.pdf)

<sup>6</sup> The New York Times reported that the overall proportion of Rikers inmates with diagnosed mental illness is 40% (including adults), which has grown from 20% 8 years ago.  
<http://www.nytimes.com/2014/03/19/nyregion/rise-in-mental-illness-and-violence-at-vast-jail-on-rikers->

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- **There are more mentally ill people on Rikers than in Hospitals.**

The *Huffington Post* reported, "Rikers Island has more mentally ill inmates than all of the state's 24 psychiatric hospitals combined."<sup>7</sup>

- **Nearly all men on Rikers Island are trauma survivors.**

A review of CASES CIRT Program found that 99% of the men screened on Rikers Island were survivors of sexual abuse and that most abuse happened in their adolescent or teenage years.

The aforementioned data tells us that we are using prison to deal with mental illness. The *New York Times* reported, "One mentally ill adolescent interviewed [on Rikers] owed 374 days upon his admission to the MHAUII [Mental Health Assessment Unit for Infracted Inmates]," the report states, "and then accrued an additional 1,002 days for infractions committed while there."<sup>8</sup> This young person's mental illness was not treated, but instead he was consistently punished for actions he committed which were directly related and a result of his trauma and untreated mental health needs.

Recognizing that nearly half of teenagers on Rikers have mental illness<sup>9</sup> we must consider the best way to help them understand their mental health needs, their past traumatic experiences, their trauma triggers, how to control their lives and prevent additional harm to others. The unsuitable environment of jail for a teenager with mental

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[island.html](#)

<sup>7</sup> [http://www.huffingtonpost.com/2014/08/05/rikers-island-\\_n\\_5649389.html](http://www.huffingtonpost.com/2014/08/05/rikers-island-_n_5649389.html)

<sup>8</sup> As reported by the *Huffington Post* [http://www.huffingtonpost.com/2014/08/05/rikers-island-\\_n\\_5649389.html](http://www.huffingtonpost.com/2014/08/05/rikers-island-_n_5649389.html)

<sup>9</sup> As compared with the adult inmate population, far more adolescents suffer from mental illness and more adolescents are awaiting trial on felony charges. These 2 sentences are directly quoted from the investigation of adolescents on Rikers report released in August. See p. 6 of <http://www.justice.gov/usao/nys/pressreleases/August14/RikersReportPR/SDNY%20Rikers%20Report.pdf>

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illness can exacerbate their trauma symptoms and lead to a cycle of ongoing incarceration. Trauma Theory rests on the belief that trauma frequently entails experiences of powerlessness and loss of control. As much as needing the solution to a particular problem, teenage trauma survivors, like all teenagers, need to believe that their behavior is intelligible of being brought under their control. Traditional prisons do not teach teenagers how to problem solve and do not teach self-control. Prison culture perpetuates the cycle of trauma by causing more trauma, by controlling every aspect of a teenager's day, from how they walk out of their cell, to when they shower, to what they eat, and what they wear. When teenagers leave prison they are no better able to control their lives than when they went in. In fact, they are less capable of controlling their lives, because they are accustomed to someone else making decisions for them. I propose that there is a better way to deal with crimes committed by youth. I believe that the better solution to locking youth in prison is alternative to incarceration programs.

## **Recommendations:**

As we discuss the United States Department of Justice Report, it is instructive to explore solutions that are alternative to incarceration— solutions that lead to long-term improvement of the individual and the community. CASES and our fellow members of the ATI/Reentry Coalition<sup>10</sup> have developed programs that address young peoples' individual mental and behavioral health and empower them to deal with their personal challenges. Collectively, our programs have resulted in decreased recidivism and long-lasting positive outcomes. Data on CASES's alternative to incarceration Court Employment Program (CEP) showed that of the number of CEP participants who pled to violent felonies and had their case completed in the past two years, 84% avoided serving additional time on their intake case. Similarly, a two-year post program follow-up of youth that successfully completed CEP showed that 80% of young people remained free of re-arrests. The success of young people in the CEP program is an example of the success ATI/Reentry Coalition members experience daily. ATI providers decrease

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<sup>10</sup> The ATI/Reentry Coalition includes CASES, Center for Community Alternatives (CCA), Center for Employment Opportunities (CEO), EAC New York City TASC, Fortune Society, Legal Action Center (LAC), Osborne Association and Women's Prison Association (WPA).

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recidivism and increase opportunities of growth and stability among our clients. Therefore and drawing upon over 40 years of experience working with youth charged violent and non-violent felonies CASES submits the following recommendations:

- ✓ **Divert young people from prison** and place them in alternative to incarceration programs that address underlying issues and build upon life skills.<sup>11</sup>

Currently New York City has a great problem; we have a plethora of alternative to incarceration programs that have hundreds of available slots for youth currently detained at Rikers Island. There are approximately 240 youth ages 16 and 17 on Rikers - we recommend that the city utilize our slots to get kids off a Rikers and into our programs where they will receive treatment, learn accountability and self-control. For example CASES's CEP program has the capacity to serve 400 young people a year. Currently we have over 120 slots available to serve young people charged with felony offenses that are lingering on Rikers Island. As a participant in CEP, youth will receive on- site mental health and well-being services, including substance abuse services, supportive case management, life skills development, on-site academic services including HSE (formerly GED) classes, and on-site career/vocational counseling. Additional CASES programs and services that would benefit youth on Rikers Island include:

- *APT (Adolescent Portable Therapy)* - Through City Council funding CASES offers APT, which is strengths-based, intensive family and individual therapy. APT treatment takes place in the young person's home and community, with experienced highly trained Master's-level clinicians. Therapist work with families for 4 months, specifically to help young people avoid drug use, identify and address any mental health concerns, improve family functioning, engage in positive social activities including work, and address any beliefs and behaviors

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<sup>11</sup> Schiraldi, Vincent, Young Adults and the Juvenile Justice System, Mayor's Office of Criminal Justice (2014).

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that increase the likelihood of the young person violating probation requirements or re-offending. CASES offers APT to justice-involved young people throughout New York City's five boroughs.

- *The Nathaniel Clinic* - our new State-licensed, Article 31 outpatient mental health clinic—integrates mental health treatment and justice-competent rehabilitative services, including services for youth with co-occurring substance use disorders. The Clinic specifically employs an evidence-based clinical model for young people who have become involved in the criminal justice system and who have mental illness.
- *Justice Re-entry Programs* – Recognizing that many young people return from prison unstable and anxious about interacting with others, our justice programs assist young people in their integration back into society. Participants work one-on-one with staff to develop individualized education and career plans as part of the program's promotion of educational advancement and employment readiness. Utilizing a youth development framework emphasizing high expectations and accountability, participants also meet with a Community Advisory Board, consisting of community leaders and stakeholders, to plan and initiate community benefit projects. Services also include case management, work-readiness training, internship/job placements, support for college application/enrollment, and stipends for achieving program goals. Staff also broker community resources, including mental health, substance abuse, and legal services, to help participants overcome barriers to success.

The services and programs mentioned are just a few of the many alternatives to prison solutions available to young people on Rikers. **Additional recommendations** to decrease our reliance on Rikers Island include:

- ✓ **Provide Mental Health Screening earlier in the arrest process.**  
Develop processes that allow youth to receive mental health screening to address their mental health needs earlier in the arrest and court process.

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This process should lead to development of treatment plans that address young people's underlying needs.

- ✓ **Provide youth with greater accessibility to alternative to incarceration programs.** Resource alternative to incarceration programs with support to provide eligibility screenings on-site at Rikers Island. Hundreds of youth are never screened by an alternative to incarceration program because they do not have access to the program.
- ✓ **Equip Judges with knowledge.** Provide Judges with ongoing forums and training opportunities to explore the theories of youth development, mental health and alternative to prison solutions.
- ✓ **Raise the age of criminal responsibility for all youth** no matter the crime. The research has been provided over and over again, that incarceration of young people doubles the likelihood that they will re-offend.

## **Conclusion:**

Young people do not belong in adult prisons. As you reflect and analyze the needs of young people lingering on Rikers Island, also remember what has worked to address their many needs – remember alternatives to incarceration. The work of CASES and our fellow ATI /Reentry Coalition members is an integral part of the strategy that has enabled the City to reduce crime. We have made important contributions to the lower populations in jails, prisons and juvenile detention facilities. **We can make an even greater impact by helping to get more kids off of Rikers.** As opposed to incarceration, our programs invest in people and their families and ultimately strengthen whole communities. Through our collective services, CASES and the ATI/Reentry Coalition improves the services and treatment of youth, reunites families and provides opportunities for individuals to attain employment, education and recovery. We are hopeful that City Council will recognize the importance of utilizing alternatives to incarceration programs to adequately serve detained young people. Through City Council

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support we can provide effective, efficient services to the **hundreds** of young people on Rikers Island. New York City has been a model for alternative to incarceration development and justice reform; so let's do more to get kids off of Rikers and support what works.

**COBA President Norman Seabrook's Testimony Delivered Before  
The New York City Council  
Committee on Fire and Criminal Justice Services and  
Committee on Juvenile Justice  
*Examining the Treatment of Adolescents in the New York City Jails and  
Reviewing the United States Department of Justice's Report on  
Violence at Rikers Island***

**October 8, 2014**

First and foremost, I thank the members of the City Council and both Chairwoman Crowley and Chairman Cabrera for allowing me to submit my testimony on this topic of great importance to both the City of New York and to my members who provide care, custody, and control of the nation's second largest municipal jail system. I deeply apologize for not being able to deliver this testimony in person since I am away, yet I feel compelled to continue to do the work that I have been blessed to do by my organization, The Correction Officers' Benevolent Association (COBA).

The COBA has sounded the alarm for many, many, years in regards to the injustices that the membership, the non-uniformed members, and the inmates have been forced to work under at Rikers Island. We have responsibly dealt with various challenges presented by the Board of Correction, the Department of Health, the Office of the Mayor and the Office of the Commissioner, and through it all we have continued to make safety and security our top priority.

Some of you have criticized us by stating publicly and anonymously in the media that we are the sole cause of problems that exist at Rikers Island. Let me assure you that we will do everything necessary to reform the Department of Correction as long as it does not jeopardize the safety and security of correction officers, civilians and inmates. I continue to work diligently with Department of Correction Commissioner Joseph Ponte to ensure that real reform is achieved which benefits both inmates and staff alike.

Some members of this Council have suggested that young adults should be removed from Rikers Island and placed in another location. If that happens, do you want a jail built in your community? I think the answer to that is no. The bottom line is a jail is a jail. Council Members have voted blindly on local legislation that continues to have a detrimental impact on the uniform members of the agency, the non-uniform members, as well as the inmates. What do you do with an inmate that slashes the throat of another inmate or a correction officer? You do not want us to put them in punitive segregation, but instead you want us to give them "a time out". I give Paige my granddaughter a time out. She has committed no crime but yet you seek to employ the same form of menial punishment in convicted murderers and rapists. That is unacceptable.

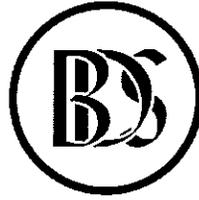
I am not suggesting that an inmate who is caught smoking a cigarette be placed in punitive segregation or that an inmate who defends himself or herself against the violence that plagues this agency, be placed in punitive segregation, but what I am suggesting is that the Board of Correction and the Department of Mental Health and Hygiene maintain and supervise their own areas and allow Commissioner Ponte to supervise his.

I believe that it is imperative that Mayor de Blasio give correction officers and the leaders of our agency the same level of respect that he gives Police Commissioner William Bratton and all the others in the New York City Police Department.

The Department of Health continues to mislead the public knowing full well that it is their responsibility to provide psychological and medical treatment for those individuals that need it the most in communities throughout the five boroughs but like I have said in the past, Rikers Island has become a new dumping ground for the City of New York. We are now responsible for the homeless, we are now responsible for the mentally ill, we are now responsible for the innocent that is incarcerated, and we are now responsible for those who have committed horrendous crimes in our communities.

Like I have said in the past, I Norman Seabrook, President of the COBA, will do everything I can to correct the injustices and the neglect that we have been plagued with for many years. But I will not take responsibility for the decisions that the Council makes that strips the men and women of this organization of their authority or jeopardizes their safety. There has been in the last three months hundreds of assaults against correction officers that have occurred in the Department of Correction, yet all of you with the exception of a few, would choose to vote overwhelmingly to change policies and procedures while you have never ever walked in our shoes. Let me assure you that I will continue to work with Commissioner Ponte and the members of this agency, to implement reforms for the benefit of my members and their families.

Finally the Department of Justice has compiled a lengthy report in regards to the New York City Department of Correction and has found faults with the agency. I have personally met with United States Attorney Preet Bharara in his office with members of his staff and reassured them that we will do all that we can as correction officers to make the appropriate changes that should have been made many years ago. I apologize once again, for not being there today to answer your questions, but I thank you for the opportunity to submit this testimony.



October 8, 2014

**Testimony of Lisa Schreibersdorf, Executive Director, Brooklyn Defender Services  
Committee on Fire and Criminal Justice Services Jointly with the Committee on Juvenile  
Justice: Oversight: Examining the Treatment of Adolescents in New York City Jails and  
Reviewing the United States Department of Justice's Report on Violence at Rikers Island**

My name is Lisa Schreibersdorf and I am the Executive Director of Brooklyn Defender Services (BDS). I am here today to testify on behalf of BDS about our experience representing adolescents housed in city jails, as well as our interpretations of the Department of Justice report pursuant to the Civil Rights of Institutionalized Persons Act. The vast majority of our adolescent clients are currently housed in city jails in pre-trial detention because they have been unable to pay bail. We also represent clients who have been sentenced to serve time in these facilities.

I would like to thank the City Council for taking up the topic of the treatment of adolescents in city jails. The Department of Justice Report, while shocking in its detailed descriptions of brutality, neglect and cover-ups by the Department of Correction (DOC), substantiates a wide range of problems that defenders have been attempting to raise awareness about for years. In fact they echo some of the findings of a 2004 report created for a then-pending class action lawsuit against the DOC. We agree with the recent DOJ report, which states concern that ten years later many of these same practices – specifically assaults to the face and head of teenagers by DOC staff – continue largely unaddressed. The CRIPA report describes long-standing systemic problems at the DOC and as unsettling as the abuse described may be, perhaps more unsettling is the lack of oversight of DOC employees and the agency as a whole, which has been left mostly unmonitored despite a series of red flags issued by advocates, lawyers, and most recently the Department of Justice. That DOC officers who conspired to shield from public scrutiny the abusive practices of correctional staff against teenagers were promoted by the current administration despite warnings from other city agencies informs us that the contents of the CRIPA report represent a crisis that continues to the present day, rather than a relic of previous administrations. Rikers Island, an entire island devoted to the warehousing of people accused of crime who are too poor to post bail, needs to be shut down if it cannot be managed in a way that is both constitutional and responsive to the human rights and safety of all New Yorkers. The members of this Committee, which is tasked with the oversight of the DOC, need to take personal responsibility for the well-being of New Yorkers who are incarcerated in city jails. The status quo is frankly embarrassing and intolerable.

## **ABOUT BROOKLYN DEFENDER SERVICES**

BDS is a Brooklyn-based public defense office that represents approximately 40,000 clients per year in criminal cases. Within BDS we have a number of specialized units – for adolescent clients, clients with mental illness, veterans and victims of trafficking. We also provide civil legal services in areas such as immigration, education and housing. These specialized units have enabled our attorneys, social workers and other staff to develop particular expertise, which lends itself to better addressing the complex needs of specified categories of clients and providing more meaningful outcomes within the criminal justice context.

This is particularly true for BDS' most vulnerable clients – youth. BDS represents more than 8,000 young people -- ages 14-21 – annually. In order to respond to the unique needs youth bring to the criminal justice system, BDS created an Adolescent Representation Team, which provides specialized representation to young people implementing a multi-disciplinary approach. This team includes ten specialized criminal defense attorneys, an education attorney, youth social workers and other support staff, all of whom work to address youth's criminal cases and the related civil consequences of criminal system involvement. Recognizing that adolescents face unique obstacles in other areas of law enforcement involvement, we have also recently opened a youth department in our Immigration Practice. The host of issues that initially drive young people into the criminal justice system are complicated and cannot be addressed by the blunt instrument of jail-based environment. We share our practice model to explain the extensive network that we have found is required to meet the basic legal needs of teenagers. It is incumbent on the Department of Corrections to have a similar, youth-focused model, if they are going to be managing youth. It is inappropriate, unjust and unfair to simply shoehorn children into adult facilities and practices, to be monitored by correctional staff that is trained only in how to manage adults.

When compared to the adult population, adolescents are more frequently diagnosed with mental illness, more likely to be awaiting trial on felony cases, and remain housed in DOC care longer. The geographical isolation of Rikers Island, along with the Department of Corrections logistical constraints, makes it exceptionally difficult for our attorneys to regularly connect with their clients while they are in pre-trial detention. The impact of this is felt more keenly by our adolescent clients. Similarly it is often difficult for our clients to contact their attorneys, particularly if they are in punitive segregation, solitary confinement or if their housing unit is locked down. BDS has a Jail-Based Services Liaison who meets with clients every day, including many adolescent clients (some of whom are in solitary confinement), most of whom are struggling to adjust to the violent and inhospitable jail environment.

### **The Particularity of Adolescents in DOC Care**

Before addressing the needs of teenagers in the care of (or absence of care of) New York City DOC, we believe it is important to acknowledge that on a basic level, it is inappropriate for this age demographic to be held in jail entirely. As the panel is aware, New York – along with North Carolina – is one of just two states in which the age of criminal responsibility is under eighteen. More than 40,000 sixteen and seventeen year-olds are arrested each year statewide, with nearly all automatically tracked into the adult system. Roughly 84 percent of these cases are for misdemeanors: possession of drugs, petty larceny, fare evasion, trespass, graffiti and criminal mischief. Adolescent arrests play a significant role in the sad fact that victimless crimes such as marijuana possession and fare evasion remain among the top categories of arrest in New York City. Most of these cases will end with a conditional discharge; a minute percentage will result in prison sentences. Of our thirteen to seventeen year-old clients who have bail set on them at arraignments, only one-third are sentenced to additional jail or prison time following the conclusion of their case. For nearly two-thirds of our youngest clients, the only jail time they will see is the time it takes their case to wind through the court. There can be no justification for jailing children, who we know will be negatively impacted by the experience of incarceration, if they are unlikely to face jail or prison time at the conclusion of their case. We need to reevaluate the way bail is used so that more young people are able to continue with the other aspects of their lives: school, work and family, while their case winds through court.

Nationally, people under the age of eighteen account for 15 percent of total arrests; just 5 percent of which is categorized as violent. Most teenagers will desist in minor rule-breaking and even low-level crime as they settle down and grow up, even without state intervention. Here in New York City the racial disproportionalities of misdemeanor arrests are stark – and our youngest clients, who are held in DOC custody, are typically there due to a combination of being poor and being Black or Latino. It is a fact that due to the discretionary aspect of bail, race plays a significant factor in who goes to jail and who goes free at arraignment. It is a sad fact that even in 2014 the same behaviors by White teenagers that are classified as youthful indiscretions are treated as crimes when done by Black or Latino youth. This is not fair.

As any parent knows, adolescents are particularly susceptible to rash decision-making and peer pressure. Social science suggests that the human brain is not fully developed until the age of twenty-five, with long-term planning, impulse control, insight and goal-oriented thinking among the last cognitive abilities a human being masters. Naturally these characteristics are exactly those that leave teenagers susceptible to behaviors that can bring them into conflict with the law, and leave them vulnerable to poor outcomes (such as infractions while incarcerated) within the system. In fact rule-breaking and even low-level criminality is a normal part of the adolescent experience. Self-reporting research shows that nearly every adult participated in some type of law-breaking during adolescence. It does not make sense to us to limit our evaluation of adolescents within DOC custody to sixteen and seventeen year olds. At BDS we include every client under twenty-one in our adolescent programming. Others recommend the twenty-five as a threshold, but realistically speaking adolescence is a life-stage defined by behaviors, brain

development and roles, which demands a more nuanced assessment than simply determining a person's date of birth.

Although our state law requires, at this time, that sixteen and seventeen year-olds are treated as adults in an adult facility, there is no statutory reason that adolescents cannot be housed in age-appropriate settings for the purpose of pre-trial or post-sentence detention. Through the "Close to Home" initiative, the City has decided that it is better to incarcerate fourteen and fifteen year-olds in their community; the same should be true of their slightly older peers. While there is significant evidence that children and teenagers should simply not go to jail, as we work toward that goal, we recommend using borough-specific facilities to house young people closer to their communities where they can better avail themselves of community support and services. In such facilities, models that are more appropriate for teens can be utilized for bad behavior and solitary confinement will never be imposed.

It is our experience and belief that the conditions at Rikers Island contribute to the levels of violence to which our clients are exposed. This should not be viewed as a surprise. Gilligan and Lee, mental health experts who studied Rikers Island in 2013 at the request of the Board of Correction, found that the physical plant of the facilities made any therapeutic goals nearly impossible and that arbitrary and harsh levels of punishment inflicted upon residents created a unique atmosphere that seemed almost **designed to stimulate violence**. They found: "More than a century of research on the psychology of punishment has made it clear that punishment, far from preventing violence, is the most powerful tool we have yet created for stimulating violence."

The Missouri Model, utilized by many placements for clients younger than fifteen, has shown to be effective at reducing violence and recidivism in large part due to programming that includes recreation, education and group activities and collaboration – the very things the infrastructure of an adult jail make prohibitive. The model has been adapted for use in secure placements in New York City for younger teenagers who are in ACS care. If this best-practice has been adopted by the city for use with fifteen year-olds, what is the explanation for not using it with sixteen year olds? Some of our clients, turn sixteen and seventeen while in secure placement and provide no additional problems for juvenile facilities than their slightly younger peers. The City already possess the tools and know-how to resolve many of the issues that are particular to adolescents confined in city jails, but as a matter of policy has decided not to utilize these understandings – to the detriment of all.

There has yet to be a compelling case made by anyone that Rikers Island is properly equipped to handle the challenges of housing teenagers that are confined there, and so it should not. Venus Singleton, a mother from Harlem, plainly stated what we see in our clients all the time: "They sent him to the Island, and he came back a monster. That boy they sent back is not the same boy I sent them. The Department of Corrections turned my son into a monster." It is a public safety imperative that we change our corrections philosophies and practices – that we commit pre-trial detainees to city jails as a matter of last resort, and that we utilize effective treatment models to

assist people in overcoming their mental illnesses, addictions and trauma-based impairments. It is irresponsible from both a fiscal and a public safety perspective to commit people to city jails who will not have their needs met there, or are likely to be made worse by the conditions there. By partnering with more community-based providers and sending fewer people to Rikers Island in the first place, criminal justice professionals can better facilitate the continuity of care and consistent standards that most healthcare providers indicate are the reliable conditions for treatment.

### **Results of the Department of Justice report pursuant to CRIPA**

There is reason to believe that Rikers Island is one of the worst run correctional facilities in the United States. The consultant who worked for the DOJ in investigating the CRIPA violations stated that in his work in hundreds of correctional facilities he had never seen a higher use of force rate than the one involving adolescents at RNDC. “Adolescents are at constant risk of physical harm while incarcerated,” the report stated. The DOJ concluded that “there is a pattern and practice of conduct at Rikers that violates the constitutional rights of adolescent inmates. In particular, we find that adolescent inmates at Rikers are not adequately protected from harm, including serious physical harm from the rampant use of unnecessary and excessive force by DOC staff.” The DOJ found that a deep-seated “culture of violence” was pervasive and that correctional officers often used extreme displays of force in response to disrespectful behavior and solely for the purpose of causing pain and suffering. Officers resorted to “headshots” even after teenagers under their care were restrained in handcuffs or otherwise posed no threat to their person. Medical staff and adolescents provided DOJ with credible stories of officers taking people under their care to areas in the facilities without video cameras for the purpose of inflicting serious injuries. Medical workers at Rikers Island reported that DOC staff interfered with adolescents’ effort to seek medical treatment following beatings. Officers frequently insult the people under their care and use racial slurs.

None of the findings of the DOJ CRIPA report are new; in fact DOC officials have known of problematic issues of violence at city jails for years yet has “failed to take reasonable steps to ensure adolescents’ safety,” the DOJ said. Almost half of the adolescents in DOC care were assaulted by staff in 2012, according to DOC data, which likely underreports incidents of force. The DOJ described this as deliberate indifference to the safety of adolescents in DOC custody. The DOJ found inadequate investigations of use of force incidents, inadequate discipline, failures to report use of force and falsified reports. Recent attempts to add trainings have not dramatically changed officer behavior. Correction officers have been promoted, some to the highest ranks of the agency, even as they abdicated all responsibility for containing violence in the facilities and obscured the full scope of the agency’s problems from investigators, including those at the Department of Justice. We cannot begin to bring the Department of Corrections into the 21<sup>st</sup> century without holding to full account those officers that do wrong. There must be true accountability – throughout the entire agency – in order for any change to occur; people need to be fired.

In summation the CRIPA report speaks for itself and rather than resubmit the findings of the DOJ, we would urge the City Council to bring whatever powers it may have to bear on these urgent issues. We, as defense attorneys, cannot continue to work within this system if our clients are going to be abused while under the care of the Department of Correction. There has to be a better way.

New York City Council Oversight Hearing  
Committee on Fire and Criminal Justice Services & Committee on Juvenile Justice

October 8, 2014

James McLain Jr. (20 years old)

**FOR THE RECORD**

I remember when I was first heard the words "remanded without bail". My first time walking through the door well the gates, there weren't too many doors just cells and big gates. I felt like I was no longer a regular human being. I had no keys, no money, and every dream I ever had went out the window. I was a convict, an inmate who had let down my family and most of all my mother and sister. I couldn't protect them I began to see things differently in jail. I had to sleep, eat, talk and walk only when I was told to do so. I remembered my freedom and it was painful when I had dreams that I was home and woke up in a cell. I was locked up with thousands of young men who looked just like me. I lost trust being around them. I just kept my mouth shut and only express my concerns during visits with my mother and sister. Those visits were the best and the yet the hardest part of my time served. I saw sadness in their eyes but I had to be strong for them and for myself.

I spent ten days in the box that by far was the hardest time of my life. I had no TV, no couch just me, my mattress, and a toilet. The day I got out of the box I felt like I had come back home when I was really still in jail. I never got comfortable with jail but I could see myself making a difference. Most of the guys I was in there with had just made mistakes that we all had to suffer for. One guy told me he didn't do the crime he was accused of but was guilty because of the judge's decision.

Feb 27 2013 I came home. The world is mines now I got my felony removed through appeal that was a long but worth it all. I don't plan on going back like society expects me to but I won't forget where I came from where I been and where I am going. Life is what you make it. You are either going to accept what people say you are or you are going to be the person they don't expect you to be. Choose one.

**FOR THE RECORD**

FC. .... )

City Council Hearing

October 8, 2014

I'm 17 years old, and I was brought to Rikers on July 16, 2014. I'm in the one Lower North at RNDC. I have been at Rikers for three months. Around the end of July, I saw one large correctional officer (CO), a very muscular CO, beat up an inmate because he said something disrespectful. The CO punched him, knocked him down and broke his jaw. The inmate was sent to medical and came back with his jaw wired. The CO who broke the inmate's jaw still works here [at Rikers].

I also saw several, maybe eight, COs beat another inmate until he was bleeding. They put him on a stretcher and sent him to the hospital. The CO's that beat him still work here.

**FOR THE RECORD**



New York City Council  
Committee on Fire and Criminal Justice Services  
Committee on Juvenile Justice

**Oversight Hearing – Examining the Treatment of Adolescents in New York City Jails and  
Reviewing the United States Department of Justice's Report on Violence at Rikers Island**

Wednesday, October 8, 2014  
Council Chambers, City Hall, New York, NY

Testimony of  
Urban Justice Center / Mental Health Project  
40 Rector Street, 9<sup>th</sup> floor  
New York, NY 10006

Prepared by Jennifer J. Parish  
Director of Criminal Justice Advocacy  
(646) 602-5644  
[jparish@urbanjustice.org](mailto:jparish@urbanjustice.org)

Thank you for inviting us to testify today. We commend the Committees for convening this hearing on the treatment of adolescents in the New York City jails (City jails). The findings of the Department of Justice's investigation, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), into the treatment of adolescent males in the City jails should be extremely disturbing to all New Yorkers. The City must take immediate action to remedy these violations of incarcerated adolescents' constitutional rights.

The Department of Justice (DOJ) findings, however, do not come as a surprise to the young people who have been incarcerated in the City jails, their families, or their advocates. Instead they validate individual experiences of violence and confirm the "deep-seated culture of violence [that] is pervasive throughout adolescent facilities at Rikers."<sup>1</sup> Individual accounts of violence and cruelty can no longer be dismissed as anecdotal and exceptional. Public officials must now

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<sup>1</sup> U.S. Department of Justice, CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island, August 4, 2014 (DOJ Report).

acknowledge and address the fundamental failure of this City to provide safety to the hundreds of young people incarcerated in the jails.

The Urban Justice Center Mental Health Project monitors compliance with the settlement agreement in *Brad H. v. City of New York*, which involves interviewing hundreds of incarcerated people who receive mental health treatment in the jails, including adolescents, and regularly reviewing mental health treatment records. The danger that teenagers face in the City jails is evident not only in their complaints to us but also in their medical records. These records document adolescents' requests to mental health staff for transfers to different housing areas out of fear for their safety as well as documentation of weeks or months spent in solitary confinement (also known as "punitive segregation").

Several of our staff are members of the New York City Jails Action Coalition<sup>1</sup> and have petitioned the New York City Board of Correction to adopt standards that would end the placement of juveniles and young people in solitary confinement.<sup>2</sup>

We are here today to call for the City to take immediate action to remedy the systemic deficiencies that result in Department of Correction (DOC) staff's excessive and unnecessary violence against adolescents and young people and their supervision failures which result in high incidence of youth-on-youth violence.

**I. The brutal treatment of young people and the callous indifference toward this treatment must end.**

No parent should have to worry about the safety of her child while that child is in the City's custody. The Department of Correction is not charged with punishing the young people it incarcerates; it is completely unacceptable for the staff to abuse the youth in their custody. The Administration for Children's Services would take action were parents to treat their children in the ways described in the DOJ Report:

- striking the ribcage with handcuffs while student was sleeping in class<sup>3</sup>
- beating for not handing over playing cards<sup>4</sup>
- closing a door on a young person's arm<sup>5</sup>
- punching repeatedly for being disruptive while waiting to enter the dining hall.<sup>6</sup>

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<sup>1</sup> The New York City Jails Action Coalition (JAC) is a coalition of activists that includes formerly incarcerated and currently incarcerated people, family members, and other community members working to promote human rights, dignity, and safety for people in the City jails.

<sup>2</sup> Petition to the New York City Board of Correction for Adoption of Rules Regarding the Use of Isolated Confinement, available at <http://www.nycjac.org/proposedrules/>.

<sup>3</sup> DOJ Report, pp. 72-73.

<sup>4</sup> DOJ Report, pp. 76-77.

<sup>5</sup> DOJ Report, pp. 75-76.

<sup>6</sup> DOJ Report, p. 77.

How can the City expect to have any positive impact on incarcerated young people if these teens are subjected to an environment of violence in which they are required to protect themselves from other young people? What are we teaching them about justice if those in authority are not role models but instead abusers whom the system allows to perpetrate violence without consequence?

The brutality by correction staff must end, and the jails must be managed in such a way that all young people incarcerated there feel safe and are not forced to fight to protect themselves.

## **II. Young people should be kept in the community whenever possible.**

Changes in state law to raise the age of criminal responsibility may eventually result in adolescents not being incarcerated in City jails. However, the City must act now to keep youth safe. We support efforts to move young people off Rikers Island and believe the best way to achieve this goal is for young people to be released to the community while they litigate their criminal charges, and if convicted, for non-incarceratory sentences to be imposed. Regardless of the improvements made to the City jails in the coming years, incarcerating young people, especially pre-trial, should be a last resort. Judges should allow for alternatives to cash bail that will ensure a young person's appearance in court. The City Council should fund alternatives-to-detention programs that allow young people to remain in the community while criminal charges are pending.

## **III. The Department of Correction must dramatically alter its approach to incarcerating young people.**

The Department of Justice recommended that “competent officers and supervisors who will receive specialized training in managing youth with behavioral problems and mental health needs” staff an adolescent facility and that the DOC “should incentivize well-qualified staff to volunteer for assignment to this facility by offering significant pay increases, preferred schedules, and other benefits.”<sup>7</sup>

We agree that specialized staff need to manage young people; however, we question whether the current DOC staff are capable of making such a shift – even with necessary training. Instead, we believe DOC in consultation with the Departments of Education and Health and Mental Hygiene should create entirely new job titles with educational requirements that certify that the person is trained to supervise and teach youth. These professionals should be the ones engaging in the “direct supervision” management style recommended by the DOJ.<sup>8</sup> We recognize that DOC staff may still be necessary to secure the units, but those staff – who should be trained and selected as DOJ recommends – should be assigned to a secondary role with the civilian professionals responsible for interacting and engaging the young people.

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<sup>7</sup> DOJ Report, p. 52.

<sup>8</sup> DOJ Report, p. 52.

We also encourage the DOC to adopt models which have proven effective in other jurisdictions. For example, the Missouri Model has six core building blocks that DOC could replicate:

- Small, non-prisonlike facilities located near young people's homes and families;
- Small groups in which teens receive close supervision and are provided group treatment as well as individual attention;
- An emphasis on keeping youth safe from physical aggression, ridicule, and emotional abuse and on providing supportive peer relationships;
- Assistance in developing academic, pre-vocational, and communication skills as well as ways to resolve interpersonal problems;
- Involvement of family members in treatment and discharge planning; and
- Support for transitioning to community.<sup>9</sup>

Creating an environment that supports the physical and psychological development of young people should be paramount. During the teen years, the human brain experiences significant structural changes, making teens "particularly amenable to change and rehabilitation" but also potentially susceptible to the effects of stress and trauma.<sup>10</sup> Half of the adolescents enter the City jails with a history of traumatic brain injury.<sup>11</sup> More than half of the adolescent population requires mental health treatment while in jail.<sup>12</sup> The environment in which adolescents are held should take into account their specific needs and be designed to promote healthy development.

#### **IV. Correction staff who engage in excessive uses of force must be removed from the Department.**

Correction staff who engage in violence toward youth must be terminated. In addition, staff who by their hostile demeanor provoke confrontation must not be permitted to oversee youth. The DOJ Report describes the lack of oversight and accountability that has allowed a culture of violence to thrive. Officers who engage in uses of force fail to report it or falsify their reports. The incidents are not adequately and timely investigated. Staff who engage in excessive uses of force are not disciplined appropriately; staff are rarely sanctioned and when they are the discipline is grossly disproportionate to the harm caused, with the officer losing only some vacation days or being required to participate in re-training. Other staff, including medical staff and teachers, know that there are little to no consequences for excessive uses of force and fail to report the violence they witness for fear of retaliation.

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<sup>9</sup> The Annie E. Casey Foundation. (2010). *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders*. Baltimore, MD: Richard Mendel. Retrieved from <http://www.aecf.org/resources/the-missouri-model/>. See also Cardozo School of Law Youth Justice Clinic. (2014). *Rethinking Rikers: Moving from a Correctional to a Therapeutic Model for Youth*. New York, NY: Ellen Yaroshefsky. Retrieved from <http://www.cardozo.yu.edu/youthjusticeclinic>.

<sup>10</sup> Human Rights Watch & ACLU. (2012). *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, p. 15. Retrieved from <https://www.aclu.org/criminal-law-reform-disability-rights/growing-locked-down-youth-solitary-confinement-jails-and>.

<sup>11</sup> Kaba, Fatos et al. Traumatic Brain Injury Among Newly Admitted Adolescents in the New York City Jail System. *Journal of Adolescent Health*, Vol. 54, Issue 5, pp. 615-17.

<sup>12</sup> DOJ Report, p. 6.

DOC must completely overhaul that system which most definitely impacts all the jails not just the adolescent facilities. The Commissioner must have a zero tolerance policy for staff violence, and while an investigation is pending, officers must be reassigned to a post in which they have no or very limited, supervised interactions with incarcerated people.

The Commissioner can demonstrate his commitment to ridding the department of staff who engage in violence or cover it up by accepting Administrative Law Judge (ALJ) Tynia Richard's recommendation of termination of employment of Captain Budnarine Behari and the five correction officers involved in the brutal beating of Robert Hinton and false reporting of the force used.<sup>13</sup> The findings upon which ALJ Richard's recommendation is based are the result of an eight-day hearing and thorough consideration of the evidence. For the Commissioner not to take decisive action in this case leaves little hope that any substantial changes to the culture of violence will occur during his tenure.

**V. We commend the Commissioner for committing to end the practice of placing 16 and 17 year olds in solitary confinement by the end of the year but encourage him to act immediately to remove all young people from isolation.**

The harm that the punishment of solitary confinement inflicts on adolescents and young people whose brains are still developing is the equivalent of torture and must stop today. Scientific studies of brain development reveal that the part of the brain responsible for cognitive processing continues to develop into a young person's early twenties. Vulnerable populations, such as young people under 25 years old, should not be subjected to the extreme isolation of solitary confinement which has the potential to impair their development and cause harmful long-term consequences.

**VI. Conclusion**

Thank you for convening this hearing and inviting our office to testify. We appreciate your oversight efforts and encourage you to continue to bring to light conditions of concern in the City jails. It is critical that the Council provide oversight of the management and functioning of the jails.

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<sup>13</sup> See Michael Winerip and Michael Schwartz, "In Rare Rebuke for Rikers Officers, Judge Urges Firing of 6 Who Beat Inmate," *The New York Times*, Sept. 29, 2014 available at <http://www.nytimes.com/2014/09/30/nyregion/in-rare-decision-judge-urges-firing-for-6-rikers-island-officers-who-beat-inmate.html>.

TESTIMONY OF

**FRIENDS OF ISLAND ACADEMY**

OCTOBER 8, 2014

BEFORE CITY COUNCIL COMMITTEES ON JUVENILE JUSTICE,

AND FIRE AND CRIMINAL JUSTICE

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On behalf of Friends of Island Academy's staff and youth members, I thank the Committees on Juvenile Justice, and Fire and Criminal Justice Services for the opportunity to address you. With our overall mission to reduce criminal justice involvement among young people in New York City custody, Friends was founded 24 years ago to help anchor and develop capacity among adolescents released from Rikers Island. As our name implies, Friends of Island Academy was rooted in collaboration between a group of committed education and correction staff who sought to address staggering recidivism rates and demographic realities, untapped potential and minority overrepresentation among the thousands of adolescents who attended school on Rikers Island every year.

While I do not pretend to have any expertise on how to run a large city jail system, I have spent the past 30 years in this field in New York at direct service, government and policy levels. During the tenures of 16 commissioners, six mayors and the Benjamin v. Malcolm consent decree<sup>1</sup>, the conditions highlighted in the recent U.S. Justice Department's

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<sup>1</sup> In 1975, the Legal Aid Society filed *Benjamin v. Malcolm*, 495 F. Supp. 1357 (S.D.N.Y. 1980), on behalf of all present or future detainees at the House of Detention for Men as soon as it became clear that the *Rhem* decision only applied to detainees who had been transferred to Rikers from the Tombs. The *Benjamin* complaint detailed unsanitary living areas and cells, overcrowding, unbearable noise levels, difficulty and delays with respect to family and attorney visits, and excessive lock-in; cited in Baer, Honorable Howard, "A Necessary and Proper Role for Federal Courts in Prison Reforms: The Benjamin v. Malcolm Consent Decrees," Vol. 52, 2008/08.

report<sup>2</sup> have not changed much. The scale as it relates to adolescents is significantly smaller, but the conditions and outcomes remained little changed through the end of 2013.

All American state justice systems set boundaries where “childhood” ends and adult criminal responsibility begins. New York is soon to be the only state in which the law sets the upper boundary of juvenile jurisdiction at age 15. It is not unlikely that New York State legislation will alter the “childhood” boundary of criminal responsibility – but in the meantime, there is much the City can do to improve conditions and promote positive youth outcomes among those in adult custody. It is neither necessary nor right to wait for the state to act on defining new boundaries. An opportunity in leadership exists right now to restore dignity to the handling of young people in adult custody.

**Specifically:**

In New York, there is no system of aftercare for some of the most vulnerable and most developmentally at-risk youth, ages 16 and 17, in the justice system. Detained youth are incarcerated during a key phase of adolescence and leave custody without the necessary skills to cope with adult responsibilities. Unemployability, homelessness, the absence of protective factors, and health and behavioral issues all contribute to very high rates of recidivism.

When adolescents ages 16 and 17 leaving custody have no plans or assistance for discharge and reintegration, both personal development and public safety are compromised. Youth require safe and secure housing, school assistance, health and mental health care, fundamental life skills, a sense of belonging and opportunities to achieve and engage.

Friends of Island Academy is working in collaboration with the New York City Department of Correction (DOC) and other public and private stakeholders to create a system

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<sup>2</sup> U.S. Justice Department, CRIPA investigation of the NYC Department of Correction Jails on Rikers Island, August 4, 2014.

of identification, assessment, expediting and discharge/reentry planning, which does not currently exist within New York City's justice system. During the past fiscal year, this system could have impacted approximately 2,000 youth, ages 16 and 17.

We call it the Adolescent Network: It is a portable approach to supporting this population – regardless of whose custody or what building they are held in.

The Adolescent Network – a network of advocates inside and outside custody – would serve as a centralized reintegration system for adolescents. The Adolescent Network is a flexible system designed to drive the following key positive outcomes for the youngest inmates held in DOC custody:

1. Discharge/reentry planning to reduce likelihood of readmission;
2. Expediting to reduce lengths of stay and minimize further justice system penetration;
3. Increasing connection to protective factors for youth through immediate identification/assessment/triage upon admission;
4. Minimizing idle time through the availability of program-specific activities and cognitive behavioral supports during non-school hours; and
5. Informing public policy directly and currently relevant to this population in New York.

The Adolescent Network will increase the number of youth connected to families upon admission to DOC custody, will increase positive engagement in key domains including placement and advancement in educational/vocational programming, stable or permanent housing and employment and retention, and Brad H discharge plan utilization and follow-up. The Adolescent Network will expedite processing to minimize length of time in local

custody, minimize further criminal justice penetration and maximize connection to post-release supports by increasing the numbers of detained youth placed into the existing rich array of services (ATD/ATI/education/health and well-being).

Whether it is the responsibility of the City, the State, the Council, the Courts, the executive branch or the community provider is not the correct focus. The correct focus is how to leverage existing resources to ensure that this Council never has to call another hearing to address conditions of confinement for adolescents held on Rikers Island. We are all, collectively, responsible.

Thank you again for the opportunity to be heard. I urge the City Council to provide the political will, the leadership, the support and the resources to launch this before this holiday season.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: William Taiman

Address: First VP CCA

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8/14

(PLEASE PRINT)

Name: RUKIA Lumumba

Address: 346 Broadway

I represent: CASES

Address: 346 Broadway

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8/2014

(PLEASE PRINT)

Name: GABRIELLE HOROWITZ - PRISCO

Address: Director, Juvenile Justice Project

I represent: The Correctional Association of NY

Address: 2090 Adam C. Powell Blvd Suite 0200

NY, NY 10027

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Victoria Sammartino

Address: 1380 Virginia Avenue #4H, Bronx NY 10462

I represent: the Juvenile Justice Coalition

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10-8-12

(PLEASE PRINT)

Name: JEREMY LAISONAVE

Address: \_\_\_\_\_

I represent: fortune Society

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Ayesha Hoda

Address: \_\_\_\_\_

I represent: Fortune Society

Address: \_\_\_\_\_

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8

(PLEASE PRINT)

Name: Alex Malinowski

Address: \_\_\_\_\_

I represent: Brooklyn Defender Services

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Megan Crowe-Rothstein

Address: \_\_\_\_\_

I represent: NYC Jails Action Coalition

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10-08-14

(PLEASE PRINT)

Name: Jesus Tiegada

Address: 484 Convent Ave Apt #33 N.Y.N.Y. 10031

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8/14

(PLEASE PRINT)

Name: Jennifer Parish

Address: 40 Rector St, Apt 11, New York, NY 10006

I represent: Urban Justice Center

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Dave Casellas

Address: 640 Adel Avenue Bronx NY 10467

I represent: Bronx Defenders

Address: 2300 E 161 St Bronx NY 10451

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8/14

(PLEASE PRINT)

Name: Joseph Ponte

Address: Commissioner, Dept. of Correction

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8/14

(PLEASE PRINT)

Name: Martin Murphy

Address: Bureau Chief, Dept. of Correction

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8/14

(PLEASE PRINT)

Name: Ercol Tauloo Jr.

Address: Deputy Commissioner, Dept. of

I represent: Correction

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8/14

(PLEASE PRINT)

Name: Erik Becklinec

Address: Deputy Commissioner, Dept. of

I represent: Correction

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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in favor  in opposition

Date: 10/8/14

(PLEASE PRINT)

Name: Michael Blake

Address: Deputy Commissioner, Dept

I represent: of Correction

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8/14

(PLEASE PRINT)

Name: James Peccino

Address: Warden, Dept of Correction

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Thomas Farrell / Elias Husander

Address: 75 Broad St Suite 810

I represent: CABA

Address: 75 Broad St

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8/2014

(PLEASE PRINT)

Name: Deandra Khan

Address: 125 Broad Street, NY NY 10004

I represent: New York Civil Liberties Union

Address: same as above

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8/2014

(PLEASE PRINT)

Name: HON. BRYANNE HAMIL

Address: Rm. 923 51 CHAMBERS ST. NY 10007

I represent: NYC BOARD OF CORRECTION

Address: BOARD MEMBER

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 8 October 2014

(PLEASE PRINT)

Name: Andrew Kalloch

Address: \_\_\_\_\_

I represent: Comptroller Scott Stringer

Address: 1 Centre Street NYC

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Dakan

Address: 553 Quince

I represent: JAC / CAIC

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Barry Campbell

Address: \_\_\_\_\_

I represent: Fortune Society

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Oversight - Rivers Date: 10/8/2014

(PLEASE PRINT)

Name: LISA SCHREIBERDORF

Address: \_\_\_\_\_

I represent: BROOKLYN DEFENDER SERVICES

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8/14

(PLEASE PRINT)

Name: Ron Schneider

Address: 115 Cabrini Blvd, CG1, NYC 10033

I represent: Brooklyn Defender Services

Address: 177 Livingston St, BKlyn 11201

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Cameron MacKay

Address: ~~117 2<sup>nd</sup> St~~ 117 VERNON AVE #1 Brooklyn, NY 11206

I represent: CUNY School of Law - IWHR Clinic

Address: 2 COURT SQ, LIC, 11101

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Maabo TSheko

Address: 2 Court Square, LIC, NY 11101

I represent: CUNY School of Law International Women's

Address: Human Rights Clinic

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: Chris Watler (PLEASE PRINT)  
Address: 520 8th Ave, NY, NY  
I represent: Center for Court Innovation  
Address: same

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: WILLIAM GIBNEY (PLEASE PRINT)  
Address: THE LEGAL AID SOCIETY 199 WATER ST.  
I represent: LAS  
Address: 199 WATER ST NY NY 10038

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: COM. Joe Font (PLEASE PRINT)  
Address: \_\_\_\_\_  
I represent: DOC  
Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Nancy Gunsburg

Address: 49 Thomas St

I represent: Legal Aid Society

Address: 49 Thomas St.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10-8-14

(PLEASE PRINT)

Name: Barry Campbell

Address: 41 Goodwin Pl Bklyn, NY 11221

I represent: Fortune Society

Address: 29-76 Northern Blvd LIC NY

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10-8-14

(PLEASE PRINT)

Name: Johnny Perez

Address: 2862 E. 196<sup>th</sup> Street BX NY 10461

I represent: URBAN Justice Center

Address: 40 Hector Street.

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 10/8/14

(PLEASE PRINT)

Name: Stephanie Gendell

Address: \_\_\_\_\_

I represent: Citizens' Committee for Children

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Elizabeth Mayer

Address: 25 Central Park West

I represent: Jails Action Coalition

Address: ~~125~~ Rector St.

Please complete this card and return to the Sergeant-at-Arms