



**ORAL TESTIMONY OF:**

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BROOKLYN DEFENDER SERVICES**

**PRESENTED BEFORE**

**The New York City Council  
Committee on Fire and Criminal Justice Services**

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We support the efforts of the Council to improve transparency in our city jails through Legislation requiring reporting by the Departments of Correction and Health and Mental Hygiene. Transparency is an important step toward addressing the decades of neglect in our city's jails, which we hope will be followed by the more important step of accountability and enforcement of the law. I would like to take this opportunity to raise an urgent issue which is not addressed in the proposed bills, but which demands our attention.

People with Developmental Disabilities and Intellectual Disabilities are one of the most vulnerable populations in jail and prison settings. They are frequently the targets of violence, sexual violence, extortion, and abuse from staff and other incarcerated people. However, in New York City, when these individuals enter the criminal justice system there is no meaningful mechanism to keep them safe, provide accommodations, or direct them to necessary services.

Neither the Department of Correction, nor the Department of Health and Mental Hygiene includes the identification of Developmental and Intellectual Disabilities as part of their intake screening process. Very often individuals with such needs have masked their disabilities during the course of their lives and may not feel safe or able to affirmatively offer up information about their needs. Even worse, they may have an impairment that has not been identified in the community, but which nonetheless necessitates accommodation and services.

Because there is no meaningful screening process, it is typically up to our office to identify for the Departments our clients who need accommodations for their cognitive deficits. Of course, lawyers are not often clinically trained to identify such conditions, and an arraignment interview is not the proper setting to do so. Therefore, we can only assume many of our clients with developmental disabilities pass through the system and are victimized not only by other individuals but by the system at large.

Currently people with developmental and intellectual impairments are placed in General Population housing units or in Mental Observation housing units with people who do not have the same needs. Almost without exception our clients with developmental and intellectual impairments are victimized while in these settings. Additionally, because certain disabilities make it difficult to follow instructions or obey jail rules, people with developmental and intellectual disabilities may be more likely to have altercations with staff and suffer placement in solitary confinement.

While we emphasize that the vast majority of people held in city jails are there unnecessarily – people with severe developmental and intellectual disabilities are a particularly egregious case. Once incarcerated, the lethargy of institutions charged with placing individuals into services in the community or to restore them to competence can leave people incarcerated for weeks and months for no good reason.

We would like to share the experiences of our clients which illustrate an all-too-common set of outcomes for individuals with cognitive impairments in the criminal justice system.

Mr. Spaulding suffers from moderate to severe mental retardation as well as mental illness. Despite multiple requests to the Department of Correction for Protective Custody, Mr. Spaulding bounced between several mental observation and general population settings. He was the victim of several beatings including a slashing attack to his stomach. Our office continued to request safe housing for Mr. Spaulding, but he continued to be victimized – he was again severely beaten, this time necessitating surgery to his face, and leaving his arm in a sling for several months. When Mr. Spaulding returned to population after hospitalization, his disability caused him to have trouble with jail rules – he did not understand why he was required to be strip searched and refused the traumatizing practice. In response, he was placed in solitary confinement in a contraband watch cell where he remained for several days, and where he was denied a counsel visit. In order to have him removed from these harmful conditions, our office provided DOHMH records regarding his intellectual disability. A five minute conversation with Mr. Spaulding is enough to raise serious red flags about his cognitive abilities. A meaningful intake screening process could have prevented repeated brutalization, months of pain in the hospital, and the suffering he endured in solitary confinement.

Mr. Williams suffers from a severe intellectual impairment and was charged with a misdemeanor. Mr. Williams was initially released on bail. However, when he was found to be too intellectually disabled to participate in his own defense, the judge, over vociferous objections, remanded him to city jail pending placement with the Office for People with Developmental Disabilities (OPWDD). It took OPWDD approximately two months to have Mr. Williams released from jail, only to refer him for outpatient services at the very same facility at which he had received services in the past. Because his charge was a misdemeanor, it was dismissed upon his placement in OPWDD. Effectively, Mr. Williams was incarcerated for two months on no charges, during which time he was assaulted in his housing unit, suffering blows to his head and eye. Mr. Williams was determined to be safe to live in the community by OPWDD, yet our criminal justice system found him so dangerous he was forced to live in a jail that could not keep him safe.

The City has a responsibility to people like those I've just described. We have a responsibility to ensure that our police officers are trained to engage these individuals safely and with care; that there are facilities in the community to address their needs before during and after police contact; that our judges release these individuals to services rather than incarcerate them from a position of misguided fear and misunderstanding; that our jails provide targeted services, meaningful safety and programming should they be held despite interventions along the way. BDS is eager to work with the council and city and state agencies toward a caring and just approach to serve our most vulnerable neighbors.