Lisa Schreibersdorf
Executive Director

BROOKLYN DEFENDER SERVICES

**TESTIMONY OF LISA SCHREIBERSDORF,
EXECUTIVE DIRECTOR, BROOKLYN DEFENDER SERVICES**

**Committee on Fire and Criminal Justice Services
Jointly with the Committee on Health and the Committee on Mental Health, Developmental Disability, Alcoholism, Substance Abuse and Disability Services:**

Oversight – Examination of Violence and the Provision of Mental Health and Medical Services in New York City Jails

Int. 0292-2014 – A Local Law to amend the administrative code of the city of New York in relation to requiring the commissioner of the department of correction to post a monthly report on its website regarding punitive segregation statistics for city jails, including the use of solitary confinement.

June 12, 2014

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 Brooklyn Defender Services about our experience representing adolescents and adults housed in city jails. The vast majority of our clients currently in city jails are 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.

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 a mental illness, veterans and trafficking victims.

Upwards of 6,000 of our clients will spend time in a city jail each year. The geographical isolation of Rikers Island, along with Department of Corrections logistical constraints, makes it exceptionally difficult for our attorneys to regularly connect with their clients while they are in pretrial detention. 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[1]. BDS has a Jail-Based Services Liaison who meets with clients every day, including many clients in solitary confinement, those with mental illness and many who are struggling to adjust to the violent and inhospitable jail environment. Our jail-based team of legal assistants and social workers also provides logistical support for the client's criminal case and have supportive personal interactions with clients to help them get through what is often a traumatic jail experience. In addition, our attorneys and social workers talk extensively with clients who are currently in or have been released from solitary confinement, especially when they appear in court in the telltale orange jumpsuit. The discussion in this memo includes information that we have received directly from clients and attorneys based on their personal experience.

SOLITARY CONFINEMENT

BDS would like to extend our thanks to the City Council Committees for taking up the topic of the use and over-use of solitary confinement at Riker's Island. In recent years, we have noticed a very significant increase in the use of solitary for infractions that are so minor as to be insignificant. The length of stay in solitary is also noticeably longer than it was even a few years ago, as clients are sometimes placed in "the box" for weeks on end. Every client who is placed in solitary

[1] We use the term solitary confinement to refer to the class of segregation cells in which our clients are placed as a form of punishment. We use the terms solitary confinement, punitive segregation, "the box" and "the bing" interchangeably. Other units such as CAPS and RHU, which ostensibly serve a non-punitive role, are defined as such.

suffers from the experience and the changes in their personalities and behaviors are readily apparent to attorneys, social workers and other staff. It is clear to us that the excessive use of this extreme punishment for minor incidents has reached an unacceptable level and that it contributes to the general violence in City facilities. In a way it is almost frustrating to have to have these public conversations due to the tremendous amount of study and research on the topics of confinement that already exist – stretching back several centuries to the birth of the very concept of jails and prisons.

Rikers Island – an entire island devoted to the warehousing of people accused of crimes who are too poor to post bail – houses a large number of people who have a mental illness. It is the largest provider of mental health services in the state, despite infrastructure and personnel entirely unqualified and ill-equipped to work with this population. Our clients who have a mental illness almost always fare poorly in jail. Many of these clients end up in solitary confinement because of actions related to their mental illness and such clients, once isolated in this way, rapidly deteriorate.

Another large segment of our clients who end up in solitary confinement are our youngest clients, ages 16 and 17. It is said in our office that anyone in that age range will be in solitary in a month unless we find a way to get them out of jail. This is because they are routinely placed in solitary because of actions very typical of teenagers. Once there, most of these young people start showing signs of serious mental problems. Teenagers, in particular, suffer from the experience of solitary. They tend to get distraught over being left alone for so many hours with their thoughts that they do self-destructive things that only serve to increase the time in solitary punishment.

In our experience, after only a short time in city jails, our clients begin to exhibit symptoms of Post-Traumatic Stress Disorder, especially hypervigilance and insomnia. Our clients who are placed in solitary confinement report conditions that appear to be particularly destructive to their physical and mental well-being. Our clients report that when in solitary confinement they are fed less, and that recreational time is only made available to them very early in the morning – when they are not yet awake. They are denied their rights to education, especially any special education services to which they are entitled. People in solitary are also denied access to phone calls and any group activities, including religious services.

They report denials of access to water, to shower products and to mental health treatment and medication. The cells they are forced to live in are filthy and vermin infested. They also report hallucinations and thoughts of self-harm.

The Missouri Model utilized by many placements for clients younger than 15 is successful at reducing violence and recidivism in large part because of programming that includes recreation, education and group activities and collaboration – the very things that we typically see denied for our adolescent and adult clients at Rikers Island and other city jails. It 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 15-year-olds, what is the explanation for not using it with 16-year-olds?

Programming the City has found to be successful for one group of adolescents can and should be utilized for the slightly older adolescents currently at Rikers Island. The City already possesses 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.

Our adult clients with mental health challenges report that the environmental conditions at Rikers Island exacerbate their mental illness, with many clients preferring to do time upstate rather than continuing to deal with the considerably more chaotic atmosphere at city jails. Our adult clients with mental illness report confusion, disorientation and overmedication. Many report being prescribed medication for the first time in city jails and that they are unused to the side effects. Our clients who are not diagnosed with mental illness upon their arrival in city jails, who later develop symptoms of mental illness due to the environment there, often report difficulty in accessing mental health services. They report being denied medical attention. Some report that after being denied services they were forced to attempt suicide in order to be granted mental health care. The conditions of solitary confinement directly exacerbate negative mental health symptoms. A March 2014 study published in the American Journal of Public Health of Public Health, reaffirmed the centuries-old research that social isolation and sensory deprivation directly lead to incidents of self-inflicted violence and harm[2].

[2] http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742

It is our experience and belief that the conditions at Rikers Island contribute to the levels of violence our clients are exposed to. 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." These experts paid particular attention to the issue of solitary confinement, which they argued was among the greatest contributors to violence in the facility, specifically as it pertained to people with mental illness.

While experts debate the efficacy of various jail-based programs insofar as they relate to the management of violence, the research on solitary confinement seems quite clear. Time and again solitary confinement – sensory deprivation and social isolation in filthy conditions – is pointed to by mental health experts as pathogenic. *That is, the conditions of solitary confinement create mental illness, decompensation and leave people more prone to anti-social behaviors and violence*. Furthermore, there has been no empirical research to support the use of solitary confinement as a means to reduce violence; and the practice has been rejected the world over both because of this and because it amounts to torture, according to the United Nations and various international human rights bodies. The long back-log on solitary cells at Rikers Island, which leaves people who have infracted jail rules among the general population for sometimes months before entering isolation suggests further evidence that this punishment is not essential for the maintenance of safety. **It is our hope that the City of New York stop the use of solitary confinement until the conditions of that confinement are such that they no longer risk permanent physical and psychological damage to people and until such time as the validity of using solitary confinement to impact positively future behavior in jail is established by concrete evidence.**

As Councilmember Crowley indicated at the February 28 hearing, much of the violence at Rikers Island involves the younger people who are housed there. The vast majority of jurisdictions in the United States and around the world have deemed it inappropriate to house 16 and 17 year olds in an adult facility, managed by corrections officers who are trained to work with adults. Although our state law

requires that 16 and 17 year-olds are treated as adults in criminal proceedings, 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 14 and 15 year-olds in their community; the same should be true of their slightly older peers. While there is significant evidence that teenagers simply should not go to jail, as we work towards 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 would need never be imposed on any young person.

There has yet to be a compelling case made by anyone that Rikers Island is properly equipped to handle the mental health challenges of the people who are confined there, and so it should not. Venus Singleton, a mother from Harlem, plainly stated what we see 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.[3]" 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 pre-trial detainees to Rikers Island, criminal justice professionals can better facilitate the continuity of care and consistent standards that most healthcare providers indicate are the most reliable opportunities for treatment.

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[3] http://jjie.org/harlem-residents-we-asked-city-for-help-we-got-a-raid-instead/107031/

BDS supports this bill that would bring more transparency to actions taken by the Department of Corrections. While this bill is only a small first step in the right direction, we are certain that if the numbers of people sentenced to punitive segregation were known, as well as the nature of the charges that caused this punishment, change would come quickly.

One of the biggest obstacles we face in terms of helping our clients in segregation is that we are not even aware that they have been moved to these facilities. Anything we could do, as their attorney, is limited by the complete lack of information and notification as to what is occurring. In addition, as with all unfair and questionable practices, holding them up to the light of day is the best way to guarantee they will be analyzed, studied and carefully considered.

One of the worst and most secret aspects of solitary confinement is that inmates continue to rack up additional days in solitary while they are isolated there. In reaction to the terrible conditions and treatment they receive while in solitary, our clients act out, forcing open their food slots, or splashing guards, or harming themselves – in desperate attempts for human contact, attention and protest. Each of these actions can, and often do, result in significant additional time. Simply holding open the food slot, in the hopes of hearing a human voice can easily result in an extra 15 days in the box.

We suggest that there be clear standards for the appropriate use of solitary sentences and that DOC place greater emphasis on advising inmates as to what type of conduct can lead to a stay in solitary. Many of our clients express a lack of understanding about the rules of city jails, report that the rules apparently change without notice, and that they are often unsure what types of conduct qualify as punishable infractions. Even those already in the box often do not find out that they are not allowed to do things like hold the food door open until they do it and by that time they have racked up further time. When we listen to clients describe the anguish they feel when they are completely isolated from other human beings for weeks or even months, we are shocked by the cruelty embodied in these policies and frankly embarrassed as criminal justice professionals.

Aside from being harsh and cruel, the punishment regime in city jails appears entirely arbitrary. We cannot make any sense out of what will land our clients in the box or how much time they will get. Outside observers who have studied the

process note the same thing. There is little doubt that forcing corrections to publicly report this information can only have a positive impact on the issue. It has reached such an oppressive level there is no way the actions and policies of DOC can withstand scrutiny of any kind.

In the past two weeks alone we have interviewed two clients who were placed into solitary confinement – subjected to torture conditions – who might not have been there had the type of reporting requirements been in place that Int. No. 292 recommends. One client was placed into solitary confinement immediately following his arraignment, ostensibly because he "owed" time from a previous incarceration. The altercation that led to the initial solitary segregation sentence is currently the subject of a civil lawsuit he has filed against the city alleging misconduct by correctional staff. We have several clients who report similar situations: being forced back into solitary confinement upon their return to Rikers Island on new charges for solitary time "owed," sometimes years after the initial DOC infraction and almost always involving an alleged incident with a corrections officer.

The second case was even more troubling. Our client was issued an infraction ticket on May 12th because a correctional officer alleged he found something in our client's rectal cavity during a cell search. As a result, our client was placed in isolation, in a contraband watch cell in OBCC. He was housed in this cell for 8 days, 24 hours a day, with no personal property and without the ability to flush the toilet because it was a contraband cell. Our client lived in this cell for over a week, sleeping beside a toilet that was full of his own waste, which he covered with newspapers and his bath towel to fight off the illness provoked by the smell. He was denied showers, telephone usage, out-of-cell time, reading and writing materials, visits and court appearances. There were men in his housing unit who claimed that they had been held there for weeks and even months. It was only when a Deputy Warden visited the housing unit that the men were released, with the Deputy apparently finding that the men had been either placed there in error or held in these cells for too long. Had there been any kind of reporting requirement, both of these men, who were on Rikers Island in pre-trial detention – having not been convicted of any crime – would not have suffered through these experiences.

In addition to the recommendations outlined in Int. No. 292, BDS would like to suggest some additional amendments. To solve one common problem, we would

ask that the inmate's attorney be notified whenever the client is charged with an offense while in custody, is moved to solitary confinement or is being seen for mental health treatment or evaluation.

It is not uncommon that having not heard from an incarcerated son or daughter for several days, a frantic family member will call our office to find out if we have heard from the client. It is almost impossible for us to ascertain their well-being in a timely manner. We recommend that when a person in city custody is sentenced to solitary confinement, that their lawyer be alerted by the DOC. Similarly, when a person in city custody is sent to the hospital following an altercation, their attorney should be notified. In addition to at least a minimal amount of accountability that such notifications would provide, both of these scenarios typically involve an interview of our clients by DOC staff that hold potential legal consequences, during which our clients are frequently asked to waive their rights against self-incrimination. Because these interviews can lead to additional criminal charges and certainly can result in the enhanced punishment of solitary confinement, it is essential that individuals know and are able to assert their civil rights to advice of counsel. There should also be a right to counsel at the infraction hearing, so that we would be able to provide our clients with a meaningful opportunity to contest infraction allegations of any kind.

Our mental health clients are the most vulnerable to severe negative outcomes during their time in solitary. Yet there are no clear guidelines regarding how to determine if a mentally ill person is able to withstand a stint in solitary confinement. With this in mind we would request documentation, notice and an opportunity to be heard when a client is moved from a mental observation unit to a punitive segregation unit pursuant to the DOC directive 4016R. We think there should be a requirement that we, as the attorney, be notified any time a client has been sent for a mental health review for the purposes of determining fitness for a solitary punishment as well. We seek notification when a client is referred for mental health services pursuant to directive 4018 and that there be a monthly report about the number of people referred to mental health services. We would also request that "splashing" be removed from the category of "assault" which carries severe penalties.

Additional information that would also be useful would be data about what services the inmates are actually receiving—like how many are actually going

outside for their so-called recreational time, how many go to religious services, receive educational packets, receive special educational services, get a shower, use the phone, ask for food and are denied it -- information that can paint a much more accurate picture of what is happening in these secretive units.

Brooklyn Defender Services SUPPORTS the bill proposed by the City Council.