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**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 there 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 21st 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.