



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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Introduction

My name is Lisa Schreibersdorf. I am the Executive Director of Brooklyn Defender Services (BDS), a comprehensive public defense office that represents half of the people who are arrested in Brooklyn annually. Today we are testifying to our experiences representing people who have been arrested, detained and incarcerated in New York City by the New York City Police Department and the Department of Correction. Despite historically low crime rates, thousands of our clients will spend time in city jails, such as those of Rikers Island, each year – the vast majority in pre-trial detention because they have been unable to post bail. Many of our clients are also sentenced to serve time in either New York City facilities or upstate prisons and others have been deported through cooperation between local agencies and Immigration Customs Enforcement. BDS represents approximately 45,000 clients each year, of which about 6,000 will spend some time incarcerated during the pendency of their case. We thank the Council for providing us with an opportunity to testify on the issues before you today.

To begin, we would like to ground our testimony in the historical moment. Over the past year, across the nation, people – particularly young people of color – have become increasingly visible in their protests against the status quo of the criminal justice system, which a growing consensus of the American public views and experiences as unfair. In New York City, the dispositive role of race and poverty in criminal justice outcomes remains a so-far-intractable aspect of the criminal justice process – from initial police encounters, to arrest and arraignment decisions, in family court, criminal court and immigration court. Spending a single day in arraignment court provides one with a glimpse into the grinding nature of the system, as one indigent person after another – nearly none White – is brought before the judge to be held criminally accountable for low-level crimes and, often, behaviors that are not even technically crimes. Fewer than half of our cases survive even a single court date; 85 percent of our caseload is misdemeanors. It would appear that no group is held more accountable by our society, and our criminal justice system specifically, than indigent people of color. And yet in the realm of public policy, few groups are helped less. It is a mistake to believe that protests focused on police brutality across the nation are not indictments of the rest of the criminal justice process. Those of us who are employed to interact in this system a step or two removed from the street encounter also bear a responsibility for the fractured relationships between communities of color and law enforcement. After all, we exist in a system through which it is a crime worthy of jail to sleep in a NYCHA stairwell as Jerome Murdough did last winter, but not a crime for the Department of Correction (DOC) to provide such incredibly negligent care that he perished while in the agency’s custody. And so people protest.

Today, BDS is thrilled that after a decade of official neglect, the City’s jail apparatus is under close scrutiny. Sunlight remains the best disinfectant. The bills before the council have the potential to shape the future of the DOC by bringing secrets into the light so that future policies might be made based on evidence and best-practices, rather than knee-jerk reactions or public relations pressures, and the agency responsible for cultivating what the U.S. Attorney described as a “culture of violence” can be held accountable to its mission of custody and care. We similarly applaud the Council for fighting for resources for bail, the Board of Correction, civilian positions within the DOC, expanded discharge planning and a better screening process for guards in your budget proposal. As the Council moves forward in efforts to bring transparency to the

DOC, it must also ensure that it retains the ability to enforce its requests. Recent reporting from the DOC, including the first reporting from Intro 42, was delayed, incomplete and inaccurate. There are huge discrepancies between injury reports from the DOC and the Department of Health and Mental Hygiene (DOHMH).

While reporting requirements are undeniably positive, in the short-term there remain acute, dangerous problems within City Jails that the bills before the Council today will not directly correct. Entire facilities have gone onto 23-hour lockdown for weeks at a time – in flagrant violation of City Law without any semblance of accountability. Even after decades of interaction with various administrations and Corrections commissioners it is still shocking to us that many of our clients continue to go without the most basic fundamental services and care – toilet paper, laundry, underwear, medication, recreation – absent daily interventions by our office. Persistent, grotesque brutality remains. Our efforts to engage the DOC to improve our ability to meet with our incarcerated clients in a timely fashion – simple asks such as informing our office when a person is transferred from general population to specialty housing like solitary confinement or mental observation – have been largely rebuffed by this administration. Because we cannot rely on DOC to meet the most basic needs of our clients, it is imperative that we are notified on these movements so that our support teams can do what is necessary in each individualized case.

For the Council, we would ask that a more consistent effort be made to inform the people most impacted by policy changes – those people living and working in the City jails and their family members – when new rules or legislation are being considered. Typically our clients are among the last people in New York City to be made aware of policy and practice implementations that will impact their lives in a substantial way. Each of the bills under consideration should be published visibly in visiting rooms and in day rooms in every facility so that people incarcerated there, working there, or visiting, will see them and have a legitimate opportunity for comment. So far as we can tell, there is no one formerly incarcerated making decisions on jail policies, either at the Council, the Board of Correction, or the DOC – rectifying this omission would provide a valuable resource to the City.

Violence in City Jails

Thankfully the Administration of Mayor Bill de Blasio has made ending violence at Rikers Island a stated priority. Unfortunately, we have yet to see many positive effects of policy changes: early lock-ins did not reduce violence, yet remain in place, and 2015, so far, has seen more incidents of violence than the previous year. While the administration has blamed visitors and family members for smuggling weapons into DOC facilities, a new report by the Board of Correction indicates that 80 percent of weapons recovered are homemade using objects commonly found inside the jails themselves. This anecdote points to the importance of accurate data driving policy decisions, and to the relevance of the bills before council today. While violence between peers in City facilities remains high, so too does the violence inflicted by staff against people they have been charged with protecting. Over just the past several weeks alone, we've had clients beaten by guards, raped by guards, and raped by their peers while guards stood by and watched. After incidents of violence implicating staff, our clients are further threatened by uniformed staff to “hold it down” – to feign an alternative narrative for their injuries. Much of the violence involving staff occurs during cell extractions and searches. There were nearly 2

million individual searches in 2014. Searches are often violent, and are used by guards as retribution for other acts. Our clients might be sprayed in their open mouths by guards with pepper spray, solely for the purpose of inflicting the most amount of pain. Very few officers are trained in de-escalation techniques and often resort to violence as the first response to any problematic situation. While the concept of crisis intervention teams is promising, in reality these should not be specialized units but instead should be the baseline for how ALL officers are trained to respond to high-intensity situations.

Solitary Confinement

Despite reforms to punitive segregation instituted at the end of last year, DOC continues to utilize practices of solitary confinement that far surpass international standards and have been described as torture by the United Nations Special Rapporteur, who has said that no one in pre-trial detention should ever be victimized by the practice, which has been proved to be pathogenic – that is it creates mental illness where there was none before. The use of solitary confinement will remain a black eye for the DOC for as long as it continues. Teenagers and people with mental illness are still routinely afflicted by stays in solitary confinement within City jails. According to the DOC there are still six people in custody who have been in solitary confinement for longer than one year, and another 22 people serving sentences of longer than six months. After fifteen days, the psychological impact of solitary confinement can lead to permanent psychosis. Solitary confinement of any kind is a violation of international law when used against pregnant women, juveniles, or persons with mental disabilities, according to the United Nations and the Convention Against Torture, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. There is no research to indicate that 30 or 60 days in solitary confinement – the new standards set by the DOC – is ever indicated for the purpose of maintaining safety in correctional facilities. Instead nearly every single study over the past two decades has shown that subjecting anyone to solitary confinement for periods as short as ten days can permanently introduce emotional, cognitive, social and physical problems.

Solitary confinement, and other punitive housing such as the Restrictive Housing Units (RHUs) and Enhanced Supervision Housing Units (ESHUs), lead directly to lapses in medication and care, a total end to confidentiality, include many people with serious mental health issues who are not sufficiently screened out, inappropriate cell-side services, DOC staff harassment and high rates of suicidality. DOC's first pass at record-keeping in solitary confinement, following the passage of Local Law 42 last year, was unsettling. In just one jail, the Otis Bantum Correctional Center, there were 30,166 requests for medical care over one quarter; the response rate was less than 50 percent. The data also showed that less than one-third of individuals in solitary confinement at OBCC received a daily shower, and less than 10 percent received their rightful hour of recreation. Requests for access to the law library and congregate religious services were also met less than 50 percent of the time. Each of these missed entitlements constitutes a distinct violation of State Correctional Law and City Law by way of the Board of Correction Minimum Standards. Falsifying the data is also a criminal offense.

A report by the Board of Correction (BOC) was issued on September 5, 2013, written by two correctional mental health experts who determined that the City was not in compliance with its own Minimum Standards of care for people diagnosed with a mental illness. The doctors, James

Gilligan and Bandy Lee, concluded that the DOC's use of "prolonged punitive segregation of the mentally ill violates" the standards. The report recommends that the RHUs be eliminated. Recently our staff visited the RHU in the adolescent facility at Rikers Island and were horrified by the conditions there: filthy cells and tables set up for waist and leg restraints for the few moments a person might be allowed to venture out of their cell, to which they are typically confined 23-hours per day. Is there a plan in place to rectify these issues and to close these problematic units?

In our opinion solitary confinement should not be used for anyone at all, but particularly must be eliminated for anyone with a mental illness or anyone who is not able to mentally cope with the isolation. Attempts by DOHMH to screen people out have not thus far been entirely effective. As it is now, there are regulations that say a person must be found mentally fit prior to placement in solitary confinement, however, there are not concrete standards to define mental illness in so far as it relates to the ability to withstand the torture of solitary confinement. Our clients there rapidly lose weight, develop insomnia and anxiety, become agitated and easily frustrated and generally decompensate. Despite the regulations empowering DOHMH to remove people from solitary confinement if at risk for self-harm or other serious issues, people remain isolated for weeks in these vulnerable states without intervention. During the February 10, 2015 Board of Correction meeting, the Board noted that such incidents had taken place in both 2014 and 2015. What steps are in place to ensure that these dangerous practices do not happen anymore?

Access to Healthcare

According to DOHMH, about 25 percent of city jail intake presents with some kind of mental illness, with approximately 5 percent presenting with serious mental illness such as schizophrenia. (This tracks, generally, with the overall population suggesting that the crisis of mental health in city jails may be one of retention, not disproportionate intake, should these statistics prove accurate). In addition to mental healthcare needs, nearly all of our incarcerated clients have medical needs, some serious ones. The ability of our clients to get routine medical care, as well as essential medical equipment such as canes, glasses and hearing aids are often severely compromised by DOC blocking access to care. Many otherwise healthy people develop health and mental health symptoms while incarcerated, such as depression, suicidality and infectious diseases.

Unfortunately, people frequently leave NYC jails in worse shape than when they entered. Our clients report that they do not always receive a mental health or physical health evaluation upon intake. There is a severe lack of comprehensive treatment modalities, an absence of individualized talk therapy, no confidentiality, scant dual-diagnosis therapy, few trauma specialists, or specialists for family or sexual violence. Such modalities are considered, in best practices, to be part of, not supplemental to, basic, medically appropriate treatment. In addition, many people decompensate due to the traumatic nature of their incarceration. Jails are simply not equipped, in staffing, infrastructure or management philosophy to meet the needs of their populations. That people continue to leave DOC custody without being enrolled in Medicaid – at a minimum – is embarrassing.

We have found that having outside advocates is the surest way to receive improved healthcare in DOC facilities, and our social workers and jail-based staff advocate regularly for the bare minimum of care. Not every incarcerated person has a paid staff advocating for them, however, leading to the now frequent horror stories in the media about healthcare neglect at Rikers Island. Our recent social work referrals to DOHMH include clients whose methadone treatment was interrupted causing excruciating withdrawal, interruption of medication regimens due to facility transfers, failures by staff to take seriously suicidal threats and depression, medical staff at Rikers Island indicating that clients need treatment at a hospital but DOC refusing transportation and a lack of responsiveness to acute medical needs. Most of our female clients are concerned with the poor quality of OB/GYN care. Constant pressure by outside advocates to ensure basic healthcare rights should not be the procedure relied upon by the City to meet the needs of some of its most vulnerable inhabitants. At the very least, New York City has a moral and constitutional obligation to end contracting with Corizon, Inc., which has proven deficient in its ability to capably manage the health needs of the incarcerated population. A recent review of the death of Bradley Ballard by the New York State Commission of Correction stated:

“The medical and mental health care provided to Ballard by NYC DOC’s contracted medical provider, Corizon, Inc. during Ballard’s course of incarceration, was so incompetent and inadequate as to shock the conscience as was his care, custody and safekeeping by the NYC DOC uniformed staff, lapses that violated NYS Correction Law and were implicated in his death.”

We ask that there be a public accounting of these deficiencies and the steps DOC has taken to hold itself and its officers accountable to ensure that similar events do not happen again. After all there were at least 46 separate violations of state law that played a role in Mr. Ballard’s death – which was deemed a homicide – and yet, there remains no public accountability. Quannell Offley died just weeks after Ballard, in the same facility.

Developmental and Cognitive Disabilities

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.

Visits

BDS is alarmed that the Department of Corrections is considering restrictions on visits – an already cumbersome and humiliating process for family members – and confused that the administration would blame family visits for weapons and contraband despite various reports from other city agencies suggesting that the visiting rooms are NOT entry points to a significant amount of contraband. We know that visits, and close connections to family and loved ones, are one of the primary reasons that people who have been incarcerated are able to overcome the experience. We are also frustrated that the City has not provided a public version of its intentions for visiting limits, even as we anticipate a request to the Board of Correction next Tuesday. This is not an inclusive process. Below is a description of the typical family visit, for reference:

You are required to go through three checkpoints when visiting someone and you can expect a wait time of three to five hours for a one hour visit. When visiting a family member, a loved one, a friend, you are told to leave everything in a locker. There are no signs explaining or informing you what to expect next. You need \$.50 for the two lockers you'll encounter, about which DOC does not warn you on their website. At the first checkpoint you are asked to take off all layers, your shoes and walk through a metal detector while your stuff goes through the x-ray. You are then required to check in according to the jail you are visiting, have your thumb print and state license scanned. You continue your time by waiting for the shuttle and having the canine unit come around to each person, including babies. You are asked to remove everything from your lap and pockets and put your hands to your side while the dog comes around and sniffs. When you reach the jail, you repeat the process and this time there's a machine set up to wipe your hands for any chemical residue. It takes one hour to reach the second checkpoint and another two hours before you will visit with your family member. There's no signage about expectations and the officers won't inform you why it's taking so long, unless you personally ask, but even then it can be difficult to get a clear answer. In the third checkpoint, a pulled screen creates a private area for just you and the officer. For a woman you're required to bend over and lift up your bra; for a man you're asked to take off your shirt. For everyone, you're asked to take off your shoes (3rd time), turn your socks inside out, pull up your sleeves, use your thumbs to move across the inside of your pants waistline, lift up your hair and then open your mouth. By the end you feel exposed and humiliated. When you are cleared, you wait again, until the officer calls you onto the visiting floor. Your one hour together starts when the person you are visiting steps onto the floor. At the end of your visit an officer yells your number and says "Time's up." You both exit the same way you came in and you can expect another hour before reaching the main entrance. In all it becomes a five hour day for a one hour visit.

The Urgent Need for Fewer Arrests

The surest way to ease the burdens on DOC is to reduce the size of the population in the City's custody, a fact that additional City Council proposals attempt to acknowledge and address.

Serious crime has never been lower, yet arrests, despite moderate decreases since 2010, remain high. There were roughly 350,000 people arrested in 2013, the vast majority for misdemeanors and violations and another 450,000 people summonsed. While it is rare that a misdemeanor, on the first instance, will lead to jail time, as low-level charges and summonses pile up – disproportionately in communities of color – people become vulnerable to detention on low-level charges. Fare-evasion, a misdemeanor, is one of the top charges leading to jail time in New York City, today; overall, misdemeanors account for more than 50 percent of jail admissions. Meanwhile, arrest, independent of long-term incarceration, can have severe collateral consequences to family structure, health, employment and education. According to the Vera Institute of Justice, arrest and incarceration are one of the major contributors to poor public health in certain communities. Due in part to racially discriminatory policing practices, these negative impacts fall heaviest on communities of color. Black New Yorkers are jailed at a rate of nearly 12 times that of their White neighbors, with Latinos jailed at five times the rate of Whites; recent studies have proven that race alone is a cognizable factor in driving prosecution decisions in at least Manhattan courts.

Issues such as homelessness and substance abuse, which frequently co-occur with serious mental health symptoms can leave specific demographics vulnerable to having bail set at arraignments at a level that is impossible for our clients to reach. Thus many people are incarcerated due solely to their poverty, despite the clear language in the State’s bail statute explaining that bail can be levied solely for the purpose of securing return to court. Our clients charged with low-level crimes, who have also been identified as having a mental health need, are frequently detained in City jails. There is a great body of evidence that would suggest that this practice, rather than one aimed at addressing the underlying needs of this population, serves little public safety purpose and rather “kicks the can down the road” leaving an unaddressed issue to resurface a few weeks later.

It is essential for the City to include more support for misdemeanor arrestees deemed to be at risk for failure to appear. These could include: voluntary supervised release programs as an alternative to bail; regular review of bail by the court with a presumption that bail should be lowered or eliminated if a person has proven to be unable to post that bail; presumptive release for a person with acute healthcare needs to a treatment facility or to a valid treatment plan proposed to the court. Pre-trial incarceration has been shown to be one of the most expensive and least effective ways of resolving long-term public safety or quality of life issues. It is obvious to us that the amount of money being spent to essentially exacerbate the problems of indigent people in New York City could be easily re-directed into community treatment options to address the actual needs of these same people. The current practice of utilizing jails and prisons as mental health “treatment” facilities, at an astronomical price, is not sustainable, effective or morally justifiable. Furthermore, the practices of New York City when it comes to incarcerating people who have committed nothing more than nuisance offenses must come to an end. There is no doubt that this type of charge is disproportionately used against people unable to cope with the burdens set up by our inequitable society and are trying to do what they can to survive. We urge City Council to reduce the number of people in correctional custody and invest in community-based high-quality health care, housing, education and targeted preventative, diversion and reentry services.

Specific Comment on Proposed Bill of Rights

We believe strongly that the City Council is taking the right step to inform people incarcerated in City jails of their rights and responsibilities. We are concerned that the DOC already has an obligation to inform people brought into their custody of many of these rights and that the agency does not presently do a sufficient job in this respect. What recourse will people have if the DOC fails to provide them with this resource, or fails to honor the obligations set forth in the Bill of Rights? For example the DOC has had difficulty distributing the document referred to as the “Inmate Handbook,” which outlines rights and responsibilities and has a particular dysfunction with regards to its ability to distribute the important re-entry guide *Connections*, which is published by the New York Public Library. While most, but not ALL of our clients receive the handbook, almost none receive *Connections*, despite a promise by the DOC in the handbook referring to the provision of this critical resource. For those unaware of *Connections*, it is a comprehensive resource guide that provides people with contacts for housing, employment treatment and other services that speak to what in most cases are the root causes of criminal justice contact to begin with. Why is the DOC withholding this resource, and how can the Council ensure that more people have access to it? We would ask that access to the handbook and to *Connections*, both of which are printed on Rikers Island, be added as an amendment to the bill. As one of our clients recently put it after first seeing the book: “If I had had access to *Connections* the first time I was arrested, I never would have been arrested a second time.”

We are thankful to the Council for hosting this important hearing today, and look forward to a new era in City Jail management defined by transparency and accountability. Thank you very much for providing us with the opportunity to testify today.

Sincerely,

Lisa Screibersdorf