Statement before the

New York City Council

Committee on Fire and Criminal Justice Services

Elizabeth Crowley, Chairperson

By Joseph Ponte, Commissioner

NYC Department of Correction

May 6, 2015

Good afternoon, Chairperson Crowley and members of the committee on Fire and Criminal Justice Services. I am Joseph Ponte, Commissioner of the New York City Department of Correction.

As Commissioner, I am committed to advancing comprehensive reforms that will positively affect the Department by combating violence and fundamentally shift our institution to a culture of safety Since December, Use of Force incidents have dropped significantly at both RNDC and GRVC. At RNDC, Uses of Forces have decreased by 39%. At GRVC, Uses of Force have decreased by 50%. We have made progress in many areas, closing adolescent punitive segregation, creating the Rovers canine program at RNDC and opening Enhanced Supervision Housing units, but much more continues to be accomplished. While I spoke to you about our comprehensive, 14-point anti-violence reform agenda in March, I would like to take this opportunity to update you on this critical reform effort.

There are five initiatives that directly target violence and nine cultural transformational efforts. To address the violence that has plagued the jails for far too long, we are taking a holistic approach. This approach will:

- keep contraband off Rikers Island;
- establish an integrated classification and housing strategy;
- provide complete camera coverage on the island;

- expand educational and programming opportunities for inmates; and,
- designate specially trained first responders for rapid de-escalation.

I would like to take a moment to briefly discuss each of these initiatives and how, collectively, they will reduce violence and promote a culture of safety.

1. DOC needs to keep weapons, drugs, and contraband out of Rikers

We must confiscate weapons, drugs, and other dangerous contraband before it makes its way onto Rikers Island. Contraband of any kind increases the likelihood of violence. To that end, DOC will enhance our overall search procedures at the front gate and the facilities. This will include enhanced efforts to ensure contraband is not being moved by staff, inmates, or visitors. At the front gate, all staff will receive TSA-style search training and conduct K-9 searches of all individuals entering the Island. Investigator teams will be placed at key facilities. To date, investigator teams have been placed in three facilities and going forward will be located in key high population facilities. And, at the facility level, we will use the best search equipment available to conduct searches. We are seeking state legislative action to allow for the use of body-scanning capability to detect the most dangerous weapon in the facilities: scalpels. Locker rooms will also be relocated outside of the facilities, so that staff and visitors will have a place to store items. In addition to these security procedures already under way, DOC is seeking modest revision of the NYC Board of Correction's minimum standards on visitation to allow for changes that will enhance safety for all.

2. DOC will create an integrated classification and housing strategy

We will finalize a new system for classifying and housing inmates to more effectively identify those inmates who are most likely to commit violent acts and separate them from those that are less likely to do so. By adopting a new classification and housing strategy, the Department will address the unique needs of the inmate population. As part of this new system, we will assess and improve both housing assignments and inmate movement. We will be launching an integrated classification and housing pilot at a designated facility in order to evaluate the initial plan before expanding it by implementing it facility by facility with appropriate programming and staff.

3. DOC is ensuring comprehensive security-camera coverage across Rikers

We have already begun installing cameras needed to provide 100% coverage on Rikers. Enhanced camera coverage throughout the facilities ensures greater transparency, bolsters forensic records for investigative and training purposes, and provides safety and accountability to all. We are committed to first completing camera coverage in priority facilities with particular attention to adolescent and young-adult housing areas, where we are focusing on a facility-by-facility approach.

4. DOC will design and offer effective inmate education opportunities and services

Reducing idle time has been recognized as a proven method for reducing violence. When inmates are involved in educational and rehabilitative programming, it serves to both reduce their likelihood of engaging in violent acts (by reducing idleness) and supports their development and re-integration into the community. DOC will institute a comprehensive idleness-reduction program that will dramatically expand the options available to all inmates for non-school classes and activities. A robust adolescent and young-adult behavior-modification strategy has been developed and will be implemented in the coming year. Weekend programming enhancements have already begun for the adolescents, a first of its kind at DOC. The goal is to first provide at least 5 hours of available programming to the adolescent and young-adult population before moving on to the adult population.

5. DOC will redefine first-line incident responses

DOC is changing how first-line incident responses are conducted within the Department. First, with funding from the Mayor's Task Force for Behavioral Health and Criminal Justice, DOC and its partners at DOHMH will implement Crisis Intervention Teams later this year. These multidisciplinary teams of specially trained officers, supervisors, mental health staff and nurses will respond to inmates in mental-health crisis to safely and non-violently de-escalate the situation and remove the inmate to the appropriate location for continued treatment. Under our new plan, officers will also be placed in key facilities to ensure rapid response, swift resolution of violent incidents and minimize any chance of escalation or collateral violence. DOC will increase the effectiveness of the Emergency Services Unit (ESU) by overhauling response procedures, tactical equipment, and physical location of staff from a central headquarters to

individual facilities. We will develop measurements to qualify ESU performance (e.g. time from incident start to control) and evaluate execution. Our efforts will reduce overall violence by improving intelligence, raise capabilities and skills for our first-responders, lessen response times to incidents and reduce the collateral damage of violence that occurs.

Nine other initiatives will drive DOC's cultural transformation. Through this combination of initiatives, DOC will create and expand common-sense managerial and operational practices to strengthen performance, accountability, ownership, and transparency. Changing the culture begins at the top, through leadership training geared toward enhanced communication and team-building. Throughout the year, we've listened to staff express their views about the Department. We held four (4) Town Halls and twenty-five (25) focus groups, communicating with over 1200 uniform and non-uniform members of staff about various matters including our antiviolence agenda. By listening to staff, we were able to align the needs of staff with our anti-violence reform agenda. This resulted in a focused plan that we have already begun implementing.

We will ensure a steady flow of top-quality recruits who will be trained and mentored into top-quality officers. Targeted, customized training will be given to officers based on their post designation. Officers working with special populations will have the skills needed to address the scope of their work. Further enhancements will be made through the advancement of an operational-management process to track metrics across divisions and facilities. Through that, we will hold staff accountable for actions they commit and measure their improvements. This plan represents the Administration's continued commitment to holistical reform of Rikers Island after decades of neglect, in order to reduce violence and improve safety in the jails.

Council Legislation

I want to speak briefly about the 12 bills recently introduced by the Council. The theme of these bills is greater transparency: 10 require regular reporting and two require the publication of policies on our website.

I share the Council's appreciation for transparency. As the Department has enacted reforms over the last year, we have tried to be open with the Council and the public about our changes and this has been supported by our efforts to open up the jails to greater numbers of visits from press and interested parties. We are working to make our jails safe for staff, inmates, and visitors, and we

invite the public to pay attention to how we are doing it. While I believe there is some work to be done to the draft bills to clarify definitions and goals, and we do have some concerns about the time and resource burden that some of this reporting would put on our staff, I look forward to working with the Council in the coming months in order to design reports that support the Department's and the Council's shared goals

Thank you for this opportunity to testify today. I am happy for the opportunity to elaborate on previous discussions about our anti-violence initiatives and the direction in which we are taking the Department. We are making significant improvements, and we will continue to enact important reforms.

At this point, I'd be happy to take your questions.

THE LEGAL AID SOCIETY

TESTIMONY

The Council of the City of New York

Committee on Fire and Criminal Justice Services
Elizabeth S. Crowley, Chair

Oversight - Examining Violence in New York City's Jails and the City's Response.

May 6, 2015
New York, New York

Presented by:
Sarah Kerr
Prisoners' Rights Project
Cynthia Conti-Cook
Criminal Practice Special Litigation Unit
The Legal Aid Society
199 Water Street
New York, NY 10038

Thank you for the opportunity to testify concerning the ongoing problem of violence in the New York City jails. We submit this testimony on behalf of The Legal Aid Society, and thank Chair Crowley and the Committee on Fire and Criminal Justice for inviting our thoughts on the subject. We applaud the Council for continuing to focus on this important topic of concern for our City.

Since its inception over 40 years ago, the Prisoners' Rights Project ("PRP") of the Legal Aid Society has addressed the problem of violence in the New York City jails. Through advocacy with the Department of Correction ("DOC") and individual and class action lawsuits, we have sought to reform the systems for oversight of use of force and violence in the jails. Currently, we along with the U.S. Department of Justice are engaged in settlement negotiations with the City in our system-wide litigation, *Nunez v. City of New York*, a case which was filed to bring about a comprehensive remedy for the culture of staff violence that exists in the City jails. We hope these negotiations will be completed by or shortly after Memorial Day, 2015. In addition, each week we receive and investigate numerous requests for assistance from individuals housed in the City jails who have been victims of violence in the jails, either by staff or other individuals. We interview individuals injured in violent encounters, and carefully review their medical records. This daily contact with individuals housed in the jails and their families gives our office direct knowledge of the devastating effects of jail violence. It is on this basis that we offer these comments to legislators and all New Yorkers.

I. Violence in the Jails

PRP and others at Legal Aid have testified repeatedly about the extraordinary amount and severity of violence in the jails.[1] Currently, the complaints we receive concerning staff violence

[1] See Legal Aid Society Testimony to the New York City Council 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, available at http://www.legal-aid.org/media/189855/testimony_10.8.14.pdf; Legal Aid Society Testimony to the New York City Council Committee on Fire and Criminal Justice Services Int 0292-A-2014 - *A Local Law to amend the administrative code of the city of New York, in relation to requiring the commissioner of correction, in coordination with the commissioner of health and mental hygiene, to post a quarterly report on its website regarding punitive segregation, restricted housing and clinical alternative to punitive segregation housing statistics for city jails and T2014-1633 Resolution calling on the New York City Department of Correction to end the practice of placing individuals returning to City jails into punitive segregation, also known as solitary confinement, to complete time owed*, August 20, 2014, available at http://www.legal-aid.org/media/192599/testimony_8.20.14.pdf; Legal Aid Society Testimony to the New York City Council Committee on Fire and Criminal Justice Services, 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 and 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, available at http://www.legal-aid.org/media/185933/061214_city_council.pdf; Legal Aid Society Testimony to the New York City Council Committee on Fire and Criminal Justice Services, *Examining Violence in New York City Jails*, April 4, 2013, available at http://www.legal-aid.org/media/192596/testimony_4.4.13.pdf; Legal Aid Society Testimony to the New York City Council Committee on Mental Health, Mental Retardation, Alcoholism, Drug Abuse, and Disability Services and the Committee on Fire and Criminal Justice Services, *Examining New York City's Compliance with the Brad H. Settlement and Administration of Discharge Planning for People with Mental Illness in City Jails*, October 26, 2012, available at http://www.legal-aid.org/media/192593/testimony_10.26.12.pdf.

remain as frequent and as serious as ever. We continue to receive complaints about assaults, threats of assault and requests to be placed into protective custody with distressing regularity.

II. The City's Plan to Address Violence in the Jails

It is difficult to address the City's 14 Point Plan with any specificity because it has not been released to the public. We hope that a specific written plan will be made available to the public soon. To date, we have only the press release from the Mayor's office announcing a 14-Point Plan, but not identifying the 14 points.[2]

Certain of the elements of the plan that are disclosed in the press release are sensible and valuable on their face:

- "Creating an integrated classification and housing strategy to more safely house inmates."[3] The Department of Correction already has a classification system—created as a result of Legal Aid's litigation[4]—but improving it to take account of changed circumstances and experience (the current serious gang problem) is an appropriate step.
- "Providing comprehensive security camera coverage." The widespread use of cameras to help control violence in the jails—which also originated from Legal Aid litigation[5]—is an excellent idea that should be pursued vigorously.
- "Designing effective inmate education opportunities and services to reduce idle time." It is universally understood that reducing idleness with constructive activity is an important tactic for reducing violence, as well as having value in its own right.[6]
- "Developing crisis intervention teams to respond more quickly to inmate-on-inmate violence." The adaptation and use of multi-disciplinary crisis intervention teams into the City jails will, if successful, reduce injury and violence as it has done for police departments who utilize these teams for street encounters.[7]

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[2] The Mayor's Press Release of March 12, 2015, titled *Mayor de Blasio, Commissioner Ponte Announce 14-Point Rikers Anti-Violence Agenda*. The press release is available at http://www.nyc.gov/html/doc/downloads/pdf/press-releases/MAYOR_DE_BLASIO_COMMISSIONER_PONTE_ANNOUNCE_14_POINT_RIKERS_ANTI_VIOLENCE_AGENDA.pdf.

[3] Quotations in this section are from the press release cited in fn. 1 above.

[4] *Rhem v. Malcolm*, 507 F.2d 333, 338-39 (2d Cir. 1974) (affirming finding that classification system is necessary for detainee population); *Fisher v. Koehler*, 718 F.Supp. 1111, 1120-22 (S.D.N.Y. 1989) (directing creation of a classification system in jail holding sentenced misdemeanants), *aff'd*, 902 F.2d 2 (2d Cir. 1990).

[5] *Sheppard v. Phoenix*, 210 F.Supp.2d 450, 452, 455 (S.D.N.Y. 2002) (noting installation of cameras in Central Punitive Segregation Unit during litigation, describing consent judgment provisions for wall-mounted and hand-held cameras); *Ingles v. Toro*, 438 F.Supp.2d 203, 208 (S.D.N.Y. 2006) (noting provisions for camera placement in settlement of city-wide use of force case).

[6] See Thigpen, Beauclair, Hutchinson, *Inmate Behavior Management: The Key to a Safe and Secure Jail*, U.S. Dept. of Justice, National Institute of Corrections (August 2009) available at https://s3.amazonaws.com/static.nicic.gov/Library/023882.pdf.

[7] The Mayor's Task Force on Behavioral Health and the Criminal Justice System includes in its Action Plan implementation of crisis intervention teams in the Department of Corrections. Teams of Department of Correction and health staff will be trained in de-escalation and behavioral health symptom identification. The Action plan also includes training for New York City police officers on recognizing behavioral health needs and expands the options for alternatives to arrest by creating two clinical drop-off community centers to assess needs and provide short-term

- "Implementing K-9 capabilities for searches and investigations by June 2016." This may be a useful step, but it must be closely monitored to minimize the potential for abuse.[8]
- "Building more, new secure entrances for each facility by December 2018." The entrance spaces in the City jails are too small and ill-designed to permit adequate security measures to be implemented.
- "Training 100% of existing front entrance staff in enhanced TSA-style procedures by December 2015." Implementation of effective security searches of all persons entering the jails is essential, as pointedly demonstrated by the recent Department of Investigation report issued after a DOI investigator walked into numerous jails unmolested despite having his pockets stuffed with drugs and weapons.[9]

Other measures proposed in the Press Release are likely to be more damaging than helpful. The Department desires "new rules for visitors that DOC will seek from the Board of Correction, its oversight body. These rules will seek to limit the physical contact incarcerated individuals may have with visitors, broaden the criteria for restricting visitors, and establish a visitor registry." A few months ago the Board of Correction rejected such limits on visiting proposed for individuals placed in the new Enhanced Security Housing units.[10] The Board heard a chorus of disapproval from the public and advocates in their testimony for the December 19, 2014 hearing on the proposals to limit visitation.[11] It was clearly expressed, and supported by data, that individuals who maintain close family ties are less like to be repeat offenders, and that the jail system should not be taking action to interfere with family relations by limiting visiting or making it more difficult or unpleasant. According to the American Bar Association:[12]

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care. The Action Plan is available online at http://www1.nyc.gov/assets/criminaljustice/downloads/pdf/annual-report-complete.pdf. The need for training and inter-disciplinary teams to de-escalate situations and avoid tragedy inside and outside of the jails remains apparent. *See* "Suspect Fatally Shot by Detective in East Village Had Mental Illness and a Troubled Past," *New York Times*, April 26, 2015, available at http://www.nytimes.com/2015/04/27/nyregion/suspect-fatally-shot-by-detective-in-east-village-had-mental-illness-and-a-troubled-past.html.

[8] See *In re Texas Prison Litigation*, 191 F.R.D. 164, 166-67 (W.D. Mo. 1999) (describing dogs biting prisoners who were offering no resistance).

[9] The Department of Investigation Report is available online at http://www.nyc.gov/html/doi/downloads/pdf/2014/Nov14/pr26rikers_110614.pdf

[10] *See* New York City Board of Correction, Notice of Adoption of Rules, approved January 13, 2015, at 9. The Department had requested the denial of contact visits to all persons held in the newly authorized Enhanced Supervision Housing (ESH), but the Board approved the deprivation of contact visits only based on an individualized finding at a hearing. The Board also rejected proposals to limit visits to individuals in ESH to a pre-approved list (*i.e.*, a visitor registry) and to limit those persons who can visit. The Department apparently intends to repeat its request and make it applicable to *all* individuals in the jails even though it was rejected for people housed in the ESH.

[11] The hearing transcript, written testimony and tapes from the hearing are on the Board of Correction website at http://www.nyc.gov/html/boc/html/meetings/RuleChanges_2015.shtml.

[12] Letter, American Bar Ass'n Governmental Affairs Office to Chairperson, Committee on the Judiciary and Public Safety, Council of the District of Columbia (June 19, 2013), pp. 2-3, available at http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2013june19_dcvisitation_l.authcheckdam.pdf. This letter was written in support of allowing contact visits in the District of Columbia jails in addition to video contact.

> Maintaining personal connections through contact visits improves the lives of incarcerated individuals, their families, and the community in three important ways. First, people who receive visits from and maintain relationships with friends and family while incarcerated have improved behavior during their time in custody,[13] contributing both to a safe and more rehabilitative atmosphere in the facility. Second, individuals who maintain relationships have more successful transitions back to society than those who do not.[14] For example, the Minnesota Department of Corrections found that prisoners who were visited were 13 percent less likely to be reconvicted of a felony and 25 percent less likely to return to prison on parole violation.[15] Third, families and children that are able to visit their relatives in jail benefit greatly from maintaining family ties during a time that can often cause family trauma.[16]

The ABA's conclusions are consistent with those of other research finding that people who maintain family ties during incarceration and benefit from the support of family after release have better reentry outcomes than those who are unable to do so,[17] and that maintaining family ties with a parent who is in custody also has significant, salutary effects on the child's well-being, including possibly improving the child's chances of staying out of the criminal justice system.[18] Against this background, and with specific reference to contact visits, the ABA has stated in its Criminal Justice Standards for Treatment of Prisoners (emphasis supplied):

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[13] See ABA Standards for Criminal Justice: Treatment of Prisoners, Standard 23-8.5 cmt. at 260. See also Virginia Hutchinson et al, U.S. Dep't of Justice, Nat'l Inst. of Corr., *Inmate Behavior Management: The Keys to a Safe and Secure Jail*, 8 (August 2009) (noting that maintaining contact with family and friends (including visitation) is integral to behavior management in the jail setting and that a failure to meet this important social need can lead to depression and inappropriate behavior in the under-custody population); Karen Casey-Acevedo & Tim Bakken, *The Effects of Visitation on Women in Prison*, 25 Int'l J. Comp. & App. Crim. Just. 48 (2001); Richard Tewksbury & Matthew DeMichele, *Going to Prison: A Prison Visitation Program*, 85 Prison J. 292 (2005); John D. Wooldredge, Inmate Experiences and Psychological Well-Being, 26 Crim. J. & Behav. 235 (1999).

[14] *See* Jeremy Travis et al, Urban Institute, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry* 39 (June 2001) ("Studies comparing the outcomes of prisoners who maintained family connections during prison through letters and personal visits with those who did not suggest that maintaining family ties reduces recidivism rates.") (internal citation omitted).

[15] *See* Minnesota Dept. of Corr., *The Effects of Prison Visitation on Offender Recidivism* (Nov. 2011), pp. 18-21.

[16] See Hairston, C.F. *Family Ties During Imprisonment: Important to Whom and for What?* 18 Journal of Sociology and Social Welfare 87-104 (Mar. 1991) (literature review of research showing maintenance of family ties improves mental health of inmates' children and increases likelihood of family reunification after release).

[17] Travis et. al., *Families Left Behind: The Hidden Costs of Incarceration and Reentry*, 6 (Urban Institute 2005) ("Studies comparing the outcomes of prisoners who maintained family connections during prison through letters and personal visits with those who did not suggest that maintaining family ties reduces recidivism rates") (internal citation omitted).

[18] *See* Allard & Greene, *Justice Strategies: Children on the Outside*, 22-23 (Justice Strategies 2012) (noting that self-worth and connectedness impact risk of criminal justice involvement and recommends facilitating prison visits to boost those feelings); Nickel et. al., *Children of Incarcerated Parents: An Action Plan for Federal Policy Makers*, 13 (Council of State Governments 2011) ("Strong parent-child relationships may aid in children's adjustment to

> For prisoners whose confinement extends more than [30 days], correctional authorities should allow contact visits between prisoners and their visitors, especially minor children, absent an individualized determination that a contact visit between a particular prisoner and a particular visitor poses a danger to a criminal investigation or trial, institutional security, or the safety of any person.[19]

The provision of contact visits absent an individualized determination is also required by the state Constitution. The New York Court of Appeals has held that pre-trial detainees have a state constitutional right to contact visits, subject to reasonable security precautions, and that any denial of contact visits must be done based on individualized consideration, not meted out in wholesale lots. *Cooper v. Morin*, 49 N.Y.2d 69, 81 n.6 (1979). This right is embodied in the State Commission of Correction Minimum Standards at 9 NYCRR § 7008.6 (a) ("Physical contact shall be permitted between a prisoner and his visitors."). **The City Council should guarantee individuals housed in the City jails their right to contact visits, absent a compelling individualized reason.**

The Board was correct to reject earlier attempts to limit and restrict visits. The Council should not support this part of the 14-Point Plan. Restricting visits is unlikely to produce the desired outcome of reducing violence. The lack of a connection between visit restrictions and violence reduction is reinforced by the recent Board of Correction study which found that "the vast majority of weapons are found in areas other than intake and visits and that the majority of weapons found in the jails are inmate-made or fashioned from materials already inside the jails."[20] The data suggest that further restricting the already heavily supervised visiting process will not be of much help in reducing the prevalence of weapons in the jails, and the human cost of restricting visits will be great.

III. The Proposed Legislation

In the following sections, we comment on the items of proposed legislation put forward for consideration at this hearing.[21] Our specific proposals for modification of the bills are in bold face.

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their parents' incarceration and help to mitigate many of the negative outcomes for children that are associated with parental incarceration") (citation omitted).

[19]ABA, Criminal Justice Standards for Treatment of Prisoners, Standard 23-8.5(e) (Visiting), available at http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/Treatment_of_Prisoners.authcheckdam.pdf, p. 259.

[20] New York City Board of Corrections, *Violence in New York City Jails: Stabbing and Slashing Incidents*, at p. 7 (April 22, 2015), available at http://www.nyc.gov/html/boc/downloads/pdf/reports/Slashings_stabbings_CRP_2015_04_27_FINAL.pdf.

[21] We have not commented on Int. No. 0717, City Council Bill re: Reports on Population Demographics of City Jails. We support its enactment as drafted but have no specific suggestions to make.

A. T2015-2921, City Council Bill re: Inmate Bill of Rights

This bill requires the Department of Correction to prepare a summary of inmates' rights under federal, state, and local laws, and the Board of Correction Minimum Standards, in addition to providing information about various services and programs available from DOC.

Legal Aid supports this worthy effort to ensure that individuals housed in the City jails understand their rights and opportunities. A comprehensive document that is easy to understand and provides information about whom to contact if they believe their rights have been violated will ensure appropriate efforts and responses to issues that arise in the City jails. A document explaining rights and providing available services and programs will also assist family members in understanding the conditions of confinement and how to communicate about their loved ones. Providing valid information about rights and avenues of redress for grievances will benefit everyone by assisting in resolving misunderstandings and reducing tensions in the jails. However, we suggest that the DOC may not be the best agency to prepare a summary of these legal rights, since it may have an unwarrantedly narrow view of those rights. **We recommend that Council prepare this document, or assign this responsibility to the Board of Correction. Alternatively, if the Council wishes to have DOC draft this document in the first instance, consultation with correctional advocacy groups and the approval of the Board of Correction should be required.**

Int. No. 643, Council Bill re: Waiting Lists for Restrictive Housing and Clinical Alternatives to Punitive Segregation Units

This bill requires that DOC and DOHMH post a monthly report on the Department of Correction website detailing the highest number of individuals in the jail who are awaiting placement into restrictive housing units (RHU) and clinical alternative to punitive segregation (CAPS) housing, disaggregated by housing type. The bill specifically targets the alternative housing settings for individuals with mental illness who have run afoul of the Department's rules for inmates. As with all of the City Council bills that increase transparency by requiring reporting, we are in favor of this bill. However, we suggest that the bill expand its requirements to include reporting on other wait lists, and require additional information to be reported. We believe that these modifications will improve the utility of the information for oversight and public comment on the administration of our City's jails. **We recommend the Council include additional mental health housing areas such as the program for accelerating clinical effectiveness (PACE) and mental observation (MO) housing, and we recommend that Council include reporting on individuals subject to transfer to OMH through CPL Section 730. These additions would provide a more comprehensive picture of individuals with mental health needs who are not being accommodated in a speedy manner within our jails. In addition, the reporting should include the number of individuals on each wait list for specified periods (e.g. longer than 4 days, longer than 7 days, longer than 10 days, longer**

than 15 days, longer than 30 days). The bill should require that each report remain on the website for comparison and so that trends may be identified.[22]

Bills Concerning Reporting Requirements on Use of Force, Injuries and Security Indicators

Int. No. 778, City Council Bill re: Reports Regarding Excessive Force by Officers

Int. No. 759, City Council Bill re: Reports on Injuries to Inmates and Staff

Int. No. 763, City Council Bill re: Reports on Security Indicators (Injuries and Violence)

Collectively, these bills contain highly salutary reporting provisions that will help bring transparency and accountability to use of force practices in the jails. We welcome these measures requiring the Department of Correction to collect and publish this aggregate data, so that public policy can be informed by actual evidence rather than anecdote, and trends in violence can be addressed early enough for appropriate intervention where required.

In particular, these bills recognize that one of the signature problems the City has failed to remedy is the use of highly *injurious* force in the jails. Force is inherent in the correctional mission; safety and security can be maintained in a large jail without some applications of force. But the levels of injuries sustained in New York City jails, and the severity of those injuries, have no parallel in current American corrections and no justification in sound correctional practice. While far more extensive changes in the practices of the Department of Correction are necessary to curb the rampant staff violence, the reporting requirements in these bills are a sound preliminary step to addressing these serious problem.

However, as the Council is no doubt aware, the City's use of force policies, including its tracking of data concerning use of force, are currently the subject of litigation in *Nunez v. City of New York,* No. 11-Civ.-5845 (S.D.N.Y. (LTS) (JCF)). The plaintiffs in *Nunez*—a certified class comprised of all individuals in the City jails not already under court order (represented by our office and two law firms), with the United States Department of Justice intervening on behalf of younger inmates—are seeking reforms of the use of force practices in the jails to redress a pattern and practice of unconstitutional brutality by correction staff. Part of the relief that the plaintiff class will seek includes tracking and reporting of various indicators of use of force within the jails, as well as changes in the ways use of force is investigated. The parties are

[22] The need for this last recommendation has recently become apparent. The DOC recently posted its second punitive segregation quarterly report in compliance with Intro 292 passed by Council last year. Unfortunately, the DOC did not keep its initial report available on the DOC website. The inability to compare and contrast the quarterly punitive segregation reports diminishes their utility for public understanding and commentary. This failure is detrimental to understanding and encouraging rule changes that are demonstrated to create humane, safe and cost-effective corrections policies.

currently engaged in very detailed settlement discussions that all parties hope to complete within a matter of weeks.

We suggest that the Council hold in abeyance legislation concerning these reporting requirements until the *Nunez* negotiations are complete, in the event that they result in agreements or orders covering the same terrain. Any further requirements the Council seeks to enact could thus be done in harmony with those reforms to avoid subjecting the Department to inconsistent reporting standards while addressing any matters the Council does not think are adequately addressed by the litigation.

Should the Council wish to proceed with the current bills, we recommend certain amendments to close loopholes or clarify definitions and help the bills achieve their important purpose. Because these are terms used in several of the bills, we discuss them collectively here.

Definitions of Physical Injury. The bills' current definitions may not adequately capture the injuries that are of gravest concern: injuries to the face and head. New York City correction staff resort to blows to inmates' heads and faces with a frequency unseen anywhere else in the country, causing individuals to suffer facial fractures and head injuries at astonishing levels. We applaud the Council's attention to this serious health risk, and the inclusion in the bills of reporting requirements specifically aimed at addressing this type of force. However, as written, the bills do not adequately capture the information they appear to seek. Although "head strikes" always carry a significant risk of death or permanent injury, often the only symptom resulting from such a blow may be a laceration, or severe contusion. Such head trauma is significant, but arguably might not be captured by some interpretations of the current bill's definition of "physical injury," which seems to exclude bruises and swelling. (See Int..0759, §3(b)-(c), requiring reporting of "physical injury" to the head). The definitions of "physical injury" and "serious physical injury" should be amended to eliminate any possibility of under-counting of head injuries. This can be accomplished by adding language to the definitions.

Definition of use of force. The definition of "use of force" in the pending legislation should also be amended, as it is presently both over and under-inclusive. The current definition in the bill is: "'Use of force' shall mean the use of chemical agents or physical contact between a uniformed member of service and an inmate, but shall not include physical contact used in a non-confrontational manner to apply mechanical restraints or guide an inmate." This should be amended to include instances where staff use not only "chemical agents or physical contact," but also objects, instruments, and electric devices against an individual.

In addition, the exclusion should be modified to more accurately capture permissible bodily contact. To do so, it should state that "use of force" does not include moving, transporting, or applying restraints to a compliant person, as these are all permissible. But it should *not* use the term "guide," as this term is often used by corrections staff as a cover for slamming an person's head into the wall or throwing an individual to the floor. Moreover, the exclusion should turn not on the subjective question of whether an interaction such as applying restraints was "non-confrontational," but rather on the more objective question of whether the person was compliant.

Inclusion of data on false reporting and other use of force violations. Several provisions of these bills require the Department to report when it finds that staff have engaged in excessive force. In our experience, the Department rarely charges staff with excessive force, even when it concludes that staff have violated the use of force policy. Rather, charges are often framed as "failure to supervise" or "conduct unbecoming an officer" instead of as excessive or unnecessary force. To capture all of the charges that are relevant to uses of force, we recommend that the Council require the Department to report on *all* violations of its use of force directive, and *all* charges arising from use of force incidents and not simply those denominated "excessive force."

In addition, one of the most pernicious factors contributing to the culture of staff violence within the Department is the blue wall of silence: staff's willingness to cover up excessive force by other staff. The Council should require the Department to report when it finds that staff failed to report force, lied at MEO-16 hearings, or otherwise provided false information concerning use of force incidents.

Int. No. 768, City Council Bill re: Enhanced Supervision Housing

Last year council passed a law requiring quarterly reporting on punitive segregation in the City jails. (Int. 292, Local Law 42). Int. 0768 updates that statute by incorporating changes that occurred in January, 2015 when amendments to the board of correction (BOC) jail minimum standards went into effect. The amended BOC standards include the creation of the Enhanced Supervision Housing Units (ESHU) and include the split between punitive segregation for violent offenses and punitive segregation for non-violent offenses (where 7 hours of out-of-cell is permitted each day). Placement into the ESHU does not require that a person violated a DOC rule.

The language in the bill does not mention ESHU. Instead, it encompasses the ESHU into its own definition of punitive segregation. The proposed language includes in the definition of punitive segregation *any* housing where an individuals is confined to their cell longer than the lock-out period set for individuals in general population. We agree that there should be reporting on all of the jail areas where individuals are confined to their cell. The language would clearly include punitive segregation, ESHU and other forms of administrative segregation. However, because the amended BOC standards create two forms of punitive segregation in addition to ESHU housing, *and* there are other forms of administrative segregation, the use of the term "punitive segregation" is confusing. Punitive segregation has always referred to a place for individuals who have been found guilty of violating department rules. To expand it to include other areas of cell-confinement creates serious contradictions between the definitions in the Board standards and this proposed law. For example, the Board standards include limitations on punitive segregation which would not apply to individuals in ESHU and other forms of administrative segregation. The Council should avoid using a different set of terms, since the result may be to confuse the public rather than to inform the public.

Compiling relevant data and making it public will help both the agency and the public judge whether these programs are accomplishing their purposes. However, the reporting requirements in the bill do not require the disaggregation of data by type of confinement housing

area (punitive segregation for violent offenses (23 hour lock-in)), punitive segregation for non-violent offenses (7 hours out of cell), ESHU, other forms of administrative segregation). Disaggregation by housing area must be required if the data is to be helpful for determining the effectiveness of the various different programs in the jails. The disaggregation of data by facility and program will assist the DOC, DOHMH, council and the public in identifying specific programs or jails where there are training needs, additional staffing needs or needs for other remedies for identified problems. The data should distinguish between the different confinement settings so that outcome data provides essential information on human and fiscal costs and permits identification of valid evidence-based rehabilitation programs. **We recommend that the term "punitive segregation" be changed. We recommend that the reporting sections of the bill require that the data be disaggregated to identify the different areas where individuals in the jails are held in cell confinement (e.g. ESHU, 23 hour lock-in punitive segregation, 7 hours out of cell punitive segregation, and each other form of cell confinement housing).**

Int. No. 770, City Council Bill re: Establishment of Crisis Intervention Program

The Legal Aid Society supports the passage of Int. No. 770, which requires the Department of Correction and the Department of Health and Mental Hygiene to implement crisis intervention teams in the City jails. The adaptation and use of multi-disciplinary crisis intervention teams in the City jails will, if successful, reduce injury and violence as it has done for police departments who utilize CIT teams for street encounters. The Legal Aid Society has actively participated in the Mayor's Task Force on Behavioral Health and the Criminal Justice System which included in its action plan implementation of crisis intervention teams in the Department of Corrections. Crisis intervention in the City jails would require that teams of corrections and health staff trained in de-escalation and behavioral health symptom identification respond to crises involving individuals with behavioral health needs instead of the DOC probe team.[23] It is our understanding that some training has begun and that adaptation of National Alliance on Mental Illness (NAMI) CIT curriculum is under way. It is also our understanding that the development of policies and procedures necessary to implementing CIT in the City jails is not yet complete. The bill appears to be complementary to the current efforts in almost all respects. However, the definition of a crisis intervention team being adopted by DOC and DOHMH may differ from the "one CIT officer and one mental health professional" proposed in this bill. **We recommend that Council confer with DOC, DOHMH, BOC and NAMI to ensure that the definition of the "crisis intervention team" accurately describes needed personnel. In addition, we recommend the following additions to the reporting requirements in the bill: the number of individuals injured as a result of CIT response to crises, in total and disaggregated by facility and housing/program type within each facility; the number of individuals transferred to a psychiatric hospital after CIT response, in total and disaggregated by facility and housing/program type within each facility; the number of individuals transferred to mental health housing as a result of CIT response, in total and disaggregated by facility and housing/program type (transfer to and from) within each**

[23] The Action Plan is available online at http://www1.nyc.gov/assets/criminaljustice/downloads/pdf/annual-report-complete.pdf.

facility. The bill should require that each report remain on the website for comparison and so that trends may be identified.

Int. No. 753, City Council Bill re: Quarterly Report re Bail Status

The Legal Aid Society supports the passage of Intro. 753, which requires the Department of Information Technology to post a quarterly report regarding the bail status of individuals housed in the New York City jails. **The bill should require that each report remain on the website for comparison and so that trends may be identified.** The current bail practice in our City penalizes people, not because they have committed some serious crime or are a danger to our community, but because they are poor and cannot afford bail. By allowing people with money to get out of jail while incarcerating those who cannot afford even small amounts of bail we create unfair distortions between rich and poor in our criminal justice system. In addition to our targeted police practice, bail has become an important factor driving mass incarceration of youth of color. We believe that the reporting of information required by Intro. 753 will show the unfairness of the current bail system and lead to constructive efforts for reform.

The current bail practice creates needless suffering for the people of New York and causes tremendous economic waste for our City. Pre-trial detention is very expensive and those who are detained often suffer the loss of jobs and the resulting social and economic impact for both them and their families. The fact is that for the vast majority of those involved in the criminal justice system the setting of even a small amount of bail will cause the defendant to remain in jail after the arraignment. A recent Human Rights Report that studied misdemeanor arrests in New York City showed the consequences of setting even small amounts of bail for low level offenses. When bail is set at $1,000 only 11.3% of those detained were able to post bail. When bail is set at $500 only 17.6% of those detained could post bail.[24] Almost half (48%) of those who could not post bail at the arraignment will remain in until a disposition on the case.[25]

The ability to post bail can make all of the difference in a criminal case. For the person without enough money getting out of Rikers Island can become a goal that is more important than guilt or innocence on the criminal charge. Pre-trial detention has a clear negative impact on felony and non-felony case outcomes. New York's Criminal Justice Agency reports that those who are released have a 50% conviction rate. Those detained have a 92% conviction rate.[26] Those who are too poor to post bail languish on Riker's Island, where they face physical violence, lasting damage to family and community relationships, the loss of employment, and a significant disadvantage in the plea-bargaining process. Many defendants who sit in jail long enough eventually reach the conclusion that it is more beneficial to plead guilty, and get released, than it is to continue to wait for a trial in jail. That is not justice.

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[24] Jamie Fellner, Human Rights Watch, *The Price of Freedom*, 2010, p. 21

[25] Mary T. Phillips, New York City Criminal Justice Agency, *Bail, Detention and Nonfelony Case Outcomes,* May 2007.

[26] Id at p. 5.

Our bail system operates under the presumption that we are making it more likely that people will appear for trial when money is posted. Research shows that, for many cases, this presumption is not true. The effectiveness of bail in reducing failure to appear rates is confined primarily to defendants who did not receive a positive recommendation for ROR from the Criminal Justice Agency which does a pre-arraignment assessment of each person who is arrested. For the 40% who are recommended for release, bail is ineffective in reducing the failure to appear rate.[27] Where bail is set under $7,500 (84% of the cases), moderate increases in the amount of bail have no impact on the failure to appear rate.[28] For poor families with little or no discretionary income the setting of almost any amount is disastrous.

While the bail bond industry may argue otherwise, bonds are no more effective than cash in predicting failure to appear. When release is recommended those who post bonds have an 8% failure to appear rate, those who post cash fail to appear at a 7% rate.[29]

We need to find a better way. In his 2013 State of the Judiciary address Chief Judge Jonathan Lippman called for "a top-to-bottom revamping of the rules governing bail in our state." He urged the State "to do all we can do to eliminate the risk that New Yorkers are incarcerated simply because of the lack the financial means to make bail."[30]

Unfortunately, the cash bail system is very resistant to change and little has changed in the day-to-day functioning of arraignments in the wake of Judge Lippman's call to action. While there are nine ways to post bail available in New York,[31] most judges still give the defendant only two options for posting bail – cash or insurance company bond. Other bail alternatives, such as the recently adopted credit card option, are grossly underutilized.[32] The current situation presents an insurmountable problem for thousands of indigent defendants who cannot afford the hefty financial cost of freedom.

Reforming our system of pre-trial detention is a necessity. Far too many people sit in jail before trial waiting for justice that will never materialize. The reason is far too common: they can't afford the alternative. Yet, there are other more effective alternatives. Research has shown that an effective risk assessment instrument can give judges the detailed information that they need to make informed choices regarding the risk that an offender poses. A combination of strategies that do not require cash such as pre-trial treatment, case managers, and reminders about court appearances can minimize the use of pre-trial detention.[33]

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[27] Id at p. 5.

[28] Id.

[29] Id.at p.6.

[30] Jonathan Lippmn, *State of the Judiciary*, January 2013

[31] These are cash, insurance company bail bond, secured surety bond, secured appearance bond, partially secured surety bond, partially secured appearance bond, unsecured surety bond, unsecured appearance bond and credit card or a similar device. See CPL 520.10.

[32] See Mary T. Phillips, New York City Criminal Justice Agency, *New York's Credit Card Bail Experiment,* September 2014. Where a credit card is utilized the use of the card shows no significant effect on the likelihood of a failure to appear. (page. 46).

[33] Pretrial Justice Institute, *The Problem,* available at http://www.pretrial.org/the problem/.

In his remarks on the state of the judiciary, Chief Judge Lippman noted that, "Back in 1964, Robert F. Kennedy made a powerful case for bail reform, saying: 'Usually only one factor determines whether a defendant stays in jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor is, simply, money.'"[34] Over forty years later those words still speak the truth.

Int. No. 758, City Council Bill re: DOC Grievance System Reports

We are pleased to see that the Council is turning attention to the Department of Correction grievance system. This has been a source of numerous complaints by our clients to Legal Aid, and by Legal Aid to the Department of Correction, with no apparent improvement. However, the proposal to gather information about the grievance process, while commendable, does not get at the most basic problem of the grievance system.

That most basic problem is that the staff do not follow the rules in processing grievances and DOC does not make them do so. Though there is an elaborate written procedure, see DOC Directive 3376, available at http://www.nyc.gov/html/doc/downloads/pdf/Directive_3376_Inmate_Grievance_Request_Program.pdf , it is widely disregarded in important respects, as revealed by the pattern of complaints we receive and as partially corroborated by DOC's own data.

In a nutshell, our clients complain that:

(a) They are unable to file grievances, because grievances are not picked up from the grievance boxes used in some jails. In other jails, where individuals are expected to file grievances in person at the grievance office, some individuals report that they cannot get to that office, and others report that when they do get to the office, the staff member assigned refuses to take certain grievances even though the subject of the grievance is "grievable" (appropriate for the grievance process)

(b) They file grievances but never receive a response. We see many court decisions in which individuals report such non-response, in addition to the complaints we receive directly.

(c) If grievants receive a response and are not satisfied with it, the next step is to request a hearing. But at most jails, there are literally never hearings, individuals are told that is the case, and therefore, no one requests them. Many court decisions dismiss cases for non-exhaustion of administrative remedies because the individual did not request a hearing. The failure to provide hearings is circumstantially corroborated by the extremely low number of hearings reported in DOC's own data, discussed below.

(d) If grievants try to proceed past the hearing (or non-hearing) stage by appealing to the Warden and then to the Central Office Review Committee, they receive no response. This failure to respond is circumstantially corroborated by the negligible number of decisions at the Warden's and the Central Office level.

[34] Lippman, *State of the Judiciary,* supra.

On several occasions, we have requested records from the grievance program under the Freedom of Information Law. Our most recent request for FY 2014 remains incompletely answered even though it was made on July 29, 2014. Previously, we had obtained the records for FY 2013, and those records showed that out of a total of 4013 grievances processed, some 3936 were "informally resolved" at the facility level. Only *one* grievance was "formally resolved" (*i.e.*, disposed of after a hearing). Only 27 grievances were resolved by the Warden, and these were limited to three jails: the George Motchan Detention Center, the George R. Vierno Center, and the Central Punitive Segregation Unit. Only *one* grievance was resolved at the Central Office.[35]

The tiny numbers of hearings, Warden's decisions, and Central Office decisions (combined, only 0.007% of the total of 4013) lead inescapably to the conclusion that these aspects of the grievance system are mostly illusory. Otherwise, it would be necessary to believe that over 99% of the prisoners in the City jails are satisfied with the facility decisions of their grievances and do not wish to pursue them further. The complaints we receive from our jailed clients make clear that is not the case.

Thus the proposed legislation, which requires publication of specified information, while valuable, does not get directly at the problem of massive noncompliance and nonfunctionality of the grievance system. The Council should include provisions that do so.

We propose that the Council amend the proposed bill to include requirements that all grievances submitted be processed consistently with DOC policy, that all requests for hearings be honored by providing a hearing, and that all appeals at all stages be decided within the time limits specified. Additionally—and crucially—the Council should provide for enforcement of these requirements. The best way to do so is probably to fund a position at the Board of Correction for a staff member whose sole responsibility is to verify that each jail grievance office, each Warden, and the Central Office are following DOC's grievance procedure and processing all grievances properly.

Below, we comment on specific provisions of the legislation as proposed.

The first category of data to be reported pursuant to this bill is the number of grievances submitted. (b.1.) As noted above, not all submitted grievances (e.g., placed in the grievance box, delivered to IGRP office, or handed to IGRP staff) are in fact filed. At virtually all facilities, monthly IGRP reports state that interviews are conducted with potential grievants, following submission of grievance complaints. Following the interviews, some number of grievances are not filed. At certain facilities, this is the result of a process that separates grievable from non-grievable matters. For example, at AMKC, in December 2014, there were 145 interviews, 43 non-grievable issues, and 102 grievances filed. Contrast that with the process at Brooklyn Detention Complex where, in November 2014, there were 46 interviews, 4 non-grievable matters, and 14 grievances filed; the *majority* of grievances were not filed even though grievable. An even larger margin is found at EMTC, where in December 2014, there were 211 interviews, no report of non-grievable matters, and 48 grievances filed. The grievance Directive does not

[35] These numbers do not add up to 4013 because some grievances are listed as having been withdrawn or the prisoner transferred.

authorize, or even mention, the type of interview suggested by this data as a component of the grievance procedure. **The Council should either bar the informal interview procedure entirely or require that DOC state the number of grievances submitted but not filed.**

The term "health clinics" is used to identify housing areas for which separate grievance data would be reportable for areas where grievance boxes and IGRP offices are not available. (b.1., b.3.). However, health clinics are not housing units with their own population. **If Council intended an accounting of grievances from individuals confined in infirmary units, it should change the language of the bill accordingly.**

The grievance Directive provides that when a grievant submits a grievance by placing the statement in the grievance box and does not receive a stamped receipt with two (2) days, the grievant should submit another grievance. **The Bill should be revised to include reporting of the number of grievances re-submitted for this reason. To facilitate the reporting, the grievance form should be revised to include an indication that a grievance is being re-submitted following the failure of the IGRP to provide a stamped receipt.**

As noted above, hearings are extremely rare, though the IGRC does not have discretion to reject a request for a hearing. In fact, a grievant's non-acceptance of a proposed informal resolution is supposed to be treated as a request for a hearing. Directive 3376, IV.G.5.b. Yet, according to data reports we received for October through December 2014, showing 1,550 grievances filed, two grievances at GMDC were resolved at a formal hearing level, one at GRVC was resolved at a hearing, and one at RNDC was resolved at a hearing. Following 3.f., which calls for reporting the number of grievances in which the grievant did not accept informal resolution, and therefore under the DOC policy requested a hearing, **the bill should be revised to include reporting of the number of grievances in which a hearing was actually held**.

Under current procedure, the Board of Correction does not have decision-making power in the CORC appeal but may offer its opinion and advice. **The Bill should include reporting of the number of Central Office Review Committee (CORC) appeals to which the New York City Board of Correction responded.**

CONCLUSION

Violence in the jails remains out of control. The violence problem cannot be directly solved by the City Council, but the Council can and should enact measures to ensure that both the amount and seriousness of violence and the operation of measures that are nominally taken to control it are recorded reliably and disclosed transparently. We offer the foregoing comments to support the Council's effort and to suggest measures that may make the proposed legislation more effective.

Dated: May 6, 2015
New York, New York

Testimony before the City Council

On Reducing Violence on Rikers Island

Tanya Krupat, LMSW, MPH

on behalf of the New York Initiative for Children of Incarcerated Parents

May 6, 2015

Thank you for this opportunity to speak with you today on the very important matter of reducing violence at Rikers Island. My name is Tanya Krupat and I am the Program Director of the New York Initiative for Children of Incarcerated Parents at the Osborne Association. The New York Initiative is a statewide policy reform effort (launched in 2006) to improve the lives of New York's children who have experienced the arrest and/or incarceration of a parent.

For the past 16 years, I have worked with and on behalf of children whose parents are in jail or prison. For more than 10 of these years I visited Rikers Island weekly as a service provider; for seven of these years I worked at the Administration for Children's Services. My focus over these years has been reducing the harm of separation for children and their parents, mostly through visiting as a key intervention that has numerous positive outcomes (for children, parents, correctional facilities, public safety, and reentry).

In-person contact visiting is largely misunderstood and under-utilized as a positive intervention in correctional settings. My experience witnessing visits at multiple jail visiting rooms on Rikers and, for a time, focusing on improving the visiting experience in the Central Visit House (where all visitors are processed) convinced me that even under the best of circumstances, visiting Rikers is a stressful experience. But we did not have the best of circumstances; the process is not child-sensitive or welcoming. In fact, it is typically grueling and often demeaning and frustrating for visitors. For children, it was a long, tiring, boring, often mean, and unfriendly place. Here they experienced people in uniforms (who they often refer to as the "police") as sometimes friendly, but more often not. This contributed to an already often negative view of uniformed law enforcement personnel – not the kind of impression we want for our young people. The fact that hundreds of thousands of family members continue to visit tells you that people are willing to put up with a LOT in order to support their loved ones who are experiencing the fear and trauma associated with detention and incarceration.

I say all of this because it is relevant to the proposals being considered today, and presumably being put forth by the City and the Department of Correction as "solutions" to violence. Addressing the violence at Rikers is of extreme and urgent importance, and we believe there are some important and promising points in the proposed 14 point anti-violence agenda. However, the restrictions on visiting – which have not been formally proposed but can be inferred from the reports -- are not among them and should be abandoned in favor of *visiting improvements*.

As we understand them, and as we set forth in the attached letter to the Board of Correction, signed by 17 organizations concerned with children, families, and those incarcerated, the impending proposal will set forth the following changes to visiting:

1. Plexiglas partitions (possibly 6-8 inches in height and extending down to the floor) to be installed at visiting tables;
2. Visitors would be required to register and seek approval in advance, and would be subjected to some form of background check to determine visit-worthiness.

3. DOC could deny visitors based on a "perceived threat," or based on a previous felony conviction or presumed gang affiliation.

The letter discusses each of these points in detail, making a strong case for not moving forward with these recommended changes.

Complementing this letter, it is important to remember the actual people and lives that are being affected by visiting policies. We received a letter from a young woman whose mother is incarcerated and who wrote,

> "Coming from the perspective of a child; my mother is incarcerated and has been since I was 4. All we have are visits to look forward to. Those visits were she can touch me and physically be there. When you are not able to be tucked in at night with the person who gave life to you it has an effect. It is not like we can just call or shoot a text because that is how society today work. Except for when it comes to the correctional facilities, we have one or two options; write or visit. My mother is still a human being, I yearn for her touch and to see her smile. I am what keeps my mother sane, out of lock and any other trouble they can cage her for. Her words of wisdom and knowledge also keep me out of trouble."

It is not only for the children and families that we express this concern. The ability to visit someone without physical or technological barriers, soon after arrest but before advanced approvals are possible (or possibly disapproved) is also critical to the mental health and well-being of those held on Rikers Island, which in turn is significant for the levels of peace or violence within the jails. Rather than add waiting times of days due to visitor registration, **DOC should explore ways to make visiting easier, faster, and more accessible as a violence prevention strategy.**

One of the young people in our Youth Action Council told us how the visits from him and his brother kept his dad sane and calm during his incarceration; it helped him deal with the various stressors he faced.

A grandmother in our program visited her daughter on Rikers frequently, often bringing her two young grandchildren who cherished the precious one hour or less with their mother. Under the proposed restrictions, this grandmother would likely not have been allowed to visit due to her own previous criminal justice involvement. Interestingly, visiting in our state prisons, where all of those confined are actually convicted of felonies, is far better – with daily contact visits available in maximum security facilities.

We all agree that reducing violence on Rikers is essential and urgent. However, visiting could be part of the solution instead of seen as the root of the problem. Instead of limiting visitors and

visiting, we suggest the following steps be taken as part of a comprehensive approach to addressing contraband and increasing safety:

- **Train Correction Officers in interacting with the public/ visitors and being more sensitive to the experiences of children** (including teenagers who look like adults) in visiting Rikers. Training should include **shifting the culture to see visitors as helping to maintain safety and calm** within the facilities;

- **Recognize and capitalize on the important opportunity that DOC has in creating positive relationships and associations between people in the community and those in uniforms;**
- **Create or better utilize existing children's areas within visiting rooms** at various jails;

- **Add more information for visitors to the DOC website** so that visitors arrive prepared, reducing the frustration of Corrections Officers and visitors, and reducing the processing time.

These changes to improve visiting should be paired with strict efforts to prevent, identify and seize contraband from all sources (including uniformed and civilian staff) using safe and effective technology such as body scanners, cameras, and other devices.

Keeping incarcerated people connected to their children, their loved ones on the outside, and to the community they will return to is an important correctional goal; it is a public safety goal and a violence prevention strategy that the Department of Correction and all of should support.

Thank you for your thoughtful consideration of these very important issues.

May 6, 2015

Dear Members of the Board of Correction,

As advocates for children and families, we write to you to express our concern about the anticipated restrictions on visiting at Rikers Island. We recognize the urgency of addressing violence on Rikers Island based on reports of assaults and fights involving incarcerated individuals and staff, and the significant threat to the safety and security of the facilities posed by the introduction of contraband by staff and visitors. However, the proposed changes to visiting would likely deny, delay, and reduce the quality of visiting, and risk *exacerbating* violence by further isolating people from their loved ones in the community.

While details of the proposed visiting changes have not been publicly released, information gleaned from Commissioner Ponte's budget testimony in March and news reports suggests that the NYC Department of Correction (DOC) is linking the violence at Rikers Island to contraband allegedly introduced through visiting and is determined to restrict both the contact between incarcerated individuals and their families, as well as to require advance approval of visitors which will lead to delays and in many cases denial of visiting by family and friends. The proposed changes would likely include:

4. Plexiglas partitions (possibly 6-8 inches in height and extending down to the floor) to be installed at visiting tables;
5. Visitors would be required to register and seek approval in advance, and would be subjected to some form of background check in order to obtain DOC approval;
6. DOC could deny visitors based on a "perceived threat," or based on a previous felony conviction or presumed gang affiliation.

We address these three aspects of the proposed visit restrictions below, and strongly urge DOC to implement the more urgent, more effective, and more relevant aspects of the 14 point plan (such as installing cameras and increasing programming) *before* making any changes to the current minimum standards for visiting. We urge you *not* to approve a change to the minimum visiting standards.

<u>Reducing Contact between Visitors and the Incarcerated Person</u>

Contact between children and their incarcerated parents in the form of child-sensitive, face to face visits is critical. In addition to supporting the child's well-being and the parent's rehabilitation, visiting has been shown to reduce disciplinary infractions and create a more

"peaceful correctional environment."[1] Additionally, for parents with open child welfare cases, visiting is critical to reducing the trauma of foster care placement by helping children remain emotionally stable and connected to their parents. Regular and meaningful parent-child visiting for children in foster care, including when a parent is incarcerated, is required by the Family Court Act and Social Services law, state regulations, and the NYC Administration for Children's Services' policies. [2]

For family members, friends and loved ones, visiting across a barrier is very different from and more painful than having a contact visit. Although DOC proposes a 6-8 inch barrier, this is a full barrier to a child. **Children need to be able to hug their parents and sit close to them throughout a visit and not just when they arrive and leave.** Preventing children from touching their parents, sitting on their parents' laps, and from being held *throughout* a visit can have devastating effects on children and on the parent/child relationship.

We are unable to find any evidence or data that supports non-contact visiting as a best practice.

Visitor Registry and Application

In its examination of practices elsewhere, DOC has cited LA County and Cook County jail procedures as "best practices" to consider adopting. A review of the Cook County jail website for visitors reveals an online visiting application process which includes a background check that takes up to 3 business days to clear. With non-contact visits and visiting delays, these facilities do not exemplify best practice visiting policies and there is no evidence available that suggests restricting visits has led to reduced incidents of contraband. We recommend DOC examine the Philadelphia Prison System (their jail system) which offers contact visits and has separate child-friendly visiting rooms. They address contraband through a "combination of searches, surveillance, intelligence gathering and mechanical devices …and conduct pat down searches of staff upon entry."[3] The recently opened Las Colinas Detention and Reentry Center, in San Diego County, allows for contact visits. Body scanning incarcerated individuals after visits has reduced contraband incidents.[4]

The targeting of visitors as the major source of contraband and reason for internal violence seems sorely misguided. According to a 2014 NYC Department of Investigation (DOI) report, a large proportion of the illegal trafficking (contraband) is carried out by uniformed guards and civilian employees.[5] DOI recommends stricter screening of correction officers, including drug-

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[1] Mohr, G. C. An Overview of Research Findings in the Visitation, Offender Behavior Connection. Columbus: Ohio Department of Rehabilitation and Correction, 2012; DC Public Safety Radio podcast April 2015, http://media.csosa.gov/podcast/audio/2015/04/video-visiting-in-corrections-national-institute-of-corrections/

[2] Family Court Act § 1030; see also Social Services Law § 384-b(7)(f)(5); ACS Memo, Deputy Commissioner Lisa Parrish (1999), *Clarification of Visits to Incarcerated Birth Parents.*

[3] Commissioner Giorla, Philadelphia Prison System per e-mail correspondence with Lois Cronholm on March 26, 2015.

[4] Communication with Kathy Meyers, Reentry Supervisor Las Colinas Detention & Reentry Facility on April 30, 2015.

[5] NYC Department of Investigation Report on Security Failures at City Department of Correction Facilities. November 2014. http://www.nyc.gov/html/doi/downloads/pdf/2014/Nov14/pr26rikers_110614.pdf

sniffing dogs at employee entrances. "Investigators say that while visitors to city jails bring in some contraband, a large proportion of the illegal trafficking is carried out by uniformed guards and civilian employees."[6]

Rikers processes approximately 1,500 visitors daily (5 days a week) or 390,000 visits annually. According to a review of DOC data from July 2014- March 2015, 16 weapons were confiscated and 44 visitors were found with drugs.[7] This is 60 instances of contraband in a 9 month period in which there were close to 270,000 visits; we are not aware whether the individuals caught with contraband would have been screened out by a registry, and question if there is any evidence to link the introduction of contraband to those whose backgrounds would disqualify them from visiting under the proposed plan.

DOC should be focused on making visiting *more* welcoming and child-friendly, reducing the unfriendly and difficult visiting process that already discourages visitors who are best able to reassure and support incarcerated individuals who might otherwise be more suicidal, violence-prone, and depressed.

Prohibiting People Based on Past Criminal Convictions

This aspect of the proposal would disproportionately affect poor people and communities of color who are over-represented among people who are convicted of crimes. It would prevent thousands of people, including caregivers and parents who bring children to visit, from visiting. New York State prisons release approximately 11,000 people a year to New York City, and there are thousands of individuals on parole and probation with felony records, many of whom have family members detained on Rikers Island, and who could provide needed support.

Many individuals with prior convictions, even serious convictions, exemplify transformation, upstanding citizenship, and are effective mentors for incarcerated family and friends. They are also now leaders of organizations, service providers, work for government agencies, and are loving family members. We are missing an opportunity to support reentry and lower recidivism by preventing individuals with felony backgrounds from visiting.

In closing, we collectively urge that the visiting limitations/restrictions within the 14 point plan be abandoned or at least, placed on hold while DOC implements and then evaluates the effectiveness of the following actions:

- **DOC should strengthen screening, searches and security methods for reducing contraband,** both prior to entry of visitors to the visiting room and visit-exit strategies to better identify contraband. DOC should explore the use of body scanners and TSA technology that is safe, less invasive, and effective for identifying contraband;

[6] Ibid.

[7] Pazmino, G. "New policy announced for Rikers Island visitors." Capital News, March 12, 2015.

- **DOC should install cameras and increase staffing in visiting rooms;**
- **DOC should evaluate the effects of improved screening and security measures on contraband levels** before changes to the visiting standards are considered;
- **DOC should speed up their proposed timeline for installing cameras and other measures that have much greater promise for reducing violence on Rikers.** Camera installation has been pushed back to an estimated 2018 date, while measures to restrict visits would presumably go into effect immediately, in August 2015.

We are available to discuss this further, or answer any questions. Please contact Tanya Krupat at The Osborne Association to arrange this, tkrupat@osborneny.org or 646-964-2160.

Thank you in advance for your thoughtful consideration.

Sincerely,

The Bronx Defenders
Brooklyn Defender Services
CASES
Center for Family Representation
Center for Community Alternatives
Center for Employment Opportunities
Citizens' Committee for Children
The Fortune Society
Hour Children
JustLeadershipUSA
Lawyers For Children
Legal Action Center
NYU Family Defense Clinic
The Osborne Association
Women's Prison Association
Philip Genty, Director, Prisoners and Families Clinic at Columbia University
Permanent Judicial Commission on Justice for Children

DOCTORS DC COUNCIL
a national affiliate of SEIU

A United Voice for Doctors, Our Patients, & the Communities We Serve

National Office
50 Broadway
11th Floor Suite 1101
New York, NY 10004
P: 212.532.7690
F: 212.481.4137
info@doctorscouncil.com
www.doctorscouncil.com

Testimony of Frank Proscia, M.D.,
President of Doctors Council SEIU
Before the New York City Council Criminal Justice and Fire Committee

May 6, 2015

Good Afternoon Chair Crowley and members of the Criminal Justice and Fire Committee. My name is Dr. Frank Proscia and I am the President of Doctors Council SEIU which represents thousands of doctors in the Metropolitan area, including in every HHC facility, the New York City Department of Health and Mental Hygiene, New York City School Health Program, and New York City jails including Rikers and Vernon C. Baines Correctional Barge. Thank you for the opportunity to testify today.

Doctors Council SEIU is here today to voice support for the package of bills that seek to examine violence in New York City's jails and the City's response. The collection and reporting of data offers greater transparency in examining the root causes of violence and can provide concrete information to foster potential solutions that are sorely needed.

Our doctors are doing exceptional work providing patient care on Rikers Island in a challenging setting. Inmates deserve the fundamental right of access to quality healthcare and as such, we believe that certain measures could increase access to that care.

The environment in which doctors, nurses and other healthcare staff operate has clear implications for patient care. Our partnership with DOC, and its role in connecting the inmates with clinics, is critically important.

To that end, we would like to weigh in on four bills in particular which we feel are important to promoting a secure work setting and increasing inmates' access to healthcare.

First, Doctors Council supports Intro 0643 requiring that the DOC provide a monthly report regarding the number of inmates who are on a waiting list for

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National Office
50 Broadway
11th Floor Suite 1101
New York, NY 10004
P: 212.532.7690
F: 212.481.4137
info@doctorscouncil.com
www.doctorscouncil.com

restrictive housing and clinical alternative to punitive segregation units. Our clinicians believe that programs like CAPS and PACE are promising, but the demand for these programs is much greater than current availability leaving too many inside Rikers underserved. Everyday events, both inside and outside Rikers, underscore the fact that our corrections facilities need more space and staffing for mental health intervention – that should be a priority.

Second, we support Intro 0768 which would require the DOC to report on enhanced supervision housing. As this is a new housing unit, we want to make sure that appropriate health services and physical plant conditions are in place. Medical rounds must be conducted safely and confidentially. We believe there are protocols that still need to be ironed out.

Doctors Council SEIU supports efforts described in Intro 0759 to report on cases of injuries to inmates and staff in city jails. Staff injuries have been on the rise in recent years and Doctors Council is committed to improving safety protocols and physical infrastructure to ensure that all healthcare professionals can do their jobs safely and provide the best care possible. In addition to collecting stats on incidents, it is critical that these matters are indeed treated as serious crimes and referred to the appropriate DA's office so as to serve as a deterrent.

Recently, during monthly safety meetings among agencies at Rikers, there were discussions that GMDC lacks appropriate egress in the mental health treatment area in case of an emergency. This is an important physical plant issue that remains unaddressed and that could potentially lead to a violent incident.

Lastly, we are encouraged by Intro 0770 and the proposal requiring that the DOC establish a crisis intervention program. Our doctors are ready, willing and able to weigh in on protocols to improve responses to crises. We recommend that the doctors at Rikers Island, especially the psychiatrists, be included in the course of planning and training for the crisis intervention teams.

Thank you for the opportunity to testify today.

Hearing of the New York City Council Fire and Criminal Justice Services Committee

May 6, 2015

Good morning. My name is Aida Morales and I am the Vice President representing 1199 SEIU members who provide health care services in correctional facilities under a Department of Health and Mental Hygiene contract with Corizon Health. Thank you for this opportunity to testify on these pending bills.

As with Intro 440, 1199 expresses its ongoing support for the call to quantify data that serves to better inform planning for the needs of staff and inmates in correctional facilities. Additional data will assist to better assess staffing needs, and to allow the agencies to identify problems, develop and implement programs to address those problems and improve conditions for staff, inmates, and their visitors. But, as we testified to earlier, we do not believe that reports alone will resolve the problems that exist in the prison system. There must be increased interagency collaboration, cooperation and coordination which is currently lacking. We also feel strongly that in the interest of transparency, such data must be posted on the agency website.

There are two Intros that warrant additional comment. The first, Intro 770 would require the Department of Correction to develop a crisis intervention program. We support and very much need such an initiative, but we must be clear. Such a program will be less effective without the much needed cross-training needed with uniformed and civilian personnel. Workers have requesting cross-training, to no avail. A team approach to identify potential problems before they escalate would go a long way toward minimizing chaos. Simple solutions such as posting correction officers inside the clinics and in blind spots, providing escorts in a more organized manner, increased staffing, utilizing cuff bars for aggressive inmates, and having on person panic buttons are other preventive measures that can be used to maintain order.

While I personally have found Corizon to be cooperative and willing to take the necessary steps, all persons physically located within the prisons are in the custody and care of the Department of Correction, the agency responsible for the day-to-day management of the facilities. Safety meetings where proposals are discussed with worker representatives are attended by DOC, but to be effective, the recommendations must be acted upon. Without DOC's cooperation, not much can be resolved. We look forward to a continuing working relationship with Corizon and to actively engage all interested parties in identifying solutions and their implementation.

Another, Intro 759, requires reports of injuries sustained by staff and inmates. We believe that these reports are compiled, but this information must be made readily available to the workers. Over the years, we have had difficulty in accessing this information.

In closing, I must reiterate that the problems that exist are very serious. Absent interagency cooperation, any contractor will face the same obstacles. Thank you.

The Bronx Defenders

Redefining public defense.

Written Comments of the Bronx Defenders
New York City Council
Committee on Fire and Criminal Justice Services
May 6, 2015

Re: Support for Int. No. 770: In relation to requiring that the department of correction establish a crisis intervention program.

Good afternoon. My name is Cheyne Castroni, and I am a Criminal Defense Social Worker with The Bronx Defenders. Thank you for the opportunity to testify.

The Bronx Defenders provides innovative, holistic, and client-centered criminal defense, family defense, civil legal services, and social work support to indigent people of the Bronx. Our staff of nearly 250 represents over 35,000 people each year and reaches thousands more through outreach programs and community legal education. We work in interdisciplinary teams to ensure that each client of The Bronx Defenders has seamless access to multiple advocates and services to meet his or her legal and non-legal needs. The primary goal of our holistic defense model is to address the underlying issues that drive people into the criminal justice system and mitigate the devastating impact of criminal justice involvement, such as deportation, eviction, removal of children from the home, or loss of employment, student loans, and public benefits. Instead of referring to these outcomes as "collateral consequences," we use the term "enmeshed penalties," which better reflects the grave risks and realities that our clients face from the moment of arrest.

In my capacity as a social worker at The Bronx Defenders, I work primarily with clients charged with criminal offenses on issues relating to substance abuse, domestic

violence, trauma and mental illness. I have worked within the field of social work for six years. My background includes a wide diversity of experience as a mental health practitioner for organizations including Jewish Family Services, Interface Children and Family Services, and Covenant House. In that time, I have employed various therapeutic interventions and modalities that range from cognitive behavioral therapy to crisis intervention.

As a certified crisis interventionist I have come to learn the value and utility of this skill-set, which I employ on a daily basis. I have used Crisis Intervention to deescalate a 16-year old client who is actively contemplating suicide after spending his first week inside Rikers Island. I have used it to help a frustrated young female client process her grief at the unexpected loss of a loved one. And I have used it to help stabilize countless clients whose incarceration has only served to aggravate the symptoms of undetected and untreated mental illness. In each of these situations and many others, my crisis intervention training has provided me with the ability to connect and effectively assist those in need. It has given me a framework to better recognize and understand the symptoms, needs, and experiences of each client I serve, be they elderly, mentally ill, developmentally disabled, veterans, etc.). And it has equipped me with the techniques and communication skills that I use to safely and effectively work with clients in crisis.

At The Bronx Defenders, I have worked with dozens of clients incarcerated at Rikers Island. Their experiences clearly demonstrate that DOC staff is currently unequipped to meet the demands placed on them by people with mental illness, a group whose incarceration rate continues to rise. Correctional staff need training, supervision,

and clear policies in order to respond appropriately to issues, crises, and other needs presented by all specialized populations in custody, but especially for those with untreated mental illness.

The unfortunate truth is that Correctional staff, because of lack of adequate training, often misinterpret symptom of untreated mental illness simply as "acting out" and as a disciplinary problem. Misunderstood and perceived as dangerous, bizarre, and annoying, those with untreated mental illness experience higher rates of disciplinary infractions, incidents involving use of force and solitary confinement, which are simply ineffective ploys to manage this population and typically make matters worse.

We support all of the reporting bills before the Council today, but wish to lend our most emphatic support to Intro 770, which will create Crisis Intervention Teams and provide correctional staff with a better understanding of mental illness and ways to deescalate situations that could become quickly volatile if not handled appropriately. According to the National Alliance on Mental Illness, crisis intervention offers an immediate, calming approach that reduces the likelihood of physical confrontations and allows for better patient care. Intro 770- is a small but important step towards improving our mental health system, and most of all, an opportunity to work towards the creation of a much safer, and ultimately more secure, environment for incarcerated persons and correctional staff.

Thank you for your time and consideration.

BROOKLYN
DEFENDER
SERVICES

TESTIMONY OF:

Lisa Schreibersdorf – Executive Director

BROOKLYN DEFENDER SERVICES

PRESENTED BEFORE

The New York City Council

Committee on Fire and Criminal Justice Services

May 6, 2015

Lisa Schreibersdorf
Executive Director

177 Livingston Street, 7th Floor
Brooklyn New York 11201

T (718) 254-0700
F (718) 254-0897

www.bds.org
@bklyndefenders

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-trail 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

Brooklyn Defender Services 177 Livingston Street, 7th Floor Brooklyn New York 11201 T (718) 254-0700 F (718) 254-0897 www.bds.org @bklyndefenders

hour children

Remarks Prepared for New York City Council Committee
on Fire and Criminal Justice Service
May 6, 2015

I am Jane Stanicki, an advocate with Hour Children, an organization that for 28 years has worked with incarcerated and formerly incarcerated women and their children. For almost ten years I have gone weekly to the Rose M. Singer Center, the women's facility at Rikers.

Today I confine my comments to the proposed visitation policy which I find one of the most anti-family policies that could be devised. DOC's own data indicate about 65% of the women held at Rikers are mothers, many with small children. (Not for today's discussion, but a concomitant fact is that the vast majority are there for a non-violent offense.)

Let's take an actual example of a visit last fall: a 5 year old boy is brought by his grandmother to visit his mother. The wait at the front visit house has been 3 hours. Again at Singer there is a wait, shorter, to be sure. Then he is told to sit still at a table while his mother is cleared. Under the proposed policy that child, now a basket case and irritable beyond words, may receive a quick hug then not touch his mother again until the visit is over. In fact, the visit was ruined before it started, given the unreasonable demands made of this 5 year old.

Every single bit of research we know about building and maintaining a family relationship is that warmth and the ability to express feelings is critical. Take the example of a teen age daughter who is 14, already upset because her mother is going to miss her birthday and the last day of school -- imagine the guilt the mother feels when she cannot sit and hold hands and hug her daughter during the visit.

If we want to make the incarceration experience even more destructive and to put additional pressure on already-strained families, this would certainly do it.

The proposed 'no contact' visit policy is so ill conceived it should never have been articulated and should certainly be laid to rest forthwith.

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: 05-06-2015

(PLEASE PRINT)

Name: Yesenia Vega

Address: _____

I represent: Brooklyn Defender Services

Address: 177 Livingston Street, Brooklyn, NY 11201

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Name: LAURIE DAVIDSON

Address: _____

I represent: Doctors Council SEIU

Address: 50 B'way

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Name: Mary Fillerup

Address: _____

I represent: Nurse

Address: _____

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Name: Aida MORALES

Address: 310 West 43 St

I represent: 1199 Workers Rickes

Address:

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Name: Joseph Ponte, Commissioner

Address:

I represent: DOC

Address:

Questions

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Date: 5/6/15

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Name: Deana Logan

Address: Assistant Commissioner Trials and Litigation

I represent: DOC

Address:

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Questions

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Name: Michael Blake

Address: Deputy Commissioner Investigations

I represent: DOC

Address:

Questions

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Name: Erik Berliner

Address: Deputy Commissioner Health Affairs

I represent: DOC

Address:

Questions

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Name: Jeff Thamkittikasem

Address: Chief of Staff

I represent: DOC

Address:

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Will Answer questions

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Name: Martin Murphy

Address: Chief of Department

I represent: DOC

Address:

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Date: 5/6/15

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Name: Tanya Krupat

Address: 175 Remsen St

I represent: Ny Initiative for Children of Incarcerated Parents

Address:

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Date: 05-06-2015

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Name: Riley Doyle Evans

Address:

I represent: Brooklyn Defender Services

Address: 177 Livingston Street, Brooklyn, NY 11201

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Name: Dr. Frank Proscia

Address: _____

I represent: Doctors Council SEIU

Address: 50 B'way

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I intend to appear and speak on Int. No. [illegible] Res. No. _____

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Name: [illegible]

Address: 99 WATER ST.

I represent: THE LEGAL AID SOCIETY

Address: 99 WATER ST

DOHMH will be answering questions

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Date: 5/6/15

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Name: Homer Venters

Address: 42-09 28th Street LIC

I represent: DOHMH

Address: _____

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DOHMH will be answering questions

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Name: Sonia Angell

Address: 42-09 28th St

I represent: DOHMH

Address: _____

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☑ in favor ☐ in opposition

Date: 5/6/15

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Name: Cynthia Conti-Cook

Address: legal aid society (with Sarah Kerr)

I represent: Special Lit, CDP

Address: 199 Water St NYNY

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☐ in favor ☒ in opposition

Date: 5/6/15

(PLEASE PRINT)

Name: Jane Stanicki

Address: 35 E 85th St #8B

I represent: Hour Children

Address: 12th St LIC

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☒ in favor ☐ in opposition

Date: May 6, 2015

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Name: Cheyne Castroni

Address: 360 E. 161st Street

I represent: Bronx Defenders

Address: " "

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