THE CITY OF NEW YORK

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

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Testimony

of

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before the

New York City Council Committees on Health and Fire and Criminal Justice Services

regarding

Physical Health Services in New York City's Correctional Facilities

October 28, 2008

City Hall
New York City

Good morning, Chairpersons Rivera and Martinez and members of the Health and Criminal and Fire Justice Service Committees. My name is Dr. Jason Hershberger and I am Assistant Commissioner for the Bureau of Correctional Health Services. With me is Louise Cohen, Deputy Commissioner of the Division of Health Care Access and Improvement. Thank you for this opportunity to update you on the health care system for people incarcerated in New York City jails.

Correctional Health in New York City

Let me begin by providing an overview of how correctional health care is provided in New York City. Under the City Charter, the Department of Health and Mental Hygiene (DOHMH) is responsible for providing health care to the 14,000 New Yorkers in the custody of the Department of Correction (DOC) every day. Approximately one hundred thousand people come into our jails every year, of whom approximately 60% are individuals not previously incarcerated that year and the remainder of whom are returning to jail for a second or third time. Ninety percent of inmates are male, most are African American or Latino, and many come from the poorest neighborhoods in the city. Education levels are low and unemployment is high.

The mission of correctional health services is to provide the best possible medical assessment and treatment during an inmate's incarceration and to provide appropriate discharge planning services to promote health once a person leaves jail. We strongly believe that high quality correctional health services are critical for patient safety and health while they are in jail, and to safeguard the health of the communities to which discharged inmates return. To this end, DOHMH's Correctional Health Services Bureau directly employs physicians, nurses, pharmacists, psychiatrists, psychologists, social workers, health educators, discharge planners and contract managers.

CHS also oversees a large medical services contract with Prison Health Services (PHS), which has approximately 1,000 medical and allied health personnel working 24 hours a day, seven days a week in New York City jails. Following a competitive process, HHC – which supervised Correctional Health Services at that time -- signed a three year contract with PHS effective 2001, which was extended for a year. In 2003, the DOHMH reassumed direct supervision of Correctional Health Services. The Department issued an RFP; PHS was selected and they began a new three year contract in 2005. DOHMH exercised that contract's three-year option to renew, in 2008, which will expire in December 2010.

PHS provides over one million medical, dental and mental health encounters a year at 10 out of the 11 City Department of Correction facilities. One facility, the Vernon C. Bain Center barge in the Bronx, is staffed by the Health and Hospitals Corporation under the direct supervision of the DOHMH. CHS closely monitors the PHS contract by tracking progress against performance indicators and quality control measures, reviewing individual cases, directing quality improvement projects, assessing and credentialing professional staff, and ensuring compliance with CHS policy and procedures.

Let me now turn to the key health services provided in New York City's jails. These include: initial medical intake, chronic care management, sick call, urgent care, mental health services and discharge planning. Each month there are more than 8,000 intake visits; approximately 70,000 medical visits; 2,500 specialty clinic visits; and 18,000 mental health visits. While many of these patients are young and healthy, a significant proportion of our patients suffer from serious health problems including chronic diseases, substance abuse and mental illness.

An inmate's first encounter with health services in New York City's jails occurs on the first day of incarceration. All inmates receive a full medical intake examination within the first 24 hours of entering the custody of the Department of Correction. New York City is among national leaders in this regard, as it takes most jurisdictions between one and two weeks after admission to complete such exams.

Using this higher standard allows for three positive outcomes:

1) From the first day of custody jailed New Yorkers have access to a physician who can detect and treat health conditions ranging from acute issues requiring emergent care to chronic diseases;
2) The Department of Health and Mental Hygiene has an opportunity to screen and treat every jailed New Yorker for health conditions that present a risk to the public health of the City; and
3) We can begin to provide discharge planning, particularly important for patients with HIV and other chronic diseases, as soon as possible.

While an inmate is incarcerated, CHS provides medical care and treatment, including regular follow up for any chronic conditions such as diabetes, hypertension, asthma and HIV; sick call on a daily basis for anyone who requests it; urgent care provided by emergency physicians; and preventive medicine, including immunizations against flu, hepatitis and pneumonia. The Department also provides appropriate discharge planning for people leaving jail, focusing on those with chronic diseases, particularly for those with HIV, but also, for example, for women who had pap smears but left without receiving their results, or those with mental illness or substance abuse problems.

Over the last few years, we have had great success in redesigning our HIV discharge planning program so that it reaches more people more effectively. Of the people with HIV who are released to the community, approximately 70% are successfully connected to community medical and substance use providers.

<u>Correctional Health and Public Health</u>

The Department's correctional health and public health missions are closely aligned and CHS takes every opportunity to realize the Department's public health goals as part of its work at the City's jails. For example, a major Department public health goal is for every New Yorker to know his or her HIV status so that proper treatment can be obtained and further transmission can be curtailed. We know that the rate of HIV among New York City inmates is many times as high as the rate found in the rest of the city and inmates

often suffer from compound risk factors for HIV illness, including high risk sexual behavior and unsafe injection drug use. For these reasons, all inmates are offered voluntary rapid HIV testing upon admission to jail and at subsequent medical encounters. Under this voluntary testing program, correctional health provides over 25,000 HIV tests per year, an increase from approximately 6,000 tests in 2003

Similarly, in 2005, Correctional Health Services established a testing program for young men with asymptomatic Gonorrhea and Chlamydia infections; women were already universally screened. To date, over 155,000 individuals have been screened, and 14,500, or 9% have been found positive. Of these, 70% are treated before release with a single injection of an antibiotic. These inmates came into custody with an infectious illness and left non-infectious and with improved health.

The public health mission of correctional health can also be seen in additional initiatives, including universal mental health screening and mental health discharge planning, universal screening and control of tuberculosis, and the increasing numbers of inmates receiving flu, pneumonia and hepatitis B vaccinations.

It is important to note that almost 40% of inmates tell us that they are active substance users, and 16% say that they regularly currently drink alcohol, although we believe the actual prevalence of substance abuse is significantly higher. The Department actively seeks to identify and assist individuals with a history of substance abuse in order to provide them with appropriate care while detained and so that they may return to their communities linked with appropriate assistance.

CHS is a national and international leader in the treatment of substance abuse. Patients are assessed at intake for their need for detoxification or maintenance treatment and NYC jails are among the few in the country accredited by the Substance Abuse and Mental Health Services Administration (SAMHSA) to provide methadone treatment. Since 1987, we have provided detoxification services and methadone maintenance services to patients addicted to opiates, and detoxify almost 20,000 people each year. Upon reentry, inmates are connected to community-based methadone programs to continue and support their recovery.

Correctional health care is delivered in a highly restrictive and secure environment, presenting significant challenges not seen in other health care settings. It is only through our collaborative relationship with our sister agencies and community partners that CHS is able to successfully provide care in this secure custody environment. The partnership between the DOC and the DOHMH, made possible by the strong commitment of Commissioner Horn and his senior staff to the health and well being of inmates, enables us to be successful in spite of the many hurdles to providing quality of health care in City jails. In medical emergencies, stabilization and emergency transportation is provided by the excellent work of the Fire Department of New York's Emergency Medical Services unit. The Health and Hospitals Corporation provides emergency care, hospitalization and some specialty services in secure prison wards at Bellevue or Elmhurst Hospitals. The City's Human Resources Administration and Department of Homeless Services are

helping CHS link patients to needed public benefits and shelter. And finally, the hundreds of community medical and mental health providers who care for inmates after they leave the system are among our most important partners.

Thank you again for this opportunity to testify. We are happy to answer any questions you may have.

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Testimony of the New York Civil Liberties Union

before

The New York City Council Committee on Health

regarding

Physical Health Services in New York City's Correctional Facilities

October 28, 2008

My name is Corinne Carey and I am Public Policy Counsel to the New York Civil Liberties Union ("NYCLU"). The NYCLU, the state affiliate of the American Civil Liberties Union, has approximately 48,000 members. The NYCLU is devoted to the protection and enhancement of those fundamental rights and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York.

I would like to thank the Committee on Health for inviting the NYCLU here today to provide testimony relating to physical health services in New York City's Correctional Facilities.

I am here today to speak to the issue of access to reproductive health care for women in jail in New York City. Sparked by cases where women in county jail facilities outside of New York City were denied access to reproductive health care while

incarcerated, the NYCLU last year launched an investigation of policies for provision of health care specific to female inmates. The NYCLU sent Freedom of Information Law (FOIL) requests to 58 counties, seeking information about access to a variety of reproductive health care services, including abortion, prenatal care, routine gynecological exams, contraception, and testing and treatment for HIV or sexually transmitted infections (STIs).

We published a report of our findings in March of this year entitled *Access to Reproductive Health Care in New York State Jails*. Our report exposed an uneven patchwork of health care policies in the 52 county jails in New York that house women. Those policies often fail to address the most basic reproductive health services, such as pregnancy testing, prenatal care, screening and treatment for sexually transmitted infections or access to abortion services. Women who are incarcerated in New York State are legally entitled to reproductive health care, but few county jails have policies ensuring comprehensive access to such care. Without a uniform policy, the quality of health care a woman receives in a county jail depends on where she is incarcerated.

Fortunately for women incarcerated here in New York City, we found that access to reproductive health care in City facilities is quite good. In fact, we have suggested that New York's policies and practices regarding health care for female inmates serve as a model to other counties across the state. There is still work to be done, however, to improve the breadth of services that should be offered to women in our city's jails. In addition, some of the services that are in place for women now are not provided pursuant to any official policy, but simply because the current administration believes they are necessary. We have found that good practices must be memorialized in written policies

and procedures, or else they risk being eliminated as personnel and administrations change.

Let me begin by telling you what we found that made New York's policies outstanding. New York City's policy on emergency contraception (EC) is exemplary—it recognizes that women may enter the system having had unprotected or inadequately protected sex up to 120 hours prior to being in custody, it ensures that EC is made available to women who may be at risk of pregnancy, and it provides guidance to jail staff about how to determine whether a woman may need EC and how to administer it. The city's policies also recognize that women may need to continue birth control during their incarceration, and allows them to do so. The policies provide that EC is provided as a routine part of post-sexual assault treatment, as well as post-exposure prophylaxis to prevent HIV infection.

Access to abortion services is also guaranteed by New York City's policies, as well as basic prenatal care for women who choose to continue their pregnancies while incarcerated. The city's policy on the use of restraints for pregnant inmates is commendable: it proscribes the use of restraints on pregnant women who are being transported to a hospital in order to deliver, and that at all other times, pregnant inmates can be handcuffed in the front of their bodies, but not with their arms behind their backs, and never at the ankles.

In conversations we had following up on the documents that we received from our FOIL request, we found that women are routinely offered gynecological examinations,

including STI testing, at admission. However, this offer of routine gynecological care is not part of the policies and procedures that govern health care in the facility.

In our report, we offered a series of recommendations for ensuring access to comprehensive reproductive health care for women in jail. We based our recommendations on guidelines from the American College of Obstetrics and Gynecology's Health and Health Care of Incarcerated Adult and Adolescent Females, and the American Public Health Association's Standards for Health Services in Correctional Institutions. Our recommendations were adopted by the State Commission of Correction, which issued a memorandum to all county jail facilities encouraging them to adopt written policies and procedures addressing access to reproductive health care.

While New York City's policies and practices are the best in the state, we offer three recommendations from our report that would improve them.

- First, we urge the city to strengthen the commitment it has already demonstrated to ensuring access to comprehensive reproductive health care to women in jail by memorializing current practices and procedures in written policies, so that such practices are more likely to remain in place regardless of shifts in personnel or administration.
- Second, the city should provide women access to age-appropriate mammography services.
- Finally, the City should establish procedures to guide jail officials in preparing for the timely transport of pregnant women to appropriate facilities for labor and delivery.

Jail officials are required by law to provide inmates with access to necessary medical care—but there is also significant public health benefit to doing so. Incarcerated women suffer disproportionately from lack of access to primary care and resulting poor health outcomes. Jail administrators have a unique opportunity to provide not only necessary treatment, but also preventive health care services and screening for medical problems that often go undetected at home. Offering such services ensures that women return to their communities healthier and in less need of public health resources.

We believe that if the changes we have proposed were to be implemented, New York City's provision of health care to incarcerated women could become a model not only to the rest of New York State, but also to the entire nation.

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Testimony of The Legal Aid Society

on

Physical Health Services in New York City's Correctional Facilities

Presented before

The New York City Council Committees on Health and Fire and Criminal Justice Services

Presented by

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October 28, 2008

Testimony of the Legal Aid Society Before the Committees on Health and Fire and Criminal Justice of the New York City Council October 28, 2008

Thank you for the opportunity to testify concerning the future of the New York City jails' health care system. The Legal Aid Society's Prisoners' Rights Project has been dealing with the problems of the jail health care system for over 35 years. We have a record of helping to reform the City jail medical care system both through litigation and administrative advocacy. Our litigation efforts have led to the construction of new health care treatment facilities, including a Contagious Disease Unit for the quarantine of patients with tuberculosis and other diseases; to improved access to hospitals and specialty clinics; and to improved systems for infection control and medical clinic sanitation. We advocate on a near daily basis on behalf of City prisoners, including those suffering from chronic and acute problems, pregnant women, and the mentally ill. The Legal Aid Society is intensely interested in improving the quality of care for City prisoners, as well as in the City's plans for the future of health care services to constituents who are held in the City's jails.

Virtually every day, our office is contacted by prisoners or their families or attorneys with complaints about medical care issues such as denied access to sick call, failure to provide care that medical staff has ordered, psychiatric emergencies, the need for special diets, and so on. We regularly contact the medical provider, Prison Health Services (PHS), and Department of Health and Mental Hygiene (DOHMH) staff, both in the central office and on Rikers Island, on behalf of these prisoners. While we do not have the resources to compile statistics or issue reports on the medical care system's performance, there are clear patterns in the complaints we receive which we believe reflect ongoing deficiencies in the jail medical care system.

Treating the medical and mental health needs of inmates is essential to protecting not only their health, but the public's. Many of the City's prisoners are among the most seriously ill persons in our community. Every year over 100,000 persons are admitted to City jails. Thousands are discharged back into society.[1] Many do not stay in jail long.

The Board of Correction has promulgated detailed Minimum Standards for the provision of Health Care and Mental Health Care services to City jail prisoners. These Standards have been in effect since the early 1990s. If the Board of Correction enforced these Minimum Standards and the Department of Correction complied with them, we would see significantly fewer problems with the provision of medical and mental health care in the City jails. The Board earlier this year completed a revision of the 1973 Minimum Standards for the City jails, a process that met with significant resistance from the large community of prisoners, former prisoners, families, advocates (including former Board members and staff). We thank Chairman

[1] *See* DOC website: http://www.nyc.gov/html/doc/html/stats/doc_stats.shtml (last visited October 21, 2008).

Martinez and the Fire and Safety Committee for taking an active interest in opening up that process and ensuring greater public participation.

We do not know what plans, if any, the Board has to propose changes to the Health and Mental Health Standards. We do know that it would be a terrible mistake for the Board to weaken them. We urge the Council to maintain oversight of the Board's actions in this critical area.

The delivery of quality health care services to prisoners is not just a legal and constitutional obligation;[2] it is an essential part of good community health care. But there are some practical concerns that need to be kept in mind to see that it is done right for the health and safety of inmates, staff and the general public.

We will address major issues that have repeatedly been the subject of inmate complaints and will discuss the general themes which have been raised by them. On some topics we suggest questions which the Council can pose to the Departments of Health and Correction. At the end of our presentation we will suggest some legislative remedies to improve the quality of jail medical care, to lower its costs, and to increase accountability.

DEATHS IN CUSTODY

A number of deaths of inmates have been reported to have occurred in City jails, including at the jail infirmary. Some of these deaths appear to have been preventable, based on initial reports.[3] Because the City Board of Correction no longer investigates the deaths of City inmates, we recommend that the Committee obtain and read the death review reports of the State Commission of Correction on a regular basis to gain a better understanding of how the jail medical care system may have failed and of the State Commission's recommendations for improvements to the jail health care system. The Council may also wish to consider taking steps to ensure that there is a public and transparent death review process by City officials, independent of the Department of Correction, since this function appears no longer to be exercised by the Board of Correction.

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[2] In the case of *Estelle v. Gamble*, the United States Supreme Court ruled that government has a constitutional obligation to meet the serious medical needs of its prisoners. New York City's Charter requires that the Department of Health provide for the care and treatment of City inmates. The City Board of Correction has promulgated Minimum Health Care Standards for the City Departments of Health and Correction, and any medical service contractor, to follow.

[3] We say "initial report" because although the Board of Correction is required by the City Charter to investigate and report on inmate deaths in custody, it has stopped issuing Death Review Reports, apparently preferring to rely on the Department to investigate and report on itself.

SUICIDE RESPONSE

As the Committee knows, the downsizing of psychiatric hospitals has flooded jails and prisons with people who suffer from mental illnesses. Mentally ill prisoners frequently encounter difficulty abiding by the rules and regulations of jail, and often find themselves in confrontations with staff and other prisoners. Many then find themselves punished and confined to their cells for 23 hours a day—a regimen which often results in psychiatric deterioration and increased risk of self-injury and suicide.

We have received complaints from prisoners and advocates about inadequate responses to threats of suicide. For example, a defense attorney reported to us that, after he called DOC to report a client's threat of suicide, the report was ignored and nothing was done until the next day, after the client tried to kill himself. We regularly contact DOHMH and PHS to request immediate intervention for prisoners who contact us, or whose lawyers contact us, because of threats of self-harm.

Although the Department of Health and Mental Hygiene says that it is its policy to require psychiatric hospitalization of suicidal inmates, it does not appear that this is the actual practice.

Many inmates who express suicidal thoughts or attempt to kill themselves are not hospitalized, but instead are placed on a jail "suicide watch." In at least one instance, a prisoner deemed by a judge to warrant suicide watch was not even placed in that status, and hanged himself within his first twenty hour hours in custody. Inmates confined by themselves in cells for 23 hours per day, especially those with underlying psychiatric problems, are at particular risk of suicide or self injury. We know of at least two suicides in the close custody unit (where vulnerable inmates who require separation and protection are housed). One of these suicides was an adolescent boy.

If an inmate has broken the jail rules, but is mentally ill, DOC will in many instances keep the inmate in punitive segregation, *i.e.*, in solitary confinement, for weeks or months at a time in a cellblock known as the Mental Health Unit for Infracted Inmates or "MHAUII." We believe, based on the consensus of medical expert opinion, that solitary confinement can be, and often is, dangerously inappropriate for mentally ill inmates: it can literally cause them to become severely depressed, or suicidal. MHAUII was created by the prior administration at our request, after we identified a number of prisoners in the Central Punitive Segregation Unit (or "CPSU") who had decompensated under the harsh conditions of isolated confinement. MHAUII does have clinical staff on-site which provides enhanced mental health services; it is clearly a step above what we saw ten years ago. But, in our view, it does not sufficiently respond to the disastrous effects that prolonged solitary confinement can have on persons with mental illness. The consequences of such confinement can be physically as well as psychologically injurious. We know that a large number of use of force incidents in the jails involve mentally ill inmates in MHAUII or other punitive segregation areas for mentally ill inmates, such as 12 Main in GRVC.

We have encountered other instances of the inhumane treatment of prisoners with mental illness in the jails. Several years ago, the current Department of Correction administration authorized a policy to place diagnosed mentally ill patients into solitary lockdown because it

suspected that they were "faking" mental illness to get out of serving time in punitive segregation. These inmates were known to Correction as "bing beaters" because they were perceived to be trying to beat the "bing" or jail punishment system. As a result of this directive, PHS and DOHMH supervisors reviewed, and in many cases reversed, the decisions of mental health treatment staff and "cleared" these inmates for punitive segregation. However, the Department of Correction (and perhaps DOHMH officials) ordered that these inmates be stripped practically naked, with only adult paper diapers and a so-called suicide smock, allegedly so they could not use clothes to hang themselves just in case the inmates really were suicidal or would try to fake a suicide, but go too far. These prisoners were also denied reading materials and writing utensils, although some were given crayons. The Department of Correction called this "No Harm Housing." To the outside observer, however, this treatment appeared clearly more punitive in nature than preventive, an effort to humiliate grown men by treating them like children.

After strenuous objections to this regimen were raised by this office and others, the policy was discontinued.

I dealt extensively with an acutely mentally ill prisoner, who is no longer in City custody, who jail and heath officials kept for months in solitary confinement 23 hours per day in punitive segregation despite his obvious mental illness.

When I saw him he had deteriorated to a primordial state of being; he was completely non-communicative, curled in a fetal position in a far corner of his bed. He had smeared his own feces around the cell but was kept locked in that filth. The stench could be smelled from outside the locked door. Staff told me that he had been seen eating his own waste. Nonetheless jail medical and guard staff had stripped him naked and kept him for months on end in a punitive segregation isolation cell without mental health care. While he was in the segregation area, a member of the staff of the Office of Compliance Consultants, which assists the federal court in monitoring conditions in the jails, visited this prisoner and observed the following:

> [The prisoner] was observed nude and asleep (fetal position) on the bed frame with the mattress folded at his feet. The cell was littered with three partially eaten paper food trays on the bed, one partially eaten food tray on the floor and dirty/soiled bed sheets on the floor. There was what looked and smelled like feces on the bed and on the paper on the desk and floor. A strong odor, akin to feces and urine, emanated from the cell. [We] discussed the matter with the area captain and Assistant Deputy Warden, who informed us that [the inmate] would be moved from [the cell] to facilitate cleaning.

After this visit, and after we continued to complain, the prisoner was transferred to a jail mental health unit and placed in lockdown isolation cell in a remote corner of the cellblock. DOHMH officials initially told us he was put in "the most intensive treatment area on Rikers." However, they did not tell us, as a doctor later revealed, that he was not getting any treatment in the intensive treatment unit because his condition was so severe that it was beyond their ability to treat on Rikers. But they did not admit him to a hospital, where a higher level of treatment was available, until we complained again. Instead DOHMH, its contractor PHS, and HHC sent him back and forth between Bellevue and Rikers, in a process of patient "dumping" known in the

system as "ping pong." Eventually the relevant officials were persuaded to keep him hospitalized at Bellevue for inpatient psychiatric treatment until he was released from City custody.

We think the treatment we have described in the preceding paragraphs is unjustified. However, when persons with mental illness are jailed, conflict between their psychiatric condition and even the legitimate needs of jail security is difficult to avoid; it is far better to avoid keeping them in the jail setting. **We think that the City Council can help by funding community treatment and housing programs to keep as many mentally ill persons out of jail as possible and to allow them to become healthy in an appropriate treatment environment. Jails simply are not that place.**

SICK CALL ACCESS

Inmates consistently report difficulty getting seen by medical staff at both daily and emergency sick call. Obviously, preventing access to sick call can be a dangerous failing if an inmate is seriously ill or injured and cannot get prompt treatment.

Board of Correction Minimum Health Care Standards require that :

> *Sick-call* shall be available at each facility to all inmates at a minimum of five days per week within 24 hours of a request or at the next regularly scheduled sick-call. Standard 302.c.1.
>
> Sick-call is to be conducted by a physician or under the supervision of a physician.
> (i) correctional personnel shall not prevent or delay, or cause to prevent or delay an inmate's access to medical or dental services.
> (ii) correctional personnel will not diagnose any illness or injury, prescribe treatment, administer medication . . . or screen sick-call requests.
> Standard 302.c.2.
>
> *Emergency Services*. All inmate requests for emergency medical or dental attention shall be responded to promptly by medical personnel. This shall include a face to face encounter between the inmate requesting attention and appropriate health care personnel. Standard 302.d.1.

Regular sick call

Despite the Board's rules, inmates have consistently complained to us over a period of years about restrictions on seeing a doctor at one of the largest Rikers jails, the Anna M. Kross Center, or AMKC. We have received many complaints that some housing areas simply are not called for sick call, sometimes for days on end. In other instances, inmates are taken to sick call, but sit in uncomfortable and crowded waiting rooms for hours on end, often late into the night; correctional staff then offer to return them to their housing areas, and many are so exhausted or frustrated that they do so, foregoing their right to medical attention. Some of the recent complaints describe what amounts to a crude quota system. Inmates have reported that only a

fixed number of those wanting to go to sick call will be taken there by correction staff (*e.g.* 4 out of 12). Then inmates are told to choose among themselves who needs to go the most. The rest are left behind and denied treatment.

We have requested that DOC and DOHMH enforce the rules against staff interference with daily sick call. The BOC Minimum Standards state that "correctional personnel shall not prevent or delay, or cause to prevent or delay an inmate's access to medical or dental services and that (ii) correctional personnel will not diagnose any illness or injury, prescribe treatment, administer medication . . . or screen sick-call requests." Standard 302.c.2.

Nothing has occurred to our knowledge in response to those requests, despite our numerous reports and demands to that effect. A simple request to post the rules in the housing areas about letting inmates see a doctor (*i.e.*, the Minimum Standards requirements) has been ignored by DOHMH and DOC for years.

Emergency sick call

We receive frequent complaints that access to emergency care is also denied, or an inmate's request for help is second guessed, particularly by untrained DOC staff, in violation of BOC Minimum Standards. For example, inmates say they are frequently told by officers, "you must be bleeding or dying or unconscious" to get emergency care, contrary to the above quoted Minimum Standard 302.d.1, which requires prompt response to *all* requests for emergency care.

These complaints are not just about correction staff, but are directed at to PHS health care staff as well. For example, an asthmatic with an acute breathing attack during the night complained to us that PHS told DOC staff to tell him to wait until morning when the clinic opened, instead of treating him in a nearby infirmary that was open all night.

Bureaucratic obstacles: No treatment without forms

Inmates frequently complain to us that PHS staff will not see or treat them in the jail clinics for injuries without a DOC "injury to inmate report." We know that a number of inmates are struck and injured in incidents that are not reported, and hence there is no "injury to inmate" form filled out. In some cases, the inmate is threatened by Correction staff not to report the use of force. It is only after the inmate contacts us, and we in turn contact DOHMH Risk Management, that these patients will be seen, examined, and treated.

Dental sick call

We still see long delays of days, weeks and months for complaints of dental pain, which in some instances no doubt represent true emergencies.

DOHMH has told us that part of the problem is a lack a sufficient number of dentists to meet the demand for care.

CONTINUITY OF CARE

We have received complaints that PHS does not continue medicines prescribed for AIDS patients, persons with heart disease or other chronic conditions before they were arrested.

We have had many complaints about treatment orders, either existing orders for chronic care from personal physicians or City hospitals, or even HHC specialist orders, that are not being followed by PHS or are changed without explanation to the patient.

SPECIAL MEDICAL DIETS

When a doctor orders a restricted medical diet it is because the patient cannot safely eat the regular jail diet served by the jail kitchens. High salt food can be dangerous to an inmate with high blood pressure or heart disease. Sugary sweet food can be dangerous to a diabetic.

Inmates regularly complain to us that these important medical diet orders from jail doctors are not maintained in place if an inmate is transferred to a different DOC jail. Often, special diet orders are not implemented by the kitchen in the first place, until we intervene and contact DOC and the DOHMH.

DISABLED / HANDICAPPED INMATES AND ORTHOPEDIC CARE

Many inmates are admitted to the jails with severe injuries or handicaps requiring intensive care and physical therapy to prevent permanently disabling conditions. Yet, to our knowledge, there is no organized system of treatment oversight or appropriate housing for physically disabled inmates, though many of them are housed in the North Infirmary Command on Rikers Island. We have long advocated that this care be placed under the supervision of a qualified orthopedist. Disabled inmates are housed in large dormitories with poor facilities. Physical therapy, when it is offered, is held in a cramped, poorly equipped room at the men's infirmary. Bathroom areas are deteriorated and have barriers that prevent handicapped inmates from safely using toilets, sinks and showers.

Patients complain that they do not get the early treatment or therapy that is critical to preventing loss of function or range of motion. We have repeatedly received complaints from prisoners that they are not being provided the physical therapy that is prescribed for them.

Just last Friday, October 24, seven prisoners held at the North Infirmary Command called our office to request assistance in obtaining functioning wheelchairs, follow-up ordered care for prosthetic limbs, pain medication and appropriate medical equipment, such as a foam mattress. One of these inmates, who is blind, told us that he had been required to go to court on a regular DOC bus, not the van in which he is ordinarily transported, and in trying to enter the bus had fallen, sustaining injuries which required his treatment at Bellevue.

We urge the Council to require that DOHMH establish a treatment unit for the physically disabled that is competently administered, handicapped accessible and that is under the direction of an orthopedist, with enough staff to provide assistance with daily living and the physical

therapy equipment and services necessary to allow patients to recover or regain as much function as possible.

Handicap and Wheelchair Transport

Disabled inmates who cannot walk need to be transported to and from court and medical appointments in appropriate vehicles. Until recently, DOC used converted vans without proper restraints to prevent patients, including those in wheelchairs, from being thrown about the cabin. The use of these jerry-rigged vans frequently resulted in serious injury to inmates during outside trips to court or to medical clinics. The City has had to pay thousands of dollars in lawsuits brought by inmates injured in these vans.

We are pleased to report that, under a settlement agreement with the U.S. Department of Justice, following our request for an investigation by Justice, DOC has recently purchased several specially manufactured wheelchair ambulettes for the transport of handicapped inmates.

DOC INTERFERENCE WITH MEDICAL ORDERS FOR DISABLED INMATES

The jails have many handicapped and disabled inmates, some of whom are paralyzed from gunshot wounds, falls, motor vehicle collisions or other types of accidents or diseases. Some are temporarily suffering from broken legs or arms or back injuries that prevent them from walking normally. Some of these inmates are confined to wheelchairs or must use canes or crutches or braces to get around. Inmates will come to jail with these aids and jail doctors will write permission slips to allow the disabled inmate to use them while in jail.

However, we are frequently called by prisoners and their families after DOC uniformed staff have confiscated medically ordered canes, wheelchairs, crutches, braces, or orthopedic shoes without first checking with medical staff to find out if the inmate has a doctor's order. We have complained to DOC, DOHMH and BOC officials about this practice for years with no apparent change.

The DOC and BOC have failed to address this issue or even reply to our repeated complaints over the past several years. As a result, we have requested an investigation by the Department of Justice of this apparent pattern and practice violation under the federal disability discrimination law.

In addition, various other DOC actions are reported by patients. For example, despite a federal court order prohibiting the practice, we learned of repeated instances of rear-cuffing of an asthmatic inmate who needed to be able to use his inhaler pump in an emergency on the way to court. A Deputy Warden ignored medical orders not to rear cuff the inmate, but to use instead the Department alternative of front cuffing the inmate to a secure to a waist chain that would still allow the inmate to use his inhaler. We complained to DOC Central Office but our complaints were ignored, and the asthmatic inmate continued to be rear-cuffed, until we said we would go to court and seek contempt sanctions.

PREGNANT WOMEN AND INFANT CARE

A significant number of pregnant women are jailed each year and require competent pre-natal and obstetrical care to insure a safe and healthy delivery.

Still, pregnant women's health care at the jail for women on Rikers is often deficient. One of the most egregious incidents we dealt with was witnessed by one of Legal Aid's parole attorneys: a pregnant inmate with HIV was brought to court for a parole hearing *while in labor*. Because she had HIV it was extremely important that her pregnancy be closely monitored so that when she gave birth, the HIV virus was not transmitted to the baby during delivery. Long before the incident, at the beginning of her pregnancy, we told PHS about this woman's need for special delivery precautions.

We do not know why jail doctors cleared her for court in this condition, but apparently this incident is not unique to PHS at Rikers. The *New York Times* reported several similar instances in other jails run by PHS where women gave birth in their cells, not a hospital, and were ignored by PHS staff.

We recommend that the Council investigate if there is a systemic PHS practice that delays hospitalization for near-term, high risk pregnancies

PHS STAFF RETALIATION

A number of complaints have been lodged against PHS staff at the jail infirmary at NIC and at other jails that inmates are called names, or threatened with discharge from the infirmary, or with disciplinary action for questioning their treatment or complaining to Legal Aid about their medical care.

Other inmates complain that when they ask for stronger pain medicine, PHS staff have called them names, like "junkies." The *New York Times* reported similar behavior by a PHS doctor in an Illinois correctional facility. Inmates complain to us that PHS staff even deny or reduce pain medicine doses, sometimes in retaliation for perceived insolence or making complaints to their attorneys.

We have passed on many such complaints over the years but have almost never received substantive responses to them. We think it would be helpful for the Council to inquire into what DOHMH has done about such behavior, both as a general preventive matter and in response to specific complaints or incidents.

The repeated complaints which we have heard about PHS health care staff calling names and making threats of retaliation also raises the issue of how PHS screens its applicants for professional temperament, what the PHS staff qualifications are, and what PHS senior staff do to enforce appropriate standards of behavior towards inmate patients. We know, for example, that PHS has hired in one case a doctor whose medical license was suspended in two states, including New York, after patients died under his care because of "gross negligence," as the Court described his conduct.

We brought this to the attention of PHS and DOHMH years ago but to our knowledge the doctor is still working in the jails for PHS and treating inmates.

We note that under the former not-for-profit medical provider in the jails, Montefiore Hospital and Medical Center, it was extremely rare for our office to receive complaints of this sort of abusive treatment from medical personnel. We think that was because the strong message from the top at Montefiore was to treat patients in jail with the courtesy and respect that patients in any other setting would receive. It does not appear that the present provider is sending or reinforcing that message.

LACK OF ACCOUNTABILITY

Since this March, because of the loss of staff, DOHMH has stopped providing written answers to our complaints or requests for information when we present medical releases.

The Board of Correction hardly ever responds to our investigation requests. Hundreds of requests for enforcement of the Board's Minimum Standards for Health Care have gone without any reply from the BOC. We understand that the BOC has a severe shortage of staff that impedes their ability to investigate medical care complaints, either individual complaints or complaints that suggest patterns of mistreatment.

We also understand that Board members are not provided with our email complaints about medical care, which are copied to BOC staff. This might help explain why the BOC's monthly public meetings have never, to our knowledge, ever discussed a single patient complaint forwarded from our office for BOC investigation. Beyond that, the BOC has never, to our knowledge, undertaken any investigation of patterns of violations of their own Minimum Health Care Standards, much less produced written reports to the public about compliance with the Standards.

CONCLUSION AND LEGISLATIVE RECOMMENDATIONS

Some history: for over 20 years, between 1975 and 1997, most jail medical care was provided by a local non-profit teaching hospital. Since 1997, the City has relied, unwisely we think, on for-profit contractor providers. Since then inmate complaints to us about medical care have increased dramatically. As you know, periodic exposes have appeared in the newspapers about poor care and preventable deaths.

Yet the City continues to issue contracts based on the for-profit model.

To address this problem, the City Council can enact legislation that creates a preference for local teaching hospitals in the contract bidding process for the provision of jail medical care.

The federal courts are increasingly limiting their scrutiny of human rights in local jails and prisons. A federal statute has allowed local governments, including New York City's, to roll back the judicial protection of constitutional and other human rights in jails. At present, the City is seeking to terminate the court order that sets minimum standards for humane treatment of

prisoners who are held in the City's psychiatric hospital wards—at Bellevue and Elmhurst Hospitals—because the level of care they need is not available in the jails. The City Council is in a position now to take the lead to demonstrate that New York City is serious about maintaining humane conditions in its jails. To this end, the City Council can enact legislation that authorizes the Board of Correction or aggrieved persons—the prisoners who were intended to benefit from their protections—to enforce its Minimum Standards in local courts.

Another measure that is likely to provide increased oversight of the delivery of medical care in the jails would be a requirement that the jail health services be subject to review and accreditation by the Joint Commission on Accreditation of Health Care Organizations (JCAHO). It is not a coincidence that the delivery of psychiatric care to hospitalized prisoners in New York City improved markedly after the Joint Commission indicated in 1987 that it would not accredit Bellevue Hospital unless it made significant, long term improvements on the forensic psychiatric ward.

Finally, the North Infirmary Command, the medical infirmary on Rikers Island for the care of male inmates, has limped along for two decades in a decrepit building that was converted from an old garage. The City had plans, known as the C-133 Project, to build a permanent medical center on Rikers Island to provide infirmary care (*not* hospital care) in an acceptable clinical environment and to attract quality staff to work there. This plan was defunded during the Giuliani Administration. We urge City Council to restore funding for this long overdue and necessary project.

Thank you for this opportunity to express our perspective on the oversight of City jail medical care.

THE COUNCIL
THE CITY OF NEW YORK

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I intend to appear and speak on Int. No. ______ Res. No. ______

☐ in favor ☐ in opposition

Date: ______

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Name: Roger PARRIS

Address: Dep. Commissioner

Dept. Correction

I represent: ______

Address: 60 Hudson St

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Name: Louise Cohen, Deputy Comm.

Address: 225 Broadway, NY, NY

I represent: DOHMH

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Name: Jason Hershberger, Asst. Comm.

Address: 225 Broadway, NY, NY DOHMH

I represent: DOHMH

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Name: Dale A Willar
Address: 199 Water St NYC 10038
I represent: Legal Aid Society
Address: 199 Water St NYC 10038

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Name: John Boston
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Name: Corinne Carey
Address: 125 Broad St., 19th Fl NY NY 10004
I represent: New York Civil Liberties Union
Address: Same.

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