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September 15, 2015

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New York City Council
Committee on Fire and Criminal Justice Services
Chair, Elizabeth Crowley
Committee Members: Mathieu Eugene, Fernando Cabrera,
Rory I. Lancman, Paul Vallone
250 Broadway
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**Re: Proposed Int. Nos.: 0643-A-2015, 0706-A-2015, 0753-A-2015,
0758-A-2015, 0766-A-2015, 0767-A-2015, 0768-A-2015 and 0784-A-2015**

Dear Chair Crowley and Members of the Committee on Fire and Criminal Justice Services:

The Legal Aid Society writes in support of the City Council's passing each of the following eight bills: Proposed Int. Nos.: 0643-A-2015, 0706-A-2015, 0753-A-2015, 0758-A-2015, 0766-A-2015, 0767-A-2015, 0768-A-2015 and 0784-A-2015.

The Legal Aid Society supported these eight bills before the Committee on Fire and Criminal Justice Services. We hope that the whole City Council will act to pass them because they will enact measures that ensure accountability and transparency by the New York City Department of Correction (DOC) concerning the operations of our City's jails. The bills provide for reporting of vital information concerning the treatment of individuals incarcerated in the jails and provide individuals in the jails with information about their rights and about DOC use of force policies. The Council should enact these measures to ensure that information is recorded reliably and disclosed transparently and to ensure that our jails are humane and lawful institutions. This is important information that should be public. The Council should instruct the DOC to maintain all of the reports on its website for comparison and so that trends may be identified.

Int. No. 0643-A-2015, City Council Bill re: Waiting Lists for Restrictive Housing and Clinical Alternatives to Punitive Segregation Units

This bill requires that DOC post, every 60 days, a report on the Department of Correction website detailing the number of individuals in the jails who are awaiting placement into punitive segregation, restrictive housing units (RHU), and clinical alternative to punitive segregation (CAPS) housing, disaggregated by "M" designation (known by mental health staff). The report will include the number of individuals on each wait list categorized by the amount of time they have been awaiting transfer. The bill also requires DOC to post a quarterly report on individuals subject to transfer to the New York State Office of Mental Health and the New York State Office for People with Developmental Disabilities pursuant to CPL § 730. The inclusion of data about CPL 730 delays is especially important in light of the sometimes substantial delays that have occurred over the past year. This quarterly report is required to include the waiting period as well as the housing areas where the individuals were housed during that wait time for transfer. This information is important and should be public. These reports will provide a comprehensive picture of individuals with mental illness who are not being accommodated in a speedy manner within our jails.

Int. No. 0706-A-2015, City Council Bill re: Quarterly Report re: Visitation in the City Jails

This bill requires that DOC post a quarterly report on visitation in the City jails. It includes the requirement that DOC post the same information for 2015, if available. The importance of visitation for individuals who are incarcerated, for the safety of jails and for their communities, is well documented. The consistent conclusions from expert reports is 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;¹ people who receive visits from and maintain relationships with friends and family while incarcerated have improved behavior during their time in custody,² contributing both to a safer and more rehabilitative atmosphere in the facility; and 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

¹ 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).

² 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).

system.³ Yet, the DOC is currently seeking to restrict and limit visitation through changes to the Board of Correction Jail Minimum Standards. These restrictive measures should not be permitted if they result in a reduction in family and community contact. Individuals who maintain close family ties are less likely to be repeat offenders, and our jail system should not be taking action to interfere with family relations by limiting visiting or making it more difficult or unpleasant. This quarterly report is *inter alia* required to record visitation rates and reasons for why visits are not completed. Reporting on the utilization of visitation and the barriers to visitation will provide essential information about failures to improve and encourage visitation in our City jails. The Legal Aid Society supports this bill because this information is important and should be public. These reports will provide a comprehensive picture of how visitation is utilized and help to identify misguided policy decisions that create unnecessary barriers to visitation.

Int. No. 0753-A-2015, City Council Bill re: Quarterly Report re Bail Status

This bill requires that DOC post information about bail and the criminal justice system on the Department of Correction website. Depending on the information, it must be posted quarterly, semi-annually or annually. The Legal Aid Society supports reporting on the bail status of individuals housed in the New York City jails. Our bail system operates under the presumption that we are making it more likely that people will appear for trial when money is posted. Yet, research shows that, for many cases, this presumption is not true.⁴ 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 racially skewed police practices, bail has become an important factor driving mass incarceration of youth of color. Reporting of information required by Intro. 753 will provide information to identify unfairness of the current bail system and lead to constructive remediation efforts. This information is important and should be public.

³ 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 their parents’ incarceration and help to mitigate many of the negative outcomes for children that are associated with parental incarceration”) (citation omitted).

⁴ 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. 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. For poor families with little or no discretionary income the setting of almost any amount is disastrous. See Mary T. Phillips, New York City Criminal Justice Agency, *Bail, Detention and Nonfelony Case Outcomes*, May 2007.

Int. No. 0758-A-2015, City Council Bill re: DOC Grievance System Reports

This bill requires that the DOC report quarterly on information pertaining to the utilization and results of the inmate grievance system disaggregated by facility and housing area type. The Legal Aid Society supports reporting on information about the grievance process. Reporting of information required by Intro. 758 will expose areas in the jails that require oversight (due to numerous grievances) and areas in the jails where the grievance process is not functioning (no grievances filed or evidence of lack of hearings and appeals). The grievance process is a source of numerous complaints by our clients. The public reporting required by this bill will identify problems with the grievance process and assist in developing improvements to the jails and the grievance process.

Int. No. 0766-A-2015, City Council Bill re: Population Demographics of City Jails

The Legal Aid Society supports this bill, which will make public information about the demographic population of the City jails.

Int. No. 0767- A-2015, City Council Bill re: Publication of DOC Policies on Use of Force

The Legal Aid Society supports this bill which requires the DOC to post its policies regarding use of force on individuals housed in our jails. It is vital that the policies concerning use of force practices in our jails be available publicly to provide the necessary framework for evaluating data about violence in the jails and to better inform public policy on violence reduction efforts.

Int. No. 0768-A-2015, City Council Bill re: Enhanced Supervision Housing

This bill contains highly salutary reporting provisions that will help bring transparency and accountability about segregated housing areas and mental health units in the jails and the outcomes of those placements. The Legal Aid Society welcomes these measures requiring the DOC to collect and publish data disaggregated by housing area, so that public policy can be informed by actual evidence rather than anecdotes. The reporting provisions will help to identify trends in violence, failures to identify mental health crises and to provide adequate treatment, and the adequacy of the provision of required services. Compiling relevant data and making it public will help both the agency and the public judge whether these programs are accomplishing their purposes. Individualized reports by housing area will help determine the effectiveness of the various different programs in the jails. Individualized reports 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. Providing outcome data on each type of confinement setting will provide essential information on human and fiscal costs and permit identification of valid evidence-based rehabilitation programs.

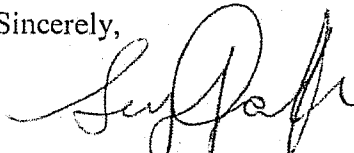
Proposed Int. No. 0784-A-2015, City Council Bill re: Inmate Bill of Rights

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. The Legal Aid Society 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.

Conclusion:

We thank the Committee on Fire and Criminal Justice Services for continuing to focus its attention on the City jails. We hope that the whole City Council will act to enact these measures to ensure accountability and transparency by the New York City Department of Correction (DOC) concerning the operations of our City's jails. Council should enact these measures to ensure that information is recorded reliably, disclosed transparently and to ensure that our jails are humane and lawful institutions. This is important information that should be public.

Sincerely,



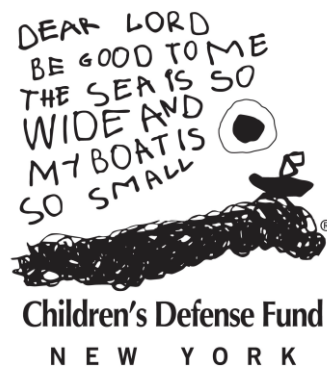
Seymour W. James, Jr.
Attorney-in-Chief

Cc: New York City Council Speaker, Melissa Mark-Viverito

Testimony of the Children's Defense Fund – New York
Before the Committee on Fire and Criminal Justice
Services

New York City Council
September 16, 2015

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Good morning. My name is Beth Powers. I am the Director of Youth Justice at the Children's Defense Fund – New York. Thank you to Councilmember Crowley and the members of the Fire and Criminal Justice Services Committee for this opportunity to testify today.

The Children's Defense Fund's (CDF) Leave No Child Behind® mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective and independent voice for all the children of America who cannot vote, lobby or speak for themselves. We pay particular attention to the needs of poor children, children of color and those with disabilities. CDF – New York's unique approach to improving conditions for children combines research, public education, policy development, community organizing and advocacy activities, making us an innovative leader for New York's children, particularly in the areas of health, education, early childhood and juvenile justice.

It is the position of the Children's Defense Fund – New York (CDF-NY) that adolescents should not be detained in adult jails. We support raising the age of criminal responsibility in New York to 18, (to be on par with the majority of states in the county), and have repeatedly called for removing youth under age 18 from adult correctional settings. CDF-NY is the co-lead of Raise the Age – New York (RTA-NY), a statewide campaign to increase public awareness of the need to implement a comprehensive approach to raise the age of criminal responsibility in NYS so that the legal process responds to all children as children and services and placement options better meet the rehabilitative needs of all children and youth. We are concerned by the conditions and treatment of adolescents and young adults (up to age 25) in adult facilities, and continue to call for the realization of age-appropriate protections and services for this population. Neuroscience indicates that brain development continues into the mid-twenties. Later stages of brain development include areas responsible for impulse control, planning, and thinking ahead, amongst others. This is why youth under 25 years old often exhibit more impulsive behavior with less ability to focus on consequences of behavior than older individuals. For meaningful intervention to be made, young people require age-appropriate services and programming that recognize their relative stage of brain development and ensure that their unique needs are appropriately met.

We thank the Council for making efforts to keep the DOC accountable for the treatment of detained people, including youth, and support reporting requirements that increase transparency and assist in holding the DOC accountable for the treatment of incarcerated people in NYC Jails. We support all introductions today aimed at increasing transparency for detained people (Int 0643-2015, Int 0706-2015, Int 0753-2015, Int 0758-2015, Int 0766-2015, Int 0767-2015, Int 0768-2015, Int 0784-2015).

Int 0643-2015

This bill requires the Department of Correction to post a monthly report on its website indicating the number of inmates waiting for placement in restrictive housing and clinical alternative to punitive segregation housing. It is widely accepted that prolonged isolation does not meet young people's needs. Rather it is excessively harmful, especially to youth and young adults. A December 2014 report issued by the New York Advisory Committee to the U.S. Commission on Civil Rights details the detrimental effects of solitary confinement on young people in New York jails and prisons. We applaud the DOC for eliminating the use of punitive segregation for 16 and 17 year olds and excluding them from ESHU. We are encouraged by plans to eliminate the use of punitive segregation for 18-21 year olds and remove them from ESHU by January 2016. We urge the Council to ensure the DOC follows through on these commitments and encourage inclusion of young people up to age 25. We support Int 0643-2015 and encourage monthly reporting to be disaggregated by

age which will allow for assessing the number of young people in need of age appropriate interventions.

Int 0706-2015

This bill requires the DOC to publish a quarterly report on the number of visitors in both Rikers Island and in borough facilities, and to differentiate between attorney visits and other types of visitors. The bill also requires the DOC to report the number of visitations in which the visitor was unable to visit their inmate, and to record and report the reason the visit was unsuccessful. The DOC must report the total number of visits and the rate of visits per inmate. All reporting differentiates between Rikers Island and borough facilities.

Regular access to family is vital for justice system involved young people to help maintain positive ties to family and the community. The identification of barriers to successful visitation is necessary in order to ensure youth and young adults have optimal access to vital family support. If passed, we encourage City Council to monitor the rate of visitation and denials of visitation as well as the reasons for denial of visitation. DOC has requested a change to the current Board of Correction minimum standards regarding visiting. CDF opposes any changes to visitation that would decrease visiting quantity or quality for young people. Given the possibility of such changes we urge the passage of this bill to provide transparency of visiting practices in city jails.

We encourage DOC to replicate visiting models utilized in juvenile justice facilities. Such practices prioritize family visits with the recognition that visitation with family is critical for the development and well-being of youth. Facilities are encouraged to accommodate visits by providing family friendly visiting spaces, a variety of visiting times, and assisting families with transportation needs. Visiting is regularly part of the youth's overall service plan. Barriers to visitation are addressed as an important component to meeting the needs of detained youth. Youth detained in adult facilities should be afforded the same opportunities necessary to successfully return home as youth in juvenile facilities, of which family connections are a vital component.

Int 0753-2015

This bill requires the Department of Information Technology and Telecommunications (DoITT) to report on a number of issues pertaining to the inmate population of the DOC, many of which relate to length of stay and the role of bail in detainment. CDF supports reporting requirements regarding length of stay and bail in city jails. Many New Yorkers are subject to incarceration in city jails not because of the risk they pose to society but rather because they cannot afford the monetary amount required for release. Young people, particularly young people of low income or those lacking family support are particularly financially vulnerable. The city recently saw the tragic effects of this system of lengthy stays and bail in the case of Kalif Browder. Kalif was a young person detained at Rikers for three years on a robbery charge that was eventually dismissed. He and his family were unable to pay the \$3,000 bail. He tragically committed suicide upon release. Requiring reporting on bail for inmates in NYC will allow for analysis of barriers to release from city jails. We support the passage of this bill and urge such reporting to be utilized in reforming the bail system to avoid disproportionately incarcerating people with the sole barrier of being unable to pay for their freedom.

Int 0758-2015

This bill requires the Department to report on the number of grievances filed at every step of the grievance process, and the outcome of such grievances at each state of the grievance system. The bill also requires the Department to list separately the system's functioning in those facilities in which grievance offices or grievance form deposit boxes are not available, and to list separately whether grievances are filed through the grievance office, the grievance form drop box, or through grievance program staff members.

The Department of Justice (DOJ) report regarding conditions for adolescents at Rikers shed light on the conditions for youth at RNDC on Rikers. CDF supports reporting requirements regarding grievances filed to not only allow for tracking of grievances across facilities but also to highlight areas in which grievances are known to likely exist but formal complaints are lacking. Such reporting will inform analysis of the quality of the grievance process. We encourage reporting on grievances as well as analysis of barriers to use of the grievance process. We encourage DOC to consider the developmental level of youth and ensure grievance procedures are easily understood by adolescents in addition to the adult population in city jails. We further encourage consideration of varying literacy levels and encourage ensuring all inmates have full access to grieving in a manner that is accessible to them and free from fear of retribution.

Int 0766-2015

This bill requires the DOC to publish demographic information regarding its inmates, including their age, gender, race, and the borough in which they were arrested quarterly, based on the average daily population of the city's jails for the preceding quarter. The disproportionate impact of incarceration on people of color is well documented and clearly apparent in New York City jails. CDF encourages the publication of demographic data on all of the indicators proposed in this bill.

Int 0767-2015

This bill requires the Department of Correction to publish their rules and regulations/directives regarding the use of force by Correction staff on inmates, including describing in what circumstances the use of force, or the use of certain equipment, is warranted. CDF supports transparency surrounding use of force practices by DOC staff. The DOJ recently highlighted the abuse of use of force against youth at Rikers. CDF remains concerned about the safety of young people in adult jails. We strongly encourage the use of age appropriate de-escalation techniques and only when necessary to prevent imminent harm, the use of restraint techniques approved for use within youth justice facilities.

Int 0768-2015

This bill expands the list of facilities for which reporting on conditions in punitive segregation facilities and other specialized facilities is required, adding any facility in which inmates are regularly kept to their cells for more than the maximum number of hours allowed by the jail standards, regardless of whether such placement is due to a punishment for committing an infraction or not, which would include ESHU. CDF is encouraged by the elimination of extreme isolation in the form of punitive segregation and ESHU for youth 17 and under in DOC facilities as well as the commitment of removing youth 18-21 from such settings by 2016. We encourage expanding these restrictions to young people up to age 25. We support expanding reporting requirements to include reporting on all forms of extreme isolation to ensure young people are protected from the detrimental effects of such treatment.

Int 0784-2015

This bill would require the Department of Correction to communicate to every inmate their rights as inmates in plain and simple language, both in writing and orally. CDF supports informing inmates of their rights. We encourage DOC to ensure language used to disseminate this information accounts for the developmental stages, literacy levels, and primary language of young people in DOC custody. We encourage inclusion of grievance policies with explanation of rights should an inmate feel their rights have been violated.

We thank the Council for making efforts to keep the DOC accountable for the treatment of inmates, including young people, and support reporting requirements that increase transparency and assist in holding the DOC accountable for the treatment of incarcerated people in NYC Jails. We encourage the Council to consider requiring disaggregation of reported data by age, race/ethnicity, and gender to provide particular indicators of the impact on young people, particularly young people of color, of NYC jail practices. Thank you for the opportunity to testify. I can be reached at 212-697-0882 or epowers@childrensdefense.org should you have any questions regarding this testimony.