

**Board of Correction
Hearing on Proposed Rule
Re: Enhanced Supervision Housing**

**Testimony of the Correctional Association of New York
Presented by: Gabrielle Horowitz-Prisco
Director, Juvenile Justice Project**

December 19, 2014

Minor revisions to reflect comments made during hearing

My name is Gabrielle Horowitz-Prisco. I am the Director of the Juvenile Justice Project of the Correctional Association of New York and an attorney who previously represented children in Family Court. The Correctional Association of New York (CA) is an independent, non-profit organization founded by concerned citizens in 1844 and granted unique authority by the New York State Legislature to inspect prisons and report its findings and recommendations to the legislature, the public and the press. Through monitoring, research, public education and policy recommendations, the CA strives to make the administration of justice in New York State more fair, efficient, and humane. We also operate youth leadership development programs for young people impacted by the justice and child welfare systems. I thank the Board of Correction for this opportunity to testify.

We share with the Board of Correction a deep concern about the conditions young people face on Rikers Island. We were relieved to learn this week that the solitary confinement of 16- and 17-year-olds on Rikers has, according to Mayor de Blasio, ended.¹ We also support the exclusion of 16- and 17-year-olds from the proposed Enhanced Supervision Housing (ESH).

We simultaneously remain profoundly alarmed at conditions faced by young people between the ages of 16 and 25 housed on Rikers, including: the continued use of solitary confinement for 18- to 25-year-olds; the proposed creation of new Enhanced Supervision Housing (ESH), which categorically excludes only 16- and 17-year-olds; and claims made this week by the United States attorney in federal court that recent reforms aimed at young people on Rikers are not reaching 18-year-olds.²

Although my testimony will focus specifically on the needs and rights of young people, the Correctional Association strongly urges the Board of Correction to reject the proposed ESH rule as it applies to all people. My colleague Scott Paltrowitz will present testimony focused on the devastating impact the proposed rule would have on adults.

My testimony will focus on the following 6 recommendations:

1. The Department of Correction should end the use of all forms of extended isolation, regardless of their name or acronym and including Enhanced Supervision Housing, for all people under 25-years-old and under.
2. The Board of Correction should immediately evaluate the implementation of any reforms that are or will be used as an alternative to solitary confinement for 16- and 17-year-olds, including all special housing units and services.
3. The Board of Correction should immediately issue proposed rules related to the needs of young people on Rikers Island.

¹ Michael Schwirtz and Michael Winerip, De Blasio Pledges Reforms During Rikers Island Visit, NYT, Dec.18, 2014,atA33, online version with headline De Blasio Tours Rikers Jail Complex for First Time as Mayor, available at: <http://www.nytimes.com/2014/12/18/nyregion/mayor-bill-de-blasio-rikers-island-visit.html?emc=eta1>, last accessed 12/18/2014.

² Rebecca Davis O'Brien, Federal Prosecutors Sue New York City Over Rikers Troubles, WSJ, Dec. 18, 2014, <http://www.federal.com/articles/federal-prosecutors-seek-to-intervene-in-rikers-inmate-lawsuit-1418923065>, last visited 12/18/2014.

4. All children under 18-years-old who are detained or incarcerated should, as soon as possible, be removed from Rikers Island and transferred to the youth justice system as soon as relevant law allows. The Department of Correction should not be responsible for housing any child under 18-years-old.
5. The Department of Correction should move quickly to effectuate separate housing for 18- to 21-year-olds on Rikers, consistent with the Department's August 8, 2014 request for a variance to do so.
6. New York City should deepen its investment in the continuum of non-residential community based services, programs, and treatments that keep kids out of jail and prison, and have been proven to improve youth outcomes and public safety while saving taxpayer money.

When I was eleven years old, I went to London with my family, where we visited a medieval torture museum. I remember my horror at what was done to people suspected of crimes. One day some eleven-year-old will visit Rikers- which I hope will by then be a park- and she will visit a museum on the Island. And she will ask her mother, as I asked my own, *how* could they let that happen?

When evaluating the proposed rule and all reforms, I ask you to ask yourself: what response would you want the Department of Correction to have, what response would you want this Board to have, if your own child was on Rikers?

Adolescent Brain Development

In considering these recommendations I also urge the Board to consider a robust body of scientific research on adolescent brain development demonstrating that young adults, even in their late teens, do not have the ability make mature decisions and that the brain does not fully develop until the twenties.³ The prefrontal cortex of the brain is crucial for weighing risk vs. reward, future planning, impulse control, and its development is critical for rational decision-making.^{4 5} The prefrontal cortex

³ See National Institute of Mental Health, *The Teen Brain Still Under Construction*, <http://www.nimh.nih.gov/health/publications/the-teen-brain-still-under-construction/index.shtml#pub1>, last visited 12/18/2014. See also, MacArthur Foundation Research Network, *Less Guilty By Reason of Adolescence*, http://www.adjj.org/downloads/6093issue_brief_3.pdf, last visited 12/18/2014.

⁴ This section draws heavily on a research fact sheet prepared by the Campaign for Youth Justice, and significant portions related to research findings in the field of adolescent brain development is paraphrased with their permission.

⁵ Antoine Bechara et al., *Characterization of the Decision-Making Deficit of Patients with Ventromedial Prefrontal Cortex Lesions*, 123 *Brain* 2189, 2198-2200 (2000) (patients with lesions in the prefrontal cortex suffered from impairments in the ability to make real-life decisions because of an insensitivity to future consequences, whether reward or punishment); Antoine Bechara et al., *Dissociation of Working Memory from Decision Making Within the Human Prefrontal Cortex*, 18 *J. Neurosci.* 428, 428, 434 (1998) (prefrontal cortex is necessary for decision-making in tasks involving evaluation of risk and reward); Antonio R. Damasio & Steven W. Anderson, *The Frontal Lobes, in Clinical Neuropsychology* 404, 434 (Kenneth M. Heilman & Edward Valenstein eds., 4th ed. 2003) (one "hallmark of frontal lobe dysfunction is difficulty making decisions that are in the long-term best interests" of the individual); see also Elizabeth R. Sowell et al., *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 *Nature Neurosci.* 859, 860 (1999) (frontal lobes are essential for planning and organization); see also, e.g., Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* 23, 24, 141

is one of the last parts of the brain to develop and is still not fully mature even in late adolescence.⁶ As anyone who has been a teenager or has parented one, engaging in reckless behavior is normal during adolescence.⁷ It is harder for adolescents to exercise self-control as compared to adults.⁸ Adolescents and young adults are more likely to place greater weight on rewards than on risks when making choices,⁹ and they often do not properly assess risk to begin with. Adolescents and young adults are also less likely to consider the long-term consequences of their actions and are more vulnerable to the negative influences of environment and peer pressure than adults.

At the same time, recent neuroscientific advances also offer an opportunity to rethink our approach to youth justice. Recognizing the malleability of the adolescent and young adult brain provides policymakers with a chance to design and deliver rehabilitative services that effectively guide young people during a critical period in their development and identity formation. This approach is well aligned with the goals of holding young people accountable and improving public safety. By applying the science of brain development, policymakers can now ensure that justice systems hold young people accountable in ways that are developmentally appropriate and thus far more likely to achieve their intended goals of reducing recidivism and increasing the positive long-term outcomes for system-involved young people.

(2001); see also B.J. Casey et al., *Structural and Functional Brain Development and its Relation to Cognitive Development*, 54 *Biological Psychol.* 241, 244-246 (2000).

⁶ Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 *Proc. Nat'l Acad. Sci.* 8174, 8177 (2004); Casey et al., *supra* note 14, at 243; Linda Spear, *The Behavioral Neuroscience of Adolescence* 108-111 (forthcoming 2009).

⁷ Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Rev.* 339, 344 (1992).

⁸ Elizabeth Cauffman & Laurence Steinberg, *(Im)Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 *Behav. Sci. & L.* 741, 748-749, 754 & tbl. 4 (2000); see also Laurence Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 *Developmental Psychol.* 1764, 1774-1776 (2008); see also Adriana Galvan et al., *Risk Taking and the Adolescent Brain: Who is at Risk?*, 10 *Developmental Sci.* F8, F13 (2007) (in study of individuals aged 7 to 29, finding that impulse control continues to develop over the course of adolescence and early adulthood); Rotem Leshem & Joseph Glicksohn, *The Construct of Impulsivity Revisited*, 43 *Personality & Individual Differences* 681, 684-686 (2007) (reporting significant decline in impulsivity from ages 14-16 to 20-22 on two different impulsivity scales).

⁹ Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1012 (2003); see also Arnett, *supra* note 1, at 350-353 (summarizing evidence that adolescents' poor capacity for assessing probabilities plays a role in their reckless behavior); Bonnie L. Halpern-Felsher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 *J. Applied Developmental Psychol.* 257, 261, 264-270 (2001); Susan G. Millstein & Bonnie L. Halpern-Felsher, *Perceptions of Risk and Vulnerability, in Adolescent Risk and Vulnerability* 15, 34-35 (Baruch Fischhoff et al. eds., 2001); Elizabeth Cauffman et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Test*, *Developmental Psychol.* 1, 11, 14 (forthcoming 2009).

Recommendations

- 1. The Department of Correction should end the use of all forms of extended isolation, regardless of their name or acronym and including Enhanced Supervision Housing, for all people under 25-years-old and under.**

In September of 2014, the Department of Correction announced it would end the use of solitary for 16- and 17-year-olds by the end of December 2014.¹⁰ Just two days ago, after a tour of Rikers on December 17th, Mayor de Blasio announced that the city had met its commitment.¹¹ The Mayor stated that as of December 4th, 2014, all 16- and 17-year-olds had been removed from solitary confinement, indicating that two new housing units with therapeutic programs were created in its stead.¹²

The Correctional Association applauds these critical reforms, while remaining extremely concerned about the continued extended isolation of young adults (18- to 25-year-olds), including in both the proposed Enhanced Supervision Housing (ESH) and in “traditional” solitary confinement units.¹³

Extended isolation can be psychologically shattering for anyone and we strongly opposes its use for all persons, regardless of age. We simultaneously note that extended isolation is especially harmful for developing adolescent minds.¹⁴ Solitary confinement has been shown to both cause and exacerbate mental illness in adolescents.¹⁵

People detained in Enhanced Supervision Housing, including those 18- to 25-years-old will still be subjected to long periods of isolation, with only 7 hours out of cell time a day. In “My Night in Solitary”, Rick Raemisch, the newly appointed head of corrections for the state of Colorado movingly documents the twenty hours he voluntarily spent in solitary confinement in a prison he is

¹⁰ Michael Schwartz, Solitary Confinement to End for Youngest on Rikers Island, NYT, September 29, 2014, http://www.nytimes.com/2014/09/29/nyregion/solitary-confinement-to-end-for-youngest-at-rikers-island.html?_r=0 last accessed 12/18/2014.

¹¹ FN 1 (Schwartz and Winerip)

¹² *Ibid.* (Schwartz and Winerip)

¹³ The Department has indicated that it will continue to place adults in solitary confinement. *See Ibid.* (Schwartz and Winerip)

¹⁴ American Civil Liberties Union and Human Rights Watch, *Growing Up Locked Down, Youth in Solitary Confinement in Jails and Prisons Across the United States* (2012).

¹⁵ *Id.* (Growing Up Locked Down), at 23 *citing* Maureen L. O’Keefe et al., Colorado Department of Corrections, “One Year Longitudinal Study of the Psychological Effects of Administrative Segregation,” October 31, 2010, <https://www.ncjrs.gov/pdffiles1/nij/grants/232973.pdf> (accessed August 27, 2012); Peter Scharff Smith, National Institute of Corrections, “The effects of solitary confinement: Commentary on One Year Longitudinal Study of the Psychological Effects of Administrative Segregation,” June 2011, www.community.nicic.gov/cfs-filesystemfile.ashx/_key/CommunityServer.CommunityServer.Components.PostAttachments/00.00.05.95.22/Supermax_-_2Doo_-T-_2Soo_-Smith.pdf (accessed August 27, 2012).

in charge of.¹⁶ What is so profound is that Mr. Raemisch describes the negative emotions he started experiencing way before he reached 20 hours in isolation. Mr. Raemisch discusses difficulties sleeping just hours into his solitary confinement, which began at 6:45pm. He discussed the boredom he felt at 6:15a- less than twelve hours into isolation, and how by 11:10a when he broke down and asked an officer the time (he had pledged to himself not to), it felt like he had been in isolation for days. He writes that he is confident he would have lost his mind with more time. If these kinds of negative impacts happened in way less than 20 hours to a man who chose his own isolation and had the power to end it any moment, why do we think that 17 hours a day in an ESH cell, for days on end and longer, is going to help people who may already be struggling with self-regulation?

The Correctional Association is also deeply concerned that the Department of Correction is continuing the practice of solitary confinement for those 18 and older. Solitary confinement is torture. It is also a counter-productive public safety strategy.

And we know that young adults are deeply impacted by the continuing use of solitary confinement. As the United States Attorney noted in federal court yesterday, 18-year-olds, including “including many with mental illnesses,” are still being held in punitive solitary confinement for excessive periods of time.¹⁷

The New York State Advisory Committee to the U.S. Commission on Civil Rights recently issued a report recommending a ban on solitary confinement for all persons under 25. The Committee noted that youth in solitary confinement, who are primarily Black and Latino/a, are subject to abhorrent conditions.¹⁸ They also note that exposure to solitary devastates youth, including exacerbating already existing mental health issues; increasing the risk of suicide; increasing the risk of self-harm; causing serious harm to physical health; and stunting the social, emotional and physical development of young adults.¹⁹

The Board of Correction should categorically end the use of all forms of extended isolation, regardless of their name or acronym and including both solitary confinement and ESH, for all people under 25-years-old.

¹⁶ Rick Raemisch, My Night in Solitary, NYT, 2/20/2014, <http://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html?module=Search&mabReward=relbias%3Aw%2C{%221%22%3A%22RI%3A5%22}>, last accessed 12/18/2014.

¹⁷ Rebecca Davis O'Brien, Federal Prosecutors Sue New York City Over Rikers' Troubles, WSJ, 12/18/2014, <http://www.wsj.com/articles/federal-prosecutors-seek-to-intervene-in-rikers-inmate-lawsuit-1418923065> last accessed 12/18/2014.

¹⁸ Report of the New York State Advisory Committee to the U.S. Commission on Human Rights, *see* page 60.

¹⁹ Civil Rights Panel to Release Report on the Solitary Confinement of Youth in New York, December 16, 2014.

2. The Board of Correction should immediately evaluate the implementation of any reforms that are or will be used as an alternative to solitary confinement for 16- and 17-year-olds, including all special housing units and services.

The Correctional Association was heartened by the very recent Mayor's announcement, during his first visit to Rikers, that the Department of Correction has begun implementing alternatives to solitary confinement for 16- and 17-year-olds.²⁰

We urge the Board of Corrections to immediately evaluate the implementation of these reforms to ensure that appropriate and meaningful services are offered, that young people's therapeutic needs are met, and that 16- and 17-year-olds remain out of all forms of isolation.

The Mayor also announced the creation of two new housing units that will separate certain teenagers from the general population while providing therapeutic programs.²¹

Concerns were recently brought to our attention about adolescents housed in a new Transitional Repair Unit being confined to their cells for extended periods of time, including allegedly for twenty hours a day. We have not yet been able to verify this information, and do not know whether the TRU is one of the two housing units referenced by the Mayor. If this is accurate, this reflects less out of cell time for adolescents in the TRU than for adults in the ESH. While the new TRU may be seen by the Department of Correction as part of a progression- we ask what exactly that progression is, and what checks and balances are in place to ensure that adolescents progress? We also strongly oppose cell confinement for 20 hours a day, whether as part of a new or old program or under any name. Extensive research demonstrates that there is no therapeutic or reparative basis for this practice.

We are acutely mindful that ending the use of solitary for 16- and 17-year-olds is only the first step, albeit a crucial one in true reform, and that ongoing evaluation of replacement programs and housing units is needed. The ongoing public release of information related to new reforms is also a necessary part of system transformation.

To this end, we urge the Board of Corrections to regularly visit any specialized housing units for young people, including any new housing created as an alternative to solitary confinement. We further urge the Board to review the potential existence of the Transitional Repair Unit, including the conditions for any youth housed inside.

We also urge the Board to regularly speak to young people on Rikers, while recognizing that young people may not feel they can safely share their opinions and experiences with outsiders who will leave the Island, while they remain locked on an island well known for its culture of violence and brutality. And we urge the Board to regularly review data related to youth in these units, including about the frequency and types of programming offered, educational access, visiting access, and day-to-day operations. Finally, we urge the Board to regularly and publicly release information related to its evaluations.

²⁰ *Ibid.* (Schwartz and Winerip)

²¹ *Ibid.* (Schwartz and Winerip)

It is crucial that the extended isolation of the 16- and 17-year-olds removed from solitary confinement does not continue under a new name or acronym. And it is crucial that the housing, programs, and services offered as alternatives to solitary are both well-implemented and subject to external and public review.

3. The Board of Correction should immediately issue proposed rules related to the needs of young people on Rikers Island.

The federal Department of Justice’s investigation into conditions for adolescent males on Rikers found a pervasive culture of brutal violence against children. In the words of U.S. Attorney Preet Bharara:

As our investigation has shown, for adolescents, Rikers Island is a broken institution. It is a place where brute force is the first impulse rather than the last resort; where verbal insults are repaid with physical injuries; where beatings are routine while accountability is rare; and where a culture of violence endures even while a code of silence prevails. The adolescents in Rikers are walled off from the public, but they are not walled off from the Constitution. Indeed most of these young men are pre-trial detainees who are innocent until proven guilty, but whether they are pre-trial or convicted, they are entitled to be detained safely and in accordance with their constitutional rights – not consigned to a corrections crucible that seems more inspired by Lord of the Flies than any legitimate philosophy of humane detention. These young men, automatically charged as adults despite their age under New York law, may be on an island and out of sight, but they can no longer remain out of mind. Attention must be paid immediately to their rights, their safety and their mental well being, and in the wake of this report we will make sure that happens one way or another.²²

Federal prosecutors sued New York City just yesterday to hasten the pace of reforms for adolescents at Rikers Island. “In court papers, Attorney General Eric Holder and Manhattan U.S. Attorney Preet Bharara wrote that despite four months of negotiations with the city, federal prosecutors ‘have been unable to reach agreement as to lasting, verifiable, and enforceable reforms.’”²³

In discussing the sheer brutality children and adults on Rikers face day in and out, we want to acknowledge that these problems long preceded the current Department of Correction (DOC) and city administration. We are heartened by Commissioner Ponte’s long history of correctional reforms. And we applaud Mayor de Blasio for his stated commitment to change, and stand fully ready to aid the city in their efforts. It is also essential to note that the culture of jails and prisons often transcend individual administrations and leaders. The Department of Justice report is shocking not for its revelations—the violence on Rikers, including that against children, was made public long ago. What

²² United States Department of Justice, U.S. Attorney for the Southern District of New York Finds Pattern and Practice of Excessive Force and Violence at New York City Jails on Rikers Island That Violates the Constitutional Rights of Adolescent Male Inmates, August 4, 2014, <http://www.justice.gov/opa/pr/us-attorney-southern-district-new-york-finds-pattern-and-practice-excessive-force-and>.

²³ Jake Pearson and Tom Hays, Associated Press, Feds Sue NYC Over Rikers Island Jail Violence, http://hosted.ap.org/dynamic/stories/U/US_NYC_JAILS_FEDERAL_INVESTIGATION?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT, last visited 12/18/2014.

is shocking is how little has been done to protect the children and adults on Rikers, despite this knowledge. The tentacles of brutality on Rikers are historic and deep.

In October 2008, on Rikers Island, detained individuals murdered 18-year-old Christopher Robinson as guards looked the other way. The Correction Department investigated.²⁴ According to the Village Voice, “(t)he agency interviewed hundreds of teen inmates and concluded that under a practice known as ‘the Program,’ guards were deputizing inmates, often in the teen jail, and pitting them against one another in fights as a way to keep order and extort them for phone, food, and television privileges. In the wake of the scandal, two guards, Khalid Nelson and Michael McKie, were convicted of complicity in the Program and sentenced to short prison terms. A third officer (at the time of publication) was awaiting sentencing. Twelve inmates were also indicted in the case, with five pleading guilty. Meanwhile, Correction Department officials claimed they had taken a series of steps that dealt with the problem, including staffing dayrooms with officers and reducing the guard-inmate ratio.”²⁵

On May 9, 2012, the Village Voice ran an investigative piece about the violence and slashings on Rikers with photos that were so graphic and chilling, I circulated the article to staff with a warning.²⁶ The photos show many detained individuals with their cheeks literally slashed open, with gaping flesh wounds. As reported in that article, the photos confirmed what the Voice had reported *four years* before that “fight club” style violence by and against detained people on Rikers was promoted by correctional staff.²⁷ As also reported, this behavior continued even after two members of correctional staff went to prison.²⁸ On January 30, 2011, New York Magazine published “Lords of Rikers” offering chilling details about the culture in the adolescent units on Rikers. The piece opens with “One Main, House of Pain,” the name given by detained people to the Robert N. Davoren Center or RNDC, the building on Rikers housing adolescent males.²⁹

The Correctional Association was excited when, as part of the Juvenile Justice Coalition, it met with the Board of Correction’s Adolescent Committee last April and witnessed firsthand the Committee’s commitment to addressing the needs of adolescents on Rikers. It is our understanding that the Adolescent Committee spent approximately a year gathering information, including from a diverse constellation of stakeholders, and crafting recommendations for reform with the goal of proposed rule-making.

We were then deeply disappointed to learn that the Board appears to be no longer poised to engage in rulemaking as it relates to adolescents and young adults. We wonder what happened to the proposed rules: where did they go? We urge the Board pick its critical work back up. The young people on Rikers need this work done, and you as a Board are well positioned to do it.

²⁴ The Village Voice, Graham Rayman, Rikers Violence: Out of Control, May 9, 2012, <http://www.villagevoice.com/2012-05-09/news/rikers-violence-out-of-control/>.

²⁵ *Ibid* (Village Voice, italics added)

²⁶ *Ibid* (Village Voice)

²⁷ *Ibid* (Village Voice)

²⁸ *Ibid* (Village Voice)

²⁹ New York Magazine, Geoffrey Gray, *The Lords of Rikers*, January 30, 2011, <http://nymag.com/news/features/70978/>

- 4. All children under 18-years-old who are detained or incarcerated should, as soon as possible, be removed from Rikers Island and transferred to the youth justice system. The Department of Correction should not be responsible for housing any child under 18-years-old.**

All 16- and 17-year-olds must be removed from Rikers Island. If a parent held their child in the same conditions that the federal Department of Justice found on Rikers Island, New York City's child welfare agency would use its emergency removal powers to remove that child and its siblings from the home, and that parent would be charged with child abuse in New York City Family Court. That parent would also likely face criminal prosecution. Maintaining children on Rikers Island is indefensible, as the rampant violence, abuse, and torture of children on the Island cannot be reformed sufficiently or quickly enough and as the Department of Correction is simply designed to serve young people. The Department of Justice recommends that 16- and 17-year-olds currently in Rikers be moved off-island to a separate facility operated by the New York City Department of Correction (DOC). It is profoundly challenging to envision how the same agency and employees responsible for creating and maintaining the brutal culture at Rikers over a long period of time will have the capacity and commitment to create a new culture of safety attuned to the unique developmental needs of children. While itself not perfect, the city's youth justice system is an overwhelmingly more appropriate place for children.

In a recent New York Times article DOC Commissioner Ponte discussed the national trend of reform-minded jails moving away from punishing young people and focusing instead on treatment through programs. The Commissioner said: "We've never done that in New York" and "How do you take officers that were hired and trained to deal with adult inmates, to manage the juveniles? That is a major cultural shift for staff to go through." "What exists currently is an adult model in an adolescent facility," he added.³⁰ The Commissioner is exactly right, and there is little evidence to believe that New York can train its current staff to appropriately serve young people, particularly when many of those current staff members either actively engaged in or tacitly allowed the culture of brutal violence documented in the media and DOJ report to flourish.

Fortunately, there is no need for New York City to enter this uncharted territory where failure is likely. New York City's youth justice system is already designed to serve young people, and it is better-equipped meet their educational, treatment, and program needs. Consequently, the youth justice system is better poised to improve youth outcomes, reduce recidivism, and improve public safety than is DOC.

Additionally removing 16- and 17-year-olds from DOC custody will allow the Department to focus its energy and resources on improving conditions for detained adults on Rikers. Although the DOJ report focused on adolescent males, the conditions for the adult men and women on Rikers are as brutal, inhumane, and unconscionable as those for children. The New York Times has extensively reported on the grievous and permanent harms being inflicted on those with mental illness on Rikers,³¹ and reliable information documenting the sheer brutality against adults on Rikers abound in

³⁰ New York Times, *New York Hires Consultant to Create Rikers Island Reform Plan*, September 8, 2014, <http://www.nytimes.com/2014/09/09/nyregion/new-york-hires-consultant-to-create-rikers-island-reform-plan.html>.

³¹ See FN 1 (New York Times), and see New York Times, *Rikers: Where Mental Illness Meets Brutality in Jail*, July 14, 2014, <http://www.nytimes.com/2014/07/14/nyregion/rikers-study-finds-prisoners-injured-by-employees.html>.

both the media and litigation. The agency can wait no longer to stop the brutality against adults, and removing kids from DOC custody will allow its focus to sharpen and deepen.

Although not without its own flaws, New York City's current youth justice system is the result of many years of sustained reform efforts by this Council and other elected officials, agency officials, and advocates. In December 2010, in recognition of the overlap between the child welfare and youth justice populations, the former NYC Department of Juvenile Justice merged with the Administration for Children's Services (ACS).³² ACS operates two secure youth detention facilities, contracts with private providers who operate non-secure detention facilities, and manages the Close to Home initiative, including contracts with private providers for the placement of youth post-sentencing. ACS and the New York City Department of Probation also operate and support a myriad of interventions specifically designed to keep kids out of facilities, instead providing the kinds of robust community based options proven to improve outcomes for youth and families and reduce recidivism, all at a fraction of the cost of lock-up. Staff members in the city's youth justice system are aware when hired that they will be working with children, and have applied specifically to do so. Many youth justice staff have specialized training in critically important areas such as positive youth development³³ and trauma-informed care. ACS is currently partnered with NYU Langone and Bellevue Hospital to operate grants totaling more than seven million dollars to treat childhood trauma, including for youth in the city's detention system.³⁴ Additionally, the measurement and behavioral management tools used in the youth justice system are specifically designed for youth. ACS also has landmark protections for lesbian, gay, bi-sexual, transgender, and questioning (LGBTQ) youth, including an anti-discrimination policy and guidelines that is a national model. Research demonstrates that LGBTQ youth are over-represented in the youth justice system and are particularly vulnerable to routine and systemic mistreatment³⁵ and sexual abuse in detention. It is also worth noting that ACS currently houses youth convicted of "juvenile offenses" (a statutorily enumerated set of more serious crimes, including some violent crimes) in its secure detention facilities.

By contrast, the DOC system is, in Commissioner Ponte's own words, designed for adults. The agency, staff and system generally lack the training, expertise, skill set, and concrete tools to effectively work with youth. As the DOJ report makes clear in no uncertain terms, staff is not adequately trained or supported to understand adolescent brain development and respond to youth in a developmentally appropriate manner. There is also notorious staff resistance to working with adolescents on Rikers. New York's adult criminal justice system currently provides LGBTQ youth, including those on Rikers, with no specific protections. There is a voluntary transgender women's housing unit on Rikers, but it is restricted only to adult transgender women and no similar option exists for transgender girls or boys or transgender adult males. It is wholly unclear how the same

³² http://www.nyc.gov/html/acs/html/pr_archives/pr10_12_07.shtml.

³³ An increasing number of practitioners and advocates in the youth justice field are adopting a positive youth development (PYD) perspective and other strengths-based strategies that focus on youths' assets rather than their weaknesses or problems. PYD can be described as a youth's development of a sense of competency, usefulness, belonging, and influence. National Juvenile Justice Network, Policy Platform: Approaching Juvenile Justice With a Focus on Positive Youth Development 1 (2010) (citations omitted) (internal quotation marks omitted), http://www.njjn.org/uploads/digital_library/resource_1427.pdf.

³⁴ <http://www1.nyc.gov/office-of-the-mayor/news/060-13/mayor-bloomberg-partnership-nyu-langone-medical-center-bellevue-hospital-to>

³⁵ See Majd, et. al., Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts (2009), and see Prisco, *When the Cure Makes You Ill: Seven Principles for Changing the Course of Youth Justice*, (56 N.Y.L. Sch. L. Rev. 1413).

agency and staff that brought us the conditions documented in appalling detail over the span of years will suddenly, even with the support of a resource-rich outside consultant, be able to appropriately serve the unique developmental needs of children in the justice system. Additionally, it would be a tremendous waste of taxpayer dollars and city resources to recreate a youth justice oriented facility within the adult jail system when New York City already has a robust youth justice agency—one that this body and others have already invested significant resources in reforming. Finally, removing youth from DOC custody would, as detailed above, also allow DOCS to focus its energy and monies on bringing desperately needed reforms to the adults currently suffering on Rikers.

5. The Department of Correction should move quickly to effectuate separate housing for 18- to 21-year-olds on Rikers, consistent with the Department’s August 8, 2014 request for a variance to do so.

On August 8, 2014, Department of Correction Commissioner Ponte requested a variance to house 18- to 21-year-olds separate from older adults on Rikers Island. In the request, the Commissioner stated that the plan to house 18- to 21-year-olds in the same location “presents an opportunity to provide this group of inmates with services that will have a positive impact on safety, inside and outside of jails.”³⁶ The Commissioner further noted: “(I)ncarcerated young adults in this age group are disproportionately affected by poverty, homelessness, poor employment prospects, and drug use—all of which contribute to their involvement with the criminal justice system.”³⁷ The Commissioner also outlines in the request a series of reasons why separate housing for 18- to 21-year-olds will better serve this population, including making “school attendance a natural part of the day, as it is for adolescents.”³⁸ The Commissioner further stated that “introducing comprehensive reentry services available to all 18-21year olds in their housing areas will transform the jail environment and help achieve the highest levels of safety in the jails and in New York City’s neighborhoods.

Given these promised benefits for both 18- to 21-year-old and the community at large, the Correctional Association was disheartened to learn that the proposed plan for separate housing for this population has not moved forward, and urges the Board of Correction and the Department of Correction to immediately re-engage this process.

6. New York City should deepen its investment in the continuum of non-residential community based services, programs, and treatments that keep kids out of jail and prison, and have been proven to improve youth outcomes and public safety while saving taxpayer money.

Although a full exploration of this topic is beyond the scope of this hearing and testimony, the Correctional Association urges the Board of Correction and city policymakers to further explore and support how the city can deepen its investment in the continuum of non-residential, community-based services, programs, and treatments that keep kids out of jail and prison, are proven to work to reduce recidivism and improve youth outcomes, and drastically save resources.

³⁶ Commissioner Joseph Ponte, New York City Department of Correction, Request for Variance: Young Adult Housing, August 8, 2014.

³⁷ *Ibid.* (Ponte)

³⁸ *Ibid.* (Ponte)

An ever-increasing body of evidence demonstrates that incarcerating children leads to increased violence, recidivism, and poor life outcomes for youth (even when controlling for severity of offense).³⁹ ⁴⁰ Youth with mental health concerns, detention (pretrial) and incarceration (posttrial) have been shown to exacerbate mental health symptoms and increase the likelihood that youth will engage in self-harm and commit suicide.⁴¹ Youth who have experienced secure detention or incarceration are also less likely to return to school.⁴² Economists have shown that incarcerating youth decreases their future earning potential and the chance that they will remain in the labor market.⁴³

As my colleague Angelo Pinto noted recently in the Crime Report: “For many children under 16, New York State has made tremendous strides in improving youth justice. The state closed 28 youth facilities since 2009. Fewer kids are locked up and more are receiving the kinds of community-based rehabilitative and therapeutic services that reduce recidivism. The Close to Home Initiative means that many New York City youth are no longer being sent to facilities hours from their homes and are instead being served in either programs or facilities closer to family and community supports, making it more likely they will succeed upon release. And New York State has dramatically reduced the number of youth who spend time in pre-trial detention by expanding the range of community-based programs that keep kids home with the help and services they need. All of these reforms have been accomplished without compromising public safety: youth crime in New York continues to decline.”⁴⁴

The time is ripe for New York City to continue to deepen this investment in what works, with a particular focus on expanding the capacity of programs and services for older adolescents and young adults in the justice system. For too long, the focus on community-based options has centered on the needs of younger youth.

³⁹ The section of this testimony focusing on community-based services draws heavily on a piece I authored, *When the Cure Makes You Ill: Seven Principles for Changing the Course of Youth Justice*, (56 N.Y.L. Sch. L. Rev. 1413) (FN 16).

⁴⁰ See NEELUM ARYA, CAMPAIGN FOR YOUTH JUST., JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA 1 (2007),

http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf; AMANDA PETTERUTI ET AL., JUST. POL’Y INST., THE COSTS OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES MAKE GOOD FISCAL SENSE 1, app. A, at 16–9 (2009),

http://www.justicepolicy.org/images/upload/09_05_REP_CostsOfConfinement_JJ_PS.pdf; see also BARRY HOLMAN & JASON ZIEDENBERG, JUST. POL’Y INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 1, 4–5 (2006), http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf; see also *The Consequences Aren’t Minor: The Impact of Trying Youth as Adults and Strategies for Reform*, CAMPAIGN FOR YOUTH JUST. 1 (Liz Ryan & Jason Ziedenberg eds., 2007),

http://www.campaignforyouthjustice.org/documents/CFYJNR_ConsequencesMinor.pdf; Task Force on Community Preventive Services, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, 32 AM. J. PREV. MED. S7 (2007), <http://www.thecommunityguide.org/violence/mcgowanarticle4.pdf>.

⁴¹ HOLMAN & ZIEDENBERG, *supra* note 11, at 2. See PETTERUTI ET AL., *supra* note 11, at 18. Additionally, youth who have been detained or incarcerated also have a significantly higher mortality rate than the general population, including homicide-related deaths; this increase in mortality rate disproportionately impacts youth of color and female youth, with the highest mortality rate found among African American male youth. See Linda A. Teplin, et al., *Early Violent Death Among Delinquent Youth: A Prospective Longitudinal Study*, 115 PEDIATRICS 1586, 1586 (2005).

⁴² HOLMAN & ZIEDENBERG, *supra* note 11, at 9.

⁴³ *Ibid.* at 2.

⁴⁴ The Crime Report, Angelo R. Pinto, *Freeing Youths from Solitary Isn’t Enough*, October 7, 2014, <http://www.thecrimereport.org/viewpoints/2014-10-freeing-youths-from-solitary-isnt-enough>.

Conclusion

One of the most treasured of quotations is John Donne's: "No man is an island." For far too long, this city has turned a willful and blind eye to Rikers Island. The children and adults detained on Rikers have literally been cast aside on a separate island- geographically close, but a vast chasm away- where they are subject to unspeakable taxpayer-funded violence. But we must speak this suffering, we must fully acknowledge it in our city's hearts, minds and policies, and we must end it now.

**Board of Correction
Hearing on Proposed Rule
Re: Enhanced Supervision Housing**

**Testimony of the Correctional Association of New York
Presented by: Gabrielle Horowitz-Prisco
Director, Juvenile Justice Project**

December 19, 2014

My name is Gabrielle Horowitz-Prisco. I am the Director of the Juvenile Justice Project of the Correctional Association of New York and an attorney who previously represented children in Family Court. The Correctional Association of New York (CA) is an independent, non-profit organization founded by concerned citizens in 1844 and granted unique authority by the New York State Legislature to inspect prisons and report its findings and recommendations to the legislature, the public and the press. Through monitoring, research, public education and policy recommendations, the CA strives to make the administration of justice in New York State more fair, efficient, and humane. We also operate youth leadership development programs for young people impacted by the justice and child welfare systems. I thank the Board of Correction for this opportunity to testify.

We share with the Board of Correction a deep concern about the conditions young people face on Rikers Island. We were relieved to learn this week that the solitary confinement of 16- and 17-year-olds on Rikers has, according to Mayor de Blasio, ended.¹ We also support the exclusion of 16- and 17-year-olds from the proposed Enhanced Supervision Housing (ESH).

We simultaneously remain profoundly alarmed at conditions faced by young people between the ages of 16 and 25 housed on Rikers, including: the continued use of solitary confinement for 18- to 25-year-olds; the proposed creation of new Enhanced Supervision Housing (ESH), which categorically excludes only 16- and 17-year-olds; and claims made this week by the United States attorney in federal court that recent reforms aimed at young people on Rikers are not reaching 18-year-olds.²

Although my testimony will focus specifically on the needs and rights of young people, the Correctional Association strongly urges the Board of Correction to reject the proposed ESH rule as it applies to all people. My colleague Scott Paltrowitz will present testimony focused on the devastating impact the proposed rule would have on adults.

My testimony will focus on the following 6 recommendations:

1. The Department of Correction should end the use of all forms of extended isolation, regardless of their name or acronym and including Enhanced Supervision Housing, for all people under 25-years-old and under.
2. The Board of Correction should immediately evaluate the implementation of any reforms that are or will be used as an alternative to solitary confinement for 16- and 17-year-olds, including all special housing units and services.
3. The Board of Correction should immediately issue proposed rules related to the needs of young people on Rikers Island.

¹ Michael Schwirtz and Michael Winerip, De Blasio Pledges Reforms During Rikers Island Visit, NYT, Dec.18, 2014,atA33, online version with headline De Blasio Tours Rikers Jail Complex for First Time as Mayor, available at: <http://www.nytimes.com/2014/12/18/nyregion/mayor-bill-de-blasio-rikers-island-visit.html?emc=eta1>, last accessed 12/18/2014.

² Rebecca Davis O'Brien, Federal Prosecutors Sue New York City Over Rikers Troubles, WSJ, Dec. 18, 2014, <http://www.federal.com/articles/federal-prosecutors-seek-to-intervene-in-rikers-inmate-lawsuit-1418923065>, last visited 12/18/2014.

4. All children under 18-years-old who are detained or incarcerated should, as soon as possible, be removed from Rikers Island and transferred to the youth justice system as soon as relevant law allows. The Department of Correction should not be responsible for housing any child under 18-years-old.
5. The Department of Correction should move quickly to effectuate separate housing for 18- to 21-year-olds on Rikers, consistent with the Department's August 8, 2014 request for a variance to do so.
6. New York City should deepen its investment in the continuum of non-residential community based services, programs, and treatments that keep kids out of jail and prison, and have been proven to improve youth outcomes and public safety while saving taxpayer money.

Adolescent Brain Development

In considering these recommendations I urge the Board to consider a robust body of scientific research on adolescent brain development demonstrating that young adults, even in their late teens, do not have the ability make mature decisions and that the brain does not fully develop until the twenties.³ The prefrontal cortex of the brain is crucial for weighing risk vs. reward, future planning, impulse control, and its development is critical for rational decision-making.^{4 5} The prefrontal cortex is one of the last parts of the brain to develop and is still not fully mature even in late adolescence.⁶ As anyone who has been a teenager or has parented one, engaging in reckless behavior is normal during adolescence.⁷ It is harder for adolescents to exercise self-control as compared to adults.⁸

³ See National Institute of Mental Health, The Teen Brain Still Under Construction, <http://www.nimh.nih.gov/health/publications/the-teen-brain-still-under-construction/index.shtml#pub1>, last visited 12/18/2014. See also, MacArthur Foundation Research Network, Less Guilty By Reason of Adolescence, http://www.adj.org/downloads/6093issue_brief_3.pdf, last visited 12/18/2014.

⁴ This section draws heavily on a research fact sheet prepared by the Campaign for Youth Justice, and significant portions related to research findings in the field of adolescent brain development is paraphrased with their permission.

⁵ Antoine Bechara et al., *Characterization of the Decision-Making Deficit of Patients with Ventromedial Prefrontal Cortex Lesions*, 123 *Brain* 2189, 2198-2200 (2000) (patients with lesions in the prefrontal cortex suffered from impairments in the ability to make real-life decisions because of an insensitivity to future consequences, whether reward or punishment); Antoine Bechara et al., *Dissociation of Working Memory from Decision Making Within the Human Prefrontal Cortex*, 18 *J. Neurosci.* 428, 428, 434 (1998) (prefrontal cortex is necessary for decision-making in tasks involving evaluation of risk and reward); Antonio R. Damasio & Steven W. Anderson, *The Frontal Lobes, in Clinical Neuropsychology* 404, 434 (Kenneth M. Heilman & Edward Valenstein eds., 4th ed. 2003) (one "hallmark of frontal lobe dysfunction is difficulty making decisions that are in the long-term best interests" of the individual); see also Elizabeth R. Sowell et al., *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 *Nature Neurosci.* 859, 860 (1999) (frontal lobes are essential for planning and organization); see also, e.g., Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* 23, 24, 141 (2001); see also B.J. Casey et al., *Structural and Functional Brain Development and its Relation to Cognitive Development*, 54 *Biological Psychol.* 241, 244-246 (2000).

⁶ Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 *Proc. Nat'l Acad. Sci.* 8174, 8177 (2004); Casey et al., *supra* note 14, at 243; Linda Spear, *The Behavioral Neuroscience of Adolescence* 108-111 (forthcoming 2009).

⁷ Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Rev.* 339, 344 (1992).

⁸ Elizabeth Cauffman & Laurence Steinberg, *(Im)Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 *Behav. Sci. & L.* 741, 748-749, 754 & tbl. 4 (2000); see also Laurence Steinberg et al., *Age Differences in*

Adolescents and young adults are more likely to place greater weight on rewards than on risks when making choices,⁹ and they often do not properly assess risk to begin with. Adolescents and young adults are also less likely to consider the long-term consequences of their actions and are more vulnerable to the negative influences of environment and peer pressure than adults.

At the same time, recent neuroscientific advances also offer an opportunity to rethink our approach to youth justice. Recognizing the malleability of the adolescent and young adult brain provides policymakers with a chance to design and deliver rehabilitative services that effectively guide young people during a critical period in their development and identity formation. This approach is well aligned with the goals of holding young people accountable and improving public safety. By applying the science of brain development, policymakers can now ensure that justice systems hold young people accountable in ways that are developmentally appropriate and thus far more likely to achieve their intended goals of reducing recidivism and increasing the positive long-term outcomes for system-involved young people.

Recommendations

- 1. The Department of Correction should end the use of all forms of extended isolation, regardless of their name or acronym and including Enhanced Supervision Housing, for all people under 25-years-old and under.**

In September of 2014, the Department of Correction announced it would end the use of solitary for 16- and 17-year-olds by the end of December 2014.¹⁰ Just two days ago, after a tour of Rikers on December 17th, Mayor de Blasio announced that the city had met its commitment.¹¹ The Mayor stated that as of December 4th, 2014, all 16- and 17-year-olds had been removed from solitary

Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model, 44 *Developmental Psychol.* 1764, 1774-1776 (2008); see also Adriana Galvan et al., *Risk Taking and the Adolescent Brain: Who is at Risk?*, 10 *Developmental Sci.* F8, F13 (2007) (in study of individuals aged 7 to 29, finding that impulse control continues to develop over the course of adolescence and early adulthood); Rotem Leshem & Joseph Glicksohn, *The Construct of Impulsivity Revisited*, 43 *Personality & Individual Differences* 681, 684-686 (2007) (reporting significant decline in impulsivity from ages 14-16 to 20-22 on two different impulsivity scales).

⁹Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1012 (2003); see also Arnett, *supra* note 1, at 350-353 (summarizing evidence that adolescents' poor capacity for assessing probabilities plays a role in their reckless behavior); Bonnie L. Halpern-Felsher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 *J. Applied Developmental Psychol.* 257, 261, 264-270 (2001); Susan G. Millstein & Bonnie L. Halpern-Felsher, *Perceptions of Risk and Vulnerability*, in *Adolescent Risk and Vulnerability* 15, 34-35 (Baruch Fischhoff et al. eds., 2001); Elizabeth Cauffman et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Test*, *Developmental Psychol.* 1, 11, 14 (forthcoming 2009).

¹⁰ Michael Schwartz, *Solitary Confinement to End for Youngest on Rikers Island*, NYT, September 29, 2014, http://www.nytimes.com/2014/09/29/nyregion/solitary-confinement-to-end-for-youngest-at-rikers-island.html?_r=0 last accessed 12/18/2014.

¹¹ FN 1 (Schwartz and Winerip)

confinement, indicating that two new housing units with therapeutic programs were created in its stead.¹²

The Correctional Association applauds these critical reforms, while remaining extremely concerned about the continued extended isolation of young adults (18- to 25-year-olds), including in both the proposed Enhanced Supervision Housing (ESH) and in “traditional” solitary confinement units.¹³

Extended isolation can be psychologically shattering for anyone and the Correctional Association strongly opposes its use for all persons, regardless of age. We simultaneously note that extended isolation is especially harmful for developing adolescent minds.¹⁴ Solitary confinement has been shown to both cause and exacerbate mental illness in adolescents.¹⁵

People detained in Enhanced Supervision Housing, including those 18- to 25-years-old will still be subjected to long periods of isolation, with only 7 hours out of cell time a day. In “My Night in Solitary”, Rick Raemisch, the newly appointed head of corrections for the state of Colorado movingly documents the twenty hours he voluntarily spent in solitary confinement in a prison he is in charge of.¹⁶ What is so profound is that Mr. Raemisch describes the negative emotions he started experiencing way before he reached 20 hours in isolation. Mr. Raemisch discusses difficulties sleeping just hours into his solitary confinement, which began at 6:45pm. He discussed the boredom he felt at 6:15a- less than twelve hours into isolation, and how by 11:10a when he broke down and asked an officer the time (he had pledged to himself not to), it felt like he had been in isolation for days. He writes that he is confident he would have lost his mind with more time. If these kinds of negative impacts happened in way less than 20 hours to a man who chose his own isolation and had the power to end it any moment, why do we think that 17 hours a day in an ESH cell, for days on end and longer, is going to help people who may already be struggling with self-regulation?

¹² *Ibid.* (Schwartz and Winerip)

¹³ The Department has indicated that it will continue to place adults in solitary confinement. *See Ibid.* (Schwartz and Winerip)

¹⁴ American Civil Liberties Union and Human Rights Watch, *Growing Up Locked Down, Youth in Solitary Confinement in Jails and Prisons Across the United States* (2012).

¹⁵ *Id.* (Growing Up Locked Down), at 23 *citing* Maureen L. O’Keefe et al., Colorado Department of Corrections, “One Year Longitudinal Study of the Psychological Effects of Administrative Segregation,” October 31, 2010, <https://www.ncjrs.gov/pdffiles1/nij/grants/232973.pdf> (accessed August 27, 2012); Peter Scharff Smith, National Institute of Corrections, “The effects of solitary confinement: Commentary on One Year Longitudinal Study of the Psychological Effects of Administrative Segregation,” June 2011, www.community.nicic.gov/cfs-filesystemfile.ashx/_key/CommunityServer.CommunityServer.Components.PostAttachments/00.00.05.95.22/Supermax_-_2Doo_-T-_2Soo_-Smith.pdf (accessed August 27, 2012).

¹⁶ Rick Raemisch, My Night in Solitary, NYT, 2/20/2014, <http://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html?module=Search&mabReward=relbias%3Aw%2C{%221%22%3A%22RI%3A5%22}>, last accessed 12/18/2014.

The Correctional Association is also deeply concerned that the Department of Correction is continuing the practice of solitary confinement for those 18 and older. Solitary confinement is torture. It is also a counter-productive public safety strategy.

And we know that young adults are deeply impacted by the continuing use of solitary confinement. As the United States Attorney noted in federal court yesterday, 18-year-olds, including “including many with mental illnesses,” are still being held in punitive solitary confinement for excessive periods of time.¹⁷

The New York State Advisory Committee to the U.S. Commission on Civil Rights recently issued a report recommending a ban on solitary confinement for all persons under 25. The Committee noted that youth in solitary confinement, who are primarily Black and Latino/a, are subject to abhorrent conditions.¹⁸ They also note that exposure to solitary devastates youth, including exacerbating already existing mental health issues; increasing the risk of suicide; increasing the risk of self-harm; causing serious harm to physical health; and stunting the social, emotional and physical development of young adults.¹⁹

The Board of Correction should categorically end the use of all forms of extended isolation, regardless of their name or acronym and including both solitary confinement and ESH, for all people under 25-years-old.

2. The Board of Correction should immediately evaluate the implementation of any reforms that are or will be used as an alternative to solitary confinement for 16- and 17-year-olds, including all special housing units and services.

The Correctional Association was heartened by the very recent Mayor’s announcement, during his first visit to Rikers, that the Department of Correction has begun implementing alternatives to solitary confinement for 16- and 17-year-olds.²⁰

We urge the Board of Corrections to immediately evaluate the implementation of these reforms to ensure that appropriate and meaningful services are offered, that young people’s therapeutic needs are met, and that 16- and 17-year-olds remain out of all forms of isolation.

The Mayor also announced the creation of two new housing units that will separate certain teenagers from the general population while providing therapeutic programs.²¹

¹⁷ Rebecca Davis O’Brien, Federal Prosecutors Sue New York City Over Rikers Troubles, WSJ, 12/18/2014, <http://www.wsj.com/articles/federal-prosecutors-seek-to-intervene-in-rikers-inmate-lawsuit-1418923065> last accessed 12/18/2014.

¹⁸ Report of the New York State Advisory Committee to the U.S. Commission on Human Rights, *see* page 60.

¹⁹ Civil Rights Panel to Release Report on the Solitary Confinement of Youth in New York, December 16, 2014.

²⁰ *Ibid.* (Schwartz and Winerip)

²¹ *Ibid.* (Schwartz and Winerip)

Concerns were recently brought to our attention about adolescents housed in a new Transitional Repair Unit being confined to their cells for extended periods of time, including allegedly for twenty hours a day. We have not yet been able to verify this information, and do not know whether the TRU is one of the two housing units referenced by the Mayor. We raise it here because we are acutely mindful that ending the use of solitary for 16- and 17-year-olds is only the first step, albeit a crucial one in true reform, and that ongoing evaluation of replacement programs and housing units is needed. The ongoing public release of information related to new reforms is also a necessary part of system transformation.

To this end, we urge the Board of Corrections to regularly visit any specialized housing units for young people, including any new housing created as an alternative to solitary confinement. We further urge the Board to review the potential existence of the Transitional Repair Unit, including the conditions for any youth housed inside.

We also urge the Board to regularly speak to young people on Rikers, while recognizing that young people may not feel they can safely share their opinions and experiences with outsiders who will leave the Island, while they remain locked on an island well known for its culture of violence and brutality. And we urge the Board to regularly review data related to youth in these units, including about the frequency and types of programming offered, educational access, visiting access, and day-to-day operations. Finally, we urge the Board to regularly and publicly release information related to its evaluations.

It is crucial that the extended isolation of the 16- and 17-year-olds removed from solitary confinement does not continue under a new name or acronym. And it is crucial that the housing, programs, and services offered as alternatives to solitary are both well-implemented and subject to external and public review.

3. The Board of Correction should immediately issue proposed rules related to the needs of young people on Rikers Island.

The federal Department of Justice's investigation into conditions for adolescent males on Rikers found a pervasive culture of brutal violence against children. In the words of U.S. Attorney Preet Bharara:

As our investigation has shown, for adolescents, Rikers Island is a broken institution. It is a place where brute force is the first impulse rather than the last resort; where verbal insults are repaid with physical injuries; where beatings are routine while accountability is rare; and where a culture of violence endures even while a code of silence prevails. The adolescents in Rikers are walled off from the public, but they are not walled off from the Constitution. Indeed most of these young men are pre-trial detainees who are innocent until proven guilty, but whether they are pre-trial or convicted, they are entitled to be detained safely and in accordance with their constitutional rights – not consigned to a corrections crucible that seems more inspired by Lord of the Flies than any legitimate philosophy of humane detention. These young men, automatically charged as adults despite their age under New York law, may be on an island and out of sight, but they can no longer remain out of

mind. Attention must be paid immediately to their rights, their safety and their mental well being, and in the wake of this report we will make sure that happens one way or another.²²

Federal prosecutors sued New York City just yesterday to hasten the pace of reforms for adolescents at Rikers Island. “In court papers, Attorney General Eric Holder and Manhattan U.S. Attorney Preet Bharara wrote that despite four months of negotiations with the city, federal prosecutors ‘have been unable to reach agreement as to lasting, verifiable, and enforceable reforms.’”²³

In discussing the sheer brutality children and adults on Rikers face day in and out, we want to acknowledge that these problems long preceded the current Department of Correction (DOC) and city administration. We are heartened by Commissioner Ponte’s long history of correctional reforms. And we applaud Mayor de Blasio for his stated commitment to change, and stand fully ready to aid the city in their efforts. It is also essential to note that the culture of jails and prisons often transcend individual administrations and leaders. The Department of Justice report is shocking not for its revelations—the violence on Rikers, including that against children, was made public long ago. What is shocking is how little has been done to protect the children and adults on Rikers, despite this knowledge. The tentacles of brutality on Rikers are historic and deep.

In October 2008, on Rikers Island, detained individuals murdered 18-year-old Christopher Robinson as guards looked the other way. The Correction Department investigated.²⁴ According to the Village Voice, “(t)he agency interviewed hundreds of teen inmates and concluded that under a practice known as ‘the Program,’ guards were deputizing inmates, often in the teen jail, and pitting them against one another in fights as a way to keep order and extort them for phone, food, and television privileges. In the wake of the scandal, two guards, Khalid Nelson and Michael McKie, were convicted of complicity in the Program and sentenced to short prison terms. A third officer (at the time of publication) was awaiting sentencing. Twelve inmates were also indicted in the case, with five pleading guilty. Meanwhile, Correction Department officials claimed they had taken a series of steps that dealt with the problem, including staffing dayrooms with officers and reducing the guard-inmate ratio.”²⁵

On May 9, 2012, the Village Voice ran an investigative piece about the violence and slashings on Rikers with photos that were so graphic and chilling, I circulated the article to staff with a warning.²⁶ The photos show many detained individuals with their cheeks literally slashed open, with gaping flesh wounds. As reported in that article, the photos confirmed what the Voice had reported *four years* before that “fight club” style violence by and against detained people on Rikers was promoted

²² United States Department of Justice, U.S. Attorney for the Southern District of New York Finds Pattern and Practice of Excessive Force and Violence at New York City Jails on Rikers Island That Violates the Constitutional Rights of Adolescent Male Inmates, August 4, 2014, <http://www.justice.gov/opa/pr/us-attorney-southern-district-new-york-finds-pattern-and-practice-excessive-force-and>.

²³ Jake Pearson and Tom Hays, Associated Press, Feds Sue NYC Over Rikers Island Jail Violence, http://hosted.ap.org/dynamic/stories/U/US_NYC_JAILS_FEDERAL_INVESTIGATION?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT, last visited 12/18/2014.

²⁴ The Village Voice, Graham Rayman, Rikers Violence: Out of Control, May 9, 2012, <http://www.villagevoice.com/2012-05-09/news/rikers-violence-out-of-control/>.

²⁵ *Ibid* (Village Voice, italics added)

²⁶ *Ibid* (Village Voice)

by correctional staff.²⁷ As also reported, this behavior continued even after two members of correctional staff went to prison.²⁸ On January 30, 2011, New York Magazine published “Lords of Rikers” offering chilling details about the culture in the adolescent units on Rikers. The piece opens with “One Main, House of Pain,” the name given by detained people to the Robert N. Davoren Center or RNDC, the building on Rikers housing adolescent males.²⁹

The Correctional Association was excited when, as part of the Juvenile Justice Coalition, it met with the Board of Correction’s Adolescent Committee last April and witnessed firsthand the Committee’s commitment to addressing the needs of adolescents on Rikers. It is our understanding that the Adolescent Committee spent approximately a year gathering information, including from a diverse constellation of stakeholders, and crafting recommendations for reform with the goal of proposed rule-making.

We were then deeply disappointed to learn that the Board appears to be no longer poised to engage in rulemaking as it relates to adolescents and young adults. We urge the Board pick its critical work back up. The young people on Rikers need this work done, and you as a Board are well positioned to do it.

- 4. All children under 18-years-old who are detained or incarcerated should, as soon as possible, be removed from Rikers Island and transferred to the youth justice system. The Department of Correction should not be responsible for housing any child under 18-years-old.**

All 16- and 17-year-olds must be removed from Rikers Island. Maintaining children on Rikers Island is indefensible, as the rampant violence, abuse, and torture of children on the Island cannot be reformed sufficiently or quickly enough and as the Department of Correction is simply designed to serve young people. The Department of Justice recommends that 16- and 17-year-olds currently in Rikers be moved off-island to a separate facility operated by the New York City Department of Correction (DOC). It is profoundly challenging to envision how the same agency and employees responsible for creating and maintaining the brutal culture at Rikers over a long period of time will have the capacity and commitment to create a new culture of safety attuned to the unique developmental needs of children. While itself not perfect, the city’s youth justice system is an overwhelmingly more appropriate place for children.

In a recent New York Times article DOC Commissioner Ponte discussed the national trend of reform-minded jails moving away from punishing young people and focusing instead on treatment through programs. The Commissioner said: “We’ve never done that in New York” and “How do you take officers that were hired and trained to deal with adult inmates, to manage the juveniles? That is a major cultural shift for staff to go through.” “What exists currently is an adult model in an adolescent facility,” he added.³⁰ The Commissioner is exactly right, and there is little evidence to believe that New York can train its current staff to appropriately serve young people, particularly

²⁷ *Ibid* (Village Voice)

²⁸ *Ibid* (Village Voice)

²⁹ New York Magazine, Geoffrey Gray, *The Lords of Rikers*, January 30, 2011, <http://nymag.com/news/features/70978/>

³⁰ New York Times, *New York Hires Consultant to Create Rikers Island Reform Plan*, September 8, 2014, <http://www.nytimes.com/2014/09/09/nyregion/new-york-hires-consultant-to-create-rikers-island-reform-plan.html>.

when many of those current staff members either actively engaged in or tacitly allowed the culture of brutal violence documented in the media and DOJ report to flourish.

Fortunately, there is no need for New York City to enter this uncharted territory where failure is likely. New York City's youth justice system is already designed to serve young people, and it is better-equipped meet their educational, treatment, and program needs. Consequently, the youth justice system is better poised to improve youth outcomes, reduce recidivism, and improve public safety than is DOC.

Additionally removing 16- and 17-year-olds from DOC custody will allow the Department to focus its energy and resources on improving conditions for detained adults on Rikers. Although the DOJ report focused on adolescent males, the conditions for the adult men and women on Rikers are as brutal, inhumane, and unconscionable as those for children. The New York Times has extensively reported on the grievous and permanent harms being inflicted on those with mental illness on Rikers,³¹ and reliable information documenting the sheer brutality against adults on Rikers abound in both the media and litigation. The agency can wait no longer to stop the brutality against adults, and removing kids from DOC custody will allow its focus to sharpen and deepen.

Although not without its own flaws, New York City's current youth justice system is the result of many years of sustained reform efforts by this Council and other elected officials, agency officials, and advocates. In December 2010, in recognition of the overlap between the child welfare and youth justice populations, the former NYC Department of Juvenile Justice merged with the Administration for Children's Services (ACS).³² ACS operates two secure youth detention facilities, contracts with private providers who operate non-secure detention facilities, and manages the Close to Home initiative, including contracts with private providers for the placement of youth post-sentencing. ACS and the New York City Department of Probation also operate and support a myriad of interventions specifically designed to keep kids out of facilities, instead providing the kinds of robust community based options proven to improve outcomes for youth and families and reduce recidivism, all at a fraction of the cost of lock-up. Staff members in the city's youth justice system are aware when hired that they will be working with children, and have applied specifically to do so. Many youth justice staff have specialized training in critically important areas such as positive youth development³³ and trauma-informed care. ACS is currently partnered with NYU Langone and Bellevue Hospital to operate grants totaling more than seven million dollars to treat childhood trauma, including for youth in the city's detention system.³⁴ Additionally, the measurement and behavioral management tools used in the youth justice system are specifically designed for youth. ACS also has landmark protections for lesbian, gay, bi-sexual, transgender, and questioning (LGBTQ) youth, including an anti-discrimination policy and guidelines that is a national model.

³¹ See FN 1 (New York Times), and see New York Times, *Rikers: Where Mental Illness Meets Brutality in Jail*, July 14, 2014, <http://www.nytimes.com/2014/07/14/nyregion/rikers-study-finds-prisoners-injured-by-employees.html>.

³² http://www.nyc.gov/html/acs/html/pr_archives/pr10_12_07.shtml.

³³ An increasing number of practitioners and advocates in the youth justice field are adopting a positive youth development (PYD) perspective and other strengths-based strategies that focus on youths' assets rather than their weaknesses or problems. PYD can be described as a youth's development of a sense of competency, usefulness, belonging, and influence. National Juvenile Justice Network, Policy Platform: Approaching Juvenile Justice With a Focus on Positive Youth Development 1 (2010) (citations omitted) (internal quotation marks omitted), http://www.njjn.org/uploads/digital_library/resource_1427.pdf.

³⁴ <http://www1.nyc.gov/office-of-the-mayor/news/060-13/mayor-bloomberg-partnership-nyu-langone-medical-center-bellevue-hospital-to>

Research demonstrates that LGBTQ youth are over-represented in the youth justice system and are particularly vulnerable to routine and systemic mistreatment³⁵ and sexual abuse in detention. It is also worth noting that ACS currently houses youth convicted of “juvenile offenses” (a statutorily enumerated set of more serious crimes, including some violent crimes) in its secure detention facilities.

By contrast, the DOC system is, in Commissioner Ponte’s own words, designed for adults. The agency, staff and system generally lack the training, expertise, skill set, and concrete tools to effectively work with youth. As the DOJ report makes clear in no uncertain terms, staff is not adequately trained or supported to understand adolescent brain development and respond to youth in a developmentally appropriate manner. There is also notorious staff resistance to working with adolescents on Rikers. New York’s adult criminal justice system currently provides LGBTQ youth, including those on Rikers, with no specific protections. There is a voluntary transgender women’s housing unit on Rikers, but it is restricted only to adult transgender women and no similar option exists for transgender girls or boys or transgender adult males. It is wholly unclear how the same agency and staff that brought us the conditions documented in appalling detail over the span of years will suddenly, even with the support of a resource-rich outside consultant, be able to appropriately serve the unique developmental needs of children in the justice system. Additionally, it would be a tremendous waste of taxpayer dollars and city resources to recreate a youth justice oriented facility within the adult jail system when New York City already has a robust youth justice agency—one that this body and others have already invested significant resources in reforming. Finally, removing youth from DOC custody would, as detailed above, also allow DOCS to focus its energy and monies on bringing desperately needed reforms to the adults currently suffering on Rikers.

5. The Department of Correction should move quickly to effectuate separate housing for 18- to 21-year-olds on Rikers, consistent with the Department’s August 8, 2014 request for a variance to do so.

On August 8, 2014, Department of Correction Commissioner Ponte requested a variance to house 18- to 21-year-olds separate from older adults on Rikers Island. In the request, the Commissioner stated that the plan to house 18- to 21-year-olds in the same location “presents an opportunity to provide this group of inmates with services that will have a positive impact on safety, inside and outside of jails.”³⁶ The Commissioner further noted: “(I)ncarcerated young adults in this age group are disproportionately affected by poverty, homelessness, poor employment prospects, and drug use—all of which contribute to their involvement with the criminal justice system.”³⁷ The Commissioner also outlines in the request a series of reasons why separate housing for 18- to 21-year-olds will better serve this population, including making “school attendance a natural part of the day, as it is for adolescents.”³⁸ The Commissioner further stated that “introducing comprehensive reentry

³⁵ See Majd, et. al., *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009), and see Prisco, *When the Cure Makes You Ill: Seven Principles for Changing the Course of Youth Justice*, (56 N.Y.L. Sch. L. Rev. 1413).

³⁶ Commissioner Joseph Ponte, New York City Department of Correction, Request for Variance: Young Adult Housing, August 8, 2014.

³⁷ *Ibid.* (Ponte)

³⁸ *Ibid.* (Ponte)

services available to all 18-21-year-olds in their housing areas will transform the jail environment and help achieve the highest levels of safety in the jails and in New York City's neighborhoods.

Given these promised benefits for both 18- to 21-year-olds and the community at large, the Correctional Association was disheartened to learn that the proposed plan for separate housing for this population has not moved forward, and urges the Board of Correction and the Department of Correction to immediately re-engage this process.

6. New York City should deepen its investment in the continuum of non-residential community based services, programs, and treatments that keep kids out of jail and prison, and have been proven to improve youth outcomes and public safety while saving taxpayer money.

Although a full exploration of this topic is beyond the scope of this hearing and testimony, the Correctional Association urges the Board of Correction and city policymakers to further explore and support how the city can deepen its investment in the continuum of non-residential, community-based services, programs, and treatments that keep kids out of jail and prison, are proven to work to reduce recidivism and improve youth outcomes, and drastically save resources.

An ever-increasing body of evidence demonstrates that incarcerating children leads to increased violence, recidivism, and poor life outcomes for youth (even when controlling for severity of offense).³⁹ ⁴⁰ Youth with mental health concerns, detention (pretrial) and incarceration (posttrial) have been shown to exacerbate mental health symptoms and increase the likelihood that youth will engage in self-harm and commit suicide.⁴¹ Youth who have experienced secure detention or incarceration are also less likely to return to school.⁴² Economists have shown that incarcerating youth decreases their future earning potential and the chance that they will remain in the labor market.⁴³

³⁹ The section of this testimony focusing on community-based services draws heavily on a piece I authored, *When the Cure Makes You Ill: Seven Principles for Changing the Course of Youth Justice*, (56 N.Y.L. Sch. L. Rev. 1413) (FN 16).

⁴⁰ See NEELUM ARYA, CAMPAIGN FOR YOUTH JUST., JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA 1 (2007),

http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf; AMANDA PETTERUTI ET AL., JUST. POL'Y INST., THE COSTS OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES MAKE GOOD FISCAL SENSE 1, app. A, at 16-9 (2009),

http://www.justicepolicy.org/images/upload/09_05_REP_CostsOfConfinement_JJ_PS.pdf; see also BARRY HOLMAN & JASON ZIEDENBERG, JUST. POL'Y INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 1, 4-5 (2006), http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf; see also *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform*, CAMPAIGN FOR YOUTH JUST. 1 (Liz Ryan & Jason Ziedenberg eds., 2007),

http://www.campaignforyouthjustice.org/documents/CFYJNR_ConsequencesMinor.pdf; Task Force on Community Preventive Services, *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, 32 AM. J. PREV. MED. S7 (2007), <http://www.thecommunityguide.org/violence/mcgowanarticle4.pdf>.

⁴¹ HOLMAN & ZIEDENBERG, *supra* note 11, at 2. See PETTERUTI ET AL., *supra* note 11, at 18. Additionally, youth who have been detained or incarcerated also have a significantly higher mortality rate than the general population, including homicide-related deaths; this increase in mortality rate disproportionately impacts youth of color and female youth, with the highest mortality rate found among African American male youth. See Linda A. Teplin, et al., *Early Violent Death Among Delinquent Youth: A Prospective Longitudinal Study*, 115 PEDIATRICS 1586, 1586 (2005).

⁴² HOLMAN & ZIEDENBERG, *supra* note 11, at 9.

⁴³ *Ibid.* at 2.

As my colleague Angelo Pinto noted recently in the Crime Report: “For many children under 16, New York State has made tremendous strides in improving youth justice. The state closed 28 youth facilities since 2009. Fewer kids are locked up and more are receiving the kinds of community-based rehabilitative and therapeutic services that reduce recidivism. The Close to Home Initiative means that many New York City youth are no longer being sent to facilities hours from their homes and are instead being served in either programs or facilities closer to family and community supports, making it more likely they will succeed upon release. And New York State has dramatically reduced the number of youth who spend time in pre-trial detention by expanding the range of community-based programs that keep kids home with the help and services they need. All of these reforms have been accomplished without compromising public safety: youth crime in New York continues to decline.”⁴⁴

The time is ripe for New York City to continue to deepen this investment in what works, with a particular focus on expanding the capacity of programs and services for older adolescents and young adults in the justice system. For too long, the focus on community-based options has centered on the needs of younger youth.

Conclusion

One of the most treasured of quotations is John Donne’s: “No man is an island.” For far too long, this city has turned a willful and blind eye to Rikers Island. The children and adults detained on Rikers have literally been cast aside on a separate island- geographically close, but a vast chasm away- where they are subject to unspeakable taxpayer-funded violence. But we must speak this suffering, we must fully acknowledge it in our city’s hearts, minds and policies, and we must end it now.

⁴⁴ The Crime Report, Angelo R. Pinto, *Freeing Youths from Solitary Isn’t Enough*, October 7, 2014, <http://www.thecrimereport.org/viewpoints/2014-10-freeing-youths-from-solitary-isnt-enough>.