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TESTIMONY

The Council of the City of New York
Committee on Juvenile Justice
Sara M. Gonzalez, Chair

“Safety and Security Protocols of Department of Juvenile Justice Facilities”

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The Legal Aid Society
Juvenile Rights Practice
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Good afternoon. I am Christine Bella, a staff attorney in the Special Litigation & Law Reform unit of the Legal Aid Society's Juvenile Rights Practice. I submit this testimony on behalf of the Legal Aid Society, and thank the Committee on Juvenile Justice for inviting us to speak about this important topic and for holding this hearing to examine the safety and security of children in the custody of the City's Department of Juvenile Justice (DJJ).

The Legal Aid Society is the nation's largest and oldest provider of legal services to poor families and individuals. Legal Aid's Juvenile Rights Practice provides comprehensive legal representation to children who appear before the New York City Family Courts in all five boroughs, in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 34,000 children, including approximately 4000 who were charged in Family Court with juvenile delinquency, some of whom spent time in DJJ facilities. At the same time, the Criminal Defense Practice represented clients in nearly 227,000 cases in the last year. We have a special team of lawyers, social workers and investigators devoted to the unique needs of adolescents charged in adult court with certain enumerated crimes -- the Adolescent Intervention and Diversion Project, whose clients are often held at one of DJJ's secure facilities. Our perspective comes from our daily contacts with children and their families, and also from our frequent interactions with the courts, social service providers, and State and City agencies, including DJJ. In addition to representing many thousands of children each year in trial and appellate courts, Legal Aid also pursues impact litigation and other law reform initiatives on behalf of our clients.

Background

Any discussion of the issues related to incarcerating children in New York City must consider the population involved. The vast majority of children and teenagers in DJJ's detention facilities are poor, African-American or Latino¹, and live in under-resourced neighborhoods with low-performing schools and high rates of alleged child abuse and neglect, substance abuse and mental illness. Oftentimes, the primary reason for the incarceration of these children facing delinquency or criminal charges is not the severity of the crime, but rather the collateral social issues of truancy, school failure, mental illness, substance abuse and weak family structure. Too many children are placed in detention facilities by judges because the City lacks coordinated services designed to meet the needs of children in school and in the community both before and in the event of arrest. Children should not have to be incarcerated while awaiting placement in rehabilitative services and should not face long periods of incarceration because of a lack of community-based rehabilitative services.

We are all aware of the great human and financial costs of detention. We urge the Juvenile Justice Committee to continue to work jointly with other committees including Education, Youth Services, and General Welfare, to demand accountability from our schools, police, courts, and probation department, as well as DJJ, toward the goal of preventing the placement of children in detention whose behavior and family issues should properly be addressed outside the juvenile justice system.

¹ Although the New York City Department of Juvenile Justice no longer posts statistics related to race on its website, almost the entire detention population consistently has been composed of youth of color -- approximately 60% of those detained pre-trial are African-American and 37% are Latino. Most delinquency offenses prosecuted in New York City would be misdemeanors if committed by adults.

We testify today to urge the Council to ensure that DJJ continues to improve its efforts to provide young people who are in its custody with necessary services and to keep them safe. DJJ must continually improve its efforts to protect the health and safety of this traumatized, needy population.

The Needs of Children in Detention

In fiscal year 2008, the City housed a daily average of 427 children arrested between the ages of 10 and 15 and remanded by courts – 290 in DJJ’s three maximum security juvenile jails, and 137 children in non-secure detention group homes.² In fiscal year 2009, in the four month period referred to in the preliminary Mayor’s Management Report, the average daily DJJ population is 401 children.³ The majority of children in detention have mental health needs, many have substance abuse problems, and a majority have special educational needs – far in excess of the general population. DJJ reports that 83% of the children incarcerated in their facilities received mental health services in FY2008.⁴ Additionally, DJJ has previously reported that the majority of their youth are in need of special education services and 90% of the students, whose average age is 15, read below the 7th grade level while 25% read below the 4th grade level. Eighty-three percent of these students have math skills below the 7th grade level.

It is also true that the majority of young people detained by the Family Courts are accused of delinquent behavior involving nonviolent, misdemeanor offenses.⁵ Further, the

² Fiscal Year 2008 New York City Mayor’s Management Report, www.nyc.gov.

³ Fiscal Year 2009 Preliminary New York City Mayor’s Management Report, www.nyc.gov

⁴ Fiscal Year 2008 New York City Mayor’s Management Report, www.nyc.gov

⁵ While juvenile arrests and detention usage in New York City increased in 2006 as compared to 2005, for example, the largest increases were in misdemeanor arrests (11% increase) and usage of non-secure detention (NSD) group homes (11% increase). Data provided on March 12, 2007 to the Legal Aid Society by the NYC Mayor’s Office of the Criminal Justice Coordinator.

staggering cost of detention -- \$588 per day, \$214,620 per year⁶ -- is compounded by the fact that detention during the pendency of a court case is the greatest predictor of further detention or incarceration.⁷ And in New York State, we know that children who are detained in DJJ's facilities are more likely than those in the community to be placed in upstate facilities operated by the New York State Office of Children and Family Services (OCFS) at the conclusion of their cases. DJJ can and should play a crucial role in keeping children in their communities by releasing children who may lawfully be released, protecting the health and safety of those children who are remanded to their custody by courts, and taking an active role in bringing to light the needs of children who cannot be adequately cared for in a detention setting.

Safety of Children in DJJ Custody

State regulations provide uniform standards and procedures for the establishment and operation of local juvenile detention facilities.⁸ These regulations set forth mandates designed to ensure, among other things, the health and safety of residents in juvenile detention facilities operated by DJJ and other localities. Safety-related regulations require, for example, that in detention facilities, "children shall be humanely treated and provided with whatever is necessary for their safety, comfort and well-being."⁹ Abuse of children in any form is prohibited.¹⁰ Solitary confinement is prohibited.¹¹ Room confinement is only permitted in the

⁶ Fiscal Year 2008 New York City Mayor's Management Report, www.nyc.gov

⁷ Justice Policy Institute (Holman & Ziedenberg), *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Facilities*, November 2006.

⁸ 9 N.Y.C.R.R. Part 180.

⁹ 9 N.Y.C.R.R. § 180.9.

¹⁰ 9 N.Y.C.R.R. § 180.9(c)(10)(i).

¹¹ 9 N.Y.C.R.R. § 180.9(c)(10)(iii).

secure facilities, and may be used only in extreme circumstances when a child “constitutes a serious and evident danger to himself/herself or others,” and shall never be used for punishment.¹² Each secure facility is required to submit monthly reports with the following information: the number of children who have been placed in room confinement; the name of each child; the length of confinement; the person authorizing the confinement; the names of social work and medical staff visiting the confined children; and the times and dates of such visits.¹³ Given that room confinement is an extreme measure, resulting in children being isolated for periods of time, we suggest that the Council review DJJ’s monthly reports (with names redacted) in order to better understand how often and for how long children are isolated in DJJ’s secure facilities.

We appreciate that DJJ has met with us recently and is willing to listen to our comments and concerns about the care of our clients who are in DJJ’s custody. DJJ has devoted much attention to improving conditions and increasing administrative oversight of staff and available services in recent years. We do have several concerns, and urge the Council to gather as much detailed information as possible regarding DJJ’s safety procedures, and to exercise vigilant oversight.

Physical Restraints

It is well-documented that children involved in the juvenile justice system have a high prevalence of exposure to trauma, including childhood histories involving physical, sexual and emotional abuse. As a result, many residents have serious mental health issues when they enter detention. Clearly, this is a vulnerable population, and the use of physical restraint against these

¹² 9 N.Y.C.R.R. § 180.9(c)(11)(i) and (ii) .

¹³ 9 N.Y.C.R.R. § 180.9(c)(11)(a) and (b).

children carries significant risks. According to the September 2007 report prepared by New York's Committee on Restraint and Crisis Intervention Techniques, "all forms of physical restraint come with inherent risk due to the hazardous circumstances in which restraints are applied."¹⁴ Such risks to children during the restraint process may include exposure to trauma and serious physical injury. "The use of restraints is recognized as an intervention of last resort."¹⁵

We are concerned that DJJ staff use physical restraints on children as a behavioral tool, and that in the course of being restrained by multiple adult staff members, children are sometimes injured. While DJJ policy is that each such restraint is reported and investigated as a mandated report concerning child abuse or neglect, these reports are after the fact. We encourage DJJ to use physical restraints only as a last resort, if ever. We also urge the City Council to have DJJ provide the Committee regularly with data concerning the numbers of restraints, reports of injuries to children in DJJ's custody, reports to the State Central Registry for Child Abuse and Neglect (SCR), the Department of Investigation, and DJJ's Resident Advocate Program, and the results of those reports.

Intrusive Searches of Children in DJJ Custody

We urge the Committee to question and oversee DJJ's increased use of and spending on intrusive searches of children, including canine searches. The Preliminary Mayor's Management Report for FY09 (preliminary MMR) reveals that in the first four months of Fiscal 2009, DJJ's searches increased by 84 % from the previous year. Searches have become a part of daily life in

¹⁴ "Behavior and Management: Coordinated Standards for Children's Systems of Care," Final Report to the Governor September 2007, developed by the Committee on Restraint and Crisis Intervention Techniques p. 11.

¹⁵ Id. at 19.

DJJ facilities, and yield contraband in less than one-tenth of one percent of all searches. In Fiscal 2008, DJJ staff conducted 208,793 searches of 5490 children admitted to its custody – an average of 38 searches per child with an average length of stay per child of 28 days in detention. In just four months of FY 2009, while neither the number of children in detention nor the average length of stay have changed in a meaningful way, the number of searches jumped to 93,721, or an annualized number of 281,163. Surely, the money spent on these excessive searches would be better spent on providing services to this needy population.

Safety of LGBTQ Youth in Detention

Lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth who are detained by DJJ face an unsupportive, hostile, and even dangerous environment. A lack of clear policies against discrimination, guidelines, and training to promote staff sensitivity to the needs of LGBTQ youth has resulted in a system that not only fails to support the healthy development of these youth, but actually perpetuates the loss of self-esteem and trauma many LGBTQ youth have experienced elsewhere in their lives. While DJJ has now issued a written policy concerning these youth, the policy does not mandate an environment that respects and supports the development of all young people in their care, regardless of sexual orientation, and DJJ has not instituted mandatory and ongoing training for staff to enable its staff to interact and respond appropriately to this vulnerable population.

Safety in Courthouse Detention Space

In December 2008, a long-time DJJ staff member was arraigned for allegedly raping a 15- year-old girl in DJJ detention space in the Manhattan Family Court. When DJJ found out in July, the agency immediately suspended the employee. We understand that DJJ is looking into

whether the agency's policies, practices and configuration of the physical detention spaces need be changed. We applaud this response – a single staff member must never be alone with a resident in a confined space. We are also aware that DJJ is investigating the location and actions of the additional DJJ staff in the room at the time of the assault. Each DJJ staff member is independently responsible for the safety and care of the children in DJJ's care and should bear an individual obligation to protect each child from harm.

Children in DJJ Custody Who are Injured

It is our experience that significant numbers of children enter DJJ's custody with recent injuries, or are harmed while in DJJ's custody – by staff, outsiders, or sometimes other residents. When such harm occurs or is observed, it is critical that DJJ take immediate steps to ensure the children's safety and treatment. Children have suffered injuries at the hands of DJJ staff during restraints, in vehicle accidents, and by the police during or incident to arrest. One of our clients, for example, was recently assaulted by a police officer while in the DJJ admissions area.

At our request, DJJ provided Legal Aid with their revised policy directive concerning the reporting and processing of child abuse and maltreatment allegations, Directive #01/09, dated January 2009¹⁶. We commend DJJ's effort to set out directives for actions to be taken in the event of abuse, maltreatment or neglect of children in their custody, and the directive does require action and reporting in many circumstances. There are several major omissions in this Directive, however, on which we are providing detailed comments to DJJ. We summarize our concerns here, and suggest that the Council look into them and urge DJJ to amend its directive.

¹⁶ The policy states that it is promulgated in accordance with New York Social Services Law §§ 412-a and 413, and State regulation 9 N.Y.C.R.R. 180.5.

First, DJJ's directive applies to "abused child[ren] in a juvenile detention setting," who are defined as children who are "subjected to specified acts, regardless of whether the child is injured," but excludes actions that are "accidental or done as an emergency safety intervention." Listed in the directive are examples of severe, harmful and in some instances violent acts or deprivations inflicted on children that under no reasonable reading could be deemed accidental or acceptable as a safety measure. These include, for example, injuries incidental to a physical restraint -- "being thrown, shoved, kicked, pinched, punched, shaken, choked, smothered, bitten, burned, cut or stricken." *The "accidental" and "emergency" exceptions should be removed, and in all instances where it is alleged that the actions stated in the directive have occurred, a report should be called into the SCR and other appropriate action taken.*

Second, DJJ's directive requires, in various types of incidents, reporting to the DJJ supervisory staff and the SCR, notification of parents/guardians, and notification to the Family Court of "external child abuse allegations." The policy does not, however, include time frames for notification, and nowhere includes notification of the child's lawyer. *The directive should be amended to require immediate notification of parents/guardians and of children's lawyers, who can then assist the children in protecting their rights and ensure their appropriate care.* The DJJ policy requires notification to parents/guardians only if an SCR report is "accepted" unless it is a "critical allegation," in which case parents must be immediately notified. *The parent or guardian should be notified in every instance in which there are allegations that a crime has*

been committed against a child (regardless of whether such an act could be considered abuse or maltreatment)¹⁷.

Third, *DJJ's directive conspicuously omits directing staff to call the police when a serious crime is committed against a child* by DJJ staff, police officer, or other adult on the premises. In fact, State regulation requires that DJJ's written procedures include immediate notification of suspected abuse and maltreatment to "local law enforcement officials, if it appears likely that a crime has been committed against a child" ¹⁸ If an arrest might need to be made against a police officer who harms a child on the way to DJJ or in a DJJ facility, for example, the directive's current mandate to notify only NYPD's Internal Affairs Bureau and the Civilian Complaint Review Board is insufficient.

Finally, DJJ's directive contains no requirement that a child be seen by a mental health provider or for crisis intervention following an allegation of abuse, neglect or other harm. Again, State regulation requires that counseling should be provided to the "youth involved in any report."¹⁹ Certainly, all children exposed to trauma in detention should be evaluated by a crisis counselor following any incident such as this and if the child is receiving mental health treatment, the provider should be informed of the incident immediately.

Thank you for this opportunity to testify. I am happy to answer any questions the chair and committee members have.

¹⁷ DJJ's directive instructs that cases of suspected police misconduct be called in as allegations of child abuse or neglect to the SCR. The SCR will not accept these cases because the allegation is not against a parent or "person legally responsible" for the child.

¹⁸ 9 N.Y.C.R.R. 180.5(b)(3).

¹⁹ 9 N.Y.C.R.R. 180.5(3)(g).

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