

TESTIMONY

The Council of the City of New York

Committee on Juvenile Justice

Sara M. Gonzalez, Chair

Committee on Criminal Justice

Miguel Martinez, Chair

Committee on Youth Services

Lewis A. Fidler, Chair

“Oversight: Special Needs of Adolescents in New York City Correctional
Facilities”

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Prepared by

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Thank you for the opportunity to testify concerning the special needs of adolescents in the New York City adult jails. I am Mary Lynne Werlwas, a staff attorney with the Prisoners' Rights Project at the Legal Aid Society of New York City. I am here with Nancy Ginsburg, who is the Director of the Adolescent Intervention and Diversion Team of our Criminal Defense Practice. The Legal Aid Society is the nation's largest and oldest provider of legal services to poor families and individuals. Our Prisoners' Rights Project has successfully brought litigation challenging a variety of practices in the New York City jails. In addition, each week our office receives as many as 200 letters or phone calls requesting assistance from inmates in the New York City jails and state prisons. We attempt to remedy these problems by intervening administratively with the Department of Correction and other appropriate agencies. This daily contact with inmates and their families has given our office a firsthand view of many of the problems confronting inmates. It is on that basis of our direct contact over the past several years with literally thousands of prisoners and their family members that we offer these comments and recommendations to legislators and all New Yorkers.

In addition, by contract with the city, the Society serves as the primary defender of poor people prosecuted in the State court system at both trial and appellate levels. Although newer public defender agencies have been created in New York City, the Society continues to play the central defense role in the City's criminal justice system. The Criminal Defense Practice (CDP) 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, the Adolescent Intervention and Diversion Project (AID). The AID Project works with the education, foster care and mental health systems to ensure that our adolescent clients' needs are met. This holistic practice aids the courts by providing detailed information about the youth before them and in creating sentencing plans that ensure that young people are receiving the mental health, educational, substance abuse and family services they need to aid them in functioning productively in the community and, in the long run, reducing recidivism. In that capacity, CDP too has daily contact with the youth whose welfare and well being is being discussed today.

We submit this testimony on behalf of the Legal Aid Society, and thank Chairs Fidler, Gonzalez and Martinez and the Committees on Youth Services, Juvenile Justice and Criminal Justice for inviting our thoughts on the issue of special needs of adolescents in the correctional facilities of New York City. We applaud the Council for tackling this important subject, and look forward to the valuable contributions that we are sure the Committee will make in this area of vital concern to our City's teenagers.

Overview of Adolescents in New York City Jails

In New York State, the age of majority for purposes of criminal prosecution is sixteen. Children under the age of sixteen who are charged with the commission of a crime are prosecuted in Family Court. An exception is made for thirteen year olds charged with murder and fourteen and fifteen year olds charged with a specified number of violent crimes delineated by statute all of whom are prosecuted as "juvenile offenders" in the adult Criminal Court system.¹ These 13-15 year old "juvenile offenders" are incarcerated in juvenile detention facilities run by the Department of Juvenile Justice, and face shorter sentences than adults for the same crimes, but significantly longer sentences than juvenile delinquents prosecuted in Family Court.

At sixteen years of age, young people are prosecuted and sentenced as adults for all violations of the law in the adult Criminal Court system. These youth are the subject of our testimony today, as once a youth turns sixteen, he or she will be incarcerated in adult jails and prisons. In New York City, boys are principally housed at the Robert N. Davoren Center (RNDC, formerly known as the Adolescent Reception and Detention Center), and girls are housed at the Rose M. Singer Center (RMSC). Boys who commit disciplinary infractions are housed in the Central Punitive Segregation Unit, a lock-down unit primarily for adult males. Some youth are also kept in pre-hearing detention before

¹14 and 15 year old youth are prosecuted in adult criminal court as "juvenile offenders" for the following crimes: Murder in the second degree, attempted murder in the second degree, kidnapping in the first degree, attempted kidnapping in the second degree, arson in the first and second degrees, subdivisions one and two of assault in the first degree, manslaughter in the first degree, rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, burglary in the first degree, robbery in the first degree, subdivision two of robbery in the second degree, subdivision four of criminal possession in the third degree (possession on school grounds), possession of a weapon in the second degree (on school grounds). P.L. §10(18); C.P.L. §1.20(42).

their infractions are adjudicated at the George R. Vierno Center (GRVC), another adult facility. While today we focus principally on problems at RNDC, the source of frequent complaints of officer-instigated violence, the needs of adolescents in these other jails should not be overlooked.

The challenges posed by incarcerating youth with adults is something few states face. Only thirteen states in the country consider adolescents under the age of 18 to be adults for the purpose of criminal prosecution. Only three states set original adult court jurisdiction at the age of 16. New York is one of these three states.² The United States Supreme Court recently recognized that social science research confirms that “a lack of maturity and an underdeveloped sense of responsibility are found in youth more than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”³ The Court also noted that youth have less control over their own environment.⁴ The Court further recognized that “almost every state prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.”⁵ In fact, New York sets the age of majority for most civil purposes at age 18.⁶

²The states with original adult court jurisdiction at age 17 are: Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, South Carolina, Texas and Wisconsin. The states with original adult court jurisdiction at age 16 are: New York, Connecticut, and North Carolina. Connecticut has passed legislation that will raise the age of criminal responsibility to 18, effective January 1, 2010. North Carolina is considering legislation that would raise the age of criminal responsibility.

³*Roper v. Simmons*, 543 U.S. 551, 569 (2005) (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

⁴*Id.* at 569 (citing Laurence Steinberg and Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003)).

⁵*Id.*

⁶CPLR 105, D.R.L 2, NY Gen. Oblig. Law 1-202. New York State restricts the rights of 18 year olds in the following areas: Alcohol possession/sale, NY Alco. Bev. Cont. 65c; Possession/purchase of cigarettes, NY Pub. Health Law 1399-cc; Contract rights, UCC Law 3-305, CPLR 105; Driving, VTL 502; Firearms, PL 265.16; Gambling, NY Tax Law 1610, Gen. Mun. Law 486, Rac. Pari-Mut Wag. & Breed. Law 104; Jury Duty, Jud. Law 510; Working hours, D.R.L. 7; Pawnbrokers, Gen. Bus. Law 47-a; Pornography, PL 235.21; Tattoos, PL 260.21, Voting, NY Elec. Law 5-102, and wills, EPTL 3-1.1.

Violence at RNDC and Staff Collusion or Encouragement

RNDC is a violent jail. While the Department frequently touts its systemwide reductions in stabbings and slashings – which indeed is a welcome trend – these are not the only, or even predominant, form of violence in jail. We have been deeply disturbed by increasing reports from our clients that they have been assaulted by staff, or by other inmates with the complicity or acquiescence of corrections staff. As tragic as we found the recent death of Christopher Robinson, the circumstances were unfortunately not terribly surprising to us given what has been happening in that jail.

The following stories provide a snapshot of the experiences of our clients recently incarcerated in RNDC:

- A 17 year old client was bailed out by his mother last month after being jumped or attacked by at least ten other youth because he refused to join a gang.
- A corrections officer told inmates that one of our clients is being charged with a sex offense. These inmates beat our client, who received stitches in his lip, while an officer who was present did not intervene. Our client remains in RNDC despite requests to be moved elsewhere. The Department's response to the fight was to put him in close custody, where he is in solitary confinement 23 hours a day, and complains of symptoms of anxiety and depression.
- Clients frequently tell us that officers deputize certain inmates to control the feeding and telephones, and that these inmate enforcers frequently traffic in contraband tobacco on behalf of staff. Clients say that the officers look the other way when these inmate enforcers beat other inmates, and several of our clients have been victims of such beatings.
- A client who has been incarcerated for five months reports being beaten by other inmates in attempts to get his PIN number, used for placing phone calls. He reports that officers failed to intervene. He also has witnessed officers hitting inmates.
- One client reports receiving black eyes and cut and swollen lips from inmates several times. He did not want to report the incidents to DOC for fear of

retaliation. This client reports that correction officers in RNDC encourage fights between gang members to keep order in the house.

- Several clients reported being victims of sexual and physical assaults in RNDC. They were threatened by inmates to “keep their mouth shut” or further problems would ensue. Clients report being forced to perform oral sex on other inmates while the guards ignored it.
- Many clients describe that the officers “stay in the bubble” when altercations occur, ignoring or simply watching what is going on.
- Youth held in the “3 upper” housing unit repeatedly report to us that they are beaten by other inmates, with full knowledge of the officers, if they fail to “get down with the program,” that is, acquiesce to gang demands.

Just last week, we wrote to the Department about an inmate at RNDC who stated he was beaten, including by an Assistant Deputy Warden, when he asked not to be moved into a housing area where he feared for his safety because he had prior problems with inmates in that house. He even asked to go to punitive segregation instead of the new housing area, to no avail. Instead, he told us, while standing in the vestibule outside of the housing unit (areas where uses of force are very common), several officers and an Assistant Deputy Warden punched and hit him several times. When additional officers arrived, staff claimed that he had assaulted them. The inmate was taken to Elmhurst Hospital by EMS after the incident.

These stories are but further illustrations of the same dynamic that has led to recent indictments of RNDC correction officers by the Bronx District Attorney. Earlier this year, an officer was indicted on gang assault charges for his “scheme to use inmates to enforce discipline” at RNDC. (See Press Release, Office of the Bronx District Attorney, February 26, 2008, <http://bronxda.nyc.gov/frames.html>). According to the indictment, Officer Lloyd Nicholson ran a “systematic program... in which he would use a select group of inmates to maintain order and enforce discipline. The group of inmates would enforce rules of conduct established by Nicholson in exchange for preferential treatment, which included allowing them to extort commissary and telephone privileges as well as personal property from other inmates.” *Id.* In one of the incidents alleged in the indictment, Nicholson beat an inmate with a wooden stick. A few weeks later, he

ordered six inmates to beat up two other inmates, one of whom suffered a collapsed lung. *Id.*

On June 1, 2007, the district attorney indicted an Assistant Deputy Warden and a captain for an egregious cover-up of a staff assault. (See Press Release, Office of the Bronx District Attorney, February June 1, 2007, <http://bronxda.nyc.gov/frames.html>). The indictment “alleged that Captain Sherman Graham struck inmate Brian Mitchell without provocation in the presence of 15 Correction Officer recruits whom he then ordered to falsely claim that Mitchell had been the aggressor,” and that Assistant Deputy Warden Gail Lewis participated in the cover-up.⁷ This involvement of an ADW and a false statement that the inmate initiated the assault are very similar to the incident we described above and about which we complained last week.

We believe that the complaints we hear under-represent the frequency of violence at RNDC, as in our thirty-plus years of experience with the jail population, younger inmates tend not to report the violence they suffer in jails. Not only are they more often unaware that we can advocate on their behalf, but they have a very well-founded fear of retaliation. However, notwithstanding these barriers to reporting, there exists comprehensive, systematic data about reported violence in RNDC—locations, participants, housing areas, staff involvement, injuries sustained. The Department of Correction tracks inmate fights, reported incidents in which staff use force, and allegations that staff used force.

Each month, the Prisoners’ Rights Project reads and analyzes *every* use of force report from RNDC in connection with our monitoring the settlement agreement we reached with the City in our class action about brutality in the jails, *Ingles v. Toro*. Unfortunately, we cannot provide you with this rich body of data because as a condition of settlement, the City insisted we keep this information confidential, even from you. While we think it repugnant as a matter public policy that the City would insist upon secrecy, we believe the settlement as a whole benefited our clients – most notably with

⁷ In the same vein, in 2006 another correction officer at ARDC, as RNDC was then known, was indicted for abusing nine inmates, all between the ages of 16 and 19, and “instructing the inmate to remain quiet or face harsh consequences.” See Press Release, Office of the Bronx District Attorney, May 23, 2006, <http://bronxda.nyc.gov/frames.html>.

the installation of recording cameras, which we believe is one of the most effective measures the Department can take in deterring misconduct. We strongly encourage you to ask the Department of Correction for this same body of data we review (including videotapes), and for the letters we have sent them raising our concerns about violence in the jails.

The consistency of the complaints coming out of RNDC--that inmates who are perceived as not being “down with the program” are the subject of beatings either by staff or by inmates while staff turn a blind eye--raises very serious questions about the degree to which central management controls staff misconduct in the jail. It would be salient to know, for example, what measures the Department takes to prevent the introduction of contraband by staff into the jails on an ongoing basis, rather than only in response to a crisis or bad publicity. The Department also has the ability to identify which staff repeatedly use force or are present in the locations or altercations in which inmates end up injured. This information should be utilized more than it is in order to more effectively supervise uniformed staff.

We have just been told by clients that the Department is now interviewing inmates at RNDC about staff misconduct, indicating a recent flurry of attention to the issue. But any reliance or pressure on adolescent inmates to “turn staff in” is deeply dangerous when the Department cannot guarantee protection for inmates who do report staff misconduct. How can an inmate possibly feel safe if he has reported on the very same housing area officer who controls when his cell door is open or closed? Whether he is safe or exposed? Whether he has access to a phone to call family, or must surrender his time to gang members? He cannot feel safe because he is not safe. Until the Department actively intervenes to make clear to staff – by actions as well as word – that it will no longer tolerate this culture of violence, this will not change.

Close Custody: A Hobson’s Choice for Vulnerable Inmates

Inmates who are in danger in the general population have only one choice for protection: submission to the oppressively harsh conditions of 23-hour, solitary lock-in confinement in “close custody.” Before 2005, the Department, like all prisons and large jails, had a protective custody unit for inmates who could not mingle with the general

population, either because of the threat they posed or the threats posed to them. At RNDC, there was both a generic protective custody unit and a special gay housing unit. Those were eliminated in 2005 with the introduction of “close custody.” This unit was created to house notorious inmates with high profile crimes; inmates deemed to be dangerous or predatory; and inmates who are vulnerable and in need of protection.

Conditions in close custody are among the harshest in any jail system. Inmates are locked in their cells for 23 hours each day, only permitted the constitutionally mandated one hour of exercise out of their cells. We are told they may also watch some television from separate plexiglass booths that are much smaller than their cells. High school aged inmates do not go to school and access to communal programs is cut off. The extensive literature documenting the harmful effects of this type of confinement, and the special vulnerability of adolescents and those with latent and diagnosed mental illnesses to isolation, is well known, and we won’t repeat it here.⁸ These predictable consequences were tragically illustrated by two suicides in close custody in the last two years: the death of 18-year-old Steven Morales on April 27, 2008, who had been in close custody for some time; and the November 2006 death of Matthew Cruz, who was incarcerated in a stock manipulation case. We also have clients who were beaten by staff while held in close custody.

It is entirely wrong to subject inmates to these conditions as the price for protection. Many know they could not tolerate these conditions any more than most of us can, and choose instead the risks of the general population. While the dangers of this type of confinement should be scrutinized in connection with its use for disciplinary

⁸See, e.g., *Davenport v. DeRobertis*, 844 F.2d 1310, 1313, 1316 (7th Cir. 1988) (citing Stuart Grassian, *Psychological Effects of Solitary Confinement*, 140 Am.J.Psychiatry 1450 (1983); *Langley v. Coughlin*, 715 F.Supp. 522, 540 (S.D.N.Y. 1989); *Baraldini v. Meese*, 691 F.Supp. 432, 446-7 (D.D.C. 1988) (citing sensory disturbance, perceptual distortions, and other psychological effects of segregation), *rev'd on other grounds*, 884 F.2d 615 (D.C. Cir. 1989); *Bono v. Saxbe*, 450 F.Supp. 934, 946 (“[p]laintiffs’ uncontroverted evidence showed the debilitating mental effect on those inmates confined to the control unit.”), *aff’d in part and remanded in part on other grounds*, 620 F.2d 609 (7th Cir. 1980); *Madrid v. Gomez*, 889 F.Supp. 1146, 1235 (N.D.Cal. 1995) (“many, if not most, inmates in the SHU experience some degree of psychological trauma in reaction to their extreme social isolation and the severely restricted environmental stimulation in SHU.”);

purposes, subjecting inmates who have violated no rules, and merely seek protection in a demonstrably violent jail, to these conditions is grossly unfair.

Special Needs of Incarcerated Youth Oft-neglected in Jail

The Legal Aid Society closely tracks the needs of the youth represented by our Adolescent Intervention and Diversion Project. These clients include youth aged 13-15 prosecuted as juvenile offenders in the adult court system and 16-18 year olds prosecuted as adults. In the most recent review of our clients needs we found that many of our clients present with multiple issues. Many youths who have mental health diagnoses also have co-occurring substance abuse problems. Many youngsters in foster care have mental health and/or special education needs.

Our most recent statistics of our caseload show that fifteen percent of our teenage clients are in foster care, twenty-three percent have been exposed to domestic violence, thirty-five percent of the youth have substance abuse problems, twenty-three percent have mental health problems and thirty-five percent are classified in need of special education services. These numbers usually fluctuate within a ten percent range in each category at any given time. The characteristics of the teenage client base demonstrate a population of young people who have profound needs and are in desperate need of therapeutic intervention. Unfortunately, they are exposed to violent jail conditions which exacerbate their prior life experiences.

Two recent teenage suicides in RNDC demonstrate the fatal consequences of failing to treat vulnerable adolescents. Steven Morales, who killed himself in close custody this past April, had a history that called out for more supervision: apparently raised largely in the foster care system, he was arrested at age 17 on charges in the death of his infant daughter, which itself is a high risk factor for suicide. *See*, Village Voice, "A Short Life Ends on Rikers Island," May 27, 2008 (<http://www.villagevoice.com/2008-05-27/news/a-short-life-ends-on-rikers-island-in-a-place-where-suicide-isn-t-supposed-to-happen/>). And on December 20, 2007, 17-year-old David Mercado also hanged himself at RNDC. Although Mr. Mercado was supposed to be placed on a suicide watch pursuant to the court's order, this was apparently ignored and he was placed in a dorm

setting. It is simply intolerable that these two very young, very vulnerable men killed themselves while ostensibly under departmental care.

Prior Neglect and Abuse

We have found that close to one-third of our clients in the delinquency and criminal system are, or have been, in foster care. Many of these youth have been in multiple foster care placements by the time they reach their mid-teens. Some feel disconnected from a system which they feel has not met their needs. The transitional planning services often fall short of ensuring a stable entry into adulthood. Some have emotional disabilities stemming from neglect or abuse which have not been identified or fully addressed. Many youngsters who were victims of sexual abuse suffer from mental illness or low self-esteem and can turn to substance abuse to dull the memories and the resulting pain. A percentage of these youngsters turn to prostitution to support themselves. This further exposes them to trauma and violence.

Mental Health Needs

Many incarcerated youth suffer from the entire range of mental illnesses. The most prevalent diagnoses of court-involved youth are attention deficit disorder, post-traumatic stress disorder, depression and bipolar disorder. Without consistent treatment, structure and services, these teens cannot complete their education or hold meaningful jobs. There are an insufficient number of residential beds in placements that can meet their serious needs. These young people often get discharged from the hospital into homelessness and eventually end up in the criminal justice system. Additional treatment resources will greatly help reduce the number of incarcerated youth.

Poor Family Support

Often lack of family support is caused by parents who are seriously mentally ill, suffering from addiction or are incarcerated. These young people really have no support system to turn to and once they become court-involved, can show no stability in the community and often face incarceration as a result.

LGBTQ Youth

Youngsters who identify as lesbian, gay, bisexual, transgender or questioning are often disproportionately harassed or attacked in jail. Many of these young people have been rejected by their families based on their sexual orientation and have been pushed out of their homes—some, at a very early age. Unfortunately, many of these youth experience their first contact with the court system on charges of prostitution, trespass and loitering. Because of the lack of family support and insufficient residential programs for this population, they also face incarceration.

Education

Youth arrive in adult jails with severe educational deficits: about 40-50% are classified as in need of special education services, and large numbers have reading and math proficiency four or five grades below grade level. Education in jail is of paramount importance not only to ensure their successful reintegration to the community upon release, but also to provide them with rehabilitative activities while in custody. Idleness breeds violence, and leaving adolescents to languish in housing areas rather than engage in productive school activities is a recipe for trouble.

The Department of Education provides high school education on Rikers Island to youth who are under 21 and do not have a diploma or GED. In 2000, in a lawsuit brought by the Legal Aid Society, a federal court found that these programs were so deficient that they violated the Constitution and federal laws. A monitor, appointed over the City's vigorous opposition, issued highly critical reports detailing serious failures in the Rikers schools, and the federal court again in 2002 ordered the City to come into compliance. After an appeal to the Second Circuit, which did not disturb the findings that education is constitutionally deficient, the case is now back in the federal courts to determine what relief will be imposed on the City finally to bring the education on Rikers Island up to the legal minimum.

Astonishingly, not only has the City strenuously opposed working with the Legal Aid Society for effective reform of the Rikers schools, but it actually continues to threaten to cut back on education in the jails. The City claims that it might cut in half the hours of school provided to the youngest prisoners – 16 and 17 year olds – by reducing

the school day from five and half to three hours. We do not yet know if this has been done. The City also threatened the court that if faced with injunctive relief requiring reforms in the schools, particularly to young people in special housing units, it would simply cut some of these programs altogether, even though we believe this would violate the law. The City also continues to insist that students face a 25 day waiting period before getting school, which would effectively eliminate an entire month of the school year for any student in New York City who is arrested and incarcerated.

While the City has made numerous changes to the schools on Rikers Island in response to our lawsuit, some of the most glaring problems identified by the Court and monitor remain unchanged. Although youth in need of special education are vastly over-represented in jail, the Rikers schools largely ignore their individual needs – not to mention the federal laws governing special education -- and instead provide a “one size fits all” approach that is the antithesis of special education.

Placement in a segregated housing unit – such as close custody, administrative segregation, or punitive segregation – essentially cuts off all education. Many of these students have very low literacy rates, and the monitor found that 65% of those in punitive segregation were classified as needing special education. The City claims to provide “cell study” in these units, but that consists at best of a generic, mimeographed packet of written material, and an occasional phone call (that a student must initiate) to a teacher. This is not education, and certainly is not meaningful to a young person with a serious learning impairment. Moreover, we have been informed that even these minimal services are offered intermittently at best, as there are not always telephones nor teachers to provide them.

The City should settle this case on terms that provide for basic literacy education for all students; permit schooling for youth the City places in special housing units; and ensure compliance with the federal laws governing special education. Teachers and administrators on Rikers want the case to succeed so as to bring about reforms in the much-neglected system, but the current administration has taken a remarkably aggressive approach to resisting fixing the problems the Court has already found. The City should stop fighting the attempts to remedy the violations in the schools, and should implement

the remedial measures previously suggested by the court monitor to ensure that youth in jail receive education during their incarceration.

Challenges Facing Girls in Adult Jails

Although this hearing focuses on the conditions in RNDC where boys are housed, it is important to remember that teenaged girls also are held on Rikers Island at the Rose M. Singer Center. While girls charged with crimes or delinquency face many of the same issues as boys, several areas of concern affect girls in particular. Most of the girls who enter the criminal justice system have experienced sexual, emotional and/or physical abuse in their past, suffer from mental health problems, and/or are substance abusers. One or any combination of these factors can contribute to the conduct resulting in criminal or delinquency proceedings. Indeed, research indicates that abuse (sexual, emotional and/or physical) may be the most significant underlying cause of such high-risk behaviors for girls.⁹ Victimization can lead to an increase in violent behavior, substance abuse and other self-harming behaviors, poor self esteem, early sexual activity and prostitution.¹⁰

In fact, the National Mental Health Association estimates that more than 70% of incarcerated girls nationwide report sexual and physical abuse. Due to repeated exposure to trauma and violence, up to 50% of incarcerated girls fit the criteria for a diagnosis of post traumatic stress disorder (PTSD) as well.¹¹ The extent of mental health problems among these girls is staggering. Almost 70% of girls in the juvenile justice system have histories of physical abuse, compared to a rate of about 20% for teenage females in the general population.¹² A 1997 study of boys and girls in juvenile justice facilities found

⁹ *Adolescent Girls with Co-Occurring Disorders in the Juvenile Justice System*, at 3, The National GAINS Center for People with Co-Occurring Disorders in the Justice System, December 1997.

¹⁰ *Id.*

¹¹ *Mental Health and Adolescent Girls in the Justice System*, National Mental Health Association (1999).

¹² Laurie Schaffner, *Female Juvenile Delinquency: Sexual Solutions, Gender Bias, and Juvenile Justice*, 9 *Hastings Womens L.J.*, 4 (1998)

that 84% of girls needed mental health assistance, compared to 27% of boys.¹³ It is certain that many of these mental health issues stem from histories of abuse so many of the girls have endured. Yet the juvenile and criminal justice systems traditionally focus on the girls' actions instead of the trauma they have endured and how that trauma might be related to the behavior for which they are charged.

The combination of past victimization and mental health problems also leads many girls to abuse drugs, often as a form of self-medication. In addition, the low self-esteem that many of these girls experience leads them to develop unhealthy and demeaning relationships and to associate with peer groups that encourage self-harming behavior. Girls who are commercially sexually exploited fit this profile. Experts recognize that there is a distinct difference between how girls cope with past violence and how boys tend to cope with similar histories. Girls internalize violence much more than boys, often manifesting it by self-mutilation. The characteristics of the detention environment (*e.g.*, seclusion, staff insensitivity, loss of privacy) all too frequently add to the loss of control and negativity that the girls feel, magnifying their inability to cope with life stressors, and increasing the risk of self-mutilating and suicidal behaviors.

Staffing and Separation of Young and Adult Prisoners

State regulations set the standard ratio for staff per youth in juvenile detention and jail. The difference in treatment of 15 year olds and 16 year olds is remarkable, despite the fact that this particular age distinction is made nowhere else in New York State law. 9 NYCRR §180.9 provides that the “minimum staff ratios shall be as follows: (i) one child care worker per eight children per shift; and (ii) one social worker per 15 children.” In contrast, on Rikers Island, a ratio of one officer for 50 inmates is permitted.¹⁴ Thus, a 15 year old must be placed in a facility with a staff to detainee ratio of 1:8; a 16 year old

¹³ *Adolescent Girls with Co-Occurring Disorders in the Juvenile Justice System*, at 5, The National GAINS Center for People with Co-Occurring Disorders in the Justice System, December 1997. In New York City Fiscal Year 2006, the NYC Department of Juvenile Justice reports that 68% of children admitted to DJJ facilities required mental health services. Mayor's Management Report.

¹⁴ Rules of the Board of Correction, 40 RCNY §1-04(c)(5)(i).

may be in a facility with a ratio of 1:50. No institution which houses adolescents—foster care, schools—provides such drastically different levels of for 15 and 16 year olds.

There are far fewer incidents of violence in the Department of Juvenile Justice secure facilities than in DOC, and the incidents themselves are much less serious. We believe that to be the case because of the greater level of supervision of the youth in DJJ and the enhanced training that DJJ staff receive in addition to actual social work staff present during the day and available to the young people.

New York also requires separation of adolescent and adult prisoners. Correction Law §500-b4 provides: “No person under nineteen years of age shall be placed or kept or allowed to be at any time with any prisoner or prisoners nineteen years of age or older in any room, dormitory, cell or tier of the buildings of such institution unless separately grouped to prevent access to persons under nineteen years of age by prisoners nineteen years of age or older.” In practice, there are serious questions about whether the Department has blurred the distinction this statute draws. Teenagers and adults are both housed in close custody, which we understand is a single tier at RNDC. And whereas previously RNDC had its own administrative and punitive segregation units, which housed adolescents awaiting a disciplinary hearing and those convicted of infractions respectively, it is our understanding that these adolescents are now housed in the adult jails of GRVC (for pre-hearing detention) and the Central Punitive Segregation Unit (for infractions). The Department must ensure that these statutory protections of adolescents are not abridged.

We suggest that extra protections beyond this mere separation requirement should be provided for teenage prisoners who are prosecuted as adults. The current law simply does not provide for the supervision adolescents need.

The Basis for Reform: Kids are Not Adults

Public policy concerning youth held in adult jails must be rooted in the fact that adolescents are not adults. The treatment of adolescents in the criminal justice system has received significant attention over the past ten years. In 2005, the United States Supreme Court relied on medical, psychological and social science research to support its finding that children under the age of 18 are less culpable and more amenable to rehabilitation

than adults who commit similar crimes. *Roper v. Simmons*, 543 U.S. 551, 569 (2005). The Court's decision noted three significant differences between adolescents and adults: (1) adolescents demonstrate a "lack of maturity and an underdeveloped sense of responsibility" in youth that results in "impetuous and ill-considered actions and decisions"; (2) adolescents "are more vulnerable or susceptible than adults to negative influences and outside pressures, including peer pressure"; and finally, (3) "the character of a juvenile is not as well formed as that of an adult," and as a result, youthful offenders are "categorically less culpable than the average criminal,"

The finding that juveniles have reduced culpability led to the Court's conclusion that juveniles cannot be subjected to the death penalty. In sum, the *Simmons* Court found that sentencing for juveniles must be moderated to some degree to reflect their lesser blameworthiness.

These judicial and legislative trends are well supported by medical and social science research that adolescents are developmentally different than adults. Developmental psychologists have long recognized that adolescence is a period of major development in many areas including the development of cognitive skills. During the teenage years, youth begin to develop the abilities to abstract and to think of the possible, including alternative possibilities. These cognitive capacities progressively become ingrained in a person's thought process. However, this development rarely follows a straight line during adolescence, as periods of progress alternate with periods of regression.¹⁵ In recognition of this development, one psychologist has noted, "During the time these processes are developing, it doesn't make sense to ask the average adolescent to think or act like the average adult, because he or she can't—any more than a six-year-old can learn calculus."¹⁶ Adolescence is a time when the gradual transition into a self-governing, autonomous individual begins.¹⁷ Nevertheless, adolescents remain

¹⁵Laurence Steinberg & Robert G. Schwartz, "Developmental Psychology Goes to Court." in *Youth on Trial: A Developmental Perspective On Juvenile Justice*, 24 (Thomas Grisso and Robert Schwartz eds. 2000)

¹⁶Laurence Steinberg, *Juveniles on Trial*, 18 *Crim. Just.* 20, 22 (Fall 2003).

¹⁷*Kids are Different: How Knowledge of Adolescent Development Theory Can Aid Decision-Making in Court*, 16 (L. Rosado ed., 2000).

emotionally dependent on other people, specifically their parents or caretakers, peers, and society throughout this development process. They are less capable of independent, self-directed action than adults who have achieved a greater sense of identity and autonomy.¹⁸

Additionally, new research about the structure and function of the brain suggest that the teenage brain does not fully develop until the early 20's. The research, made possible by new technologies such as magnetic resonance imaging (MRI), allowing scientists to study brain images, demonstrates that the last areas of the brain to develop are the frontal lobes, specifically the pre-frontal cortex, which govern decision-making, judgment, and impulse control. As this area of the brain develops, young adults become more reflective and deliberate decision makers.¹⁹

The studies that have been conducted evaluating the value of treating children as adults have shown that these laws fail to reduce crime or recidivism. In fact, it has been shown that the opposite occurs. Ten years after the enactment of the Juvenile Offender Law in New York State, a study examined its effect on the rate of serious juvenile crime. The JO law required that juveniles charged with certain serious crimes be tried as adults. The study analyzed juvenile arrest rates four years prior and six years after the enactment of the law. The researchers found that the threat of adult criminal sanctions had no effect on the levels of serious juvenile crime.²⁰ A similar study conducted in Idaho examining a similar statute requiring that juveniles charges with certain serious crimes be tried as adults, came to the same conclusion. Additionally, when compared with neighboring states Montana and Wyoming, which had discretionary waiver systems similar to the system Idaho had in place prior to the legislative change, the study found that juvenile

¹⁸*Id.*, see also, Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 Hofstra L. Rev. 547, 555 (2000).

¹⁹Elizabeth S. Scott and Laurence Steinberg, *Blaming Youth*, 81 Tex. L. Rev. 799, 816 (2003) (citing Patricia Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 Neuroscience & Behavioral Reviews 417, 421-23 (2000); National Institute of Mental Health, *Teenage Brain: A Work In Progress* (NIH Publication No. 01-4929, January 2001) (available at www.nimh.nih.gov/publicat/teenbrain.pdf).

²⁰Singer, Simon I., and David McDowall. 1988. "Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law." *Law and Society Review* 22:521-35; cited in Bishop, Donna, "Juvenile Offenders in the Adult Criminal System," 27 *Crime and Justice* 81 (2000).

arrests for the offenses targeted by the legislation actually increased in Idaho, while decreasing in the other two states.²¹

Another study compared adolescents (aged 15 and 16) prosecuted for first and second degree robbery in New York and New Jersey. In New York, the adolescents were charged in criminal court; in New Jersey, they were charged in juvenile court. The study found that the adolescents prosecuted in adult court were more likely to re-offend and to be reincarcerated than those prosecuted in juvenile court.²² This was so despite the similar demographics of both groups, and the fact that all were prosecuted for the same crime, robbery. In New York, the youth were prosecuted in the adult system because the family court did not have jurisdiction; in New Jersey, only the juvenile system had jurisdiction. The results of the study showed that the change in jurisdiction controlled the recidivism rate: the same population prosecuted in juvenile court re-offended less than those automatically prosecuted in adult court. Since the juvenile court system is infused with more rehabilitative and therapeutic services, the outcomes of prosecuting teenagers in juvenile court were demonstrated to have better results.

A national public opinion poll conducted by Zogby International in 2007 demonstrated that striking majorities favor rehabilitative services for young people and, despite a lack of confidence in the juvenile system, are largely opposed to prosecuting youth in the adult court and incarcerating youth in adult facilities. By a margin of more than 15 to 1, the U.S. voting public believes that decisions to transfer youth to the adult court should be made on a case-by-case basis and not be governed by a blanket policy. More than 80% of respondents think that spending on rehabilitative services and treatment for youth will save tax dollars in the long run. Approximately 7 in 10 feel that putting youth under age 18 in adult correctional facilities makes them more likely to commit future crime. More than two-thirds disagree that incarcerating youth in adult facilities teaches them a lesson and deters them from committing future crimes. Despite

²¹ Jensen, Eric L., and Linda K. Metsger. 1994. "A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime." *Crime and Delinquency* 40:96-104, cited in Bishop, Donna, "Juvenile Offenders in the Adult Criminal System," 27 *Crime and Justice* 81 (2000).

²² Fagan, Jeffrey, 1996. "The Comparative Advantage of Juvenile versus Criminal Court Sanctions on Recidivism among Adolescent Felony Offenders." *Law and Policy* 18:77-112.

these findings, New York continues to prosecute children aged 16 and 17 as adults and incarcerates them in the same or similar facilities.

Recommendations

A. Social services to incarcerated teenagers must be increased, both to protect them during their incarceration and facilitate their re-entry to society upon release.

B. The Department of Correction and relevant other agencies should provide enhanced training focusing on adolescent development, mental health and educational issues for officers working with adolescents,

C. The Department of Correction should offer protective custody units to vulnerable inmates without subjecting them to the harsh deprivations of 23-hour lock in status or isolation.

D. The Department of Correction's systems for maintaining and utilizing information about violence against inmates should be reviewed, and the Department held accountable for supervision of its staff;

E. The Office of Mental Health should provide liaisons to facilitate assessment and placement of mentally ill court involved youth.

F. The Department of Education and Department of Correction should implement the reforms to the education system recommended by the monitor, so that they can develop sufficient academic skills to function successfully as adults.

Thank you for the opportunity to speak about this important topic.

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