

OVERSIGHT HEARING: NEW YORK CITY COUNCIL
TESTIMONY FROM DORA B. SCHIRO, COMMISSIONER, DEPARTMENT OF CORRECTION
Committee on Fire and Criminal Justice Services
Committee on Juvenile Justice

Oversight: Jail Violence at Adult and Adolescent Facilities on Rikers Island
December 15, 2010

Good morning Chairs Crowley and Gonzalez and Council Members of the Fire and Criminal Justice Services and Juvenile Justice Committees. The safety and well-being of the city is our core mission and that cannot happen if the safety and well-being of the city's correction workforce and inmate population are not intact. You have convened this hearing, and we and others are in attendance because institutional safety and the reduction of violence in the jails as well as the street is of paramount concern to you, all of us at DOC and the justice system's many stakeholders. I welcome the opportunity to discuss the data at length and to convey to you the substantive reforms that are underway to improve upon the existing policies and practices to ensure that DOC is the safest and best jail system in the country. Above all else, it is my top priority that every member of our workforce goes home to their family at the end of their tour as they reported to work - safe and sound, and that every inmate in our custody is incarcerated in a secure and appropriate manner.

At 16, I knew that I wanted to work in Corrections. I've been lucky. I have spent virtually my entire career working in and making better correctional systems across the country. My first assignment was in the Massachusetts Department of Corrections working with high custody males. I came home to New York and worked first in the Criminal Justice Coordinator's Office and then at the Department of Correction as assistant commissioner. I went to Missouri, as warden of a St. Louis city jail, and several years later was appointed Director of the Missouri Department of Corrections and then the Arizona DOC as Department Director. Before returning to our DOC a little over a year ago, at the request of the Secretary of the Department of Homeland Security, I made a complete assessment of the federal government's civil detention system. DHS adopted my recommendations for reform and published my report. All of these assignments were challenging and in every instance, working alongside others, measurable improvements were made. But none of these assignments is as rewarding as this opportunity to come home and to serve again in a correctional system with many attributes, not the least of which is a workforce with great heart and a huge commitment to public safety. Their passion makes everything possible, and that is a good thing, because this system, like every other in the country, must continue to strive towards excellence in every facet of custody management to succeed.

Framing the Issue

Our inmate population remains fairly flat but a greater percentage of the city jail population is charged with violent crimes today than over the last ten years. The DOC is also detaining more mentally ill inmates than ever. Both of these groups of inmates, maximum custody and mentally ill prisoners, are the most difficult to manage, and disproportionate to their numbers are the most likely to participate in incidents in jail, and the most violent incidents in the jails. These findings are facts, not excuses, to inform decision-makers and correctional personnel in earnest pursuit of better results. This assessment and today's conversation is representative of our approach to problem solving. We are committed to wrapping our arms around the full extent of the problems we face and to make the most of the opportunities to improve.

As discussed in detail below, I have already taken significant steps to address this issue, including increasing the percentage (from 84 to 88) of uniformed personnel to security posts in the jails and enhancing the review of incidents to help prevent them from re-occurring.

Department Overview

The New York City Department of Correction is the second largest jail system in the country with an average daily population of 13,169 prisoners and a workforce of 9,982 correction professionals including 8,542 uniformed personnel (8,742 tomorrow when DOC's next class of 200 cadets reports to the Academy). The DOC FY 2011 operating budget is \$1.1 billion, of which 88 percent is dedicated to personnel services. They staff 14 jails, ten of them on Rikers Island, three prison hospital wards, and 16 court pens. DOC has 14,384 beds at standard. Cells make up a considerable percentage of the bed capacity (49 percent). Consistent with our commitment to improve custody management, this past summer, DOC announced 4,000 outdated dormitory beds will be demolished and a 1500-bed intake jail will be built to improve admissions, releases and risk assessments.

DOC is also a very dynamic system with a terrific amount of inmate movement. Last year (FY 2010), the department processed nearly 100,000 admissions (95,385 admissions) *and* releases (95,948 releases) from city custody. And, on any given day, DOC transports as much as 12 percent of the population to and from court. With few exceptions, inmates are admitted and released and produced for court on time. Meals are served and health care is provided as required.

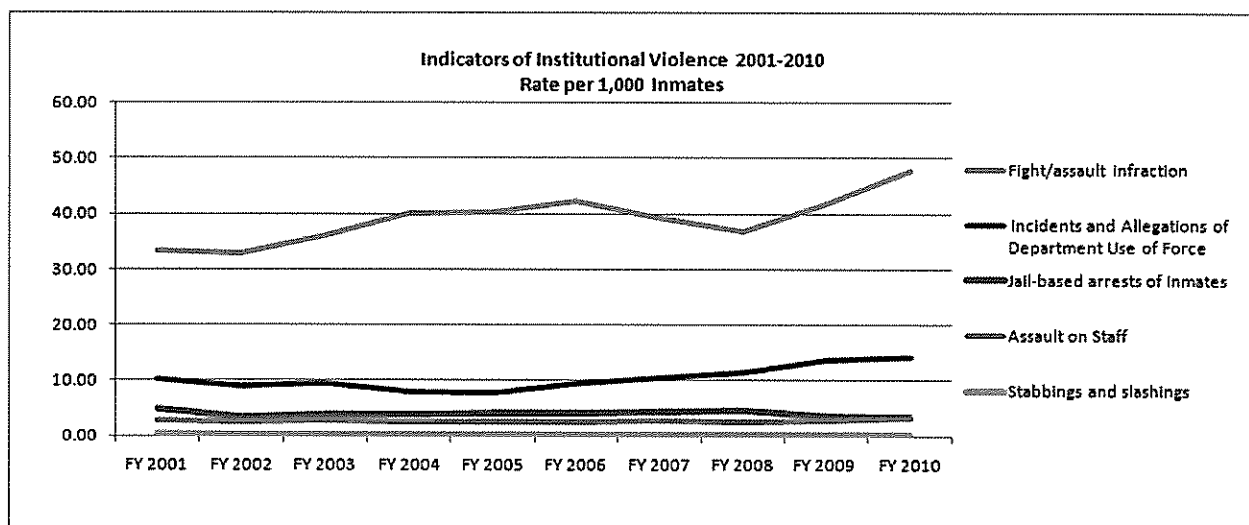
Pretrial inmates remain in DOC custody 50.1 days on average, but an appreciable number (29 percent), primarily inmates with low bail amounts and less serious drug and property charges, are released within the first three days. Inmates with violent felony charges, lengthy criminal histories and high bail, and inmates who are mentally ill, ordinarily remain in custody twice as long as other inmates. The inmate population has changed appreciably over the past ten years. Inmates charged with violent felonies and inmates diagnosed with mental illness represent greater percentages of the total population today than ten years ago. Despite these significant changes in the inmate population, DOC safety performance indicators have not changed at nearly the same rate. The majority of the inmate

population, both low and medium custody inmates, is largely incident free. The minority of the inmate population – high custody inmates and mentally ill inmates particularly those who are assigned to Mental Observation housing units – are disproportionately engaged in institutional violence.

These challenges are not unique to our DOC, and they are not new to us. I will talk today about violence in the jails, contributing factors, and the comprehensive efforts that are underway to identify *and* to eradicate its root causes. Today's conversation will focus in large part on safety indicators. The data is critical to a shared understanding of the state of institutional safety. This is where I will begin.

Ten-year Trends

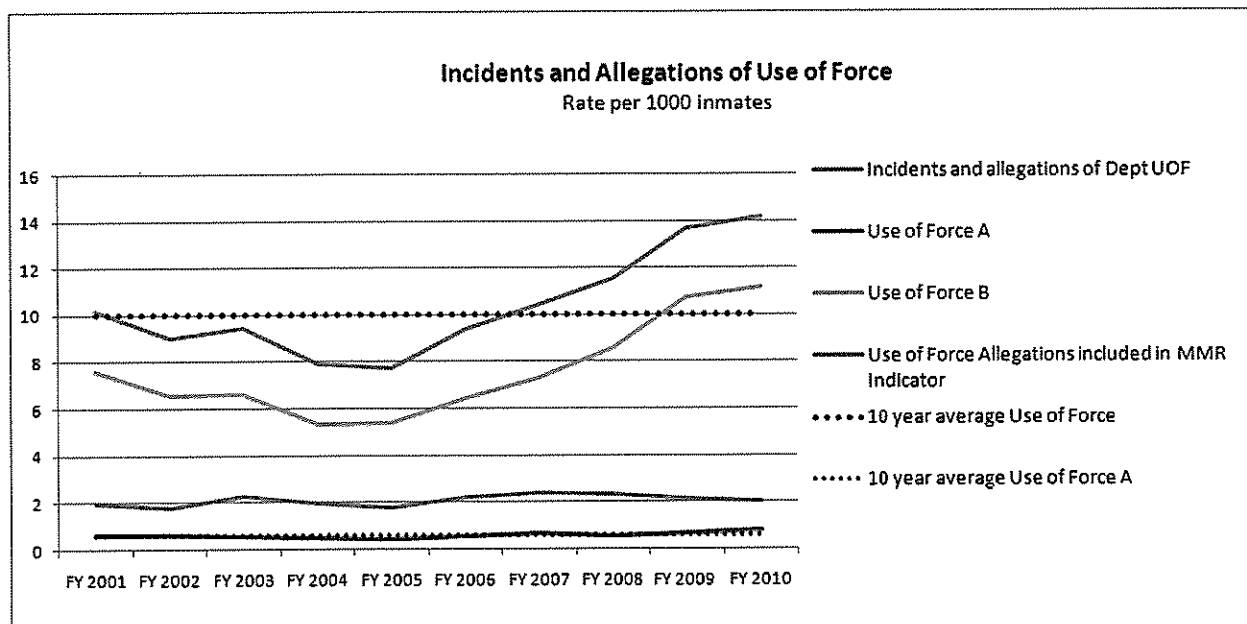
The DOC reports a number of violence indicators. These include incidents and allegations of Department Use of Force (UOF), assaults on staff, stabbings and slashings, fight/assault infractions, and jail-based arrests of inmates. Overall, the incidents of violence in the jails over the past ten years have remained steady with a slight uptick in the past year, consistent with the recent and appreciable increase in inmates charged with violent felonies and mentally ill inmates in the city jail system. It should be emphasized that the numbers achieved during the last decade pale in comparison to the violence numbers recorded in the 1990s.



Incidents and Allegations of Department UOF combines three data sets – Use of Force (UOF) A, Use of Force (UOF) B, and Use of Force (UOF) Allegations. When DOC established this indicator it assumed that every UOF results in some injury to the inmate and/or the officer although this is not necessarily the case; the disbursement of OC (i.e., chemical agent) spray can result in no injury to the officer or the inmate and yet is still considered a UOF B. This indicator does not specify whether the inmate(s) and/or the officer(s) were injured, how many were injured and whether or not the injury was sustained in the precipitating incident or as a result of the application of the use of force. The

designations, UOF A and B, connote whether or not the injury is "serious." UOF A injuries are serious; UOF B injuries are not. Serious is defined as any injury requiring medical treatment beyond the prescription of over-the-counter analgesics or the administration of minor first aid. The vast majority of Uses of Force, 93 percent, are UOF B and many of them, a full 40 percent, involve the use of a chemical agent (OC spray). The increase in the use of OC is intentional; DOC analyzed A level uses of force over five months and determined that as many as one half of the injuries sustained by uniformed personnel who were involved in uses of force, were the result of the use of force and not the precipitating incident. Many of these were injuries to officers' hands, wrists and fingers. DOC now requires every incident summary to include whether OC was used. Further, high-level uniform staff is now reviewing every use of force incident, including video whenever it is available. The review is the basis for amended incident summaries, staff redirection, in-service training, shift briefings, TEAMS and other management meetings.

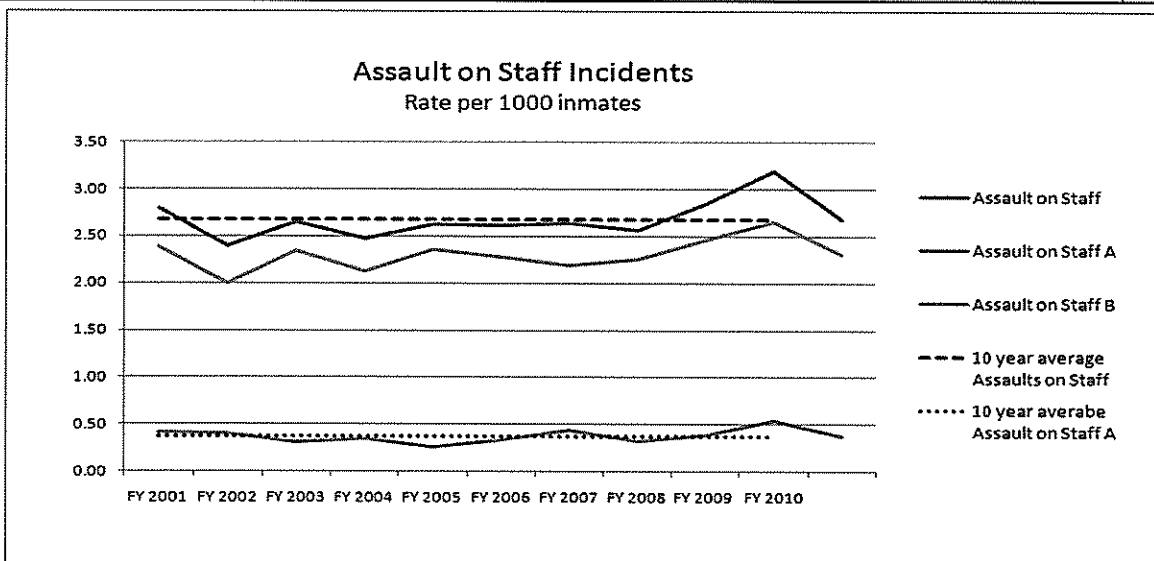
Violence Indicator	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	10 YEAR AVERAGE
Incidents and allegations of Dept UOF	1772	1510	1647	1309	1263	1522	1751	1915	2196	2222	1711
Rate per 1000 ADP	10.19	9.03	9.44	7.93	7.75	9.39	10.43	11.52	13.69	14.18	10.35
Use of Force A	106	101	95	86	72	89	113	88	109	128	98.70
Rate per 1000 ADP	0.61	0.60	0.54	0.52	0.44	0.55	0.67	0.53	0.68	0.82	0.60
Percent with use of OC	46%	35%	38%	31%	32%	22%	27%	51%	32%	29%	34%
Use of Force B	1321	1100	1157	883	879	1045	1223	1423	1717	1743	1249.1
Rate per 1000 ADP	7.59	6.58	6.63	5.35	5.39	6.45	7.29	8.56	10.70	11.13	7.57
Percent with use of OC	36%	37%	38%	33%	36%	37%	46%	32%	39%	40%	37%
Use of Force Allegations included in MMR Indicator	345	309	395	340	312	388	415	404	370	351	363



Assaults on Staff combine two data sets – Assaults on Staff (AOS) A and Assaults on Staff (AOS) B and represents the number of incidents involving an inmate assault on staff resulting in a staff use of force. Accordingly, when an assault on staff does not require a use of force to regain control – for

example, an inmate who pushes or strikes a MOS (Member of Service) and then immediately steps aside – the incident is not included. This indicator does not specify whether an officer and/or an inmate was injured, how many were injured, and does not capture whether the staff injury, if there was an injury, is attributable to the assault. DOC analyzed recent assaults on staff and determined that improved instruction about responding to incidents could enhance staff safety, particularly when responding to incidents in housing units where the majority of incidents occur. Redirection regarding probe and response teams and the video recording of incidents has been released to the field with improved results.

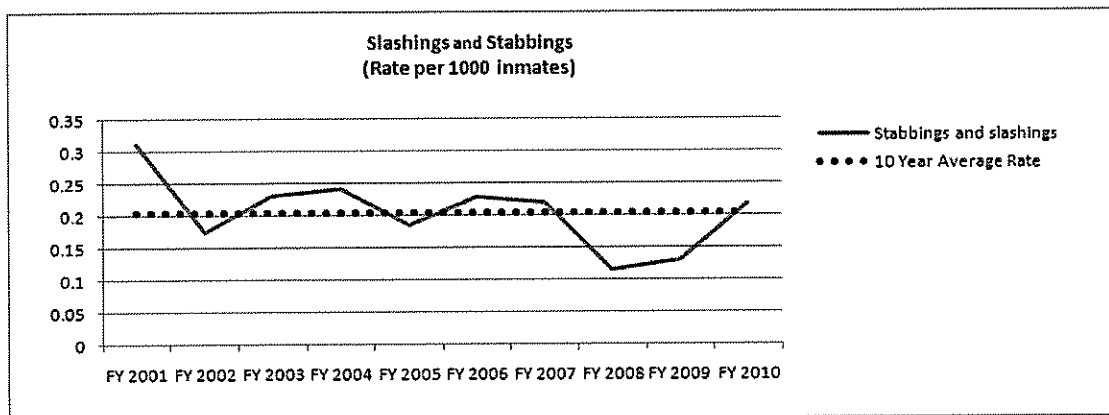
Violence Indicator		FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	10 YEAR AVERAGE
Assaults on Staff		486	400	462	408	428	424	442	427	457	500	443
	Assault on Staff	2.79	2.39	2.65	2.47	2.63	2.62	2.63	2.57	2.85	3.19	2.68
	Assaults on Staff A	71	66	54	57	43	55	74	53	63	84	62
	Rate per 1000 ADP	0.41	0.39	0.31	0.35	0.26	0.34	0.44	0.32	0.39	0.54	0.37
	Assaults on Staff B	415	334	408	351	385	369	368	374	394	416	381.4
	Rate per 1000 ADP	2.39	2.00	2.34	2.13	2.36	2.28	2.19	2.25	2.46	2.66	2.30



NYC LAW DEPARTMENT - WORKERS' COMPENSATION INJURED CORRECTION OFFICERS FY2008 THROUGH FY2010				
	FY 2008	FY 2009	FY 2010	TOTAL
Number of Injured Correction Officers	1253	1384	1435	4072
Number of Injured Correction Officers with Assault Injury	413	460	434	1307

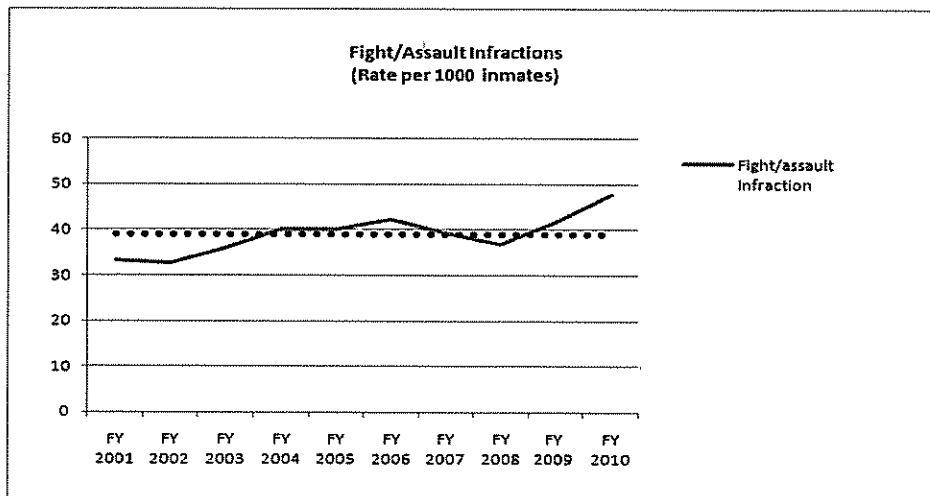
Slashings and stabbings represent one kind of an inmate-on-inmate assault. A slashing is a cut that requires closure. A stabbing is a puncture that requires closure. This indicator counts incidents in which one or more slashings and/or stabbings of an inmate occurs and not how many inmates sustained one or more slashings or stabbings. Previously, the DOC counted as a stabbing or slashing only an incident resulting in a wound that required sutures. Because additional means of closing wounds are widely used today, the DOC now counts and records any incident resulting in a wound that requires closure whether by suture, surgical glue, staple or other means, a change we made late last fall. Five slashing/stabbing incidents that would not have been previously counted – two in FY 2010 and three in FY 2011 to date – have been recorded since then. Further, because the type of weaponry inmates use changes over time and others cannot be detected through ordinary search methods, DOC has consulted with the Transportation Security Administration and is in the process of placing an order for several Rapiscan detectors, the same detection devices that are being placed in airports today.

Violence Indicator	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	10 YEAR AVERAGE
Stabbings and slashings	54	29	40	40	30	37	37	19	21	34	34
Rate per 1000 ADP	0.31	0.17	0.23	0.24	0.18	0.23	0.22	0.11	0.13	0.22	0.21



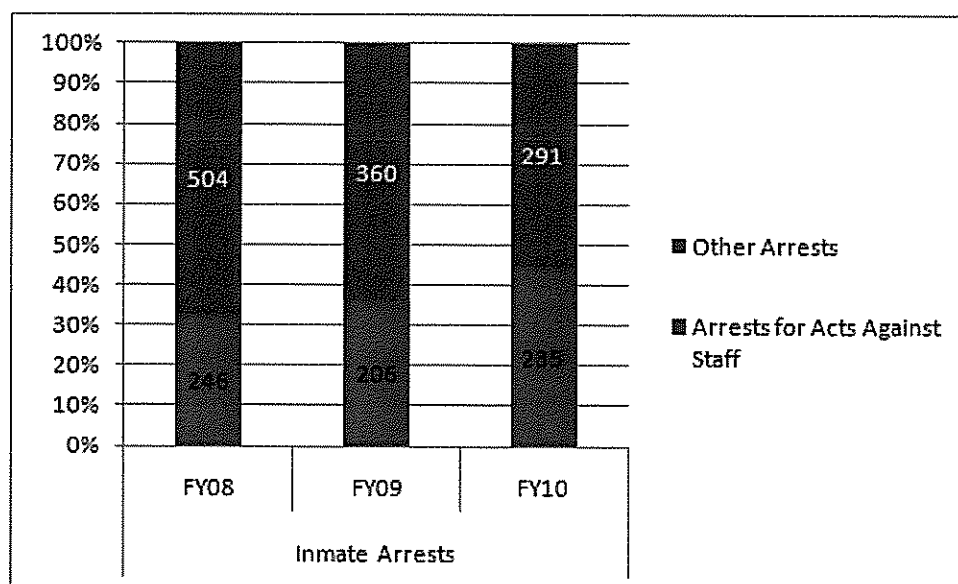
Fight/assault infractions counts the number of fight and assault infractions written, not substantiated. In an effort to identify and to intercede in every potential hot spot, infractions are written for any physical altercation including horseplay, effective this past March. Additionally, whenever a fight occurs and video is available, it is being reviewed to identify and issue infractions to every instigator and participant. As a result of additional due diligence, the number of infractions issued has increased.

Violence Indicator	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	10 YEAR AVERAGE
Fight/assault infraction	5803	5473	6283	6616	6548	6833	6576	6109	6696	7475	6441.20
Rate per 1000 ADP	33.36	32.71	36.03	40.07	40.17	42.17	39.18	36.74	41.74	47.71	38.99



Jail-based arrests of inmates encompass the total number of inmates arrested for committing criminal offenses while in DOC custody. DOC has focused its efforts on arresting inmates who assault staff, or commit other acts against staff. Arrests of inmates who assaulted staff thus increased 30 percent from 163 in fiscal year 2009 to 212 in fiscal year 2010. Additionally, arrests of inmates for criminal acts they committed against staff as a percentage of total inmate arrests rose from 33 percent in fiscal year 2008 to 36 percent in fiscal year 2009 and to 45 percent in fiscal year 2010. The conversations with the office of the Bronx DA that DOC initiated over a year ago, about expediting the processing of both felony and misdemeanor arrests, are promising and will continue.

Violence Indicator	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	10 YEAR AVERAGE
Jail-based arrests of inmates	853	576	671	628	684	654	738	751	567	526	664.80
Rate per 1000 ADP	4.90	3.44	3.85	3.80	4.20	4.04	4.40	4.52	3.53	3.36	4.00



A general comment about the current MMR indicators of violence

The current MMR indicators were a good faith effort by DOC to capture information to inform decision making. Nevertheless, these indicators and their definitions have proven problematic and are being replaced. The department has sought and received approval to adopt new measures that will be published in the next PMMR, which covers the period July through October, 2011. The new measures will capture more information that is important to all of us; for example, inmate assault on staff and serious injury to staff as a result of the inmate assault on staff. Further, where better indicators are available they will be used instead; for example counting all violent inmate-on-inmate incidents and not just slashings/stabbings. This is just the first phase of our effort to improve indicators of violence, which, as we reprogram and link our databases, will be able to differentiate between incidents and actions, individual inmates and officers and their roles and injuries, and connect inmate and staff characteristics to violence. A copy of the new fiscal year 2011 measures is included as Appendix A.

BOC Data

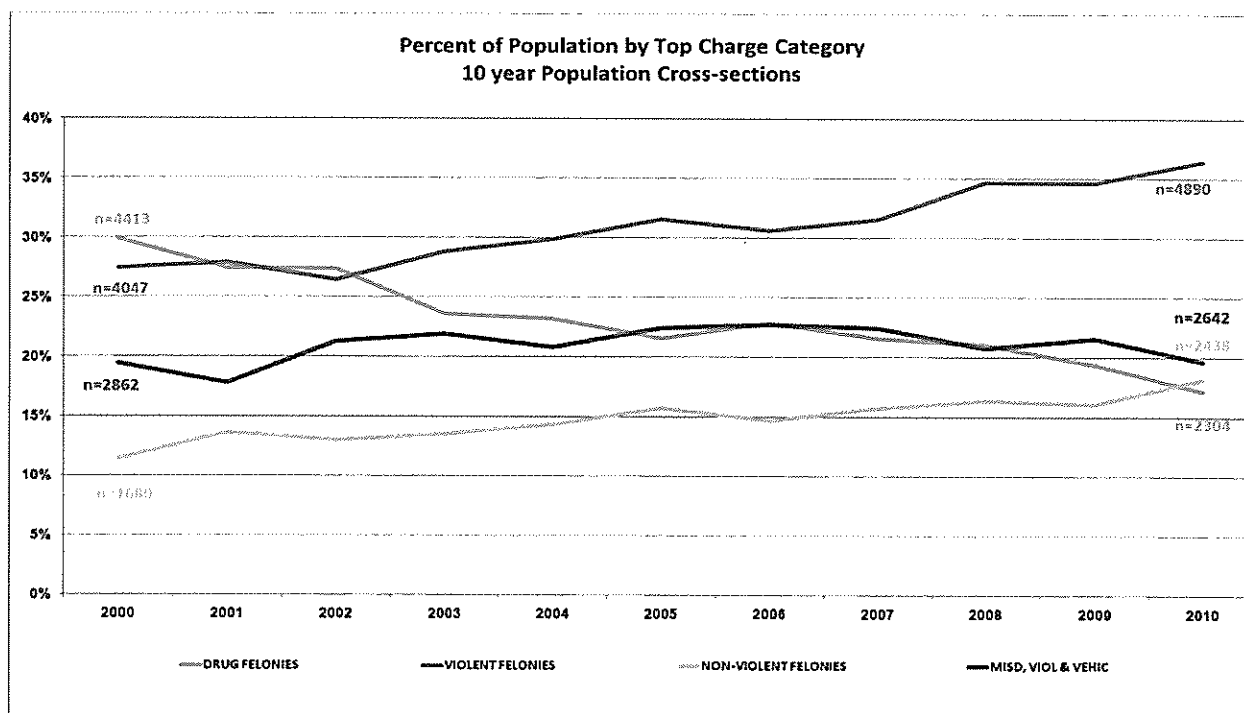
The NYC Board of Correction (BOC) is one of three oversight bodies with 24/7 access to DOC facilities and the inmate population. The other two authorities are the New York State Commission on Correction (SCOC) and the Office of Compliance Consultants (OCC). The BOC was established by City Charter, the SCOC by the state legislature, and OCC by federal court order. Both the BOC and the SCOC are also authorized to promulgate minimum standards by which DOC must operate. This committee asked the BOC to provide several reports and asked DOC to comment on differences in BOC and DOC data.

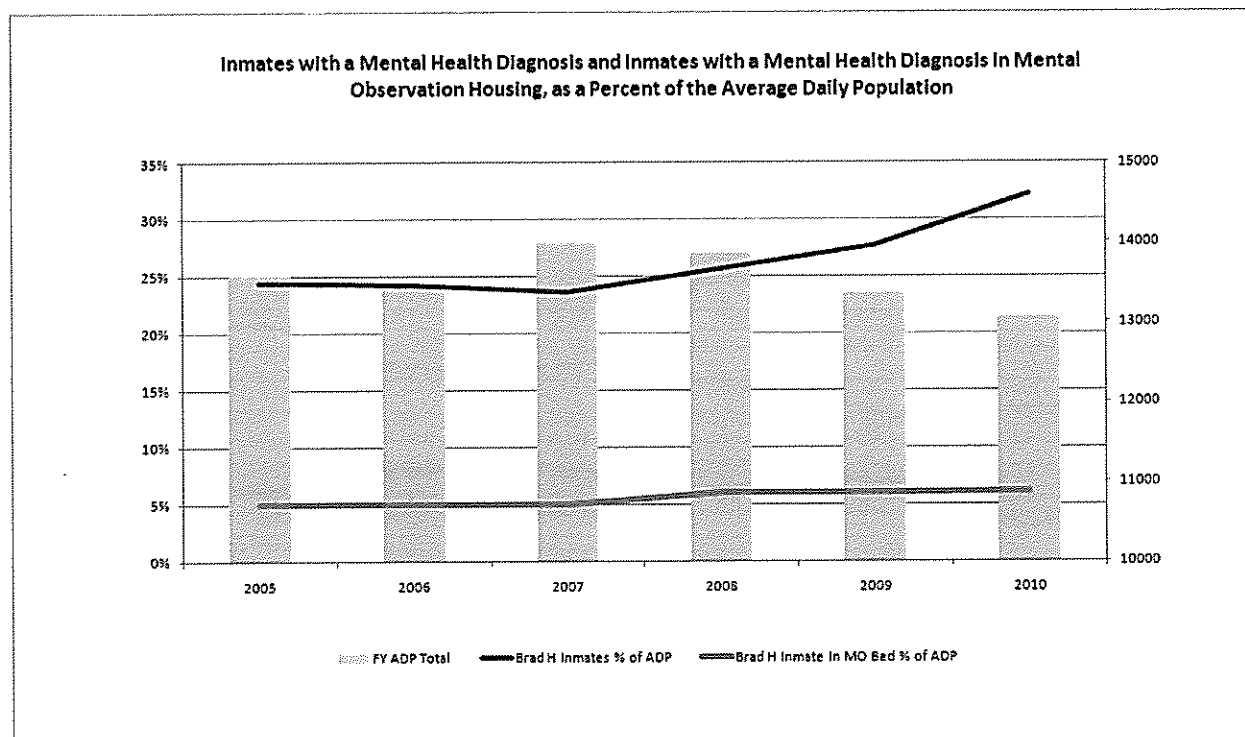
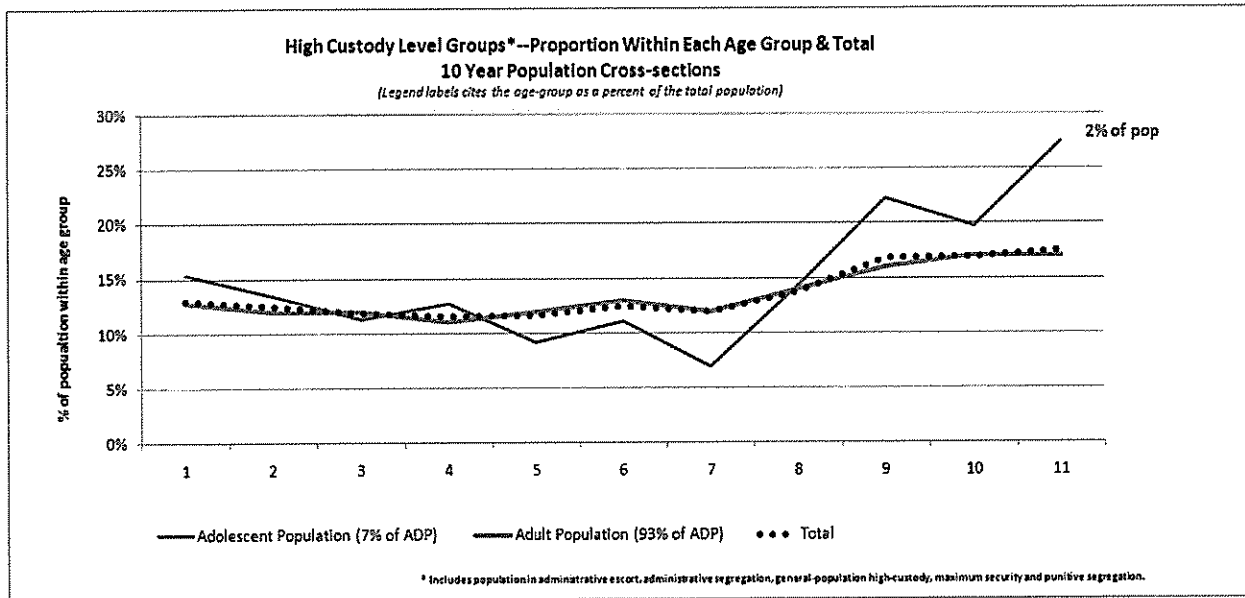
Of the four major indicators BOC tracks, slashings and stabblings is the only one that overlaps with DOC MMR data. Other differences between the two sets of data are as follows: (1) BOC records incident data by incident date whereas DOC records such data by date reported; (2) the BOC-created indicator "Inmate Injuries/Serious Injuries From Inmate Fights/Fight Incidents" is based on BOC's interpretation of initial COD-incident narratives, while DOC tracks Serious Injury to Inmates and codes the cause of injury as an inmate on inmate fight only after an investigation into the injury has taken place; (3) rate calculations sometimes differ since BOC calculates incidents per 100 inmates, whereas DOC calculates incidents per 1,000 inmates; (4) DOC's data reflects updates in use of force incidents, while BOC's does not; and (5) BOC's calculation of average daily census is often lower than DOC's, resulting in artificially higher rates.

Hot Spot Analysis, Taking a Closer Look at today's Population

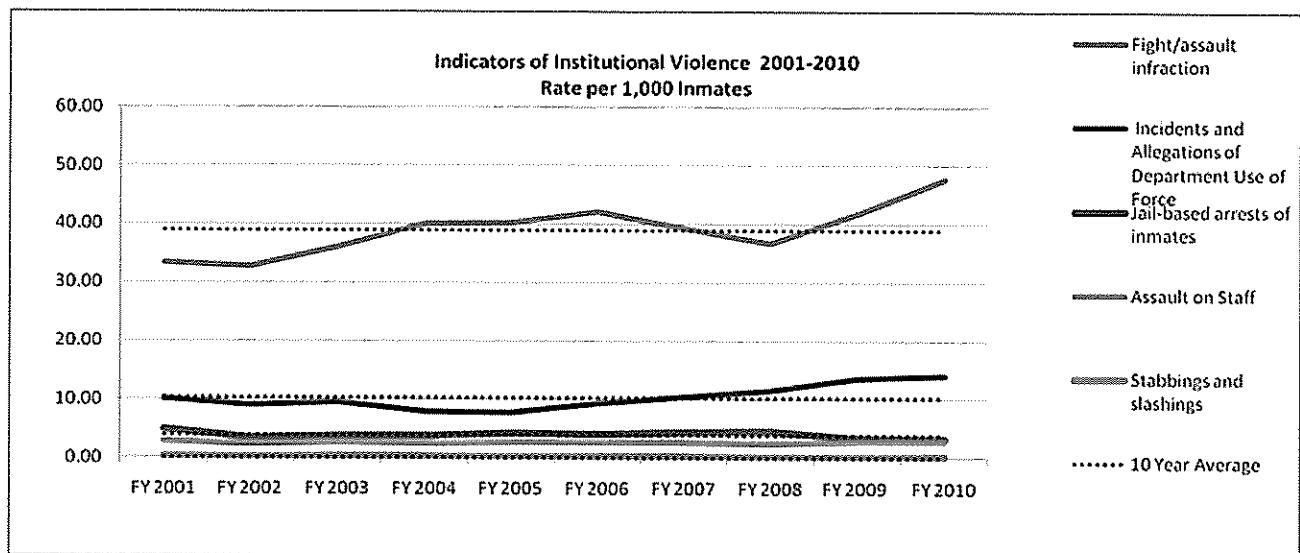
Analyzing Department data over time is critical to our assessment and our course of action. The DOC has made a careful review of population trend data as well as performance statistics over the past ten years. From this analysis there are three significant findings. First, the inmate population has changed appreciably over the past ten years. Inmates charged with violent felonies and inmates diagnosed with mental illness represent greater percentages of the total population than ten years ago. Second, despite the significant changes in the inmate population, DOC safety performance indicators have not changed considerably. Third, the majority of the inmate population, both low and medium custody inmates, and the housing units to which they are assigned are largely incident free. The minority of the inmate population – high custody inmates and mentally ill inmates particularly those who are assigned to Mental Observation housing units – are disproportionately engaged in institutional incidents, particularly institutional incidents with violence.

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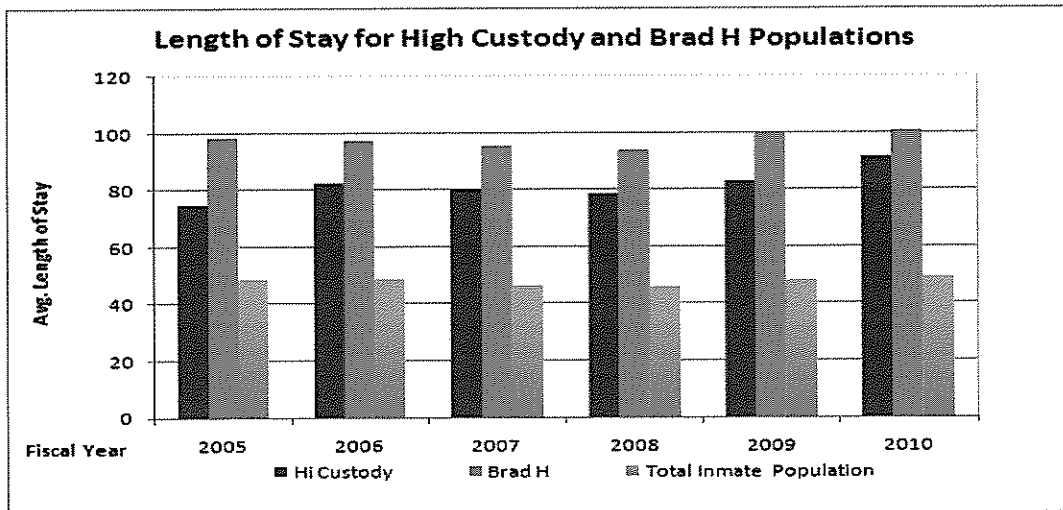


The majority of housing units to which inmates are assigned—low and medium custody general population—are largely incident free. Low custody, general population units (classification scores of 0 to 5) house approximately 24 percent of the average daily population and produced just one percent of serious violent incidents (Use of Force A, Serious Injury to Inmate Incidents, and Stabbings/Slashings) that occurred in housing areas from July through November 2010. Low-medium, general population housing areas (classification scores of 6 to 10) house approximately 30 percent of the population and were the setting for only 10 percent of these violent incidents. High-medium, general population housing areas (classification scores of 11 to 16) account for 20 percent of the population and 17 percent of violent incidents that occurred in housing areas. Consequently, units housing approximately 74% of our average daily population were responsible for just 28% of violent incidents that took place in housing areas. Housing units where a minority of the inmate population resides produced a majority of violent incidents that occurred in housing areas. For example, high-custody, general population housing areas (classification scores of 17 and greater), which house approximately 14% of the population, produced 28% of the violent incidents. Approximately 14% of the violent incidents in housing areas took place in high-risk housing areas such as Central Punitive Segregation Units (CPSU) and Administrative Segregation units, where approximately four percent of inmates reside. Additionally, seven percent of the violent incidents in housing areas occurred in Mental Observation housing in which just four percent of the population resides. In fact, if one includes less serious violent incidents (Use of Force B and Allegations of Use of Force), 19% of violent incidents took place in MO housing units.

In a separate analysis of violent incidents that were reported during 2010 in and outside of housing areas, inmates with a mental health diagnosis – the majority of whom remains in the general

population and make up slightly more than 30 percent of the DOC population—were disproportionately involved in 67 percent of these incidents.

Inmates with a mental health diagnosis and high custody inmates are also more likely to remain in detention longer, affording more opportunity to familiarize themselves with DOC activities and operations and to engage in misconduct.



Adolescent Inmates

In New York State all persons 16 years of age and older are charged as adults in criminal matters (Penal Law Section 30.00(1)) and confined in adult facilities but separated from inmates who are 19 years of age and older (Correction Law Section 500-b(4)). Inmates, ages 16 – 18, are referred to as adolescents (New York City Administrative Code Section 9-130). Approximately seven percent of the total average daily population is adolescents. The majority of adolescents – 74 percent – are assigned to the RNDC where they make up 46 percent of the jail’s census.

ADOLESCENT INMATE POPULATION*

FACILITY	Male Detainee	Male Sentenced
EMTC	0	76
NIC	0	2
NIC/Infirmary	5	0
OBCC	96	0
RNDC	631	27
BHPW	1	0
Total Male	733	105
FACILITY	Female Detainee	Female Sentenced
RMSC	31	5
Total Female	31	5
TOTAL	764	110

*total number of adolescent inmates,
ages 16 – 18, in DOC custody on December
7, 2010

The first five quarters of data and our own analysis comparing rates of violence among adolescents and adults at RNDC suggest several findings.

First, the New York City Council required the DOC to report on 20 different violence indicators. For nine of the most serious indicators, the DOC has had no incidents to report. From July 1, 2010 to September 30, 2011, adolescents were not involved in any homicides, attempted suicides, suicides, stabbings, and slashings. No adolescents were hospitalized as a result of use of force A incidents or adolescent-on-adolescent fights and there were no substantiated incidents of adolescent-on-adolescent sexual assaults or staff-on-adolescent sexual assaults. (However, in October and November 2011, adolescents were involved in two slashing incidents; these will be reported in the second quarter FY 2011 report.)

Second, among violent incidents, adolescents engage most frequently in inmate-on-inmate fights. Although relatively few of these fights result in serious injuries, the department has responded

by issuing fight infractions against adolescents at higher rates. For example, in the first quarter of FY 2011, there were 91.43 adolescent inmate fights per 1000 inmates (an increase from the 53.39 rate in the first quarter of FY 2010). Only 2.74 per 1000 adolescents sustained a serious injury as a result of these fights (an increase of 1.62 since the first quarter of FY 2010). In response, the department issued infractions for fighting against 236.01 inmates per 1000, an increase of 123% since the first quarter of FY 2010. While first quarter FY 2010 and FY 2011 comparisons show an increase in several indicators, from the fourth quarter FY 2010 to the first quarter FY 2011, there was a notable decline in the rate of adolescent inmate fights and serious injuries as a result of these fights, adolescent assaults on staff, use of force A incidents involving adolescents, and incidents of use of force involving adolescents resulting in non-serious and no injury.

Fighting amongst adolescents is not unique to the DOC. For example, in the first quarter of FY 2011, the New York City Department of Juvenile Justice reported 181 fights and altercations among an average daily population of approximately 380 youths. By contrast, DOC reported a total of 234 fights with an average daily population of more than 800.

Third, a comparison of the rates at which adults and adolescents participate in violent acts at RNDC shows that adolescents are more frequently involved in violent acts than adults. During the first five months of FY 2011, the rate at which adolescents were involved in all major violence indicators—stabbing/slashing incidents, incidents leading to serious inmate injury, uses of force, and assaults on staff—exceeded that of the RNDC adult population.

Recent Incidents of Violence

Any violent incident is one too many. Recently, a couple of incidents garnered press attention and while you may have heard that they were related to staffing, this was not the case.

Each of these events involved high-risk inmates, including those with known gang affiliations and others with documented mental illnesses. We have worked with the DA's office to ensure that all of the inmates who assaulted staff in these recent incidents have been or will be arrested and prosecuted promptly.

The Department has undertaken a systematic review of all incidents to identify trends and develop new training regimes to better equip staff with the necessary skills to perform line duty responsibilities. For example, as an ongoing practice going forward, the Department's probe team will respond with handheld cameras to better document our incident response. Our ongoing review will help ensure that violence is reduced to the lowest possible level and all members of service go home safely at the end of the day.

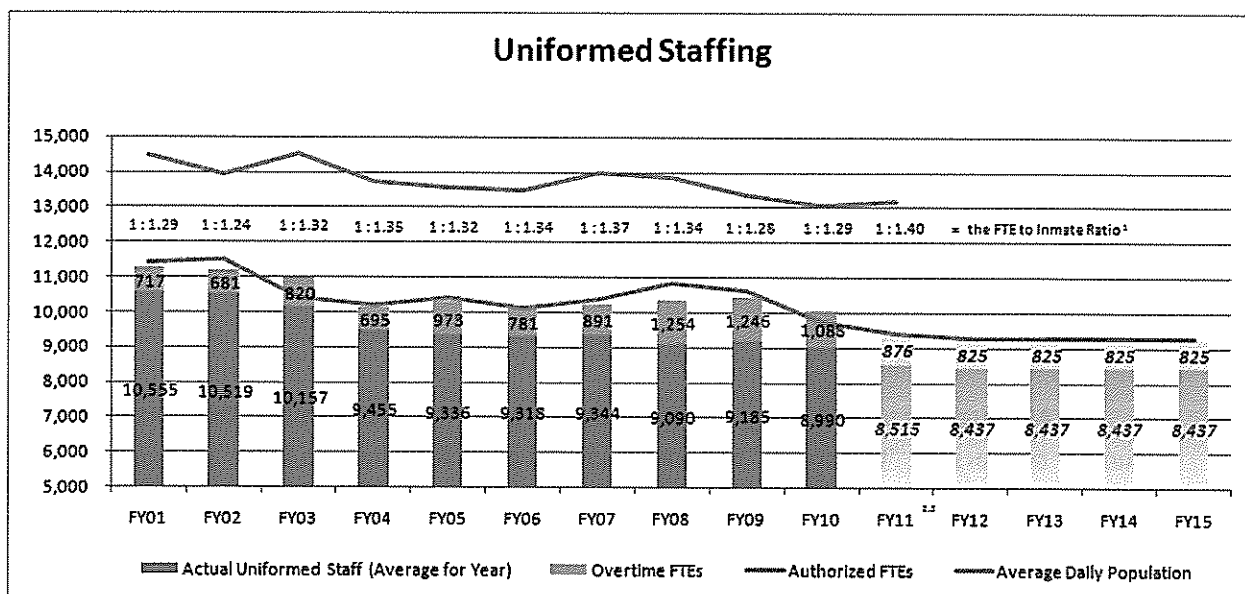
Systems Reforms

Staffing

Staffing Levels

The DOC FY 2011 operating budget is \$1.1 billion, of which 88 percent is reserved for personnel services. The majority of the department's workforce of 9,982 staff is uniformed personnel (8,542 members of service representing 86 percent of the workforce) and 7,573 (89 percent) of these MOS are correction officers. The number of line officers will increase tomorrow, December 16, when a newly hired class of 200 officer cadets reports to the Academy. The remaining 1,440 employees (14 percent of the workforce) are civilians primarily fulfilling clerical, professional and trades duties.

The total numbers of uniformed and civilian staff has been cut over time; however, the ratio of uniformed staff to inmates has remained fairly stable over the past ten years. Today, the uniformed staff to inmate ratio is 1:1.4, which compares favorably to other municipal jail systems.



1 The "appearance rate" for uniformed staff is 55%. The converted average staffing ratio per shift above ranges from one FTE for every 7.7 inmates in FY11, to one FTE for every 6.7 inmates in FY02, a 14% change.

2 FY11 - 15 bars represent authorized levels as of the FY12 November Plan; the overtime FTE is based on the authorized budget of \$73 million.

3 As of the November 26th payroll, the actual uniformed headcount was 8,542. Effective December 16th, the number of Correction Officers will increase by 200 with the start of a new Academy class.

4 Over the past 10 years, the Actual Correction Officer Staff (Average for Year) has consistently been approximately 89% of total uniformed staff. From FY2001 - 2010 the numbers were 9,476; 9,404; 9,055; 8,401; 8,288; 8,273; 8,296; 8,036; 8,146; 7,969. The FY2011 budgeted is 7,540.

RANK	ACTUAL AVERAGE FOR FISCAL YEAR										BUDGETED
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
CO	9,476	9,404	9,055	8,401	8,288	8,273	8,296	8,036	8,146	7,969	7,540
CAPT	894	916	907	886	883	862	864	868	859	854	815
ADW	115	121	120	102	99	112	116	112	113	108	101
DW	49	55	52	41	43	47	42	47	43	40	34
Warden	22	23	24	25	24	24	26	26	24	19	25
AVERAGE	10,555	10,519	10,157	9,455	9,336	9,318	9,344	9,090	9,185	8,990	8,515
% CO	90%	89%	89%	89%	89%	89%	89%	88%	89%	89%	89%

Additionally, DOC allocated a greater percentage of uniformed personnel to security posts in the jails. The number of uniformed staff with significant direct inmate contact increased from 84 to 88 percent in the past year.

October 2010	Jails	Other Commands	Total
	% of Total	% of Total	% of Total
Minimal Inmate Contact	6%	35%	12%
Significant Inmate Contact	94%	65%	88%
TOTAL	100%	100%	100%
October 2009	Jails	Other Commands	Total
	% of Total	% of Total	% of Total
Minimal Inmate Contact	10%	37%	16%
Significant Inmate Contact	90%	63%	84%
TOTAL	100%	100%	100%

Although security staffing remains at a high level, 445 positions that DOC has maintained for a number of years are “temporary” or non-authorized posts for which no funds are expressly appropriated and are covered with appropriated overtime monies. Maintaining these posts with overtime funds quickly depletes this account and leads to overspending the annual operating budget every year. DOC is completing a staffing study to assess a level of staffing that will allow effective operations without excessive overtime.

Staff Seniority and Assignments

The DOC uniformed workforce has each served an average of 12 years with the Department. Nearly two-thirds have more than five years of experience on the job and more than one-quarter has acquired 20 or more years of experience at DOC. Although the depth of knowledge is quite deep, here at DOC and as is the case in many other systems, the most junior officers are often assigned to the less desirable shifts and days and to the jails with the greatest numbers of difficult to manage inmates. Redistributing staff across facilities, days of week, and shifts would improve custody management.

Correction Officers by Tenure, Department-wide

Years of Service	Preferred Commands (BHPW, BKDC, BXDC, EHPW, MDC, QDC, SOD, TRANS, VCBC, WF)		Non Preferred Commands (AMKC, EMTC, GMDC, GRVC, NIC, OBCC, RMSC, RNDC)	
Probationary (0-1 years)	0	0%	190	4%
2-5 years	133	6%	1856	37%
6-10 years	395	18%	1179	24%
11-20 years	1137	51%	1148	23%
More than 20 years	563	25%	614	12%

Staff Training

Staff pre-service, in-service and promotional training is critical to custody management. DOC provides a comprehensive 16-week pre-service training program to recruits and annual 40-hour in-service training to officers. The Academy augments classroom instruction with training modules that can be delivered at shift briefings. Its current focus is increasing the successful utilization of OC spray.

Over the past ten years, funding for the Academy and training has been reduced by approximately 40 percent, which has compromised efforts to provide certain enhanced and additional training. DOC will redouble its efforts to secure sufficient funding to provide such training.

Core Correctional Competency Testing

To ensure every MOS is knowledgeable and proficient and succeeds in the performance of his or her duties, DOC plans to assess each MOS' mastery of five core correctional competencies annually beginning CY 2011. The areas will be published in advance and optional study groups will be offered.

Security

Accurate Assessments of Risk (Custody Classification)

When DOC adopted its custody classification instrument in the 1980s, it was state of the art. Over twenty years later, it needs updating and last October, DOC sought the assistance of a national expert to re-calibrate the custody classification scoring system to ensure the accurate assessment of each inmate's propensity for violence. Working with MOS in every rank, DOC is completing final adjustments to its revised custody classification instrument with implementation on target for this spring. BOC and SCOC review is required.

Evidence-based Custody Management

DOC's custody management practices are regulated in large part by BOC, and to a lesser extent, SCOC minimum standards, which in many instances exceed USSC and 2nd circuit holdings. DOC has approached its state and local regulators to inform them of our interest in revising standards that in our opinion impede custody management; for example, the requirement that every inmate regardless of custody classification, other than inmates in CPSU, may elect to lock out of his or her cell at least 14 hours every day. DOC is hopeful that standards in keeping with national practices will be considered and approved.

CPSU ("Bing") Reform

For years, DOC, like other correctional systems, has carried a significant backlog of inmates sentenced to punitive segregation for infractions committed during their current incarceration (1,141 inmates with a total of 58,925 days). Unlike other systems, however, DOC tends to issue sterner sanctions, carries Bing time over to subsequent admissions (643 inmates owe a total of 35,101 days), and relies exclusively on punitive segregation (CPSU or the Bing) for punishment. This past spring, I convened a workgroup of MOS to determine the optimum number of Bing beds needed to punish inmates committing violent and other serious violations immediately as well as to consider proven strategies to address other institutional misconduct. All three uniformed unions were invited to participate.

Earlier this month, DOC opened 66 additional punitive segregation beds in a third jail and plans to open another 143 Bing beds in four more jails upon receipt of SCOC approval, increasing the male Bing capacity by 30 percent to 887 punitive segregation cells.

Video Cameras and Other Security Equipment

DOC has funds allocated in the FY 2011 capital budget and will order over 1,200 additional video cameras for installation in locations where incidents occur. Video recordings are an important tool in ensuring the safety of officers and inmates and successfully prosecuting wrongdoing.

As reported previously, DOC is in the process of placing an order to purchase TSA-approved walk-through screening equipment.

DOC Bed Plan

This past summer, DOC announced the demolition of 4,000 outdated temporary beds and the construction of a 1,500-bed intake facility, both on Rikers Island, affording consolidation of five intake facilities on Rikers Island into one facility and enhancing custody management by yielding more consistent classification results and improved bed management. Pending the opening of the permanent, centralized intake facility, DOC, in consultation with DOHMH, is modifying four contiguous modular buildings as an interim centralized intake facility. Additionally, DOC has completed a review and reassignment of housing units most suitable for low, medium, and high custody inmates.

DOC is also proceeding with a plan to upgrade the jails' physical plant, bringing city jails into compliance with fire safety and other critical physical plant standards established by the Court. Over the next several years, we will install fire alarms, upgrade sprinklers, lighting, and ventilation, replace showers, and improve sanitation conditions department-wide, improving officer and inmate safety.

Gang Management

DOC detains 2,042 inmates who have been assessed or self-identified as members of one of 60 gangs recognized by the department. The department is securing the services of subject matter experts to update agency practices for verifying gang membership, certifying gang organizations as security threat groups, and improving gang management practices. The initiative will commence early in 2011.

I.T. Improvements

DOC IT is upgrading existing databases to capture more detail at the incident and person level, while building a data repository to integrate inmate, visitor, and employee intelligence. Under an American Recovery & Reinvestment Act (ARRA) Federal grant, a predictive modeling and dashboard system is being built to identify and report leading risk indicators of violence. DOC is engaging the IBM team responsible for NYPD's Real Time Crime Intelligence System, and is working with NYPD on enhanced data exchange.

Improved Oversight, On-Going Assessments, Updated Written Instruction

Last winter DOC secured technical assistance from the US DOJ National Institute of Correction to train a team of uniformed supervisors and managers to perform Peer Reviews of facility operations. DOC is implementing these peer reviews next month.

Earlier this month, DOC instituted same-day rapid reviews of every use of force; previously fewer than ten percent of all UOF B were reviewed and usually considerable time had elapsed. Real time reviews enable immediate feedback and redirection for facility administrators, shift supervisors and line staff.

Finally, DOC is completing the procurement of a subject matter expert to assist DOC in the consolidation, updating and publication of its written instructions as both a policy and procedure manual and an emergency management manual.

Improved Custody Management of Mentally Ill Inmates

The mentally ill make up a full 30 percent of the DOC population today and are disproportionately involved in jail violence. Indeed, 67 percent of all inmate incidents involve the mentally ill, either as perpetrator or victim. DOC approached DOHMH last fall to develop inter-agency alternatives to the management of mentally ill inmates and the delivery of MH services. An inter-disciplinary workgroup, which included members of all uniformed ranks, worked diligently and proposed a consolidation of the population and the development of custody management and treatment teams of uniformed and clinical personnel with greater sharing of information and joint decision-making. Last month, this

proposal was implemented as a pilot program in three mental observation housing units. Its structured curriculum is evidence-based with group and individual counseling, incentives for participation and good behavior and disincentives for violence and anti-social behavior.

The next phase of the pilot is intended to tackle the several hundred mentally ill inmates who violated institutional rules and have been sentenced to punitive segregation but are awaiting the availability of MHAUII beds, which are punitive segregation areas with on-site mental health staff.

Improved Custody Management of Adolescent Inmates

Education Consolidation and Improvement on Rikers Island

On June 24, 2010, District 79 started the process of consolidating schools on Rikers Island with the intention of creating one centrally managed operation under new leadership. East River Academy offers students a rigorous, standards-based curriculum aligned to the curriculum of other high schools in NYC. Each student undergoes an orientation process through which the student determines an appropriate educational goal – a high school diploma or a GED. Each student also receives intensive transitional planning from one of the school's counselors, which helps students link up with a school or a program in their community.

Academic credits are now being placed directly on student transcripts and East River staff members are working closely with home schools to ensure students approaching the required number of credits for graduation will receive a high school diploma. The Regents exam will be offered on Rikers Island to eligible students in January.

Summer Programming for Adolescents

During the summer break from school, the Department provided a number of activities to keep adolescents engaged in programming and services and to reduce idleness, thereby reducing potential incidents from arising. Staff coordinated basketball, volleyball and soccer tournaments while non-profit partners were recruited to provide workshops including cognitive restructuring, stress reduction techniques, literacy improvement and yoga.

Anti-bullying Campaign

The Department has developed a new initiative to combat inmate bullying. The new procedures create a mechanism for inmates to report bullying activity through secure phone lines in each housing area. The protocol ensures that calls are handled appropriately and responded to expeditiously, while at the same time preserving inmate confidentiality. We anticipate that the initiative will assist department staff identify, fix, monitor and track trends in bullying and other negative behavior that may otherwise go undetected. The bullying initiative is being piloted in RNDC and RMSC, where most adolescents are housed, beginning this month, with system-wide rollout expected by spring 2011.

Family Engagement

DOC recognizes that family engagement plays a crucial role in the lives of incarcerated adolescents. In an effort to promote and strengthen family ties, DOC developed parent orientation sessions. These sessions aim to provide parents and/or guardians of youth in the Department's custody with information, resources and ideas that will assist with challenges in coping with a child's incarceration.

DOC is focused on creating a family friendly environment within its visit areas. The Department operates Children's Visit Centers in two jail visit areas, providing incarcerated parents an opportunity to actively parent during the limited time they have with their visiting children. Additionally, DOC has been providing inmates the opportunity to purchase cards and gifts for their visiting family members.

Programming for Adolescents

The Department has proposed wraparound programming for adolescents that would involve cognitive behavioral restructuring, an evidence-based approach to problem-solving and conflict resolution, as well as substance abuse and mental health counseling to improve day to day safety in jails as well as to improve the outcomes for youth after discharge to the community. A major component of the program will include additional structured recreation time to be provided as an incentive for good behavior, an offer that we believe will be attractive to the youth and will ensure a safer environment for officers and adolescent inmates.

Parent Orientation

The Department provides parent orientations to parents and guardians of adolescent inmates in our custody. These sessions are intended to provide a connection between the youth, their parental figures, the Department and the school system. Sessions have increased communication and improved adolescent engagement in school and extracurricular programming.

Institute of Inner Development (IID)

IID was created to provide cognitive behavioral restructuring therapy to adolescent inmates. Additional officers are allocated to these special housing areas to facilitate group discussions that provide real life tools for inmates to problem solve upon re-entry to the community. Topics include basic life skills, attitudinal and behavioral change, self esteem building, reentry and other issues that contribute to successful reintegration in the community.

Conclusion

I reiterate that my top priority is that every member of our workforce goes home after work to his or her family safe and sound.

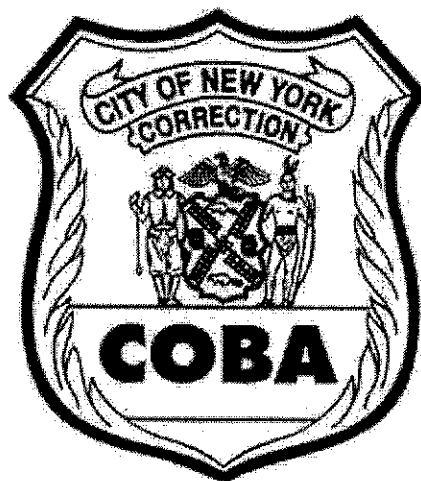
The above details the many steps I have taken to help ensure that we accomplish that goal and I will continue those efforts throughout my tenure as Commissioner.

Appendix A

PMMR REFLECTING NEW CRITICAL INDICATORS

	Actual			Target Updated		4-month Actual	4-month Actual
	FY08	FY09	FY10	FY11	FY12	FY10	FY11
Incidents and allegations of Department Use of Force				*	*		
Violent inmate-on-inmate incidents (rate per 1000 ADP) ★				*	*		
Serious Injury to Inmate Incidents				*	*		
Serious injury to inmate(s) as a result of violent inmate-on-inmate incidents (rate per 1000 ADP) ★				*	*		
Inmate deaths (exclusive of suicides)				*	*		
Stabbings and slashings				*	*		
Inmate assault on staff (rate per 1000 ADP) ★				*	*		
Serious injury to staff as a result of inmate assault on staff (rate per 1000 ADP) ★				*	*		
Fight/assault infraction				*	*		
Jail-based arrests of inmates				*	*		
Searches				*	*		
Weapons Recovered				*	*		
Escapes (rate per 1000 ADP) ★				*	*		
Non-natural inmate deaths in custody (Rate per 1000 ADP) ★							
Suicides				*	*		
Inmates with a mental health diagnosis (% ADP) ★				*	*		
Inmate Health Clinic Visits				*	*		
Average clinic waiting time (minutes)				*	*		
Jail-cells unavailable (short-term repair) (%)				1%	1%		
Population as percent of capacity ★				96%	96%		
Average cost per inmate per year (\$)				*	*		
Inmates delivered to court				*	*		
On-trial inmates delivered to court on time (%)				95%	95%		
Average daily attendance in school programs				*	*		
Average daily number of inmates in vocational skills training programs				*	*		
Percent of inmates released to the community who participated in skills-building activities/discharge planning ★				*	*		
Inmates transported directly to community-based service sites upon discharge through RIDE				*	*		

Critical Indicator; appears in CPR Dashboard ★



"Patrolling the Toughest Precincts in New York"

COBA President Norman Seabrook's Testimony Regarding Jail Violence at Adult and Adolescent Facilities on Rikers Island

New York City Council
Committee on Fire and Criminal Justice Services
December 15, 2010

Good morning Madam Chairwoman and members of this committee. My name is Norman Seabrook and I am president of the New York City Correction Officers' Benevolent Association, which is the second-largest law-enforcement union in the City of New York. Our members, New York's Boldest, patrol the toughest precincts in New York and run the largest municipal jail system in the nation.

I am grateful to you to have been given the opportunity to testify before you today on a subject that is of great importance to our members, the COBA Executive Board, and to myself. Jail violence is increasing at an alarmingly rate and its continuing to impact Correction Officers throughout the Department of Correction.

You have just heard the Commissioner offer the city's perspective on this subject and now, in all candor, it's time to hear the truth.

We live in a great city filled with great leaders from every part of New York and from all walks of life. At every level of government, many individuals make countless sacrifices in order to serve the public and we all applaud their service. Just this past Sunday on the popular Sunday talk show, "*Meet the Press*," Mayor Bloomberg remarked that he "wanted to go out having a reputation as a very good mayor, maybe the greatest mayor ever."

With all due respect to Mayor Bloomberg, no mayor of any major city can go out as the greatest mayor ever, when public safety is in jeopardy and when the citizens of this city are threatened by yet a new wave of violence. Today, ladies and gentlemen, I'm hear to talk about jail violence and how it has already reached a crisis level, causing many of us veterans of the Department of Correction to lose faith in our managers and the leader of this department, Commissioner Dora Schriro. This is not a prison system, this is a jail system.

At a time when the Department of Correction is at an all time low regarding its staffing levels (The Table of Organization in its Correctional Facilities are operating at more than 30% below the minimum safe staffing levels), and the levels of assaults on Correction Officers are rising to alarming levels, and inmates are becoming more and more violent, Commissioner Schriro has decided, in spite of the Correction Officers' Benevolent Association's warnings, to authorize the reduction of hundreds of security posts, including cuts to the Department's Emergency Service Unit.

ESU as it is known, is the department's only available resource to respond to and curtail violent outbreaks such as the melees that occurred at the Robert N. Davoren Center, the Otis Bantum Correction Center, and the George R. Vierno Detention Center, which resulted in severe injuries to over 50 Correction Officers within the last six months.

In just 2010 alone, the calendar year, not the fiscal year, 118 Correction Officers were seriously injured, of which 93 officers were sent to the hospital to be treated for fractures, sutures, broken noses, lacerations, and most horrific---a severed thumb! Just so that those of you know what a severed thumb looks like after an inmate attacks an officer, I've brought these visual aids along so you can see for yourself.

ESU is also the Department's response to: medical emergencies, fires, bomb threats, high security inmate transports, disaster responses, haz-mat responses, and protection detail among other critical areas of responsibility.

Commissioner Schriro has drastically reduced the number of these responders and all but cut the specialized training that these highly trained staff members must undergo annually to keep them able to

perform the functions that they are called for. This is totally unacceptable to me and to the COBA Executive Board.

It is inexcusable to place our members in harm's way every single time City Hall calls for budget cuts. For when they do make these cuts, they are only putting one more bullet in the chamber of the gun which is pointed directly at the public.

Think I'm wrong? Think again. Let's look at four of the biggest jails on Rikers Island, which just happen to be the very locations where the biggest melees occurred this past year. At the Robert N. Davoren Center (RNDC), the Table of Organization calls for 737 Correction Officers. There are only 580 Correction Officers physically working at RNDC. Correction Officers were seriously injured in a melee that occurred there on October 19th.

This was not an "isolated incident". At the George R. Vierno Center (GRVC), the Table of Organization calls for 555 Correction Officers, while only 495 Correction Officers are actually working there. At a melee that erupted there on March 27th, 16 Correction Officers were hurt, as well as, 4 Captains.

At the Otis Bantum Correction Center (OBCC) which houses 1,650 inmates, the Table of Organization calls for 812 Correction Officers, while only 635 officers are actually working there. This number excludes medically monitored staff, officers temporarily assigned to other facilities and officers on terminal leave. Just two days before this past Thanksgiving, fourteen Correction Officers were sent to the hospital after a brutal attack caused by several inmates who refused to be locked into their housing areas.

At the Anna M. Kross Center (AMKC) the Table of Organization calls for 1,050 Correction Officers, while only 946 are actually working there. Just a couple of weeks ago Correction Officer Rodney Brown, assigned to AMKC, had his thumb severed when

an inmate attacked him while being transported from the intake area to his housing unit.

The violence that is erupting at these facilities is just a mere glimpse into the overall crisis we face department-wide. The 2010 Table of Organization calls for the allocation of 7,919 Correction Officers in the Department of Correction's budget. The actual number of Correction Officers is currently 7,605---well over 300 less than what the budget allocates for.

Between fiscal year 2009 and fiscal year 2011, the DOC's budget will have been cut by almost \$20 million dollars. The City of New York has paid out \$83 million dollars over three settlements over inmate strip searches over the past nine years. And what are we left with? A severe crisis not only facing the safety of every Correction Officer in this department, but also a nightmare facing this entire city---affecting every man, woman and child.

If any one of these aforementioned facilities were overtaken by a gang of hostile inmates run amok, Rikers Island would run wild and our streets would be filled with some of the most dangerous criminals in our society. Unfortunately, this is not just some nightmare we expect will pass, rather this is the reality we face staring down at us through the barrel of a gun---a gun which is being pointed at us by our very own managers.

As if the cuts to security posts weren't alarming enough, the working conditions at Rikers Island facilities grows direr each and every day. We need only look to recent reports made public to know that this is indeed true. On October 28, 2010, Douglas Weidner, a recently retired civilian DOC employee reported to ABC News that a lack of proper maintenance had caused faulty sprinklers and faulty smoke alarms. Mr. Weidner reported that he found non-functional critical fire safety systems and that sprinkler and flow alarms, fire alarms and smoke alarms were not working.

If there was a fire, literally thousands of inmates and staff could die and the city would not only be held liable for billions of dollars, but it would also have blood on its hands.

For example, the Otis Bantum Correction Center, which I mentioned earlier in my testimony, has inoperable smoke and fire alarm systems. Moreover, representatives of the Correction Officers' Benevolent Association have witnessed the following problems with the fire safety system in OBCC:

- 1) Control Room's fire safety lights do not function;
- 2) There is no communication between the detection devices and the notification areas;
- 3) Fire safety warning lights and audible signals do not function.
- 4) The automatic fire pumps and/or fire suppression systems are inoperable;
- 5) The sprinkler lines are exposed outside the facility and are capable of freezing during the winter.

In response to these alarming conditions at OBCC, the COBA filed a PESH Complaint with the Public Employee Safety and Health Bureau on November 16, 2010. On November 22, 2010, the COBA filed an additional PESH Complaint addressing three existing hazards, all related to M-17 A1 gas masks, in all facilities maintained by the Department of Correction which affect the health and safety of over 7,500 Correction Officers on a daily basis. First, the DOC continues to use and assign officers M-17 A1 gas masks and filters which are not certified for use by the United States Occupational Health and Safety Administration. Second, the DOC is required to ensure that Correction Officers use a tight-fitting gas mask tested prior to initial use and annually thereafter. The DOC does not perform this annual fit test for 7,500 Correction Officers. Third, the DOC is required to establish and implement a written respiratory protection program. The DOC has

failed to comply with this requirement as well. We at the COBA, also believe that there is an existing hazard related to the Millennium gas masks in the Emergency Service Unit of the Department of Correction, at which approximately 90 Correction Officers are assigned. The filters for these gas masks have a five-year shelf life. After this period of time, the manufacture indicates in its guidance not to use these filters, which can result in serious personal injury. The department's supply of these filters has expired. This is unacceptable.

Whether it is deteriorating facilities, inadequate equipment or draconian cuts to security posts, it is abundantly clear that jail violence is rising and the crisis we face will only get worse, not better. It is a known fact that crime is also rising across all major categories across this city. More rapists, murderers, and thieves all translates into more inmates. And where are these inmates held? The island---Rikers Island. Let's not pretend that we can do more with less as the Correction Commissioner would lead you to believe. And let's not pretend that Correction Officers are not a vital part of maintaining public safety to this city. The mayor is right to be concerned with his reputation and his record. But he can start with us---make us a priority and help us help keep you safe, twenty-four hours a day, seven days a week.

Thank you again for inviting me to testify and I will be happy to answer any questions you may have at this time.



ASSISTANT DEPUTY WARDENS DEPUTY WARDENS ASSOCIATION

**364 Decker Avenue
Staten Island, N.Y. 10302-2224**

Phone: 1.718.273.8687

Fax: 1.718.273.8671

www.nycwarden.com

adw_dw_association@hotmail.com



JOINT TESTIMONY

Committee on Fire and Criminal Justice Services

Committee on Juvenile Justice

New York City Council

250 Broadway (Committee Room / 16th Floor)

(Wednesday, December 15, 2010 / 10:00 A.M.)

Good morning to Council Chairs Crawley and Gonzalez and members of both committees

1. Madame Chairpersons, my name is Sidney Schwartzbaum, and I am the President of the *Assistant Deputy Wardens - Deputy Wardens Association* for the New York City Department of Correction. My union represents the uniformed ranks of Assistant Deputy Wardens, Deputy Wardens, and Deputy Wardens-in-Command, also known as Warden - Level I and Warden - Level II. These ranks are the equivalent in pay and supervisory responsibilities to the NYPD ranks of Lieutenant, Captain, and Deputy Inspector.

2. I am thankful for this opportunity to testify on the important issue of jail violence and its effect on custodial staff and the inmate population that we are entrusted to manage and protect. For all accounts, jail violence has increased this calendar year, both in assaults on inmates with weapons and the increased viciousness of the assaults on uniformed staff members. It has been an on-going problem of our Department's inability to deal with the increasing number of inmates convicted of disciplinary infractions who are not being segregated from the general population. These inmates then continue to commit further violent acts, when they should have been "locked-down" within punitive segregation status.

JOINT TESTIMONY

Committee on Fire and Criminal Justice Services

Committee on Juvenile Justice

3. Several of the major disturbances and assaults on staff and inmates could have been avoided had these inmates been in punitive segregation for prior violations of the inmate disciplinary rule book

Some recent examples

I. The disturbance at the **OTIS BANTUM CORRECTIONAL CENTER** where several of the inmates should have been segregated;

II. The recent slashing of an inmate by two other inmates at the **ANNA M. KROSS CENTER** on December 5, 2010;

III. In fact, eight of the last 9 assaults with weapons (slashings and/or stabbings) at the **ANNA M. KROSS CENTER** (the largest facility on Rikers Island) either involved inmates who were victims or perpetrators and whom should have already been segregated to avoid these types of incidents;

IV. The vicious assault of a Captain (who suffered facial fractures) at the **ROBERT N. DAVOREN CENTER** by an inmate who should have been locked-down;

V. On December 3, 2010, at **ROBERT N. DAVOREN CENTER**, an inmate who owed 75-days in punitive segregation viciously assaulted a probationary Correction Officer (also fracturing facial bones);

VI. The recent assault of a Correction Officer at **ANNA M. KROSS CENTER** by a deranged inmate, who bit-off the tip of his finger

4. These are just some of the incidents that may have been avoided had these inmates been securely segregated. While all of these incidents are disheartening in that they could have been avoided, the good news is that DOC (on December 8, 2010) promulgated a teletype delineating plans for additional punitive segregation areas to address this serious problem of segregating our behavioral problems. There is no doubt in my mind that violent episodes will be reduced by initiating this plan in an intelligent and judicious administration of justice.

JOINT TESTIMONY

Committee on Fire and Criminal Justice Services

Committee on Juvenile Justice

5. The New York Post reported on Sunday, December 12, 2010, that statistically for this calendar year, stabbings and slashings have increased + **60%**. While I believe that violent incidents involving weapons have increased, I also believe that (as an agency) DOC is reporting these incidents more accurately. Chief of Department Larry Davis and Supervising Warden Carmine Labruzzo both have done “Q & A” sessions at my general membership meeting within the last year to re-enforce the integrity of the reporting system. So while stabbings and slashings are up – not to the extent that the statistics reflect.

6. One of the challenges we face within DOC is the sophistication with the inmate smuggling-in titanium scalpels. Many of these inmates have managed to circumvent magnetometers by utilizing these types of titanium metals and duct tape to escape detection. DOC needs better and more sophisticated detectors to combat this trend.

7. While these violent episodes present a significant threat to the security and safety of our jails, the biggest threats we face are major inmate disturbances – where the prisoners present a united and solidified force to assault our staff and take control of the entire facility. In preparation for these types of incidents, and to maintain control of our facilities, the Department of Correction needs to ensure that the following measures are taken:

I. Ensure our emergency response personnel and the personnel assigned for response teams within each facility are not eliminated, shift-reduced, or given other duties within the interior of the facility. All of these factors adversely impact a timely and orderly emergency response.

II. Supervisory staff is properly trained yearly in the use of chemical agents (aka “tear gas”) in the event of a large scale disturbance.

III. That our Emergency Response Manuals are accurately updated with clear lines of authority, in accordance with the city-wide incident management.

JOINT TESTIMONY

Committee on Fire and Criminal Justice Services

Committee on Juvenile Justice

8. While everyone understands that the City/State of New York is in a budget crisis, the DOC jail system is not operating with an abundance of staff. *"Belt-tightening"* is occurring in all aspects of our Department and other city agencies. Top level and mid-level managers are exhausting all means to reduce overtime and other cost-cutting measures. But, by reducing staff in support areas and designated security posts, we are in-essence throwing *"fuel-on-the fire"*, which is not cost-effective. With violence comes its high costs. Correction personnel injured within our jails is cost-prohibitive in the many hours of overtime needed to replace them for periods while out sick. Every inmate seriously assaulted by other inmates carries with it extensive medical costs, along with uniformed staff needed to escort them to city hospitals. Violence is costly.

9. In concluding, I would like to thank both the committees and chairs for holding these hearings. I hope the information presented today serves as a catalyst to identify and confront problems and accepting responsibilities for creating a safer environment for our staff and inmates entrusted in our care. Violence is deadly, costly, and must be contained and controlled with adequate staff who are properly trained. Thank you again for the opportunity to testify and I am prepared to answer any questions that you may have.

TESTIMONY

The Council of the City of New York

Committee on Fire and Criminal Justice Services

Elizabeth S. Crowley, Chair

Committee on Juvenile Justice

Sara Gonzalez, Chair

“Oversight: Jail Violence at Adult and Adolescent Facilities On Rikers Island”

December 15, 2010
New York, New York

Prepared by
The Legal Aid Society
Prisoners’ Rights Project and Criminal Defense Practice
199 Water Street
New York, NY 10038

Presented by:

Mary Lynne Werlwas, Prisoners’ Rights Project

Thank you for the opportunity to testify concerning violence against adolescents and adults in the New York City adult jails. We submit this testimony on behalf of the Legal Aid Society, and thank Chairs Crowley and Gonzalez and the Committees on Fire and Criminal Justice and Juvenile Justice for inviting our thoughts on the issue of violence in the jails. We applaud the Council for tackling this important subject.

Since its inception nearly 40 years ago, the Prisoners' Rights Project of the Legal Aid Society has addressed the problem of violence in the New York City jails. Through advocacy with the Department of Correction ("DOC") and individual and class action lawsuits, we have sought to reform the systems for oversight of use of force and violence in the jails. In addition, each week our office receives and investigates numerous requests for assistance from City jail inmates who have been victims of violence in the jails. This daily contact with inmates and their families has given our office a firsthand view of many problems confronting inmates, and it is on this basis that we offer these comments to legislators and all New Yorkers.

The Society's Criminal Defense Practice, which serves as the primary defender of low-income people in New York City prosecuted in the State court system at both trial and appellate levels, also has daily contact with the youth and adults whose welfare is being discussed today. The Criminal Defense Practice (CDP) represented clients in more than 230,000 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 and to ensure that our adolescent clients' needs are met. Addressing victimization of our young clients within the jails is part and parcel of our daily work.

The single most important lesson we have taken from our collective experience is that controlling violence in jails and prisons is a function of correctional leadership; that when the top officials actively intervene to make clear to staff – by actions as well as words – that it will not tolerate management-by-violence, brutality ceases. When the leadership turns a blind eye towards misconduct – by failing to hold staff accountable for

excessive force, conducting sham investigations, failing to supervise more closely those involved in questionable incidents and failing to discipline those who misuse force – it sends a signal to line staff that they can control troublesome, or defiant, or merely disrespectful prisoners by beating them.

Violence Against Inmates is Rampant in the City Jails

The New York City jails are tremendously violent. While the Department frequently touts its reductions in stabbings and slashings by inmates – which indeed is a welcome trend – these are not the only, or even predominant, form of violence in jail. Rather, brutality by DOC staff poses a serious threat to safety in the jails. We continue to receive numerous reports from our clients who are victims of staff brutality, and who have suffered serious injuries as a result, including broken facial bones, traumatic brain injury, and deep lacerations. The Committees have no doubt heard of a recently reported experience of a visitor to Rikers Island being brutally beaten by a correction officer for perceived disagreement or disrespect — in front of a news reporter. Christina Boyle and Joe Kemp, *Witnesses see visitor to Rikers Island jail roughed up by correction officer*, NY Daily News, November 12, 2010. More typically, however, this resort to violence as a punishment for verbal complaints or arguments occurs behind closed doors. The following snapshots are some of our clients' recent experiences:

- After arguing with a housing area officer over access to the telephone, A. was kicked in the face and punched repeatedly, while in handcuffs, in the presence of captains and an assistant deputy warden. His nose was broken and lacerations to his face had to be repaired with derma bond. (March 2010, George R. Vierno Center (GRVC)).
- B. was assaulted in his cell by two officers who entered the cell (which is not permitted under Department procedure). He was struck in the face with a hand-held radio, suffering a fractured nose and losing a tooth. This followed a verbal exchange with an officer who refused to let him go to the barbershop. (November 2009, GRVC).
- An officer pushed a young woman's head against the wall and floor after she refused his order to get off the phone (she had just learned of her brother's death). She

suffered a 3-4 cm laceration and subsequent seizures, and a lesion was found on brain. (September 2008, Rose M. Singer Center)

- An inmate in the adolescent jail suffered a spinal fracture when he was struck by a corrections officer with a belt, then kicked in the lower back while on his knees, pursuant to the officer's order, following a scuffle with another inmate. (March 2010, Robert N. Davoren Center).
- An inmate was struck by an officer in the face, breaking his nose, after he argued with an officer who had told him his watch was going to be taken and probably not returned to him when he left the jail. (May 2010, Vernon C. Bain Center).
- An inmate's nose was broken when officers struck her in the face after she was removed from a pen by officers pulling her hair. She had asked an officer for a drink of water and had been told to drink from the toilet. She argued with the officer, then lay down on a bench, from which she was pulled out of the pen. (August 2010, Manhattan Court Pens).
- Inmate C. suffered a broken nose when an officer hit him in the face, following an allegation by another inmate that C. had hit him (which C. denies). He also had extensive bruises to his face and a chipped tooth from the officer's blow. (April 2010, George Motchan Detention Center).

We also have brought in the last two years numerous individual lawsuits for victims of staff brutality, in which each of our clients suffered a constellation of severe injuries such as a spinal fracture; a fractured orbital wall, facial bruising and severe bruising all over the body; a facial laceration requiring many sutures, broken nose, skull laceration requiring many staples, and bruising to the body.

These assaults by Department staff cost the City tremendous amounts of money. In 2009-2010, the City paid over \$3.2 million to settle cases by victims of excessive force by DOC staff simply in cases of which we are aware – and there are many more cases than that.¹ Because such judgments are paid by the City, and not out of the DOC budget,

¹ Legal Aid has a pending FOIL request for information of settlements paid in other cases, but it had not been provided as of the date of this testimony.

the Department is effectively outsourcing the costs of its failure—or unwillingness—to rein in its rogue staff.

“Those Who Do Not Learn From History:” The Department Has Known of the Brutality Problem For Decades

The magnitude of the problem today is all the more disturbing given that the City has repeatedly agreed, in settlements and consent judgments, to reform its policies and oversight of staff misuse of force. The lessons learned from those successful reforms *should* be guiding policy today. Yet the frequency, severity and nature of brutality by staff that we are seeing at present reflects little of the progress we would expect.² There is one critical exception: in our view, the increased use of video cameras in the jails, which was required by our most recent class action settlement, has been a singularly effective means of deterring excessive force in the areas under surveillance, permitting the Department to hold staff and inmates accountable. Expanding video surveillance throughout the jails should be a top priority, for the safety of both staff and inmates.

Staff misuse of force in the City jails has been the subject of a series of class action lawsuits we have brought. The remedies implemented in those cases have shown that brutality is not inherent in the correctional mission, but rather that the City jails can be safely and securely operated without resort to excessive force—when the Department chooses to do so. In the first challenge to excessive force on the prison wards of New York City Hospitals, the consent judgment provided for, *inter alia*, screening measures for correction officers to ensure that those with disciplinary records connected to use of force were assigned elsewhere. *Reynolds v. Sielaff*, 81 Civ. 101 (PNL), Order and Consent Judgment Approving Class Settlement at ¶¶ 43-48 (S.D.N.Y., Oct. 1, 1990).

² For over three years, the Prisoners’ Rights Project read and analyzed every use of force report from the jails not previously subject to consent decree in connection with monitoring a settlement agreement in our most recent 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 of public policy that the City would insist upon secrecy, we believe the settlement as a whole benefited our clients – most notably with the installation of recording cameras. Of course, the Council itself can certainly ask the Department for the countless letters we sent them in the course of monitoring the Ingles agreement raising our concerns about violence in the jails.

Complaints of use of force dropped significantly, providing an important lesson: active supervision of staff, and careful screening and assignments to marginalize those officers whose conduct is more suspect than others, will yield results.

A later challenge concerned excessive force and inmate-inmate violence at the jail for sentenced misdemeanants on Rikers Island. The court found that DOC staff engaged in a pattern that sounds familiar today: “1) use of force out of frustration in response to offensive but non-dangerous inmate goading; 2) officers’ use of excessive force as a means of obtaining obedience and keeping order; 3) force as a *first* resort in reaction to any inmate behavior that might possibly be interpreted as aggressive; and 4) serious examples of excessive force by emergency response teams.” *Fisher v. Koehler*, 692 F. Supp. 1519, 1538 (S.D.N.Y. 1988). It found that the Department’s “failure to monitor, investigate and discipline misuse of force has allowed – *indeed even made inevitable* – an unacceptably high risk of misuse of force by staff on inmates.” *Id.* at 1558. After the court ordered significant changes in the investigation of use of force and discipline of staff members, the use of force declined precipitously.

Concurrently, a suit about force at the Brooklyn House of Detention yielded a settlement with similar terms, with the added requirement of installation of video cameras in the area of the jail where brutality had been concentrated. *Jackson v. Freckleton*, CV 85-2384 (AS), Order Approving Stipulation of Settlement and Entry as Consent Judgment (E.D.N.Y., Nov. 27, 1991). This early experiment in the utility of cameras, long before the current digital technology was available, had dramatic results, as the complaints of misuse of force diminished sharply.

In 1998, in *Sheppard v. Phoenix*, the City and Legal Aid negotiated a comprehensive settlement to our next class action addressing the horrific abuse at the Central Punitive Segregation Unit, which houses youth and adults who have committed disciplinary offenses. 91 Civ. 4148 (RPP), Stipulation of Settlement (S.D.N.Y., July 10, 1998). The warden of the CPSU candidly admitted that brutality was “ingrained in the culture” of the Department, and was “part of the overall operations of the jail.” Declaration of Jonathan S. Chasan, *Sheppard v. Phoenix*. To address this culture at its

core, the City agreed to blanket the CPSU with recording videocameras, and to weed out the “bad apples,” or officers whose use of force histories were troublesome. Two expert joint consultants provided technical assistance in transforming the “culture of violence” in the CPSU, with remarkable success. For example, from 1997 (the last year before the settlement) to 2001, the number of serious and injurious use of force incidents in the CPSU dropped from 177 to 15—an over 90% decline. *See Sheppard v. Phoenix*, 210 F. Supp.2d 450, 459-59 (S.D.N.Y. 2002).

Even though these lawsuits proved that the Department *could* reduce the injuries suffered by prisoners if it chose to do so, the reforms implemented there were not rolled out systemwide. The physical abuse of prisoners continued unabated in the other jails. For that reason, Legal Aid then filed *Ingles v. Toro*, 01 Civ. 8279 (DC) (S.D.N.Y., filed August 11, 2003) to address excessive force in all of the remaining jails which had not been under Court order. That case was settled in 2006. Central to the settlement were requirements for significantly more camera coverage in the jails, and the development and promulgation of new procedures to govern the Investigation Division, which had a history of merely whitewashing use of force incidents, rather than functioning as a genuinely investigative body. That settlement agreement terminated on November 1, 2009.

We are thus not writing on a blank slate. The incidents that have occurred within the last year—both the circumstances in which they have occurred (i.e., staff retaliation for inmate complaints or verbal annoyance) and the highly injurious nature of force used—are simply inexcusable in a system that has had ample opportunities to reform.

A Case Study: Perforated Eardrums

The persistence of perforated eardrum injuries in the jails is stark illustration of the Department’s failure to end longstanding problems of brutality. A perforated eardrum is an injury associated with the infliction of torture. See Istanbul Protocol, *The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2004) (“Trauma to the ears, and especially rupture of the tympanic membrane, is a frequent consequence of harsh beatings.”) Perforated

eardrums are generally caused by blows with cupped hands to the ear. Our experts told us that it is almost impossible to inflict that injury inadvertently. The prevalence of perforated eardrums following applications of force in the New York City jails is not news to the Department. In the *Sheppard* litigation, former Commissioner Jacobson described the injury as one “associated with” use of force in the CPSU. When he was interviewed by the *New York Times* after the *Sheppard* case settled, Commissioner Kerik, referring to the infliction of perforated eardrums, stated, “That kind of thing doesn’t happen here anymore.” *Rikers Island Guards Made ‘House of Pain’ for Inmates*, *New York Times*, August 16, 2008.

Prior to the resolution of the *Sheppard* litigation in 2002, approximately 35 prisoners sustained perforated eardrums in the CPSU over a period of seven years. The issue of perforated eardrums was also addressed in detail in the subsequent litigation, *Ingles v. Toro*, which we settled in 2006, and monitored extensively through 2008. Thus, we were astonished to find at least four inmates who suffered perforated eardrums in use of force incidents in a few months’ time span towards the end of 2008. We filed lawsuits on their behalf, all of which were settled in 2010 for substantial damages. These incidents, viewed together, point to a serious breakdown in supervision and oversight of the use of force in the City jails. There is simply no reason why this form of torture should continue to be seen in the City jails.

“The Program”: Violence at RNDC with Staff Collusion or Encouragement

We are deeply concerned by another trend in violence in the jails: assaults by inmates on other inmates, with the acquiescence or collusion of uniformed staff. This practice has become so entrenched at the adolescent jail, RNDC, that it is widely known simply as “the program.” Under “the program,” staff effectively deputize certain inmates (often a specific gang) to run a given housing area, ceding to these inmates authority to control access to telephones and meals and extort goods from other inmates and paying them with contraband or privileges. Youth who are not “with it” or “down with the program”—that is, those who do not acquiesce to the demands made by the inmate-controllers to turn over goods purchased at the commissary or telephone PIN numbers, or to beat other inmates—are beaten, often with full knowledge of the officers.

We exhaustively detailed “the program” in testimony we gave to this and other Committees two years ago, and will not repeat those details here. *See* “Oversight: Special Needs of Adolescents in New York City Correctional Facilities,” November 24, 2008, Testimony of The Legal Aid Society. We are happy to provide copies of that testimony, which detailed the multiple criminal charges pending against officers for facilitating “the program.”

In view of the high-level attention given to this problem, we are astonished that “the program” continues apace at RNDC. Recent incidents reported to our office from RNDC include:

- M., an adolescent boy housed in an area dominated by a specific gang, was beaten repeatedly by inmates between March and July, 2010 for refusing to turn over his commissary items and his telephone PIN number, and refusing to sit at the table designated by gang members. He has sustained two separate jaw fractures, and other injuries, from these beatings.
- K. was severely beaten by gang members in June, 2010 in a stairwell, removed from video surveillance, suffering a lacerated kidney and intracranial hemorrhage.
- D. suffered a fractured leg in June, 2010 when stomped on by another inmate after they were both locked into a pantry area by a housing area officer. The officer told him to tell medical staff that he had “fallen”. The inmate who stomped D. said the officer had instructed him to “make him” do the kitchen work.

We believe that the complaints we hear under-represent the frequency of violence at RNDC, as it has been consistently clear in our nearly forty years of experience with the jail population that 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 DOC—locations, participants, housing areas, staff involvement, injuries sustained—that the Department could use to monitor these incidents. For example, appended to this testimony is a document we received from a reporter that we were told is part of a list

simply of *fractures*—and not other serious injuries—suffered by RNDC inmates in violent incidents—with 41 *fractures* alone reported in 2008.

The consistency of the complaints coming out of RNDC about “the program,” and the severity of injury that youth are suffering while in the City’s care raises very serious questions about the degree to which central management controls staff misconduct in the jail. The Department has the ability to identify which staff repeatedly are present in locations where inmates are suffering serious injuries at the hands of other inmates, and to supervise those areas and staff closely. The Department should not be permitted to take refuge in the fact that teen inmates are often very reluctant to request a housing area change or to lodge complaints about their treatment. The adolescent’s fear of retribution within the Department is entirely reasonable. Moreover, in free society, we do not depend upon 16 year olds’ assessments of their personal safety in potentially dangerous situations, but rather expect their adult caretakers to be vigilant and protective. So too in jail, the Department absolutely must take responsibility for the violent culture created by “the program.” This would include actively investigating indications or reports that staff have engaged in such misconduct; detailing and bolstering the measures taken to prevent staff from bringing into the jail contraband that facilitates this operation; taking seriously the complaints of inmates who are brave enough to report their overseers; and holding staff accountable to their supervisors for the inmate-inmate violence that occurs on their watch.

Meaningful Investigation, Supervision and Discipline

The Department already has extensive written policies governing use of force; an Investigation Division tasked with investigating and reporting on staff misconduct; overlapping systems for tracking which officers have been involved in use of force incidents; and a disciplinary system leading to formal charges against officers who break the rules. But these systems serve only to whitewash misconduct if they lack integrity, and if there is no ongoing vigilance by correctional leadership to ensure integrity.

In our experience, the Investigation Division of the Department has not been held accountable for its longstanding failures to conduct unbiased, even-handed investigations

of use of force incidents. The default mode seems to be that the task of the investigation is to exonerate staff of wrongdoing, unless there is video evidence that precludes such a finding. This should not be, as ID has an excellent manual, created by the Department itself pursuant to the *Ingles* settlement, that, if followed, would guide investigations and evaluation of conflicting testimony and evidence. But in our experience, it does not appear as if these requirements are being followed in many cases. Key eyewitnesses are not interviewed; critical forensic medical evidence is not, as required, discussed with the Office of the Medical Examiner, but rather is examined simply by jail clinicians not trained in the interpretation of such evidence; and inmate accounts are more or less automatically given less weight than officers' accounts of disputed facts. It is imperative that the Investigation Division operate meaningfully if staff misconduct is truly to be discovered and addressed, and that end can only be accomplished through strong leadership and supervision from above in order to overcome an entrenched culture of bias and lack of thoroughness and professionalism.

There must also be an effective disciplinary system to enforce compliance with Departmental policies and ensure staff professionalism. The Department's disciplinary system necessarily depends on the investigative system to identify cases calling for disciplinary prosecution, and the above described deficiencies in the investigative system severely compromise internal staff discipline. Even in those cases that are identified for prosecution, the disciplinary system seems to move extraordinarily slowly in use of force incidents, and thus the deterrent value—or message sent—by discipline is so temporally removed from the misconduct itself that it is often meaningless. We encourage the Department to identify the obstacles to speedy yet just resolution of the charges it brings against officers it believes have violated the rules.

Even effective investigative and disciplinary systems cannot by themselves create a culture of professionalism in the jails. Active and effective daily supervision of staff is also essential. Departmental managers—especially wardens and supervisors in specific jails—can and should learn their staff's use of force histories, *not* to impose discipline, but rather to assess whether a staff member is properly assigned; whether he or she has repeatedly been involved in the same questionable scenarios; and whether his or her

involvements with inmates should be more actively supervised. In our experience, the identity of the “head beaters” or “bad apples” in a jail is usually an open secret. Providing staff with impunity for their misconduct not only perpetuates the occurrence of serious injury, but also encourages other staff, such as new recruits, to join the company of rogue actors. The leadership from top to bottom must make clear that use of force histories will not be swept under the rug, but rather staff will be held accountable.

Special Needs of Incarcerated Youth 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 15% of our teenage clients are in foster care, 23% have been exposed to domestic violence, 35% of the youth have substance abuse problems, 23% have mental health problems and 35% are classified in need of special education services. These numbers usually fluctuate within a 10% 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.

State regulations set the standard ratio for staff per youth in juvenile detention and jail. The difference in treatment of 15 year olds, who are housed in juvenile detention, and 16 year olds, who are housed in jail, is remarkable. 9 NYCRR §180.9 provides that in juvenile detention, 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..³ Thus, a 15 year old must be placed in a facility with a staff to detainee ratio of 1:8; a 16 year old 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. 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.

³ Rules of the Board of Correction, 40 RCNY §1-04(c)(5)(i).

Recommendations

- A. Greatly expand the videocamera surveillance in the jails.
- B. Revise the Department of Correction's management, discipline and promotion policies so that staff members' use of force is meaningfully considered and addressed in assignment and promotion of staff.
- C. Overhaul the Department's Investigation Division to ensure that it complies with the Investigation Manual and conducts bona fide, competent investigations.
- D. Review the Department of Correction's systems for maintaining and utilizing information about violence against inmates, and for holding accountable staff who foster inmate violence.
- E. Increase the staff to inmate ratio for adolescents on Rikers and provide specialized training in adolescent development, in addition to recruiting correction officers who demonstrate a willingness and ability to work with teenagers.

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

Contact: Prisoners' Rights Project
212-577-3530

Mary Lynne Werlwas
mlwerlwas@legal-aid.org

Jonathan S. Chasan
jchasan@legal-aid.org

John Boston
jboston@legal-aid.org



**Children's Studies Center for
Research, Policy, and Public Service**

Legislation for an Independent Office of the Child Advocate for New York (OCA)

Our research and work involving child policy in New York revealed a need to address the many problems that confront predominantly minority children: One-third of the two million children in New York City live in poverty, many of them face homelessness and failure in school, and many will also eventually be unemployed or involved in the juvenile and criminal justice systems.

On March 11, 2004, the Children's Studies Center held a policy symposium, "Children and the Law in New York," funded by the Carnegie Corporation of New York. The remarks of twenty-eight speakers — including members of the judiciary, the state legislature, child advocacy agencies, and existing Child Advocates from the states of Connecticut New Jersey, and Rhode Island, along with key stakeholders who are professionally concerned with children and childhood — addressed the realities that these children face within the compartmentalized systems of child supervision and administration. The symposium provided a child-centered and human rights perspective on the major issues of child welfare, education, health and mental health, and of children in the juvenile/criminal justice systems in New York. It directly resulted in the introduction of legislation in the New York State (NYS) Assembly for an independent Office of the Child Advocate for New York on June 11, 2004, three months after the day of the symposium. This ongoing legislation (currently A03233b and S6877) has passed every year for the last five years in the NYS Assembly and separately in the NYS Senate, but this year was different because both same as bills finally passed in both houses and went before Governor David Paterson.

Juvenile Justice and Office of the Child Advocate Legislative Update

U.S. Department of Justice Investigation*

In August 2009, the U.S. Department of Justice (USDOJ) released a report detailing the findings of a two-year investigation of four secure juvenile detention facilities in New York—Lansing, Gossett, Tryon Boys and Tryon Girls. The findings included many instances of violation of constitutional standards in the area of protection from harm and mental health care. The report detailed excessive use of force and inappropriate restraints by staff against youth resulting in numerous instances of severe physical injuries, inappropriate medication practices regarding psychotropic medications, inadequate investigations or actions to address abuses by staff against

youth, and inadequate care and treatment of youth, especially those requiring mental health care or substance abuse treatment. The USDOJ required the NYS Office of Children and Family Services (OCFS) to reach a resolution addressing their concerns within 49 days of the report or they would authorize the Attorney General to initiate a lawsuit against them.

Response to the USDOJ Investigation

Senator Velmanette Montgomery, Chairperson, NYS Senate Committee on Children and Families organized a meeting titled: *Meeting of Juvenile Justice Minds: A Roundtable Discussion* on November 18, 2009. The purpose of the meeting was to discuss facility oversight and administration, and to address the issues that were raised in the report with legislative and budget proposals as a short- and long-term plan of remedial action.

Children's Studies was among the numerous stakeholders invited to the meeting and has been aware for many years of the growing problem of oversight and accountability in the fragmented systems of child supervision and administration. We have fully supported and participated in the research for the OCA legislation since its introduction in 2004. At the time of the roundtable discussion, Senator Velmanette Montgomery was the Senate sponsor of the OCA legislation S4790A, which was also included as an agenda item along with other legislative reform proposals.

Amendment to the OCA Legislation: A Strategic Necessity

Whereas the previous legislation for an OCA encompassed both the child welfare and juvenile justice systems, in January 2010 Assemblywoman Barbara Clark, the main sponsor of the bill since 2005, amended it to focus only on juvenile justice. This change came about in response to the Department of Justice Report and to the "Report of Governor David Paterson's Task Force on Transforming Juvenile Justice." In particular, its Recommendation 19 stipulated: "Establish and fund an *independent, external oversight body to monitor and report* on OCFS's juvenile justice policies and practices" (italics added). Moreover, years of powerful opposition to the original OCA legislation by both the public and not-for-profit child welfare agencies in the state suggested that an OCA focused only on juvenile justice might have a better chance to succeed.

According to A03233B, the bill "establishes the independent office of child advocate to ensure the protection and promotion of legal rights for youth in juvenile justice facilities; repeals certain provisions relating to the office of the ombudsman." It passed the NYS Assembly in February 2010. Since Senator Montgomery no longer served as the co-sponsor of the amended bill, Senator Kevin S. Parker co-sponsored the bill as S6877 in the NYS Senate, where it passed in June 2010.

Senator Montgomery, on her part, introduced S6474, which proposed that the Correctional Association of New York provide independent oversight over the New York

juvenile justice system. In the course of an interview on the Brian Lehrer Show on February 3, 2010 with Senator Montgomery and A.M. Clark to discuss the OCA legislation and other proposals as they related to issues brought up by the Department of Justice report. Senator Montgomery affirmed that New York needed both the OCA legislation A03233B/S6877 and S6474. to make sure that children are protected in the juvenile justice system. (Brian Lehrer Show, WNYC, 93.9 fm, am 820, "Advocating for Children," February 3, 2010. <http://beta.wnyc.org/shows/bl/2010/feb/03/advocating-for-children/>)

Governor Paterson Introduces Program Bill 273

At the very end of the legislative session and when it became clear that the OCA legislation was going to be passed in the NYS Senate as well as the Assembly, and shortly before the settlement with the USDOJ was to be signed, it was in June 2010 that, on his part, Governor Paterson introduced Program Bill 273 to establish an office of the independent juvenile justice advocate. Senator Montgomery introduced this bill in the NYS Senate as S8091. But it could not find a NYS Assembly co-sponsor.

S6877 Parker Same as A 3233-B Clark "establishes the independent office of child advocate to ensure the protection and promotion of legal rights for youth in juvenile justice facilities; repeals certain provisions relating to the office of the ombudsman" passes the NYS Senate on June 24th, 2010 and receives strong support

Upon passage of S6877/A3233-B in the NYS Senate and Assembly, numerous letters of support were immediately sent to Governor Paterson to urge him to sign the legislation into law; The following is a partial list of those who sent letters of support for S6877/A3233-B: American Civil Liberties Foundation Women's Rights Project; Chair of the Committee on Children and Families in the New York State Assembly; Child Advocates of the States of Connecticut, Massachusetts and Rhode Island, and Ombudsman, Office of the Family and Children's Ombudsman, State of Washington; Executive Director, Children's Rights; New York State Bar Association Committee on Children and the Law; Director of the Brooklyn College Children's Studies Program and Center; Executive Director, Empire State Coalition of Youth and Family Services; Executive Director and Legislative Director, New York Civil Liberties Union; Executive Director, Parents in Action; President, HEAL-NYC; and The Community Vision Council. At the same time, however, the OCA legislation continued to meet fierce opposition from the public and private agencies that it would provide oversight and accountability over.

Governor David Paterson Announces Settlement with USDOJ

On July 14, 2010, the lawsuit between OCFS and the USDOJ was settled. The following is an excerpt of that announcement that appeared on Governor Paterson's website:

Governor David A. Paterson today announced that New York State has executed a Settlement Agreement with the United States Department of Justice, which will significantly improve oversight and operations at four juvenile justice facilities of the Office of Children and Family

Services (OCFS). Along with implementation of recommendations of the Governor's Task Force on Transforming Juvenile Justice and the Governor's Juvenile Justice program bill, which awaits Legislative action, this Settlement Agreement will further efforts to transform the juvenile justice system. The Settlement Agreement will result in a number of remedial measures to resolve issues identified as a result of a Department of Justice investigation of the four OCFS facilities in 2008.

Governor David Paterson Vetoes S6877/A3233-B

In spite of solid support and passage of the OCA legislation by wide margins in the NYS Senate and Assembly, coupled with strong support from key stakeholders as listed above, Governor Paterson vetoed the bill on October 1, 2010, citing budgetary, technical, and legal ramifications of the OCA legislation. In his veto message number 6819 to the New York State Assembly, the Division of Budget estimated costs of the new OCA office to be 6.2 million dollars in the first year and 3.2 million dollars of annual costs thereafter.

The Governor was opposed to removing the statutory authority of the Office of the Ombudsman within OCFS and to place oversight in the hands of "an outside watchdog." He further insisted that the existing Office of the Ombudsman was a "highly successful tool in ensuring the proper functioning of OCFS facilities." Lastly, he cited a number of "technical problems" with the bill, which would "produce unnecessary disputes and litigation."

In summation, his primary "point of disagreement with the sponsors relates to the cost of this bill" and he invited the "legislature to negotiate a bill that would meet all of our goals."

Children's Studies Position and Policy Recommendation

Since the settlement with the USDOJ and NYS and the veto of the OCA legislation, Children's Studies is saddened to report that -- within two months -- there have already been two confirmed deaths that have happened in two facilities under the oversight of OCFS. They are currently under investigation, one of a boy named Alexis Cirino-Rodriguez, who died on October 13, 2010 after a physical incident involving intervention by a staff member of the William George Agency in Dryden, and another boy who was just reported to have committed suicide on November 16, 2010 in OCFS's Highland facility.

As far as budgetary concerns which led to the Governor's veto of the OCA, it should be noted that Governor Paterson has budgeted \$18.2 million in the 2010-2011 executive budget to hire additional counselors and staff, and to provide training for employees in the juvenile justice facilities as a part of the settlement agreement. At the same time, New York's budgetary crisis worsens and funding that supports children and families are projected to be cut, further worsening the existing systemic problems and curtailing new legislative measures to address problems in the system before they can even take effect.

Children's Studies will continue to work towards educating the public about the human rights of children as articulated in *The Universal Declaration of Human Rights* (1948) and the *U.N. Convention on the Rights of the Child* (1989) (UNCRC) and in the case of the Independent Office of the Child Advocate Legislation, recommend Article 3 of the UNCRC, which states, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

We take the position that children must come first, not special interests, not political agendas, not profit, and not budget constraints. Precisely at such time of fiscal crises, systems of oversight, accountability and transparency are more needed than ever and could save the state money. An OCA office would indeed help unify and streamline an overly large, unmanageable and fragmented system, and in so doing it will effectively serve children and youth in New York and protect their human and civil rights.

The Children's Studies Center policy research has shown that an independent Office of the Child Advocate has worked in many states that have experienced very similar problems to that of New York and it can also work here if it is implemented in a responsible manner and with adequate financial support.

***The following are links to documents relating to the Juvenile Justice lawsuit, settlement, and related matters:**

U.S. Department of Justice, Civil Rights Division, August 14, 2009 "Investigation of the Lansing Residential Center, Louis Gossett, Jr. Residential Center, Tyron Residential Center, and Tyron Girls System"
http://www.justice.gov/crt/split/documents/NY_juvenile_facilities_findlet_08-14-2009.pdf

Charting a New Course

A Blueprint for Transforming Juvenile Justice in New York State

From the Vera Institute of Justice – December 2009:

A Report of Governor David Paterson's Task Force on Transforming Juvenile Justice

<http://www.vera.org/download?file=2948/Charting-a-new-course-Executive-summary-recommendations.pdf>

<http://www.vera.org/download?file=2944/Charting-a-new-course-A-blueprint-for-transforming-juvenile-justice-in-New-York-State.pdf>

Information about the Department of Justice lawsuit against the New York State Office of Children and Families:

<http://www.ocfs.state.ny.us/main/default2.asp>

Children's Studies Policy Symposium: "Children and the Law in New York,"
March 11, 2004

<http://www.brooklyn.cuny.edu/pub/departments/childrensstudies/1587.htm>

S6877/Parker/Same as A3233-B/Clark: "establishes the independent office of child advocate to ensure the protection and promotion of legal rights for youth in juvenile justice facilities; repeals certain provisions relating to the office of the ombudsman"

<http://www.brooklyn.cuny.edu/pub/departments/childrensstudies/1595.htm>

Governor Paterson's Program Bill #273, introduced by Senator Velmanette Montgomery in the New York State Senate and no sponsors in the New York State Assembly:

http://www.state.ny.us/governor/bills/pdf/gpb_273.pdf

Governor Paterson Announces Settlement with USDOJ to Continue Efforts to Transform the Juvenile Justice System:

<http://www.state.ny.us/governor/press/071410settlement.html>

OCFS Press Release, July 14, 2009: Governor Paterson Announces Settlement with USDOJ to Continue Efforts to Transform the Juvenile Justice System

http://www.ocfs.state.ny.us/main/rehab/Jul%2014%202010_%20Paterson%20Press%20Release%20DOJ%20Juvenile%20Justice.asp

Governor Paterson Veto Message No. 6819

<http://www.votesmart.org/vetotext/32699.pdf>

Text of the U.N. Convention on the Rights of the Child (CRC)

<http://www2.ohchr.org/english/law/crc.htm>



Legislation Details for Res 0580-2006

Res 0580-2006

Create the Office of the Child Advocate (A.6334-A/S. 6877-A)

Description: Resolution calling upon the New York State Legislature to pass A.

Council Member Sponsors for: Res 0580-2006

- *Foster, Helen D.
- *Gerson, Alan J.
- *Jackson, Robert
- *James, Letitia
- *Liu, John C.
- *Mealy, Darlene
- *Mendez, Rosie
- *Palma, Annabel
- *Sears, Helen
- *Stewart, Kendall

Note:

* Primary Sponsor(s)

Committee Reports for Res 0580-2006

There are no Committee Reports found for Res 05

History/Status for: Res 0580-2006

Action Date	Acting Body	Action Taken	Ver	Sent To	Du Dat
10/25/2006	City Council	Introduced by Council	*		
10/25/2006	City Council	Referred to Comm by Council	*	Committee on General Welfare	

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Resolution calling upon the New York State Legislature to pass A.6334-A/S. 6877-A, which would create the Office of the Child Advocate to oversee the New York State Office of Children and Family Services.

By Council Members James, Mealy, Sears, Foster, Gerson, Liu, Mendez, Palma, Stewart and Jackson

Whereas, Recent reports regarding the abusive and discriminatory conditions of juvenile justice facilities run by the New York State Office of Children and Family Services ("OCFS") indicate the need for urgent reform of current OCFS policies and practices; and

Whereas, The need for additional oversight of the state child welfare system is further demonstrated by the tragic deaths of children such as Colesvinton Florestal, Jr. and Nixzmary Brown, whose families were known to the child welfare authorities prior to their deaths; and

Whereas, Bill A.6334-A/S. 6877-A would establish an independent Office of the Child Advocate; and

Whereas, The Office of the Child Advocate would replace the Commission on the Quality of Foster Care, which currently performs a similar but significantly limited oversight role; and

Whereas, The Child Advocate would be charged with (i) evaluating the performance of OCFS, (ii) reviewing, referring, and investigating complaints against OCFS, (iii) reviewing the institutions and residences into which foster children are placed, and (iv) recommending and overseeing the implementation of necessary corrective action plans and policy changes; and

Whereas, The Child Advocate would have the authority to initiate civil action on behalf of a child against the State and other public or private entities providing out-of-home residential services to children; and

Whereas, Children and families that experience foster care removals often experience extreme disruption and emotional trauma and the Child Advocate would serve as a means by which both parents and children involved with the child welfare system could report abuses experienced while in the system; and

Whereas, The Child Advocate would operate a private toll-free hotline for children in need; and

Whereas, Similar advocacy offices exist in the nearby states of Connecticut, New Jersey, and Rhode Island; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass A.6334-A/S. 6877-A, which would create the Office of the Child Advocate to oversee the New York State Office of Children and Family Services.

INTRODUCTION AND READING OF BILLS

Res. No. 1891

Resolution supporting the "Convention on the Rights of the Child," as adopted by the General Assembly of the United Nations on November 20, 1989; and calling on all City agencies— especially those concerned with the housing, nutrition, education, protection, medical care, recreation, and economic opportunity for children—to ensure that their activities and funding processes comply with the Convention on the Rights of the Child.

By the President (Mr. Stein) and Council Members Friedlander and Messinger; also Council Members Alter, Castaneira Colon, Crispino, Eisland, Foster, Gerges, Greitzer, Harrison, Horwitz, Lisa, Leffler, Michels, Povman, Spigner and Williams. Whereas, Children have inalienable human rights—such as the right to food, shelter, health care, protection from abuse, education, and the right to develop in a safe environment free from discrimination; and

Whereas, Children in the United States and throughout the world face an unprecedented crisis that impedes their proper development; and

Whereas, Children remain the subject of abuse, neglect, and exploitation; and

Whereas, It is the duty of the Government to ensure that all children receive the level of support necessary for the realization of these rights; and

Whereas, There is insufficient support for the maintenance of caring and nurturing families; and

Whereas, On November 20, 1989, the United Nations General Assembly voted to adopt a new international treaty for the protection of children; and

Whereas, The "Convention on the Rights of the Child" details the civil and political rights of children, as well as their social, economic and cultural rights; and

Whereas, Setting basic rights of children as whole persons requires rethinking programs for families and children; now, therefore be it

Resolved, That the Council of the City of New York affirms its support for the Convention on the Rights of the Child, as adopted by the United Nations General Assembly on November 20, 1989; and, be it further

Resolved, That the Council call on all City agencies—especially those concerned with the housing, nutrition, education, protection, medical care, recreation and economic opportunity for children—to ensure that their activities and funding processes comply with the Convention on the Rights of the Child.

On motion of the Vice-Chairman (Council Member Vallone), and adopted. The matter was made a General Order for the Day and unanimously adopted by a viva voce vote.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1 Res. No.

☐ in favor ☒ in opposition

Date:

(PLEASE PRINT)

Name: Dora Schribo

Address: 75-20 Astoria Boulevard

I represent: Department of Correction

Address:

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date:

(PLEASE PRINT)

Name: Larry Davis

Address: 75 20 Astoria Boulevard

I represent: Department of Correction

Address:

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/15/2010

(PLEASE PRINT)

Name: Arthur Olivari

Address:

I represent: NYC Dept of Correction.

Address:

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/15/2010

(PLEASE PRINT)

Name: Michael Hori hane

Address: _____

I represent: NYC Dept of Correction

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/15/2010

(PLEASE PRINT)

Name: Peter Panagi

Address: _____

I represent: NYC Dept of Correction

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Norman Seabrook

Address: 75 Broad St.

I represent: COBA

Address: _____

▶ Please complete this card and return to the Sergeant-at-Arms ◀

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: SIDNEY SCHWARTZBAUM PRESIDENT (ASSISTANT Deputy Wardens)

Address: 364 Decker Ave SI NY 10302

I represent: ASSISTANT Deputy Wardens Association

Address: 364 Decker Ave SI NY 10302

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Mary Lynne Werlwas + John Boston

Address: 199 Water St NY NY 10035

I represent: The Legal Aid Society

Address: Same

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12-15-10

(PLEASE PRINT)

Name: Loretta Chin

Address: Brooklyn College Children's Studies Center 2900 Bedford Ave Brooklyn, NY 11210

I represent: Brooklyn College Children's Studies Center

Address: 2900 Bedford Ave 2002 Jones Hall, Brooklyn, NY 11210

Please complete this card and return to the Sergeant-at-Arms