



Testimony of

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Before the  
New York City Council  
Committees on Juvenile Justice and Fire and Criminal Justice Services

Oversight Hearing:  
Examining the Treatment of Adolescents in NYC Jails and Reviewing  
United States Department of Justice's Report on Violence at Riker's

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Good morning. My name is Stephanie Gendell and I am the Associate Executive Director for Policy and Government Relations at Citizens' Committee for Children of New York (CCC). CCC is a 71-year-old independent, multi-issue child advocacy organization dedicated to ensuring every New York child is healthy, housed, educated and safe.

I would first like to thank Chairs Rodriguez and Crowley and the members of the City Council Fire and Criminal Justice and Juvenile Justice Committees for holding this important hearing and providing us with the opportunity to testify. We are also extremely grateful to Preet Bharara and the United States Department of Justice for their attention to the unacceptable violence adolescents are experiencing at Rikers Island. We are also pleased that Governor Cuomo created a Commission that is currently devising a plan to raise the age of criminal responsibility in New York.

Before elaborating on the care and treatment of adolescents at Rikers, the data, or our recommendations, it needs to be stated at the outset—adolescents (i.e. children ages 16 and 17 years old) should not be incarcerated on Rikers Island. Period. The facility was not created for children; the staff are not trained to work with children; the facility is not developmentally appropriate for children; and children should be treated differently from adults in part because their brains are not fully developed until they are 21-25 years old.

On August 4, 2014, Eric Holder, the US Attorney General, and Preet Bharara, the US Attorney for the Southern District of New York, released a report documenting their multi-year civil investigation into the conditions of care for adolescent male inmates at Rikers Island. The report concluded that there is a pattern and practice of conduct that violates the Constitutional Rights of the adolescents (the 8<sup>th</sup> and 14<sup>th</sup> Amendments).

The report stated the following:

... we find that adolescent inmates at Rikers are not adequately protected from harm, including serious physical harm from the rampant use of unnecessary and excessive force by DOC staff. In addition, adolescent inmates are not adequately protected from harm caused by violence inflicted by other inmates, including inmate-on-inmate fights. Indeed, we find a deep-seated culture of violence is pervasive throughout the adolescent facilities at Rikers, and DOC staff routinely utilize force not as a last resort, but instead as a means to control the adolescent behavior and punish disorderly or disrespectful behavior. Moreover, DOC relies far too heavily on punitive segregation as a disciplinary measure, placing adolescent inmates—many of whom are mentally ill—in what amounts to solitary confinement at an alarming rate and for excessive periods of time.”

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The text of the report is jarring—reading page after page of the violence and injuries being inflicted on NYC's youth. These are our City's youth. Yet they are subjected to “headshots”, broken jaws and orbital bones, beatings as retribution, painful escort techniques, solitary confinement in six by eight foot single cells for 23 hours a day, etc. etc. It is unacceptable.

The report includes 73 recommendations in 10 categories and then concludes stating that the City has 49 days to work with the Attorney General to cooperatively address the findings or the US DOJ might file a lawsuit. On September 22, 2014—the 49<sup>th</sup> day—US Attorney Preet Bharara issued a release expressing concern about the City’s progress in meeting its constitutional obligations. The release also expressed concern regarding reports that some of the information his office received was inaccurate because data had been manipulated to indicate violence had declined.

On September 29, 2014 it was widely reported that the de Blasio Administration had decided that by the end of the year, solitary confinement would be eliminated for 16 and 17-year olds at Rikers.

We believe that the conditions described in the DOJ Report including the violence between both inmates and guards and inmates and inmates and the lack of mental health services (or lack of ability to properly care for those with mental illness) is inhumane for any person incarcerated at Rikers Island. As indicated in the DOJ report, the fact that the report focused on the adolescent male unit does in no way indicate that the same conditions of confinement are not found in the adult population (male and female) or female adolescent unit.

That said, because of our mission, CCC’s recommendations focus on children and youth at Rikers. CCC appreciates the continued interest the City Council has taken with regard to the systemic and egregious conditions for inmates at Rikers Island and particularly your interest in the adolescent units. We look forward to working together to dramatically reform this system.

We respectfully submit the following recommendations:

1) **Remove all 16 and 17-year old children from Rikers Island**

CCC’s first recommendation is the same as that of the US Attorney and Department of Justice. Rikers Island is not an appropriate facility for children and they should not be placed there.

Raise the Age of Criminal Responsibility and Ensure Youth are Not Placed in Adult Facilities:

As many are now aware, New York is one only two states (the other is North Carolina) where all 16 and 17 year olds alleged to have committed a crime are treated as adults, regardless of the crime.

This means that when a 16 or 17-year old youth is arrested, the police department does not notify his/her parents and the youth can waive his/her Miranda Rights without parental consent. This means that these youth have their cases heard in the adult criminal court system, rather than the family court system and that the Family Court Act does not apply. This means that these children are housed in adult facilities like Rikers, even though federal law precludes them from having sight or sound contact with adults. This

means that 16 and 17 year olds do not have an adjustment process nor dispositional options that enable them to avail themselves of the services proven to reduce recidivism and help youth turn their lives around. This means that these youth can end up with their youthful discretions on their permanent criminal record, impacting their future ability to go to college, get a job, or find an apartment.

Luckily, Governor Cuomo has determined that New York must raise the age of criminal responsibility. He has created a Commission to develop a plan, which should be released this winter. CCC looks forward to the details of this plan and hopes to advocate for its passage as part of the upcoming state budget process. We also hope that the State's plan will prohibit placing 16 and 17 year olds in adult facilities, like Rikers.

We hope that if the State's plan to Raise the Age is in the best interest of children, families and communities, that the City Council and the de Blasio Administration can be partners in advocating for the passage of the plan to raise the age of criminal responsibility.

#### Remove 16 and 17 Year Olds from Rikers Immediately

While CCC appreciates the de Blasio Administration's commitment to ending the use of solitary confinement for 16 and 17-year olds at Rikers by the end of the year, we believe that the better course of action would be to ensure no youth is still at Rikers at the end of the year.

It is very likely that the Cuomo Administration and the Raise the Age Commission will be recommending that 16 and 17-year olds not be placed in adult facilities. There is no reason for the City to wait for the final report from the State while implementing band-aid solutions at Rikers. The City should develop a plan now to remove the youth as soon as possible.

It is important to note that there are fewer than 300 16 and 17 year old youths at Rikers at any given time. This means that the population needing to be moved and housed elsewhere is quite manageable.

In addition, a substantial number of those 300 young people need not be incarcerated. Some of the youth are at Rikers because they were unable to make bail. (Note that in Family Court there is no bail and determinations about detaining a youth pre-trial is based on whether the young person is a danger to the community or at risk of flight.) Thus, the City could create a process to adjust some of these bail cases and allow the youth to remain in the community pending their trials. Furthermore, many of the youth actually have mental illnesses and would be better served by mental health services (either in the community or in a facility). Thus, the total number of youth needing a new placement will not be overwhelming.

While the Department of Justice recommended that the new facility off of Rikers Island be part of the Department of Corrections, we urge the Administration and the City Council to strongly consider that they be supervised and staffed by a child-serving agency like the Administration for Children's Services (ACS). At a minimum, the staff at the new facility MUST be trained in working with youth.

**2) Improve the Conditions of Care at Rikers (and at any new facility for youth)**

The additional recommendations in the DOJ report should be implemented both at Rikers and at any new facility for 16 and 17 year olds.

It is worth noting that the adolescent brain is not fully developed until a young person is 21-25 years old. Thus, even once 16 and 17-year olds are no longer placed at Rikers, there will still be adolescents at the facility. Not only do they deserve to have their Constitutional Rights protected, but it will better serve them as well as society if their needs are tended to while they are at Rikers in a manner that ultimately helps them to better re-engage into society rather than remain in a life of crime.

Until very recently, 18 year olds were housed with the 16 and 17 year olds in the adolescent unit at Rikers. Federal law prohibits states from incarcerating youth under 18 with adults 18 and over. So to be in compliance with the federal Prison Rape Elimination Act (PREA), the state passed a law moving the 18-year olds into the adult population. While we appreciate the compliance with federal law, we believe that 18-21 year olds (or 18-24 year olds) should also be treated differently by the justice and corrections systems. We urge the de Blasio Administration to consider this as part of any reform plan for Rikers.

We appreciate the City Council's interest in improving the conditions of confinement at Rikers Island.

Thank you for the opportunity to testify.