



Defending America's
Abused and Neglected Kids

**Older Youth Development:
Insights from Child Welfare and Implications for New York City Department of
Correction Policy and Practice**

Public Comment submitted by Children's Rights
For the New York City Board of Correction

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I. Introduction

Children's Rights is a national advocate for youth in child welfare systems. Our work began as a project of the New York Civil Liberties Union and, later, the American Civil Liberties Union. In 1995 we became an independent nonprofit organization. We have won landmark legal victories in a number of states and engaged in advocacy efforts that are changing the way child welfare is practiced. Our experience with adolescents and young adults in foster care often brings us in contact with juvenile and adult corrections, as our clients are disproportionately represented among young people in these settings.

As discussed in more detail below, research from biology, neuroscience, and social science shows that youth development does not end at age 18. Young people continue to mature well into the mid-twenties, making them uniquely vulnerable and impressionable. This is especially true for the adolescents and young adults in child welfare and criminal justice systems. These young people require supports that respond to these needs. The field of child welfare has recognized this and developed policy and best practices accordingly. We believe the same foundational information applies to working with older youth in New York's criminal justice system.

Children's Rights' Position

Solitary confinement is harmful to older youth up to age 25. Children's Rights joins with the Legal Aid Society, New York City Jails Action Coalition and the New York Advisory Committee to the U.S. Commission on Civil Rights and urges the Board of Correction to protect young people age 18 to 25 as it protects adolescents who are 16 and 17 by excluding older youth from Punitive Segregation. Youth does not end at age 17. Indeed, much like infancy, pathways established during adolescence and young adulthood are critically important to brain

development.¹ Experiences during this period shape young people's futures as adults.² As a result, young people age 18 to 25 have unique needs and face a serious risk of harm if subjected to excessive isolation while in state custody.

Enhanced Supervision Housing is inappropriate for older youth up to age 25. As currently proposed, placement in ESH would limit young people's access to visitation and participation in programming. This is counter-productive for older youth, who need developmentally-appropriate services and connections with community.

Training is necessary for effectively working with older youth up to age 25. Department of Correction staff should have appropriate training and skills to work with adolescents and young adults.³ During this limited window of time, older youth have the chance to develop the knowledge and skills that will help them positively navigate the adult world.⁴ No one benefits from continuing to warehouse older youth without regard to their developmental needs and the opportunities to promote positive future outcomes for them.

The Story of L.M.

L.M. is one of many clients Children's Rights has represented in its advocacy to reform child welfare systems, and he reflects the widely-recognized overlap between the young people placed in criminal justice systems and those who are or have been in foster care.⁵ Indeed, as many who work in these fields agree "[y]outh involved in the child welfare and juvenile justice systems are among the most vulnerable children in society."⁶ Both populations reflect marginalized adolescents and young adults. It is widely understood that "[y]outh who have contact with these systems are overwhelmingly poor, from minority populations, and tend to have limited access to social supports and resources that might allow them to avert system involvement."⁷

¹ Jim Casey Youth Opportunities Initiative, *The Adolescent Brain: New Research and its Implications for Young People Transitioning from Foster Care* (2011), at 7-8.

² *Id.*

³ *See id.* at 28-32 (discussing trauma-informed child welfare practice and positive youth development models) and at 33-37 (providing recommendations to guide child welfare practice); Yaroshefsky, *supra*, at 44-48.

⁴ Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra*, at 7-8.

⁵ *See* Casey Family Programs, *Improving Outcomes for Older Youth in Foster Care* (2008), at 4; *see also* Denise C. Hertz et al., *Challenges Facing Crossover Youth: An Examination of Juvenile-Justice Decision Making and Recidivism*, 48 Fam. Ct. Rev. 305, 305-06 (2010); Miriam Aroni Krinsky, *A Not So Happy Birthday: The Foster Youth Transition from Adolescence into Adulthood*, 48 Fam. Ct. Rev. 250, 251 (2010); Miriam Aroni Krinsky, *Disrupting the Pathway from Foster Care to the Justice System – A Former Prosecutor's Perspectives on Reform*, 48 Fam. Ct. Rev. 322, 324-25 (2010); Lauren Wylie, *Closing the Crossover Gap: Amending Fostering Connections to Provide Independent Living Services for Foster Youth who Crossover to the Justice System*, 52 Fam. Ct. Rev. 298 (2014).

⁶ Jennifer K. Pokempner, Riya Saha Shah, Mark F. Houldin, Michael J. Dale & Robert G. Schwartz, *The Legal Significance of Adolescent Development on the Right to Counsel: Establishing the Constitutional Right to Counsel for Teens in Child Welfare Matters and Assuring a Meaningful Right to Counsel in Delinquency Matters*, 47 Harv. C.R.-C.L. L. Rev. 529, 529 (2012).

⁷ *Id.* (citations omitted).

L.M. entered foster care in a northeastern state⁸ when he was five years old. He and his younger sister were removed from their grandmother's home after it was found to be unsafe. Before he was in the fourth grade, L.M. was diagnosed as having learning disabilities and severe emotional and behavioral problems. Once in foster care, he was placed with his biological father while the state provided supervision. A few months later, L.M.'s father was arrested for sexually assaulting a minor while L.M. and his sister were living with him. L.M. was removed from his family again and spent the next decade and a half in foster care.

Like many older youth, L.M. left the state's legal custody without a permanent family. At age 21, he found himself homeless and hungry, returning to his old neighborhood and troubled biological family. Without a job or a functional social network, L.M. struggled to care for himself. He left home and was living on the streets. He was charged with armed robbery and placed in adult detention before his twenty-second birthday.

L.M. remained in detention for over a year, housed primarily in solitary confinement and a segregated unit purportedly for his own safety and protection. He had little contact with the outside world, leaving his cell for no more than a few hours a day. He had no education or training program. The behavior management therapy and counseling he had received sporadically before entering detention were no longer available to him. His mental health quickly deteriorated. Scared and isolated, L.M. became suicidal.

When L.M. was released at age 22, he made his way to a halfway house – a temporary shelter for other men exiting the criminal justice system. There, his youth, fragile mental health, and low cognitive functioning made him a target for other residents who threatened him. The trauma of his experience in detention, coupled with the lack of coordinated services post-release, resulted in his having a mental health crisis and contemplating suicide again.

Today L.M., who is 23 years old, still struggles to make his way. He is unemployed because he cannot find an employer who will hire him with his criminal record. He lives on social security disability payments and is not enrolled in school. L.M. spends several days a week in an outpatient therapeutic program for youth in transition to help build life-skills and manage his mental illness. But his connections to the community are tenuous and his family relationships are unreliable. He remains a very vulnerable young man.

Young adults, especially young men of color like L.M., commonly find themselves moving from foster care to detention and corrections systems. "Former foster youth are ten times more likely to be arrested than other youth of the same age, race, and sex, and twenty-five percent of emancipated youth will spend time in jail within two years of leaving the system."⁹ One study found that children who were victims of maltreatment had a 55 percent increased risk of arrest and a 96 percent increase in risk for arrest for a violent crime when compared with children who had not suffered abuse or neglect.¹⁰ Another study found that by age 23 or 24, 81 percent of young

⁸ L.M. was a class-member in a federal civil rights lawsuit brought by Children's Rights. He was never placed in New York City foster care or corrections facilities. His story is presented here solely for the purposes of illustrating the experiences of many youth exiting foster care and entering the adult criminal justice system.

⁹ Wylie, *supra*, at 300 (citing Krinsky, *A Not So Happy Birthday*, *supra*, at 251).

¹⁰ John A. Tuell, Child Welfare League of America, *Promoting a Coordinated and Integrated Child Welfare and Juvenile Justice System: An Action Strategy for Improved Outcomes* (2003), at 3.

men who had been in foster care reported having been arrested, compared with only 17 percent of the general population.¹¹

The experience of youth in New York is no different. As Professor Yaroshefsky found in her recent report to the Board of Correction titled *Rethinking Rikers*, many of the young people at Rikers Island have a history with the child welfare system.¹² According to the City, 48 percent of the 5,400 children arrested and detained in 2010 in New York City had previous or current foster care involvement, including more than 300 youth who were living in foster care at the time of their arrest.¹³ The overlapping populations and experiences of older youth in foster care and correctional settings provide opportunities to share best practices across disciplines and to inform policy decisions to improve outcomes for adolescents and young adults, including those currently before the Board.

II. Youth Does Not End at Age 17: Development Continues Through Early Adulthood

Adolescents and young adults involved with the child welfare and criminal justice systems have much in common. Both populations of youth disproportionately experience domestic and community violence,¹⁴ mental and physical abuse and neglect,¹⁵ chronic and acute mental and behavioral health conditions,¹⁶ unmet physical and dental health needs,¹⁷ substance abuse,¹⁸ and educational needs.¹⁹ They also share a likelihood of weakened or non-existent social and family networks that would normally help older youth establish effective life skills during this time of intensive emotional and cognitive development.²⁰ While most young adults in the general

¹¹ Jim Casey Youth Opportunities Initiative, *Issue Brief #1: Foster Care to 21: Doing it Right*, at 2.

¹² Ellen Yaroshefsky, *Rethinking Rikers: Moving from a Correctional to a Therapeutic Model for Youth*, Proposal for Rule-Making Report for the NYC Board of Correction (2014), at 25.

¹³ Helon Zelon, *Juvenile Justice System Excludes Many Youthful Wrongdoers*, City Limits, June 1, 2012, http://citylimits.org/2012/06/01/juvenile-justice-system-excludes-many-youthful-wrongdoers/#.URKvX2dUm_F (“Of nearly 5,400 children arrested and detained in 2010 in New York City, 48 percent had previous or current foster care involvement, Sara Hemmeter, ACS’s associate commissioner for family and youth justice programs, says. More than 300 were living in foster care settings at the time of their arrest; more than 1,500 had received ACS-administered preventive services on previous Family Court orders.”).

¹⁴ American Academy of Pediatrics, Task Force on Health Care for Children in Foster Care, *Fostering Health: Health Care for Children and Adolescents in Foster Care* (2d ed. 2005), at 3 (foster care); Jim Casey Youth Opportunities Initiative, *Issue Brief #5: Trauma-Informed Practice with Young People in Foster Care* (2012) (foster care).

¹⁵ Yaroshefsky, *supra*, at 19, 25 (juvenile justice); Jim Casey Youth Opportunities Initiative, *Trauma-Informed Practice*, *supra* (foster care).

¹⁶ Report from the U.S. Department of Justice, United States Attorney Southern District of New York to the Honorable Bill de Blasio, Commissioner Joseph Ponte, and Zachary Carter, *CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island* (Aug. 4, 2014), at 46 (juvenile justice); Yaroshefsky, *supra*, at 25 (criminal justice); American Academy of Pediatrics, *supra*, at ix (foster care).

¹⁷ American Academy of Pediatrics, *supra*, at ix, 1-3 (foster care).

¹⁸ Yaroshefsky, *supra*, at 25 (juvenile justice); Jim Casey Youth Opportunities Initiative, *Trauma-Informed Practice*, *supra*, at 3 (foster care).

¹⁹ American Academy of Pediatrics, *supra*, at 2 (foster care); Yaroshefsky, *supra*, at 12 (citing Alan Singer, *Rikers Island – Last Stop on the New York City School-to-Prison Pipeline*, Huffington Post, Feb. 3, 2012, http://www.huffingtonpost.com/alan-singer/rikers-island-prison_b_1252325.html) (juvenile justice).

²⁰ David Altschuler, Gary Stangler, Kent Berkley & Leonard Burton, Center for Juvenile Justice Reform and the Jim Casey Youth Opportunities Initiative, *Supporting Youth in Transition to Adulthood: Lessons Learned from Child Welfare and Juvenile Justice* (2009), at 8-9.

population have access to emotional support systems through their early adult years, older youth involved with the child welfare and criminal justice systems often do not have these supportive relationships in place and may face obstacles to building supports that ease the transition to adulthood. According to standards developed for older youth in foster care by the Child Welfare League of America, “[f]ederal and state statutes, regulations, and policies that require youth-serving and child welfare agencies to discharge young people in foster care upon reaching age 18 or 19 are counterproductive.”²¹ Older youth need ongoing support and services, and without them, they are “more likely to be unemployed or underemployed, to require long-term government support, and to experience life-long difficulties” including involvement with the criminal justice system, low educational attainment, and homelessness.²²

For more than a generation, the federal government has recognized that adolescents and young adults in foster care are a particularly vulnerable population. Since 1986 the federal government has provided funding to states to help prepare adolescents in foster care for the transition to adulthood.²³ Today, states provide life skills preparation, housing support, and educational, vocational, and employment training services for adolescents up to age 21.²⁴ Federal law permits states to claim federal reimbursement for providing youth up to age 21 with basic necessities, including housing assistance, and case management services.²⁵ More recently the federal government authorized funding for education and training vouchers to cover their cost of postsecondary education until age 23.²⁶ Beginning in 2014, eligible young people who emancipate from foster care are covered under a mandatory Medicaid pathway until age 26.²⁷ In New York State, young adults have access to an Independent Living Program, which includes access to case planning, educational services, vocational training, life skills training, stipends, and room and board up to age 21 and support for education or vocational training up to age 23.²⁸

The codified acknowledgement that older youth in foster care require ongoing support after they attain the legal age of majority is supported by decades of scientific research.²⁹ The concept of emerging adulthood – that young people gradually move toward independence rather than achieving independence at a pre-determined age – has become well-developed in recent years.³⁰ Indeed, research from a number of social science fields has shown that the acquisition of critical life skills happens gradually throughout adolescence and into the mid-twenties.³¹ Neuroscience

²¹ Child Welfare League of America, *Standards of Excellence for Transition, Independent Living, and Self-Sufficiency Services* (revised ed. 2005), at 138-39.

²² Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra*, at 12.

²³ The Independent Living Initiative of 1986, P.L. 99-272, provided funding for services to prepare young adults in foster care for independent living.

²⁴ Foster Care Independence Act of 1999, P.L. 106-169.

²⁵ Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

²⁶ Promoting Safe and Stable Families Amendments of 2001, P.L. 107-133.

²⁷ Patient Protection and Affordable Care Act, P.L. 111-148.

²⁸ New York State, Office of Children and Family Services, *Goal #4: Adolescents in Foster Care and Pregnant, Parenting and At-Risk Teens in Receipt of Public Assistance Will Develop the Social, Educational and Vocational Skills Necessary for Self-Sufficiency*, <http://www.ocfs.state.ny.us/main/sppd/assets/independentliving.pdf>.

²⁹ MacArthur Foundation & Models for Change Resource Center Partnership, *Systems Reform in Juvenile Justice, Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System* (2014), at 3, 5-6.

³⁰ Jim Casey Youth Opportunities Initiative, *Success Beyond 18: A Better Path for Young People Transitioning from Foster Care to Adulthood* (2013) (citing Jeffrey Arnett, *Emerging Adulthood: The Winding Road from the Late Teens Through the Twenties* (2004)).

³¹ Altschuler et al., *supra*.

research has found that the brain, including the frontal lobe, which regulates judgment, reasoning, decision-making, impulsivity, and emotions, does not fully develop until the early to mid-twenties.³² In fact, the frontal lobe undergoes far more change during young adulthood than at any other stage of life.³³ During this time a young adult is maturing physically and sexually, moving toward social and economic independence, developing identity, acquiring skills needed to carry out adult relationships and roles, and developing the capacity for abstract reasoning.³⁴

This developmental period is also a time of greater risk, when a youth's environment can have substantial influence on decision-making.³⁵ Research has shown that this window of opportunity to impact youth development and promote resilience closes in the mid-twenties.³⁶ It is critical that adults working with older youth address their need for family supports, education and training opportunities, employment, opportunities to contribute to a community, adequate health and mental health supports, and supportive relationships with others.³⁷

III. Adolescents and Young Adults Require Developmentally Appropriate Care

During this critical period of development in adolescence and young adulthood, the opportunity to interact with supportive adults and practice reasoning, decision-making, and self-regulating skills strengthens young people's ability to function in the years ahead.³⁸ Best practices in child welfare require that systems provide supports to assist youth in developing relationships with significant adults and peers because research shows "[y]oung people are more likely to succeed if they have a good relationship with at least one caring adult."³⁹ Older youth must develop social support networks and build healthy, meaningful relationships with caring individuals.⁴⁰ Just as in child welfare, building social networks must be a priority for older youth involved in the criminal justice system in order to develop necessary skills and brain functioning to transition into adulthood. Indeed, as the MacArthur Foundation recently reported in the context of juvenile justice systems, "[t]he most effective programs and services are those that seek to meet youth's needs and influence their development in a positive way, by promoting contact with prosocial peers and adult role models, actively engaging parents and family members, offering tools to deal with negative influences that youth may face in their communities, and engaging

³² Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra*, at 20-23; Adam Ortiz, American Bar Association Juvenile Justice Center, *Adolescence, Brain Development and Legal Culpability* (2004), at 1-2.

³³ Ortiz, *supra*, at 2 (citing Elizabeth R. Sowell, Paul M. Thompson, Colin J. Holems, Terry L. Jernigan & Arthur W. Toga. *In vivo evidence for post-adolescent brain maturation in frontal and striatal regions*. 2 Nature Neuroscience 10 (1999)).

³⁴ Jim Casey Youth Opportunities Initiative, *Success Beyond 18*, *supra*, at 5 (citing World Health Organization, *Adolescent Development* (2012)).

³⁵ MacArthur Foundation, *Because Kids are Different*, *supra*, at 5-6; Jim Casey Youth Opportunities Initiative, *Success Beyond 18*, *supra*, at 5 (citing World Health Organization, *Adolescent Development* (2012)).

³⁶ Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra*, at 14.

³⁷ *See id.*

³⁸ Jim Casey Youth Opportunities Initiative, *Issue Brief #3: Authentic Youth Engagement: Youth-Adult Partnerships* (2012).

³⁹ Child Welfare League of America, *Standards of Excellence for Transition*, *supra*, at 112.

⁴⁰ Council on Accreditation, *Youth Independent Living Services* (2014), at PA-YIL7. The Council on Accreditation is an international, independent, nonprofit, human service accrediting organization.

youth in educational programming and employment that will prepare them for conventional adult roles.”⁴¹

Settings that remove and isolate youth from their communities, whether correctional or congregate care in foster care, can severely limit opportunities to build enduring relationships with caring adults.⁴² In child welfare, studies have demonstrated that young adults who remain in foster care beyond age 18 and receive developmentally targeted services have significantly better outcomes, including lower rates of incarceration, than those young adults who age out of care with only adult services available.⁴³ The same can be said for the provision of services to youth involved with the juvenile and criminal justice systems. Studies reviewed by the Centers For Disease Control and Prevention Task Force found that adolescents who enter the adult criminal justice system, “on average, reoffend sooner, more frequently, and for more serious offenses following their release than comparison groups of juveniles retained in the juvenile justice system.”⁴⁴ Youth have better outcomes if their unique needs are addressed and they are not required to navigate systems created for older adults.

IV. No Youth Under 25 Should be Placed in Punitive Segregation

Whether in foster care or detention, while in government custody, all youth must be free from harm.⁴⁵ Research and intervention models developed in child welfare show that placement of and services to adolescents and young adults must address trauma and normalize young people’s lives.⁴⁶ Institutionalized youth need *more* contact with trusted adults and peers – not less.⁴⁷ Excessive isolation is incompatible with current research and policy for older youth today.

Because brain development is underway, adolescents and young adults are more vulnerable than older adults to the negative effects of solitary confinement, including increased risk for: mental illness or worsened mental illness; anxiety; rage; insomnia; self-mutilation; suicidal thoughts; and suicide.⁴⁸ In addition to the immediate harm this presents, solitary confinement can impede brain development and affect long-term cognitive and social abilities.⁴⁹ A report issued this month by the New York Advisory Committee to the U.S. Commission on Civil Rights affirms

⁴¹ MacArthur Foundation, *supra*, at 7.

⁴² Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra*, at 10-11 (citing Rosemary J. Avery & Madelyn Freundlich, *Planning for permanency for youth in congregate care*, 27 Children & Youth Servs. Rev. 115-134 (2005)).

⁴³ Altschuler et al., *supra*.

⁴⁴ *Id.* at 41 (citing Centers for Disease Control & Prevention Task Force on Community Preventive Services, *Effects on violence of laws and policies facilitating the transfer of youth from the juvenile to the adult justice system* (2007)).

⁴⁵ See *County of Sacramento v. Lewis*, 523 U.S. 833, 851 (1998); *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199-200 (1989).

⁴⁶ Charlyn Harper Browne, PhD, Center for the Study of Social Policy, *Youth Thrive: Advancing Healthy Adolescent Development and Well-Being* (2014) at 2; Jim Casey Youth Opportunities Initiative, *Trauma-Informed Practice*, *supra*, at 6.

⁴⁷ Jim Casey Youth Opportunities Initiative, *Trauma-Informed Practice*, *supra*, at 6 (foster care); MacArthur Foundation, *supra*, at 7 (juvenile justice).

⁴⁸ MacArthur Foundation, *supra*, at 10-11.

⁴⁹ Anthony Giannetti, *The Solitary Confinement of Juveniles in Adult Jails and Prisons: A Cruel and Unusual Punishment?*, 30 Buff. Pub. Int. L.J. 31, 45-49 (2011-2012)

the threat that solitary confinement poses to older youth based on their incomplete brain development and calls for its prohibition for all young people up to age 25.⁵⁰

Moreover, extended placement in solitary confinement cuts off older youth from essential services and community connections, jeopardizing young people's access to therapeutic services, education and training, visitation with family and friends, and connection with the social networks older youth need to survive once they exit state custody.⁵¹

Developmentally appropriate services are an essential part of child welfare's approach to working with older youth. For example, professional standards require youth living in residential congregate care settings receive: "(a) a positive adult example; (b) nurturance, structure, support, respect, and active involvement; (c) predictable limit-setting; ... (d) guided practice to learn effective communication, positive social interaction, and problem solving skills; and (e) education and skills training specific to risk-taking behaviors, including practice with decision making and anger management."⁵² These are components of "[s]ocial capital – social relationships and networks that support healthy development – [that] is essential for all young people."⁵³ Punitive segregation and excessive isolation of older youth is inconsistent with current research and best practices that recognize the importance of these skills and connections.

The Department of Correction is right to exclude 16 and 17 year-olds from Punitive Segregation, which it recognizes is a "severe penalty" that "represents a serious threat to the physical and psychological health of adolescents."⁵⁴ However, as discussed above, youth ages 18 to 25 are similarly vulnerable during this critical period of development and should be excluded from punitive segregation as well.

V. Enhanced Supervision Housing is Inappropriate for Older Youth Up to Age 25

For many of the same reasons discussed with regard to punitive segregation, young people up to age 25 should not be placed in Enhanced Supervision Housing (ESH) placements.⁵⁵ Social science and neurological research that guides best practices for working with older youth in foster care shows that "[b]y the age of 25, young people need to be 'connected,' that is, 'embedded in networks—families, friends, and communities—that provide guidance, support, and help" as they transition to adulthood.⁵⁶ Adolescents and young adults who live in institutional congregate care, much like those in detention, have few "opportunities to rebuild or build enduring relationships with family and caring adults."⁵⁷ Warehousing 18 to 25-year-olds in ESH units places these "emerging adults"⁵⁸ into settings where they are further cut off from beneficial contacts, including

⁵⁰ New York Advisory Committee to the U.S. Commission on Civil Rights, *The Solitary Confinement of Youth in New York: a Civil Rights Violation* (2014), at 31, 56.

⁵¹ MacArthur Foundation, *supra*, at 10-11.

⁵² Council on Accreditation, *Residential Treatment Services* (2014), at RTX 18.02.

⁵³ Jim Casey Youth Opportunities Initiative, *Issue Brief #2: Social Capital: Building Quality Networks for Young People in Foster Care* (2012), at 1.

⁵⁴ New York City Board of Correction, Proposed Rule Sec. 1-17 "Limitations on the Use of Punitive Segregation."

⁵⁵ New York City Board of Correction, Notice of Public Hearing and Opportunity to Comment on Proposed Rule, Statement of Basis and Purpose at 3.

⁵⁶ Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra*, at 7.

⁵⁷ *Id.* at 11.

⁵⁸ *Id.* at 4.

the few existing normalizing activities available in detention, like attending religious services and having contact visits.⁵⁹ Moreover, placing these youth in ESH with older people makes it more difficult to deliver the kind of developmentally-appropriate supervision and services these youth need.

Additionally, the proposed rulemaking for ESH does not include any process for screening or exclusion based on mental illness. According to the Department of Justice, during fiscal year 2013, 51 percent of adolescents 16 to 18 at Rikers Island were diagnosed with some form of mental illness.⁶⁰ While data on young people 19 to 25 are not publicly available, 39 percent of the Department's jail population has been diagnosed as either seriously or moderately mentally ill.⁶¹ Based on these data and the fact that brain development is ongoing through the mid-twenties,⁶² failing to exclude mentally-ill 18 to 25-year-olds from ESH placement places a vulnerable group of older youth at grave risk of harm.

VI. Department of Correction Staff Must Have Appropriate Training and Skills for Working with Older Youth Up to Age 25

Training and Credentials

Child welfare research and best practices support Professor Yaroshefsky's conclusion that the Department cannot rely on mental health providers and social workers to ensure safety and well-being of adolescents and older youth, and that corrections staff must be trained to work with youth. Training correctional staff can transform a facility's culture from a disciplinary-centered focus to a rehabilitative atmosphere.⁶³ An effective system trains corrections officers to operate as "rehabilitation-focused youth specialists" that are "highly motivated, highly trained," and "constantly interacting with youth to create an environment of trust and respect."⁶⁴

Comparable child welfare standards for congregate care and young adult service providers are consistent with these principles. Guidelines for personnel who work in group living services, which include group living programs in the child welfare, juvenile justice, mental health, and education systems require staff to possess: "(a) a bachelor's degree or are actively and continuously pursuing a degree; ... (b) the personal characteristics and experience to collaborate with and provide appropriate care to residents and their families, gain their respect, guide their development, manage a home effectively, and participate in the overall treatment program; ... (c) the temperament to work with, and care for, children, youth, adults, or families with special needs, as appropriate; ... and (d) adequate and continuous training and supervision."⁶⁵

With regard to credentials, staff working with older youth in child welfare must: "(a) hold a bachelor's degree in social work or a bachelor's degree and two years of relevant youth work experience; (b) are knowledgeable about normative youth development and effects on youth

⁵⁹ New York City Board of Correction, Notice of Public Hearing and Opportunity to Comment on Proposed Rule, Statement of Basis and Purpose at 2-3.

⁶⁰ U.S. Department of Justice, *CRIPA Investigation*, *supra*, at 6.

⁶¹ James Gilligan & Bandy Lee, *Report to the New York City Board of Correction* (Sept. 5, 2013), at 3.

⁶² Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra*, at 5.

⁶³ Yaroshefsky, *supra*, at 7, 44-48.

⁶⁴ *Id.* at 46.

⁶⁵ Council on Accreditation, *Group Living Services* (2014), at GLS 19.01.

development of early trauma, educational gaps and delays, and abuse and neglect; and (c) possess case work, group work, and case coordination skills.”⁶⁶ Young adult case managers must be trained in: “(a) positive youth development; (b) establishment of a service recipient/case manager relationship; (c) knowledge of service programs, purposes, and effective practices and approaches; ... and (d) skills in case advocacy.”⁶⁷

While detention and correctional settings have unique concerns that make them different from congregate care or independent living in child welfare, the needs of the youth are similar. Penological issues of safety and population management are not inconsistent with developmentally-appropriate training that recognizes that adolescents and young adults are unique.

Trauma-Informed Orientation and Services

Adolescents and young adults in child welfare and correctional settings have often experienced severe trauma. The concept of “complex trauma” has come to describe the dual problem of exposure to multiple traumatic events and the impact of this exposure on immediate and long-term outcomes.⁶⁸ Trauma is especially injurious for adolescents and young adults because it can disrupt and slow brain development in older youth.⁶⁹

Research shows, however, that even complex trauma can be remedied when young people have the benefit of corrective experiences and relationships.⁷⁰ For this reason, there is a building consensus that adolescents and young adults can recover from trauma and are entitled to the “same opportunities, experiences, and high expectations as all other youth in the community.”⁷¹ Experts working with young adults agree that “[i]t is important for people working in youth-serving systems to understand young people’s responses to trauma in order to promote healing and emotional security.”⁷²

In child welfare work, trauma-informed and trauma-specific practices are essential parts of serving older youth.⁷³ Professional standards in the field call for youth serving organizations to “provide therapeutic and practical opportunities for youth to learn how to acknowledge and cope with past trauma, and to create a meaningful sense of personal identity.”⁷⁴ Indeed, where appropriate services are available, young people’s developmental state can make “involvement in these systems . . . positive and even life-saving.”⁷⁵ The same opportunity exists for older youth placed with the City’s Department of Correction.

⁶⁶ Council on Accreditation, *Youth Independent Living Services* (2014), at PA-YIL 11.01.

⁶⁷ *Id.* at PA-YIL 11.05.

⁶⁸ Jim Casey Youth Opportunities Initiative, *The Adolescent Brain*, *supra*, at 13.

⁶⁹ *Id.* at 25 (citing D.F. Becker, M. Daley, W.J. Gadpaille, & M.R. Green, *Trauma and Adolescence: The nature and scope of trauma*, Adolescent Psychiatry (2003)).

⁷⁰ *Id.* at 27-28 (citing B. van der Kolk, *Clinical implications of neuroscience research in PTSD*, Annals of the N.Y. Acad. of Sci., 1-17 (2006)).

⁷¹ See Browne, *supra*, at 2 (collecting authorities in foster care).

Jim Casey Youth Opportunities Initiative, *Success Beyond 18*, *supra*.

⁷² Jim Casey Youth Opportunities Initiative, *Trauma-Informed Practice*, *supra*, at 1.

⁷³ *Id.*

⁷⁴ Child Welfare League of America, *Standards of Excellence for Transition*, *supra*, at 115.

⁷⁵ Pokempner, *supra*, at 529.

VII. Conclusion

Children's Rights has helped lead child welfare reform with states across the U.S. for nearly two decades and understands how challenging systemic change can be. Today, the Board is at a crossroads and has an opportunity to align Department of Correction rules with best practices in youth development. By doing so, older youth in facilities across the city will be safer and less likely to re-enter detention after their release.