

**BOARD OF CORRECTION
CITY OF NEW YORK
2 LAFAYETTE STREET, RM 1221
NEW YORK, NY 10007
212 669-7900 (Office)**

**Testimony of the New York City Board of Correction
Before the New York City Council
Committees on Criminal Justice and Oversight and Investigations
Regarding the New York City Department of Correction's
Transportation of Detained Individuals to Court**

May 30, 2023

By Chai Park Messina, BOC Deputy Executive Director of Monitoring & Research

Good afternoon, Chairs Brewer and Rivera and members of the New York City Council committees on Criminal Justice and Oversight and Investigations. I am Chai Park Messina, Deputy Executive Director of Monitoring & Research at the New York City Board of Correction ("BOC"). I thank the Council for the opportunity to testify today about the Department of Correction's transportation of detained individuals to court.

I will begin my testimony by providing a brief background on BOC's mission and work, followed by some information on our current monitoring efforts around court production.

Background

BOC is a nine-member independent oversight board charged with ensuring that the Department of Correction (hereinafter "DOC" or the "Department") and Correctional Health Services ("CHS") meet the Minimum Standards, set forth by the Board, regulating conditions of confinement and

correctional health and mental health care in all City jails. The Minimum Standards establish the baseline for DOC and CHS, and their meeting this baseline is critical as the City endeavors to move towards a more humane correctional system. Accordingly, at BOC, our role is to promulgate and enforce regulations and carry out independent oversight of jail operations. To that end, BOC remains committed to operating with transparency in our evaluation and reporting of systemic jail issues.

Monitoring of Court Production

The Board of Correction recognizes the broad impact that a potentially ineffective or inefficient court production system can have on the rights of people in custody, the City's criminal justice system, and on the jail census. Accordingly, Section 1-08 of the Minimum Standards covers court production, and requires DOC, in part, to provide timely transportation of people in custody to their scheduled court appearances. However, as we testified during the March 2023 Preliminary Budget Hearing, the Board lacks the headcount necessary to monitor and enforce the full range of our regulations, including Section 1-08. As it stands, our 12 monitoring staff members are responsible for carrying out oversight activities at the eight New York City jails that are currently open, seven of which are on Rikers Island and one in the Bronx; courthouse holding pens across the five boroughs; and two hospital prison wards, one in Queens and the other in Manhattan.

Despite our limited staffing, our monitoring staff periodically visit the courthouse holding pens across all five boroughs to monitor court production. Our staff also have received and have followed up on complaints from people in custody regarding court production. Moreover, to inform our understanding of the issues around court production, our staff recently reviewed body-worn and handheld video footage of court refusals—that is, instances where DOC has represented that nonproduction was due to the person in custody's refusal to be transported to court.

The Board of Correction recognizes that court production is complex, and problems may arise throughout the process, from escorting people to intake for timely transfer to buses leaving for court—usually between 4:00 a.m. to 7:00 a.m.—to the availability of appropriate vehicles, to the actual production of individuals in courtrooms, even after they have been brought to the

courthouse. There also may be inefficiencies in the court return process, itself, whereby people in custody sometimes wait for hours on the bus after returning from court—in restraints and without access to toilets, medication, or food—before they are let off the bus and returned to their housing areas, sometimes late at night. These factors sometimes discourage people in custody from going to court, but the magnitude of their impact on the volume of court refusals is yet unclear.

Ideally, with increased staffing, we would be better positioned to monitor timely court production consistently, and BOC would have more capacity to produce reporting on this important topic.

Thank you again for the opportunity to testify today. We look forward to partnering with the City Council to ensure that the Minimum Standards, including those pertaining to court production, are met. At this time, I am happy to take any questions.

**Testimony before the
New York City Council
Committees on Oversight and Investigations
Chair Carlina Rivera
Chair Gale Brewer**

**By
Paul Shechtman, General Counsel
NYC Department of Correction**

May 30, 2023

Good morning, Chairs Rivera and Brewer and members of the Committee on Criminal Justice and the Committee on Oversight and Investigations. I am Paul Shechtman, General Counsel for the NYC Department of Correction. I am here to discuss the Department's transportation of individuals to court. I will keep my remarks brief.

The Department and the Office of Court Administration ("OCA") coordinate closely to ensure that all individuals in the Department's custody who are scheduled for a court appearance, appear. Each day, the Department receives a list of scheduled court appearances from OCA, which is used to create a manifest for court production the next morning. Individuals scheduled to appear in court are awakened at 5 a.m., are provided with a meal, escorted to a search area, and then taken to the intake area, and to their assigned vehicle. Once they arrive at the court facility and are called for their appearance, individuals are transferred to OCA custody to be escorted to their court parts.

We were pleased that two members of Chair Brewer’s staff – Kevin Frick and Zachary Meher – joined us on May 12, 2023, at 5:30 a.m. to observe court production from beginning to end. They asked meaningful questions, followed a bus to court, and saw the process through.

With this as background, the good news is that court production has improved significantly. Recently, it has not been our strong suit, but this is no longer the case. This month, as the chart below shows, the Department has produced 96% of individuals to their required court appearances.

Department-wide Court Production May 1 – May 23, 2023	
Total Scheduled	6,293
Total Produced	6,050
Percent Produced	96.1%
Total Non-Productions	243
<i>Non-Compliant</i>	146
<i>Medically Unfit</i>	35
<i>Religious Observance</i>	20
<i>Other</i>	27

We are committed to maintaining that number and improving on them to the extent practicable. As Commissioner Molina testified at the Department’s May 19, 2023 Executive Budget hearing, reporting on the Department’s success is not fashionable. But thanks to the leadership of Warden Joseph Caputo, who sits behind me, and others, court production is now an area where we are doing much better. It is now a success.

I thank you for the opportunity to testify today and look forward to answering your questions.



NEW YORK COUNTY DEFENDER SERVICES

Testimony of

Joshua White
Trial Attorney
New York County Defender Services

&

Celia Joyce
Senior Data Analyst
New York County Defender Services

Before the

New York City Council

Committee on Criminal Justice
Committee on Oversight and Investigations

Joint Oversight Hearing: DOC's Transportation of Detained Individuals to Court

May 30, 2023

We are Joshua White, Trial Attorney, and Celia Joyce, Senior Data Analyst. We work at New York County Defender Services, a public defense office that represents New Yorkers in thousands of cases in Manhattan's Criminal and Supreme Courts every year. Thank you to Councilmembers Rivera and Brewer for holding this joint oversight hearing about the New York City Department of Correction's abysmal record of transporting incarcerated people to court. This is an issue that we see frequently in our practice in Manhattan, which has detrimental consequences for the people we represent. We are grateful for the opportunity to share our experience and expertise with the committees today.

New York County Defender Services

100 William St, 20th Floor, New York, New York 10038 | t: 212.803.1500 | f: 212.571.6035 | nycds.org

I. Introduction

New York County Defender Services is, first and foremost, a public defense office committed to providing the highest-quality representation to people accused of crimes in Manhattan courts since 1997. An important component of our work is tracking and assessing major issues affecting our clients. NYCDS is now a national leader in data collection and analysis in public defense. In July 2021, the Data Research Unit spearheaded our transition to fully digital operations and a highly customized case management system, which allows us to track hundreds of data points across the lifespan of each case. The Data Research Unit uses internal and publicly available data to inform our practice and influence policy reform.

Today we will share anecdotal evidence of client and staff experiences and data from a survey conducted by the NYCDS Data Research Unit regarding DOC court transportation issues. Together these will demonstrate that DOC persistently fails to fulfill one of its primary duties – ensuring that people are present at their court appearances.

II. Transportation Issues in NYC are at a Crisis-Level

DOC's failure to bring our incarcerated clients to court is not new, but the situation is the worst it has been in more than twenty years, according to DOC's own data. One in four incarcerated people were not brought to court on time at the end of last year.¹

This data is consistent with what we have heard from our staff and extends beyond issues of court production. Video teleconferences with attorneys and NYCDS staff, psychiatric appointments, and doctors appointments are all routinely missed by clients due to DOC's failure to transport them.

In February of this year, Joshua reported to *Gothamist* about one of his cases. Joshua's client languished unnecessarily on Rikers because he was not brought to court for four hearings to have his bail reduced or removed. Each time, Joshua received no explanation, and the judge refused to reconsider bail without his client present. When Joshua's client was finally transported to court and had his hearing, bail was removed and he was freed.

Another recent example illuminates the logistical chaos that ensues when a person is not transported to their court appearances. In April, an incarcerated NYCDS client was slated to be accepted into Manhattan Drug Court, released from custody and admitted into a residential treatment program located an hour outside of New York City. Because the individual's release from custody and escort to the program was scheduled to occur at the person's court appearance,

¹ Matt Katz, "1 in 4 people jailed in NYC are not being brought to court on time," *Gothamist*, Feb. 20, 2023, available at <https://gothamist.com/news/1-in-4-people-jailed-in-nyc-are-not-being-brought-to-court-on-time>.

the defense counsel and court staff coordinated with the treatment program to ensure that a program escort would be in attendance. Unfortunately, the Department of Correction failed to bring our client to this important court appearance. The court then rescheduled the appearance for later in the week, and defense counsel, court staff and the treatment provider once again coordinated to ensure an escort would be available to provide transportation to the upstate program. At this second court appearance, once again, the Department of Correction failed to bring the individual to court. The court again rescheduled the court appearance for the following week, but by this point, the program could no longer hold the person's spot (AKA "bed") at the facility. The defense counsel, program and court were forced to scramble to find a new treatment placement. Fortunately, at the last minute, another bed in the same facility became available, and the person was able to enter the treatment facility at the next appearance, when the Department of Correction, on the third try, finally succeeded in bringing the person to court.

Delays are even more common. As Joshua shared in the article, even when our clients are woken up before daybreak and taken to one of the borough courthouses, they don't always make it to their hearings or trials. Often, we learn that our clients are brought to the wrong court building and are told that it is too logistically complicated to arrange their transport to the correct courthouse. Sometimes, even when our clients are in the correct court building, it still can take several hours for them to be brought to the appropriate courtroom.²

When a client is not brought to court on their court date, a common refrain from DOC is that "the client refused production." This is belied by our experience. On at least one occasion, the court was informed that a client "refused production," only for them to appear in the courtroom 30 minutes later. This calls into question the credibility of DOC's claims of clients refusing to be transported. Our clients' own accounting further undermines DOC's credibility. Many times, clients report that they did not in fact refuse transport to court. When clients do "refuse," follow-up conversations with them often reveal that the "refusal" was really due to inaccurate communication from DOC staff. To illustrate: clients will report that DOC staff will come to get them and tell them they are bringing them to court, when, for example, the client knows they actually have a medical appointment that day. Under such miscommunications, the clients will "refuse" production, not wanting to miss the event for which they are actually scheduled.

The following are additional stories shared by attorneys and social workers in our office (lightly edited for clarity):

² *Id.*

Court Transportation

- “My client was supposed to be transported to Part 92 to be released to a drug program. The client was housed at GRVC on Rikers and has been requesting MH counseling and medication. He was not produced on two successive court dates in April 2023.”
- “An issue I see is that a client would be transported to 100 Centre, but not produced at 111 Centre St. That happened for one of my clients on at least three occasions.”
- “Clients have been produced but not brought to the courtroom. Courts often assume clients must have refused when not produced, even when there's no proof or indication of such.”

Video Conferences

- “DOC produced a person with a different spelling of the same last name for a scheduled video conference: the wrong person! Then they had me wait almost an hour to get the right client. I needed to schedule a whole new video conference.”
- “I have had a client since January who I have requested five separate video conferences with in a span of four months. Each one has either been canceled due to an alarm or because DOC could not escort the client to the booth.”

These stories are only one part of the narrative. The data helps to show the broader scope of this issue.

III. The Survey

Over the past two weeks, NYCDS surveyed attorneys, social workers, and corrections specialists on their experiences with DOC’s transportation of incarcerated clients. The results of our survey support the aforementioned anecdotes and are aligned with the Mayor’s Management Report³, which details DOC’s under-performance in transporting individuals in custody to court. Our survey shows that DOC transportation of incarcerated clients to court remains a significant problem and highlights the inability and negligence of DOC in fulfilling our clients right to be present at and fully informed for their court appearances.

On average, NYCDS represents between 260-300 clients who are in DOC custody.⁴ The majority of our attorney respondents reported having between one and three court appearances with

³ NYC Dept. of Correction, *Preliminary Mayor’s Management Report* (2023), available at <https://www.nyc.gov/assets/operations/downloads/pdf/pmmr2023/doc.pdf>.

⁴ On May 17, 2023, for example, we represented 265 incarcerated clients.

incarcerated clients each week. We estimate that NYCDS relies on DOC to transport as many as 174 of our clients to court any given week. 55% of our attorney respondents stated that, on at least one occasion in the past two months, a client missed their court date because they were not on the DOC production list. The prevalence of this problem emphasizes the archaic and error-prone nature of the paper-based system DOC uses to transport our clients to their court appearances.

Even more troublesome is the DOC practice of falsifying client refusals to be transported to court. 66% of our attorney respondents report that, in the past two months, at least one of their clients has disputed an alleged refusal to be transported for a court appearance. DOC will often claim a client refused transportation without providing copies of the required documentation, or will provide refusal paperwork stating that our client “refused to sign” without including any additional information. We estimate that clients dispute over 60% of the court transportation refusals reported by DOC.

These transportation issues also interfere with the ability of our incarcerated clients’ to meet with their defense teams via video teleconference. Our staff estimate that as of May 2023, clients in DOC custody miss over 20% of their scheduled video conferences. 60% of staff respondents stated that, on at least one occasion in the past two months, DOC staff were unavailable to escort the client to a video conference. 49% indicated that, in the past two months, at least one of their clients has disputed an alleged refusal to be transported to a video conference. We estimate that clients dispute over 66% of the video conference refusals reported by DOC. When a client is moved to a new jail facility, and there is an alarm, alleged refusal, or insufficient jail escorts, it often takes our staff up to a month to successfully videoconference them.

Not only does the inability of DOC to implement a functional transport system impede court proceedings, it fundamentally endangers the well-being of our clients. It is known that incarceration can have lasting effects on one’s physical and mental health^{5,6}, making it critical that incarcerated individuals promptly receive necessary medical and mental health attention. 42% of surveyed staff report issues with DOC transportation of incarcerated clients to medical appointments, 40% of respondents report issues with the transportation of clients to mental health appointments, and 32% report issues with transportation to psychological evaluations.

⁵ Alicia Piper & David Berle, *The association between trauma experienced during incarceration and PTSD outcomes: A systematic review and meta-analysis*, 30 THE JOURNAL OF FORENSIC PSYCHIATRY & PSYCHOLOGY 854–875 (2019).

⁶ Michael Massoglia & Brianna Remster, *Linkages between incarceration and health*, 134 PUBLIC HEALTH REPORTS (2019).

IV. What this Means for Our Clients

DOC's inability to consistently and reliably transport people who are incarcerated to their court dates has an impact on our clients far beyond the inconvenience it causes. This failure results in infringements on our client's constitutional rights, their prolonged detention in the human rights disaster that is Rikers Island, and potentially permanent harm to their physical and mental health.

Every time that DOC fails to transport a client for court, a video conference, or any other important event, the ultimate trajectory of their case, and therefore their detention, is prolonged. For example, when a potential plea deal is held in abeyance until a psychological evaluation can be conducted, and DOC fails to bring the client to the evaluation three times, that client's potential plea deal and release is delayed for weeks, if not months. When a client has been accepted into a program as an alternative to incarceration, but DOC fails to bring the client on the date scheduled for their release, that results in the client remaining in Rikers and serving more jail time than all of the parties have agreed upon. When DOC fails to bring an individual to their doctor's appointments or mental health treatment sessions, whether because they are ill, injured, in pain, or in mental or emotional distress, that individual is not able to meaningfully participate in their own defense, potentially prolonging their case even more.

When DOC covers their failures to transport individuals to court with a false claim of “refusal,” there is a direct impact on our clients beyond case delay. Courts will hold an alleged “refusal” against our clients, seeing it as an instance of obstinance or evasiveness. This is incredibly harmful: when, for example, a court is making a decision about bail or about sentencing, such information will certainly influence a judge’s decision-making process. The fact that DOC is so quick to mislabel any failure on their end as a refusal on the client’s end actually has serious consequences for our clients in their court cases.

Moreover, these failures result in actual infringements on our clients' constitutional rights, such as the right to counsel. Many lawyers and clients rely on DOC to facilitate the most meaningful forms of communication: video conferences and face-to-face meetings on court dates. Yet, when these forms of communication are stymied by DOC's inconsistent and unreliable ability to actually transport individuals to the video booth or the courthouse, our clients' right to counsel is severely infringed.

All of this is unconscionable and a stain on our criminal legal system. The Council must act to make certain that DOC fulfills their duty to bring people to court and other mandated appointments to ensure a swift resolution of their criminal case and to guarantee protection of their constitutional rights.

V. Legislation

NYCDS strongly supports ***T2023-3624*** - *A Local Law to amend the administrative code of the city of New York, in relation to recording alleged refusals to attend court appearances, the appointment of a court production liaison, and reporting on court appearance transportation.* The bill is currently sponsored by Chairs Rivera and Brewer. We urge the other members of this committee to co-sponsor this legislation.

We estimate that NYCDS clients dispute over 60% of the court transportation refusals reported by DOC. DOC will often claim a client refused transportation without providing copies of the required documentation, or will provide refusal paperwork stating that our client “refused to sign” without including any additional information. DOC must be required to record a comprehensive discussion with the detainee as to precisely where they are going to be transported and if and why they are refusing transportation. This recording should include precise details of what proceeding the detained person is allegedly being transported to.

We especially appreciate language in the bill that requires DOC to turn over the video file of the alleged refusal to the individual’s defense attorney within 7 business days of a written request. It is crucial that defenders have prompt access to the video so that we can litigate alleged refusals expeditiously.

Finally, we would like to see in the law some language to ensure that the entire “refusal” conversation is recorded, not just a “no” at the end. Our concern, based on our experience, is that if DOC is given any deference to determine the length of the recording, rather than being required to record the entire interaction, then they will use that discretion to report facts in ways that harm our clients or are not accurate.

VI. Conclusion

State law is clear - the only reason that judges may set bail is to ensure a person’s return to court. The great hypocrisy of our criminal legal system is that DOC is so bad at bringing people to court that only 72.2% of those detained in city jails from September through December last year were brought to court on time. They must be made to do better.

Questions about our testimony? Please email policy@nycds.org.



NEW YORK COUNTY DEFENDER SERVICES

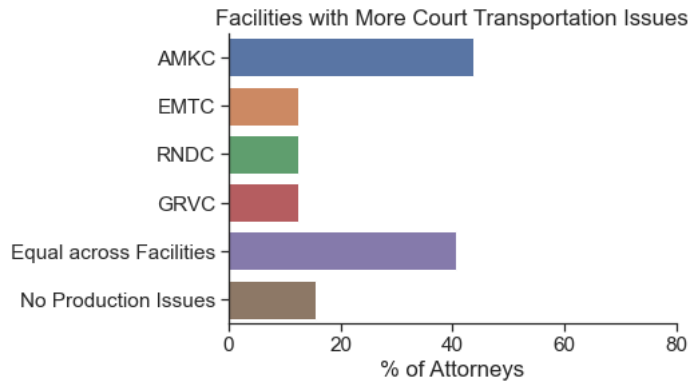
NYCDS Survey on DOC's Transportation of
Detained Individuals to Court Appearances and Video Conferences

May 30, 2023

New York County Defender Services
100 William Street, 20th Floor
New York, New York 10038
data@nycds.org

Do specific jail facilities have more court transportation issues than others?

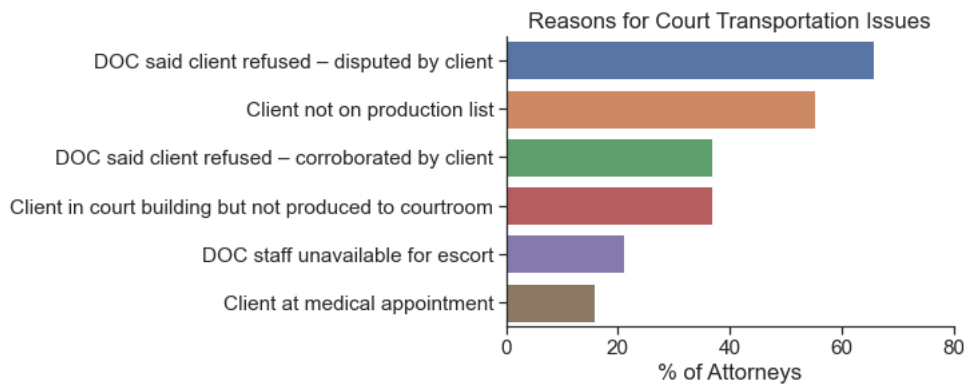
When asked which jail facilities consistently had more court transportation issues, 44% of attorneys said AMKC.



Why are clients not successfully transported to court appearances?

66% of attorneys report that, on at least one occasion in the past two months, a client claimed that DOC falsified their refusal for transportation to a court appearance. Attorneys estimate that clients dispute over 60% of the court transportation refusals cited by DOC.

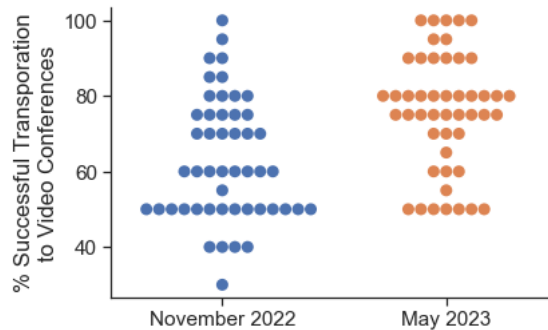
55% of attorneys report that, on at least one occasion in the past two months, they were informed that a client was not transported to a court appearance because the client was not on the DOC production list.



Section 2: DOC Transportation of Incarcerated Clients to Video Conferencing
Responses represent attorneys, social workers, and correction specialists

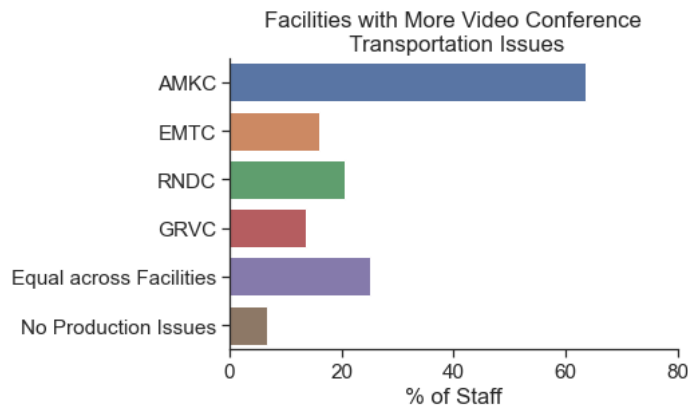
How often are incarcerated clients successfully transported to video conferences?

NYCDS staff report that, on average, their incarcerated clients are successfully transported to video conferences 76% of the time. In contrast, staff estimate that 6 months ago, clients were transported to video conferences 63% of the time.



Do specific jail facilities have more video conference transportation issues than others?

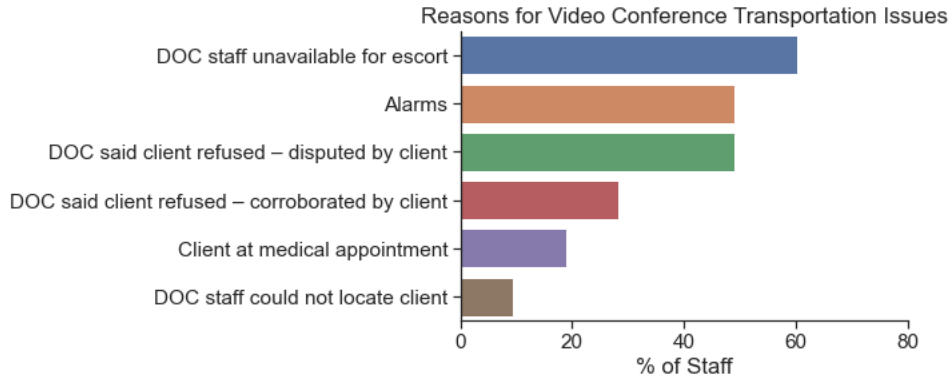
When asked which jail facilities consistently had more video conference production issues, 64% of staff said AMKC.



Why are clients not transported to scheduled video conferences?

60% of respondents report that, on a least one occasion in the past two months, DOC staff were unavailable to escort the client to a video conference.

49% of respondents report that, on at least one occasion in the past two months, a client has claimed that DOC falsified their refusal for transportation to a video conference. Respondents estimate that clients dispute 67% of video conference refusals cited by DOC.



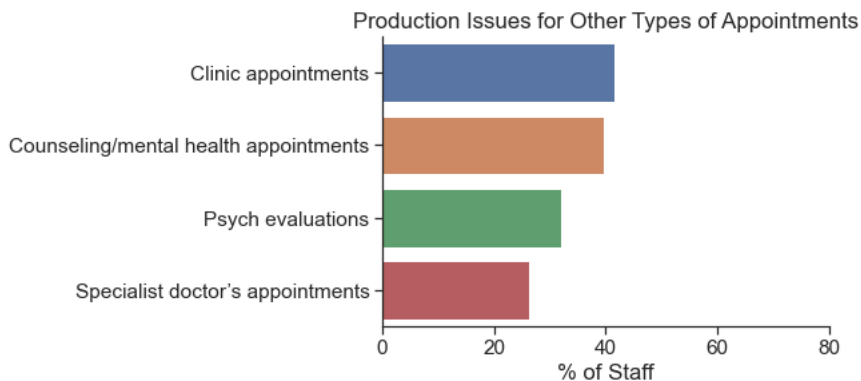
Section 3: DOC Transportation of Incarcerated NYCDS clients to Health Appointments

Responses represent attorneys, social workers, and correction specialists

Are incarcerated clients successfully transported to medical and mental health appointments?

42% of NYCDS staff report issues with the transportation of incarcerated clients to medical appointments.

40% of NYCDS staff report issues with the transportation of incarcerated clients to mental health appointments.





Brooklyn Defender Services
177 Livingston St, 7th Fl
Brooklyn, NY 11201

Tel (718) 254-0700
Fax (718) 254-0897
info@bds.org

TESTIMONY OF:

Alyssa Briody

BROOKLYN DEFENDER SERVICES

Presented before

New York City Council

Committee on Oversight and Investigation and Criminal Justice

Hearing on DOC's Transportation of Detained Individuals to Court

May 30, 2023

My name is Alyssa Briody and I am a Senior Attorney in the Civil Rights and Law Reform Unit at Brooklyn Defender Services (BDS). BDS is a public defense office, representing approximately 22,000 people each year who are accused of a crime, facing the removal of their children, or deportation. Thousands of the people we serve each year are detained or incarcerated in New York City's jail system either while fighting their cases in court or upon conviction of a misdemeanor and a sentence of a year or less. We thank the Committees on Oversight and Investigation and Criminal Justice for the opportunity to address the Council about court productions and transportation from our city's jails.

For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Through our work in the jails, our staff addresses urgent needs related to basic civil rights and conditions of confinement for our clients who are incarcerated. We work to secure access to essential medical and mental health care, and address safety and education needs through individual administrative advocacy, participation in Board of Correction (BOC) hearings and numerous working groups. We monitor and document the conditions inside New York City's jails and advocate for the rights, safety and protection of those inside these facilities.

Crisis at New York City Jails

New York City jails have long been in a state of crisis. The Department of Correction's (DOC) inability to ensure access to court for the people in its custody and failure to provide timely information about those non-productions is just one of many examples of its gross mismanagement. DOC's chronic mismanagement and disregard for the humanity of the people in its custody has caused people to needlessly suffer and die, including by suicide. People are forced to endure mental health and medical crises without access to medication or care, while facing high rates of use of force and deplorable conditions of confinement. Such mismanagement has been clearly documented by a multitude of testimonies from people in custody,¹ health and correctional staff,² and correctional experts. The *Nunez* federal monitor himself reported on DOC's strong-arm culture, and recently raised concerns over DOC's disregard for the safety of people in custody and lack of transparency over serious injuries and death.³ Twenty-two people have lost their lives in DOC custody since Eric Adams became mayor, and many others have suffered critical, life-limiting injuries.⁴

The Department of Correction has consistently demonstrated an inability to effectively manage its own staff,⁵ to enforce its own rules including those implementing the federal standards established by Congress through PREA and subsequently promulgated by the U.S. Department

¹ Rebecca McCray, *What It's Like at Rikers, According to People Who Just Got Out*: "They're not feeding people, there's no water, no showers, no phone calls," *New York Magazine*, Sept. 23, 2021, <https://www.curbed.com/2021/09/rikers-jail-conditions.html>.

² Gloria Pazmino, *Staffing Dysfunction and Unsafe Conditions lead to Crisis on Rikers Island*, NY1, September 9, 2021, <https://www.ny1.com/nyc/all-boroughs/public-safety/2021/09/10/rikers-island-staffing-issues-correction-officers-calling-out-unsafe-conditions-what-happened>.

³ Nunez Monitor Reports are available at <https://www1.nyc.gov/site/doc/media/nunez-reports.page>

⁴ Jan Ransom and Jonah E. Bromwich, *Tracking the Deaths in New York City's Jail System*, *The New York Times*, May 30, 2023, <https://www.nytimes.com/article/rikers-deaths-jail.html>.

⁵ See, e.g., Graham Rayman and Elizabeth Keogh, *Rikers Island staff, cars to undergo drug searches by NYPD*, *Department of Correction*, *New York Daily News*, Jan. 18, 2023, <https://www.nydailynews.com/new-york/nyccrime/ny-rikers-island-staff-cars-search-20230119-jjiuw4f6a5dgtaqwlno4i4lshu-story.html>; Joseph Konig, *3 Rikers officers accused of covering up inmate assault*, *Spectrum News*, Jan. 18, 2023, <https://www.ny1.com/nyc/all-boroughs/public-safety/2023/01/17/3-rikers-officers-charged-in-alleged-inmate-assault-cover-up#:~:text=All%20three%20were%20charged%20with,for%20filing%2C%20and%20official%20misconduct.>; Jan Ransom and William K. Rashbaum, *At Rikers, Piling Up Sick Days While Investigating Sick-Leave Abuse*, *The New York Times*, Jan. 16, 2023, <https://www.nytimes.com/2023/01/16/nyregion/rikersguards-sick-leave.html>; Rich Calder and Matthew Sedacca, *Rikers Island officers working 100-plus hours weekly, stuck sleeping in jail's parking lot*, *New York Post*, Dec. 24, 2022, <https://nypost.com/2022/12/24/rikers-islandcorrection-officers-routinely-working-100-plus-hours-a-week/>; Gina Bellafante, *Rikers Has a Deadly Contraband Problem. Are Cargo Pants to Blame?*, *The New York Times*, Dec. 17, 2022, <https://www.nytimes.com/2022/12/17/nyregion/rikers-drug-crisis.html>; Chelsia Rose Marcius, *Correction Department fails to manage staffers and how they respond to jail incidents: federal report*, *New York Daily News*, May 11, 2021, <https://www.nydailynews.com/new-york/ny-correction-department-nyc-jails-federal-monitor-report20210511-pdwko5mscjea7jajoksivejj3y-story.html>.

of Justice in corresponding federal regulations,⁶ and generally to provide a minimum level of safety and security for people in DOC custody.⁷ DOC's failure to meet its mandatory duty to provide people with access to medical care is the subject of ongoing litigation brought by BDS and its co-counsel, The Legal Aid Society, and the law firm Milbank in *Matter of Agnew, et al. v. New York City Department of Correction*.⁸ DOC's failure to provide access to medical care has already led to one finding of contempt against the Department.⁹ These chronic court and medical nonproductions come at a time when conditions in DOC facilities have deteriorated and yet DOC is more interested in operating in a shroud of secrecy and shirking any oversight and accountability, rather than working to ensure the safety of people in its custody. DOC is unable to safely and humanely house people in its custody or ensure they are safely produced to court: In tandem with the Council's efforts to improve oversight over court production, the Council and the city must move to decarcerate the jails.

Problems with transportation and court production

In New York State, the only permissible purpose for incarcerating a person prior to a trial is to ensure that they will return to court. Specifically, New York courts are required to release people pretrial unless there is an individualized demonstration that the person "poses a risk of flight to avoid prosecution."¹⁰ Even if the court finds that the person poses a risk of flight, the court is required to choose the kind and degree of control necessary to ensure that the person comes back to court.

Despite this legal scheme, however, our data collection has revealed that detention by the Department of Correction is less likely to ensure return to court compared with people living in their communities during the pendency of the criminal case. If the sole purpose of pretrial incarceration is to make sure a person comes to court, then DOC's inability to transport people in its custody to court negates the purpose of bail. In late 2021, in response to a drastic decline in court productions of the people we represent, we began tracking the rate of DOC court productions and found that only 66% of clients were brought to their court dates. Based on this data (gathered from October through November 2021), we found that almost 40% of detained

⁶ See generally, Task Force on Issues Faced by TGNCNBI People in Custody, August 15, 2022, <https://www.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/FINAL-REPORT-of-the-TASK-FORCE-081522.pdf>.

⁷ See *Nunez v. City of New York*, 11 Civ. 5845 (LTS) (S.D.N.Y. 2011) and all related documents; see also, "Twelfth Report of the Nunez Independent Monitor," filed December 6, 2021 ("The findings in this report bring into sharp focus that despite six years of striving to implement the required practices, the Department's efforts have been unsuccessful in remediating the serious problems that gave rise to the Consent Judgment. Instead, conditions have progressively and substantially worsened.").

⁸ See, e.g., *Agnew v. New York City Dep't of Corr.*, Index No. 21-813431 Bronx Co. (2021), Judgment/Order, May 17, 2022 (finding DOC in civil contempt of prior court order dated December 3, 2021, requiring, inter alia, that the Department "comply with its duties to provide [incarcerated individuals] with access to sick call and not prohibit or delay them from health services").

⁹ *Id.*

¹⁰ Criminal Procedure Law § 510.10(1)

clients with multiple appearances missed more than half of those appearances. As such, pretrial detention was significantly less likely to result in a person's reliable appearance for court dates than if the person was released. Importantly, if pretrial detention is not serving its purpose, then instead of increasing the jail population, we should be decarcerating.

Court Production Issues in Practice

A person accused of a crime has the constitutionally protected rights to communicate with their attorney and be able to participate in their own defense. It is abundantly clear that when a person in DOC custody is not produced for court appearances or other matters, cases are delayed. And through the entire production process, defenders are very much kept in the dark.

Our staff and clients expect our clients to be produced to court. When an attorney arrives at court in the morning, they may be told by the commit officer in the courtroom that their client refused to be produced to court. But more often, they check in and are told that their client is not produced *yet* and they should come back later. Defenders then handle their other cases, checking back in or calling the corrections floor in the courthouse when they have a spare minute to determine if their client has been produced. Defenders are frequently told that their client is on the next bus, only to find when that bus arrives that their client was not on the bus. Then, they may come back to court after lunch, to wait for the last bus from Rikers, only to be told, sometimes as late as 4pm, that their client refused to come to court. The commit officer sometimes has a refusal form that they provide to the defender, that may include the reason for the refusal and a place for the client to sign the form to verify that they refused. In practice, the form is hardly ever signed by the client.

We are told our clients refused to come to court on days that they are scheduled to take an advantageous plea deal, be released to a program, or finally get to tell their side of the story to the grand jury. Generally, these are not court appearances that any client would refuse to attend. We are told that clients refused to come because they claimed to be sick or because they are observing a religious holiday on days when there is no such holiday. When we talk to our clients afterwards, our clients frequently tell us that no correction officer came to get anyone in their housing unit for court or that they were taken to intake to wait for hours for a bus that never came. Other times clients are brought to court, but officers wrongly tell staff they have not been produced and clients wait all day in a holding cell before being returned to jail. In other cases, people are produced late in the day, long after their case has been called.

DOC is required to record video of any refusals to go to court. A defender can call DOC Legal to try to obtain the refusal video. When we request refusal video, we are usually told that we need a judicial subpoena. We also frequently get a response that no such video exists, despite the fact that DOC directives require that these refusals be recorded. We have also obtained refusal video

that makes clear that the client never refused. For example, in one such video, a captain begins the recording by stating, “Inmate [client] was left from court. Inmate, are you refusing to go to court?” The client then says, “I’m not refusing. I was waiting to go to court and the bus left me.” In this case, the DA had been requesting that the judge sign a force order and continue the client’s remand without bail. After we obtained the video, the judge agreed to set reasonable bail. Being able to get refusal video is still rare though, and many of our clients are prejudiced by DOC falsely reporting refusals that never occurred and the impact that can have on the court case and the judge. For these reasons, we support the pre-considered Intro that would require video recording of alleged production refusals and make the videos easily accessible to defenders.

Effects of Non-Production and Delay of a Case

There are many occasions when a client’s non-production significantly prejudices their case and results in more time in jail. But regardless of the potential effect on their case, each time a client is not produced they are denied the opportunity to stand before a judge and hear firsthand what is happening in the criminal case that is depriving them of their liberty and confining them in deplorable conditions. They are also deprived of the ability to speak with their attorneys directly before or after the proceedings. Attorneys frequently utilize court productions to communicate with clients, discuss what will happen or has happened on that court date, and assist in the resolution of cases.

When cases are scheduled for a plea and a person in custody is not produced, the delay and prejudice are significant. On the one hand, the delay exacerbates an already backlogged court system, but more importantly non-production can lead to a delay in a person’s release from custody, or a person’s admission to a substance use or mental health facility, or even a delay in transfer from a jail facility undergoing a humanitarian crisis to a state-run facility.

When a case is on for a hearing or trial, and a person is not produced, the delay can have constitutional and statutory speedy trial implications. For example, if the prosecution is ready to proceed with the hearing or trial, and the person is not produced then the case is delayed, and the speedy trial clock is stopped. This essentially gives the prosecution more time to prepare and the person in custody must wait longer to confront and examine the evidence and allegations against them.

There are other reasons why a person in custody would be produced to the courthouse, even without a court date. Clients suffering from serious mental illness are often produced so a forensic competency examination can be conducted. Currently there are extraordinary delays in completing these competency examinations (“730 Exams”) because of production issues, and this causes a person who would otherwise be transferred to a hospital to languish on Rikers Island without receiving critical care. Additionally, potential mental health court or drug court

participants may be produced for evaluation by the treatment court clinical team. Non-production in these circumstances not only delays their admission into a program, but keeps them incarcerated longer, and potentially causes them to lose a bed in a program where there is already a short supply.

Defenders also rely on court productions for more than just scheduled court appearances. Before, during, and after these court appearances, defenders use this critical in person contact with their incarcerated clients to discuss their cases, plea offers and their consequences, and to share and review discovery. For example, defenders will often bring social workers, immigration attorneys, housing attorneys, and family attorneys with them to meet with the client when they are produced. This not only greatly benefits the person in custody by providing them with person-centered defense services as they consider how to resolve their case, but it reduces the number of production requests and video conference requests to DOC.

In the wake of New York's important discovery reforms in 2019, defenders finally have access to crucial evidence earlier on in a criminal case. These documents, scientific reports, and videos must be shared with incarcerated clients in the same meaningful way they are shared and discussed with non-incarcerated clients. This is most efficiently accomplished when a person in custody is produced to court. For example, defenders can get permission to bring a laptop to the courthouse visitation area to show video or photographic evidence to incarcerated clients. They can also review documents in person with incarcerated clients who are produced and provide them with physical copies of the discovery in their case.

For people in DOC custody, not being produced to court creates great anxiety and confusion. People we represent may wait weeks or months between court dates. When we tell the people we represent that they will be produced to court—and then they are not—it can create mistrust between the attorney and their client. The person in custody misses a critical opportunity to have a face-to-face discussion with their defense team, to review discovery with their attorney, to ask questions, and to be heard.

Court appearances also present an opportunity for people in pretrial detention to see their support systems. Many judges understand the great hardship loved ones face in traveling to visit Rikers Island and will allow time for people in DOC custody to say hello to a family member in the courtroom before or after a court appearance. Too often, parents, children, and other loved ones wait all day in court for their family member to be produced—only to hear that their family member was not on the first, next, or last bus from the jails. A court date is often a rare opportunity to see a loved one face to face, and many people take hours off of work or days off of school to come to court to see a person without the trip to Rikers.

Recommendations

It is imperative that DOC produce people in its custody to court. There is a clear lack of accountability and transparency surrounding many aspects of DOC operations, and court productions are no different; this must change. For the above-mentioned reasons and because of the critical importance of all court appearances, DOC should expand data collection to production for all court appearances, not just hearing and trial dates. Furthermore, as DOC struggles to be transparent and forthright, the Council should require that DOC report its methods of data collection and how staff are trained on court production data collection, and make their raw data available to the Board of Corrections and the Council for crucial oversight.

DOC must also record all alleged refusals and must make those videos, and all accompanying paperwork, readily available and accessible to defenders. Additionally, the Council should pass the pre-considered Intro that would require video recording of alleged production refusals and would make the videos accessible to defenders.

Conclusion

Every person accused of a crime has the right to participate in their own defense, regardless of whether or not they are subjected to pretrial incarceration. Failure to produce a person in custody for their court appearance not only violates that right, but greatly diminishes their ability to have fair access to their attorneys and to meaningfully participate in the resolution of their case.

Thank you again for inviting us to testify today. If you have any questions, please reach out to me at abriody@bds.org or Elizabeth Vasquez, Director of BDS' Science and Surveillance Project at evasquez@bds.org.

**The Bronx
Defenders**

**Redefining
public
defense.**

**New York City Council Committee on Criminal Justice, jointly with the Committee on
Oversight & Investigations**

Hearing re: DOC's Transportation of Detained Individuals to Court

May 30, 2023

Oral Testimony of Conrad Blackburn

Chairs and Council Members, my name is Conrad Blackburn and I am a Policy Counsel for the Criminal Defense Practice at The Bronx Defenders. Thank you for the opportunity to testify here today, and for your interest in this important matter.

My testimony today focuses on the continued failures of the New York City Department of Corrections (DOC) to ensure that people held in DOC custody at Rikers Island and other city correctional facilities are brought to court for all court appearances and that they have a meaningful ability to participate in their own defense.

Since the passage of New York State's bail laws in 1971, the sole purpose of pretrial detention has been to ensure an individual's return to court. This fundamental principle is rooted in the presumption of innocence and a recognition that pretrial detention imposes punishment prior to conviction of any crime. Thus, when someone is committed to DOC custody and caged at Riker's Island while awaiting trial, the sole purpose of that detention is to ensure that they are produced for their court dates. All of the horrific conditions that exist are endured in service of this single purpose. DOC's entire existence is premised on their ability to produce individuals to court. In this respect, they are failing miserably.

In FY2022, individuals in DOC custody made only 79.1% of their court dates; during the first quarter of FY 2023, only 72.2% of individuals were produced to their court dates.¹ Meanwhile, the rate of return for people who were released (and therefore not in DOC custody) was 85% in 2019, 92% in 2020, and 91% through the first nine months of 2021.² Thus, individuals who are incarcerated pretrial are substantially *less* likely to make it to their court dates, defeating the purpose of that incarceration entirely. This is unacceptable.

There are myriad reasons why DOC fails to ensure that people are brought to court for court appearances. One key reason is that the system used by DOC is completely antiquated. The department relies on old-fashioned pen and paper methods to track when people are next due in court, to record bail amounts set by judges, and to note when critical requests are made of the

¹ <https://www.nyc.gov/assets/operations/downloads/pdf/pmmr2023/doc.pdf>

² <https://datacollaborativeforjustice.org/wp-content/uploads/2022/09/FINAL-DCJS-Public-Briefing-on-Supplemental-Pretrial-Release-Data-9-21-22.pdf>

department, such as requests for medical attention or requests for protective custody. This pen and paper system is even used to record when people are ordered released from custody. As an example: if a judge orders a person released from custody, and that person is physically at Rikers Island, the paperwork ordering the person's release is sent from the courtroom down the correctional area of the courthouse. It is then transported on a DOC bus back to Rikers Island where it is ultimately delivered and processed. This process not only takes hours but is riddled with opportunities for human error along the way. It is no surprise that the City recently agreed to pay as much as \$300 million to settle a class action lawsuit brought on behalf of thousands of people whose releases were delayed for hours, even days, after they made bail.³

But outdated systems are just one reason for DOC's failures. Staff absenteeism and staff mismanagement continue to affect the Department's ability to produce people to court. DOC often cites lack of escorts and or Captain escorts for the failures to produce. This reasoning is frequently given for incarcerated individuals in mental observation units, restrictive housing settings, people with high security classifications, and RED ID and enhanced restraint designations. The logistical obstacles these scenarios cause is only exacerbated by DOC's overuse of restrictive housing and security designations, as well as the subpar mental health and de-escalation training staff receive.

Lastly, "refusals" (where DOC alleges an individual has refused to come to court) have long been a source of contention for people in custody and their legal counsel. It is virtually impossible to challenge the legitimacy of a refusal—requests for proof of a refusal are usually ignored or are met with dismissive and unhelpful responses, leaving advocates and their clients with little to no recourse. For this reason, we support legislation to require meaningful recordings of alleged refusals and reporting of court productions, such as the bill carried by Council Members Rivera and Brewer.⁴ However, we believe to ensure accountability and maximize transparency, Officers should be required to turn their body cameras on when they are approaching an incarcerated person so that the entire interaction is recorded. Additionally, the reporting requirement for production should include ALL court dates. Currently, DOC limits their reports to appearances scheduled for hearing and trial, thus creating skewed data that makes it impossible to appreciate and understand the magnitude of DOC's failure to fulfill their primary purpose, ensure that people in their custody are produced to court.

Thank you.

³ <https://www.nytimes.com/2022/11/29/nyregion/new-york-rikers-settlement.html>

⁴ <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=6230844&GUID=EB2F8355-E77D-454C-8313-A66DD13E7229&Options=&Search=>

THE LEGAL AID SOCIETY

Marva C. Brown | Staff Attorney

Pronouns: She, Her, Hers

The Legal Aid Society | Criminal Defense Practice

Special Litigation and Law Reform Unit

p. 646-592-1449 | f. 646-449-6749

Email: mcbrown@legal-aid.org

Good morning. My name is Marva Brown and I am an attorney with the Legal Aid Society's Special Litigation and Law Reform Unit of our Criminal Defense Practice. I have been a public defender for more than 16 years and I am honored to be back in front of the Council to offer comments on the NYC Department of Corrections failure to produce clients to court on scheduled court dates.

I have represented many clients where, at arraignments, bail was set, and the NYC Department of Corrections was charged with ensuring the client's return to court. Unfortunately, however, there are too many occasions when, as a defense attorney, I've sat in court, on a scheduled court appearance date, waiting hours on end for an incarcerated client who was simply not produced to court. There is little that a defense attorney can do in these situations, except inquire to Court staff and the Department of Corrections staff to try and locate the client, ask if he is will be produced at all, and if not, adjourn the case. This leads to delays in the criminal process, wasted time for loved ones and witnesses, and increased periods of incarceration on matters that could otherwise be resolved had the client been produced to court.

In October 2021, my colleagues in the Prisoner's Rights Practice and Special Litigation and Law Reform Unit brought a lawsuit – *Agnew, et al v. NYC DOC*, demanding that DOC provide everyone in custody access to medical care because DOC was, and still is, failing repeatedly to bring people in the jails to medical, mental health, dental, and outside specialist appointments. DOC has already been found in contempt of the Court's Order to provide people in custody access to medical and mental health care. Court production failures are harder to track, however, because it is largely up to individual attorneys to triage production failures. They work with supervisors in our office to make calls to try and get the client produced to court as soon as possible, but our case tracking system, which is populated by

the department of corrections, only indicates incarceration status, *not* production statistics. Without data from the Department of Corrections there is no way to know how pervasive the problem is.

We sent out a survey to attorneys in our trial practice, in all five boroughs, to see if there were any common themes to be revealed in terms of court productions. The overarching message from respondents was that Court productions have always been a problem. They got decidedly worse during the height of the pandemic as DOC frequently did not produce clients to court claiming that the clients were in COVID isolation, but oftentimes clients would call their attorneys asking why they weren't brought to court as they did not have COVID and were not in isolation. In recent months, the message from DOC has been that clients are refusing to come to court. These assertions are often revealed to be untrue once attorneys speak to their clients on the phone. Furthermore, the benefit of the Agnew case has been that the body worn cameras that became common place at Rikers in 2015, started being used to provide evidence of refusals. However, in several situations where attorneys requested refusal videos from DOC, the client was miraculously produced to court on the next bus from the island. This happened in the case of client, Mr. M in Queens. Mr. M had been continuously incarcerated for 6 and a half years pending retrial on an appeal, and the court appearance Mr. M was alleged to have refused was for a bail application. His lawyer absolutely knew that he would not have refused. And he did not.

Other problems that arise with court productions is extreme delay. Court typically starts at 9:30am and the informal expectation is that incarcerated clients will be produced to court by 10:30 or 11am. Attorneys reported that they were told that their clients were in transit, but when they spoke to the department of corrections staff directly, they learned that their clients had not yet left the island. Additionally, many attorneys are reporting that clients are not getting to court until 2:15pm or 3 o'clock. Late arrivals to court prevent litigation from moving forward as trial parts are designated on a first come first served basis. When a case is on for hearings, and the arrival time of an incarcerated client is uncertain, witnesses may be released from court to go about their business. Jury pools are sent to courtrooms on a first come first served basis as well. Where an incarcerated client arrives late, there may not be enough (or any at all) jurors available to start jury selection. The case must be adjourned and the process of waiting for the client to be produced starts all over again. These delays in production cause cases to linger on the courts docket even longer and increase periods of incarceration on Rikers Island which is riddled with human rights violations.

A remnant from COVID time is the "hot sheet" or "dashboard" placement for clients where DOC, due to staffing issues, would only produce incarcerated clients to their court appearances when they were placed on a secondary list. This circumvents the court dates as agreed upon by the parties and causes unnecessary delay. Sometimes we've heard that there are no buses, that a client was taken to the wrong courthouse, and that there was no excuse given as to why the client was not produced. There were occasions where DOC faxed "undelivered defendant" forms to the court, only for the client to say that was not his signature on the form. After arraignment where bail is set, the District attorney's office must secure an indictment within 5 days (not including holidays or weekends), but where DOC fails to produce a client, judges often grant "good cause" extensions which in all actuality gives DA's more time to secure their indictments.

Overall, Court productions by DOC are unreliable and inconsistent. This Council should require that Department of Corrections record all alleged refusals and provide recordings to defense counsel via email as soon as the refusal is given. The department of corrections should facilitate a method by which

defense counsel can communicate with their incarcerated client via phone and/or video conference where defense counsel can discuss court production with their client. Ultimately, however, DOC woefully fails to produce clients to their court appearances, thereby delaying the judicial process. Resources would be better spent on supervised release, electronic monitoring, emergency reentry units and supportive housing, so that we are not reliant upon the DOC to bring people to court.

**Testimony to NYC City Council Committees on
Criminal Justice & Oversight and Investigation**

DOC's Transportation of Detained Individuals to Court

Public Hearing

May 30, 2023

Tanya Krupat
Vice President, Policy & Advocacy
Osborne Center for Justice Across Generations



Thank you for the opportunity to testify today and for holding this hearing on this critically important topic. My name is Tanya Krupat and I am the Vice President of Policy & Advocacy at the Osborne Center for Justice Across Generations. The Osborne Association is a 90-year-old nonprofit organization dedicated to transforming the criminal justice system and supporting individuals, families, and communities affected by incarceration. Through advocacy, direct service, and policy reform, Osborne works to create opportunities for people to heal, grow, and thrive. We serve more than 10,000 individuals each year out of offices in the Bronx, Harlem, Brooklyn, Newburgh and Buffalo. We also provide programs on Rikers Island and in NYS prisons. Specific to Rikers, we provide court advocacy services to pre-trial detainees and those detained for parole violations across many facilities; jail-based programming mostly at GRVC and RMSC (although this program is among those slated to be eliminated come July 1st); and video visiting and parenting support services to women at RMSC. The court transportation stories and situations described in my testimony come from the experiences shared by participants across these programs. They underscore that there are really three aspects to court transportation that DOC is responsible for and that each need attention and improvement: 1) getting to court; 2) getting to the actual courtroom in front of the judge; and, 3) people's actual experience throughout all of this.

The topic of today's hearing has become a growing area of concern for us at Osborne. We had actually begun tracking the problems arising with DOC bringing people to their court dates as we were hearing more and more concerning experiences and growing frustration among those in DOC custody. It goes without saying that transporting people to court is critically important for so many reasons, including moving court cases along and ensuring people spend the least amount of time possible pre-trial and on Rikers. There are now approximately 5,411 people awaiting trial on Rikers; more than 1,200 have been there more than one year, and 488 (according to DOC's own dashboard) have been there more than 2 years ... without yet being sentenced. The Federal Monitor's report from this past Friday (5/26/23) highlighted the dangerous and deadly conditions at Rikers. In addition to moving expeditiously to close Rikers, we also need to ensure that people are there for as short a time as possible. Getting people to their court dates is an urgent part of this.

In preparation for this hearing, I went to the DOC website hoping to gain clarity about what is supposed to happen, what DOC's legal obligation is, what detained people's rights are, and

perhaps even data about the number of people transported. What I found is that there is no public information about this critical aspect of DOC's operations..It is not included at all in the latest [Handbook for Detained and Sentenced Individuals](#) (last updated in 2019), and the [only mention](#) I could find on the DOC website is the following about the Transportation Unit;

“With over four hundred vehicles in its care, the Transportation Division is charged with transporting inmates, staff, visitors and cargo safely and securely. This multifaceted unit handles all of the New York City Department of Correction’s automotive and transportation needs.”

As far as I could find, there is not one mention of how the process of transporting individuals to court works, nor what a detainee’s rights are.

Despite this lack of information and transparency, DOC transports many individuals every day to NYC courts. How many and to which courts would be important to know. Here are some of the challenges and worrisome and even dangerous situations we have become aware of through our various programs:

Refusals

Although there is a refusal form or video that is required of DOC to document that an individual is refusing to attend their court hearing, this is not often produced. According to one of our staff: “What I see most often are ‘refusals’ where a court officer will tell the judge the person refused to come, say there's a video of the refusal, and no video ever surfaces. The client often has no idea someone came to get them at all; sometimes they just asked to go to the bathroom or change first and planned on coming. [This can prejudice] the judge and DA to hear that the person is refusing ... especially when [DOC says] they have it on video.”

The issue of people “refusing” their court dates should be questioned and closely investigated; each refusal should have documentation that indeed the individual chose not to go to court with a reason why. For example, was the refusal for a religious or health reason? One of our staff mentioned an instance where DOC noted a “refusal” for a Muslim client who had a court date on a Friday during Ramadan. Another person refused because the previous time they weren’t given adequate medication or food during the very long day of going to court. Given that more than half of the people held on Rikers have a mental health diagnosis, with 16% having a serious mental health diagnosis, it seems a trauma-informed approach would yield better results in reducing “refusals” than the “soft-touch force” DOC has mentioned employing.

Health concerns

For people with diabetes or on medically assisted treatment (MAT), going to court can prove dangerous or painful. Our staff described how people will intentionally take less insulin in the morning before court because they don't know if or when they will be fed again, and **have no access to their insulin while in court custody**. For clients on MAT, if someone alerts the KEEP program about the court dates, hopefully individuals can receive their dose in the morning before they get on the bus; otherwise it's very painful. Furthermore, missed meds count against an individual's compliance and affect their entry into vital programs.

Wrong person and unsafe mixing of people

In addition to coordination between DOC staff and CHS staff being critical, there is a need for a better system to ensure the correct person is brought to court and that they are not transported with or at all exposed to their co-defendants, which can be dangerous and also influence the outcome of their court hearing or case. One of our staff recounted DOC bringing the wrong person (who shared the same name) to court *twice*. Apparently, DOC mixes men and women on the buses, and mixes co-defendants. We have heard of instances where people were intimidated and/or threatened by their co-defendant on the bus or in the pens and responded differently in court as a result.

Unsafe conditions of transport and the pens

Process can be triggering for people who have experienced previous trauma, which describes the majority of people on Rikers. People are in close, claustrophobic quarters in hand restraints and leg chains on the bus - sometimes for hours. The conditions of the buses and the court pens can be difficult for anyone, much less those with any vulnerabilities.

One of our staff's clients was assaulted just before boarding the buses, and came to court actively bleeding. According to her attorney: "The bad part was that CLIENT appeared with a cut on her face (under her left eye). It was very bloody. She said that she had been assaulted by a group of people just before leaving for court in the morning." A social worker did a quick concussion screening on her and it appears she might have been concussed.

Negative impact on court case

Our staff shared several instances where people were influenced to take pleas they did not want to take:

- One woman had not been able to receive her psychiatric medication before court and although she wanted to go to trial with her case, without her medication to stabilize her, she took a plea.
- One woman was exposed to the smoking of drugs on the bus to court and was on the bus breathing this in for so long (with no open windows or way to get away from it) that she arrived to court under the influence and it affected her judgment.

For parole court, there are strict timelines for hearings due to Less is More. When people miss their hearings due to non-productions, it puts them over the time limit for preliminary and recognizance hearings, leading to a majority of people getting released on writs of habeus corpus or being detained past their supposed maximum. It is not functioning the way it was intended. It is a joke among parole attorneys that if an officer at court says the person is “in transit” from Rikers, they are probably not on the bus and will never be produced.

Inefficient or lack of systems

There seem to be huge delays throughout the whole process from when people are woken up at 4am or 5 am, but don't arrive at court until more than 6 hours later, to people waiting in the pens to be called to the courtroom for hours, sometimes never to be called and only to get back on a bus shackled, hungry, and thirsty many hours later.

Recommendations

While there are, of course, instances where transporting people to court happens smoothly, this seems as much luck as the result of systems set up to ensure this is the norm. We agree with Chair Brewer that these problems are solvable and require interagency communication and coordination. We recommend the following as initial next steps and urge the Council to continue to monitor this issue, perhaps along with the NYC Comptroller, as there are huge cost implications to extra days on Rikers (which costs \$556,000 per person per year) and to court delays and adjournments.

-
- Improve the technology monitoring “custody management” such identifying the correct individuals for court, separating co-defendants, and attending to medication needs before and during court days;

- Ensure every refusal to go to court has a refusal video submitted to the court;
- Establish an interagency body that includes DOC, CHS, OCA, and BOC to monitor, troubleshoot, and improve this whole process;
- Designate a high level leader at DOC who will inventory the entire court transportation process from when an order to produce is received, to preparing for the individual's transport in advance, to waking the individual up, all the way to returning them to their housing area/ bed. This DOC staff person should monitor every aspect of this and submit monthly data to the Commissioner and to the City Council.

Individuals in custody have legal rights, including to be brought to court safely, on time, and humanely. Ensuring this happens is key to a smooth functioning democracy and justice system, and to reducing the population on Rikers and the trauma being there inflicts. What happens currently is unacceptably costly, in financial and human terms. We hope this hearing and further examination will spark some serious and concrete problem-solving, accountability, and improvements. Thank you again for looking into this issue.

To the NYC Council Committee on Criminal Justice:

My name is Michael McGovern, and I am a proud resident of Sunnyside, Queens and a PhD student in U.S. history focused on civil rights and criminal justice. I am asking NYC Council to oppose maintaining the current NYPD budget by cutting from education and vital services New Yorkers need, and to disband the Strategic Response Group.

Substituting police for essential workers like teachers and mental health professionals has become so thoroughly naturalized that it has become difficult to see things any other way. But social crises cannot be solved by surveillance and incarceration, only be displaced and deferred at the cost of the most vulnerable. Crime is not merely a 'social construction' in a relativist sense; it is quite literally created by policies, strategies, and measurement apparatuses that implicitly or explicitly reinforce the hierarchical race, class, and gender relations modern policing was created to maintain. It will take a concerted effort – however unpopular – to undo these interwoven systems and the common sense that maintains them, but there is no other way to move forward without falling back into the same patterns.

Given what we know about the history of policing, to continue the vicious cycle of responding to moral panics over crime by prioritizing the NYPD at the expense of vital city services is cynical and mendacious. Given the SRG's well-documented terrorism against Black folks and activists exercising their constitutional rights, to fund such an initiative at all is downright cruel.

Sincerely,

Michael F. McGovern

**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: 5/30/23

(PLEASE PRINT)

Name: Paul Shechtman

Address: General Counsel

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: 5/30/2023

(PLEASE PRINT)

Name: Marva C. Brown

Address: 199 Waters Street, NY, NY

I represent: The Legal Aid Society

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: Conrad Bacchus - The Bronx Defenders

Address: 360 E. 161st St.

I represent: Bronx Defenders

Address: 360 E 161st St

**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: ZACHARY KATZ NEESON
Address: 121 6TH AVE NY, NY 10013
I represent: LIPPMAN COMMISSION
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: 5/30/23

(PLEASE PRINT)

Name: CELA JOYCE, ~~DATA~~ GENIUS DATA ANALYST
Address: 100 WILLIAM STREET
I represent: NEW YORK COUNTY DEFENSE SERVICES
Address: 100 WILLIAM STREET

**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: 5/30/23

(PLEASE PRINT)

Name: Joshua White
Address: 100 William St, 20th Floor NY, NY 10038
I represent: NYCDS
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: 5/30/23

(PLEASE PRINT)

Name: Tanya Krupat

Address: 125 Remsen St.

I represent: Osborne Association

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: Ashley Conrad

Address: _____

I represent: Freedom Agenda

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: Adrienne ~~MA~~ Maher

Address: St Johns Pl BR 11233

I represent: Northampton

Address: BR 14n NY

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