



Ana Bermúdez
Commissioner

33 Beaver Street
23rd Floor
New York, NY 10004

212-510-3710 tel

Statement to the NYC Council Committee on Criminal Justice

By Ana Bermúdez

Friday October 22nd, 10am

Good morning, Chair Powers and members of the Criminal Justice committee. I am Ana Bermúdez, Commissioner of the New York City Department of Probation (DOP). With me today is General Counsel Wayne McKenzie, and, I am also pleased to introduce Roberto Velez, newly hired Executive Agency Counsel and Director of the New York City Conditional Release Commission (CRC). Thank you for the opportunity to testify about the important work of the Department of Probation and to update you on the status of the Conditional Release Commission.

NYC Conditional Release Commission

Our Commission Director, who you will hear from shortly, is only finishing up his second week in this new role. Fortunately for us, Mr. Velez is no stranger to the DOP family, having previously worked at our agency and in City government in a variety of capacities. This will serve him well as he builds upon the on-going work undertaken at DOP since the Council passed Local Law No. 60 reconstituting the Commission.

As you already know from your work on the enabling legislation, there have been other release mechanisms employed recently with the goal of short-term emergency management of the City's jail population. The NYC CRC differs from those other release types in three areas: eligibility, longevity, and model. First, the pool of those eligible for this particular conditional release is limited only to those individuals who have been convicted of certain crimes and are serving sentences of 120 days or more – roughly over one hundred people according to the daily jail census. However, as the process unfolds and we have more outreach and partnership with other parts of the justice system, we are looking at potentially hundreds of eligible people over the course of a year. Second, by reconstituting an LCRC, the Council has provided more than

simply another temporary additional release method, but one that is far more institutionalized and lasting even after this pandemic is over. Lastly, and most significantly, this model is unique. An independent commission of qualified individuals, vetted and chosen with advice of the Council, will review and ultimately approve any applicants for release. (As Commissioner of DOP, I will be an ex-officio and non-voting member of the Commission.) Probation then utilizes our expertise in balancing structure and support according to the person's specific risks and needs to safely supervise the approved applicants in their communities for one year. A key advantage of the CRC model is that all components of the process would be housed under "one roof" within Probation, ensuring both a consistent programmatic ethos and seamless integration across the Conditional Release continuum, from application through community supervision.

As you know, Probation is the largest alternative to incarceration in New York City and plays a crucial role in keeping us all safe. At DOP, we understand that safety is more than just the absence of crime, but the network of trusted relationships focused on a person's wellbeing and the wellbeing of their community. This has never been more important, and I am very proud of this agency's ability to continually adapt to the needs of the people we serve. During the pandemic, we pivoted to provide critical resources to communities hardest hit by Covid-19, which includes those served by our Neighborhood Opportunity Network (NeONs); feeding close to half a million people through our NeON Nutrition Kitchens, launching new virtual summer programming for 2,700 youth, and continuing our other offerings online. I am so thrilled to announce that our wonderful NeON Photography program currently has its first post-pandemic in person exhibit happening at the Kente Royal gallery in Harlem (*not including the permanent gallery at Council Member Holden's office, which has featured work from our NeON Photographers for years*). The pieces being featured are all from the Harlem summer 2021 class, which was taught by a NeON Photography graduate and fellow community resident. The gallery owner was so compelled when he learned of the program that he agreed to host this exhibit, which runs through this weekend. One of our photographers was brought to tears from the amount of pride and joy she felt seeing her work featured in a New York City gallery - I encourage you all to see it if possible.

As people on probation are currently successfully completing their sentence at a rate of 9 out of 10, I am confident that this combined approach allows for both the safety of those being released as well as the



NYC communities they call home. Thank you, Council Members, for the confidence in Probation you have shown by reestablishing the Conditional Release initiative. I will be pleased to answer any questions you may have in just a moment. But before that, I would like to provide Roberto Velez, Executive Agency Counsel and Director of the New York City Conditional Release Commission, an opportunity to say a few words.

[Testimony from Roberto Velez – Executive Agency Counsel and Director – NYC CRC]

Thank you, Director Velez. While that concludes the CRC part of our testimony, I would like to take a moment to personally and deeply thank all of you, and the Council as a whole, for the incredible partnership we have built over the last four years. You have been tireless champions of the work of this Department: from keeping us accountable in oversight hearings, amplifying the strong evidence from our Arches and AIM evaluations, holding the groundbreaking NeON Arts hearing where the incredible people we serve showed you how the arts have changed their lives, and providing the funding needed to support those impactful initiatives. It is through your support, and the work of the incredible Probation staff, that we have been able to accomplish outcomes that I am not only extremely proud of, but that years ago I could not have imagined were even possible.

As I said earlier, the rate at which people successfully complete probation in New York City is currently 9 of out 10 (compared to 6 out of 10 when I first began as Commissioner). In addition, we have also seen a 33% increase in the rate at which people on probation earn an early discharge. The people on probation who live in neighborhoods with a NeON, the vast majority of whom are people of color, are *also* successfully completing at a rate of 9 out of 10. That is remarkable when considering the many long-standing structural barriers in these neighborhoods and is a true testament to the strength of the NeON model, the people we serve, and their communities. Justice system outcomes need not be predetermined by a person's zip code. All of this is how we ensure public safety and create a more just New York City – with vastly improved outcomes for people on probation and their communities at roughly 100 times less per capita than the cost of incarceration. I thank you again for your time and am happy to answer any questions you may have.



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Statement to the NYC Council Committee on Criminal Justice

By Roberto Velez

Friday October 22nd, 10am

Thank you, Commissioner, and good morning Chair Powers and members of the Criminal Justice committee. My name is Roberto Velez, Executive Agency Counsel and Director of the NYC Conditional Release Commission (CRC). As this is only my second week in this role, I want to thank you for the opportunity to introduce myself to you, share my background, and tell you why I am thrilled to return to Probation and oversee the work of New York City's Conditional Release Commission.

I am a native New Yorker, born and raised in the Bronx. For thirty-one years, I have worked as an attorney representing and helping the people of the City of New York. For seventeen of those years, I worked in City government under three different Mayoral administrations (Koch, Giuliani, and Bloomberg). I have held a variety of City government positions, including the Chief Judge of the Office of Administrative Trials and Hearings (better known as OATH). OATH is the City's independent tribunal with a reputation of providing excellent and well-reasoned decisions. As Chief Judge, I was responsible for the successful merger of numerous City tribunals into OATH. The largest merger involved the Environmental Control Board (better known as ECB) which created one of the largest and, in my opinion, best run independent tribunals in the country.

I have held a variety of other high-level positions in city government, such as Chief of Staff and Associate Commissioner at the Department of Juvenile Justice and Department of Consumer Affairs, respectively. And I had the honor of serving as Commissioner of the NYC Department of Probation during September 11th and its aftermath. It was a difficult time for all of us, and despite that, the staff of DOP continued to do an outstanding job of supervising and helping people on probation.



I have served as an attorney in private practice as a partner at Anderson Kill, where I specialized in protecting policyholders' rights, and more recently at Gonzalez & Oberlander LLP, where I worked on litigation and transactional matters. I am particularly proud of my work at G&O defending and assisting members of the union Local 32BJ with their legal matters, including matrimonial and family court issues. It was especially satisfying to assist 32BJ members whose primary language was Spanish and help them resolve a range of issues for which they otherwise may have had difficulty gaining effective representation.

I have also worked in the not-for-profit arena, where I served as General Counsel for Acacia Network from 2010 to 2014. In that capacity, I served as the principal legal adviser to the Chief Executive Officer and executive team. I was responsible for developing and implementing Acacia's new corporate compliance and risk management programs.

I am very excited to return to Probation. I am passionate about helping people find their way out of the criminal justice system by effectively navigating and accessing City government programs, services, and resources. I am especially excited to help create and oversee an initiative that will assist people who are incarcerated return to their families and communities sooner and begin what my Probation colleagues refer to as their "New Now."

Thank you again Council members for the opportunity to testify and introduce myself to you today. I look forward to working with you on this important Commission. With that, I defer back to Commissioner Bermudez.



New York County District Attorney's Office
Written Testimony by District Attorney Cyrus R. Vance, Jr.
for City Council Committee on Criminal Justice
Oversight Hearing "Update on the Local Conditional Release Commission"
October 22, 2021

Chair Powers and members of the Committee on Criminal Justice, thank you for the opportunity to submit testimony for the City Council's oversight hearing regarding an update on the Local Conditional Release Commission, an effort to strengthen the City's response to public health emergencies in jails. As I expressed in May 2020, when the Committees on Criminal Justice and the Justice System held a hearing on COVID-19 in City Jails and Juvenile Detention Centers, I share your concerns about the health and well-being of justice-involved individuals and correctional staff amid the ongoing coronavirus pandemic.

In last year's hearing testimony, I described the proactive efforts the Manhattan District Attorney's Office had already taken to review people in DOC custody on Manhattan cases, and the process we engaged in to evaluate requests for release from the City, defense providers, and individuals, in the form of bail applications and writs of habeas corpus. In the first two months of the pandemic, we helped reduce the number of people being held in jail on a Manhattan case by 45%.

When we reported on those efforts to you nearly a year and a half ago, we had all hoped that by now the coronavirus pandemic would be a thing of the past. Unfortunately, that is not the reality we are facing. Worse, beyond just the coronavirus crisis, we are facing the humanitarian crisis that it compounds at Rikers Island. That, too, is a circumstance that cannot be ignored. Indeed, Governor Kathy Hochul has issued an Executive Order declaring a state of disaster emergency in the counties of New York City due to the conditions there.

Just as we did at the start of the coronavirus pandemic, we are again undertaking proactive measures to mitigate ongoing issues. To that end, we reviewed the people in DOC custody on Manhattan cases to see where it was appropriate to exercise our discretion to recommend release. In the first weeks of that undertaking, following our review of the cases submitted to us by public defenders at our request, and our proactive review of our own internal records, we made the decision to consent to the pre-trial release of more than two dozen individuals charged with felony offenses. We also consented to immediately resolve 6 felony cases with terms that allowed for the individuals' release, such as a sentence of probation. With the oversight of our Alternatives to Incarceration Unit, we have continued to actively seek programming to support the release of 17 other individuals charged with felonies. We also moved to dismiss 2 misdemeanor cases where the individuals were being held on \$1 bail pertaining to holds by another agency, although those holds may still be in place. This review process has continued since those first weeks.

Further, we have advised our lawyers to refrain from seeking bail on non-violent crimes committed by non-violent offenders, in circumstances that do not implicate the safety of other people. We have also advised them to continue to ask for supervised release and other non-monetary conditions, where appropriate.

In practice, this means that our Assistants are not asking for monetary bail, for the time being, when:

1. The instant crime is legally and factually non-violent, and does not implicate domestic violence or other risk of physical harm to a person; and
2. The defendant is not a violent predicate felon, and does not have sex crimes or violent misdemeanor convictions within the last 10 years; and
3. The defendant has not failed to appear on the instant case.

Cases that fall under this policy are primarily theft-related crimes such as larceny, burglary (excluding the intrusion into someone's actual living space), possession of stolen property, certain petty identity theft cases, and similar crimes. We chose these crimes because we believe the threat of confinement under the current Rikers conditions has to be balanced with the threat to the community.

We were able to conduct a data review and gather strong approximations of the number of Manhattan cases for which an individual is incarcerated on Rikers Island. Under our bail policy, as of October 18, 2021, there are 1,508 Manhattan cases in which an individual is incarcerated on Rikers Island, down from 1,591 on just October 1. Of those cases, 1,258 represent legally violent felony charges.

On October 1, the number of cases in which the charges did not meet the definition of "violent" under the Penal Law was 294 and, as of October 18, that number is down to 250. Although the charges the individuals face in those 250 cases do not meet the Penal Law definition of "violent," many of the charges are still, in fact, dangerous. For example, homicide does not fall under the Penal Law definition of "violent." The 250 "non-violent" cases include 54 homicides, 8 completed sex offenses (including 2 predatory sexual assaults on a child), 1 first-degree kidnapping, 30 felony contempt cases (which are virtually all violations of domestic violence orders of protection), 1 attempted first-degree sex abuse, and 1 failure to register as a sex offender case.

Largely, if not entirely, the individuals held on "non-violent" charges in the remaining 155 cases fail to meet the criteria in our temporary bail policy – i.e., the crime implicates domestic violence or physical harm to a person, or the individual has been adjudicated a violent predicate felon or has a conviction for a sex crime or violent misdemeanor in the past 10 years, or the individual has failed to appear on the instant case. As to the last point, 45 individuals have bench warranted on the instant matter. Notably, too, only 19 individuals are held on misdemeanor charges alone. The majority of those cases involve forcible touching charges, and others include assault, menacing, criminal contempt, and aggravated harassment.

In my testimony last year, I stated my belief that the coronavirus outbreak would beget changes that would persist long after this horrible pandemic subsided. As the pandemic continues to rage on, we have not yet had the opportunity to see that come to fruition. What we have seen, however, is that, regardless of the circumstance, it is always important to thoughtfully evaluate our practices and evolve when necessary. We, like all stakeholders in the justice system, will continue to do that as we embark on the next stages of the pandemic.

Thank you for the opportunity to discuss our efforts today and for your continued attention to issues of great importance in the criminal justice space.

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Richmond County District Attorney's Office

Testimony before the New York City Council's Committee on Criminal Justice regarding the Re-Creation of a Local Conditional Release Commission

October 22, 2021

As District Attorney, my primary concerns are to protect victims of crime, uphold the rule of law, and keep our communities safe. While this remains the central mission of my office, my team and I have always worked diligently to balance public safety with the need to create a fairer criminal justice system. We know that many of the low-level, non-violent crimes being committed on Staten Island and elsewhere are fueled by various underlying problems, especially surrounding mental health and substance abuse issues. That is why we have expanded diversion programs in these areas and continue to offer a robust network of alternatives to incarceration (ATI) programs that weigh both the needs of the community with the unique circumstances that may have led an individual to commit a crime.

I am extremely proud of all we have achieved through our HOPE and other ATI programs, which has successfully diverted hundreds of defendants out of the criminal justice system, allowing these individuals to avoid a jail sentence while taking the necessary steps to improve their lives and avoid making the same mistakes in the future. Despite the success of these programs in reducing the City's jail population and still holding individuals accountable for committing crimes, the City Council has once again taken up the mantle of misguided and agenda-driven activists to demand the total emptying of our jails.

The latest attempt for the wholesale release of incarcerated individuals comes in the form of a bill under discussion today that proposes the re-creation of a Local Release Commission in New York City. These renewed demands have

understandably grown louder as the situation at Rikers Island continues to be exasperated by the total lack of leadership from the Mayor and his Department of Corrections. After witnessing the dire conditions at Rikers first-hand during a tour of the facilities earlier this month, I find it inconceivable that this administration has done next to nothing to improve the situation there both for inmates as well as Corrections Officers who risk their own safety every day. I must commend recently installed Commissioner Vincent Schiraldi who is trying very hard with his team to improve the situation at Rikers, but the challenge before him is enormous because of years of mismanagement and neglect.

Despite my concern and outrage at the current administration-created crisis at Rikers, as the City Council takes this bill under consideration, I am compelled to express my deep reservations on both practical and constitutional grounds.

Although Article 12 Section 271 of the Correction Law does state: “[e]very county, and the city of New York, may adopt a local law establishing a local conditional release commission,” the powers invested in such a commission appear to conflict with established case law that only a Court may establish conditions on the release of an inmate from custody (*Earley v Murray*, 451 F.3d 71, *Garner v. NYSDOCS*, 10 N.Y.3d 358). In both cases referenced above, the petitioners were granted relief from conditions of post-release supervision imposed by the New York State Department of Corrections and Community Supervision after their term of incarceration had begun. It was held the Department did not have authority to unilaterally issue such conditions outside a court proceeding. That is the very essence of what the proposed Local Conditional Release Commission is designed to do: grant early relief in the form of post-release monitoring from a court-imposed sentence, absent a hearing before that same court.

Further, the history of New York City’s Local Conditional Release Commission must also be considered as a warning to those who would vote in favor of this bill. Such a commission has previously existed in New York City and developed a tarnished record involving allegations of political favoritism and a lack of transparency. This previous iteration was ultimately eliminated.

One well-known example of this occurred in 2004 when the Commission took up the case of former State Senator Guy Velella, who was convicted on numerous counts of conspiracy and bribery relating to a scheme where Velella and his co-defendants received \$250,000 over a period of 5 years in exchange for approving applications for public works contracts across the State. Velella was sentenced to

one year in prison for his role, yet after serving just 12 weeks of his sentence, Velella was granted his release by the Commission. The investigation that followed found the meeting which resulted in Velella's release did not have the mandatory quorum necessary to conduct a vote, and minutes of the meeting were not kept as required by the statute. In light of this embarrassing episode, Mayor Bloomberg accepted the resignation of all members of the Commission, appointed new members, and eventually allowed the Commission to expire in 2005.

If the Commission were to be recreated, its members would once again be appointed by the Mayor, with no other obvious oversight authority. This should give an oversight body like the City Council great pause. It is also not clear how the proposed commission would avoid the pitfalls of the past nor how it would improve upon the system currently in place. The logistics of how the commission would interface with other Mayoral agencies on critical services such as supervised release and other support necessary to make release possible also remains unclear.

We have done so much on Staten Island and indeed, across our City to make the justice system more equitable and sanctions more appropriate for those convicted of violating our laws. One need not look further than the population on Rikers Island, lower than it has been since the 1940s, for proof that our City's criminal justice apparatus has sought every opportunity to divert offenders out of the criminal justice system and into meaningful engagement with pro-social services. The proliferation of exceptional community providers who offer quality mental health and drug treatment, batterer intervention, neighborhood placemaking and other programs is evidence that we are continuing to move beyond incarceration as the only tool to hold offenders accountable.

Rather than focusing our efforts on blindly releasing all defendants, the City Council should study the ongoing delays in our court system which has caused a backlog of cases resulting in defendants spending longer periods of time in custody.

According to the Mayor's Office of Criminal Justice (MOCJ), "by the time COVID-19 hit New York City in March 2020, the City's jail population was less than half what it was more than six years prior—11,089 on January 1, 2014 to 5,458 on March 16, 2020. In response to the pandemic, the City engaged its criminal justice partners to reduce the jail population to levels not seen since World War II. By August 31, 2021, the population had increased to over 6,000, driven largely by violent felony detainees. Among this population, those who have been detained for a year or more while awaiting to resolve their case was the primary driver. In August

2021, the population was still 46% down from January 2014. Since then, the population has continued to trend downward.”

Of importance to the conversation at hand, the MOCJ report notes that:

“City jails are functioning like a prison because of systemic delays, with 30% of people incarcerated being held over 12 months. People charged with felonies make up 99.9% of pretrial detainees. When these detainees' right to a speedy resolution of their cases isn't realized, Rikers functions as a de facto prison. Delays in the justice system are driven by fewer felony cases being closed than it indicted. In previous years the justice system cleared more cases than were filed, leading to a decrease in the docket in 2018 (8.1%), 2019 (21.8%) and 2020 (42.2%) through the end of September of each year. The trend has reversed so far this year, with the felony filing outpacing dispositions by 12%.

Fewer court appearances and fewer trial hearings in felony cases are creating fewer dispositions. While court appearances have rebounded from the COVID-19 near-shutdown of the justice system in 2020, they remain substantially lower than pre-pandemic levels in 2018 (40.3%) and 2019 (37.9%). Pretrial hearings in 2021, meanwhile, are still far below even the lower levels brought about by COVID-19 in 2020 (32%), and significantly below pre-pandemic levels in 2019 and 2018 (about 41%.)

Court appearances by people in DOC custody have decreased drastically. The impact of COVID-19 led to the near shutdown of court proceedings for months. Yet the number and proportion of defendants held in custody by the City's Department of Correction that are making their scheduled court appearances remains a fraction of the levels seen pre-pandemic.

With fewer court appearances, more court proceedings are postponed, more days occur between adjournments, and case lengths are longer. Court adjournment in which a proceeding is postponed to a future date has increased from a median of 9 adjournments per case to 13. The days in between these adjournments has also increased. The result has helped increase the median case length in August 2021 by 82% compared to August 2019.

With fewer court appearances and trial hearings, we have fewer pleas and trials. Trials starting and ending, either through a plea agreement or a verdict, remain far behind pre-pandemic levels. While pleas have rebounded from their lows during the

worst of the pandemic in 2020, trials beginning or ending following a verdict in 2021 have fallen even further behind the significant dropoff experienced in 2020.

With fewer pleas and trials, more people in Rikers are awaiting sentencing. Even when a case is concluded, defendants that took pleas or were convicted continue to too often remain on Rikers Island awaiting sentencing by a judge. The rate in 2021 remains at less than half the pace of sentencing prior to the pandemic.”

This Council would be wise to explore and understand the reasons and factors that contribute to these delays before attempting to legislate solutions. Some stem from the staffing crisis at the Department of Corrections, which has inhibited their ability to produce defendants for scheduled court appearances. Some stem from limited physical capacity to hold multiple hearings and trials in COVID-safe spaces in courthouses simultaneously. Some stem from limited judicial and court staff resources post-pandemic. Some stem from delays from defender institutions who have been unable to meet with their clients and unwilling to return to the courthouse for in-person proceedings. Some stem from recent systemic changes that are a result of new criminal justice reform laws that have dramatically shifted how cases and discovery are handled. Some stem from the growing rate of attrition in DA’s offices, because of a lack of pay parity among other issues, which has led to cases being reassigned sometimes multiple times. There are many ways this Council has the power and ability to address these underlying causes, which would do far more to address the backlog of cases and conditions and population at Rikers, all while improving the efficiency of our justice system and public safety as a whole, than the wholesale release of more individuals from Rikers.

We must not be so naïve to think there is no need for incarceration, and that cutting short judicial sentences that are in line with the laws of our State should be the norm as opposed to the exception. Any crime committed by someone who was released before the conclusion of their sentence represents a failing not just of that individual, but of the system and safeguards put in place to ensure the offender’s safe reintegration into their community. This Commission unnecessarily creates more opportunities for such a failing.

The delusional mission to empty all jails will make us all less safe in the end, especially the victims whose voices continue to be ignored throughout this crisis, as they have been for far too long. We need an effective system of accountability, so that the people we represent will believe that their voices are heard, and their interests are protected. As Justice Benjamin Cardozo said, “Justice, though due to the accused, is due the accuser also.” As we struggle every day to contain the many

problems we face in our City, our elected leaders need to serve all New Yorkers, not just the loudest and most extreme.

TRINITY CHURCH WALL STREET

Trinity Church Wall Street - Testimony - City Council Criminal Justice Committee Oversight Hearing

October 22, 2021 | Subject: Oversight - Update on the Local Conditional Release Commission

Good morning Chair Powers and members of the Committee on Criminal Justice. My name is Susan Shah and I am the Managing Director for Racial Justice at Trinity Church Wall Street Philanthropies. Thank you for providing me with the opportunity to submit testimony for today's hearing to discuss the status of the City's Local Conditional Release Commission and other strategies to help decarcerate the City's jails.

Trinity Church Wall Street is an active Episcopal church down the street from City Hall with more than 1,600 parishioners, who represent all five boroughs and form an ethnically, racially, and economically diverse congregation. In addition to our ministry, Trinity carries out its mission of faith and social justice by engaging in advocacy and operating a grant-making program that seeks to help break the cycles of mass incarceration, mass homelessness, and housing instability in New York City.

Since the City Council's last oversight hearing on the City's jails in September, Rikers Island and other City's jails have remained dangerously unsafe and are failing to protect the overall health and wellbeing of those incarcerated within them. This week, an individual who attempted suicide while being held in a Manhattan Criminal Court holding pen was taken off life support, and last week a detainee being held on Rikers Island before trial tragically [died after contracting COVID-19](#), bringing the total number of people to perish in the custody of the NYC Department of Corrections this year to 14.

We thank the City and State for taking a series of steps since the City Council's last hearing to reduce New York City's total jail population, most notably Governor Hochul's [signing](#) of the Less is More Act and recent [Executive Order](#) to allow for the expansion of virtual court hearings to reduce the time that individuals are detained in City jails, as well as the Governor and Mayor's recent [agreement](#) to move 230 incarcerated women and transgender individuals off of Rikers Island to nearby State-run facilities for the short term while a long-term facility (ideally Lincoln Correctional Center in Manhattan) is brought up to code as soon as possible.

However, the current situation is a humanitarian catastrophe that further underscores the inability of the City's jails to protect the health and safety of those who are incarcerated in them. Inaction is a

choice. The Mayor has tools he can use now and in the near term to improve the lives of hundreds and ultimately thousands of detainees. This crisis is not just an administrative failure - though it is surely that - it is a moral failure. It is time for the Mayor to knuckle down and get the job done.

This starts with the full implementation of Local Law 60 of 2020, which calls for the creation of a Local Conditional Release Commission. We commend Council Member Powers for enacting this legislation at the height of the COVID-19 pandemic and believe that the creation of the Commission will serve as a powerful tool to protect the health and wellbeing of incarcerated individuals now, as well as advance the goal of reducing the City's overall jail population moving forward.

Although Local Law 60 of 2020 required the City to implement the Local Conditional Release Commission immediately, we are concerned that the Mayor and City Hall have not yet demonstrated any commitment to forming it, **and urge City Hall to put the Local Commission together now to continue to make meaningful steps toward mitigating the crisis throughout the City's jails.** Further, we encourage City Hall to appoint more than one individual who meets the membership criteria **and** who has lived experience of incarceration to serve on the Commission. We invite City Hall and the City Council to utilize Trinity and our broad network of community-based partners for appointment recommendations, as they are staffed by many skilled men and women who both meet the criteria to serve on the Commission and have relevant lived experiences. In addition, we would urge the City to ensure full transparency in the creation and operation of the Commission by submitting regular, accessible reports so the public can track the Commission's progress and activities.

The creation of the Local Conditional Release Commission alone will not effectively mitigate the emergency on Rikers Island. We urge the Mayor and the City Council to commit to undertaking the following evidence-based strategies to safely decarcerate the City's jails:

1. **Expand the Mayor's use of the 6a work release program.** We urge the Mayor to utilize the powers provided to him by the State under '6a' (which he widely used at the height of the pandemic in 2020 to safely reduce the City's jail population) to review and authorize the release of approximately 100 detainees who are potentially eligible for release under this law.
2. **Improve the pretrial processes to shrink the City's jail population.** We urge the City to utilize pretrial release and 'ability to pay' assessment tools to help reduce the number of individuals being held in City jails pretrial, as well as encourage the use of supervised release and only detain those who pose a credible risk of flight.

3. **Provide alternatives for people with serious mental illness.** We encourage the City to commit more funding for additional outpatient treatment slots and community-based residential facilities — akin to supportive housing — for people with a serious mental illness to avoid incarceration.
4. **Sentencing more people to Alternatives to Incarceration programs.** These community-based programs are much better equipped to address individual underlying needs and ensure accountability. The City should also expand restorative justice programs and mental health courts because they have proven track records of reducing recidivism for people charged with violence, enhancing oversight, and meeting the needs of victims.

Lastly, we believe that the current crisis demonstrates that there is no amount of investment or reform that will make Rikers and the City's existing jail facilities acceptable places to protect the dignity and humanity of incarcerated individuals. We strongly urge City Hall and the City Council to reaffirm their commitments to the plan to close Rikers Island by 2026 and utilize a smaller and more humane system of borough-based jails, as well as to honor the funding commitments that were made in the plan's October 2019 Points of Agreement.

Thank you for providing the opportunity to submit testimony today.

Testimony to City Council Committee on Criminal Justice**October 22, 2021**

Thank you, Chair Powers and committee members for the opportunity to submit written testimony in regard to the Local Conditional Release Commission (LCRC).

It is unconscionable that nearly a year and half after the passage of the law establishing the Local Conditional Release Commission, the Commission has not begun its work and no Commissioners have been appointed. In the time since the Commission was established, at least 17 people have died in the custody of the Department of Correction, and the jails have descended into an undeniable state of chaos, in which Board of Correction member Dr. Robert Cohen said that “Every person...is at serious risk of harm and death.” Given this ongoing and worsening emergency, it is urgent to release every person who can be released, as quickly as possible. In the one area where the City has direct power to release people, we’ve seen unwillingness to do so, even as every single minimum standard for the City jails is going unmet, as acknowledged by the Board of Correction on their meeting this week.

The need for decarceration goes far beyond what this Commission can do, but the releases that this Commission can effectuate will clearly matter to the people currently languishing in jail, and will send a broader message that this administration is committed to ending mass incarceration, is committed to advancing the closure of Rikers, and recognizes the abundant evidence that jailing people, especially in the conditions that exist on Rikers, undermines public safety, rather than supporting it.

We also want to thank the Council for initiating this hearing, to hold the administration accountable for following through on making appointments to bodies like this that were established by legislation to provide mechanisms for public participation and oversight into government operations that are too often bureaucratic, opaque, and lacking in both urgency and compassion. The failure to appoint Commissioners to the LCRC echoes the unacceptable failures to confirm appointments to and convene the Renewable Rikers Advisory Committee, which in accordance with Local Law 16-2021, was supposed to convene for its first meeting by the end of August 2021. For the Renewable Rikers Advisory Committee, appointments must be made by both the Council and Mayor. We ask your help in pushing both the Council’s and Mayor’s Offices of Appointments to convene this committee without further delay, to guide the transition of Rikers Island from a place of incarceration and torture to a place that can restore harm done to our communities and our environment.

Sincerely,

Sarita Daftary

Co-Director, Freedom Agenda



Testimony of

Rachel Sznajderman
Natalie Fiorenzo
Corrections Specialists

New York County Defender Services

Before the
Committee on Criminal Justice

Oversight Hearing on the Update on the Local Conditional Release Commission

October 22, 2021

We are Rachel Sznajderman and Natalie Fiorenzo, Corrections Specialists at New York County Defender Services (NYCDS), a public defense office that represents thousands of New Yorkers in criminal cases in Manhattan’s Criminal Court, Supreme Court, and Family Court every year. We submit this testimony to report on the continuing crisis in our city jails and to illustrate how the Local Conditional Release Commission could help alleviate this humanitarian catastrophe. Thank you, Chair Powers, for holding this hearing on the Local Conditional Release Commission.

1. Background

As Corrections Specialists at NYCDS, we provide a direct channel of communication and advocacy for our incarcerated clients. When these clients express concerns relating to their health or living conditions in the jails, we intervene and advocate on their behalf to address the underlying issues and unmet needs. NYCDS currently represents roughly three-hundred individuals currently detained at Rikers Island. While most of the incarcerated individuals we represent are awaiting resolution of their criminal cases, some are serving definite sentences. City-wide, over one hundred individuals currently incarcerated in NYC jails are serving city sentences.¹ Many of these would

¹ Vera Institute of Justice. “People in Jail in New York City: Daily Snapshot.” *Greater Justice NY*, 2021, <https://greaterjusticenyc.vera.org/nycjail/>. Accessed 25 October 2021.

be eligible to apply for early release before the Local Conditional Release Commission, were it currently operational.

It has been nearly a year and a half since this body passed legislation to institute a Local Conditional Release Commission. The legislation seizes on existing state law, N.Y. Correction Law § 272, which allows New York counties (and New York City) to establish such commissions to relieve overcrowding in jails. The law authorizes the Commission to consider release for individuals who were sentenced to more than 90 days and have already served 60 days of their sentence. Certain cases are excluded, notably, any convictions ineligible for merit time pursuant to N.Y. Corr. Law. 803, domestic violence convictions, or obscenity offenses where the complainant was under 18 years old.

The legislation was inspired by the success of the citywide decarceration effort at the outset of the COVID-19 pandemic in the spring of 2020, which in a matter of months dramatically reduced the population in our city jails and as a result, effectively stemmed the spiraling outbreak unfolding there. Today, our city jails face a crisis of even greater magnitude, which places every single person incarcerated there at grave risk of harm. The Local Conditional Release Commission promises to provide a critical safety valve to this crisis, relieving the strain of the current overcrowding and saving potentially dozens of lives from needless suffering and torture. To illustrate the importance of immediately establishing the Local Conditional Release Commission, we offer the following story of a NYCDS client, who for confidentiality purposes we will refer to as “Moe,” who would be eligible for release under this body.

a. Profile of an NYCDS Client Who Would Be Eligible for Release Under the Local Conditional Release Commission

The first thing Moe said when we asked him about the possibility of release is “jail is not helping me. I’ve been here so many times and they don’t have the tools to help me.” Moe is a recovering drug addict and alcoholic. He is in an endless feedback loop: stealing to get money to buy drugs, getting sent to jail for stealing, being spit back out into society with no resources to help with his houselessness, his addiction, his depression, and his lack of health care. It is no wonder that he returns to what he knows: friends who are bad influences and his vices.

Moe is currently serving two sentences for misdemeanor convictions of Petit Larceny, P.L. 155.25. Neither of these convictions stemmed from a domestic violence incident, thus both are eligible for Local Conditional Release. On these convictions, he received a definite sentence of 9 months and 3 months, respectively, which are ordered to run concurrent. Moe entered custody upon his arrest on September 17, 2021, and thus has now served longer than the required 30 days to be considered for Local Conditional Release.

All Moe wants is a fresh start. He has a daughter and three grandchildren. He wants to be a role model for his 16-year-old grandson, to let him know what he has been through and guide him down a better path. He knows that he is getting older and it weighs on him. He told us, “The lifespan of a black man is 56-71. I’m in there. I don’t have much more time.” The thought is sobering. He wants to share love and support with his family—while he still can.

Moe has been through NA and AA programs before, and they were successful at the time. He remained sober for five years. He knows what led to his relapse, and where he needs to be careful next time. Unfortunately, because there are no NA or AA programs in jail, and he has not historically been set up with the tools he needs to change his life when he leaves, he keeps returning to what he knows. He told us, over and over again, that is not the life he wants.

If Moe were released, our office would set him up with the support and resources he needs for success. He wants this help. He is introspective enough to know that he needs support. He has family who can help him in his journey to recovery, but he needs more. He needs a good, consistent program and some public assistance. He is willing to do the work and make the change. If he were given the opportunity for early release, he would thrive.

Unless the Local Conditional Release Commission is assembled and begins hearing applications, Moe will spend the next 5-6 months languishing at Rikers Island. Moving forward with the commission would help Moe, and countless other incarcerated individuals just like him.

2. The Urgency of the Local Release Commission to Immediately Address the Ongoing Humanitarian Crisis at Rikers Island.

As media attention surrounding the ongoing crisis in Rikers has proliferated, the Department of Correction (DOC), the Mayor’s Office, and the Governor’s Office have taken preliminary measures to begin to address the deadly conditions at Rikers. Unfortunately, these few measures have not made a measurable impact in mitigating the ongoing humanitarian catastrophe. The lack of any significant improvements, most notably in abating the rampant, unchecked violence, continue to threaten the lives of our clients and everyone currently housed on Rikers Island. The Local Conditional Release Commission would be a swift and concrete way to remove people from these lethal and inhumane living conditions.

a. The escalating culture of violence.

As the staff absenteeism crisis continues, the culture of cruel, unmitigated violence has spread across DOC facilities. This grisly phenomenon has been widely reported in the news media,² and

² See, e.g., Ransom, Jan, et al. “Inside Rikers: Dysfunction, Lawlessness and Detainees in Control.” *New York Times*, 11 October 2021, p. 1, <https://www.nytimes.com/2021/10/11/nyregion/rikers-detainees-correction-officers.html>.

is echoed by our clients' reports. We spoke with one client who said this is the most dangerous jail he has ever seen in his life, more dangerous even than another jail where some detainees carried guns. We hear repeated reports that detainees carry around knives and handmade weapons and are advised by corrections staff to "hide it so the camera can't see."

The only effort corrections staff seem to make to address the violence is through constant, widespread pepper spraying. One client reported that his entire unit was pepper sprayed by COs because another individual was having a mental health emergency. There were no subsequent efforts to remediate or treat those affected by the pepper spraying. As a consequence, our clients often report being unable to breathe properly for several days.

Indeed, it is those living there who largely bear the brunt of this violence and chaos. In one recent example, a NYCDS client was attacked last week and left with a broken nose, jaw, and stitches in his face. This person and all those who are confined in these conditions are left to fend for themselves in the face of danger, and heal themselves when danger inevitably ends up on their lap. They are living in constant fear for their lives.

b. Persistent Lack of Adequate Medical Services.

Our clients have not seen any improvement in attention to medical care since we last reported to the City Council. In fact, over the past month, the frequency with which clients are actually brought to see medical staff has decreased significantly. With each day that passes, we receive more reports that clients have not received basic healthcare, including insulin and mental health medications.

For one client, the lack of insulin resulted in a series of seizures. However, he continues to report that he does not receive his insulin as prescribed. Another client did not receive their blood clot medication for over two weeks, which can be life-threatening if not attended to. This continued until he was eventually brought to the emergency room, where their doctors found many blood clots spread across different parts of his body. He now requires a more intensive medication regimen, and is considerably less healthy than he was upon entering DOC custody. One client with asthma cannot get access to his prescribed inhaler. He repeatedly has asthma attacks that go ignored by Correctional Officers and medical staff. Just two days ago he woke up struggling to breathe. His social worker sent a referral to Correctional Health Services at 8:29am. They responded that they would inform his facility at 8:33am. This was an emergency - an asthma attack can end your life in minutes - and yet CHS never sent the referral to our client's facility. It took 5 separate calls from NYCDS staff to the clinic to finally get him seen late that afternoon. When we finally reached someone, they appeared to have no awareness of the individual at imminent risk.

The deeply-entrenched mismanagement and lack of care provided by health services at the DOC threatens daily the life of every person housed on Rikers Island. The DOC and CHS repeatedly

neglect their responsibility to care for our clients without any accountability. Though these examples shed light on the current situation, in fact, we fear that the true magnitude of the medical neglect faced by detainees is far worse than we know.

c. The ongoing, spiraling threat of COVID-19.

Over the past month, we have seen multiple housing areas shut down due to COVID-19 outbreaks. An entire facility, OBCC, was under quarantine for at least fourteen days. We were not made aware of that situation until a client of ours failed to be produced to court without explanation. He was supposed to accept a plea and be released at that court appearance, but was subsequently not brought to court for weeks. Instead, he languished at OBCC under quarantine, without even receiving a COVID test.

We also hear many reports that standard CDC and DOC COVID-19 guidelines are not being followed. We hear from many clients that DOC is quarantining COVID-negative detainees with COVID-positive detainees, and then restarting the 14 days every time a new person contracts COVID-19. These ineffective quarantine measures are not stopping the spread of the virus, but rather forcing individuals who do not have COVID-19 into small, unsanitary, abhorrent conditions— with no access to masks— alongside individuals that do have COVID-19. By housing positive and negative cases together, DOC is creating an endless loop, leaving some of our clients in quarantine for a month or more.

This system is not only ineffective and dangerous, but considerably slows down the judicial process, as anyone in quarantine housing cannot be brought to court. This inhibits our ability to move our clients' cases along and potentially get them released sooner. It also directly affects our clients' access to counsel and family visits.

d. Access to counsel.

Video conferences (AKA “vidcons”) with our clients are cancelled as often as they are actually held. To be clear, when our staff request a vidcon with a client, it is typically to discuss an urgent matter. Sometimes these vidcons are scheduled because we learn that our client has been badly hurt, or is experiencing suicidal thoughts, or needs to talk through the life-altering decision of whether to take a plea or go to trial.

Yet these important points of contact - and often the sole viable means of communication between our staff and our clients - have become exceedingly unreliable. These cancelations happen without warning and often without explanation. In one recent and representative example, it took three canceled vidcons and one month to finally make contact with an NYCDS client.

Even when the vidcons are not explicitly canceled, DOC dysfunction and abhorrent jail conditions inhibit meaningful communication. For example, one of our attorneys recently logged into a scheduled vidcon, and when the screen came on, another person (not our client) appeared. The man said he was there for court. Shortly thereafter, the screen went black. When our attorney called to ask what was going on, corrections staff simply told him that there was no longer a booth available and refused to provide further explanation.

Another attorney was told that "the computers were down" when he signed in. But he was staring into the booth on his own computer screen. When he reported this to the corrections officer, the officer responded that the actual issue was that there were not enough staff to escort his client to the booth. In one chilling example, an attorney showed up to his vidcon only to personally observe his client being violently assaulted as he tried to make his way into the booth.

These stories are only a sample of the many ways in which the conditions on Rikers Island have frustrated our attorneys ability to communicate with those they represent, and in turn, violated these individuals' sacred, constitutional right to effective assistance of counsel.

3. Conclusion

To date, fourteen people have lost their lives as a result of the ongoing humanitarian crisis transpiring at Rikers Island. To be clear, the Local Conditional Release Commission will not singlehandedly end this catastrophe. But it will certainly save those who are released from further suffering, and provide some measure of relief to the overpopulation at Rikers. Ultimately, this is an emergency requiring emergency action from every actor capable of alleviating the crisis. Accordingly, our government bodies and institutional stakeholders must deploy every conceivable tool to immediately depopulate Rikers Island.

This includes convening the Local Conditional Release Commission to review individuals eligible for release from these torturous conditions. The City Council's tools for addressing the spiraling crisis on Rikers Island are admittedly limited. But it is within this body's power to potentially release dozens of people, whose risk of death increases with each passing day they spend on Rikers Island. We thus urge the City Council to immediately take action to convene the Local Conditional Release Commission.

For any questions about this testimony, please email us at nfiorenzo@nycds.org, and rsznajderman@nycds.org.