NYC Criminal Justice

Mayor's Office of Criminal Justice
New York City Council
Committee on Fire and Criminal Justice Services
September 26, 2016

Good afternoon, Chair Crowley and members of the Committee on Fire and Criminal Justice Services. My name is Alex Crohn and I am General Counsel for the Mayor's Office of Criminal Justice ("MOCJ"). Thank you for the opportunity to testify today. Chidinma Ume and Molly Cohen, Associate Counsels from my office, are here with me to answer questions.

The Mayor's Office of Criminal Justice advises the Mayor on public safety strategy and, together with partners inside and outside of government, develops and implements policies aimed at reducing crime, reducing unnecessary arrests and incarceration, promoting fairness, and building strong and safe neighborhoods.

Two of the issues we are here to discuss today –a bill to ensure individuals in DOC custody are transported to all court appearances regardless of bail status and a bill that will eliminate the 3% fee taken from individual's bail when they plead or are found guilty – should be seen in New York City's larger context. New York City's use of jail has declined precipitously in the last several decades. While jail and prison populations increased 11% between 1996 and 2013 in the rest of the country, New York City's jail population fell by 53%. Low-level enforcement has also reduced dramatically – the number of summonses issued citywide has dropped 34% since 2009, for example. This sharp reduction has happened alongside a 60% decline in major crime, unique proof that jurisdictions can both be safer and reduce reliance on jail.

The current challenge – one that the Mayor's office has confronted head on – is to solve these difficult system problems that remain. Working to solve these problems will allow New York City both to continue to be the safest big city in the country and to reduce unnecessary detention even further.

Justice Reboot/Case Processing:

Close coordination between DOC and the State Court system is critical to ensure that people who do go to jail during the pendency of their cases do not remain there unnecessarily. Justice Reboot, a system-wide initiative to reduce case delay launched by the City and State Courts in April 2015, has proven to be an effective vehicle for coordinating across agencies and achieving significant systemic gains.

Every part of the criminal justice system is necessary to produce change. To reduce case delay in an enduring way, it is critical that we recognize that judges, prosecutors, defense lawyers, witnesses, correctional officers, juries and grand juries of citizens all have a role in determining how quickly or not a case will move. Few of these entities answer to the same boss. The continual challenge in cutting case delay, then, will be ensuring that representatives from each piece of the system continue to see value in working together to improve case processing times, despite sometimes differing political interests, competing budget priorities, and the nature of an adversarial justice system.

Critically, then, Justice Reboot is built around the recognition that efforts to reduce case delay require the engagement of all the District Attorneys, the defense bar, as well as Mayoral agencies, among others. To date, the City has addressed this issue through productive, regular oversight and accountability meetings of a committee representing each part of the system, with reform ideas developed in partnership. The Committee met initially in mid-April and continues to meet regularly to review progress towards goals and make implementation decisions on the borough teams' recommendations.

The administration supports the goals of Intro. 1260. Ensuring individuals regardless of bail status arrive for all of their court appearances is a key element of ensuring that cases are resolved without unnecessary delay. As such, the administration has already begun discussions with the Office of Court Administration in order to determine what can be done to achieve the goals of Intro. 1260. However, our office has concerns about any legislation that would mandate specific forms of coordination with the State Courts, an entity that is not within the City's control. Given both this constraint as well as the success we have seen using the Justice Reboot convening model, we propose that the aims of Intro. 1260 be achieved through non-legislative means.

Waiving 3% Bail Fee:

Last October, the City launched the Bail Lab aimed at reducing reliance on money bail and promoting public safety. The Bail Lab builds upon New York City's history of leading the nation in pre-trial justice reform. Currently, New York City is a national leader in the percentage of defendants who wait for trial at home without conditions like supervision or money bail. Even though New York City sets bail amounts that are appreciably lower than the national average, only 10% of people are able to pay bail at arraignment. Another 30% make bail after arraignment, most within one week. This suggests that these defendants may be able to come up with the money to pay bail, but that inefficiencies in the bail payment process could be leading to delays that result in unnecessary time behind bars. To identify bottlenecks in the bail payment process, the City partnered with the Center for Court Innovation to comprehensively map physical and procedural obstacles to paying bail.

Last May, the City announced several new tools that will make it easier for defendants to post bail. The resources – developed as part of the Bail Lab – include ATMs in all of New York City's

criminal courthouses and an easy-to-understand guide to paying bail that describes how to send bail money to inmates and obtain a bail refund.

Since then, the City has made significant gains in improving the bail payment process. The City is going to create a remote bail payment system, accessible by internet, phone and kiosk. This system will allow family and friends to bail out individuals without making the lengthy and burdensome trip to DOC facilities and will reduce unnecessary incarceration. The City has also created an alert to notify defense attorneys and court staff when a defendant has the potential to be detained solely on $1 bail, which is an administrative hold that the Court system uses in order to ensure defendants receive credit for the time they are detained on multiple cases. This notification will ensure that court personnel and defense attorneys are aware of the hold and that the $1 bail can be posted before an individual is needlessly detained. In addition to these reforms, the City enthusiastically supports eliminating the 3% fee taken from an individual's bail when they plead or are found guilty and is glad that the administration and the Council have worked together to develop the bill we are discussing today. The administration therefore is in favor of Intro. 1261 as it furthers the City's bail payment reforms.

We appreciate the City Council's interest and look forward to continuing to work together.

Thank you for the opportunity to testify here today. I would be happy to answer any questions.

NEW YORK CITY COUNCIL
COMMITTEE ON FIRE AND CRIMINAL JUSTICE SERVICES

TESTIMONY OF MARK G. PETERS
COMMISSIONER, NEW YORK CITY DEPARTMENT OF INVESTIGATION

CONCERNING PROPOSED INT 1228-A

SEPTEMBER 26, 2016

Good afternoon Speaker Mark-Viverito, Chairperson Crowley and members of the Committee on Fire and Criminal Justice. I am Mark Peters, Commissioner of the NYC Department of Investigation. Thank you for inviting me here to comment on City Council's proposed bill, Intro 1228-A, a "Local Law to amend the New York city charter, in relation to the investigating, reviewing, studying, and auditing of and making of recommendations relating to the operations, policies, programs and practices of the department of correction by the commissioner of the department of investigation."

I appreciate City Council's concern over the important issue of Rikers Island reform. This issue has been a key focus area for me since I started as DOI Commissioner in 2014. As you know, under current law, DOI possesses the authority to investigate issues of corruption, waste, fraud and abuse in the City's jails. Chapter 34 of the City Charter states that the DOI commissioner "is authorized and empowered to make any study or investigation which in his opinion may be in the best interests of the city, including but not limited to investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency." Executive Order 16, endorsed by every Mayor since Ed Koch, grants DOI unrestricted access to City documents and employees to carry out these investigations. These broad provisions establish and mandate DOI's role as the independent inspector general for all City agencies and operations.

In the context of our oversight of the Department of Correction, the work of DOI's DOC IG unit has led to the arrest of thirty-four DOC staff since 2014, nearly two dozen staff disciplined and more than three dozen inmates arrested, all on various charges including assault and smuggling contraband. Those arrests included one correction officer who smuggled seven scalpel blades in to be used as weapons, and most recently

a correction officer who sexually assaulted a female inmate. Several more arrests are expected by year end.

Under the current law, our work looks at both broad systemic issues, and individual criminal cases spanning use of force and violence, sexual assault, and contraband. Where appropriate, we issue reports which detail our findings and issue specific recommendations to the Department of Correction for further action and reform. Since 2014, we have issued three such reports which have led to implementation of reforms, including improved recruitment procedures, the introduction of drug sniffing dogs and new enhanced security screening procedures.

Once again, I appreciate and support the Council's intent to focus energy and attention on the issue of jail safety and human rights. I also appreciate the Council's confidence in DOI's work to date and role as the City's independent Inspector General that has led the Council to ask DOI to carry out further work on these issues. My understanding of the intent and purpose of this bill is to not affect or be duplicative of the current robust work of DOI in our oversight of the Department of Correction. The work DOI undertakes to comply with 1228-A will not impede or interfere with DOI's ongoing investigatory functions and will produce reports of a type separate and apart from that work or the work being done by others under the Nunez settlement. That is to say, the reporting requirements stipulated in the bill apply to the new work the office will undertake pursuant to the bill.

This new unit must be fully funded and supported by both the Mayor and City Council in order to carry out its requirements, and the work contemplated by the bill cannot begin until such funding occurs. In order to accommodate council's directive to produce system-wide reports and studies on an ongoing basis, in addition to an annual report, DOI

would require an additional 25 staff, and accompanying OTPS expenses, to bring on auditors, policy experts and analysts of the type contemplated in this bill.

With these understandings, which have been discussed with Council staff, DOI is comfortable executing this bill. Again I want to thank the Speaker both for her understanding of DOI's concerns, for her confidence in our experience as investigators, and for her ongoing attention to this issue.

Thank you again for the opportunity to address the committee, and I'd be happy to take questions at this time.

Statement before the
New York City Council

Committee on Fire and Criminal Justice Services
Elizabeth Crowley, Chairperson

By Frank Doka, Deputy Commissioner
NYC Department of Correction

September 26, 2016

Good afternoon, Speaker Mark-Viverito, Chair Crowley and members of the Fire and Criminal Justice Services committee. I am Frank Doka, Deputy Commissioner of Financial, Facility, and Fleet Administration at the New York City Department of Correction. I am here today to speak about the proposed Intro. 1152, which would limit the fee that money transfer agents would be permitted to charge customers who use their services to transfer funds into an inmate's personal account who is in DOC custody.

Since 2007, the Department has had a license agreement, procured via a Request for Expression of Interest solicitation, with Western Union and JPay to provide money transfer services. The services provided by these vendors expanded the options available to the public for making deposits into an inmate account, to include: online, by phone, kiosk, or walk-in service at the vendor's establishment.

Prior to 2007, the only avenues available to deposit money into an inmate's account were to travel to any one of the borough jail locations or to the central cashier's office on Rikers Island located in the Visit Center, or to send a money order via US Mail. These options are still available and there is no service fee.

I would like to take a moment to briefly describe the process and how it operates. Each inmate in the Department's custody is provided a personal account to use for all their financial transactions. Family and friends may deposit money into an inmate's account and inmates may transfer funds out. The addition of the services provided by JPay and Western Union, enable family and friends to make deposits in a manner that is simple, convenient, and saves time regardless of where they may reside. These options eliminate the need to travel to a DOC facility solely for the purpose of making a deposit. Family and friends can select from any one of the following options:

- By Phone – deposits can be made by calling the participating money transfer agents toll-free numbers and using a credit or debit card to deposit the chosen amount. The City's 311 service maintains contact information for money transfer agents which is given to callers as needed.
- Via the Internet – money transfers can be made by going directly to a transfer agent's website. Additionally, DOC's website contains a link to the transfer agent's website. A credit or debit card would be used to complete the transaction.
- Walk-ins at the Money Transfer Agent offices – deposits can be made in person at any money transfer agent office by using a credit or debit card, or cash.
- By Kiosk – located at DOC cashier offices, allows for deposits to be made by credit or debit card or cash.
- At a DOC Facility – cash deposits can be made free of charge at the cashier window, regardless of whether the inmate is housed in that particular facility. Deposits can be made 24/7 at the Rikers Island central cashier, or until 8:00 p.m. at the borough facility cashiers.
- Mail In Deposits – deposits received by mail in the form of a money order are processed at the cashier office.

In Fiscal Year 2016, there were approximately 360,000 deposits made by the public, of which 29% were made via walk-ins at agent locations, 26% via the internet, 22% conducted over the phone, 15% made at DOC cashier offices, 7% through kiosks, and 1% by mail.

The average deposit amount received via phone, internet, and walk-in at an agent's location, was $48 per transaction. The fee charged by the vendor for each deposit made is based on a set range established by the agents based on the deposit amount. In Fiscal Year 2016, the average transaction fee was approximately $7.15. A flat fee of $2.50 per transaction is charged for kiosk deposits. Deposits made at the cashier window in DOC facilities or by mail are free of charge.

In Fiscal Year 2016, it is estimated that the revenue collected by these vendors was approximately $2 million. The Department conducted a review to compare internet and phone transaction fees charged by transfer agents for deposits made into an inmate's account in DOC custody to fees charged to inmates in other correctional institutions. The review results revealed that the rates DOC vendors charge are comparable and in some instances lower than fees charged at other correctional institutions.

If Intro. 1152 limits the fee these vendors can charge to 1%, or a maximum of $5 per deposit, based on the average amount and number of deposits made in Fiscal Year 2016, the estimated annual revenue collected by the vendors would have been approximately $147,000 – a revenue loss to the vendor of 93%. Since there is a $300 cap per deposit transaction on most of these services, the $5 maximum fee will most likely never be reached.

This legislation would not have a fiscal impact on the Department, as the Department does not collect any deposit fees. However, it may have a negative effect on money transfer agents who may determine that there is no financial benefit to providing this service. The most significant consequence of this bill would be to the inmate and the inmate's family and friends who would no longer be afforded the convenience of remotely transferring funds. Family members or friends who want to make a deposit would be required to travel to a DOC facility in person or send a money order by mail. This option would be especially difficult and costly for those individuals living out of the city or out of state. We believe that the Department's current deposit system is in line with Council's position in ensuring that family and friends have options and convenience in transferring funds to individuals in DOC custody. The current proposed legislation, as drafted, could undermine the positive changes established since 2007.

We welcome the opportunity to continue the dialogue with the goal of maintaining the current options and conveniences while addressing Council's core concerns.

Thank you for the opportunity to testify today. I am happy to answer any questions that you may have.

Statement before the
New York City Council

Committee on Fire and Criminal Justice Services
Elizabeth Crowley, Chairperson

By Timothy Farrell, Deputy Commissioner
NYC Department of Correction

September 26, 2016

Good afternoon, Speaker Mark-Viverito, Chair Crowley and members of the Fire and Criminal Justice Services committee. I am Timothy Farrell, Deputy Commissioner of Custody Management at the New York City Department of Correction. I am here today to speak about the proposed Intro. 1262, which would prohibit the Department from producing inmates to court appearances in departmental uniforms in all cases.

The Department not only recognizes the right of all defendants to a fair trial, it appreciates defendant's concern that appearing in a jail uniform may negatively influence the outcome of a criminal jury trial. We are also cognizant of the concern that inmates released directly from court wearing a correctional uniform can be stigmatizing. For all jury appearances, including appearances before grand juries, trial appearances, and sentencings, inmates are provided with the personal clothing from their property.

Recently, the Department implemented an institutional uniform plan. As part of that plan we accounted for situations that necessitated an inmate's access to personal clothing. To that end, the Department operationalized procedures for the retrieval of an inmate's clothing in the facility prior to court production. We began establishing clothing boxes within each court facility to enable inmates in uniforms being released directly from court to change into street clothing. Currently, we are making changes to better supply the necessary clothing for this purpose. An inmate may also elect to simply leave in the uniform. It is important to note, that in selecting the uniform design, the Department contemplated that an inmate may leave our custody in the uniform and chose a generic hospital scrub style garb free of any correctional identifiers.

The Department's decision to transition to an institutional uniform plan was directly aligned with our overall 14-point anti-violence agenda. More specifically it was based on a fundamental understanding that there was a correlation between an inmate's attire and the entry and concealment of contraband in our facilities. Contraband, particularly weapon contraband, is an ongoing threat to the safety of staff, inmates, volunteers, and visitors alike. Utilization of uniforms has proven successful in reducing violence and promoting safety.

Now, upon entering DOC custody all individuals are provided with uniforms for the duration of their incarceration. As I previously stated, uniforms resemble medical scrubs and contain no departmental identifiers. These uniforms facilitate search procedures as officers are familiar with the design and better able to assess the limited locations where an item could be concealed. In contrast, civilian attire may have multiple pockets or hidden compartments that may be used to hide contraband. The adoption of uniforms also eliminated the need for inmates to receive clothing which served to further limit the introduction of contraband, as contraband has the ability to be smuggled in clothing sent to correctional facilities.

The use of uniforms is not merely a means of limiting the entry of contraband, it is also a tool in its discovery. In 2016, in comparison to last year, there has been a 63 percent increase in contraband finds. A number of factors have contributed to this increase; uniforms are one of those factors. The establishment of a uniform system further enhances facility safety and security by providing immediate visual distinctions for identification purposes. Officers are able to instantly determine who is an inmate verses other individuals in the area.

As I stated earlier, coupled with the adoption of the uniform plan the Department instituted procedures for the provision of civilian clothing for applicable court appearances. The Department has a system for retrieving personal clothing. Every evening, in preparation for the following day's court production, custody management provides each facility with a list of all inmates who must be produced to court the next day, with a notation for inmates who must be offered personal clothing. The inmates' personal clothing is kept in their sealed property bags in the property storage units. Uniform staff must pull the bags for each inmate who will be offered personal clothing. When the inmates are being produced for court in the morning, they are asked if they would like their personal clothing. For inmates who wish to wear personal clothing, uniform staff open the sealed property bag, review the contents with the inmate to ensure that the contents match the bag's inventory receipt, allow the inmate to remove the needed clothing, re-

inventory the bag with a new receipt, and reseal it. The process is repeated when the inmate returns at the end of the day and the clothing is returned to the bag.

Currently, on average, 70 to 100 inmates are offered the opportunity to wear civilian clothing at a court appearance on any given day. The clothing retrieval protocols I just described are conducted for each of these inmates and in its totality is a time consuming but essential practice. To provide further context, on an average day, approximately 1000 inmates are transported to court for a range of court appearances. Jury appearances represent a small percentage, about 3 to 5 percent of the average daily court production. DOC current operational practices distinguishes between routine court appearances, such as scheduled motions, that don't involve appearing before a jury verses those that may; including appearances before grand juries, trial appearances, and sentencings. Enactment of this legislation, as currently drafted, would require the Department to complete this process on a daily basis for an estimated additional 900-1000 inmates who will not be appearing before a jury.

We share the Council's interests in ensuring that all inmates receive a fair trial and have actively instituted necessary safeguards. The Department must also balance safety and security needs while optimizing available resources. As currently drafted, this legislation would be unduly burdensome and potentially detrimental to the court production process. We welcome the opportunity to continue our dialogue with the Council towards addressing the stated concerns within an operationally feasible construct.

Thank you for the opportunity to testify today. I am happy to answer any questions that you may have.

COBA PRESIDENT ELIAS HUSAMUDEEN CITY COUNCIL TESTIMONY BEFORE THE FIRE & CRIMINAL JUSTICE SERVICES COMMITTEE

Elizabeth S. Crowley
Chairwoman

September 26, 2016

Good Afternoon Chairwoman Crowley and members of the Committee on Fire and Criminal Justice.

My name is Elias Husamudeen and I am the president of the Correction Officers' Benevolent Association, which is the second-largest law enforcement union in the City of New York. Our members, New York's Boldest, are responsible for the care, custody, and control of the inmate population in the nation's second-largest municipal jail system.

I thank you for the opportunity to address this committee concerning the legislation that is being introduced today. With regards to Intro 1260, which would amend the administrative code of the City of New York, in relation to transporting inmates in the custody of the department of correction to all criminal court appearances, the COBA's position is consistent with our longstanding commitment to execute the safe transportation of inmates to their court appearances. However, there is one caveat. If our responsibilities are expanded under this bill, then it is only logical to expand the number of correction officers who would now be responsible for transporting many more inmates to a significantly greater number of court appearances.

I know that the members of this committee understand the security implications that are involved when transporting anywhere between 900-1,100 inmates daily back and forth through the Five Boroughs to the courts and back to their facilities. There is no room for error and correction officers perform this essential service every single day without any incidents. The criminal justice system depends on this seamless process in order to adjudicate the numerous court cases that are processed daily. To add a new requirement that would only increase the number of trips our officers would be required to make would have a major impact on the criminal justice system.

We have no issue making more trips with more inmates. However, it is incumbent upon this Council to hold the Department of Correction responsible for increasing the staffing levels that would be required to meet these new challenges. We cannot do more with less and our officers are already stretched too thin as it is.

Before this hearing ends, I would ask each of you to pledge that you will not pass this bill without ensuring that the men and women at the front lines have the resources they need to take on these additional challenges.

I also want to comment on Intro 1262 which would amend the administrative code of the City of New York, in relation to prohibiting the department of correction from producing inmates to court appearances in departmental uniforms. We recently met with Council Speaker Melissa Mark-Viverito and Public Advocate Tish James to express a number of our security concerns regarding this proposal and we are grateful for their willingness to understand the basis for these concerns.

We have not, as yet, seen a detailed plan that would demonstrate how producing inmates in civilian clothes would prevent the concealment of weapons and contraband which we already struggle with when inmates are behind bars. In addition, if an inmate is presented before a Judge without a Jury present, it doesn't matter whether the inmate is in a DOC uniform or not. Furthermore, it is important for the Council and the public to be reminded precisely why inmates are transported wearing DOC uniforms in the first place. If, God forbids, there is an accident and a department vehicle is compromised, enabling dozens of inmates to escape and pour out into the streets, wearing civilian clothes, they would be able to quickly assimilate and avoid capture. We need to maintain optimal security protocols at all times if we are asked to keep the public safe at all times.

Our members' safety, as well as the public's safety must be paramount and this proposed legislation, as it currently stands, is deeply troubling. We urge the Committee to oppose this measure until a more detailed plan, taking into account these security concerns is provided.

In closing, I want this Committee to address a crisis that is unfolding throughout the Department and which impacts hundreds of our members. More and more of our members, over 4,900 who are female and many of whom are single mothers, are being ordered to work triple overtime shifts which is unprecedented in the history of the Department and is also a direct threat to safety and security in the jails.

How can this agency ask correction officers to be away from their children for 72 hours straight without proper rest? How can this agency force law enforcement officers to miss meals during these punitive shifts? How does the Department even justify mandating triple overtime shifts when the inmate population has actually declined from last year? We are aware that DOC managers were here today and we ask this committee to pose these questions to them as a written follow up.

Just this past August, 335 correction officers were forced to work triple tours because of the numerous new programs the DOC has adopted. For example, in the George R. Vierno Center, the **Secured Unit Program** that began in July, there are only 7 inmates but yet there are 60 correction officers assigned to monitor them. In The Robert N. Davoren Center there is the **Transition Restore Unit Program** that requires 50-60 correction officers to monitor less than 10 inmates. Similar programs such as **The Accelerated Program Unit, The Program Accelerated Clinical Effectiveness Unit and the Clinical Alternative to Punitive Segregation Program exists in The Anna M. Kross Center.** And OBCC has **The Enhanced Supervision Housing Program**. Because of the implementation of programs such as these, without proper staffing levels, we are firmly in support of Intro 1064 which would require the department to evaluate the effectiveness of the programs it utilizes. One would think that given the millions of dollars the Council allocates to the department that a robust mechanism to evaluate its programs would already exist. This should already be in place. The City Council should move swiftly to address this immediately.

The COBA will continue to voice our members' concerns on these vital issues and we will work vigorously to assure that their safety and security is at the forefront of any legislation that this Council passes. It is outrageous to our members and their

families that in this public dialogue about jail reform it always appears that the inmate population is the protected class, while the men and women on the front lines, NYC correction officers, are the forgotten class. We are here today to make sure that 9,000 men and women who patrol the toughest precincts in NYC, are not forgotten.

With that said, at this time, I am happy to answer any questions you may have.

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Testimony at City Council Hearing on

Intros 1262, 1260, 899-A, and 1228-A

Re: NYC Department of Correction

Tanya Krupat

Director

Osborne Center for Justice Policy and Practice

The Osborne Association

Good afternoon. My name is Tanya Krupat and I am the Director of the Osborne Association's Center for Justice Policy and Practice. I would like to commend the City Council for its attention to the issues raised in these bills. My remarks focus on four of the nine bills. My perspective comes from my role leading the NY Initiative on Children of Incarcerated Parents, and as a member of the DOC Visiting Workgroup whose goal is to improve the visitor experience on Rikers Island. I also spent 7 years working at ACS visiting Rikers every week bringing children in foster care to see their incarcerated mothers and fathers. These experiences inform my testimony today.

Intro 1262

Intro 1262 is very important but should be revised with two additions: 1) this bill should apply to ALL court appearances, including those in Family Court and, and not only trial appearances (the bill does not specify which type of court appearances and in practice, this should apply to all kinds of court appearances); and, 2) that it is the obligation of the Department to provide civilian clothing to those in its custody who have no personal clothing. Intro 1262 could be revised to include "When the incarcerated person has no personal clothing available, the Department shall issue them a sweatshirt, shirt, and pants that the individual does not need to return if they are released that day from court." Additionally, DOC should consider making it easier for families to deliver clothing in advance of court dates through packages or clothing drop-off procedures.

Appearing in Court in clothing (not a City-issued DOC jumpsuit) is so important for many reasons. The odds are already stacked against those awaiting trial on Rikers with research showing worse outcomes for those fighting their cases from inside of jail, than those fighting from the outside/ in the community. Family members and children attend court hearings and seeing their loved one or parent in a DOC uniform- especially when this is pre-trial- is painful and unfair. It also can serve to reduce the legitimacy of the law and the meaning of "innocent until proven guilty" for children, families, and communities. In cases where individuals are released directly from Court, no one should have to walk into the streets of NYC in a DOC jumpsuit. And those without personal clothing should not be additionally punished and prejudicially treated in their court cases because they arrive looking the part of someone who is in jail. Intro 1262- with these additional revisions- is very important to restore fairness and protect the dignity of those detained pre-trial and those facing ongoing Court hearings during their incarceration.

Intro 1260

Intro 1260 requires DOC to transport "all inmates to their criminal court appearances," should be revised to include Family Court hearings as well. It is critical that incarcerated parents be transported to their Family Court hearings (unless there is a reason they themselves, do not want to be). It is the Department's responsibility to ensure that parents in their custody are transported to their Family Court hearings as well as their criminal court hearings.

Intro 899A- Nursery Oversight

With regard to the nursery, we agree that someone with expertise in early childhood development should be involved in decision-making about nursery acceptance and recommend the bill be revised to ensure that this perspective is part of the original decision-making process, not only appeals. The knowledge, background, and training needed to decide whether placement in the nursery is in the child's best interest falls outside of the training and expertise of DOC staff, including all the way up to the Commissioner. The Nursery Manager should be part of the decision-making and appeals process, and the Council should specify if the Early Childhood Development expert will come from another City agency, or a community-based organization. We recommend that this be someone who is outside of ACS. ACS and DOC have (apparently) signed an MOU to guide nursery decision-making for mothers with child welfare cases. However, the broader perspective of a child development specialist outside the child welfare system should be sought and incorporated. We recommend someone from the Zero to Three Network, and specifically, Susan Chinitz (former Director of the Albert Einstein Early Childhood Center in the Bronx) or Dorothy Henderson (JBFCS and Zero to Three). Their bios are attached to this testimony. Hour Children should also be sought for input into the drafting of this bill language as they are intimately familiar with the workings of the nursery.

Finally, I wanted to comment on Intro 1228-A.

Intro 1228-A

Increasing accountability and transparency of the DOC is the laudable and necessary goal of 1228-A which requires a complaint and investigative office within DOC, and requires DOC to submit reports and share information with the Council and the Mayor, and the Police Department in certain situations, among other things. I did not see the Board of Corrections mentioned anywhere in here. What is their role, given that they are the city oversight agency of the DOC? The BOC has a mechanism for filing complaints on their website:

"You can now file a complaint online related to conditions of confinement, access to health care, or access to mental health care in the New York City jails."

Created in 1957 and expanded in 1977, BOC's mission is to:

The City Charter mandates the Board's five functions:

- Establish and ensure compliance with minimum standards "for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction of the Department of Correction"
- Investigate any matter within the jurisdiction of the Department
- Review grievances from inmates and staff
- Evaluate the performance of the NYC Department of Correction (DOC)
- Make recommendations on areas of key correctional planning.

In testimony in front of this Committee on May 9, 2016, BOC Executive Director shared that "FY17 budget authorizes a [BOC] headcount of 38 and an overall budget of approximately $3 million." This is an increased staff and annual budget, presumably strengthening the ability to monitor performance and practices within DOC. It was striking that Intro 1228-A did not mention the BOC. We ask that the Council consider the City's investment in the BOC and if its role is to be meaningful (and I hope this Committee and this Council can ensure that it is), that it be included and incorporated into this and other bills being considered today.

Thank you for your time and careful consideration.

Re: Intro 899-A

Early Childhood Experts to Consider for Guidance re: Rikers Nursery Decision-making

Susan Chinitz is a psychologist with specialties in infant mental health and developmental disabilities in infancy and early childhood. She is a Professor of Clinical Pediatrics and the Patricia T. and Charles S. Raizen Distinguished Scholar in Pediatrics at the Albert Einstein College of Medicine, and is the Director of the Early Childhood Center and the Center for Babies, Toddlers and Families at the Children's Evaluation and Rehabilitation Center at Einstein. One of the outreach projects of the Early Childhood Center, Dr. Chinitz directs an Infant-Parent Intervention project that is affiliated with the Bronx Family Court.

Dorothy Henderson, PhD, LCSW is the Director of the Court Team for Babies Project & Early Childhood Trauma Services at Jewish Board and the Director of the Trauma Treatment & Training Project: Birth to Three at JBFCS. She provides direct treatment to young children utilizing Child-Parent Psychotherapy (CPP) in the out-patient clinic at the JBFCS Child Development Center in Central Harlem and she is also the Associate Director of the Infant-Parent Study Center of the Institute for Infants, Children & Families of the JCBFCS. She developed the Judicial and Child Welfare Consultation Project to train judges, lawyers and child welfare personnel in early childhood relationship development, attachment, attachment disorders and early childhood trauma to help inform their important decisions about the lives of young children.

Corrections Services

JPay Inc.
Testimony Opposing Proposed Int. 1152-A

Good afternoon, I am Greg Levine, Executive Vice President of JPay Inc. We are one of the two money transfer vendors (Western Union being the other) that collect and transmit deposits to New York City Department of Correction ("DOC") inmates from their family and friends. We also provide booking kiosks for the DOC to process an inmate's funds at intake. Our partnership with the DOC began in 2006 and we have always enjoyed an excellent working relationship.

Thank you for this opportunity to testify. The current parameters set by Int. 1152-A would prevent our company from continuing to provide money transfer services to the DOC. The fees proposed by this legislation (1% of the deposit amount, not to exceed $5.00 per payment) are simply too low for us to continue to operate in New York City. The proposed rates are well below JPay's costs to provide the services.

JPay provides a variety of payment options for friends and family to send money to inmate trust accounts. Friends and family can send money through the internet/JPay's mobile app, telephone, lobby kiosks and through MoneyGram. We aggregate all payments collected throughout the day and send the DOC a data file every hour in order to instantly credit these payments to inmate accounts. This automation has enabled the DOC to reduce the number of onsite cash windows needed and stop accepting money orders in the mail, which previously caused long cashier lines and increased DOC administrative/accounting staff workloads.

The following credit/debit fees charged in New York City are in line with the money transfer fees JPay charges in the over 30 other county jails and 29 state DOCs throughout the country. Nationwide, JPay transmits payments to nearly 1.9 million inmates, and our fees are nearly identical to those of Western Union:

Rates		
Online		
$ 0.00	**- 20.00**	**$3.95**
$ 20.01	**- 100.00**	**$6.95**
$ 100.01	**- 200.00**	**$8.95**
$ 200.01	**- 300.00**	**$10.95**
By Phone		
$ 0.00	**- 20.00**	**$4.95**
$ 20.01	**- 100.00**	**$7.95**
$ 100.01	**- 200.00**	**$9.95**
$ 200.01	**- 300.00**	**$11.95**

We are unable to lower these fees due to the following expenses associated with processing payments:

- **Credit card processing fees -** The fee assessed by merchant processers to process credit card payments is over 2%. JPay cannot recoup the costs associated with processing these transactions if we are not permitted to charge more than 1% percent of the deposit amount, as Int. 1152-A currently proposes.

- **Bank fees –** JPay bears the costs of maintaining the bank accounts which process payments and are used to send funds to the DOC.

- **Money transmitter licensing fees –** The New York Department of Financial Services (as well as every other state in which JPay has money transfer operations) assesses large fees against JPay and requires us to maintain surety bonds in significant amounts at our sole expense.

- **Lobby/booking kiosk fees –** JPay operates 8 lobby kiosks in New York City, which collect payments from visitors onsite. JPay is responsible for all of the wiring and maintenance costs associated with these operations, including the courier fees for cash pickups at these kiosks several times a week.

JPay respectfully requests that the Council takes these points into consideration before deciding to vote on a law, which if passed as proposed, would prevent JPay from operating in New York City, cause hardship to the DOC and potentially undermine the ability of friends and family members from sending funds to their incarcerated loved ones in a timely manner. Thank you for the opportunity to testify on this important issue and I would be happy to take any questions or provide additional information.

BROOKLYN DEFENDER SERVICES

TESTIMONY OF:

Kelsey DeAvila – Jail Services Social Worker

BROOKLYN DEFENDER SERVICES

Presented before
The New York City Council
Committee on Fire and Criminal Justice Services
Hearing on
Proposed Legislation
Int. 0899-2015, Int. 1014-2015, Int. 1064-2016, Int. 1144-2016, Int. 1152-2016A, Int. 1228-2016, Int. 1260-2016, Int. 1261-2016, and Int. 1262-2016

September 26, 2015

My name is Kelsey DeAvila. I am the Jail Services Social Worker at Brooklyn Defender Services (BDS). BDS provides innovative, multi-disciplinary, and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for over 40,000 clients in Brooklyn every year. Approximately 6,000 of our clients will pass through city custody each year, most of who are incarcerated pretrial because prosecutors ask for and judges set bail in amounts that they cannot afford.

The legislation before this Committee today is integral to reforming our jail system. Each of the bills seeks to address injustices our clients experience while incarcerated in city custody. We appreciate the initiative the Speaker, the Council, and the Public Advocate have taken in introducing these bills and thank chair Elizabeth Crowley for calling this hearing. We previously submitted testimony regarding introductions **0899-2015, 1014-2015, 1064-2016** and **1144-2016**. We refer the Council to our previous testimony regarding those pieces of legislation and wish to extend our strong support for their adoption, again.

We also support each piece of legislation under consideration by hearing today, and will share the experiences of our clients to illustrate why these bills are necessary to protect the dignity of our clients and their families. We will offer a few suggested amendments which we think will aid the bills in realizing their intent.

Intro 1152-A re: Maximum fee allowed when transferring money to a city inmate

BDS supports this introduction from the Public Advocate to cap the fees charged by private companies when community members send money to their loved ones in city jails. It is disturbing that the same poor families that cannot afford to buy their loved one's freedom are forced to pay exorbitant fees to JPay and Western Union in order to send the little money they can afford to support their loved one in city jails. Commissary funds sent from the outside are essential to our clients' lives while in custody. These funds are used to pay for phone calls that maintain community ties, essential toiletries and hygiene products, as well as food to supplement what is universally-described as inadequate and often inedible meals.

A family member's incarceration often means loss of income for the family at large, and a drain on resources for shared responsibilities like childcare. In this context, any money that is sent to an incarcerated client should be viewed as a tremendous hardship. That this hardship is compounded by fees that can cut in half the amount of money the client ultimately receives is simply unacceptable.

Recommendations related to Int. 1152-A
This bill is an important first step towards protecting families of people accused of crimes, but the Council can go even further. We urge the council to take similar action to cap, or better yet, eliminate, the myriad other fees poor New Yorkers are saddled with while in custody.

1. **Eliminate or cap fees on inmate phone calls**

Making a fifteen-minute call home costs people in jail several dollars - the bulk of which is paid to Securus, a private company operating on the same dubious premise as JPay - to profit on the detention our city's poorest residents. It is unclear how many millions of dollars Securus makes every year, though we know that the City anticipates $6 million per year from "inmate telephone fees."[1]

2. **Lower commissary prices**

Similarly, basic goods available through commissary are subject to steep mark-ups collected by private vendors. A recent federal lawsuit out of Oklahoma that has remarkably survived to the discovery stage has shed significantly light on the unconscionable markups that prisoners face to obtain necessary commissary goods.[2]

3. **Eliminate jailhouse fines and fees**

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[1] New York City Office of Management and Budget, *November 2015 Financial Plan: Revenue 2016-2019*, p. 47 (published Nov. 12, 2015), available at http://www.nyc.gov/html/omb/downloads/pdf/nov15_rfpd.pdf.
[2] Casey Tolan, "How one inmate discovered his private prison was ripping him off – and took his warden to court," *Fusion*, Sept. 19, 2016, available at http://fusion.net/story/348070/geo-group-lawton-commissary-michael-leatherwood-lawsuit/.

The Department of Correction levees steep fines for basic infractions in the jail for things like a dirty cell or talking back to staff. These fees are charged to incarcerated people's accounts, depriving funds otherwise used to maintain contact with family or basic hygiene.

It's essential for the City to look at **all** the fees people incarcerated in City Jails are forced to pay during the course of their confinement. It is our position that many of these services should be the obligation of the City. People should not be forced to rely on a private contractor to meet the essentials of life while incarcerated.

Intro 1261 re: Authorizing the waiver of fees in the collection of cash bail

For the same reasons, BDS supports the Speaker's legislation which would allow for a waiver of fees that families pay on top of cash bail. For most families, paying bail is a significant financial hardship. The three percent surcharge on cash bail comes as a surprise to families who have scraped together just enough to buy their loved-one's freedom and the waiver will come as a welcome relief.

Recommendations about Int. 1261

1. **We urge the Council to consider requiring a waiver of cash bail fees in all cases, rather than leaving it discretionary.**

2. **The City should create a campaign to educate the public about claiming cash bail.**

The City's unclaimed funds accounts consistently note unclaimed bail money as a significant contributor. This is because many people do not know that they can recover cash bail money at all at the end of the case.[3] The City could rectify this by increasing the availability of know your rights literature in the court houses and by reminding people of their right to cash bail monies at the conclusion of each case.

3. **The Council should continue to push judges and prosecutors to reduce bail amounts unlawfully used to detain people pre-trial**

Ultimately the City could also be playing a larger role in reducing bail amounts used by judges and prosecutors to preventatively detain people before trial. Reductions in bail amounts would dampen the financial impact of this system.

4. **The City should investigate its relationship with commercial bail bonds**

Additionally, and as it relates to the bills discussed above, the City should consider the role it plays in facilitating the use of Commercial Bail Bonds, private companies like J-Pay and Securus, that profit off the misery of incarceration. The bail bond process ensures that hundreds of thousands of dollars in non-refundable fees and premiums move from the communities that can least afford it, into the hands of private, for-profit companies backed by some of the largest insurance companies in the State.

Intro 1228-A re: Investigating, reviewing, studying and auditing of and making of recommendations relating to the operations, policies, programs and practices of the DOC by the commissioner of the DOI

[3] To learn more about cash bail refunds, visit https://www1.nyc.gov/site/finance/sheriff-courts/courts-cash-bail-refunds.page.

BDS supports the Speaker's introduction to codify the role of the Department of Investigation (DOI) in city jails. An independent rule-making body - the Board of Correction - and more independent investigations, should play an important role in moving our jails toward more humane and just conditions. Although DOI already has the authority to investigate criminal or corrupt activities by DOC staff, the Department of Corrections has been left to police itself in too many instances.

Client Stories
In one case, a BDS client was raped by a Corrections Officer and had retained physical evidence of the attack. Despite the seriousness of the allegation and the evidence showing that the allegation was credible, within 48 hours of the report, DOI had authorized DOC ID to conduct the investigation. DOI had not interviewed the victim or the officer, nor had they made an effort to collect the physical evidence.

DOC ID has a disturbing track record in conducting these investigations - none of the more than more than 60 alleged sexual assaults by staff were referred for prosecution in 2014.[4] We hope that clear guidance from the Council delineating a broad but specified range of investigations to be conducted by DOI will prevent such miscarriages of justice in the future.

Recommendations related to Int. 1228-A
In general terms, we believe DOI should be required and adequately funded to conduct investigations in any incident where an incarcerated person is injured, alleges sex abuse, or when correctional staff break the law. The Board of Corrections' Minimum Standards are city law governing correctional policies and practices in New York City. When the law is broken because Department staff failed to abide by the Minimum Standards, DOI should be empowered to investigate violations, be required to report its findings, and ensure staff is held accountable.

The notion that the DOC could be authorized to investigate its own staff in serious cases is in part what led Rikers Island down the path to the mess we face today. The recent conviction of several correctional staff in the brutal beatings of Jamal Lightfoot and Ronald Spear, and subsequent cover-ups, should serve as prescient reminders that outside investigations are foundational to uprooting the culture of opacity and violence that has plagued Rikers Island for too long. We are happy to engage with the Council in more detail and offer our expertise as you craft any amendments to the charter going forward.

Intro 1260 re: Transporting inmates in the custody of the DOC to all criminal court appearances

BDS supports introduction 1260 from the Speaker, which requires that all people in custody be produced for court appearances. The express purpose of pretrial detention is to ensure appearance at court, and it is foundational to principles of justice that people who are incarcerated before they are convicted be present in court to participate in their own defense. We have not seen data that suggests the DOC production rate is higher than the adjusted Failure to Appear Rate on ROR, which is less than 2 percent. Moreover, on any given court date, a client may be released, evaluated for an

[4] *See* Amicus Brief in Support of Leave to Appeal Denial of Class Certification at 14 (Declaration of Public Advocate Leticia James), Doe v. City of New York, No. 15 CV 03849 (S.D.N.Y. filed Oct. 9, 2015), available at http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/james_declaration.pdf

alternative to incarceration program, mental health or drug court placement, or they may be offered a plea. When any person misses a court date, it may prolong their incarceration, close doors to possible off-ramps from the system, and exacerbate associated collateral consequences.

The proposed legislation may not solve every problem with production - for example that of falsified refusals - however, we believe it is an important reminder of the purpose our jails are intended to serve. There is not city-wide documentation to properly ascertain the extent of this problem.

Recommendation related to Int. 1260

We recommend that the Council consider two important amendments to this legislation.

1. **The bill should require that people be produced in the morning hours to their court appearances.**

In Brooklyn Supreme Court, many court parts close at the lunch break and do not re-open in the afternoon. Consequently anyone brought to court after noon may not actually appear in court.

2. **The bill should address transportation by DOC to any court date, not just those in criminal court**

This legislation should impact more than just criminal court appearances. In addition to their criminal cases, people in custody often have other intersecting cases in Family, Housing, and other civil courts. It is imperative that that the Department of Correction produce people to every court date as a matter of access to justice.

Intro 1262 re: Prohibiting DOC from producing inmates to court appearances in departmental uniforms

BDS vociferously supports this legislation requiring that people be produced to criminal court appearances in civilian clothing. Producing people to court in jail garments is prejudicial not only to juries but can inspire implicit biases in judges and court staff. It is simply more just for all people to appear in court in their own clothing - to appear innocent before proven guilty.

Despite constitutional protections ensuring that people who appear before a jury do so in civilian clothing, in recent months a number of our clients were produced to court on their grand jury dates wearing jail uniforms.[5]

Client Stories

In one recent incident when the individual intended to testify, their grand jury was adjourned in order to allow DOC to produce the person again in civilian clothing, thereby unjustly extending their incarceration. At least one trial was recently delayed because our client was denied his trial clothing despite multiple requests to correction officers, and calls to DOC from the court as well as our office. Every day our Jail Services staff fields urgent requests from attorneys at Court for clothing, both for trials and for releases. BDS relies on clothing donations to meet this demand. These jail uniforms are thrown out once people get street clothing, and the replacement of these must be a considerable expense for the City.

[5] *See Estelle v. Williams*, 425 U.S. 501, 512 (1976).

Although the Department has assured the Board of Correction that they receive "trial lists" daily to alert them of individuals who should be produced to court in civilian clothing - this is not an adequate guarantee.[6] Many trials begin after being "sent out" from a regular court appearance, and these individuals would not have been produced in appropriate clothing. Our experience suggests that grand jury appearances also are not consistently listed on the "trial lists" used by the Department. The right to appear as a civilian before a jury is fundamental to our justice system. This legislation is essential to protect this right from poor management on the part of the Department, which clearly does not understand the mechanics of criminal proceedings.

Another disturbing side-effect of producing people to court in jail garb is that they are released back to the community in jail garb. The nature of criminal proceedings can be unpredictable - frequently people are released to programs or on Recognizance unpredictably. Releasing people in jail uniforms is both degrading and dangerous.

Despite assurances that DOC would make civilian clothing available in courthouses, people are still routinely discharged from court in jail uniforms. In one recent case, the judge was concerned about our young female client's release in jail uniform and refused to release her until BDS brought clothing to the courthouse for her because court and DOC staff reported that they would not do so. In another recent instance a 16 year old client we represented was released from Rikers and was terrified of returning to his neighborhood in the uniform for fear of the police and gangs in the area. BDS was happy to provide him with clothing to make the journey home, but the defense bar should not be made to play this role. If anyone is to be produced to court in a uniform it is essential that the Department be required to provide civilian clothing for those discharged from court under the law. Again, we urge the Council to extend the sensible reforms included in this bill by amending the language to include other courts - the issues of prejudice and dignity hold in those settings as well.

Conclusion

We thank the Council for its continued attention to the needs of people in city jails and their families. We hope that you continue to adopt an aggressive stance toward making New York City humane for all people. To that end, we urge you to explore legislation that will cap unreasonable fees across the system. We also urge you to investigate the disturbing conditions families endure when they visit their loved-ones on Rikers Island.[7] On a good day, the process is degrading and can take many hours. On a bad day, it can involve sexual assault by corrections officers, or being denied a visit altogether.

Thank you for your consideration of my comments. We are grateful to the Council for bringing to light the issues these important criminal justice issues. Please do not hesitate to reach out to me with any questions about these or other issues at (718) 254-0700 (ext. 208) or kdeavila@bds.org.

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[6] Board of Correction November 10, 2015 Meeting Minutes at page 5, available at http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20(11.10.15).pdf.

[7] *See, e.g.*, NBC 4, "I-Team: More than 25 women allege sex abuse by correction officers at NYC jails," Sept. 15, 2016, available at http://www.nbcnewyork.com/investigations/Rikers-Island-Sex-Abuse-Correction-Officer-Lawsuit-Claim-Investigation-Department-Correction-393576031.html.

Statement to the New York City Fire And Criminal Justice Services Committee
September 26, 2016
Kelly Grace Price: Jails Action Committee

Two bills before the city council today could potentially assist the sexual slaves of Rikers Island: Int 1144-2016[1] sponsored by Laurie Cumbo by requiring the use of trauma-informed care in city correctional facilities; and Int 1228-2016 [2] sponsored by Speaker Melissa Mark Viverito would codify the existence and role of the Department of Investigation's Inspector General for the Department of Correction.

I wound up on Rikers' Rose M. Singer Center when I turned to the NYPD & Manhattan DA to try to extract myself from a life threatening intimate-partner relationship. Because of my abuser's ties to the 28th precinct & his active role in the MDAO's "Operation Crew Cut" as a confidential informant I was tossed into "Rosies" (the all-women's jail) on Rikers & charged with 324 counts of a statute that has since been found unconstitutional in the Raphael Golb case that struck down parts of NY State's CPLR 240.30. After two years living with potentially thousands of years of prison time hanging over my head (324 counts charged each that carry a one to four year prison term if convicted) I managed to get all charges, a felony and 323 misdemeanors, dismissed & sealed. I'm currently litigating vs. the MDAO *pro se in the SDNY complaint number 15 CV 05871.* The impact that corrupt DAs have on our criminal justice system's myriad of issues is unmistakable. Victims such as myself who turn to the authorities for help at our lowest, most disparate moments should not be ending up on Rikers island to be re-victimized.

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[1] Int 1144-201 Proposed Int. No. 1144-A This bill would require the Department of Correction to train appropriate staff on the use of trauma-informed care, to use trauma-informed care consistently with federal guidance, and to issue a yearly report.
[2] Int 1228-2016 Proposed Int. No. 1228-A Investigating, reviewing, studying, and auditing of and making of recommendations relating to the operations, policies, programs and practices of the DOC by the NYC DOI.

I am not the first of the Price family to grace the house of Singer. My grandfather came to NYC on a ship from Barranquilla, Colombia as part of a trade with the Singer family in the 1890s. My great-grandfather owned a fleet that Henry Singer used to move his sewing machines south of the Tropic of Cancer. Part of the deal was that my Grandfather came to NYC & attended the Trinity school. He worked hard, had a talent for languages & commerce, was recognized at an early age, recruited, & rose up the ranks of clandestine services. He established his cover under the guise of a paper company executive. Developing countries soon had their own paper manufacturers to churn-out cheap pulp facilitating the creation of an international free press. His life's work was to assist the spread of Democracy & to be harbinger to the end of many centuries of enslavement for millions of people worldwide.

Before my false arrest & detention I managed the careers of many of the world's top photojournalists; helping them to travel to forsaken zones of war & natural disaster to tell the stories of the hopeless and the voiceless. I focused on female photographers and told the stories of countless women trapped in untenable circumstances in the wake of war, violence, natural disaster, disease and abuse. I believed the work I did tied me to my grandfather's legacy. It was not until I walked home barefoot to Harlem after being bailed-out of Rikers only to discover that C.O. Robelto had stolen my shoes from my property bag[3] that I understood my legacy in my grandfather's footsteps as an abolitionist *still* lay ahead.

[3] "Inmate did not receive her boots": http://gorgeous212.tumblr.com/post/120712435353/a-woman-resembling-a-life-sized-venus-of

My journey to Rikers opened my eyes to a class of women, girls, boys and men whose lives have been upended by secondary victimization of the criminal justice system who continue to languish in chains, at Rikers. They were not lucky enough to have a rich friend who came looking for them to bail them out. By the way my friend, Ian Hague, never did receive his 2K cash bail back despite my having won a full dismissal on all 324 charges the mewling ingenues at Cy Vance's house of horrors slapped me with. Many of their stories remain untold as they are outliers without anyone to put money in their commissary accounts, to visit them, to wish them Happy Mother's day, or to tell the narratives of the crimes that continue to be perpetrated against them. The women, girls, boys and men of Rikers who continue to be abused, raped, and selected for conscription into sexual slavery by the employees of the Department of Correction are the outliers of society: they have mental health diagnoses, have been pimped and trafficked, beaten and degraded.

These are the people who languish accused of crimes at the RSMC center. When I was there almost every single woman I met was there as a result of some type of violence against them. Barbara Sheehan, the abused wife who shot and killed her retired NYPD sergeant husband in self-defense after years of abuse spurred on by state-created danger stands out. She and I usually shared a table together in Rosie's. No one else would socialize with her: She was branded a cop-killer and a pariah. She was a victim and survivor: Just like me. These are the people who have been abused all of their lives, and cycle in and out of our City jails with no loved ones to pay bail for them. These are the people selected by predatory corrections officers and DOC employees to be abused and used as sexual chattel. These are the people with little or

no credibility left: with no connection to the outside world: no one to hear their cries when they are raped. No one cares.

How many rapes and sexual assaults are we talking about?

- Numbers are still a mystery to us. In January of 2016 PA Letitia James release an amicus Brief for the Jane Doe V Benny Santiago class action lawsuit that revealed that in the year 2014 there were a total of 116 complaints of rape and sexual assault by the women of the Rose M. Singer Center on Rikers Island.[4]

- 188 allegations of rape and sexual assault for 2015 were posted without fanfare or the required comparison to previous reporting periods on the DOC's website[5] in July of this year in accordance with Local Law 33 of 2016: (In April of 2015 the City Council passed a bill requiring reporting on a quarterly basis of all sex assault and rape complaints verified and unsubstantiated from Rikers broken down by type of complaint, demographics of complaintants, and outcome of investigations commencing on July 1, 2016.)[6]

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[4] BRIEF OF PUBLIC ADVOCATE FOR THE CITY OF NEW YORK AND MEMBERS OF NEW YORK CITY COUNCIL AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS-PETITIONERS JANE DOE 1 AND JANE DOE 2: 16-173-cv United States Court of Appeals for the Second Circuit JANE DOE 1 and JANE DOE 2 v The City of New York and Benny Santiago: January 26, 2016 pp 9, footnote 21: "In 2014, for example, 116 people detained at Rikers Island reported sexual abuse to their medical provider." http://nycjac.org/wp-content/uploads/2016/01/james_declaration.pdf

[5] Local Law 33 of 2016 http://www1.nyc.gov/assets/doc/downloads/pdf/Report_Regarding_Sexual_Abuse_Allegations_Incidents.pdf
(1) allegations of sexual abuse of an inmate by an inmate 57
(2) substantiated incidents of sexual abuse of an inmate by an inmate 0
(3) allegations of sexual abuse of an inmate by staff 131
(4) substantiated incidents of sexual abuse of an inmate by staff 1

[6] On April 28, 2015 Section 9-130 of the administrative code of the city of New York was REPEALED and a new section 9-130 is added to read as follows: § 9-130 Jail data reporting. Section 1:
d. "Beginning July 1, 2016 and every July first thereafter, the department shall post on its website a report for the prior calendar year containing information pertaining to (1) allegations of sexual abuse of an inmate by an inmate; (2) substantiated incidents of sexual abuse of an inmate by an inmate; (3) allegations of sexual abuse of an inmate by staff; and (4) substantiated incidents of sexual abuse of an inmate by staff.

This paltry showing of verified reports of rape and sexual assault is horrifying. Researchers estimate that nationally only 2.1% of rapes are fabricated[7][8] but in 2015 only ONE of 188 rapes /sexual assaults reported from Rikers was substantiated. (n.b. we don't have numbers of reports unsubstantiated because of lack of evidence vs deemed as fabrications.) This alarming rate of reports not validated for whatever reason is 99%. ***This pittance of substantiated complaints from Rikers in the context of the national averages number belies a system of investigation and reporting that is created to only maintain the integrity of the institution: not to give justice, restoration and validation to the survivor or victim of the rape and/or assault. I urge the Council to mandate specific training in the same level of best-practices and evidence-based techniques to be introduced into the rape and trauma aftercare and investigative methodologies in our City jails that are in some of our communities. Trauma-informed training for rape and sexual assault is offered free in easy to digest online modules thanks to the Federal Government and Joanna Archambault's organization End Violence Against Women International.[9]***

- Numbers for 2016: On May 26th 2016 during a budget hearing councilman Corey Johnson demanded answers ref numbers: The NYC HHC reported that the number "at

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e. The information in subdivisions b, c and d of this section shall be compared to previous reporting periods, and shall be permanently stored on the department's website."

[7] Lonsway, K. A., Archambault, J., & Lisak, D. (2009). False reports: Moving beyond the issue to successfully investigate and prosecute non-stranger sexual assault. The Voice, 3 (1), 1-11. Retrieved from the National District Attorneys Association: http://www.ndaa.org/pdf/the_voice_vol_3_no_1_2009.pdf

[8] National Sexual Violence Resource Center:Info & Stats For Journalists: Statistics About Sexual Violence: http://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf

[9] EVAWI Online Training Institute: Successfully Investigating and Prosecuting Sexual Assault: http://olti.evawintl.org/Default.aspx?ReturnUrl=%2f.

this point in time" were 118 reports for 2016. We do not know if that number represents the first quarter or complaints up to 5/26.[10]

Either way the numbers have gone up 200% or 400% in the past two years contrary to the assertions of Richard Dearing of the City Law Department who stood up at 40 Centre st on August 17, 2016, in front of an appellant panel and laughingly tried to convince the 2nd Circuit that the DOC has made mute the class action claims of the Jane Does.[11] How is it that numbers are shooting up if the city has efficaciously addressed the epidemic?

I support and applaud the City Council for 1144 and mandating DOC employees be trained in Substance Abuse and Mental Health Services Administration (SAMHSA) best-practices.[12] One of the first trauma-based practices that should be adopted and trained is regarding rape and sexual assault survivors. Current science and best practices are employed in

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[10] Excerpted from May 26, 2016 NYC Council COMMITTEE ON HEALTH JOINTLY WITH COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL DISABILITY, ALCOHOLISM, SUBSTANCE ABUSE AND DISABILITY SERVICES, AND COMMITTEE ON FIRE AND CRIMINAL JUSTICE SERVICES pp. 99-100
http://www.courthousenews.com/2016/08/17/NYC%20City%20Hall.pdf:
CHAIRPERSON JOHNSON: "So is there an epidemic of sexual violence in our jail system?
ROSS MACDONALD: The number of incidents in the last five years that reported has gone up
CHAIRPERSON JOHNSON: So is there an epidemic?
ROSS MACDONALD: I don't know what--I don't know what the true number of cases was five years ago because to be honest we did not do a very good job assessing it, but I think that the number of cases is alarming.
CHAIRPERSON JOHNSON: [interposing] What's that number?
ROSS MACDONALD: I'll have to--we have the numbers here with us. So this year there's been-so we--we track reports. So when patients report to us that they've been sexually assaulted or there a suspicion that a sexual assault or sexual abuse occurred, we track that essential through this PREA compliance reporting notifying DOC and DOI, and right now this year we had 118 reported sexual abuse.
CHAIRPERSON JOHNSON: 118?
ROSS MACDONALD: Right."

[11] **City Law Representative Richard Dearing during oral arguments 8/16/2016 Jane Doe v Benny Santiago, et al: :** "Proving Monell at this specific point in time...We have a lot that actually happens in that 2.5 years: PREA is all over this case and the PREA rules...The city applied for a grant in 2012, to achieve, to move towards PREA compliance, we have a new commissioner in 2014, the retention of a consultant to advise on PREA compliance in late 2014..."
http://www.ca2.uscourts.gov/decisions/isysquery/935ca5fd-dfce-4b85-a972-ed010aa8aba8/101-110/list/

[12] SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach Prepared by SAMHSA's Trauma and Justice Strategic Initiative, July 2014: http://store.samhsa.gov/shin/content/SMA14-4884/SMA14-4884.pdf

Manhattan and Brooklyn communities when treating rape and sexual assault victims but not in our City jails (or certain boroughs). The Human Rights Watch published a best practices recommendations in 2013[13] for Rape and Sexual Assault aftercare: most major cities around the country are already employing these best evidence-based practices which include allowing survivors complete sleep cycles before being interviewed in long form by investigators about the terms of their assaults, et al.[14] In Staten Island, Queens the Bronx and in our City Jails survivors are being forced to submit to long, invasive rape kit examinations that take approximately six hours and then are being mandated to sit through long, detailed, exhaustive interviews before being given a chance to rest. This seemingly simple omission in protocol is disastrous for the outcome of investigations. The City of New York needs to implement a victim-centered approach to treating its survivors that included allowing then quick and expedient access to our city hospitals for rape kits and following the evidence-rooted practices that follow this victim-centered, trauma-based approach. I urge the City Council to specifically include the modules of End Violence Against Women International in the language of its bill mandating trauma-based practices to be trained to relevant members of the DOC.

Int 228-2016 [15] sponsored by Speaker Melissa Mark Viverito would codify the existence and role of the Department of Investigation's Inspector General for the Department of Correction. Int 228-2016 [16] sponsored by Speaker Melissa Mark Viverito would codify the

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[13] Human Rights Watch: "Improving Police Response to Sexual Assault," 2013: Promoting a Victim-Centered Approach https://www.hrw.org/sites/default/files/reports/improvingSAInvest_0.pdf

[14] End Violence Against Women International: "The Neuro-Biology of Sexual Assault." https://www.evawintl.org/images/uploads/CompTA/Training%20Materials/The%20neurobiology%20of%20sexual%20assault%20webinar-3pp.pdf

[15] Int 1228-2016 Proposed Int. No. 1228-A Investigating, reviewing, studying, and auditing of and making of recommendations relating to the operations, policies, programs and practices of the DOC by the NYC DOI.

[16] Int 1228-2016 Proposed Int. No. 1228-A Investigating, reviewing, studying, and auditing of and making of recommendations relating to the operations, policies, programs and practices of the DOC by the NYC DOI.

existence and role of the Department of Investigation's Inspector General for the Department of Correction.

We demand external oversight and execution by the DOI of all complaints of SA and rape in our City Jails. At a July 26, 2016 Board of Correction hearing former DOC investigator Rachel Weiner testified that her training eegarding rape and sex adsault allegations consisted of watching a two hour video that left her: "bored and.confused." Weiner further related that one of the cases she verified was done ao only.by scouring reems of video tape from the jail for weeks on end to establish a pattern of behavior by the perp to proove the case. She adds that other DOC investigators would not have put in the long hours needed to establish a *prima facia* case. All these circumstances reveal a culture of complacency within the DOC that has allowed this epidemic to flourish unfettered. Survivors need to believe that by reporting they are engaging with a system that is a literal path to justice and restoration. External handling of all SA complaints by the NYC DOI is an excellent place to start. I urge the council to codify the DOIs ownership and oversight of these investigations by voting for Int 228-2016.

September 26, 2016

To the New York City Council:

We, the undersigned organizations and individuals, believe that the City must take action to ensure the fair and humane treatment of those confined in New York City jails. The City Council must enact legislation to ensure that incarcerated persons never appear in court in department uniforms and are thereby robbed of the best possible outcomes. The Council must also work to ensure that incarcerated people and their families are not punished for being poor and subjected to financial burdens for the benefit of private corporations. Furthermore the DOC must eliminate the pervasive incidents of sexual assaults and rapes inflicted on people incarcerated in City Jails and on their family members who visit.

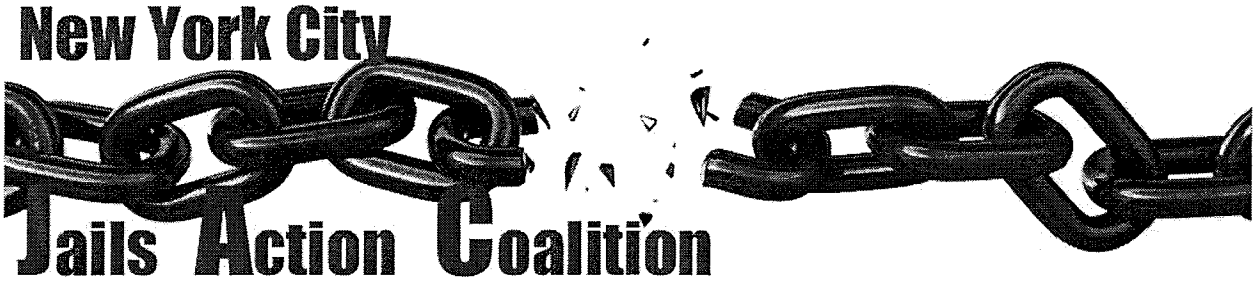
We support legislation that would:

- Require the DOC to bring people to all court appearances,
- Prohibited the DOC from bringing people to court in uniform,
- Limit the fee charged when depositing money into incarcerated individuals' commissary accounts,
- Require the Department of Finance to waive the 3% fee on cash bail,
- Codify the role of Department of Investigation's Inspector General for DOC and require yearly report regarding evaluations and recommendations related to the DOC,
- Require the DOC to integrate trauma-informed care, to use trauma-informed care consistent with federal guidance, and to issue a yearly public report on the training

We urge the Council to pass this legislation and set higher standards for the treatment of incarcerated individuals while also holding the DOC accountable.

Sincerely,

American Friends Service Committee
Bellevue/NYU Program for Survivors of Torture
Bronx Defenders
Brooklyn Defender Services
Campaign to End the New Jim Crow
Criminal Defense Clinic, CUNY School of Law
Dr. Dana DeHart, University of South Carolina
Harlem Restoration Center
INC Corp
JustLeadershipUSA
Legal Action Center
National Lawyers Guild--NYC
NYC Jails Action Coalition
Sylvia Rivera Law Project
Urban Justice Center
USA Northeast Province of the Society of Jesus



New York City Council
Committee on Fire and Criminal Justice Services

Public Hearing on Proposed Legislation
September 26, 2016

The New York City Jails Action Coalition (JAC) is an alliance of activists that includes formerly and currently incarcerated individuals, family members, and other community members working to promote human rights, dignity, and safety for people in NYC jails. Our goals include increasing transparency in Department of Correction (DOC) policies and accountability for DOC practices and abuses; ending the use of solitary confinement (commonly referred to as punitive segregation, the Box, or the Bing) in NYC jails; addressing the physical and mental health needs of people in NYC jails and ensuring access to continued care in the community upon release; advocating for increased rehabilitative services in NYC jails to promote reintegration; and fighting the racist and discriminatory policies leading to mass incarceration.

Int. 1262-2016: Prohibiting DOC from Producing Incarcerated People to Court Appearances in Departmental Uniforms

We strongly support Int. 1262, legislation that will prohibit the DOC from bringing incarcerated individuals to court in DOC uniforms. Allowing individuals to wear their own clothes to court is fundamental to promoting basic fairness in the criminal legal system. We urge the Council to require that individuals be allowed to wear their own clothes not only to all criminal court proceedings but to all family court proceedings as well. Additionally if a person's clothes are unavailable, court clothes should be provided.

Individuals who have been charged with a crime and are awaiting trial ("detainees") are in DOC custody because they cannot post bail.[1] The DOC serves the court system by confining these individuals while their criminal cases are resolved – that is the agency's fundamental purpose.

[1] In most cases they do not have the resources to do so because the bail has been set at a level that their family and friends cannot afford. Some people who cycle in and out of jail lack support networks to depend on for assistance and cannot post bail of even a few hundred dollars. A much smaller segment of those awaiting trial do not have the option of posting bail. The court has remanded them to DOC custody until their criminal charges are resolved.

All DOC policies regarding detainees should be in service of advancing the resolution of their criminal cases.

The DOC's current practice of bringing defendants to court in uniforms flies in the face of the presumption of innocence and the right to a fair trial. It turns the whole system on its head.

Being in custody while one's case is pending already places the defendant at a huge disadvantage as compared to those who are able to contest their charges while living in the community.[2] It restricts their access to counsel and to assist in their own defense. We must not allow yet another obstacle to their receiving a fair trial.

We regularly learn of cases in which defendants whose trials are commencing being produced to the courthouse in uniforms – facing the prospect of enduring jury selection while wearing clothing that communicates the presumption of guilt. Even defendants whose trials are in progress are at times brought to court in uniforms due to DOC ineptitude. Defendants charged with felonies also have the opportunity to testify before the grand jury, which makes the fundamental decision of whether there is enough evidence for the case to proceed to trial; DOC does not even attempt to bring these individuals to court in street clothes.

Clothing matters. We all know that what we wear says something about us before we utter a word. Recognizing the seriousness of these proceedings, none of you came to this hearing in your gym clothes. Incarcerated individuals – whose liberty is at stake – must be allowed to present themselves to the Court and to the jury as human beings. They should be permitted to wear clothing that matches their gender identity. When they are dressed in jail garb that demeans their humanity, their guilt is presumed – they look like a person who is already serving a jail sentence.

Many more incarcerated individuals are impacted when their cases are resolved at court, and they are released directly from the courthouse. They must ride the subway and walk the streets in attire that tells the world, "I am coming from jail." Consider the shame and humiliation that those individuals face.

In many cases the public defender offices have taken on the burden of securing courtroom apparel or street clothes that a person can wear home. But this is an unacceptable burden to place on lawyers whose role in the system is to provide legal representation, especially given that their resources are already stretched thin with unreasonably high caseloads.

The DOC has responsibility for housing defendants and must be required to allow them to dress in the manner of their choosing in their criminal proceedings. This is a question of fundamental fairness and the recognition of the human dignity of individuals – the vast majority of whom are too poor to post bail.

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[2] "[D]defendants detained until trial or case disposition are 4.44 times more likely to be sentenced to jail and 3.32 times more likely to be sentenced to prison than defendants who are released at some point pending trial." Lowenkamp, et. al, INVESTIGATING THE IMPACT OF PRETRIAL DETENTION OF SENTENCING OUTCOMES, Nov. 2013 at 10. *Accessed here*: http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_state-sentencing_FNL.pdf.

Int. 1260-2016: Transporting Incarcerated Individuals in DOC Custody to All Criminal Court Appearances

Individuals who are incarcerated lack the ability to ensure that they are able to attend court appearances without the DOC transporting them. As stated above, the DOC should serve the ends of the criminal legal system – providing for the resolution of criminal charges.

It is crucial that the DOC determine whether incarcerated persons have other court appearances and bring them to court for these appearances. Because the DOC does not currently do so, judges regularly issue bench warrants when incarcerated individuals fail to appear as no party to the case has been informed that the person is currently in custody. Having a bench warrant on one's criminal history record communicates to the judge that the person *chose* not to appear for court – which is not true for incarcerated individuals who lack the ability to communicate directly with the court about their whereabouts. A bench warrant history will lead the court in subsequent cases to set bail even for minor charges. Incarcerated individuals should not be penalized for the DOC's failure to bring them to their court appearances.

Int. 1261-2016: Authorizing Waiver of Fees in the Collection of Cash Bail

We must be committed to reducing the jail population and finding as many avenues as possible to enable defendants to contest the charges against them without being punished in advance. Being in jail scars the individuals confined there; they are subjected to its dangerous conditions, substandard medical care, and the restriction of basic needs, such as nutritious food, sleep, and exercise. By withholding a percentage of the bail, the City creates a disincentive for family and friends to scrape together the money necessary to secure the person's release.

This legislation is consistent with the City's efforts to reform the bail system. However, it should be amended to *require* the waiver of fees – rather than merely allowing for the possibility of doing so.

Proposed Int. 1152-2016-A: Capping Fee for Transferring Money to an Incarcerated Person

We support Int. 1152-A, legislation to cap fees charged when family and friends deposit money into an incarcerated person's commissary account. Currently J-Pay and Western Union, private corporations, profit off incarcerated individuals when their loved ones make these transfers. There is no reason that families and friends of incarcerated individuals should be charged such exorbitant rates for transferring money – almost 50% of small deposits, and often exceeding the $5 cap established by state law.[3] Families should be able to mail money directly to the DOC to be placed in the individual's commissary account.

[3] *See* 9 CRR-NY 7016.2(b) ("For the purpose of receiving prisoner funds, the sheriff or chief administrative officer may utilize . . . devices or systems capable of allowing members of the public to deposit funds into an inmate's institutional fund account. Members of the public depositing prisoner funds in such a manner may be charged a **service fee not to exceed $5 per transaction**.") (Emphasis added.)

Providing commissary is a significant means by which families connect with their incarcerated loved ones, and ensure their needs are met.

In the Rose M. Singer Center (RMSC), for example, DOC provides 144 non-adhesive menstrual pads per five detainees per week.[4] This low number often leaves menstruating women and trans people held at RMSC without access to vital hygiene products unless they are able to purchase them from commissary or else endure the humiliating process of visually showing correction officers their need for clean menstrual products.[5]

Curtailing detainee access to commissary leaves them at risk of not having their fundamental hygiene needs met, and denies their humanity and personal volition while confined.

Proposed Int. 1228-2016-A: Investigating, Reviewing, Studying, and Auditing of and Making Recommendations Relating to the Operations, Policies, Programs and Practices of the DOC by the Commissioner of the DOI

We support legislation to create an independent Inspector General that will have oversight of the Department of Correction. For far too long, DOC has operated largely in secrecy. Recently the Board of Correction has begun to provide more robust oversight and public reporting, but having a designated Inspector General in the Department of Investigation will allow for enhanced oversight, transparency, and accountability.

External oversight and reporting of rape and sexual assault are especially important as a culture of complacency within the DOC has allowed this epidemic to flourish unfettered. Survivors need to feel confident that reporting such violence will lead to the responsible parties being held accountable. Designating an independent Inspector General is an important step toward addressing the sexual assault crisis that plagues the DOC.

Proposed Int. 1144-2016-A: Requiring the Use of Trauma-informed Care in City Correctional Facilities

We applaud the City Council for its emphasis on trauma-informed care. We encourage this legislation be amended to include evidence-based best practices for rape and sexual assault trauma care. Currently there are no procedures or methodologies for conducting interviews, investigations, or delivering aftercare to survivors in NYC jails that are evidence-based.

Proposed Int. 899-2016-A: Procedures and Reporting for the Rikers Island Nursery Program

We encourage the Council to amend this bill to include a presumption that admission to the nursery is in the best interest of the child and that admission can be denied only in extraordinary circumstance that demonstrate imminent danger or imminent risk to the child's

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[4] Annamarya Scaccia, *Women in Jail are Being Denied Tampons, Pads, and Basic Human Dignity*, BROADLY, Mar. 28, 2016. Accessed here: https://broadly.vice.com/en_us/article/women-in-jail-are-being-denied-tampons-pads-and-basic-human-dignity.

[5] Fortunately the City Council passed legislation in early July concerning DOC distribution of sanitary products in the jails. However, it is too earlier to determine how effectively that law has been implemented.

life or health. In deciding an appeal of a denial of admission to the nursery, the commissioner or chief of the department should be required to consult with two experts – one with expertise in early childhood development (as the bill currently specifies) and an expert in child welfare – as well as the nursery manager.

The legislation should also require that the DOC hold staff accountable when they engage in use of force against a child or fail to attend to the needs of a child in a manner that causes undue risk to the child. In addition, the legislation should require that supportive nursing and medical services are readily available 24 hours a day, 7 days a week.

We also encourage reporting on the placement of children whose stay in the nursery was terminated because their mothers were transferred to state prison without their children.

New York City Council
Committee on Fire and Criminal Justice Services

Hearing on Proposed Legislation

Pro. Int. No. 1152A - in relation to the maximum fee allowed when transferring money to a city inmate.

Pro. Int. No. 1228A - in relation to the investigating, reviewing, studying, and auditing of and making of recommendations relating to the operations, policies, programs and practices of the department of correction by the commissioner of the department of investigation.

Int. No. 1260 - in relation to transporting inmates in the custody of the department of correction to all criminal court appearances.

Int. No. 1261 - in relation to authorizing the waiver of fees in the collection of cash bail.

Int. No. 1262 - in relation to transporting inmates in the custody of the department of correction to all criminal court appearances in civilian clothes.

Pro. Int. No. 899-A - in relation to procedures and reporting for the Rikers Island nursery program.

Pro. Int. No. 1014-A - in relation to requiring the department of correction to post on its website an annual report regarding mentally ill inmates and recidivism.

Pro. Int. No. 1064-A - in relation to requiring the department of correction to evaluate programs it utilizes.

Pro. Int. No. 1144-A - in relation to requiring the use of trauma-informed care in city correctional facilities.

City Hall
September 26, 2016, 1:00 P.M.
New York, New York

Presented By:
Sarah Kerr
The Legal Aid Society
Prisoners' Rights Project
199 Water Street
New York, NY 10038
(212) 577-3530

Testimony of the Legal Aid Society

Before The New York City Council
Committee on Fire and Criminal Justice Services

September 26, 2016

I. Introduction

We submit this testimony on behalf of The Legal Aid Society, and thank Chair Elizabeth S. Crowley, the Committee on Fire and Criminal Justice Services, Speaker Mark-Viverito, Public Advocate James and the other sponsors of these bills. We applaud the Council and the Public Advocate for continuing to introduce legislation to improve conditions, and increase accountability and transparency, in the criminal justice system and in the City jails.

The Legal Aid Society is the nation's oldest and largest provider of legal services to low-income families and individuals. Our Prisoners' Rights Project (PRP) has addressed problems in the New York City jails for more than 40 years. Through advocacy with the Department of Correction (DOC) and Correctional Health Services, individual and class action lawsuits, PRP has sought to improve jail conditions, access to medical and mental health care and to reform the systems for oversight of the use of force and violence in the jails. Each week PRP receives and investigates numerous requests for assistance from individuals incarcerated in the City jails, their families, and their defense lawyers from the Criminal Defense Practice and elsewhere. Years of experience, including daily contact with individuals involved with the criminal courts, and with incarcerated individuals and their families, have given The Legal Aid Society a firsthand view of problems in the criminal justice system and in the New York City jails.

II. The Proposed Legislation

In the following sections, we comment on the items of proposed legislation put forward for consideration at this hearing.

A. Pro. Int. No. 1152A – in relation to the maximum fee allowed when transferring money to a city inmate.

The Legal Aid Society supports this legislation which requires that the same $5 fee cap on transfers to inmate institutional accounts, established by state regulation (N.Y. Comp. Codes R. & Regs. tit. 9, § 7016.2(b)), applies to deposits made to inmate accounts in the New York City jails. The proposed legislation also caps the fee at no more than 1% of the deposit amount, not to exceed the $5 maximum. This cap is appropriate in our City jails where many individuals are incarcerated solely due to their inability to pay bail; small deposits made by and for indigent individuals should not be subject to fees that diminish the amount by percentages that reportedly can reach close to 50% of the amount deposited. The fees charged under the current system should not exceed the $5 service fee cap established by the State Commission of Correction in 9 NYCCR § 7016.2 (b).

This legislation requires that J-Pay, Western Union and all future financial money transfer agents the Department of Correction ("DOC") contracts with will appropriately limit the fees that are imposed. Bringing the New York City jails system in line with the standards set by the State Commission of Correction should not be controversial.

We have one proposed amendment to the legislation. Currently, there is no fee charged at the DOC cashier's offices when an individual deposits cash into an incarcerated person's account in person. We recommend incorporating this "no fee" option into the legislation to ensure that it continues. Proposed language is in **bold:**

Proposed Int. No. 1152-A

§ 9-141 Inmate accounts. The commissioner of correction shall ensure that members of the public depositing funds into a city inmate's institutional fund account established pursuant to subdivision 7 of section 500-c of the correction law are not charged a service fee that is more than 1 percent of the deposit amount. Such service fee shall not exceed $5. This fee cap applies to all devices or systems capable of allowing members of the public to deposit funds into an inmate's institutional fund account, including wire transfers. **Members of the public who deposit cash into a city inmate's institutional fund account at the department of correction cashier's offices shall pay no fee.**

B. Pro. Int. No. 1228A - in relation to the investigating, reviewing, studying, and auditing of and making of recommendations relating to the operations, policies, programs and practices of the department of correction by the commissioner of the department of investigation.

The New York City Department of Investigation plays an essential role in ensuring that the City jails are operated lawfully and safely. Its statutory independence and investigative expertise have been crucial in ascertaining objective facts about what occurs behind Rikers' closed doors, and bringing to justice wrongdoers who abuse the public trust. There is no substitute for the transparency that they are able to bring to the operation of this public agency that is literally entrusted with the lives of so many New Yorkers.

The Legal Aid Society therefore supports ensuring that the position of an Inspector General for corrections is firmly established and codified in the law, and appropriately funded. However, we would welcome further discussion among stakeholders as to the best mechanism to permit the Department of Investigation to continue its important work. We are uncertain whether the Department would be expected to survey and report on jail operations comprehensively or selectively, targeting specific issues that it deemed appropriate for investigation. Nor is it clear to us how its recommendations would intersect with the oversight responsibilities of the New York City Board of Correction, which establishes jail standards and monitors performance in many of the same areas set out in the instant bill. We wish to ensure that the Department of Investigation's robust powers are utilized in the most efficient and effective means to ensure that the Department of Correction's operations and conduct complies with the law. We welcome the views of the Department of Investigation and Board of Correction on this front, as both are crucial parts of our City's mechanisms of public oversight of our jails.

C. Int. No. 1260 - in relation to transporting inmates in the custody of the department of correction to all criminal court appearances.

The Legal Aid Society supports legislation requiring DOC to transport all inmates to their court appearances. This sensible requirement will alleviate a number of concerns that have plagued our clients for far too long. By requiring transportation of inmates to all court appearances this legislation should ameliorate some of the problems associated with $1 dollar bail, and hopefully eliminate situations in which our clients occasionally end up with a warrant on their record for failing to appear in court when it was beyond their control. Perhaps more importantly, it will ensure that any gaps in communication about court production between Court Administration and DOC do not detrimentally impact our clients.

The failure to produce inmates for all their court appearances has serious consequences. There are countless stories of clients loosing weeks of jail time credit that they would otherwise be entitled to because they were never promptly produced to court to have $1 bail set. In others, our clients miss a scheduled appearance only to have a warrant placed on their record.

The most serious instances result in weeks or months spent at Rikers Island unnecessarily. A recent Legal Aid client came into New York County arraignments with an outstanding warrant in Kings County from 2012. After resolving the New York County case, the judge set $250 bail on the cross county warrant and adjourned the case to Kings County for the very next day. DOC never produced him and our client sat in jail on $250 bail for over 3 months. Critically, our client was 58 years old, and in the process of being treated for colon and lung cancer. He did not receive treatment while at Rikers.

Heartbreaking instances of the system's failure such as this are entirely preventable. By requiring the production of all inmates, to all court dates, regardless of whether the order to produce has been completed or submitted properly, the City Council would make significant progress in ensuring that our clients are treated more fairly and do not sit at Rikers Island longer then absolutely necessary.

D. Int. No. 1261 - in relation to authorizing the waiver of fees in the collection of cash bail.

The Legal Aid Society supports the Speaker's proposal authorizing the waiver of fees collected in instances of cash bail. Nobody in the criminal justice system deserves to be punished simply because they are poor, and this legislation is a welcome addition to the bail reform conversation in New York City.

Pre-trial detention and money bail are significant burdens that disproportionately impact our poor clients. For years, our clients have not only been forced to pay bail and buy their release from jail, but they have also been hit with a 3% administrative fee for paying in cash once their case has finished. For those living paycheck to paycheck, or for those out of work, losing money to an administrative fee is simply an additional hardship that effectively criminalizes their poverty.

The impact of this legislation is significant - In 2011 and 2012 the Criminal Justice Agency released a series of reports that indicated that approximately 85% of defendants paid bail

using cash.[1] During that time city-wide conviction rates were 58% in non-felony matters and 68% in felony matters – representing thousands of people who would have had to paid additional money in administrative fees for no compelling reason.[2]

The Court of Appeals has made clear that the "only matter of legitimate concern" when setting bail is "whether any bail or the amount fixed was necessary to insure the defendant's future appearances in court."[3] Administrative fees associated with bail cannot be reconciled with the laws of the state. Nobody should profit off the administration of justice, and waiving the 3% fee goes a long way in ensuring that all New Yorkers receive equal treatment under the law.

E. Int. No. 1262 - in relation to transporting inmates in the custody of the department of correction to all criminal court appearances in civilian clothes.

The Legal Aid Society supports this legislation which requires DOC to produce individuals to all of their criminal court appearances in civilian clothing. Our clients are regularly produced in jail uniforms for grand jury and trial proceedings contrary to established law,[4] despite our efforts to protect their dignity and prevent bias.

Based on our experience over the past year, we recommend that the legislation be expanded beyond criminal court appearances to *all* court proceedings and appearances. All individuals incarcerated in our jails should have access to civilian clothing that will not prejudice their appearance in *any* court proceeding. Our specific recommendations for amendments to the statute appear at the end of this section.

Approximately one year ago DOC began to require jail uniforms for all individuals housed in the City jails. During this year DOC has regularly produced our clients to their court proceedings and appearances in jail uniforms. These are just a few of the many examples our Criminal Defense Practice lawyers report:

- 9/2/16 – Legal Aid client completed a 5 day trial in jail uniform pants and shoes. DOC never produced him in civilian clothes despite calls to the Court's DOC liaison and "marking the card" (the order to produce) for trial clothes. Our attorney provided a shirt and jacket that he had to change into in the rear of the courtroom. Court staff facilitated him changing his clothes. However, the attorney was informed by court personnel that this practice was against the rules and might not be extended if other people were staffing the courtroom.
- July and August 2016 – multiple complaints from Legal Aid staff that individuals are being produced for the grand jury and trial appearances in jail uniforms and that the process for providing civilian clothing is unclear. Some attorneys reported that they must contact the Captains at the courthouse about the need for civilian clothing; others were instructed they must obtain a letter from the court clerk and

[1] *Commercial Bail Bonds in New York City: Characteristics and Implications*, Mary T. Phillips, page 14 (April, 2011).

[2] *A decade of Bail Research in New York City,* Mary T. Phillips, page 116-117 (August, 2012).

[3] Matter of Sardino v. State Comm'n on Judicial Conduct, 58 N.Y.2d 286, 289 (1983); C.P.L. §510.30(2)(a).

[4] It is well-established that a defendant cannot be forced to undergo a jury trial or appear before a grand jury in prison attire. *See People v. Roman*, 35 NY2d 978 (1975) (trial); *People v. DiFondi*, 275 AD2d 1018 (4th Dept. 2000) (grand jury).

fax it with an order to produce in civilian clothes to the Warden of the jail; others had trouble providing court clothes at the jails or at the courthouses. Family members are having the same difficulty trying to navigate the process and provide individuals with court clothes. We were notified that a family member attempting to deliver court clothes to the jail was told that they couldn't drop off trial clothing because there is a new policy in place that delays receipt of clothing by *2 weeks* after drop off. The family indicated that DOC reported the time was necessary to provide time for searching the clothing.

- 5/3/16 – Attorney attempting to provide court clothes to client was informed by courthouse staff that they would not permit clothing to be exchanged at the courthouse due to a "new policy." A supervising attorney from our Queens office went to Rikers with trial clothing. DOC staff claimed that the client was not returned from court. Client had left the courthouse by 1 p.m. While she was at Rikers other Legal Aid staff went to a night court judge and obtained a court order to DOC ordering DOC to accept the clothes for the client. DOC refused to accept service of the order. The attorney at Rikers persevered and after almost an hour wait, a DOC Captain came, admitted the client was at the jail, and allowed her to board the bus to deliver the clothes.
- 5/12/16 – Our attorney was informed that her client would appear before the Grand Jury in the Bronx wearing an orange jumpsuit and mittens. When she spoke to the ADA, the ADA informed her that his "DOC liaison" told him that the client would be produced in the uniform due to a security issue. The Special Litigation Unit of Legal Aid intervened with DOC Counsel and the client was produced in civilian clothing.
- 5/20/16 – A client had to testify in the Grand Jury wearing bright orange pants with DOC written in large capital letters on each leg. No accommodation was offered, nor was there notice to the attorney about the pants.
- 9/22/15 – Client provided with jail uniform. His 3 sets of dress shirts and pants confiscated by DOC. Case was in the midst of jury selection. His lawyer provided a button down shirt and tie but he had to wear the jail uniform pants.
- 1/27/16 – Client appeared in the jail uniform for a Grand Jury appearance. The case was not reached. The attorney notified DOC of the need to let her come to court the next day in civilian clothing and requested that the Assistant District Attorney add the need for court clothes to the Order To Produce. Only after PRP emailed DOC Counsel and the DOC Commissioner's staff was the client produced in civilian clothing thereafter.

The failure to produce our clients in civilian clothing for grand jury and trial appearances continues unabated despite multiple attempts to resolve the issue through discussions with DOC.[5] DOC sometimes does solve the problem in individual cases when we are able to bring the

[5] In October of 2015, Legal Aid met with Commissioner Ponte, members of his staff and DOC counsel about visit rules and court clothes. At that meeting we discussed trial and grand jury appearances *requiring* the ability to appear in street clothes. We also discussed the issue of releases from the courts being hindered due to the jail uniforms. We reported that some programs were refusing to receive individuals in jail uniforms; DOC staff were refusing to

matter to the attention of DOC Counsel and other high level officials. We did so just last Thursday, September 22, for a client on trial in Richmond County. However, these *ad hoc*, last minute, solutions are no substitute for a consistent policy, that ensures that individuals are able to access and wear civilian clothing when they appear in court *without* resorting to last minute appeals to DOC officials and courtroom personnel. Counsel should not have to scramble for shirts, pants, ties and other appropriate attire for their clients. The involvement of judges, court personnel, and others is an unnecessary waste of resources that this legislation should resolve once and for all.

Moreover, the failure to permit individuals to wear civilian clothes to *all* court appearances has presented other serious problems for our clients in their court proceedings.

- 9/25/15 – Report that when our clients are released from court, we scramble to find clothing for them. The Special Litigation Unit of Legal Aid intervened with DOC Counsel about a case for a client with mental illness when a lack of civilian clothing jeopardized his release from custody.
- 12/17/15 – A client at RMSC was going to be released from court to a program. Legal Aid had an escort in court to accompany her and had worked out the details with the court and DA's office in advance. The court sent a superseding commit that she should be allowed to come in street clothes and bring all her property. Legal Aid faxed a letter to RMSC requesting the same. DOC sent her to court in the beige pants and sweatshirt and denied her the ability to bring her property to court. DOC then requested her uniform back upon her release. Our attorney ran out to buy her pants and find her a top. This delayed her travel to the program and caused additional obstacles to getting her admitted.
- 12/24/15 – Counsel from another agency reported to PRP that their 16 year old client was released on Christmas Eve in jail clothes. He was terrified to ride the train home in his jail clothes because of what people would assume in his neighborhood and the associated consequences.
- 3/8/16 – The Board of Correction stepped in to end the practice that individuals in DOC custody who were at the Bellevue Hospital Unit attended hearings on forced medication in hospital gowns and pajamas. DOC began to provide these patients with jail uniforms or sweatshirt and sweat pants for these court appearances. Video available at: https://www.youtube.com/watch?v=XSM53rNG928 see section starting at 37:49.
- 5/19/16 – Legal Aid encountered problems getting street clothing to clients who are awaiting escorts to programs. They often come to court in jail uniforms, the

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release people in jail clothes; and, the indignity our clients reported due to being released from court in a jail uniform. Commissioner Ponte suggested that DOC could have sweat pants and sweat shirts available in the courthouses to solve this issue. At the March 8, 2016 meeting of the New York City Board of Correction, DOC agreed that during grand jury, trial and jury selections individuals "can opt to wear their own clothes." DOC also reported to the Board that they are asking the Court commands to keep an inventory of street clothing to permit release in something other than a uniform. DOC reported that *some* already have this in operation. It is our experience that despite the promises, the issue has not been solved.

court staff refuses to allow them to change in the cells before they are released to go into programs.

- 5/19/16 – Investigation reveals that ongoing problem with the timely processing and release of clients by Queens DOC after they have been released by court and ordered to get to program by a certain time, escorted generally by a Legal Aid community escort or by a program representative. By the time that DOC accepts clothing for the client, the client misses the deadline for the program.
- 5/19/16 – Attorneys reporting that efforts to provide civilian clothes at the jail because a client will be released to program, are often unsuccessful.
- 8/24/16 – Legal Aid client pled guilty and was ordered released to a drug program. This outcome was expected and the attorney had called the AMKC Warden the day before to inform them that our client would be released from the courthouse. DOC indicated that our client had to fill out a form to get his clothing. The client requested his clothing from DOC but it was not provided. He was released in a jail uniform and had no clothing with him.
- 9/2/16 – Legal Aid client released in Manhattan in a jail uniform, despite specific request on the record that he be produced in court with his personal belongings (which would include clothing). DOC clearly had knowledge that he would be released – he was produced with discharge medications.
- 9/8/16 – A teen-aged Legal Aid client released from court in a jail uniform. He had been remanded for 8 days (due to a program violation) with every expectation that he would be released on the next court date.
- 9/9/16 – Legal Aid attorney reports that DOC sends clients to court in jail uniforms and won't let them wear the uniform out the door when they are released. Clients are taken back to Rikers unless attorneys come up with clothing for them.

Despite these numerous ongoing problems, the roll out of uniforms in the jails was not accompanied by changes to DOC procedures that would permit any standardized rational method of providing court clothes to incarcerated individuals or letting them have access to their property to obtain their civilian clothes prior to court appearances. In the jails, when uniforms were provided, clothing was confiscated and placed into an inmate's property. No changes were made to permit individuals to have access to their confiscated personal property before court. The DOC Directive on Packages, Directive 4002R-B, is dated May 15, 2009. The Directive seemingly permits only one method of providing court clothes that must be accomplished the day before trial. At the same time it provides a notation that a delivery after 3:00 p.m. may not work. Directive 4002R-B, § IV C. 4 states:

> If necessary for a court appearance on the following day, clothing packages may be hand delivered at any time between 0800 and 2100 hours and during any additional hours deemed appropriate by the Department. Packages containing clothing needed for a recall court appearance or other emergency may be delivered for an inmate provided the package is received at the housing facility at least two (2) hours before the scheduled time of departure.

Note: The Department cannot guarantee that property delivered after 1500 hours will be delivered to the inmate for a court appearance the next day.

However, even this process "cannot guarantee" access to civilian clothes, in our practice, has not been followed, and accommodations by DOC to provide civilian clothing are lacking.

- 3/28/16 – Legal Aid was notified that a family member tried to deliver clothing at a jail and was informed that DOC will not accept court clothing for people in the jails. The "new practice" will be for family members to bring the trial clothes to court, deliver them to the attorney, who will then ask court officers to permit the person to change into the clothes before the appearance and out of them at the end of the day.
- 9/22/16 – Legal Aid client appears for trial in Richmond County in a jail uniform. His clothing was dropped off at Rikers by his grandfather over the weekend. The clothes were accepted by DOC but the client was not given access to the clothing for his trial. The order to produce was clearly marked "on trial."

Passage of this legislation will help to preserve the dignity of our clients in all criminal court proceedings, which will include release from custody at the courthouse, by making access to personal clothing for all criminal court appearances and proceedings available. However, we propose that the Council go further in remedying the ongoing problems experienced by our clients. The legislation should be expanded to *all* court proceedings and appearances and should provide for ready access to civilian clothing. To provide for solutions to the identified problems that occur when individuals are transported to court in jail uniforms, we propose the following amendments to the legislation. Proposed additional language is in **bold**, deletions are crossed out.

Int. No. 1262

Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-146 to read as follows:

§ 9-146 Inmate court appearance clothing. The department shall not produce any inmate to an appearance **or proceeding** in New York city ~~criminal court or the criminal term of New York state supreme~~ court in a uniform issued by the department, unless such inmate has no personal clothing ~~available~~. **Inmates shall be permitted to have more than one set of clothes in their personal property maintained by the department. If an inmate does not have personal clothing in their personal property, the department shall permit clothing to be provided at any time at the jail, or prior to the court appearance at the court house. Inmates shall be provided with access to their personal property prior to all court appearances. The Department shall maintain clothing at each court house to substitute for jail uniforms as needed, including in the event of release from custody.**

F. Pro. Int. No. 899-A - in relation to procedures and reporting for the Rikers Island nursery program.

The Legal Aid Society supports this legislation which requires the DOC to report on the Rikers Island nursery program, and we propose amendments to enhance the bill.

Both common sense and experience argue that correctional officials need specific guidance on making decisions about the best interests of newborns and infants. Assessing children's best interests, especially newborns and infants, is wholly foreign to ordinary correctional decision-making. Time and again State and City correctional officials have erroneously denied newborns and mothers nursery admission only to be ordered to admit them by the courts.[6] This office has been forced to seek emergency judicial relief from nursery denials by correctional officials numerous times - we have been successful every time.

The Family Court Act permits removal of a child only when there is an imminent danger or imminent risk to the child's life or health.[7] Therefore, we propose amending the bill to include a presumption that admission to the nursery is in the best interests of the child and shall be granted unless extraordinary circumstances[8] exist that demonstrate imminent danger or imminent risk to the life or health of the child or others.

Also, since corrections officials have no particular expertise in working with babies, they need to consult experts before ordering the separation of a baby from her mother. We strongly support the provision (subsection [c] [3]) in the proposed bill mandating consultation with an expert in early childhood development. However, it is also essential that officials consult an expert in child welfare who knows about child custody determinations and the gamut of safeguards that are used to avoid the drastic remedy of separation for the protection of a child. The expert will also be able to offer guidance about when the conditions of the nursery will mitigate any perceived risk, obviating any need to separate mother and baby. Therefore, we propose adding "and a person who has expertise in child welfare" to Subsection [c] [3].

Additionally, we propose adding language to make clear that notice and decisions on applications and appeals must be made, whenever practicable, in sufficient time to allow the mother to plan for alternative care for the baby and to seek court intervention before delivery. Lastly, we propose that reporting includes total number of pregnant women who entered custody during the reporting period. Proposed additional language is in **bold**. Only those portions of the statute where amendments are proposed are inserted below.

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[6] *See e.g., Matter of Duarte*, 91 A.D.3d 778 [2d Dep't 2012], *app. dismissed*, 20 N.Y. 3d 1067 [2013] (Court ordered admission to the Rikers where mother where the Jail's denial was based on criminal and disciplinary history); *Lecia and Autumn Edghill v. City of New York*, TS-000439-08/Bx (settlement for $10,000 where mother and child were denied admission to the Rikers nursery based on a non-existent history of abuse or neglect, leading to a 5 month separation); *Losurdo v. NYS DOCCS*, Index No. 14-2845 [Westchester Sup. Ct. August 2014] [Where the Court ordered admission via temporary restraining order and again in its final decision and order]; *Green v. NYS DOCCS*, Index No. 5228-12, Order [Westchester Sup. Ct. Dec. 21, 2012] [TRO issued following denial of admission by DOCCS to the nursery based on a ten-year old violent crime, despite mother's impeccable record while in prison]. *Woodside v. NYS DOCCS*, Index No. 13-2408, Decision and Order on Motion [2d Dep't Mar. 21, 2013] (TRO issued following denial of admission by DOCCS based on mother's crime and disciplinary history); *See Pelkey-Baker v. NYS DOCCS*, Index No. 14-1908, Stipulation [Westchester Sup. Ct. May 2014] (Stipulation entered following DOCCS' denial of admission to the nursery based on mother's criminal history, which involved no violent crimes and a six-year old indicated CPS report); *Gonzalez v. NYS DOCCS*, Index No. 3718/14, Order [Westchester Sup. Ct. Nov. 2014], *Gonzalez v. NYS DOCCS*, Index No. 3718/14, Stipulation [Westchester Sup. Ct. January 30, 2015] (Stipulation reached where after initial admission to the nursery, DOCCS removed mother for minor disciplinary violations shortly before she was to give birth).

[7] *See* Family Court Act §§ 1024 and 1027.

[8] *See Apgar v. Beauter*, 75 Misc. 2d 439, 441 [Tioga Sup. Ct. 1973] [requiring "extraordinary circumstances" before a babies can be separated from their mothers].

Proposed Int. No. 899-A

Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-142 to read as follows:

§ 9-142 Rikers Island nursery procedures and report.

c. Children and their mothers shall be housed in the nursery unless the department determines that such housing would not be in the best interest of such child pursuant to section 611 of the correction law or any successor statute. **Admission to the nursery is in the best interests of the child and shall be granted unless extraordinary circumstances exist that demonstrate imminent danger or imminent risk to the life or health of the child or others.** The department shall maintain formal written procedures consistent with this policy and with the following provisions:

[...]

3. An inmate may appeal such determination. The appeal shall be decided by the commissioner or the chief of the department, in consultation with a person who has expertise in early childhood development **and a person who has expertise in child welfare**. Any denial of an appeal shall include a specific statement of the reasons for denial. A copy of this determination on the appeal shall be provided to such inmate.

[...]

d. Notice **and decisions on applications and appeals must be made, whenever practicable, in sufficient time to allow the mother to plan for alternative care for the baby and to seek court intervention before delivery.**

~~e.~~ ~~d.~~ The department shall post on the department website by the 30th day of January on a yearly basis a report containing information pertaining to the department's nursery for the prior calendar year. Such annual report shall include:

1. The total number of pregnant women who entered custody during the reporting period.

G. Pro. Int. No. 1014-A - in relation to requiring the department of correction to post on its website an annual report regarding mentally ill inmates and recidivism.

The Legal Aid Society supports this legislation which requires DOC to post an annual report on outcomes of discharge planning completed for individuals with mental illness in regards to recidivism. However, the Council should require that additional data is collected so that evidence-based improvements to discharge planning services for individuals with mental illness may be developed. The current legislation provides for data about recidivism without relating it back to the specific services that were provided. More specific information connecting service provision to the effect upon recidivism rates would help to identify those services that are most successful and should be expanded. For example, disaggregation of information by SPAN office would provide information distinguishing success rates from different locations within the City. Such information would be useful in identifying the most successful initiatives as well as trends that would be useful for fiscal and management decisions.

The report is required to be posted on the DOC website. In addition to this public access to the report, the data relied upon should also be publicly available. We recommend that the Council amend Int. No. 1014A with parallel language to that enacted last year in Local Law 440 which requires that the report on health services in the City jails "shall also be posted on the department's website, with the data in such report posted in a non-proprietary searchable machine-readable format, and shall be maintained on such website for no fewer than ten years." New York City Administrative Code § 17-199 b. Continued public access to information is essential to ensure informed policy discussions.

H. Pro. Int. No. 1064-A - in relation to requiring the department of correction to evaluate programs it utilizes.

The Legal Aid Society supports this legislation which requires the DOC to evaluate the effectiveness of programs in the City jails. The legislation incorporates recommendations that the Legal Aid Society made to Council in May that the legislation require the collection of specific information on programming including reporting on goals, outcome measures, and effectiveness so that DOC develops programming which are "best practices." To ensure that reporting serves the purpose of monitoring and establishing valuable programming in the City jails, the Council should require the DOC to identify program goals and outcome measures for each jail program and to report on them annually. The legislation includes the qualifying phrases "where applicable" and "if applicable." The Council should make clear that the expectation is that goals and outcome measures are expected for all jail programs.

The report is required to be posted on the DOC website. In addition to this public access to the report, the data relied upon should also be publicly available. We recommend that the Council amend Int. No. 1064-A with parallel language to that enacted last year in Local Law 440 which requires that the report on health services in the City jails "shall also be posted on the department's website, with the data in such report posted in a non-proprietary searchable machine-readable format, and shall be maintained on such website for no fewer than ten years." New York City Administrative Code § 17-199 b. Continued public access to information is essential to ensure informed policy discussions.

I. Pro. Int. No. 1144-A - in relation to requiring the use of trauma-informed care in city correctional facilities.

The Legal Aid Society supports this legislation which requires DOC to incorporate trauma-informed care into the City jails for DOC staff and others who "regularly provide health or counseling services directly to inmates." The vast majority of individuals in our jails have experienced trauma in their lives in one or more form and training in working with survivors of trauma will improve interactions between incarcerated individuals and programming and treatment staff, as well as, interactions between incarcerated individuals and security staff. The amended legislation provides that DOC must identify where trauma-informed care is appropriate, and utilize standards developed by the substance abuse and mental health services administration of the United States department of health and human services for training and monitoring its implementation and use.

The report is required to be posted on the DOC website. In addition to this public access to the report, the data relied upon should also be publicly available. We recommend that the

Council amend Int. No. 1144-A with parallel language to that enacted last year in Local Law 440 which requires that the report on health services in the City jails "shall also be posted on the department's website, with the data in such report posted in a non-proprietary searchable machine-readable format, and shall be maintained on such website for no fewer than ten years." New York City Administrative Code § 17-199 b. Continued public access to information is essential to ensure informed policy discussions.

III. Conclusion and Recommendations

- Pro. Int. No. 1152A – Pass the proposed legislation but enhance it by ensuring that cash deposits can be made to the accounts of incarcerated individuals with no fee deducted.
- Int. No. 1260 – Pass the proposed legislation to transporting inmates in the custody of the department of correction to all criminal court appearances.
- Int. No. 1261 - Pass the proposed legislation to authorize the waiver of fees in the collection of cash bail.
- Int. No. 1262 – Pass the legislation but expand it to cover all court appearances and proceedings. In addition the legislation should include language that provides for easy access to civilian clothing for incarcerated individuals who will be transported by DOC to court.
- Pro. Int. No. 899-A – Pass the legislation but enhance it as follows:
    (a) Include a presumption favoring nursery admission.
    (b) Require consultation with a welfare expert before denying admission to the nursery.
    (c) Ensure mothers are given notice and decisions in sufficient time before delivery.
    (d) Require reporting the total number of pregnant women in DOC custody.
- Pro. Int. No. 1014-A – Pass the legislation in relation but enhance it as follows:
    (e) Add additional data points that connect service provision to the effect upon recidivism rates to identify the most successful initiatives: e.g. disaggregate information by SPAN office.
    (f) Make the underlying data relied upon in making the report public in a non-proprietary searchable machine-readable format and require that the report and data remain on the web for no fewer than ten years.
- Pro. Int. No. 1064-A – Pass the legislation but enhance it as follows:
    (a) Make clear that the expectation is that goals and outcome measures are expected to be identified for all jail programs.
    (b) Make the underlying data relied upon in making the report public in a non-proprietary searchable machine-readable format and require that the report and data remain on the web for no fewer than ten years.
- Pro. Int. No. 1144-A – Pass the legislation but enhance the reporting by making the underlying data relied upon in making the report public in a non-proprietary searchable machine-readable format and require that the report and data remain on the web for no fewer than ten years.

We thank Council for this public forum to discuss vital areas of concern about the management of our courts and the City jails. The City Council should continue to provide public forums so that the important issues concerning the criminal justice process and City jails continue to be the subject of informed public discourse. The City Council plays and must continue to play an important role in understanding, monitoring and tracking the conditions of confinement for individuals incarcerated in the City jail system and the efforts taken to provide for successful reentry and reduced recidivism.

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FOR THE RECORD

THE NEW YORK CITY COUNCIL
HEARING BEFORE THE COMMITTEE ON FIRE AND CRIMINAL JUSTICE SERVICES

Intro 1152-2016-A: A Local Law to amend the administrative code of the city of New York, in relation to the maximum fee allowed when transferring money to a city inmate

Monday, September 26, 2016
Committee Room - City Hall – 1:00 p.m.

My name is Raymond Audain and I am a Senior Counsel at the NAACP Legal Defense and Educational Fund, Inc. ("LDF"). We appreciate the opportunity to lend support to the commendable efforts by the Public Advocate, Letitia James, and Council Members Margaret Chin and Andrew Cohen to cap the fees that corporations can charge to transfer money into jail commissary accounts. Simply stated, prison bankers cannot be allowed to bleed the families of inmates, who represent some of the poorest people in the City. This profiteering is not just wrong—it is illegal under State law.

The numbers are staggering. According to the *New York Times*, local jails process between 11 million and 13 million people a year and incarcerate approximately 750,000 a year, 60 percent of whom are awaiting trial. Many of these individuals are in jail because they cannot make bail. In New York City, more than half of the individuals in the New York City Department of Correction ("DOC") custody are incarcerated because they cannot pay a bail of $3000 or less. Eighty-five percent of individuals with bail of $500 or less are in a City jail because they are not able to cover that bail.

Although these numbers shock the conscience, corporations have seized on them as an opportunity to make hundreds of millions of dollars. The prison financial services industry has become big business, and business is booming. According to a recent report in *The Nation*, prison phone calling is a $1.2 billion-a-year industry. And approximately 10 companies offer inmate banking services to correctional systems, including JP Morgan Chase and Bank of America, two of the biggest banks in the world. In certain cases, these corporations enter into exclusive contracts that are awarded without a competitive bidding process. For these corporations, inmates and their families represent captive consumers without any bargaining power whatsoever.

The situation in New York City is particularly troubling. As you may know, inmates in DOC custody must use their inmate commissary accounts for all transactions and are not permitted to possess cash, which is regarded as contraband; visitors who give cash to an inmate are subject to arrest. In order to fund their loved ones' inmate accounts, families must either travel to the facility and deposit money in person, or pay a private vendor to wire the money. Without proper legislation, these private vendors are free to charge predatory fees to wire that money. These predatory fees can impose a significant burden on many families, who may have to choose between paying their own bills and ensuring that their loved ones have enough money in their inmate accounts to cover basic needs like soap, toothpaste, and

deodorant. By capping fees at 1 percent or $5.00, the City Council will afford the families of incarcerated individuals in New York a bulwark against some of the most sophisticated financial institutions in the world, who see those families as just another "market opportunity" to be exploited.

LDF thanks the Council for its continued attention to the needs of people in City jails and their families.

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: 9/26/16

(PLEASE PRINT)

Name: Craig Levine

Address: _____

I represent: The Bronx Defenders

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☒ in favor ☐ in opposition

Date: 9/26/16

(PLEASE PRINT)

Name: SARAH KERR

Address: 199 WATER ST.

I represent: THE LEGAL AID SOCIETY

Address: 199 WATER ST

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1228-A Res. No. _____

☐ in favor ☐ in opposition

Date: 9/26/2016

(PLEASE PRINT)

Name: COMMISSIONER MARK PETERS

Address: _____

I represent: _____

Address: _____

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 899-A Res. No. _____

~~☐~~ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Jane Stancich

Address: 35 E 85th St

I represent: Hour Children

Address: 12-12 Jackson Ave. LIC

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THE CITY OF NEW YORK

Appearance Card

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

☐ in favor ☐ in opposition

Date: 9/26/2016

(PLEASE PRINT)

Name: Dep. Comm. & Gen'l Counsel

Address: Heidi Grossman

I represent: Dept. of Correction

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1262 Res. No. _____

☐ in favor ☐ in opposition

Date: 9/26/2016

(PLEASE PRINT)

Name: Dep. Comm. Timothy Farrell

Address: Dept. of Correction

I represent: _____

Address: _____

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1152 Res. No. _____

☐ in favor ☐ in opposition

Date: 9/26/2016

(PLEASE PRINT)

Name: Dep. Comm. Frank Doka

Address: Dept. of Correction

I represent: _____

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: Jeff Thamkittikasem

Address: _____

I represent: _____

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1260, 864A Res. No. _____

☒ in favor ☐ in opposition

revised

Date: 9/26/16

(PLEASE PRINT)

Name: Tanya Krupat, Osborne.

Address: 175 Remsen St

I represent: Osborne DCJPP.

Address: _____

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card 879-2016-A

I intend to appear and speak on Int. No. 1152-2016A 1128-2016A Res. No. _____

☑ in favor ☐ in opposition 1141-2016-A

Date: 9/26/2016

(PLEASE PRINT)

Name: Faith Barksdale

Address: 440 Lafayette Ave, Apt 2, Brooklyn, NY 11238

I represent: Jails Action Coalition

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: Vivian Velasquez

Address: 184 Wyckoff Ave

I represent: Urban Justice Cntr

Address: 40 Rector st

THE COUNCIL 1144 & 1223
THE CITY OF NEW YORK

Appearance Card 1228

I intend to appear and speak on Int. No. 1144 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Kelly Grace Price

Address: 537 W 137th St #7

I represent: Jails Action Coalition

Address: USC 40 Rectors.

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1228 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Victoria Phillips

Address: 40 Rector St - 9th floor NY, NY

I represent: JAIL, Jails Action Coalition

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: Vivian Velasquez

Address: 184 Wyckoff Ave

I represent: Jails Action Center

Address: 40 Rector St.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1262/1260/1261 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Jennifer Parish

Address: 40 Rector St. NY, NY 10006

I represent: Jails Action Coalition

Address: _____

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☐ in favor ☐ in opposition

Date: 9/26/16

(PLEASE PRINT)

Name: Alex Crohn

Address: _____

I represent: General Counsel, Mayor's Office of Criminal Justice

Address: 1 Centre Street, NY, NY

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: 9/26/16

(PLEASE PRINT)

Name: Molly Cohen

Address: _____

I represent: Associate Counsel, Mayor's Office of Criminal Justice

Address: 1 Centre Street, NY, NY

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: 9/26/16

(PLEASE PRINT)

Name: Chidinma Ume

Address: _____

I represent: Associate Counsel, Mayor's Office of Criminal Justice

Address: 1 Centre Street, NY, NY

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1260 Res. No. 1262

☐ in favor ☒ in opposition w/ amendment

Date: 9/26/16

(PLEASE PRINT)

Name: ELIAS HUSAMUDEEN

Address:

I represent: COBA

Address: 75 BROAD STREET

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☐ in favor ☐ in opposition

Date: 9/26/2016

(PLEASE PRINT)

Name: Kelsey De Avila

Address:

I represent: Brooklyn Defender Services

Address:

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1152-A Res. No. _____

☐ in favor ☒ in opposition

Date: 9/26/16

(PLEASE PRINT)

Name: GREGORY Levine

Address: 10981 MARKS WAY Miramar, FL 33025

I represent: JPAY

Address: 10981 MARKS WAY

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

7262

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

☒ in favor ☐ in opposition

Date: 09-26-16

(PLEASE PRINT)

Name: Candie Johnson

Address: _____

I represent: Jail's Action Coalition & Solitary Inmate

Address: 40 Rector St.

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