



NEW YORK CITY  
BOARD OF CORRECTION

Statement before the New York City Council

Committee on Criminal Justice  
Keith Powers, Chair

January 29, 2019

By Martha W. King, Executive Director  
New York City Board of Correction

Good morning, Chair Powers and Members of the Committee on Criminal Justice. My name is Martha King, and I am the Executive Director of the New York City Board of Correction (the Board). The Board is the City's independent oversight agency for the jail system. It promulgates Minimum Standards, monitors compliance with these Standards, and provides general oversight for the Department of Correction (Department of DOC) and Health + Hospitals' Correctional Health Services. Today I am joined by Emily Turner, Deputy Executive Director of Research, and Nashla Rivas Salas, Senior Director of Research, who leads our assessments of DOC's grievance program.

When New Yorkers voted to strengthen the Board by codifying its mandates in the City Charter, those requirements included creating procedures to hear grievances by, or on behalf of, any person confined under the jurisdiction of the Department. Complaints from people in custody are often requests for help on urgent concerns, including healthcare, safety, connection to loved ones, and work. New Yorkers recognized that an effective grievance system would help to promote safety and fairness in the jails, identify institutional problems, and address individual issues before they turn into crises. Beginning in 1977, the Board collaborated with DOC to create and evaluate a grievance system for incarcerated people.

Our involvement continues in multiple ways. Today, when incarcerated people appeal to the highest level, the Board provides a recommendation on that grievance matter. The Board, per its Minimum Standards, also provides an appellate opinion in eight categories of DOC-issued restrictions. For instance, in 2018, the Board responded to approximately 400 appeals from people in custody or visitors about restrictions they believed had been unduly issued on their visits. Lastly, Board staff provide an impartial review of system patterns and make recommendations to improve the overall grievance system.

In June 2018, BOC released our second assessment of DOC's grievance program. We found a system that, despite a few improvements in recent years, had major structural problems,

including a lack of critical policies for responding to tens of thousands of 311 calls each year; unequal access and availability; and a confusing and underutilized appeal process. These structural problems lead to unmet needs, increased tensions, perceptions of unfairness, and unaddressed systemic issues in the City's jails. Today, I will summarize some of our key findings while discussing recent, significant improvements and three areas where DOC must still act.

### **Recent Improvements**

Over the past year as DOC updated its grievance policy, the Board provided extensive feedback, and DOC made important improvements. For instance, DOC clarified their process for responding to 311 complaints. New policy requires that staff provide timely acknowledgment of all 311 complaints. Up until now, 311 complaints did not automatically initiate the formal grievance process. These are critical changes since recently 79% of DOC's complaints came through 311, and the number of calls to 311 increased 49% from FY16 to FY17.

DOC's new policy also requires they provide more information to people in custody about the process. Information on which complaints are grievable is now automatically provided with grievance forms. New forms have clearer instructions, specifying timeframes for appeal and response, and now clarify which DOC offices handle non-grievable matters. DOC also hired additional staff.

Since January 2017, DOC's grievance office has used an electronic system called Service Desk to track all complaints. Service Desk should help DOC to better comply with its policies and improve accountability. It will also assist in the Board's monitoring. The Department recently provided us with direct access to Service Desk, and Board staff can now check the status of complaints, review patterns, and sample complaints for future audits.

### **Areas for Improvement**

#### **Ensuring a Coordinated, Accountable, and Transparent System**

Our assessments have found that an increasing number of complaints, and nearly 40 percent of complaints in FY17 are considered non-grievable, such as complaints about safety or staff unprofessionalism and misconduct. Over the last five years, the number of non-grievable complaints has nearly tripled and the portion of non-grievable complaints has nearly doubled. Complaints about DOC and CHS staff comprised 55% of non-grievable complaints in FY17.

In these cases, complainants are not entitled to a formal resolution or appeal. New policy requires the DOC grievance office to notify the grievant of a referral to a different office regardless of whether the complaint was made via 311 or on paper. However, grievants are not informed about what the investigation will entail or if they will receive a response. We continue to urge DOC to create a coordinated and transparent system to ensure that people receive written responses about the conclusion of the investigations into their non-grievable complaints. The electronic Service Desk system should allow for such coordination, regardless of which DOC office is investigating.

### **Simplifying the Process**

Our assessment found that the grievance appeal process is broken. If someone files a grievable complaint, the person is entitled to an initial response and the opportunity to appeal three times. Yet, nearly 95% of complaints are closed after the initial DOC response. In FY17, only 20 grievances, or .4%, were appealed, and only 10 appeals received a decision at the Department's final stage of review.

Contrary to policy, none of those appeals were provided to the Board prior to DOC's decision. As further evidence of poor tracking and management of the appeals, we found that DOC's data shows that there were even more appeals at later stages than the earlier ones.

As part of our recent assessment, we audited 262 complaint files. Many of the grievance forms audited by the Board were incomplete. 41% of these cases were not timestamped, making it impossible to track compliance with response deadlines. 58% of audited complaints did not indicate if the grievant accepted or rejected the resolution, and, of these, 64% were also missing the signature of the complainant. Without this information, it is impossible to know if the grievant wanted to appeal or even received a response.

From start to finish, the full appeal process can take more than 10 weeks to complete. We have recommended that DOC shorten and simplify the grievance appeal process. DOC's new policy, instead of shortening the process, adds a new, opaque step called a preliminary evidenciary review, making it even more difficult to appeal.

### **Problem-Solving and Proactive Prevention**

We found that five complaint categories made up nearly 50% of all grievances received by DOC. These areas have been the top complaints consistently for the past five years. These frequent complaints concern DOC staff; jail employment; financial accounts; jail sentence calculations; and personal property. Because such stark and persistent patterns signal areas of DOC operations that need to be reviewed and improved, we recommended DOC develop an action plan to evaluate and address these drivers of the top grievance categories. An effective grievance system must use its data to problem-solve to improve conditions and reduce the number of future complaints and potential lawsuits against the Department.

Complaints against DOC staff have grown most precipitously by 248% from FY13 to FY17. In FY17, staff complaints represented 13% of all complaints received by DOC. Therefore, we further recommended DOC develop a system-wide approach on this issue and one that is coordinated with the Department's significant staff development efforts and the Early Warning System required by the *Nunez* Consent Judgment. These action plans are needed to assist in preventing and decreasing the number of overall complaints, but DOC has not pursued.

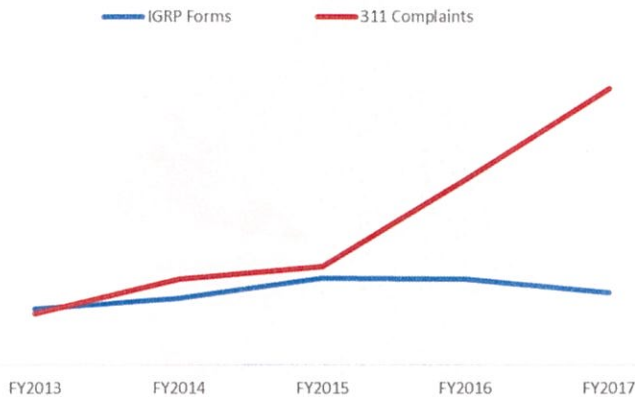
Our next assessment will be released in June 2019. We look forward to working with DOC, CHS and the Council on efforts to improve the complaint system for people in custody. We thank you for taking up these important issues today, and we are happy to answer any questions and to discuss the proposed legislation.

# Committee on Criminal Justice Oversight Hearing on Grievance Process

January 29, 2019



## Complaints From People In Custody

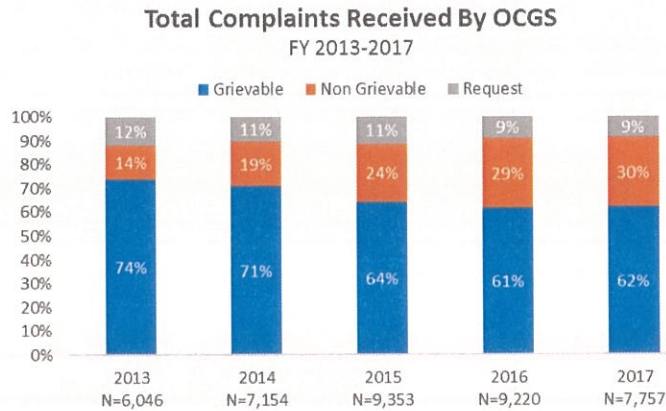


- Nearly four times as many complaints were filed via 311 than with the Grievance System in FY 2017.



## Complaints From People In Custody

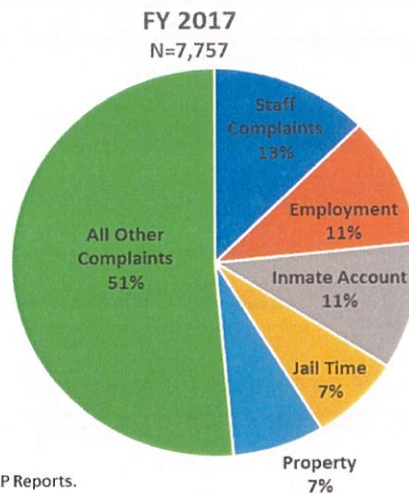
- Nearly 40% of all complaints filed with OCGS were not subject to the grievance process.



SOURCE: Department of Correction IGRP Reports FY2013-2017.

## Complaints From People In Custody

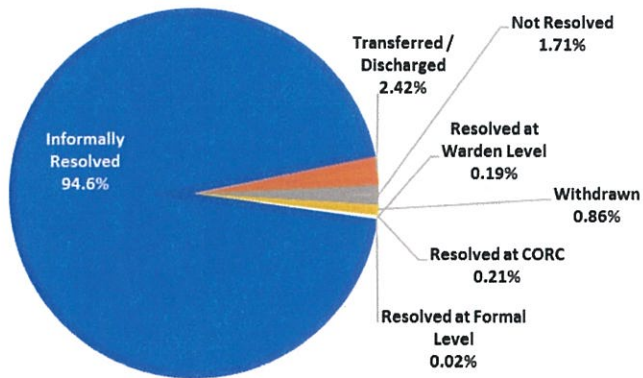
- Five categories made up nearly 50% of all complaints received by OCGS
- Have been the top 5 complaint categories for the past 5 years
  - Complaints about DOC staff
  - Employment
  - Inmate financial accounts
  - Jail time calculations
  - Personal property



SOURCE: NYC DOC IGRP Reports.

## Resolutions and Appeals

GRIEVANCE RESOLUTION STAGES



- 95% of complaints were closed after the initial OCGS response
- Only 20 people appealed any grievance decision
  - 10 received a decision from CORC.
- None of the appeals that made it to the CORC were provided to the Board prior to the CORC decision.



CITY OF NEW YORK - DEPARTMENT OF CORRECTION



OFFICE OF CONSTITUENT AND GRIEVANCE SERVICES  
INMATE STATEMENT FORM

Form.: 7101R-A  
Eff.: 9/14/18  
Ref.: Dir. 3376R-A

Inmate's Name:		Book & Case #:	NYSID #:
Facility:	Housing Area:	Date of Incident:	Date Submitted:

All grievances must be submitted within ten business days after the incident occurred, unless it's a sexual abuse or harassment allegation. The inmate filing the grievance must personally prepare this statement. Upon collection by the Office of Constituent and Grievance Services (OCGS) staff, OCGS staff will time-stamp and issue it a grievance reference number. OCGS staff shall provide the inmate with a copy of this form as a record of receipt.

Grievance:

SAMPLE

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Action Requested by Inmate: \_\_\_\_\_

Please read below and check the correct box:

Do you agree to have your statement edited for clarification by OCGS staff?    Yes     No

Do you need the OCGS staff to write the grievance for you?    Yes     No

Have you filed this grievance with a court or other agency?    Yes     No

Did you require the assistance of an interpreter?    Yes     No

Inmate's Signature:	Date of Signature:
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FOR DOC OFFICE USE ONLY

OCGS MUST PROVIDE A COPY OF THIS FORM TO THE INMATE AS A RECORD OF RECEIPT.

THIS FORM IS INVALID UNLESS SIGNED BY THE INMATE AND GRIEVANCE COORDINATOR

TIME STAMP	Grievance Reference #	Category:
	Office of Constituent and Grievances Services Coordinator/Officer Signature:	



**CITY OF NEW YORK - DEPARTMENT OF CORRECTION**



**OFFICE OF CONSTITUENT AND GRIEVANCE SERVICES  
INMATE STATEMENT FORM**

Form: # 7101R-A  
Eff.: 9/14/18  
Ref.: Dir. 3376R-A

The Office of Constituent and Grievance Services (OCGS) at the NYC Department of Correction is available to resolve your individual complaints or concerns about specific matters involving incarceration.

You may first seek to resolve the issue or condition by speaking to the involved staff or your housing area officer.

- A grievance is a written complaint submitted by an inmate in the Department's custody about an issue or condition relating to the inmate's confinement.
- You always have the right to file a complaint/grievance. Inmates are only allowed to file one complaint for each grievance form.
- Before you seek relief from an external entity, like the courts or another agency, you should file your grievance with this office.
- Inmate shall not file repetitive grievances / 311 complaints where time frame to investigate said complaint has not elapsed. This will be considered misuse.

*All grievance forms must be signed. Failure to sign form will be deemed invalid.*

**THE SUBMISSION AND APPEALS PROCESSES**

**1.SUBMISSION**

Submit this form (Statement form) to the OCGS office, OCGS staff, or drop it in a grievance box. Your grievance form will be returned to you if the complaint is outside of OCGS jurisdiction such as complaints in regards to disciplinary process; if the grievance contains multiple issues; or if the grievance form is not signed. Please speak with the grievance staff in your facility for additional information.

**2.FORMAL RESOLUTION**

You will receive a proposed resolution within seven (7) business days after the OCGS receives the form. If you disagree with the proposed resolution, you will have two business days to request an appeal to the facility Commanding Officer.

**3.COMMANDING OFFICER'S REVIEW**

The OCGS staff will forward your appeal to the commanding officer within one business day of receiving it. Within five (5) business days of receiving the appeal, the commanding officer will render a written disposition, you will have two (2) business days to appeal to the Division Chief.

**4.APPEAL TO THE DIVISION CHIEF**

The OCGS staff will forward your appeal to the Division Chief within one business day of receiving it. Within five (5) business days of receiving the appeal, the Division Chief will render a written disposition.

**5.CENTRAL OFFICE REVIEW COMMITTEE**

If you disagree with the Division Chief's disposition, you will have two (2) business days to appeal to the Central Office Review Committee (CORC). The CORC will render a disposition within fifteen business days of receiving the appeal. The CORC's disposition constitutes the Department's final decision.

**GRIEVANCE CATERGORIES**

- |                                 |                           |
|---------------------------------|---------------------------|
| 1. CLASSIFICATION/SRG STATUS    | 13. MENTAL HEALTH         |
| 2. CLOTHING                     | 14. PERSONAL HYGIENE      |
| 3. COMMISSARY                   | 15. PHONE                 |
| 4. CORRESPONDENCE / MAIL        | 16. PROGRAMS              |
| 5. EMPLOYMENT                   | 17. PROPERTY              |
| 6. ENVIRONMENTAL                | 18. RECREATION            |
| 7. FOOD                         | 19. RELIGION              |
| 8. INMATE ACCOUNT               | 20. RULES AND REGULATIONS |
| 9. JAIL TIME                    | 21. SCHOOL                |
| 10. LAUNDRY                     | 22. SEARCH                |
| 11. LAW LIBRARY                 | 23. SOCIAL SERVICES       |
| 12. MEDICAL/ACCESS TO SICK CALL | 24. TRANSPORTATION        |
|                                 | 25. VISIT                 |
|                                 | 26. OTHER                 |

**CATERGORIES NOT SUBJECT TO THE GRIEVANCE PROCESS**

1. ASSAULT ALLEGATION
2. SEXUAL ABUSE/SEXUAL HARASSMENT (PREA)
3. HARASSMENT ALLEGATION
4. STAFF COMPLAINT
5. INMATE ALTERCATION
6. INMATE ON INMATE SEXUAL ABUSE/SEXUAL HARASSMENT ALLEGATION (PREA)
7. INMATE-ON-INMATE VERBAL HARASSMENT ALLEGATION
8. STATUS AS AN INTENDED CONTRABAND RECIPIENT, ENHANCED RESTRAINT STATUS, RED ID OR CMC)
9. MEDICAL STAFF / MENTAL HEALTH STAFF
10. REQUEST FOR PROTECTIVE CUSTODY
11. REQUEST FOR ACCOMMODATION DUE TO DISABILITY
12. FREEDOM OF INFORMATION LAW REQUEST
13. HOUSING
14. INMATE GRIEVANCE
15. OTHER





Statement before the  
New York City Council

Committee on Criminal Justice Services  
Keith Powers, Chairperson

By James Boyd, Director of Constituent and Grievance Services (OCGS)  
And Acting Bureau Chief of Facility Operation Becky Scott  
NYC Department of Correction

**On Oversight – The Grievance Process**

January 29, 2019

Good morning, Chair Powers and members of the Criminal Justice Committee. Thank you for this great opportunity to discuss the Department of Correction's inmate grievance system. My name is James Boyd and I am the Director of Constituent and Grievance Services (OCGS) at the NYC Department of Correction (DOC). Joining me is Becky Scott, Acting Bureau Chief of Facility Operations, who has over twenty-five years with the DOC. Also, joining us in the audience are the Grievance Coordinator and the Grievance Officer from the Rose M. Singer Center.

Today I will briefly walk you through the Department's grievance system, current reform efforts already underway, and our plans for future improvement. I will also comment on Intro 1334, Intro 1340 and Intro 1370, the three bills being considered today.

**Background**

Though now consolidated under the OCGS, the Department originally had two units as outlets for detainee and inmate complaints, the Inmate Grievance Resolution Program (IGRP) and the Office of Constituent Services (OCS). IGRP was the initial office created in the 1980's to serve as the outlet for individuals in DOC's custody to file their grievances. This process was paper based and inmates and detainees were only allowed to file complaints directly with grievance staff in the facility. In 2011, the Department created the Office of Constituent Services and launched a pilot that captured grievances made to 311. The pilot was successful and it allowed Constituent Services staff to receive and respond to inmate complaints seven days a week. The complaint was sent directly from 311 to the constituent service email address and a notification was sent to OCS staff's email account. This efficient and paperless process also made it easier for OCS to aggregate and improved DOC's ability to report on trends and metrics.

However, two offices had difficulty reconciling duplicate grievances made by inmates who used both the 311 system and the filed paper grievances which slowed down the grievance process, delayed resolution, and frustrated officers working in the facilities. In 2017, these two offices merged to form the Office of Constituent and Grievance Services. OCGS is comprised of dedicated public servants both uniform and non-uniform staff with years of service spanning from three years to forty years working in the Department. This merger was a reflection of the Department's commitment to improve and be innovative in capturing and resolving inmate complaints. Since the creation of OCGS, the Department has used a technological system to track the life cycle of complaints known as Service Desk.

The application of Service Desk was a bold and innovative step DOC and it enabled OCGS to electronically create and assign inmate complaints. This system allows OCGS to centralize all inmate complaints, grievances and request regardless the method the inmate submitted the complaint via grievance staff, including 311, mail, advocates or third-parties. Service desk promotes transparency, accountability and improved the agency's response times to inmate complaints. To further ensure DOC is properly tracking and reviewing the quality of work in the system, OCGS created a Quality Assurance unit to support and monitor reporting efforts.

In addition to reforms made to the structure of OCGS, the Department also made important changes to its directive and forms. These changes were made collaboratively with staff on the ground and our colleagues at Board of Correction. The updated grievance system was created as a joint collaboration between the DOC and the Board of Correction. It was designed to provide individuals in DOC's custody the opportunity to file issues regarding their confinement through a structured and expedient process. The grievance process is designed to reduce conflict and litigation while providing the Department with information concerning facility operations that will help it maintain a safe and secure environment. In addition, as updates to the directive were rolled out, the Department also regularly engaged with legal advocates to keep them informed of DOC's efforts and discuss their concerns.

In 2016, BOC released a study of the Department's grievance system and the Department has since implemented many of these recommendations, including:

- Utilizing a technological system designed to track the lifecycle of all complaints from inception to completion;
- Creating consistent, weekly reports;
- Increasing responsiveness to inmate complaints;
- Hiring additional Grievance Coordinators and Grievance Officers to support this effort;
- Circulating new posters in the facilities to promote awareness on how to file a complaint;
- Revising the current grievance directive to ensure policy is aligned with practice; and
- Updating grievance forms.

BOC recommended biannual updates with OCGS to discuss ongoing efforts to improve the grievance process but the Department instead proposed meetings on a quarterly basis due to the importance of this work.

The Department's new directive on the inmate grievance procedure went into effect in December, 2018. The updated directive includes additional language about the 311 process, new appeal levels, service desk system and how to handle specific complaints. In addition, the inmate statement form and categories were printed for the first time in ten different languages including French, Mandarin, and Bengali.

In an effort to ensure everyone in DOC's custody learned about the new procedures, OCGS attended a recent inmate council meeting. A poster explaining the new process has also been drafted and will be printed and hung in all housing areas in the coming weeks.

### **How to a File Complaint**

Inmates have multiple outlets to file their complaint. Since 2015, calls to 311 have been free for the inmate population, expanding access for inmates to file a complaint. Although 311's citywide customer service standard requires city agencies to provide a response within fourteen days, the Department mandated a seven day turnaround for facilities and units to provide acknowledgements or responses to inmate issues using our inmate complaint system.

There are forty categories for individuals in DOC custody to file their complaints and these complaints can fall under a "grievable" category or subject to the grievance process or "non-grievable" category and not subject to the grievance process. OCGS staff process all inmate complaints regardless if the complaint is grievable or non-grievable.

All non-grievable issues are forwarded to the appropriate unit for further review and are then entered and processed through our service desk system. To submit a grievance, the inmate population can file a grievance with the grievance staff in the facility, drop the grievance in the grievance boxes in their facility or visit the grievance office. Inmates must write their grievance and requested outcome on the inmate statement form and sign the form. **The new inmate statement form now also includes additional information on the back of the form about the appeal process and all grievance categories.**

Greivable issues can be appealed whereas non-greivable issues cannot. If the complaint is a greivable issue like inmate account, employment or property then grievance facility staff will have seven business days to investigate the issue and provide a resolution.

- If the inmate is not satisfied with the resolution then they may appeal the decision and it escalates to that facility's Warden. The Warden has five business days to review the grievance and supporting documents and either affirm or reject the grievance staff decision or the inmate's request.
- If the inmate is not satisfied with the Warden's decision then they can appeal to the Assistant Chief. The Assistant Chief will also have five days to review the Grievance staff and Warden's decisions and either affirm or reject the grievance.
- If the inmate is not satisfied with the Assistant Chief's decision then they can appeal to the Central Office Review Committee (CORC). The CORC is comprised of the Chief of Department, General Counsel, and Assistant Commissioner for Strategic Initiatives and myself. The BOC also provides a recommendation to the CORC on the inmate grievance for review and consideration. The CORC constitute as the Department's final decision on inmate grievances.

### **311 System**

The 311 system is available to individuals within DOC's care and any member of the public with a loved one detained in one of the City's jails.

- If the Department receives a complaint from an inmate or third party on behalf of an inmate with concerns about their safety then it's sent directly to the facility staff (and security team) for further handling and tracked in the OCGS electronic complaint system until OCGS receive an acknowledgement or it's resolved.
- Where the nature of the 311 call addresses a non-grievable subject-matter (i.e., use of force by staff) that is the responsibility of a division of DOC other than OCGS to investigate and resolve, OCGS tracks the complaint in its electronic system, but the content and outcome of the investigation exists within the databases and systems of the investigating division.

All units tasked to address complaints in the service desk system have seven calendar days to acknowledge they are handling the complaint or to provide a response to OCGS, then OCGS supervisory staff will close the complaint. When complaints are not handled within the seven day timeframe, units including the facilities will receive a daily notice in their email until they address the complaint in the system. OCGS also sends all Wardens weekly reports that include their average response times, any outstanding complaints, top ten complaints for the week, top three housing areas filing complaints and complaint volume. The facilities respective Assistant Chief is also copied on this communication. In addition, The Bureau Chief of Facility

Operations, Bureau Chief of Security and Chief of Department also receive a weekly report with the aforementioned indicators to monitor performance and responsiveness.

In recent months, OCGS also improved upon how grievance information is reported to facility and agency leadership. The Department recognizes that data on inmate complaints is a valuable management tool for Wardens to reduce inmate tension and address institutional problems. To that end, OCGS' new grievance reports provide uniform leadership including the Chief of the Department weekly, monthly and quarterly data to track complaint trends, volume and response times for all facilities.

### **Introduction 1370**

The Department is already doing many reforms called for in Int. 1370. For example, the updated Inmate Statement Form now includes information on the appeals process. Additionally, 311 complaints are already part of the grievance process as per the Department's directive.

Depending on the nature of the inmate complaint, the OCGS HUB team sends any grievance received via 311 to OCGS staff to check if the inmate has already filed a grievance in regards to the complaint. If there is no grievance on file, the OCGS staff will look into the complaint and then provide the inmate a resolution, within seven business days similar to grievance filed on paper. If the OCGS HUB team receives a 311 complaint from an inmate that is not subject to the grievance process, they shall task it out in Service Desk to the appropriate unit for handling. All units within Service Desk have seven days to respond and close their correspondence in the system and provide the inmate with an acknowledgement. **The Department has a zero tolerance for anyone who prevents an inmate from filing a complaint or acts of retaliation because they filed a complaint as stated in our directive.** The Department also instituted multiple pathways for an individual to report if they feel they have been retaliated against as a result of filing a grievance.

Currently inmates do not receive formal acknowledgement from the Department for 311 complaints that are considered non-grievable. 311 staff provides inmates with a correspondence number to confirm their complaint was submitted to the Department. The Department is actively working on a plan to devise an efficient way to provide inmates with an acknowledgment for non-grievable 311 complaints. However, all 311 calls are logged in the Department's electronic OCGS complaint system, reviewed by OCGS staff and either resolved by OCGS staff or forwarded to the appropriate area of concern within the Department for investigation and resolution.

The Department supports the intention of Int. 1370, but would like to work with the Council to identify the most effective means of communicating with inmates about the appeals process.



### **Introduction 1340**

The Department supports the spirit of Int. 1340 but has some concerns. Specifically, the Department supports the idea of additional grievance boxes, however we would like to work with Council to discuss the best placement of grievance boxes, focusing on highly trafficked areas.

However, DOC has concerns about the information sharing requested in this bill and believes DOC is prohibited to share certain grievance concerns due to HIPPA regulations.

Lastly, while the Department supports innovative methods of communicating with inmates about the status of their grievances, the aging state of our existing facilities alone make the technological objectives of this bill, which would necessitate the complex installation of wi-fi throughout our facilities, incredibly time-consuming and costly to achieve. Furthermore, the Council and the Board of Correction have expressed strong interest in seeing the Department develop a Case Management System for PREA cases and improve the electronic tracking of a number of other metrics, including our bail process. Development and implementation of another central technological management solution would place a strain on our limited technological resources and would likely slow the development and implementation of these other important projects.

### **Introduction 1334**

The Department and BOC have a good working relationship, especially when it comes to our efforts to better address grievances. As such, the Department does not believe this mandated survey is needed. The Department already publically posts quarterly reports about the grievance process as required by Local Law 87 of 2015 (the most recent is enclosed). The BOC also has access to the Department's inmate complaint system and the Board can review all inmate complaints at any time, which enhances our collaborative efforts and better enables both agencies to improve the grievance system. In addition, DOC currently shares information with BOC on a weekly and monthly basis.

### **Closing Remarks**

Although the Department has made substantial strides in improving the grievance system, there is always more that can be done. OCGS continues to monitor the Service Desk system and refine it in order to better capture pertinent information and align new changes with the current grievance process. OCGS also randomly audits grievance staff's work for quality assurance purposes and to ensure their efforts are consistent with the grievance directive. The Department is continuously working to address primary complaints and intend to develop a strategic plan on how to best tackle these issues. DOC is also working closely with the Academy to revise the curriculum as it relates to grievances and improve pre-promotional trainings for Captains and

Assistant Deputy Wardens on the inmate grievance system and their role in addressing inmate issues.

The Department appreciates the Council's interest and support in this very important work. We look forward to continue working with the Council to improve the inmate grievance system and extend an opportunity to the Council to visit our Grievance staff. Thank you again for the opportunity to testify today and we are happy to answer any questions.



# Office of Constituent and Grievance Services

## Local Law 87 FY 2019: Second Quarter

GRIEVANCES PROCESSED	
Grievances filed	1156
Non-Grievable Filed	528
Request filed	148
<b>Total Processed</b>	<b>1832</b>

GRIEVANCE CATEGORIES	
Classification	26
Clothing	17
Commissary	36
Correspondence/Mail	48
Employment	211
Environmental	41
Food	24
Housing	13
Inmate Grievance and Request Prog	0
Inmate Account	173
Jail Time	94
Laundry	3
Law Library	11
Medical	174
Mental Health	9
Noise	1
Personal Hygiene	6
Phone	21
Programs	12
Property	84
Recreation	12
Religion	19
Rules & Regs	1
School	1
Search	5
Security Risk/Watch Group	72
Social Services	7
Transportation	3
Visit	31
<b>Total</b>	<b>1156</b>

GRIEVANCES , REQUESTS, NON- GRIEVABLE BY FACILITY	
AMKC	436
BKDC	57
EMTC	306
GRVC	141
MDC	175
NIC	121
OBCC	232
RMSC	217
RNDC	59
VCBC	85
WF	3
<b>Total Facilities</b>	<b>1832</b>

GRIEVANCES AND REQUESTS, NON- GRIEVABLE BY HOUSING AREA TYPE	
Administrative Segregation	1
Adolescents	1
Communicable Disease Unit	0
Central Monitor Case	0
Central Punitive Segregation Unit	66
Enhanced Supervision Housing	63
General Population	1488
Mental Observation	72
Protective Custody	52
Transgender Housing Unit	12
Young Adults	46
<b>Total Housing Area Types</b>	<b>1801</b>

GRIEVANCE RESOLUTION STAGES	
Withdrawn	14
Transferred/Discharged	23
Informally Resolved	12
Resolved at Formal Level	1094
Resolved at Wardens Level	0
Resolved at CORC	0
<b>Total Grievances Resolved</b>	<b>1143</b>

GRIEVANCES BY SUBMISSION METHOD	
Grievance Box	1515
Housing Services	227
Referrals	2
Walk-Ins	57
<b>Total Submission Types</b>	<b>1801</b>



**New York City Council  
Committee on Criminal Justice**

**Oversight Hearing:  
The Department of Correction Grievance Process**

**Hearing on Proposed Legislation:  
Int. No.1334, No. 1340 & No. 1370**

**January 29, 2019**

**Testimony of The Legal Aid Society Prisoners' Rights Project**

Presented by:

Dale A. Wilker  
Prisoners' Rights Project  
The Legal Aid Society  
199 Water Street  
New York, NY 10038  
212-577-3530

## CHAIRMAN POWERS, MEMBERS AND STAFF OF THE COMMITTEE ON CRIMINAL JUSTICE:

We submit this testimony on behalf of The Legal Aid Society, and thank Chairman Powers and members of the Committee on Criminal Justice for the opportunity to address the very important issue of reforms to the grievance system of the New York City Department of Correction.

We support the three bills under consideration today seeking to improve the jail grievance system.

The importance of a functioning grievance system in a jail or prison cannot be overstated. It is, first, an opportunity to reduce tension among incarcerated persons by providing a trustworthy mechanism to address their concerns. When human beings perceive a process to be fair, regardless of setting, they are more likely to cooperate with authority.<sup>1</sup> With the rates of violence in Department of Correction (“DOC” or “Department”) at an all-time high, the City must prioritize efforts to reduce tensions between incarcerated persons and staff.<sup>2</sup>

From a legal perspective, a useable grievance system is likewise critical. By federal law – the Prison Litigation Reform Act of 1996 – an incarcerated person cannot have federal civil rights violations redressed in court unless all available administrative remedies are first exhausted. A confusing and unwieldy grievance system can deny incarcerated people a judicial remedy for wrongs that have been done to them in our jails.

We appreciate that the Committee on Criminal Justice is holding a hearing on the grievance process in New York City jails. We write to provide context and potential lines of inquiry regarding some of the grievance issues regularly encountered by our office.

For the sake of brevity, we refer to complaints that are subject to the grievance system as “grievable,” and complaints that fall outside the grievance system as “nongrievable.” The Board of Correction (“BOC” or “Board”) has compiled a helpful table of grievable and nongrievable categories, available in the Second Assessment of the New York City Department of Correction Inmate Grievance System (“BOC Second Assessment”).<sup>3</sup>

### **The Grievance Process Should Be Communicated in Plain and Simple Language**

The Department’s newly-promulgated directive on grievances, Directive 3376R-A, is incredibly difficult to understand even for legal professionals specializing in prison reform. Administrative Code § 9-139(a) requires DOC to *inform* every incarcerated person “in writing, using plain and

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<sup>1</sup> See Tom R. Tyler, *Why People Obey the Law* (2006), available at [http://www.psych.nyu.edu/tyler/lab/Chapters\\_1-4.pdf](http://www.psych.nyu.edu/tyler/lab/Chapters_1-4.pdf).

<sup>2</sup> Sixth Report of the Nunez Independent Monitor, filed October 17, 2018 pursuant to the Consent Judgment in *Nunez v. City of New York*, 11-CV-5845 (LTS), available at [https://www1.nyc.gov/assets/doc/downloads/pdf/6th\\_Monitor\\_%20Report-10-17-18%20.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/6th_Monitor_%20Report-10-17-18%20.pdf). “[T]he use of force rate was *higher in each of the six months of the current Monitoring Period than in any previous year*” (emphasis in original, p. 8).

<sup>3</sup> Available at [https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/June-12-2018/GrievanceAuditReport\\_Final\\_2018.11.06.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/June-12-2018/GrievanceAuditReport_Final_2018.11.06.pdf). Table attached as Appendix B, p. 24.



simple language, of their *rights*...[with regard to] the grievance system” (emphasis added). The Department cannot comply with that obligation when its own explication of its grievance system is so complicated.

For example, the Directive includes substantive requirements in the “Definitions” section: this is the *only* place where grievants are told arguably the most important deadline in the process, that they must submit grievances “within ten days after the incident occurred.”<sup>4</sup> Common sense counsels that such a crucial requirement would be among the first items in the “Submission of a Grievance” section,<sup>5</sup> but instead, that deadline is buried in a paragraph defining the term “Grievance” in the “Definitions” section.<sup>6</sup> Nobody thinks of the familiar “April 15” deadline for submission of our federal tax returns as part of the definition of a “tax return.”

Recommendation: the New York City Council (“Council”) should not only require that the Department inform incarcerated persons of their rights regarding the grievance system in plain and simple language, as § 9-139(a) requires, but should mandate that the system itself is plain and simple, as are the instructions on how to use it.

### **Clarify Third Party 311 Calls and Other Third Party Complaints**

The new directive provides some clarity about how Office of Complaints and Grievance Services (“OCGS”) will process a 311 call made by an incarcerated person, but the fate of third party complaints made via 311, mail, email, or other means remains a mystery. Our office regularly encounters this issue with complaints we make on behalf of clients through email. The Department rarely responds substantively, and our clients remain consistently confused about how complaints made by us as advocates are processed by the grievance system. The directive is silent on this issue.

Recommendations:

1. We recommend that OCGS treat complaints filed by third parties, including attorneys, advocates, public officials, BOC, and family members, as a trigger for the grievance system. If the complaint is grievable, OCGS should deem the grievance as filed and continue with the system.
2. If a third-party complaint is non-grievable, OCGS should be mandated to forward that complaint to the appropriate unit(s) and/or correctional health authority.
3. At minimum, the Council should require uniform written procedures regarding how third party complaints interact with the grievance system.

### **Access to the System**

We are concerned about the lack of clarity for how OCGS handles nongrievable issues that are filed as grievances.

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<sup>4</sup> Directive 3376R-A at Section III.A, p. 3.

<sup>5</sup> Directive 3376R-A at Section V, pp. 11-14.

<sup>6</sup> Directive 3376R-A at Section III.A, p. 3.

- Incarcerated persons should not be responsible for resubmitting a nongrievable complaint to the appropriate entity.
- The Council should mandate that DOC forward all nongrievable complaints about directly to the appropriate departmental unit(s) and/or correctional health authority. The new grievance directive implies in the “Definitions” section that OCGS will do this, but it is not clear.<sup>7</sup>

The new directive allows electronic filing of a grievance, but does not establish any related procedures.<sup>8</sup>

- The Department should ensure that the incarcerated person receives a time-and-date-stamped copy of an electronically filed grievance. DOC should provide a written policy for who is responsible for providing copies, when they must provide them, and accountability mechanisms to ensure OCGS staff are complying with that policy.

### **The Grievance Process Should Be Shorter and Should Include Non-DOC Representation**

The Prisoners’ Rights Project has long advocated for a shorter grievance process to allow meaningful access—especially in New York City jails, where transfers between facilities are common and average length of stay is 72.2 days.<sup>9</sup> The revised directive has four levels: Formal Resolution from Grievance Coordinator, Commanding Officer (often the Warden of the facility), Division Chief, and finally to the Central Office Review Committee (“CORC”). Even the New York State Department of Corrections and Community Supervision has long maintained only a 3-level system.<sup>10</sup> We have proposed two simple ways to shorten the grievance process: make response times shorter, and eliminate at least one level of appeal (such as Division Chief). The new Directive does not indicate a deadline for final CORC determinations,<sup>11</sup> nor does any step in the grievance process involve non-DOC representation.<sup>12</sup>

Recent reports from DOC under the prior appeals system show that out of 1,326 grievances deemed properly filed as grievable issues, **none** were appealed to the top two levels of appeal (Warden and then CORC).<sup>13</sup> Nearly 98% (1,296) of those grievances were deemed resolved at the very first level, which was “Informal Resolution” at the time. Though the new directive was only effective as of December 10, 2018, we suspect that the ratios will remain largely the same. We look forward to updated data from the Department.

Recommendations:

<sup>7</sup> Directive 3376R-A, III.H, p. 4.

<sup>8</sup> Directive 3376R-A, V.F, p. 12.

<sup>9</sup> See DOC Statistics at [https://www1.nyc.gov/assets/doc/downloads/press-release/DOC\\_At%20a%20Glance-Frist%203%20Months%20FY%202019\\_092418.pdf](https://www1.nyc.gov/assets/doc/downloads/press-release/DOC_At%20a%20Glance-Frist%203%20Months%20FY%202019_092418.pdf) (last visited January 23, 2019).

<sup>10</sup> See DOCCS Directive 4040: Inmate Grievance System, available at <http://www.doccs.ny.gov/Directives/4040.pdf>

<sup>11</sup> Directive 3376R-A, IX, pp. 1-20.

<sup>12</sup> The prior DOC grievance system involved an appeal to the Inmate Grievance Resolution Committee, which included one inmate grievance representative, See Directive 3376, IV.C.3, p. 8.

<sup>13</sup> See DOC Statistics, OCGS Report Fiscal Year 2019: First Quarter, available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Local\\_Law\\_87\\_FY\\_19\\_Q1.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Local_Law_87_FY_19_Q1.pdf) (last visited January 23, 2019).

1. Shorten response times so that the entire grievance process can be completed in 30 calendar days
2. Eliminate at least one level of appeal. We propose eliminating the appeal to Division Chief.
3. Include non-DOC representation in the CORC.
4. Establish a deadline for the final CORC decision.
5. CORC decisions should be automatically forwarded to BOC for its review regarding conformity with City Rules, i.e., the Board's Minimum Standards, and for the Board's recommendations to the Commissioner.

### **DOC Should Provide Time-and-Date-Stamped Copies of all Documents**

One of the most common complaints we hear from our clients is that they filed a complaint or grievance, but never heard anything from any Department staff. This contributes to a general feeling among incarcerated persons that the process is futile, and there is no redress for their concerns.

Another common hurdle in the grievance process is the confusing time requirements for appeals; our clients often have difficulty keeping track of when they filed grievances and appeals and how much time they therefore have to proceed to the next step in the process. To help address both of these concerns, we have proposed a simple solution: provide incarcerated persons with (1) copies of **all the documents they submit, including appeals**, and (2) stamp the copies with the time and date on which they were received.

The current Directive requires Grievance Coordinators and Officers to “provide receipts to inmates who file any grievances, complaints not subjected to the OCGS process, or needs,” to “date [and] time-stamp all submissions,” and “maintain paper and electronic records” of all of the above submissions.<sup>14</sup> The revised Form 7101R-A, on which a grievant submits his or her initial statement, says in small type that “OCGS staff shall provide the inmate with a copy of this form as a record of receipt.” The directive, however, does not mandate that practice—and it is silent as to whether the same practice applies to all appeals.<sup>15</sup> Though these requirements are an improvement over the last directive, they still do not clearly allow the incarcerated person access to a copy of the substance of the grievance, complaint, or appeal submitted.

Without proof of the substance of the documents filed, incarcerated people have the common anxiety that they will be left only their word against the word of an officer. Time-and-date-stamped copies of all submissions to OCGS will help alleviate that anxiety.

#### Recommendations:

1. Require DOC to provide incarcerated persons with time-and-date-stamped copies of **all** documents submitted to OCGS, including appeals.
2. Mandate written procedures that address how the Department will assess accountability with these and all provisions.

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<sup>14</sup> Directive 3376R-A, IV.1.2, 4, 6, p. 11.

<sup>15</sup> The Directive says that the Coordinator “shall provide a photocopy of [the appeal to the Division Chief]”, but does not include similar language for appeals to Commanding Officers or to CORC. Directive 3376R-A, VII.D, p. 18. Compare Sections VII.6.ii and VIII.B.

## **Mandate Written, Substantive Responses to Every Grievance for Each Level of the Process**

The lack of written, substantive responses from the Department not only erodes the confidence of incarcerated persons in the grievance process, but it also engenders confusion about why their petitions were denied and how they should therefore proceed. The Directive does not mandate written responses at each level of the grievance or complaint responses, and it should.<sup>16</sup> These responses should include plain and simple information notifying the grievant of the right of appeal and how to complete that appeal.

An example of the confusion: if a Grievance Coordinator deems a grievance “in any way illegible and/or incomplete,” the Directive requires the Coordinator to try to clarify with the incarcerated person.<sup>17</sup> If the incarcerated person does not comply with the request for clarification, the “Coordinator shall not consider the grievance.” Is this considered a forfeiture? Is the incarcerated person provided with a written determination that they did not comply? Can they appeal that determination? Many similar questions remain.

Recommendations:

1. Require written, substantive decisions at all levels of the process.
2. If a complaint or grievance is dismissed or “not consider[ed]” at any point in the process, the Department must provide a written, substantive justification for the dismissal or lack of consideration.

## **Remove Barriers to Appeal, Such as Signature Forfeiture Provisions**

There are several barriers to appeal in the proposed directive. Like many incarcerated persons nationwide, our clients find the grievance appeals process difficult to navigate. Incarcerated persons are constantly unsure about when they should file grievances and appeals, to whom, and in what form. Representatives of incarcerated persons should have the ability to submit grievances and appeals on behalf of our clients.

Similarly, we are deeply concerned about the signature requirement in the Department’s new directive. The new directive provides that an incarcerated person is deemed to have forfeited the right to request an appeal of a formal resolution if he or she does not sign Form 7102R, containing the proposed Formal Resolution.<sup>18</sup> The directive instructs that incarcerated persons “shall” sign requests for appeals at the other levels of the grievance process,<sup>19</sup> but is silent as to whether a failure to sign constitutes forfeiture or abandonment of the grievance.

As we noted above, one of the most common reports we hear from our clients is that they file grievance papers, but are never contacted by Grievance Coordinators thereafter and do not receive formal resolution paperwork. Given that possibility, it is fundamentally unfair to make incarcerated persons vulnerable to a penalty over which they have very little control. In a

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<sup>16</sup> The Directive mentions only the “disposition” or “decision” of Commanding Officers and Division Chiefs, respectively—not written, substantive responses. Directive 3376R-A, VII.C and VIII.B, pp. 17-18.

<sup>17</sup> Directive 3376R-A, VI.6.a.i, p. 16.

<sup>18</sup> Directive 3376R-A, VI.6.a.ii, p. 16

<sup>19</sup> Directive 3376R-A, VII.d and VIII.b, p. 18.

grievance system that already has so many complicated and difficult barriers to access, a signature forfeiture provision only serves to frustrate the purpose of the process. Any negligible benefit to a signature requirement is vastly outweighed by the potential for unfairness.

Recommendations:

1. Eliminate signature forfeiture provisions.
2. If the Department fails to respond to a grievance or appeal within the time allotted by the directive, an incarcerated person should be able to deem the grievance/appeal constructively denied and proceed to the next step. A lack of signature from the previous step should not serve as a barrier.
3. Representatives—attorneys and non-attorneys—of those in DOC custody should be permitted to file grievances and appeals on behalf of our clients.

### **Retaliation**

People in DOC custody frequently complain to our office that they are subjected to retaliation, in the form of physical threats or assault, by DOC staff when they submit a grievance or when our office communicates their complaint to OCGS. Other forms of retaliation include being denied mandated services, escorts or other privileges, including lock-out time. Such retaliation is common enough to have a name: “being put on the burn.”

The new directive has a general prohibition against staff reprisals “for good faith use of the grievance and request program,” but also contains troubling language about “misuse” and “frivolous grievances.”<sup>20</sup> Given the regular reports of retaliation that we receive from our clients, we are concerned that the Department does not adequately address this problem.

Recommendations:

1. The Council should mandate strict employee disciplinary penalties, and appropriate criminal penalties, for any DOC staff who retaliates, or threatens to retaliate against a grievant or prospective grievant.
2. The Council should require that the Department should report to the Board all employee discipline for any DOC staff who retaliates, or threatens to retaliate against a grievant or prospective grievant.

### **Medical Care Grievances**

Incarcerated people often use the DOC grievance and complaint process to complain about medical care and treatment, including violations of the Board’s Minimum Health Care Standards. Like DOC, CHS also does not provide any substantive response to complaints made on behalf of incarcerated people by their representatives, such as The Legal Aid Society. CHS refuses to provide responses even when a release authorization from the prisoner is submitted to CHS. CHS claims that it lacks sufficient staff to provide replies, beyond automatic computerized form acknowledgments of receipt of a complaint.

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<sup>20</sup> Directive 3376R-A, XI.A and XI.C, pp. 22-23.



We know, however, that each such complaint to CHS generates within CHS memos which document its findings and treatment plans for such complaints. These memos, usually in the form of emails, could easily be shared with the incarcerated person or their representatives who provide releases to CHS.

Even when an incarcerated person's representatives formally request the client's medical records, and specifically request emails and memos generated from their complaints, CHS ignores the request and does not disclose its investigative findings. CHS will only provide the individual's medical chart, which does not contain the written complaint or investigative findings by CHS.

**Recommendations:**

1. The Council should mandate that DOC forward all complaints about jail medical and mental health services directly to Correctional Health Services (CHS). The new grievance directive implies in the "Definitions" section that OCGS will do this, but it is not clear.<sup>21</sup>
2. The Council should also mandate that CHS treat these complaints as formal grievances, i.e., "Patient Complaints" or "Requests for Second Opinion." See CHS Protocol #INT 16.
3. The Council should mandate that CHS disclose to incarcerated persons and their HIPAA-authorized representatives its findings and treatment plans in response to all complaints submitted to CHS. This information will help provide accountability for access to medical treatment.

**Conclusion**

We appreciate the Committee's commitment to providing oversight for a system that wields great power in New York City jails. We request, of course, the addition of all of our above recommendations to Ints. 1334-2019, 1340-2019, and 1370-2019. To supplement those recommendations, we have provided additional comments to all three of those bills, attached.

As always, we welcome the opportunity to discuss these important matters with you further.

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<sup>21</sup> Directive 3376R-A, III.H.6, p. 4.



**TESTIMONY OF:**

**Brooke Menschel – Civil Rights Counsel**  
***BROOKLYN DEFENDER SERVICES***

**Presented Before**

**The New York City Council Committee on Criminal Justice**

**Oversight Hearing on New York City Department of Correction Grievance Process**

January 29, 2019

My name is Brooke Menschel and I am the Civil Rights Counsel for Brooklyn Defender Services. BDS provides comprehensive public defense services to nearly 35,000 people each year, thousands of whom are detained or incarcerated in City jails in connection with their criminal cases. Thank you Council Member Keith Powers and the Committee on Criminal Justice for the opportunity to address the Council and share with you some of our concerns about the Department of Corrections' grievance process, based on the direct accounts of people we represent who are detained in our City's jails.

We appreciate the City Council's commitment to ensuring that people detained in our City's jails are able to effectively and efficiently access the Department of Corrections' grievance system to lodge complaints and notify officials when they believe that their rights have been violated. We also welcome the Council's efforts to ensure that grievances are accurately captured, tracked, monitored, and reported through Int. No. 2844, Int. No. 3622, Int. No. 3612.

**OVERVIEW**

As the Council is well aware, an effective grievance system is critical both to addressing problems encountered by individuals and for identifying and addressing systemic issues that plague the system. A robust system can be used to resolve individual issues, identify bad actors, ensure compliance with statutory and constitutional obligations, indicate problematic trends, and preempt costly litigation. Unfortunately, the system in place in the Department of Correction is largely inaccessible and remains riddled with problems that prevent its effective or productive use.

***DOC's Grievance Process is Inaccessible for Detained Populations and Their Advocates***

First and foremost, in order to be effective, any system must be accessible to those that it is intended to benefit. Unfortunately, the Department's grievance system remains largely

hypothetical for vast numbers of people incarcerated in the City's jails. Despite recent revisions to the grievance directive, the 28-page policy remains impenetrable and nearly impossible to decipher for countless people attempting to resolve a problem or advocates advising their clients. The mandate that DOC provide information about the grievance procedures "through the Inmate Handbook, posters displayed in congregate areas, and new admission orientation" remains unfilled. People simply do not know how to navigate the system.

Equally concerning, our clients regularly report that they cannot access the requisite forms that grievance submission boxes are locked or removed, and that staff refuse to facilitate the submission of grievances. Further, while the prior version included relevant forms as attachments to the policy, any person trying to comply with or advise clients on the revised directive must seek out those forms independently.

These challenges are compounded for individuals with mental illness or cognitive disabilities, who face significant hurdles to performing normal everyday activities. And in special housing areas – including restrictive housing and medical and mental health units – accessing or submitting forms is nearly impossible, as mandated visits by Office of Constituent and Grievance Services ("OCGS") representatives rarely materialize.

#### *Grievances Go Unanswered or Without Resolution*

For those lucky individuals who manage to submit a grievance, little relief is forthcoming. Our clients consistently report that their grievances go unanswered, typically without even an acknowledgement of receipt, much less a substantive resolution. When they attempt to inquire about the status of their grievance or submit a new grievance to address the outstanding issue, far too often they are turned away and told to "be patient" while they suffer. The deadlines imposed on DOC in the directive fly by unnoticed and unenforced, while if our clients miss a deadline, they forgo their right to resolve an issue.

#### *The Revised Grievance Directive Fails to Address Significant Deficiencies*

These impediments to accessing the system need not be the case. Prior to the recent revisions, the Department reached out to advocates. Eager to contribute to building a better system, BDS, along with colleagues from The Legal Aid Society, Bronx Defenders, Urban Justice Center, Children's Defense Fund, and the Silvia Rivera Law Project, shared our experiences and technical expertise. Nonetheless, Department representatives including Assistant Commissioner Jean-Claude LeBec and Director of the Office of Constituent and Grievance Services largely dismissed suggestions and concerns, noting that they believed the revised policy would be much easier to understand and some of the suggestions were simply not an option. Despite repeated inquiries, suggestions, and requests to review draft language, the recently implemented version reflects few if any of the suggested amendments. Similarly, directly impacted people were never given the opportunity to provide input to the revised directive, nor were they provided with notice of the changes.

### **CLIENT EXPERIENCES**

BDS attorneys and social workers have long been subjected to a constant stream of inquiries from clients seeking to understand the grievance procedures, submit requests and complaints, and resolve longstanding issues. By comparison the recent revisions are more straightforward

and understandable than the previous directive. Nevertheless, the system remains antiquated and these small improvements mean nothing if the process is not followed and people cannot access the requisite procedures. Clients in restrictive housing units report that they have never seen any member of the OCGS staff and have no ability to submit a grievance. There is no viable alternative to submitting a grievance from restrictive housing: our clients report that all too often, their filled-out grievances “disappear” when they ask officers stationed on their units to submit them or alternatively, some officers simply refuse to accept the forms altogether. People in mental health observation units relay similar experiences. As recently as last week, one client brought us copies of four grievances that he had recently submitted. He did not receive an acknowledgment of receipt for any of them, and none of the issues he raised have been resolved. Since October, he has filed approximately 35 grievances related to issues stemming from his incarceration, yet he has never received an acknowledgment or response. He is not alone. Our clients frequently ask us why they should bother submitting grievances since they never hear back and then request help from our office to follow up on their behalf. The few clients who receive responses are left with no course of action when their complaints come back unresolved.

### RECOMMENDATIONS

We can and must do better. Limited reforms to the grievance and reporting systems over the past few years, some prompted by the Council, demonstrate that change is possible. To improve the system, we urge the City Council to:

1. Increase transparency and accountability and embrace the use of technology where appropriate;
  - a. Mandate that the submission and appeals procedures be clearly outlined, posted throughout facilities including in all housing areas, visit floors and administrative offices, and provided by staff upon request;
  - b. Amend Int. No. 3612 to include tracking of how the grievance was submitted (through the submission box, through OCGS staff in person, through an officer, etc.) and whether the complaint alleges any present or past difficulty accessing the grievance system;
  - c. Advance the date by which Int. No. 3612 requires DOC install and operate grievance kiosks in each facility from January 2021 to January 2020.
2. Ensure that incarcerated people are able to track grievances that they have submitted and access to all documentation, either on request or through computer kiosks available at each facility;
  - a. Require OCGS staff to be regularly available to ensure that the grievance system is accessible;
  - b. Define—by position and department—the “dedicated personnel” that Int. No. 3612 requires in each housing unit to conduct outreach related to grievances;
  - c. Provide that the caseload guidelines for grievance coordinators and officers created pursuant to Int. No. 3612 be publicly available as an attachment to the directive;
3. Direct DOC to discipline, or terminate where appropriate, staff—including DOC officers and OCGS staff—that impede access to the grievance system or fail to follow the grievance directive.

Int. No. 2844, Int. No. 3622, and Int. No. 3612 contain important steps to achieving these necessary reforms.

**CONCLUSION**

DOC's inaccessible and archaic grievance system plagues incarcerated New Yorkers and their advocates and lawyers. The lack of professionalism exhibited by the OCGS is appalling. In any other industry, alleged professionals that routinely dismiss or ignore constituents or fail to follow policy would be disciplined or terminated. The fact that the directly impacted people here happen to be incarcerated is no excuse for neglecting one's responsibilities.

We are encouraged by the Council's commitment to move towards a more robust, modern, accountable system. Thank you for your time and consideration of our comments. We look forward to further discussing these and other issues that impact our clients.

If you have any questions, please feel free to reach out to Jared Chausow, our Senior Advocacy Specialist, at 718-254-0700 ext. 382 or [jchausow@bds.org](mailto:jchausow@bds.org).



Admin

# 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: \_\_\_\_\_

Dept of Correction

(PLEASE PRINT)

Name: Director James Boyd

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

Admin  
a/p

# 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: Chick Berry Scott Boyd

Address: \_\_\_\_\_

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: 1/29/19

(PLEASE PRINT)

Name: Becky Scott

Address: NYC DOC 420 46<sup>th</sup> Copague

I represent: NYC Dept. Of Correction

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: 1/29/19

(PLEASE PRINT)

Name: Martha King

Address: 1 Centre Street

I represent: NYC BOC

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: \_\_\_\_\_

(PLEASE PRINT)

Name: Nashla Rivas Salas

Address: \_\_\_\_\_

I represent: NYC BOC

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: \_\_\_\_\_

(PLEASE PRINT)

Name: Emily Turner

Address: \_\_\_\_\_

I represent: Nyc BOC

Address: 1 Centre Street NY NY

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Jonathan Winger

Address: 55 Water St. 18th fl

I represent: Health + Hospitals

Address: \_\_\_\_\_

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Zachary Rosner

Address: 55 Water Street 18th floor

I represent: Health + Hospitals

Address: \_\_\_\_\_

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**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: 1/29/2018

(PLEASE PRINT)

Name: Brooke Menschel

Address: 177 Livingston St., Brooklyn, NY 11201

I represent: Brooklyn Defender Service's

Address: Ditto

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. 1334 1340 1370 Res. No. \_\_\_\_\_

in favor  in opposition

Date: January 29, 2019

(PLEASE PRINT)

Name: Dale A. Wilker

Address: 279 Fisher Avenue, White Plains NY 10606

I represent: The Legal Aid Society, Prisoners' Rights Project

Address: 199 Water Street, New York, NY 10038

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