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THE COUNCIL OF THE CITY OF NEW YORK

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May 19, 2020

Oversight: COVID-19 in City Jails and Juvenile Detention Facilities

PRECONSIDERED INT.

(RELATED TO REPORTING):

By Council Member Powers

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of correction and correctional health services to issue reports during public health emergencies

PRECONSIDERED INT.

(RELATED TO FEES):

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TITLE:

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 person in the custody of the department of correction

PRECONSIDERED INT

(RELATED TO RELEASE):

By Council Member Powers

TITLE:

A Local Law to amend the New York City charter, in relation to adding a new section creating a local conditional release commission

I. Introduction

On May 19, 2020, the Committees on Criminal Justice and The Justice System, chaired by Council Member Keith Powers and Council Member Rory Lancman, will hold an oversight hearing examining the response to COVID-19 in New York City jails and juvenile detention facilities. The Department of Correction (“DOC” or “The Department”), the Department of Probation (“DOP”), Correctional Health Services (“CHS”), the Mayor’s Office of Criminal Justice (“MOCJ”), the Administration of Children’s Services (“ACS”), the Law Department, District Attorneys, defense providers, and members of the public are expected to testify. The

Committee will also hear three pieces of legislation, as detailed above, relating to the establishment of a local conditional release commission, reporting during public health emergencies, and imposing a cap on fees for transfers to institutional accounts.

II. Background

Since the onset of the COVID-19 pandemic, the inherent difficulty of managing infectious diseases in jail environments has been the topic of much public discussion.¹ In response to COVID-19 former Chief Medical Officer at Rikers Island, Dr. Homer Venters, stated:

“All of the new terms of art that everybody has learned in the last two weeks, like “social distancing” and “self-quarantine” and “flattening the curve” of the epidemic—all of these things are impossible in jails and prisons, or are made worse by the way jails and prisons are operated. Everything about incarceration is going to make that curve go more steeply up. . . For prison systems or jails that are full—or, let’s say, over seventy-five per cent capacity—this process may be almost impossible for them to do. They may not have room to spread out. So if you can’t do that, if you can’t effectively keep the people with symptoms away from the people without symptoms, then you have a brand-new way of promoting transmission, which is separate and apart from jails being dirty or not having soap or hand-washing capacity.”²

Current Chief Medical Officer Dr. Ross McDonald stated via Twitter that “[w]e cannot change the fundamental nature of jail . . . [w]e cannot socially distance dozens of elderly men living in a dorm, sharing a bathroom[,]”³ and urged District Attorneys and Courts to “let out as many people as you possibly can.”⁴ Accordingly, throughout this pandemic, city agencies have worked not only to manage exceedingly difficult conditions within correctional and detention

¹ E.g., Jan Ransom and Alan Feuer, *‘We’re Left for Dead’: Fears of Virus Catastrophe at Rikers Jail*, The New York Times, March 30, 2020, available at <https://www.nytimes.com/2020/03/30/nyregion/coronavirus-rikers-nyc-jail.html>

² Jennifer Gonnerman, *How Prisons and Jails Can Respond to the Coronavirus*, The New Yorker, March 14, 2020, available at <https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus>

³ <https://twitter.com/RossMacDonaldMD/status/1240455801397018624>

⁴ Id.

facilities, but also to reduce the jail population to allow for more effective social distancing. Several Mayoral agencies have worked collaboratively to facilitate the release of people in custody, and the Committees will examine those efforts across the court system, DOC jails, and juvenile detention facilities.

III. Conditions in DOC Facilities

A. DOC Action Plan

The DOC has made operational changes to mitigate the spread of COVID-19 among staff and people in custody in the City’s correctional facilities. As part of its action plan, DOC houses people in custody according to COVID-19 diagnosis, symptoms, and potential exposure. According to DOC, people in custody who are symptomatic or tested positive for COVID are housed in the Communicable Disease Unit (CDU) at the West Facility, Rose M. Singer Center (RMSC), and North Infirmery Command (NIC) or in certain housing units at Eric M. Taylor Center (EMTC).⁵ DOC has been housing newly admitted individuals with COVID-19 symptoms and are COVID-19 positive at EMTC since March 22, and designated Rose M. Singer Center (RMSC) housing areas for the same purposes for females.⁶ Also, since March 24, DOC has been using the Manhattan Detention Center (MDC) as an intake facility for newly-admitted persons without COVID-19 symptoms.⁷

The Department also publicly committed to a series of precautionary measures to prevent the spread of COVID-19 in jails. On April 3, DOC announced that it would issue masks to all

⁵ NYC Department of Correction’s presentation: “DOC Update: COVID1-19 Preparedness & Response” before the Board of Correction May 12, 2020 Public Meeting, available at https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/May/May%202020%20COVID-19%20Preparedness%20and%20Response_5.12.20.pdf

⁶ Id.

⁷ Id.

staff and people in custody.⁸ DOC’s policy is to make masks available on an as-needed basis in all housing units and intake areas.⁹ On April 14, DOC issued enhanced social distancing guidelines, which limits the number of people in custody in communal areas, such as dayrooms, bathrooms, and shower areas, and allows for alternating bed spacing in dorm areas where housing areas are below 50% capacity.¹⁰ Close to half of the housing units in the Department are at such capacity.¹¹ Moreover, the DOC committed to sanitation protocols in all facilities, which includes cleaning and sanitizing all housing units and communal spaces once per day, all contact surfaces and phone every two hours, and all shower areas three times a day.¹² According to DOC sanitation protocols, hand soap and cleaning supplies (such as disinfectant, general cleaner, floor cleaner, and gentle scrub) are provided to people in custody and are replenished upon request, as needed.¹³

B. BOC Monitoring COVID-19 in NYC Jails

On May 11, the Board of Correction (BOC) issued a report that presents observational data, collected over a two-week period last month, examining DOC’s compliance with its own guidelines and directives in five key areas: (1) social distancing, (2) use of PPE among staff, (3) use of mask among people in custody, (4) phone access and cleaning, and (5) DOC rounding practices (in cell units).¹⁴ According to the BOC, the findings “highlight the immense structural

⁸ Id.

⁹ Id.

¹⁰ NYC Department of Correction, Social Distancing Guidelines for Staff and People in Custody, available at <https://www1.nyc.gov/site/doc/media/socialdistancing.page>

¹¹ Id.

¹² NYC Department of Correction, Cleaning & Prevention: Prevention & Sanitation, available at <https://www1.nyc.gov/site/doc/media/cleaningandprevention.page>

¹³ Id.

¹⁴ NYC Board of Correction, New York City Board of Correction Monitoring COVID-19 Responses in New York City Jails, April 5- April 16, 2020, May 11, 2020, available at https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/COVID%20Housing%20Public%20Report%204.5-4.16%20DRAFT%205.11.20_FINAL_1.pdf

challenges to protecting both people in custody and staff from the spread of COVID-19 in correctional settings.”¹⁵

With regards to social distancing, the report found that in housing areas with confirmed or symptomatic people, where there is a limit of four people at any given time in communal spaces, people in custody were observed “sitting or standing close together communal spaces such as in dayrooms, especially around the TV sets, phones, main doors, and during meals.”¹⁶ Specifically, the report found in about 50 percent of celled areas housing asymptomatic people, people did not practice social distancing.¹⁷ Similarly, in about 50 percent of celled areas housing symptomatic people, BOC observed poor social distancing being practiced and more than four people in communal areas at a given time.¹⁸ The report also found alternate bed spacing in about 80 percent of dorms housing symptomatic and exposed but asymptomatic persons where capacity was below 50 percent.¹⁹

Concerning personal protective equipment (PPE) use by staff, the report found that 86 percent of all staff observed over the two week period wore their mask correctly, meaning that the mask covered both their nose and mouth, and about 72 percent wore gloves.²⁰ According to BOC, “staff mask use was highest in areas housing only confirmed COVID-19 patients, where 96 percent of the staff observed were wearing masks correctly.”²¹ Conversely, “staff mask use was lowest in housing areas for likely exposed but asymptomatic individuals, where 76% [of staff observed] were wearing masks correctly.”²² Likewise, the report found that “glove use was

¹⁵ Id, p. 1

¹⁶ Supra note 14, p. 3.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id., p. 8.

²¹ Id.

²² Id.

highest in areas housing symptomatic exposed individuals, where 87% of [staff observed] were wearing gloves,” whereas “glove use was lowest in housing areas for likely exposed but asymptomatic individuals, where 63% of staff observed were wearing gloves.”²³

Similarly, the report reveals that mask use among people in custody during the observation period was exceedingly low. Only 17 percent of all people in custody observed were wearing masks correctly, and 35 percent of people in custody observed were not wearing masks correctly.²⁴ In addition, BOC observed, “mask use was lowest in dorm housing areas for confirmed COVID-19 patients, where 54% of observations shows no people in custody wearing mask correctly, and highest in housing areas for symptomatic individuals, where only 14% of observations show no people in custody wearing masks correctly.”²⁵ In addition, BOC found “mask use among people in custody was inconsistent across all housing communal areas.”²⁶

In regards to the cleaning of phones, BOC documented 45 instances of phone use in which the phone was cleaned before use three times.²⁷ In the report, BOC noted that “on each of these three occasions the person in custody appeared to wipe the phone with a cloth or sponge. When phone sanitation did not occur, Board staff did not observe disinfectant or cleaning agents within the vicinity of the phone areas but were unable to confirm whether cleaning supplies were available elsewhere on-site for use by people in custody.”²⁸ The report also noted that “Board staff frequently observed people in custody using socks or other fabric to cover phones during use.”²⁹

²³ Supra note 14, p. 8.

²⁴ Id., p. 9.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

With respect to rounding in cell housing area – a process in which officers tour cells every 30 minutes while incarcerated people are in their cells for signs of life and to check that cells are secured – the report noted that “Board staff observed the required two rounds within a one-hour period in 80% of the 49 distinct hours observed in cell housing units.”³⁰ The report also noted that “rounding was most consistent in the contagious disease units for confirmed COVID-19 patients and symptomatic individuals, where of the 22 single hours observed, Board staff observed only one hour where staff did not round twice.”³¹

C. Concerns About Jail Conditions

The BOC report confirms some of the concerns advocates have been raising since the outbreak of COVID-19 at the city’s correctional facilities. On May 8, in a letter to BOC, the city’s public defenders expressed concerns that their clients were unable to practice social distancing in dorms and single cell units because people in custody share communal spaces and phones, and cell units are so narrow that people in custody walk within six feet of each other whenever they leave their cell.³² The letter also expressed alarm about incarcerated people’s lack of access to masks, and staff not consistently wearing masks.³³ The letter noted that even in cases where people in custody have masks, “they wear the same dirty mask for week at a time because they are not provided with new masks.”³⁴ The letter also claimed that people in custody who “performed sanitation services in housing units report that they must use the same pair of gloves

³⁰ Supra note 14, p. 10.

³¹ id.

³² Legal Aid Society of New York City et al., Re: NYC Jail Conditions During the COVID-19 Pandemic, available at https://www1.nyc.gov/assets/boc/downloads/pdf/nyc_defender_letter_5_8_2020.pdf

³³ Id., p. 4.

³⁴ Id.

for weeks.”³⁵ Equally important, as the letter expressed, is the shortage of soap and cleaning supplies, especially in common spaces, such as the dayrooms.³⁶

Other key areas that public defenders raised were the access to medical, mental health, and substance use treatment. In regards to accessibility to medical care treatment, public defenders have taken issue with CHS using “sick call triage” in which incarcerated people could call CHS nurses about their medical issues, because people in custody have reported that their phone calls are not answered, they are unable to leave a message, and for those who were able to report concerns, they received little or no follow up from medical staff.³⁷ The same issues exist for mental health treatment, according to public defenders, as people in custody “must utilize telehealth systems unless they are housed in a Mental Observation or PACE unit where staff are onsite.”³⁸ Equally concerning to the public defenders is the suspension of substance abuse counseling for people in custody and the reduced capacity of medicated-assisted treatment (MAT).³⁹

In the letter, public defenders also expressed concerns about the limited videoconferencing capability in light of the restriction on in-person visits. The letter noted that videoconferences are the only way people in custody can communicate with their attorney and to conduct virtual court appearances.⁴⁰ It also mentioned that “West Facility and EMTC remain without Skype [sic] videoconferencing capability... and in the facilities where videoconference are available, they are significantly backlogged, requiring request for video conferences to be

³⁵ Id.

³⁶ Id.

³⁷ Supra note 32, pp. 2-3

³⁸ Id., p. 3.

³⁹ Id.

⁴⁰ Id., p. 7

made several weeks in advance.”⁴¹ Furthermore, given that family members do not have the option to visit their incarcerated loved ones during this pandemic, the ability to deposit money into institutional commissary accounts is crucial, as such funds can be used to buy extra soap and other sanitation supplies. Individuals depositing such funds, however, are charged exorbitant fees for doing so remotely, despite State Commission on Correction rules requiring that “[m]embers of the public depositing prisoner funds in such a manner may be charged a service fee not to exceed \$5 per transaction.”⁴²

According to the Comptroller’s Office, for an online payment, JPay’s service fees range from \$3.95 to \$20 for deposits between \$200 and \$300, and fees over the phone are \$1 higher.⁴³ Similarly, the report notes that walk-in payment at a JPay location requires a fee of \$8.95, and cash payments at JPay kiosks require an extra \$3.⁴⁴ The Comptroller’s Office estimated that such fees amount to roughly \$2 million spent by loved ones of people incarcerated in FY 2018.⁴⁵ Such fees not only present legal concerns, but also raise serious policy concerns given that those seeking to deposit funds into commissary accounts have no other option to do so during this pandemic.

IV. Secure Juvenile Detention Centers

A. Background

ACS operates a secure detention facility at Crossroads Juvenile Center (“Crossroads”) in Brooklyn, where part of the center currently operates as a specialized secure detention facility for all “adolescent offenders,” 16 or 17-year-olds charged with a felony offense in the Youth Part of

⁴¹ Id., p. 7

⁴² N.Y. Comp. Codes R. & Regs. tit. 9, § 7016.2(b).

⁴³ Comptroller Scott M. Stringer, Fees, Fines and Fairness

How Monetary Charges Drive Inequity in New York City’s Criminal Justice System, September 10, 2019, *available at* <https://comptroller.nyc.gov/reports/fees-fines-and-fairness/>

⁴⁴ Id.

⁴⁵ Id.

Supreme Court. ACS and DOC operate a specialized juvenile detention facility at Horizon Juvenile Center (“Horizon”) in The Bronx, a secure detention facility for 17-year-olds, who in the intervening period before Raise the Age’s was full implementation in October of 2019, were tried as adults. Normal programming and services at these detention facilities include case management, medical, dental, mental health and trauma assessment, in addition to education, recreation and chapel services.⁴⁶

More recently, the administration announced plans to launch a digital advertising campaign informing parents about a rare syndrome known as pediatric multisystem inflammatory syndrome (PMIS) that doctors believe is linked to COVID-19 and has been diagnosed in 100 children in NYC as of May 14, 2020.⁴⁷ In the State, at least three children have died from PMIS, and two more deaths are under investigation, according to the Governor.⁴⁸ The New York City Health department has released a PMIS fact sheet for parents and caregivers.⁴⁹

Researchers have found that youth in the juvenile correctional system often have unmet physical, developmental, and mental health needs.⁵⁰ Several studies have found that some of these health issues occur at higher rates than in the general adolescent population, which can place them at higher risk of becoming seriously ill should they contract COVID-19.⁵¹ Further, in New York City, COVID-19 has been shown to be twice as deadly for Black and Latinx residents

⁴⁶Administration for Children’s Services, Juvenile Detention, *available at* <https://www1.nyc.gov/site/acs/justice/secure-detention.page>

⁴⁷Carlie Porterfield, 100 NYC Children Now Have Coronavirus-Related Syndrome, As Reported Cases Increase Worldwide, *available at* <https://www.forbes.com/sites/carlieporterfield/2020/05/14/100-nyc-children-now-have-coronavirus-related-syndrome-as-reported-cases-increase-worldwide/#121433df2cb0>

⁴⁸Melissa Russo, Up to 5 NY Children Dead, 100 Sickened by Rare COVID-Related Illness, *available at* <https://www.nbcnewyork.com/investigations/kawasaki-disease-up-to-5-ny-children-dead-85-sickened-by-rare-covid-related-illness/2411571/>

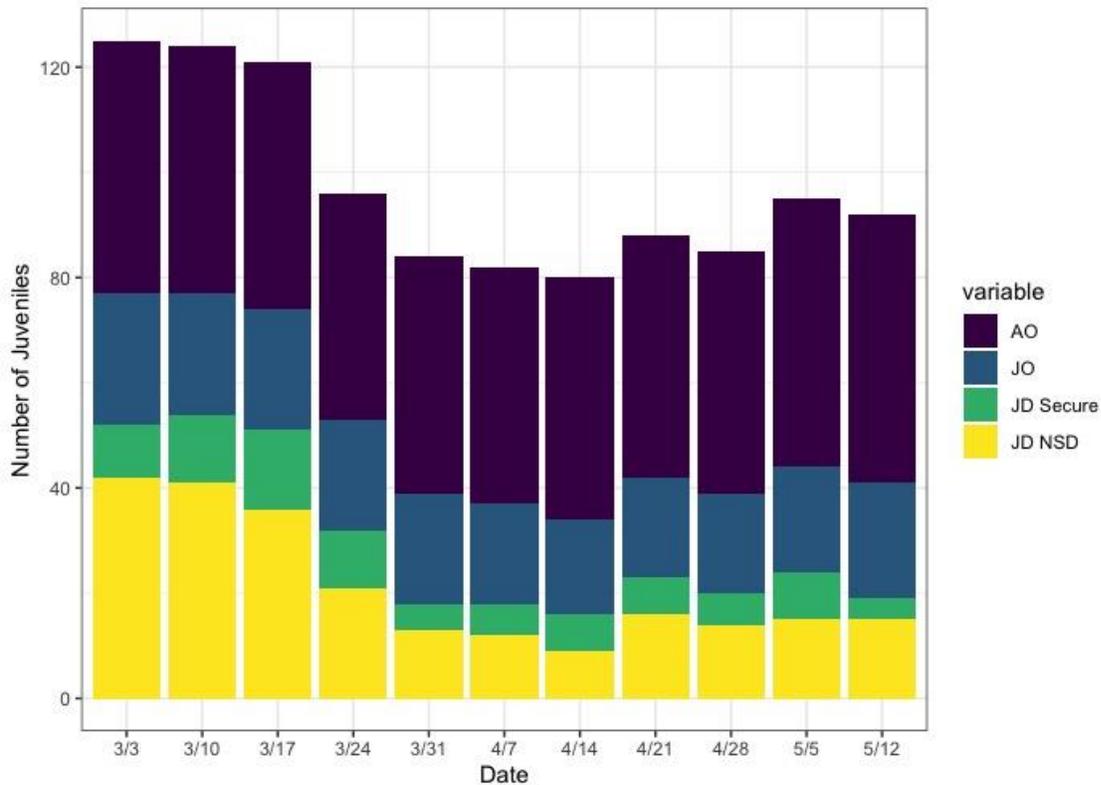
⁴⁹New York City Department of Health and Mental Hygiene, Fact Sheet: Pediatric Multisystem Inflammatory Syndrome, *available at* <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-pmis.pdf>

⁵⁰<https://pediatrics.aappublications.org/content/pediatrics/128/6/1219.full.pdf>

⁵¹American Academy of Pediatrics, Health Care for Youth in the Juvenile Justice System, *available at* <https://pediatrics.aappublications.org/content/pediatrics/128/6/1219.full.pdf>

as White residents.⁵² In 2019, approximately 97% of total admissions to ACS juvenile secure detentions were Black and Latinx youth.⁵³

The chart below indicates weekly updates to the ACS juvenile detention census from March 3 to May 12, 2020:



B. COVID-19 Response and Facility Conditions

ACS released a revised *Emergency Guidance for Congregate Care Providers: Staffing, Training and Clearances Requirements- COVID-19* on May 5, 2020, which covers temporary modifications to staffing and training requirements pertaining to congregate care programs for

⁵² Jeffery C. Mays and Andy Newman, Virus Is Twice as Deadly for Black and Latino People Than Whites in N.Y.C., available at

<https://www.nytimes.com/2020/04/08/nyregion/coronavirus-race-deaths.html>

⁵³New York City Administration for Children's Services, Detention Demographic Data, available at

<https://www1.nyc.gov/assets/acs/pdf/data-analysis/2019/LL44DDREY19.pdf>

ACS contracted foster care and juvenile justice providers.⁵⁴ The guidance addresses efforts to maintain appropriate staff-youth ratio necessary for essential services and programs to operate under modified COVID-19 conditions, such as youth supervision, facilitating family time (including virtual visits), preventing and deescalating conflict, health and wellness, and therapeutic and educational services.⁵⁵ On March 16, 2020, ACS suspended in-person visits and reported providing all youth with free phone calls and by-appointment televisiting services through Skype to help youth remain in contact with their families and communities. In April, ACS implemented a “consolidation plan,” which included transferring apparent healthy or non-symptomatic or COVID-positive youth to the Crossroads facility so that youth who test positive or show symptoms of the virus can be cared for at Horizon. The plan also called for separation of symptomatic or COVID-positive youth in the Horizon facility by floor.⁵⁶

According to ACS, As of May 13, 2020 there are no symptomatic or COVID-positive detained youth in its detention facilities. The first floor at Horizon remains dedicated to housing any symptomatic or COVID-positive youth should youth contract or show symptoms of the virus. As of May 13, 2020, Horizon and Crossroads hold 9 and 74 detained youth, respectively. In efforts to decrease crowding and adhere to CDC social distancing guidelines, ACS plans to stagger the new transfer of 10 youth from Crossroads to Horizon over the course of a week and will assess if additional transfers are necessary. In addition to COVID-19 preventive measures, such as medical screenings for COVID-19 symptoms, ACS reports having an adequate supply of personal protective gear for all youth and staff. This includes disposable masks for youth and

⁵⁴NYC Children, ACS EMERGENCY GUIDANCE FOR CONGREGATE CARE PROVIDERS: Staffing, Training and Clearances Requirements - COVID-19, May 5, 2020, *available at* <https://www1.nyc.gov/assets/acs/pdf/covid19/Congregatecarestaff.pdf>

⁵⁵ Id.

⁵⁶Abigail Kramer, After Deaths of Juvenile Detention Staff Members, Parents Fear for Their Children's Safety, *available at* <http://www.centernyc.org/news-center/2020/4/8/after-deaths-of-juvenile-detention-staff-members-parents-fear-for-their-childrens-safety>

reusable mask for staff; notably, N95 masks will be provided to staff if interacting with symptomatic youth. ACS reported no face covering enforcement or penalty for youth found not wearing a facemask, however, it is unclear if staff are required to wear them.

The media has reported on several incidents regarding conditions inside the two secure detention facilities that raise concerns for youth and staff safety. First, there were multiple reports of a violent outbreak at Crossroads after ACS carried out its first youth transfer.⁵⁷ This report raises questions as to whether ACS utilized best practices for minimizing harm when removing youth from their known, established routines. Second, there has been 1 COVID-related death of a Crossroads staffer, at least 13 staffers from both facilities had been hospitalized, and 23 have been confirmed positive for COVID-19.⁵⁸ Many more staff members are reported to be too sick to come to work but have not been tested.⁵⁹ Finally, the committees remain concerned regarding following safe social distancing practices, adequate cleaning and disinfecting of the facilities, access to COVID testing for all youth in addition to screenings, and maintaining contact and communication with parents/family.

V. Mechanisms for Releasing People Serving Determinate Sentences

A. Local Conditional Release Commission

The New York State Correction Law allows every county, and the city of New York to create a local conditional release commission by local law.⁶⁰ The law requires the commission to be appointed by the Mayor, “upon the advice and consent of the city council,” and requires the

⁵⁷ E.g., Parker Quinlan and Daryl Khan, Riot at NY Juvenile Facility Stemmed From Coronavirus-related Move, Sources Say, available at

<https://jjie.org/2020/04/15/riot-at-ny-juvenile-facility-stemmed-from-coronavirus-related-move-sources-say/>

⁵⁸ Eileen Grench, COVID KILLS STAFFER AT JUVENILE CENTER WHERE YOUTH ARE BEING SENT FOR SAFETY, available at

<https://thecity.nyc/2020/04/covid-staff-death-rocks-juvenile-center-for-virus-free-youth.html>

⁵⁹ Supra note 57.

⁶⁰ N.Y. Correction Law § 271

commission to have “at least five members”⁶¹ who “have graduated from an accredited four year college or university,”⁶² “five years experience in the field of criminology, administration of criminal justice, law enforcement, probation, parole, law, social work, social science, psychology, psychiatry, or corrections.”⁶³ The director of probation, or the director’s designee, is required to serve on the commission as a non-voting member, and the local Department of Probation is tasked with assigning staff to support the commission.⁶⁴

The Correction Law grants any such commission the power and duty of determining which individuals sentenced within New York City and serving a definite sentence of imprisonment (“city-sentenced”) may be released under conditional release and under what conditions.⁶⁵ The commission is also required to present an annual report to the city Council of its findings and actions on submitted applications.⁶⁶ The law only allows the commission to release a person in custody if the person has verified community ties with respect to employment, residence, or family; has not been previously convicted or does not stand convicted for an offense which is ineligible for merit time as authorized by § 803; an offense defined in Penal Article 235 (obscenity offenses) where the victim was under 18 years of age; or an offense which a commission determines was a crime of domestic violence. The law also requires that people in custody serve a minimum of 60 days of their sentence before applying for conditional release and that the person in custody not be released until they have served at least 90 days of their sentence.⁶⁷

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ Id.

⁶⁵ N.Y. Correction Law § 272

⁶⁶ Id.

⁶⁷ N.Y. Correct. Law § Ch. 43, art. 12, Refs & Annos

The original version of the legislation, which was allowed to sunset in 2005, did not require the Council to create local release commissions by law and did not require the Council to consent or advise on appointees.⁶⁸ These sections were added following an analysis of the previous law's shortcomings, and after seeing how the commission was perceived to function to aid the release of those with political connections.⁶⁹ When discussing the value of the previous law in a public hearing, the Assembly highlighted its flaws, including "a lack of uniform standards and criteria for granting early release, deficient reporting and record-keeping concerning early release decisions, a lack of accountability for decisions about conditional release and the failure of commissions in some cases to follow lawful procedures in making their determinations."⁷⁰ Accordingly, the Legislature gave the City Council and other local legislative bodies increased power to oversee and consent to appointment of those on the commission.

B. 6-A Work Release Program

In 1968, the State government permitted the Department of Correction to allow people in custody serving city-sentences the ability to serve their sentence outside DOC custody to those "whom there is reasonable cause to believe he will honor his trust by authorizing him to participate in a work release program in the community on a voluntary basis while continuing as a prisoner of the institution or facility in which he is confined."⁷¹ Under this section of the Correction Law, Article 6A, individuals in DOC custody may be released to a work release program "for the purpose of seeking or engaging in employment or self-employment, attending

⁶⁸ LOCAL CONDITIONAL RELEASE COMMISSION, 1989 N.Y. Sess. Law Serv. 79 (McKinney)

⁶⁹ ASSEMBLY STANDING COMMITTEE ON CORRECTION NOTICE OF PUBLIC HEARING, To consider how the statutes governing New York State's local conditional release system should be modified, January 11, 2005, *available at* <https://nyassembly.gov/comm/Correct/20041223/>

⁷⁰ *Id.*

⁷¹ N.Y. Correct. Law § 151

an educational institution, participating in a training program, or obtaining medical treatment not otherwise available, caring for the prisoner's household and family or for some other compelling reason consistent with the public interest.”⁷² According to information provided by the DOC to the Council, prior to the COVID-10 pandemic, the DOC had not utilized this law in the recent past, despite the state law mandating that the DOC “shall”⁷³ establish such a program, and “shall endeavor to secure employment for a prisoner deemed eligible to participate in a work release program.”⁷⁴

Utilizing Article 6-A, in March of this year, the Commissioner released 312 people.⁷⁵ The city’s existing Supervised Release providers – the Center for Court Innovation in Brooklyn, the Bronx and Staten Island, CASES in Manhattan, and the New York Criminal Justice Agency in Queens - provide supervision for participants upon their departure from DOC custody.⁷⁶

In comparison to supervised release, which is pre-trial only, the Early Release program is much more intense, requiring daily telephonic check-ins with participants and frequent information sharing with DOC.⁷⁷ Noncompliance is reported to DOC, and can result in a participant’s return to DOC custody.⁷⁸ To ease the burdens that constant contact can cause, phones were given to participants if they needed them, and as of late April, 100 were distributed

⁷² New York State Correction Law § 150(4).

⁷³ Supra note 72.

⁷⁴ New York State Correction Law § 152

⁷⁵ “Rikers 6-A Early Release Program: Results After One Month of Operations” April 30, 2020. Center for Court Innovation, New York Criminal Justice Agency, CASES. Available at https://www.nycja.org/assets/Rikers-Early-Release-Briefing-Note-4.30.2020_-FINAL.pdf.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.

to participants.⁷⁹ In addition, 250 referrals to other service providers were made, including finding participants stable housing.⁸⁰

Since the program is only available for those serving a definite sentence, defined in the state's penal law as sentences of under one year,⁸¹ most serious violent felonies are excluded, as state law only permits definite sentences for violent felonies in very limited circumstances.⁸² Of the participants in the early release program, 53% of participants are serving a sentence on a felony charge, most commonly either possession or sale of a controlled substance in the third degree, and criminal possession of a firearm.⁸³ 47% of participants are serving a sentence on a misdemeanor charge, most commonly for petit larceny, assault in the third degree, or possession of a controlled substance in the seventh degree.⁸⁴

In a report published by the supervised release providers, the initial results were promising. After one month of the program, only 2.2% of participants had been rearrested, and of the participants that were rearrested, over half were arrested on misdemeanors.⁸⁵ As of April 30, of the 246 participants who were still a part of their program (meaning that their sentences had not ended), 92.3% were in “full compliance” with their case manager, meaning there were almost 6,000 successful phone check-ins.⁸⁶ In total, only one participant had been terminated from the program and sent back to DOC custody.⁸⁷

VI. DOC Custody

⁷⁹ Id.

⁸⁰ Id.

⁸¹ New York Penal Law, Article 70

⁸² See Id.; § 70.00(4)

⁸³ “The Rikers Early Release Program – Documented Results April 22, 2020.” New York Criminal Justice Agency. Available at <https://www.nycja.org/rikers-early-release-program>.

⁸⁴ Id.

⁸⁵ Supra note 76.

⁸⁶ Id.

⁸⁷ Id.

A. Releases from DOC Custody

As it became apparent COVID-19 would spread throughout the city's jails, MOCJ, in conjunction with the city's District Attorneys and defenders, started efforts to reduce the DOC population. The DOC population contains four distinct subpopulations, all of which necessitate different levers for release. The vast majority of the DOC population is incarcerated pretrial, after a judge has either remanded the individual, or set bail in an amount they have not been able to make. For that person to be released, the traditional adversarial court process for pending criminal charges is the only mechanism for release, and judges make the ultimate determinations in such cases,⁸⁸ possibly with a DA's consent.

The second subpopulation are technical parole violators (TPV). These individuals are incarcerated after an alleged violation of the conditions of their state parole supervision. For that individual to be released, the state's New York State Department of Corrections and Community Supervision (DOCCS) must agree to lift the individual's warrant, or agree to release the individual without a revocation of their parole and a resulting return to state custody.

The third subpopulation are people serving a city-sentence, as previously discussed in this report's section on the 6-A Early Release Program.

The fourth and last subpopulation is a catch-all category of individuals that are incarcerated and either awaiting their transfer to an upstate state facility, or are being held on a fugitive warrant from another jurisdiction and waiting to be picked up by such jurisdiction.

A combination of bail review hearings⁸⁹ and writs of habeas corpus⁹⁰ from defense attorneys, District Attorney's consenting to release, judges treating COVID-19 as a change of

⁸⁸ New York Criminal Procedure Law, Title P

⁸⁹ See New York Criminal Procedure Law § 530.30

⁹⁰ See New York Civil Practice Law and Rules, Article 70

circumstances necessitating a change in custody status,⁹¹ and advocacy from MOCJ, more than 1,500 people have been released from DOC custody since March 16. A more detailed breakdown of the total releases, by these subpopulations, can be seen in the following table and graph.

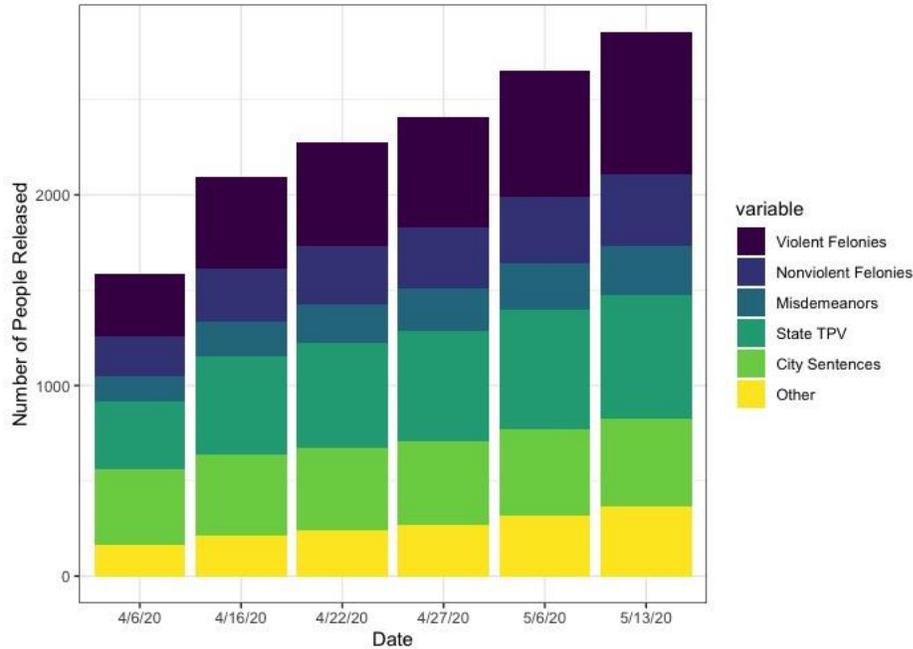
Table X. Total Releases from DOC Custody Since March 16, From April 6 to May 14⁹²

Type	April 6	April 16	April 22	April 27	May 6	May 14
Violent felony offense	329	485	542	583	661	746
Non-violent felony offense	207	276	304	320	349	379
Misdemeanor Offense	130	182	203	222	245	259
City Sentenced Offense	401	427	433	437	449	457
State TPV	354	514	549	580	625	647
Other	163	213	243	270	320	367

Figure X. Total Releases from DOC Custody Since March 16, From April 6 to May 13

⁹¹ See New York Criminal Procedure Law, Title P

⁹² Information available in MOCJ weekly updates, available at <https://criminaljustice.cityofnewyork.us/briefs/>



As a result of these releases, the daily population in DOC custody has dropped considerably. This is due not only to releases from DOC custody, but also a decline in admissions. From March 16, 2020 to May 7, 2020, 1,250 individuals entered DOC custody, as opposed to 5,330 over the same time period in 2019.⁹³ This is part due to a dramatic decline in arrests made by the NYPD,⁹⁴ and also a decline in District Attorneys asking for bail, and a decline in judges mandating pretrial detention, as compared to arraignments pre-COVID.⁹⁵

B. Individuals Remaining in DOC Custody

Even with this increase in releases, and decline in admissions, there are of course many individuals still in DOC custody – 3,874 people as of May 10. The following table and graph

⁹³ “New York City jail population reduction in the time of COVID-19, Through May 7, 2020” Mayor’s Office of Criminal Justice, available at https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/05/COVID-factsheet_MAY-7-2020.pdf

⁹⁴ Information provided by the NYPD to the Council

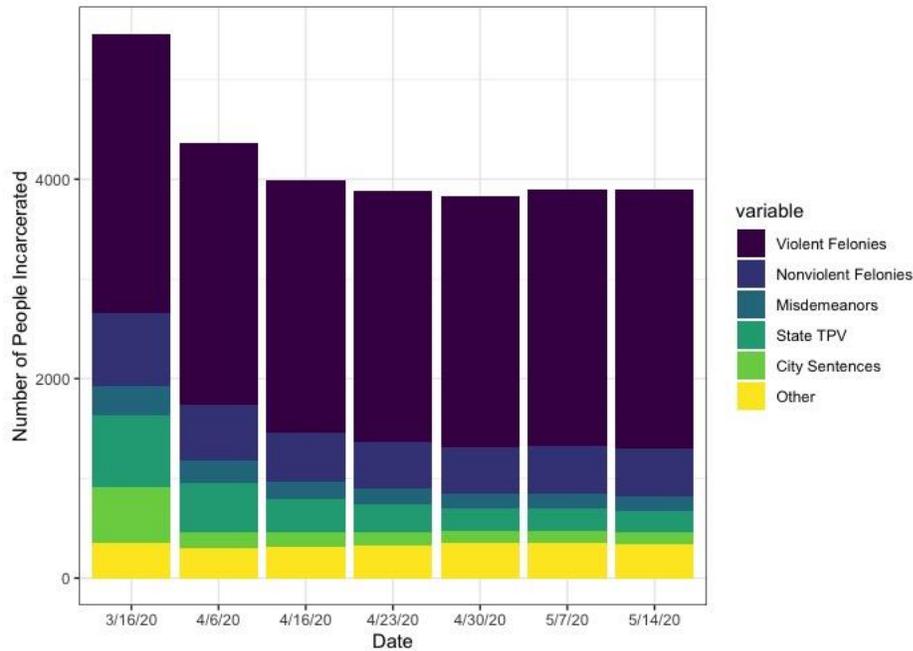
⁹⁵ Information provided by indigent defense providers and the Vera Institute of Justice to the Council.

break down the DOC population since the mass outbreak of COVID-19, broken down by the subpopulations discussed above.

Table X. Number of people in DOC Custody, March 16 to May 14

Date	March 16	April 6	April 16	April 23	April 30	May 7	May 14
Overall	5,458	4,363	3,995	3,880	3,824	3,898	3,895
Violent felonies	2,803	2,623	2,530	2,508	2,509	2,572	2,594
Non-violent felonies	729	566	497	479	473	486	480
Misdemeanor	300	222	173	152	139	145	143
City Sentenced	553	165	137	132	127	115	118
State TPV	716	493	339	283	228	227	214
Other	357	294	319	326	348	353	346

Figure X. Number of People in DOC Custody, March 16 to May 14



As the table and graph shows, from March 16 to April 30, the overall population in city jails dropped by 1,634 people. The Governor’s succession of executive orders suspending the criminal procedure laws pertaining to statutory deadlines for criminal prosecutions has also slowed the process by which some defendants are eventually released, meaning that defendants currently incarcerated pretrial are more likely to stay in custody longer. The charts *supra* reflect this, as recent increases in the population come from pretrial populations with pending felony cases.

One important issue is the makeup of the population that remains incarcerated. In discussions with elected officials, MOCJ has described their release priorities as a balance of public health and public safety concerns, while prioritizing people over the age of 50, and those with preexisting health conditions that make them at greater risk of COVID-19. As a result of those priorities, the remaining DOC population generally tend to be facing serious charges. 66%

of individuals still in DOC custody are charged with violent felonies, and of that 66%, 44% of those individuals are remanded, suggesting they are there on very serious violent felonies such as homicide.⁹⁶ By comparison, only 4% of the current DOC population are charged with misdemeanors. Similarly, for those still serving a city sentence, the most common charges are attempted possession of a firearm, criminal contempt in the second degree, petit larceny, assault in the second degree, and attempted burglary in the second degree.⁹⁷

Another way to analyze the current DOC population is by examining the percentage of defendants detained pretrial broken down by borough, as seen in the following table.

Table X. Defendants in Custody on Non-Nominal Bail, as of May 5, 2020⁹⁸

⁹⁶ New York City jail population reduction in the time of COVID-19, Weekly Update, Through May 7, 2020, available at https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/05/COVID-factsheet_MAY-7-2020.pdf

⁹⁷ Information as of May 14, from OpenData

⁹⁸ Information received by the Committee from the Office of Court Administration, via email,

County	Type of Case	In Jail ⁹⁹	Out of Jail	Total ¹⁰⁰	% of cases in jail
Bronx	Total	211	5,862	6,073	3.5%
	Misdem	27	4,365	4,392	.61%
	NV Fel	79	824	903	8.7%
	V. Felony	105	673	778	13.5%
Kings	Total	282	9,120	9,402	2.9%
	Misdem	90	6,275	6,365	1.4%
	NV Fel	85	1,411	1,496	5.7%
	V. Felony	107	1,434	1,541	6.9%
New York	Total	229	6,515	6,744	3.4%
	Misdem	50	4,822	4,872	1.0%
	NV Fel	65	1,083	1,148	5.7%
	V. Felony	114	610	724	15.7%
Queens	Total	230	8,708	8,938	2.6%
	Misdem	34	6,155	6,189	.55%
	NV Fel	80	1,440	1,520	5.3%
	V. Felony	116	1,113	1,229	9.4%
Richmond	Total	70	1,742	1,812	3.9%
	Misdem	14	1,228	1,242	1.1%
	NV Fel	20	338	358	5.6%
	V. Felony	36	176	212	16.9%

As is seen in the overall DOC custody data, there are a very small amount of individuals charged with misdemeanors in custody; Staten Island has the highest percentage of misdemeanor defendants held pretrial, but it still comprises only 1.1% of their misdemeanor caseload. Examining nonviolent felony and felony populations, however, reveals significant differences between the boroughs. Brooklyn has the lowest percentage of individuals charged with violent felonies in custody pretrial – just 6.9%, compared to Staten Island’s rate of 17% and Manhattan’s

⁹⁹ In jail” means in on cash bail over \$1, or remanded. Dollar bail is set when a defendant is in jail on another matter, but would not receive credit for their period of incarceration if not for the nominal \$1 bail being set on the subsequent matter.

¹⁰⁰ The total excludes defendants in on a \$1 bail

rate of 15.7%. The Bronx has the highest percentage of defendants held pretrial on nonviolent felonies – 8.7%, compared to other boroughs whose rates range between 5.3% and 5.7%. These figures show a meaningful difference in the ways that DAs and courts have responded to the crisis, with Brooklyn seeing the most aggressive decarceration, followed by Queens, the Bronx, Manhattan, and Staten Island in order.

It is important to note that rate data such as the chart *supra* reflects multiple variables operating concurrently. A borough may see a lower percentage of defendants incarcerated because the DA’s office continues to write up complaints for low-level charges that other offices have stopped writing up. For example, many DA’s offices in the city have recently stopped filing criminal complaints for fare evasion, or driving with a suspended license, while others have not. An borough without these low-level prosecutions would reflect higher rate of incarceration, as the total population of misdemeanor cases would contain only more serious misdemeanors where bail is more commonly set, such as charges of criminal contempt or domestic violence. However, more serious charges such as violent felonies generally present less room for prosecutorial discretion, so this type of variability may be less present when analyzing felony data.

VII. Legislation

A. Preconsidered Introduction (Related to Reporting)

Section one of this proposed legislation requires the Department and CHS to submit to the speaker of the council, and make publicly available on the department’s website, a daily report related to the outbreak of infectious diseases in city jails during the public health emergency. The report must include cumulative numbers of individuals diagnosed, deceased, hospitalized, quarantined, and tested for COVID-19. The legislation also requires the Department to report weekly on the number of people in custody serving determinate sentences who have 30,

60, and 90 days remaining to serve on such sentences, the number of people in custody with a serious mental illness, the number of mental health appointments made, the amount of money spent at commissary on soap and hygiene products, and the number of requests for video visits made and completed. The proposed legislation also requires the Department and Correctional Health Services or the Department of Health and Mental Hygiene (DOHMH) to provide regular, in-person updates to people in custody about the public health emergency. Finally, the legislation requires the Department and CHS to publish a timeline of significant events.¹⁰¹ Section 2 makes the law take effect immediately.

B. Preconsidered Introduction (Releated to Fees)

Section one of this proposed legislation ensures that members of the public depositing funds into 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 \$5. Section two makes it so that the law takes effect immediately.

C. Preconsidered Introduction (Related to Release)

Section one of this proposed legislation requires the Mayor to create a local conditional release commission pursuant to § 271 of the Correction Law. Section two makes it so that the law takes effect immediately.

¹⁰¹ See Department of Corrections, Washington State, Coronavirus COVID-19 Significant Events Timeline, available at <https://www.doc.wa.gov/news/2020/docs/daily-situation-report.pdf>

Preconsidered Int. No.

By Council Member Powers

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring the department of correction and correctional health services to issue reports during public health emergencies

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-161 to read as follows:

§ 9-161 Reports during public health emergencies. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Cumulative infections. The tem “cumulative infections” means the total number of positive infections of people who have been incarcerated during a given public health emergency, regardless of whether those individuals have been discharged.

Cumulative deaths. The tem “cumulative deaths” means the total number of deaths of people who have been incarcerated during a given public health emergency, regardless of whether those deaths occurred during or after the period of incarceration.

Infection. The term “infection” means the infection that is the subject of a given public health emergency.

Public health emergency. The term “public health emergency” means any declared state of emergency made in response to an outbreak of an infectious disease.

Significant event. The term “significant event” means any notable actions taken by the department to address the public health emergency by date. Such events include but are not limited to:

1. Memorandums distributed to staff and incarcerated individuals regarding changes to department or correctional health directives, along with links to such memorandums;

2. Memorandums distributed to staff regarding work from home policies and trainings related to the public health emergency, along with links to such memorandum and trainings;

3. Posters distributed and posted within correctional health facilities, along with links to such posters;

4. Memorandums distributed to external stakeholders, such as defense attorneys and reentry providers, along with links to such memorandums;

5. Public information disseminated to family members of incarcerated individuals; and

6. Contact information created for the distribution of information to the public.

Staff. The term “staff” means any person who works routinely in city jails, including civilian and uniform staff of the department of correction and correctional health staff.

b. During the duration of any public health emergency, the department and correctional health services shall submit to the speaker of the council, and make publicly available on the department’s website, a daily report related to the outbreak of infectious diseases in city jails. Such report shall be submitted in a machine-readable format and stored permanently on the department’s website, and include the following information:

1. The cumulative number of incarcerated individuals diagnosed with the infection, in total and disaggregated by race, gender, and age group;

2. The cumulative number of staff diagnosed with the infection; disaggregated by whether such infections were of uniform, civilian, or correctional health staff;

3. The number of incarcerated individuals diagnosed with infections in the preceding, day, week, and month;

4. The number of staff diagnosed with infections in the preceding day, week, and month, in total and disaggregated by uniform, civilian, and correctional health staff;

5. The cumulative number of deaths caused by the infection, in total and disaggregated by whether such deaths were of staff or incarcerated individuals, and further disaggregated by whether such deaths of staff were of uniform, civilian, or correctional health staff;

6. The cumulative number of hospitalizations due to the infection, disaggregated by whether such hospitalizations were of staff or incarcerated individuals, and further disaggregated by whether such hospitalizations of staff were of uniform, civilian, or correctional health;

7. The number of people who have been tested for the infection, disaggregated by whether such tests were positive, negative, and pending results, and also disaggregated by whether tests were uniform staff, civilian staff, or incarcerated individuals, and further disaggregated by positive, negative, and pending results.

8. The number of people who have been quarantined, in total and disaggregated by incarcerated individuals and staff, and further disaggregated by whether staff were uniform, civilian, or correctional health; and

c. The reports required by subdivision b of this section shall include, for every report issued on a Monday, the following information for the previous week and the previous month:

1. The number of individuals incarcerated solely on a definite sentence, disaggregated by how many such individuals have 30, 60, and 90 days remaining to serve on such sentence;

2. The number of people in custody with a serious mental illness;

3. The number of mental health appointments completed;

4. The amount of money spent at commissary on soap;

5. The amount of money spent at commissary on hygiene products, in total;

6. The number of requests for video visits made, in total and disaggregated by how many video requests were completed.

d. The department and correctional health services or the department of health and mental hygiene shall provide weekly in-person updates to incarcerated individuals during the duration of the public health emergency. Minutes of such updates shall be provided to the Council and the board of correction. Such updates shall include the following information:

1. A summary of announcements made to the general public related to the public health emergency in the city of New York;

2. Operational changes made within the jails in relation to the public health emergency;

3. Changes in mediums people in custody can use to access physical and mental healthcare;

4. Best public health practices to avoid the spread of the infectious disease within the jail.

e. During the duration of a given public health emergency, the department and correctional health services shall submit to the speaker of the council, and make publicly available on the department's website, a timeline of significant events. Such a timeline shall be updated weekly

§2. This local law takes effect immediately.

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5/14/20

Not for Distribution

Preconsidered Int. No.

By Council Member Powers, Lander, and the Public Advocate (Mr. Williams)

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 person in the custody of the department of correction

Be it enacted by the Council as follows:

Section 1. Title 9 of the administrative code of the city of New York is amended by adding a new section 9-161 to read as follows:

§ 9-161 Accounts of people in custody. The department of correction shall ensure that members of the public depositing funds into 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 \$5. This fee cap applies to all devices or systems capable of allowing members of the public to deposit funds into a person in custody's institutional fund account, including wire and online transfers.

§ 2. This local law takes effect immediately.

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LS 8804
5/12/20

Not for Distribution

Not for Distribution

Int. No.

By Council Member Powers

A LOCAL LAW

To amend the New York City charter, in relation to adding a new section creating a local conditional release commission

Be it enacted by the Council as follows:

Section 1. The New York city charter is amended by adding a new section 627 to chapter 25 to read as follows:

Section 627. Local conditional release commission. There is hereby established a local conditional release commission. Such commission shall have the powers, duties, and composition outlined under article 12 of the correction law or any successor statute.

§ 2. This local law takes effect immediately.

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