

**Mayor's Office of Criminal Justice
New York City Council
Committee on the Justice System
Committee on Criminal Justice
COVID-19 Hearing Testimony
May 19, 2020**

Good afternoon, Chair Lancman, Chair Powers and members of the Justice System Committee and Public Safety Committee. My name is Elizabeth Glazer, and I am Director of the Mayor's Office of Criminal Justice (MOCJ). Thank you for the opportunity to testify today regarding the city's response to the COVID-19 crisis in its detention facilities. Several MOCJ colleagues are present and available as well to respond to questions.

The Mayor's Office of Criminal Justice advises the Mayor on criminal justice policy and is the Mayor's representative to the courts, district attorneys, defenders and state criminal justice agencies, among others. MOCJ designs, deploys and evaluates citywide strategies to increase safety, reduce unnecessary arrests and incarceration, improve fairness and build the strong neighborhoods that ensure enduring public safety. COVID-19 has put our criminal justice partners and system to a severe test, calling upon us all to protect the people in the city's care and custody—many medically vulnerable and from the city's poorest neighborhoods—as the city maximized social distancing and courts streamlined down to only the most essential “virtual” operations.

The city's response was a dramatic acceleration of what already were historic transformations in the criminal justice landscape. In the six years prior to this crisis, the city saw historic declines in its jail population, far less crime and far fewer arrests, and an emerging model of safety relying less on the formal controls of enforcement and punishment and more on informal structures of family and neighborhood. COVID-19 hastened these trends to warp speed. Indeed, the response to this public health emergency by the criminal justice system, and the people of this city, has been nothing short of extraordinary.

The crisis has demanded distilling the criminal justice system down to what is most essential to sustain the public safety. Concerns over spread of the disease in congregate settings has led to concerted efforts by the agencies testifying today, the courts, District Attorneys, defenders, State Department of Corrections and non-profit providers to drastically reduce the jail population while maintaining safety. This has resulted in unprecedented declines in the number of people held in city jails, particularly of those most vulnerable to the disease. Since March 16, when social distancing began in the city, the jail population has plummeted to levels not seen since 1946, shrinking by approximately 30% to fewer than 4,000 individuals. City agencies and non-profit

providers have also joined forces to help ensure those arriving from jail into a city in quarantine have places to stay, reentry services and access to medical care.

We have seen other dramatic transformations outside the jails, with the crime rate cut by a quarter and arrests by a third. And our Crisis Management System (CMS) and Mayor's Action Plan for Neighborhood Safety (MAP) are working in their hard-hit communities to promote collective civilian responsibility for public health and safety.

There is much we don't know about this disease and how long the city must battle it. COVID-19 has brought tragedy and hardship, but also hard-earned lessons that may advance us even faster towards a smaller, safer and fairer criminal justice system. Our challenge will be to learn from this experience—both the good and the bad—and sustain our advances as New York City emerges into its future.



New York County District Attorney's Office
Written Testimony by District Attorney Cyrus R. Vance, Jr. for City Council Committees on
Criminal Justice and Justice System
Oversight Hearing on "COVID-19 in City Jails and Juvenile Detention Centers"
May 19, 2020

Chairs Powers and Lancman, and members of the Committees on Criminal Justice and the Justice System, thank you for the opportunity to submit testimony for the City Council's oversight hearing on COVID-19 in City jails and juvenile detention centers. I share your concerns about the health and well-being of justice-involved individuals and correctional staff amid the coronavirus pandemic. I would like to take the opportunity to describe the proactive efforts the Manhattan District Attorney's Office has made to review people in DOC custody on Manhattan cases, and the process we engage in to evaluate requests for release from the City, defense providers, and individuals, in the form of bail applications and writs of habeas corpus. From March 19th to May 12th, there was nearly a 45% reduction in the number of people being held in jail on a Manhattan case.

First, my Office undertook a comprehensive review of every person being held in DOC custody on a Manhattan case to assess whether, given the circumstances created by COVID-19, it was appropriate to proactively exercise our discretion to recommend release. We recommended release for individuals who presented no clear threat to public safety, were incarcerated on technical parole violations, were serving short sentences, or were at particular risk of contracting the virus, as well as for individuals we believed should be released for other virus-related reasons. This was an exhaustive undertaking, but one that we embraced as an office, because we felt a sense of urgency and obligation to safeguard the population in City jails and correctional staff from this unprecedented health risk. The coronavirus spreads easily and quickly, especially in densely populated areas where it is difficult to implement safety measures, like social distancing. We knew that we had an imperative to work as quickly as possible to reduce the number of people on the inside—sensibly and with public safety still in mind—so that we could increase each facility's ability to implement safety measures to reduce the likelihood of the virus' spread both inside and outside the walls of our jails.

Beyond looking at the individuals who were incarcerated prior to the virus hitting, I believe that COVID-19 demands that prosecutors think differently about pre-trial detention requests at the outset. What we are experiencing is extraordinary, and extraordinary times call for us all to be flexible, while still guided by our foundational principles of promoting safety and justice. To that end, on March 17th, I joined many other prosecutors around the country in calling for prosecutors' offices to rethink who they recommend to be held in county facilities during the COVID-19 crisis.

I also communicated these beliefs regarding proactive efforts to the entire staff of my Office in an email on March 23rd, stating: "We have been asked by the city to help reduce the population of Rikers Island during the coronavirus epidemic to limit the spread of the illness and minimize the chance of fatalities. Independently, I have come to the conclusion that we need to reduce the Rikers

population through thoughtful evaluation of categories of individuals [...] in response to the unprecedented health risks of this pandemic, I believe we should use our discretion to recommend release of certain individuals from Rikers who do not present a clear threat to public safety,” based on the categories listed above in this testimony. I also echoed my beliefs that COVID-19 demands that we re-think who we recommend be held in county jail pre-trial and that we be flexible during this state of emergency.

In addition to our proactive review, between March 17th and April 9th, my Office received 14 separate “Detainee Review” requests from the City, some necessitating the review of hundreds of individuals at once. On a single day, March 17th, we received five separate requests pertaining to 547 individuals. We responded as best as we could and as quickly as possible. Simultaneously, we began receiving mass writs of habeas corpus from the defense bar. The first writ pertained to 116 individuals. We have also handled approximately 375 individual bail applications since March 17th. The requests for release largely allege that medical conditions, jail conditions, and non-seriousness of the underlying offenses merit release.

To facilitate the most effective review of these applications, each assistant district attorney evaluated each case they were handling with an individual detained in jail, taking into account the facts of the underlying case, the individual’s criminal history, history of warrants and non-appearance, as well as any other factors relevant to detention. This information allowed our executive staff to quickly assess the factors of each case as they related to a release application. As to the medical information submitted by defense counsel, we have a former medical examiner on staff who was able to help us contextualize those claims in the applications. The allegations relating to the conditions in the jails were more difficult to assess, as the District Attorney’s Office does not have first-hand knowledge of the situation in the jails. We have, however, been able to rely on the affidavits of several DOC officials charged with implementing the COVID-19 containment and treatment protocols, who have first-hand knowledge of those protocols and the conditions in DOC facilities. According to those affidavits, measures have been taken to protect medically vulnerable individuals, at-risk individuals are monitored, individuals who test positive for the virus are separated from the rest of the population, and enhanced cleaning and screening procedures have been implemented. In responding to these applications, we balanced the facts attendant to each case and the information we were able to glean about the reality inside the jails.

Altogether, between the cases on which we consented to and recommended release and the additional cases where release requests were granted, there has been a significant decrease in the number of individuals held in jail on a Manhattan case. On May 12th, there were 1,146 such people (excluding those being held on a \$1 bail or other hold), down from 2,071 on March 19th, nearly a 45% reduction.

Notably, this reduction provides the jails with greater capability to implement safety measures for the individuals who remain incarcerated. As reported by DOC, the curve on the inside has indeed flattened. Moreover, because of the criteria we used in making our determinations regarding release—including considering whether the individual posed a risk to the public—the vast majority of the individuals who do remain incarcerated are held on the most serious charges and present risk of danger to our community if released.

Finally, I would like to conclude this testimony with an observation. I think the processes that all of the stakeholders—including DOC, the City, district attorneys, and defender organizations—have all undertaken over the past two months, and will continue to engage in, thrive best with a coordinated and collaborative effort. As a former defense attorney myself, I understand that we all have separate

interests that we seek to promote, but, at bottom, we have a unifying interest in fostering the best possible version of New York City.

I have had the benefit of talking with city prosecutors around the country over the past few weeks and of hearing the way that other cities approach coordinating these types of efforts. For example, earlier this month, a national group I co-chair called Prosecutors Against Gun Violence (PAGV) held a virtual summit entitled “Prosecutors Respond to COVID-19.” Hundreds of prosecuting attorneys from around the country came together for a half-day conference to discuss the unprecedented challenges facing the justice system during the coronavirus outbreak. My Office participated on a panel about “Jail Releases During a Pandemic: A Case Study of Three Jurisdictions” alongside prosecutors from Pima County (Tucson) and Wayne County (Detroit). Pima County’s average daily jail population went from approximately 1,960 in February 2020 to around 1,350 in late April, a 31% reduction, and Wayne County’s jail population went from 1,388 people in early March 2020 to 820 people by May 5th, a 41% reduction. Both counties discussed how these releases were the result of a central organizing body or systematic collaborating entity that allows various stakeholders to openly communicate and make decisions; allowing them to be more organized and unified at the outset, and I think they were greatly advantaged by that.

There are lessons we can learn from other areas of the country on working collaboratively and the design of jails to reduce the transmission of infections. I understand that the Council is considering a bill today that would increase reporting requirements in a correctional facility during a public health crisis, and I believe that transparency in this space constitutes a valuable tool in promoting this kind of collaborative environment. I urge the City to use this moment in time to foster a greater collaboration, and to take the lessons from this moment and apply them to the borough-based jail planning.

Thank you for the opportunity to testify today, and thank you for the continued attention to issues of great importance in the criminal justice space.

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**TESTIMONY OF JILL HARRIS, CHIEF OF POLICY AND STRATEGY,
OFFICE OF BROOKLYN DISTRICT ATTORNEY ERIC GONZALEZ**

**BEFORE THE NEW YORK CITY COUNCIL COMMITTEES ON CRIMINAL
JUSTICE AND THE JUSTICE SYSTEM**

“COVID-19 IN CITY JAILS AND JUVENILE DETENTION FACILITIES”

MAY 19, 2020

Thank you Chairman Lancman, Chairman Powers, and members of the Committees on Criminal Justice and the Justice System for this opportunity to testify regarding COVID-19 in city jails and juvenile detention facilities. My name is Jill Harris and I am the Chief of Policy and Strategy in the Office of Brooklyn District Attorney Eric Gonzalez.

I hardly need to tell you, as we hold this hearing remotely from our respective socially distanced locations, that our city is experiencing a public health emergency unlike any in at least a century. Our public health experts tell us that social distancing is essential to reduce the human toll of COVID-19, and distancing must occur everywhere—from schools and stores to houses of worship – and houses of detention.

When the first cases of COVID-19 were reported in New York, it became immediately clear to all of us who work in the criminal justice system that jails and prisons would be hard hit by the virus, and that it would be essential to reduce the numbers of people on Rikers Island to

slow the spread of this deadly disease. From the earliest days of the health crisis, the Brooklyn DA's Office has acted urgently and intentionally to reduce the number of people from Brooklyn who are detained on Rikers, where doing so would not create an undue risk of harm to any person or to the public.

DA Gonzalez views it as his solemn responsibility to keep his constituents safe, and he understands that his constituents include people who are incarcerated. During this public health emergency, in trying to do our part to reduce the jail population, our office has had to strike a balance between protecting the health and safety of people incarcerated at Rikers and those who work there, by consenting to releases that will reduce the population and allow for more social distancing, and on the other hand, protecting victims of crime and the public by supporting the continued detention of individuals who we believe would be likely to commit further acts of violence if released.

Striking this balance in favor of releasing someone is especially challenging in Brooklyn because of the work our office has already done to reduce incarceration. Before the pandemic, we had already taken aggressive steps to ensure that we were not incarcerating people on low-level cases, because we view jail and prison as extraordinary remedies that should not be sought if a non-jail alternative is available that will not endanger the public.

DA Gonzalez changed our office's bail policy well before last year's changes in state law, instructing our ADAs to consent to release at arraignments unless public safety or risk of flight in serious cases, demanded that we seek bail or remand. And of course, we have diverted countless people into services and programs to address the circumstances in their lives that contributed to their criminal offenses, rather than simply seeking to lock them up. So if we ask a court to incarcerate someone, it is because we believe that public safety requires it.

But the pandemic has changed our calculus, and we are revisiting those cases in light of the risk of infection on Rikers. We have been going through our Rikers cases involving individuals who, because of age or underlying health condition, may be particularly vulnerable to serious illness if they contract COVID-19. In some cases, we have received lists of names from the mayor's office or from corrections health services; in other cases, defense attorneys have reached out to us asking us to consent to their clients' release. Many cases have been brought as writs, and in others we have simply asked our ADAs to review their own cases for possible release in light of the health emergency.

DA Gonzalez has put together a small team of senior executives to help him conduct these reviews. We have done a case-by-case review to determine what if any conditions would allow us to consent to the person's release without putting a victim or the public at undue risk. We have also considered cases where the person may not have any special health vulnerability, but in the interest of reducing the population at Rikers, to permit more opportunity for social distancing, we might consent to their release. From March 12th to May 15th, the number of people on Rikers Island from Brooklyn dropped by 316 people, a decrease of 28%, and our case reviews are ongoing.

DA Gonzalez has personally reviewed every single one of the cases we considered. The decisions were often difficult, but we feel comfortable that we have been striking the appropriate balance. In cases with victims, we have reached out to them when we were considering releasing the person charged with hurting them, to help them with safety planning, including orders of protection, getting locks changed, or potentially relocating. These services are especially critical in domestic violence cases.

The individuals we did not consent to release are charged with very serious, violent crimes, including armed robberies, rapes, murder and attempted murder, and very brutal domestic violence assaults, and we have very strong evidence in these cases. Mindful as we are of the conditions on Rikers and the health risks to those confined there, these are not individuals we feel comfortable releasing into our neighborhoods in Brooklyn.

So, here is where we are: not everyone who is in Rikers can get out; some people need to stay there. We can't "free them all" because there are people who, if they get out, will hurt other people. But as we can all agree, no one deserves to die of COVID-19. That makes it incumbent on the city and the agencies you have heard from today to see to the health and safety of the people in their charge.

The population of Rikers Island, which once hovered over 20,000, has reached an historic low in the midst of this pandemic – it's now below 4000. I hope that the steps that we and other DA's offices have taken to reduce those numbers will make it easier for the Department of Corrections to implement appropriate sanitation and social distancing measures to keep their staffs and the remaining inmate population safe. Every life is valuable, and DA Gonzalez stands ready to cooperate with our city partners and with the council in any way necessary to ensure that those who must remain in detention to protect the public can be held safely.

Thank you for your attention to this important issue and for giving us the opportunity to speak with you today.

Be well and stay safe.

**Testimony of the Office of the Bronx County District Attorney
To the Committee on Criminal Justice and the Committee on the Justice System Hearing
Regarding “COVID-19 in the City Jails and Juvenile Detention Facilities”
May 19, 2020**

Good afternoon Chairman Lancman, members of the Committee on Criminal Justice and the Justice Committee. I am honored by this opportunity to address you, on behalf of District Attorney Clark, on a topic that is just as important as it is necessary.

The road that led the Bronx District Attorney’s Office to this moment, began in March 2020, when the impact of COVID-19 forced the city and state to close its church and school doors, redefining the way we work and live. We share a passion for justice, and we, as prosecutors, are uniquely positioned to administer justice. The Bronx District Attorney’s Office serves 1.4 million people in the Bronx, including 3,800 people who walk the halls of Rikers Island jails. They matter and are just as important as every New Yorker who shelters in place throughout the city.

DA Clark, in her wisdom and concern for employees, began the difficult task of reducing the density of our office in early March before imposing the mandates regarding “essential” workers. This was achieved with clear instruction that social distancing and remote work will not interfere with our shared commitment: “to pursue justice with integrity.” Accordingly, when the Office received its first of many lists from the Mayor’s Office of Criminal Justice requesting our assistance in reducing the population at Rikers Island, it was an understandable but challenging undertaking that embraced DA Clark’s policy of “A Safer Bronx Through Fair Justice.”

I will explain.

Since January 2016, the Bronx DA Office has performed a rigorous and intentional approach to case evaluation that has resulted in historical lows in the population at Rikers Island. Whether misdemeanor or felony, every case is purposefully evaluated and subjected to several tiers of supervisory review with the idea that freedom from incarceration is the starting point along with consideration of available services to address the wellness and mental health of the defendants as an alternative to jail or prison. With this philosophy in mind, we began the consuming task of carefully and methodically reviewing each case on each list.

First, we reviewed “the newly sentenced list,” which was soon followed by the “parolees over 50 years old list,” then, those over 50 years old incarcerated under \$10,000 bail, and defendants under 50 years old held by \$10,000 bail. We conferenced each and every case with particular attention to those who were on the city sentenced inmates list, the TPV, Technical Parole violations and cases that were approved for consent by the NYPD. Thereafter, we evaluated the cases of the 300 inmates (76 involved Bronx cases) that were released without consulting the Office. Further, there was the list of vulnerable pre-trial detainees, vulnerable youth offenders, and consideration of those under 50 on the geriatrics and complex care lists. All of these lists were evaluated daily and required extensive conversations with the defense bar.

I mention this list of categories as a reminder of all the efforts we made to consider the public health impact of our Rikers residents. Our process to case assessment is intentionally rigorous, and requires a thoughtful analysis of the circumstances of each particular defendant. We consider questions such as:

Why has the defendant committed the offense? What is the criminal record and the nature of her offense? Do we know enough about the defendant to understand who he/she is? Does the person have a history of mental illness or addiction? Have we considered the collateral effects of incarceration on the family of this defendant? Will the Bronx community be best served by incarceration? Is there a suitable alternative to incarceration?

All assistants are strongly encouraged to engage the defense bar in meaningful conversations with an eye towards exploring the possibility of resolving the case at its earliest stages. Then, each case on the lists were reviewed by the Division Chief, the Alternatives to Incarceration Chief and the Chief Assistant. Some cases required several conversations with key stakeholders in the defense bar along with approval from the final decider, DA Clark.

As we discuss those who are incarcerated, I must remind you that there are victims who are impacted by our decisions. Upon addressing criminal justice reform, we cannot forget those who continue to suffer from those unspeakable acts of violence and continue to receive services for their traumas. Accordingly, while we attempt to reduce the population of people in jails and prisons for noble and just reasons, we cannot continue to do so at the risk of neglecting the closure, healing, safety and health of the victim.

Some of the most heart wrenching conversations occur when ADAs must explain to victims of serious violent crime and survivors of sexual abuse that the person who caused their injury is about to be released. You can understand how this impacts their sense of safety and security, changing their lives forever.

It is difficult to explain why a man who gouged out a woman's eye, and then attempted to do the same to the other eye, may be released. Or, why the man who wrapped his hands so tightly around his partner's neck, causing permanent paralysis in one arm, is considered a candidate for release.

In essence, we must balance this public health crisis presented by a global pandemic with our understanding of public safety. As prosecutors, we have an important duty to protect our victims who we serve and keep our communities safe, above all else. Herein lies the important and delicate balance for a prosecutor, in particular, protecting the life of the convicted, and protecting the safety of the community. This is the life of the prosecutor in the time of COVID.

In the Bronx District Attorney's Office our compass is informed by DA Clark's vision. We can proudly announce that reform began for us way before January 2, 2020. Our bail policies were in place before criminal justice reform was law. This is why the process of bail review and Writs of Habeas have posed such a challenge. The decision to send someone to jail is serious. When we were asked to review what we had already determined was fair and appropriate in light of our own policy and criminal justice reforms, we did so with the victims in mind along with a desire to address a public health crisis and to save lives. However, violent conduct cannot be left unaddressed. Where there is responsibility, there will be accountability meted out with a fair and measured hand.

As to your bill creating a local conditional release commission, I would like to briefly highlight a few reasons why DA Clark is unable to endorse your proposed amendment. Simply stated, while this bill attempts to cure what it deems as deficiencies within the parole system, the commission's goal undercuts the victim's voice – that is, the promise of the negotiated sentences made on behalf of victims. Further, the proposed bill has ambiguity and contradictory language. In addition, it is arbitrary in deciding those who are selected for the commission since many with relevant

experience seem to be excluded, namely judges, justices and prosecutors. Again, for these reasons, DA Clark does not support this bill.

In conclusion, I would like to thank you for this important opportunity to speak with you and provide a voice for fairness, justice and recognition that the community as a whole includes the victims of crime and our Rikers Island residents. I wish you and yours safety and health as we all work together to navigate the unprecedented challenge of balancing public health and public safety during a global pandemic.



Richmond County District Attorney's Office

Testimony before the City Council's Committee on Justice System on COVID-19 in City Jails and Juvenile Detention Facilities

May 19, 2020

Good Afternoon Councilperson Lancman and members of the Committee. Thank you for allowing me to present this testimony on today's important topic on behalf of the Richmond County District Attorney's office.

As District Attorney, my primary concerns are to serve victims of crime, uphold the rule of law, and keep our communities safe by preventing and prosecuting crime. When the coronavirus pandemic reached our shores and spread rapidly through all of New York City, it created an unprecedented emergency for both public health experts and law enforcement agencies alike. We have all felt the massive strain this health crisis has placed on the entire system, and my office has been working diligently with our partners including the NYPD to ensure the coronavirus pandemic did not cripple law enforcement's ability to protect and serve the people of this City.

At the same time, we recognized early on how COVID-19 infections would have the potential to overwhelm our City jails and juvenile detention facilities if containment efforts were not immediately undertaken. From the outset, we recommended in a letter from the City's prosecutors simple measures that should have been put into place to protect inmates and Corrections staff, calling on the City to re-open shuttered buildings on Riker's Island to allow for social distancing and better quarantining of the sick.

Instead, the administration focused on releasing as many defendants as possible from Riker's Island. When this process began, we were asked to consider consenting to the release of those convicted of non-violent, non-domestic violence, and non-sexual abuse related offenses with a short time remaining on their sentence. In several instances, we were able to identify individuals who had little time left in their sentences and posed minimal risk to public safety and did give our consent to early release. In other instances, we have been actively working with defense counsel and the court to expeditiously connect detainees with treatment providers who can serve their serious substance use

disorder and mental health needs outside of Riker's either as part of a plea or while they await trial. In our view, the compassionate release of these defendants would not pose a risk to public safety so long as the City upheld its promise to closely monitor them through supervised or work-release programs.

Despite our good-faith efforts, misguided and agenda-driven activists — led by the Legal Aid Society and other public defender groups — have used this as an opportunity to demand the total emptying of our jails. Tragically, this is another example of the plight and suffering of crime victims being utterly dismissed by these activists and the elected officials whom they have co-opted. These groups of well-financed, radical zealots have now demanded the outright release of those convicted or pending trial on violent crimes including homicide, rape, and sexual abuse of children. While it is disheartening, although entirely not surprising, that these so-called advocates would seize on our current health crisis to advance their own agenda, it is the sheer lunacy of their demands that troubles us most. The truth is that people are still committing serious crimes — acts harmful not only to individual victims but also to society. As long as this remains true, complete jail-emptying is a fiction of self-promoting politicians only looking to advance their own career.

Almost daily, defense attorneys petition the courts for the release of defendants accused of committing these violent offenses, or other serious crimes involving guns, the sale of drugs, domestic violence, and vehicular homicide. While we continue to vehemently oppose where appropriate these applications in court, Staten Island's prosecutors should not be spending their valuable time and resources responding to these extreme calls for unjustified release.

These requests for release not only put victims at risk, they are based on an outright falsehood: that the infection rate in the City's jails is significantly higher than the City's general population, and that being held on Riker's Island is akin to a death sentence." We now know that the population at Riker's had been tested at a rate that was 8.3 times higher than the testing rate of the City's general population. At the same time, the rate of deaths in jails remains 9 times lower than the fatality rate of the City's general population — where 3 individuals have died of COVID-19 inside jails, at least 18,000, likely far more, have died of coronavirus in the City at-large.

In an egregious example, Legal Aid attorneys successfully petitioned the court for the release of a 77-year-old Staten Island defendant who had tested positive for COVID-19 while at Riker's Island, after being charged with Course of Sexual Conduct Against a Child for allegedly abusing a minor on multiple occasions. Over our objections, but with the blessing of the City, this COVID-positive defendant was released into a City-run nursing complex on Roosevelt Island, where it was later reported that over 70 patients had become infected with coronavirus. It is unfathomable that the City would place COVID-positive inmates in the same facilities as law-abiding and high-risk New Yorkers, but, sadly, this is the state of our current reality.

While our concerns are many, we remain most dismayed by the utter dismissal the City has shown toward victims of crime. Many defendants are being released equipped with cab fare, cell phones, and a key to a hotel room, regardless of the crime they committed or their current health condition. Ironically, few if any of these resources have ever been made available to the victims who are also at risk, especially domestic violence survivors in women's shelters or children being cared for in foster homes.

Another area of this crisis that greatly concerns us relates to a new bill which proposes the re-creation of a Local Release Commission in New York City. I am compelled to express my deep reservations on both practical and constitutional grounds.

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

Further, the history of New York City's Local Conditional Release Commission must also be considered a warning to those who would vote in favor of this bill. In 2004, the Commission took up the case of former State Senator Guy Velella, who had been convicted on numerous counts of conspiracy and bribery relating to a scheme where Velella and his co-defendants received \$250,000 over a period of 5 years in exchange for approving applications for public works contracts across the State. Velella was sentenced to one year in prison for his role, yet after serving just 12 weeks of his sentence, Velella was granted release by the Commission. The investigation that followed found the meeting which resulted in Velella's release did not have the mandatory quorum necessary to conduct a vote, and minutes of the meeting were not kept as required by the statute. In light of this embarrassing episode, Mayor Bloomberg accepted the resignation of all members of the Commission, appointed new members, and eventually allowed the Commission to expire in 2005.

If the Commission were to be recreated, its members would once again be appointed solely by the Mayor. This should give an oversight body like the City Council great pause.

We have done so much on Staten Island and indeed, across our City to make the justice system more equitable and sanctions more appropriate for those convicted of violating our laws. One need not look further than the population on Riker's Island, lower than it has been since the 1940s, for

proof that our City's criminal justice apparatus has sought every opportunity to divert offenders out of the criminal justice system and into meaningful engagement with pro-social services. The proliferation of exceptional community providers who offer quality mental health and drug treatment, batterer intervention, neighborhood placemaking and other programs is evidence that we are continuing to move beyond incarceration as the only tool to hold offenders accountable.

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

In conclusion, let me note that we have seen several serious crimes committed in the last weeks on Staten Island, including the double homicide of a pregnant woman and her boyfriend, and multiple unrelated arrests relating to the possession of large caches of weapons, including improvised explosive devices (IEDs) and dozens of firearms. At each arraignment, we successfully argued for bail or remand to be set, and these defendants currently remain incarcerated pending trial. But based on what we have seen from advocates thus far, it would come as no surprise to see calls for their release without any accountability as well.

The delusional mission to empty all jails will make us all less safe in the end, especially the victims whose voices continue to be ignored throughout this crisis, as they have been for far too long. As Justice Benjamin Cardozo said, "Justice, though due to the accused, is due the accuser also." As we struggle every day to contain the coronavirus pandemic, our elected leaders need to serve all New Yorkers, not just the loudest and most extreme.



**Testimony of the Office of the Queens County District Attorney
To the Committee on Criminal Justice and the Committee on the Justice System
Virtual Hearing regarding “COVID-19 in City Jails and Juvenile Detention Facilities”
May 19, 2020**

I would like to thank Chair Rory Lancman, of the Committee on the Justice System, and Chair Keith Powers, of the Committee on Criminal Justice, for the opportunity to appear virtually before you today to discuss with you the COVID-19 pandemic as it relates to city jails and detention facilities - as well as the proposed amendment to the NYC Charter to create a local conditional release commission.

When District Attorney Katz took office on Jan. 1, she immediately went to work to make significant policy changes to reduce our city’s jail population. She is committed to ultimately ending cash bail and feels strongly that a person’s financial status should not be a factor in determining whether or not they are incarcerated pre-trial. To that end, we at the Queens DA’s Office are working to review and evaluate alternatives to incarceration and to ensure that comprehensive supervised pre-trial release, pre-arrest programs, and other monitoring programs are developed. Since day one, we closely review each and every request for bail to make sure that all defendants are treated fairly while also maintaining the safety of our residents and the assurance that the defendants return to court. Before COVID-19 hit, we had already succeeded in lowering the average bail set by nearly \$5,000 less when comparing to the same period in 2019. In addition, 75% of those charged with bail qualifying offenses were released-either on their own recognizance or with supervision. On Jan. 1, 2020 there were over 1100 inmates in custody on Queens cases. By Feb. 1, that number dropped to under 900. As of May 14, under 560 inmates remain in custody. That’s a 50% reduction in the jail population of those in on Queens cases since DA Katz took office.

In early March, in addition to the steps DA Katz had already taken to reduce the city jail population, we ramped up those efforts as it was clear the virus was spreading quickly throughout the city. We recognized that those living and working within the confines of the city jails were at particular risk and we immediately began to identify those defendants who may be released to further reduce the jail population.

First, we reviewed multiple lists of vulnerable groups of inmates that we received from the City and several defender organizations. These lists identified certain inmates using various criteria in a multitude of permutations such as the age of the inmate, and/ or the medical status,

and/or the amount of bail set, and/or the classification of the offense charged. We, like all the other District Attorney's Offices in the City, were asked to identify those we could consent to release by either a resentencing or a plea and disposition that would effectuate release or reduction of bail. Also at the outset of this health crisis we identified those inmates whose release we would not object to, such as the release of many city sentenced prisoners with minimal time left on sentences, those in jail on just a parole hold, and those with technical parole violations.

In addition to the long lists of inmates received almost daily, we also received and continue to receive many individual requests. Since March 15, we have reviewed over 440 inmates for possible release and have responded to over 160 writs, bail applications and mass writs from the Legal Aid Society and Queens Defenders, all while working remotely, virtually, and carefully within the parameters required as a result of this pandemic. From the onset of the pandemic, we worked daily with the Mayor's Office, OCA, public defenders, and defense attorneys to prioritize and expedite the release of the most vulnerable.

Under DA Katz's leadership, we are mindful of the safety and well-being of all New Yorkers in and out of Rikers, and we realistically and carefully assess each request. In order to respond in a uniform, thoughtful and expeditious manner, we established a protocol and process to closely analyze all the relevant information and facts on each individual case. After all the information is compiled by the ADA assigned to the case, a recommendation is made, a further review and recommendation is made by bureau chiefs and senior staff members, and ultimately each case is reviewed by either me or the District Attorney herself.

There are several criteria that are considered in the review. We speak to the professionals. The doctors at Correctional Health Services have answered our questions and kept us up to date regarding the precautions that they are taking and the standard of care that they are able to deliver. We speak to the Department of Corrections regarding the ability of inmates to abide by CDC guidelines of hygiene and social distancing. We have studied all of the protocols that DOC and CHS have put in place. DA Katz and our staff have asked about and received answers from the Mayor's Office, Department of Probation and others regarding the housing, services and monitoring available to defendants upon their release. The information we have received informs each of the decisions we are making.

We look at the facts and circumstances surrounding each inmate's incarceration. We review the underlying charges they are facing, the nature of the crime, and when appropriate, we reach out to victims and witnesses to these crimes. We review any and all information that is provided regarding the inmate's health history and their housing situation at Rikers.

We look at whether the defendant has a history that demonstrates they are a flight risk or whether they have ties to the community. We seek information about a discharge plan and whether the defendant can safely shelter in the community or attend supportive programming should he be released. We review provided medical records and conditions which may make a particular defendant more vulnerable and susceptible to complications from the virus, especially those of advanced age, who are immunocompromised, have respiratory disease, cardiac disease and other health concerns.

Our goal in making these determinations is to protect those within the jails, the corrections workforce, and the community at large without jeopardizing public safety. We appreciate that this reduction in overcrowding will allow for greater flexibility within the jails and reduce transmission both in and outside of Riker's. Balancing public safety issues and public health issues while evaluating the merits of each petition is our obligation. The interests of justice are best served by these thoughtful, case specific resolutions.

If an individual remains incarcerated, rest assured the balance of public health and public safety was carefully weighed, that any and all alternatives were considered, and that this remains the most appropriate and just decision in light of all the facts and circumstances surrounding the crime.

Finally, District Attorney Katz would like to comment on the proposed amendment to the NYC Charter to create a Local Conditional Release Commission to review requests for the conditional release of inmates serving definite sentences in Riker's.

Penal Law sec. 70.40 (2) and Article 12 of the Corrections Law set forth the procedure and criteria for the conditional release of an inmate and provides that such release is in the discretion of the parole board unless a local conditional release commission is established.

It is our position that the parole board is uniquely situated to make the most informed determination for conditional release and to ensure public safety when making the determination. In fact, the statute requires an inmate serve a longer amount of time before he is released upon decision of a commission as opposed to the parole board. If the release is decided by the parole board, it may be effectuated once the inmate serves 60 days of a sentence term in excess of 90 days. If, however, his release is decided by a local conditional release commission, the inmate may not be released until he serves 90 days of a sentence term in excess of 120 days.

History has also proven that local conditional release commissions are not the better choice in making these critical determinations. By all accounts, the City's previous commission had

many problems. In 2004, it came under scrutiny when a couple of high profile releases were effectuated and later deemed invalid. Problems with the commission came to light and several city agencies were required to conduct investigations of the commission's processes. One commission decision, the release of Sen. Velella, was determined to be invalid. On appeal the Court agreed and he was ordered back to jail to complete his sentence. The Velella case resulted in the resignation of the commission members. And NYC was not alone; commissions in counties all across the state were problematic. As a result, state legislation was proposed in 2005 to completely abolish the commissions. While that law stalled in the Assembly, in 2009 the law was changed to make the creation of local conditional release commissions permissive rather than mandatory. But this still failed to address the many concerns and problems previously brought to light. Despite glaring issues of earlier years, the commission's standards and procedures remained unchecked and needed safeguards are still not in place. On the other hand, the parole board, a larger body with much broader experience and knowledge, has ably handled conditional release decisions since that time-and at no additional cost to the city, an important consideration given the economic impact COVID-19 will have on the City budget.

To take the decision of early, conditional release out of the hands of the parole board and place it into the hands of a few appointed members with minimal relevant background and experience could greatly jeopardize public safety and would create an unnecessary expense for an already overburdened City budget. On both accounts, it is a price we simply cannot afford.

I thank you for the opportunity to appear before you today. I look forward to working with you and your staff as we navigate these challenging times and move forward in the months ahead.



**David A. Hansell, Commissioner
Testimony to the New York City Council
Committees on Justice System and Criminal Justice
May 19, 2020**

Oversight—COVID-19 in City Jails and Juvenile Detention Centers

Good afternoon Chair Lancman, Chair Powers and members of the City Council Committees on the Justice System and Criminal Justice. I am David Hansell, the Commissioner of the New York City Administration for Children's Services (ACS). With me today from ACS are Sara Hemmeter, Acting Deputy Commissioner for the Division of Youth and Family Justice and Dr. Angel Mendoza, Jr., ACS's Chief Medical Officer. We are grateful for this opportunity to testify virtually about how ACS and our partners have responded to the unprecedented COVID-19 health crisis and its impact on our juvenile detention programs.

Today's NYC juvenile justice system, thanks to many years of effort by multiple stakeholders, safely serves youth through a trauma-informed lens, in the community whenever possible, and with appropriate structure and supports in place. During the COVID-19 pandemic, our focus has been on maintaining that progressive approach, keeping young people and staff protected from new health concerns, and supporting the efforts of MOCJ, Probation, the Law Department, and the District Attorneys to release those youth in detention who could be safely returned to the community.

While ACS does not have the authority to release youth, our collaboration with our sister agencies led to the release of over 1/3 of the youth in detention (20 from secure detention and 26 from non-secure detention) at the height of the pandemic from March 16th -April 9th. During the same time period, ACS also discharged 31 youth, or nearly a third of the youth in Close to Home placements, so that those youth were at home, in their communities, receiving aftercare services.

Despite the many challenges that COVID-19 presents, we have adapted ACS's full continuum of juvenile justice programs to meet the needs of youth and their families. Our Community Based Alternatives programs continue to offer prevention and diversion services to safely keep youth out of the justice system and supported at home with their families. The Close to Home system of residential placement and aftercare is serving adjudicated youth and helping them safely transition back to the community. And as I will now discuss, we have taken numerous steps to address the health and safety of the youth and staff in our detention programs.

Youth and Staff Health and Safety

The health and safety of the youth and staff in our secure detention programs is our top priority. For youth in detention, and the caring, inspirational staff who show up every day to work with them, we have implemented strict protocols to minimize the health risk to staff and youth. We have continued to follow the guidance of health officials, including DOHMH, Health + Hospitals, the Centers for Disease Control, the health care personnel who work in our detention programs (Floating Hospital at Crossroads and Correctional Health Services at Horizon), and ACS's Chief Medical Officer. As health guidance has evolved throughout the course of the pandemic, ACS has adapted and implemented new protocols as needed, and we will continue to do so.

We continually disseminate up-to-date guidance to staff and youth about virus prevention practices such as hand washing and social distancing. Our detention facilities are regularly cleaned and sanitized, and we have increased the number of cleaning personnel. We have equipped the facilities with ample hand sanitizer, soap, gloves, and PPE for staff working with symptomatic youth. Nurses conduct temperature checks for staff on each shift, and our health partners conduct daily screenings of youth. All staff and youth have been provided face coverings.

In the early weeks of March, after consultation with medical and public health experts, ACS executed a bold plan to minimize the spread of COVID-19, preserve scarce personal protective equipment (PPE), and limit the exposure of youth and staff to the virus. This plan included consolidating youth (with the exception of Pre-Raise the Age youth who have always been housed at Horizon) in Crossroads, leaving the 1st floor of Horizon exclusively for youth presenting with COVID-19 symptoms. There, the youth would be housed in one area, receive 24/7 medical care from Health + Hospital's Correctional Health Services.

Most recently, ACS has begun to implement a plan to safely redistribute our youth detention population between both facilities, while maintaining the public health advantages of a discrete medical isolation space for housing symptomatic or COVID-positive youth. To date, ACS has moved 6 youth from Crossroads to Horizon. This enables ACS to fully utilize our facility space to safely manage our youth detention population, while maintaining capacity on the first floor of Horizon to medically isolate any youth in our custody who might develop symptoms or test positive for COVID-19. Infection control practices will continue at Horizon to prevent the spread of illness among the expanded youth populations, including strict implementation of traffic control and staff separation; strict separation of transport activities, equipment, and laundry; strict implementation of cleaning and disinfecting practices; strict adherence to established PPE usage and conservation guidelines for appropriate staff, and continued daily temperature-taking of all staff.

Since the start of the pandemic, we have had a total of seven youth test positive for COVID-19. Five of these youth have fully recovered, and two youth who were more recently diagnosed are currently in isolation at Horizon. ACS and our medical partners tested other youth with whom these recently diagnosed youth were in contact, and all of these youth tested negative.

Maintaining Youth-Focused Care

Especially during these trying times, it is crucial to provide structure for youth and maintain our youth-focused model of care. Youth in detention continue to receive quality medical and mental health care, access to education and programming, and they are maintaining connections with their families.

We have a full array of on-site medical and mental health providers serving the youth in our care at Crossroads and Horizon. ACS contracts with the Floating Hospital to provide health services at Crossroads, and Correctional Health Services provides health care for youth at Horizon. We've been working closely with Health + Hospitals Bellevue Hospital Center to provide trauma-informed screening and mental health services to young people in our secure detention (as well as in our non-secure detention continuum). Through its team of psychiatrists, psychologists, and mental health clinicians, Bellevue works closely with Youth Development Specialists, Case Managers, Program Counselors, and our contracted medical services staff to provide comprehensive care for youth. We are grateful for the hard-working teams who have been meeting the complex needs of our youth prior to and throughout this crisis.

Education and programming are critical components of detention, and needed to be quickly modified and adapted due to COVID-19. All youth in detention have access to remote learning, and I want to thank the teams at ACS, including the ACS Detention Program staff and our Office of Information Technology, and the Department of Education (DOE), for quickly providing and adapting to new technology. Programming is essential to enhance the therapeutic environment in detention, while helping youth build self-esteem, take part in positive activities, reduce idle time, connect with role models and credible messengers, and develop skills to redirect their lives in a positive direction. We have implemented new types of virtual programming to engage youth while adhering to social distancing protocols. For instance, youth have access to video games, movies, and books on tablets. They are participating in virtual programming with our various partners, including a writing challenge through the Kite Program, yoga, individual exercise challenges, and more.

Strong family engagement is another essential part of our model of care, and we have adapted to make sure youth remain connected. Our Case Management staff connect with parents by phone at intake, and they call parents to provide weekly progress updates. One of our early and most challenging decisions during this crisis was to suspend in-person visiting due to the health risks. We have set up access for youth to do tele-visiting by video, in addition to increasing their regular phone access, so they can maintain connection with their families and lawyers. As has always been the case, youth can write and send unlimited letters to parents and family members.

Through the dedication of ACS's Division of Youth and Family Justice staff, ACS is making sure that youth in our detention facilities are well-cared for, as we continue to navigate these uncertain times. As the Council knows, ACS created a new position, Youth Development Specialist (YDS), to carry out our expanded responsibilities under Raise the Age. Our staff of YDS are now carrying out the crucial role of working with youth on a daily basis to provide strength-based supervision, mentorship, and connection.

Conclusion

From the start of the pandemic, we have deeply appreciated the Council's and the community's close attention to the needs of our vulnerable youth and the heroic staff who provide them with daily care and supervision, as we work together to keep youth, staff, and communities safe. I am so proud of all that the ACS DYFJ team has done to quickly adapt to this challenging time, while providing the highest quality care and support to the youth. We are happy to take your questions.

Testimony

of

Bridget G. Brennan
Special Narcotics Prosecutor

Before

The New York City Council
Committees on the Justice System and Criminal Justice

COVID-19 in City Jails and Juvenile Detention Facilities

May 19th, 2020

OFFICE OF THE SPECIAL NARCOTICS PROSECUTOR

COVID-19 in City Jails and Juvenile Detention Facilities

I thank the New York City Council's Committee on the Justice System and Committee on Criminal Justice, under Chairpersons Rory Lancman and Keith Powers, for providing this opportunity to discuss the strategies, processes and programs the Office of Special Narcotics has used to reduce the population at City jails in response to the COVID-19 pandemic.

In the face of an unprecedented public health emergency in New York City (NYC), the Special Narcotics Prosecutor's Office (SNP) has joined the five District Attorneys' offices in working with the Mayor's Office of Criminal Justice, the defense bar and the courts to reduce the City's jail population and prevent the spread of COVID-19. These collaborative efforts have reduced the NYC jail population by 1,647 inmates as of May 16, 2020, which constitutes a 29 percent reduction in the prison population that existed on March 16, 2020. With a current population below 4,000 inmates, it has been almost 75 years since the New York City jails have housed so few people.

Compassionate release of prisoners who are at high risk of serious complications from the virus is a priority, so long as the release will not jeopardize public safety, and those who are released return to court. Due to criminal justice reforms, which eliminated bail or remand for the vast majority of narcotics offenses, relatively few individuals facing prosecution by our office were confined at the onset of the pandemic. Seventy-three (73) incarcerated defendants faced charges brought by our office at the start of the crisis in mid-March, most charged with Operating as a Major Trafficker, or weapons and assault charges.

We have worked closely with the Mayor's Office of Criminal Justice (MOCJ) to identify defendants ap-

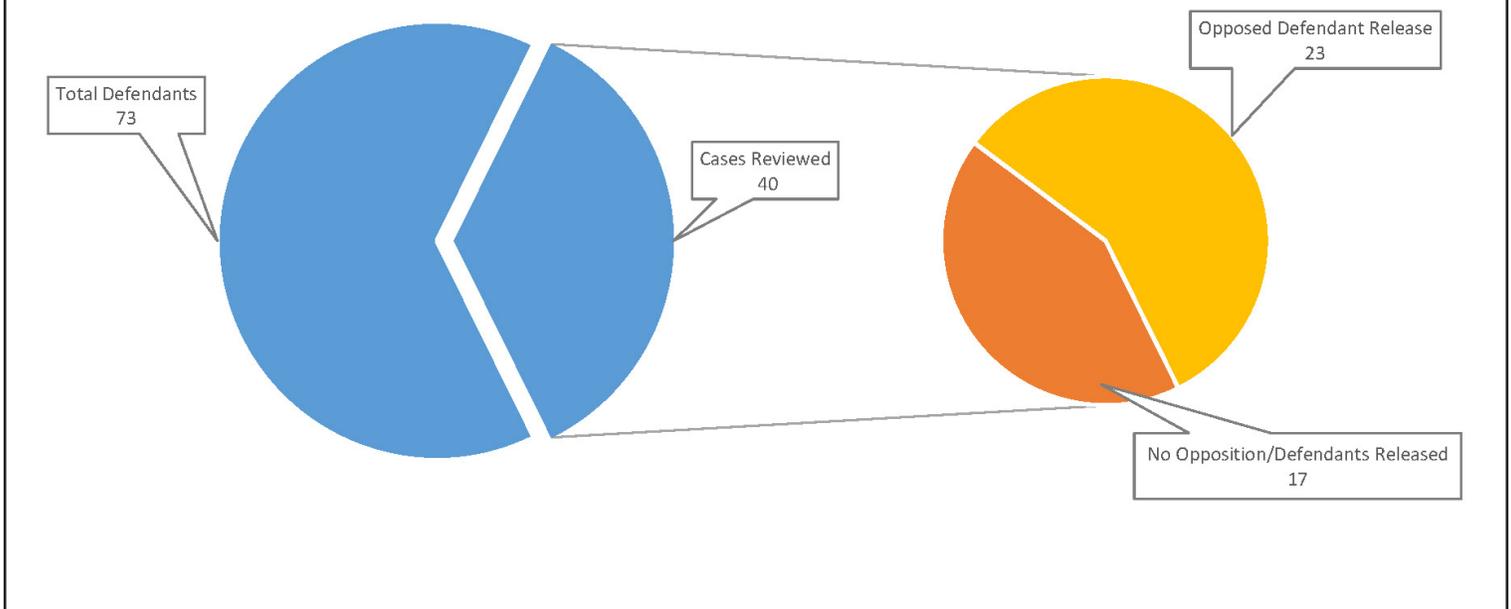
propriate for release. We continually track and update information on all incarcerated defendants, including information from reports or letters relevant to a defendant's heightened health risk. This system, in the form of a spreadsheet, is circulated among our Executive staff and used to initially evaluate requests for release. Each case is then reviewed by the individual Assistant District Attorney assigned to the matter, and by Bureau Chiefs. We are also able to see if defendants whose release we have agreed to are still incarcerated, and we then follow up with the Mayor's Office.

Over the past two months, 40 defendants have sought review of their incarceration status in our cases. These reviews were brought on in a number of ways, including by requests for review of vulnerable individuals by MOCJ, writs of habeas corpus, and individual requests and bail applications for release by individual defense counsel. In addition, recently, we were presented with a request for electronic monitoring.

Of these 40 defendants, approximately 42 percent (17) have been released with our consent as part of our review process. We have opposed applications for bail or writs of habeas corpus as to 23 defendants (58 percent). In these cases, our opposition was based on concerns for public safety or flight risks posed by a prisoner. None of the applications for release which we have opposed have been judicially granted. We have also closely analyzed information provided in individual cases and publicly available data to assess the risk to the prisoner in custody.

To demonstrate how we factor in these considerations, I will review an application pending for a defendant, who is indicted on the crimes of Attempted

SNP Applications for Release: COVID-19 Defendants on Bail or Remand Status

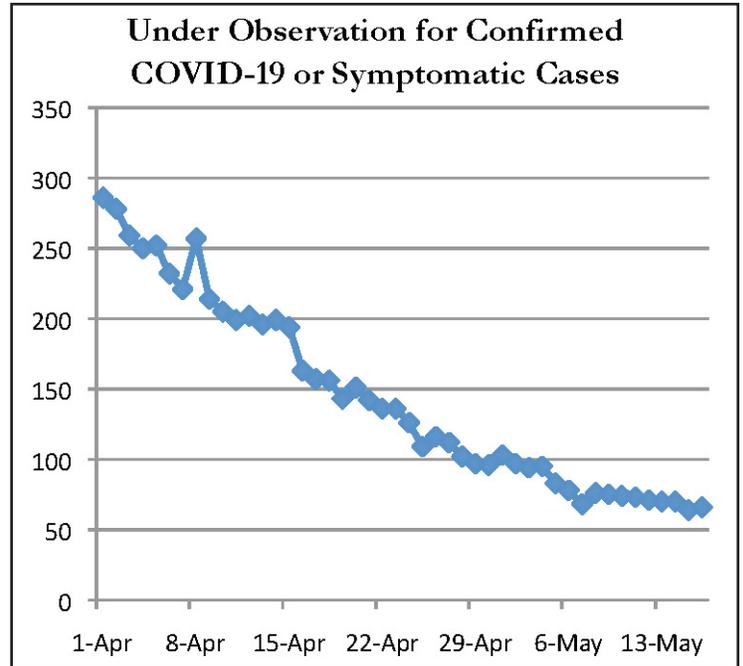


Assault in the First Degree, Reckless Endangerment in the Second Degree, Criminal Possession of a Weapon in the Second Degree (10 counts), Conspiracy and other related charges. Many of these charges stem from his alleged participation in two shootings captured on video surveillance. In telephone calls intercepted on a wiretap, the defendant and his family members discussed the purchase of bulletproof vests which would be sewn into hooded-sweatshirts. Multiple firearms were recovered during the investigations. Shortly before these incidents, the defendant was released from federal prison after having served a 20-year sentence following a conviction for Conspiracy to Distribute Heroin. Under the current charges, as a predicate felon he faces up to 15 years' incarceration if convicted on a Class C violent felony with which he is charged. In this application, we have argued against release for public safety reasons, but only after a review of available health records indicated that the health care received while incarcerated protected this defendant's well-being, and that he may have had better access to appropriate care while incarcerated, than he would have if he were at liberty.

In his application, the defendant says that his preexisting health conditions escalate risk of serious complications from the virus and support his request for release. We evaluate his claims, using reliable statistical data, and compare the health risks related to COVID-19 in City jails to the risks faced by an ordinary New York City citizen. Our review of his medical records indicates that this particular defendant may have had better access to virus testing and follow up care than available to the ordinary citizen. He received two COVID-19 tests at a time when most of New York was unable to obtain a test. Because the virus was identified through early testing, he immediately received supportive care and was transferred to a unit dedicated to inmates exposed to COVID-19 who become ill. This suggests a level of care that the severely strained city health care system could not have provided during that same period of time. There is no reason to believe he will not continue to receive appropriate care while incarcerated. We balance all of these relevant factors in determining whether we should consent to release.

Our ability to respond is enhanced by public reporting of relevant information by the Department of Corrections (DOC). The DOC reports daily on the number of inmates who are under observation, either because they are symptomatic or because they have tested positive for COVID-19, and that number has steadily declined from April 1 to May 16, 2020, from 286 to 66 inmates—a 76% reduction. The number of deaths in jails stands at 3 as of May 16, which translates to a 0.82% Case Fatality Rate compared to the New York City Case Fatality Rate, which is 8.34%, likely reflecting the enormous strain on the city’s health care system during this epidemic.

One concern we do have regarding those who have been released is the inability to supervise them in a meaningful way while we are in the grips of this pandemic. Our concern is best exemplified by a defendant who was released to the community by the DOC Commissioner under Article 6-A, which pertains to convicted prisoners who are granted early release with the proviso that they must seek employment and obey the law. The released prisoner was serving a City sentence with a release date of August 30, 2020 for selling drugs. While we consented to the majority of Article 6-A releases, this was one of the few where we made an objection because this



Source: New York City Department of Correction

Correctional Health Services (CHS) and Department of Correction (DOC) Updates to the Board of Correction (BOC)	
As of 7:00 am on Saturday, May 16, 2020	
Incarcerated Patients (Inmates)	
Number of patients under observation by CHS (confirmed COVID-19 patients and symptomatic patients in DOC facilities, excludes hospitalized patients)	66
Number of <u>currently</u> incarcerated patients with confirmed COVID-19 This metric includes hospitalized patients. A proportion of currently incarcerated patients with confirmed COVID-19 are also represented in the 'under observation' metric above.	364
Number of deaths while in custody (in hospital)	3

Source: New York City Board of Correction Daily Covid-19 Update, Saturday, May 16, 2020

individual had three prior felony convictions, two of which were for violent crimes. We were concerned that he was unlikely to obey the law and conditions of release. Almost immediately after his release, my office was contacted by a lawyer for the landlord of the building who said the defendant immediately resumed drug dealing from his home while still wearing corrections clothes upon release, and a steady stream of strangers entered the building to purchase drugs which put other residents at great risk.

It became apparent that there was no meaningful mechanism in place for supervising or sanctioning the defendant, besides conducting an NYPD investigation, and making a new arrest. This is what we were told when we passed complaints along to officials. Under the present circumstances, the police cannot use their limited resources to address this. However, the lawyer pointed out that neighbors should not be subject to increased risk of infection, not to mention the other risks posed by this early release. I am in complete agreement that we want to get away from a system that incarcerates people for low level nonviolent offenses, but instead of arrest and incarceration, we must have an effective means of protecting the public. In this instance, it was clear that neighbors felt their safety was compromised solely to benefit the released prisoner, who immediately flouted the law.

It does not appear that the proposal by the Committee on Criminal Justice to create a local conditional release commission is designed to address these concerns. My understanding is that this commission would not take the place of the DOC Commissioner's authority to release sentenced inmates, but rather add another entity tasked with performing the same or similar functions. This duplicative structure opens up the possibility of conflicting decisions with respect to individual inmates. Such a commission has previously existed in New York City and developed a tarnished record involving allegations of political favoritism and a lack of transparency. It was ultimately eliminated. It is not clear how the proposed commission would avoid these pitfalls. It

is also not clear how it would improve upon the system currently in place, or how it would interface with other Mayoral agencies on critical services such as supervised release and other support necessary to make release possible.

We need an effective system of supervision and accountability, so that our citizens will believe that their voices are heard and their interests are protected and will support our continued effort to balance reducing incarceration levels with maintaining public safety.

We are committed to continuing to do our part in limiting the spread of COVID-19 through the City's jails, while at the same time fulfilling our obligation to provide a sense of safety to the people of New York City. Thank you for holding this hearing to focus attention on this critical issue.

Testimony to the New York City Council Committees on Justice System and Criminal Justice
May 19, 2020 Oversight: COVID-19 in City Jails and Juvenile Detention Centers.

Good Afternoon Chairpersons Powers and Lancman and the members of the Criminal Justice and Justice System Committees. I am Patsy Yang, Senior Vice President at NYC Health + Hospitals for Correctional Health Services, also known as “CHS”. I am joined by Ross MacDonald, our Chief Medical Officer. We appreciate the opportunity to update you on the actions we’ve taken thusfar in the face of this devastating global pandemic, and would like to brief you on three cornerstones of our approach – decarceration, containment, and maintenance.

When the novel coronavirus was first confirmed to be in NYC on March 1st, CHS was well positioned to confront head-on this fast-moving, shape-shifting, lethal virus. Much of the foundation for our response had already been built in the four years since we became the direct provider of health care in the jails. To minimize the likelihood of transmission of the SARS-CoV-2 virus, we have taken aggressive and strategic steps that are aligned with the best available public health advice, tailored to the unique environment of the NYC jails. Tragically, three people in custody succumbed to this plague. Yet, because CHS and DOC strove to lock arms and stay in lockstep in an effort to shield people entrusted to our joint care and custody, I am certain that, together, we saved many lives.

Decarceration was one of our key strategies from the outset. CHS focused on identifying and helping arrange for release from custody our patients who were most vulnerable to a severe course of disease should they contract the virus. This effort was built upon CHS’ longstanding advocacy work for the compassionate release of patients with serious clinical conditions. The global pandemic gave strengthened purpose and opportunity for CHS to accelerate this work alongside partners at DOC, MOCJ, defense attorneys, district attorneys, courts, OMH, and DOCCS – work that relied on relationships built over months and years. Between March and May, more than 2000 individuals were released, including roughly one-half of our patients aged fifty years and older.

To support the safe release of our patients into the community, CHS’ already robust discharge services were enhanced to respond to the emergency. While our protocols for discharging patients with mental health concerns and/or medication needs remained unchanged, CHS now additionally screens for COVID-like symptoms every patient whom DOC escorts prior to release, and assists patients in securing accommodations within which to self-isolate as appropriate. We also provide information on community testing sites and on supportive services. As before, individuals who need assistance after release can contact CHS’ established community services, our Point of Reentry and Transition program and our Community Reentry Assistance Network.

Containment was a foundational strategy to protect people still in custody. Although we are unique among jails to have an 88-bedded Communicable Disease Unit, we quickly realized that this capacity was insufficient. Together with DOC, we adapted and expanded our concept of therapeutic housing units to create an entirely new designation of housing for patients on the COVID spectrum, based on clinical need and status. We separately housed our most vulnerable, asymptomatic patients; patients with confirmed disease; patients with symptoms of the disease; and patients who were asymptomatic but with known exposure to a confirmed positive individual. Because this expansion of “clinical housing” allowed us to physically separate and shield patients in the face of a viral tsunami, we also planned for surge capacities for each category of housing. Whether it was reopening an entire facility or repurposing different types of housing, CHS and DOC daily balanced the urgent and growing need to

protectively house patients, against the shrinking availability of both our staffs who were themselves getting sick. The housing plan that CHS and DOC implemented involved almost 200 housing units and thousands of beds; during this current outbreak, a maximum of 278 isolation and 2,889 quarantine beds were occupied.

Another key element of our containment strategy was testing. We instituted an early and aggressive COVID-19 antigen testing strategy that exceeds the standards being employed in the larger community. We test at a rate 4.3 times higher than New York City. Our approach to testing was more aggressive for a number of reasons, ranging from the cognizance of the likely higher toll on our patients who already bear a heavier burden of underlying conditions that predispose them to more severe outcomes; to the realities that, while congregate settings make physical distancing difficult, a person's COVID status helped inform housing decisions that are protective. We test symptomatic patients; patients who are asymptomatic but highly vulnerable; and universally all individuals newly entering the system regardless of symptoms. As of May 15th, the number of antigen tests among patients total 1,270 of which 537 were positive. We expect to begin conducting antibody testing among our patients this week. As our understanding of the disease has evolved, so have our testing strategies. We continue to proactively pursue all available laboratory resources to take advantage of rapidly developing technology because these will continue to be key as we prepare for the resurgence of this still-present virus.

The third key strategy for protecting our patients from SARS-CoV-2 was maintenance of access to health care services despite mandates to minimize person-to-person contact between patients and between patients and staff in waiting rooms, clinics, and in transit to and from housing areas. In accordance with the emergency declarations, many health care systems reduced or closed nonessential services, which resulted in the curtailment of certain elective specialty appointments during the height of this last wave of the epidemic. However, while elective and non-urgent visits were adjusted, access to medical, nursing, and mental health services; ongoing substance use treatment; and medications remained unchanged. We continued to be present in therapeutic housing units, and access to programming remained largely unchanged. Emergency response, urgent care, and nurse and physician availability continued around the clock. As before, we review missed scheduled visits to prioritize escort to clinic accordingly. As always, any patient in mental health crisis or in need of urgent medical attention alerted DOC who contacted us.

While maintaining these core services, we built new workflows and systems given the realities of this pandemic. This required maintaining adequate PPE according to the latest guidelines, responsiveness to the latest clinical guidance, and constant communication with our staff. We safely managed the majority of COVID patients who developed disease without burdening our hospital partners, and aggressively monitored for signs of more severe disease so that we could escalate care at the earliest signs of trouble. We incorporated COVID-specific screening at every contact point within the criminal justice process – at prearraignment, admission, every clinical encounter, and discharge. We worked with our partner, ACS, to transfer into our care at the Horizon facility any youth who was suspected or confirmed to have COVID-19.

We balanced the public health imperative to minimize person-to-person contact with our unflagging commitment to health care access by expanding our already pioneering use of technology. Our years of experience and our infrastructure allowed us to use telehealth video connections to minimize interruptions in care during this crisis. Working with DOC, we were able to establish new secure telephonic connections for patients in any housing area to contact CHS directly, whether it was to report health concerns including COVID-like symptoms or to talk through anxieties about the disease. These

new pathways were important supplements to the provider-patient communication channels that existed before the pandemic.

Every evening at precisely seven o'clock, neighborhoods throughout this city erupt as people stop in the streets, throw open their windows, go out onto their roofs. They whistle, applaud, shout, bang pots and pans, sound car horns. They do this in gratitude for the health care workers who put the very lives of their patients ahead of that of their own and that of their families. During every one of these daily tributes, I feel particularly privileged and honored to work alongside the staff who, even among essential workers, face challenges that are unique to the jail environment and have done so with unflinching professionalism and dedication.

Testimony of Frederic Fusco, Legislative Chairman

Correction Officers' Benevolent Association

The New York City Council

Committees on Criminal Justice and Justice System

May 19, 2020

Good afternoon Chairmen Powers and Lancman and Members of the Committees on Criminal Justice and Justice System. My name is Frederic Fusco, and I am the Legislative Chairman of the Correction Officers' Benevolent Association ("COBA"), the second-largest law enforcement union in the City of New York. I have the privilege of representing nearly 9,000 active and 20,000 retired New York City correction officers, who provide care, custody, and control of detainees in the New York City jail system.

On behalf of COBA, I thank you for holding this important oversight hearing regarding COVID-19 in City Jails and Juvenile Detention Centers. I submit this testimony to highlight the hardship that our members have endured since the start of the COVID-19 pandemic. Indeed, eight of our correction officers have fallen victim to COVID-19 and have died as a result of their exposure in the line of duty.

The nature of a jail setting is one that is conducive to rapid transmission of COVID-19—confined and densely populated quarters; limited ventilation and air circulation; communal housing and dining areas; shared bathrooms; limited ability to undertake prophylactic measures such as frequent handwashing, etc. However, if proper protocols are observed, the jail setting is also one that is conducive to preventing the virus from being introduced into the jail and to isolating infected individuals. Unfortunately, and tragically, the Department of Correction ("DOC") did not observe those proper protocols quickly enough, despite the repeated urging of COBA, which ultimately cost the lives of 8 correction officers.

As we all know, Rikers Island had quickly become the epicenter of the outbreak of the virus in New York City, which is itself the global epicenter of the outbreak of the virus. From the very early days of the pandemic, COBA recognized the need for stringent medical screening and testing of correction officers, other staff, and visitors (while they were still permitted), who—aside from newly incarcerated individuals—were the primary potential sources of introduction of COVID-19 into Rikers Island. In conjunction with testing, COBA also called upon the DOC to provide sufficient personal protective equipment ("PPE") to all correction officers for their own protection and to limit any potential transmission of COVID-19 to other staff or inmates. Additionally, COBA recommended activating unutilized areas of facilities on Rikers Island to separate inmates and provide ability for isolation and quarantine.

Instead, the DOC relied on visitors and staff to self-report any potential illness; refused to provide PPE, including masks, gloves, and sanitizer, to correction officers in any remotely

sufficient quantity; forced correction officers and other staff members to work triple tours of duty —yes, three back-to-back shifts; and, after COVID-19 had spread like wildfire inside the jails, released inmates from custody. The DOC only reversed course and implemented a testing protocol; provided sufficient PPE to staff; and stopped assignment of triple shifts after COBA filed several lawsuits to challenge those deeply flawed decisions. A recent NY Post article from May 12, 2020, which reported that at least 110 inmates who were released because of concern about risk of COVID-19 infection have since been rearrested for new crimes, makes clear that this was also a similarly ill-advised policy.

As New York State and New York City begin to consider how to begin to reopen, the DOC must continue to adhere to strict medical screening and testing protocols and ensure that all correction officers and other staff have a plentiful supply of personal protective equipment.



Ana Bermúdez
Commissioner

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Statement to the NYC Council Committee on Criminal Justice & Justice Services

By Ana Bermúdez

Tuesday May 19th – 12pm

Good afternoon Chair Powers and Chair Lancman, as well as members of the Criminal Justice and Justice Services committees. I am Ana Bermúdez, Commissioner of the New York City Department of Probation (DOP) and with me is Deputy Commissioner Sharun Goodwin. Thank you for the opportunity to testify about the important work of the Department of Probation and the recent bill introduction to reestablish New York City's Local Conditional Release Commission (LCRC).

As you know, Probation is the largest alternative to incarceration in New York City and plays a crucial role in keeping us all safe. At DOP, we understand that safety is more than just one's physical well-being, but the network of trusted relationships built around a person to keep them on track when times are tough. This has never been more apparent and important, and I am very proud of this agency's ability to be nimble and adapt to the present circumstances. The 17,225 people currently under supervision (16,000 adults and 1,225 juveniles) are being safely supervised by our dedicated and professional Probation Officers through electronic means like phone, text, video, and web check-in.

Similar to how we expanded Intensive Community Monitoring (ICM) for youth that would otherwise be detained when we saw the need with Raise the Age, we have adapted to this "New Now" by transitioning our programming online, so that clients and other community members can stay engaged with the people and programs they have grown to rely on during this time when they are needed most. Our groundbreaking credible messenger mentoring programs such as Arches and Parent Coaches, our unique partnerships like the Made in NY Animation Project, NeON Arts, and NeON Photography, as well as our behavioral health specialists, are all available



remotely for clients and their families to access. And touchingly, as I have spoken with Probation Officers about their experience with remote supervision, they often report that clients are calling to check in on *them* and how they are doing during this crisis. For those on probation where regular in-person check-ins are necessary, we are employing social distancing and other recommended precautions to keep individuals under supervision, probation officers, and the public, safe.

In fact, the part of our in-person operation that has *increased* during this pandemic is our NeON Nutrition Kitchens, which with support from the Young Men’s Initiative (YMI), have now tripled their capacity. We are now serving some 12,000 people per week, a more than six-fold increase of our typical pre-COVID volume. Though that is a sobering statistic, it is also an uplifting one, as it shows the incredible impact the work of this Department is having on the lives of our clients, their families, and communities in which they live. We could not have done this first and foremost without our dedicated staff, who came up with the Nutrition Kitchen idea, as well as our partners like YMI and The Living Redemption Youth Opportunity Hub in Harlem, who stepped up to the plate [no pun intended] when our previous location had to close. And it comes as no surprise to us that the neighborhoods with the most positive COVID-19 cases are home to communities of color and whose residents are disproportionately employed in frontline service. COVID-19 has revealed the racial and economic inequity that is deeply embedded in our city’s socio-economic infrastructure.

Our NeONs aimed to be the opposite of that, instead serving as engines of equity by working *with* neighborhood residents to develop ground up solutions for what their community needs. By being rooted in partnership with both residents and service providers, the NeON model has allowed us to invest valuable resources and help to restore a sense of agency in these communities. And we are seeing the results pay off. For despite decades of “concentrated disadvantage,” the residents of our NeON neighborhoods are successfully completing probation at a rate of more than 4 out of 5, the same rate for residents of neighborhoods that do not have these structural challenges. Though there is still a lot more work to do, I am proud of this Department’s contribution towards ensuring that justice system outcomes are not defined by a person’s zip code.



Local Conditional Release Commission

Though the Local Conditional Release Commission (LCRC) has not been in operation during my time as Commissioner, I am somewhat familiar with its duties and scope. As Commissioner of DOP, I would be an ex-officio and non-voting member of the Commission, and anyone granted conditional release would be supervised by Probation for a period of one year. An advantage of the LCRC is that all components of the process would be housed under “one roof” within Probation, ensuring both a consistent programmatic ethos and seamless integration across the Conditional Release continuum, from application through community supervision. The Department does not have any objections to this legislation and would work with you to not only ensure its implementation but to prioritize connecting the work of the Commission with the communities that have historically been disproportionately represented in the jail/prison pipeline.

Thank you for the opportunity to testify. Moreover, thank you, Council Members, for the incredible and continued support you have shown this Department and the people we serve over the years. I am pleased to answer any questions you may have.



Testimony of

Christopher Boyle

Director of Data Research and Policy
New York County Defender Services

Before the

Committee on Criminal Justice and Committee on Justice System
Oversight Hearing – COVID-19 in City Jails and Juvenile Detention Facilities
&
Intros. 2020-6175, 2020-6183, & 2020-6184

May 19, 2020

My name is Christopher Boyle and I am the Director of Data Research and Policy at New York County Defender Services (NYCDS). We are a public defense office that represents New Yorkers in thousands of cases in Manhattan’s Criminal Court and Supreme Court every year. I have been a New York City public defender for more than twenty years. Thank you to Chairs Powers and Lancman for holding this hearing on the spread of COVID-19 in city jails.

New York City is failing miserably at keeping incarcerated people safe during the pandemic. Our adult jails and juvenile detention facilities are unsafe, and the novel coronavirus continues to spread unabated. This not only harms our clients in ways that violate their health, safety and constitutional rights, but it also threatens the health and safety of all of the people who work in this facility, as well as their families and communities. The City Council must take urgent action to curb the spread of the disease. Two of the bills on today’s agenda are a step in the right direction, but they do not go far enough. We recommend amendments to ensure that they effectively help the city to achieve our goals in safely decreasing our city jail populations to a level that will allow people who cannot be safely released to social distance.

I. Background on COVID-19 in city jails

In NYC Department of Correction (DOC) facilities, novel coronavirus is spreading at an even higher rate than in the general population. As of May 14, 2020, more than 20,000 people are believed to have died of COVID-19 in New York City.¹ The number of city residents who have died from COVID-19 is more than six times higher than the number of people killed on 9/11 in New York City.

New York City jails have now 362 confirmed cases among the current incarcerated person population.² Three incarcerated people have died while in custody.³ At least one other person died shortly after release. The Legal Aid Society projects that, out of a population of 3,906 incarcerated people, this would mean an infection prevalence rate of 9.27 percent, as compared to a 2.28 percent infection prevalence rate for the average non-incarcerated city resident.⁴

But we all know that these numbers, as reported on the Board of Correction (BOC) website and updated daily, are far short of the actual number of infections in our city jails. This is because DOC does not test everyone regularly and there is a constant influx of corrections officers, newly detained people, and others on a daily basis.⁵

How do we know that the BOC infection numbers are low? We need only look to other jails and prisons that have performed wide scale testing, where as many as 70 percent of incarcerated people have tested positive for the coronavirus. At Marion Correctional Institute in Ohio, 73 percent of inmates (1,828 people total) have tested positive for the virus.⁶ 600 inmates at the Arkansas Department of Corrections' Cummins Unit have tested positive. In the first barrack that Cummins Unit tested, "43 out of 46 people were found to be infected."⁷ At Neuse Correctional Institution in Goldsboro, North Carolina, "more than 450 of the 770 inmates have tested positive. State officials are now testing every inmate there, and more results are pending."⁸ We all know that testing is key to stopping or halting the spread of the virus in our communities. But on this measure, DOC has failed. It is no surprise that our clients are falling sick.

¹ New York City Health, *COVID-19: Data*, available at <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>.

² NYC Board of Correction and COVID-19 (Update April 27, 2020), available at <https://www1.nyc.gov/site/boc/covid-19.page>

³ *Id.*

⁴ Legal Aid NYC, *COVID-19 Infection Tracking in NYC Jails* (as of April 27, 2020), available at <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/>. (The Legal Aid Society's website appears to report the jail population at Rikers rather than citywide, so the statistics here have been adjusted to conform with the Board of Correction's citywide data.)

⁵ Graph 6 of our internal data shows the recent uptick in new NYCDS cases where bail was set at arraignments. See page 8 of this testimony.

⁶ Patrick Cooley and Jim Woods, "More than 1,800 inmates at Marion Correctional test positive for coronavirus," *The Columbus Dispatch*, April 19, 2020, available at <https://www.marionstar.com/story/news/local/2020/04/19/1-800-inmates-marion-correctional-positive-coronavirus/5163285002/>.

⁷ Meghan Roos, "One Arkansas prison makes up almost a third of state's coronavirus cases," *Newsweek*, April 20, 2020, available at <https://www.newsweek.com/one-arkansas-prison-makes-almost-third-states-coronavirus-cases-1499045>.

⁸ Ames Alexander, "'It's ground zero.' How fear gripped an NC prison as COVID-19 infected hundreds," *Charlotte Observer*, April 18, 2020, available at <https://www.charlotteobserver.com/news/coronavirus/article242109076.html>.

II. How the coronavirus pandemic is affecting our incarcerated clients

A. Clients with COVID-19

Since the outbreak of the pandemic, 12 NYCDS clients have reported a positive test for the coronavirus. 17 other clients have reported to us that they had symptoms consistent with the coronavirus, or that they were moved to quarantined units for people who are presumed positive, but were, to our knowledge, never tested. At least three clients were hospitalized over the past two months for COVID-19-like symptoms.

B. Other Effects of the Pandemic

The pandemic is negatively affecting the mental health, physical health and well-being of all of our clients who are incarcerated, whether or not they have tested positive or exhibited symptoms of the disease. NYCDS submitted a joint letter with the other NYC defender offices on May 8, 2020 that goes into detail about the many harms that our clients experience, including an inability to properly socially distance, limited accessibility of medical and mental health treatment, a reduced commitment to consistent substance abuse treatment, lack of access to personal protective equipment and inadequate sanitation, an increased reliance on punitive segregation and many other issues. The letter is available on the BOC website.⁹

C. NYCDS Survey of Incarcerated Clients

We have recently undertaken a comprehensive data collection project to show the realities of conditions in jails pertaining to the coronavirus pandemic. Our attorneys and social workers are in the process of interviewing our incarcerated clients over phone or video conferencing. The brief “yes/no” and “how frequently” questions are used to obtain real-time reporting on such subjects as cleanliness, hygiene, social distancing, and access to medical care in our New York City jails.

Here are our preliminary findings:

- As of May 18th, we have collected 16 responses to our survey, and only 12.5% of our clients report that DOC staff wear masks at all times.
- Of our clients who have been provided masks, 50% state that their masks are visibly dirty, and 75% of individuals have been reusing the same mask for at least a week - and for multiple weeks, in several instances.
- Only 3 of 16 clients state that they are able to observe social distancing protocols when they leave their cells and are in the company of others. One hundred percent of clients responded “no” when asked if they feel safe in terms of avoiding transmission of the coronavirus.

These preliminary responses directly contradict many DOC policies and demonstrate that pandemic-related measures taken in DOC jails are insufficient. We will release a more detailed report once data collection has been completed, but these initial findings are still striking, and help

⁹ Letter to the NYC Board of Correction re: NYC Jail Conditions During the COVID-19 Pandemic, May 8, 2020, available at https://www1.nyc.gov/assets/boc/downloads/pdf/nyc_defender_letter_5_8_2020.pdf.

us to understand why the coronavirus continues to spread at rates higher than the rest of the population.

D. DOC & CHS Staff

DOC and Correctional Health Services employees who work in our city jails are also falling sick at record levels. 1,319 DOC employees and 183 Correctional Health Services employees have tested positive for the virus as of May 14th.¹⁰ At least eight DOC employees have died of COVID-19.¹¹ *The Wall Street Journal* called the Rikers Island Jail Complex “among the most-infected workplaces in the U.S.”¹²

Rikers Island is not safe for anyone - not for our clients who are incarcerated there, not for the corrections officers, and not for the medical professionals who staff the medical facilities. Yet despite all of this evidence that DOC has failed to keep people safe, people continue to circulate in and out of our jails, as our internal data below will show.

III. NYCDS Data Related to COVID-19

A. People incarcerated at the time the pandemic began

On March 22, 2020, we represented 203 adults incarcerated in DOC jails. This was the universe of people who our team has been working urgently to secure release of since the pandemic began two months ago. Graphs 1 and 2 on the next page illustrate the breakdown of those 203 NYCDS clients who were incarcerated when the pandemic began, analyzed by charge type and reason for incarceration.

Slightly more than half were incarcerated on violent felony allegations, while 19 percent were in on misdemeanors and 28 percent were in on non-violent felonies. You will also see that approximately a third of our clients were incarcerated because of a parole hold, 8 percent were serving a misdemeanor sentence and 61 percent were awaiting trial.

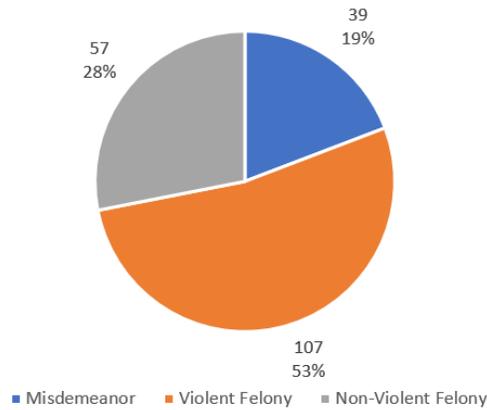
¹⁰ NYC Board of Correction and COVID-19 (Update April 27, 2020), available at <https://www1.nyc.gov/site/boc/covid-19.page>

¹¹ Mary Murphy, 8th NYC correction officer dead from COVID-19, *Pix 11*, April 20, 2020, available at <https://www.pix11.com/news/coronavirus/faces-of-the-pandemic/8th-nyc-correction-officer-dead-from-covid-19>.

¹² Deanna Paul & Ben Chapman, “Rikers Island Jail Guards Are Dying in One of the Worst Coronavirus Outbreaks,” *Wall Street Journal*, April 22, 2020, available at <https://www.wsj.com/articles/rikers-island-jail-guards-are-dying-in-one-of-the-worst-coronavirus-outbreaks-11587547801>.

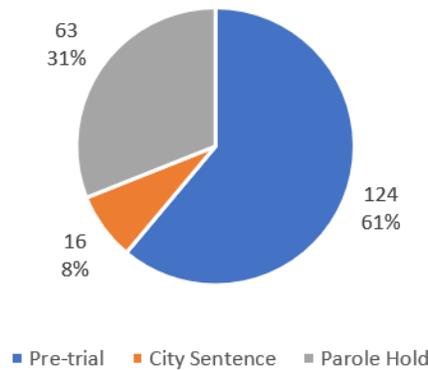
GRAPH 1 - Charge Class of Jail Population as of March 22, 2020

Charge Class of Jail Population as of March 22nd, 2020



GRAPH 2 - Reason for Incarceration for Jail Population as of March 22, 2020

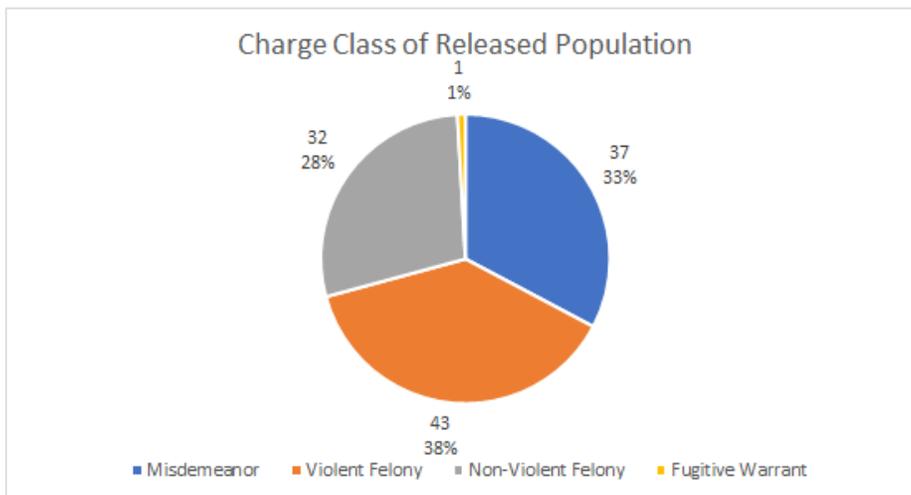
Reason for Incarceration for Jail Population as of March 22nd, 2020



B. People released since the pandemic began

Since March 22, 98 of our adult clients have been released from city jails because of the advocacy efforts of our defenders. These 98 people represent 48% of our incarcerated clients as of March 22nd, 2020. You may note that we originally had 39 people in on misdemeanors - we secured the release of 33 of them. Yet we have had much less success with people accused of violent felonies. Of clients in that category, approximately only 31 percent were released due to COVID-19.

GRAPH 3 - Charge Class of Released Population



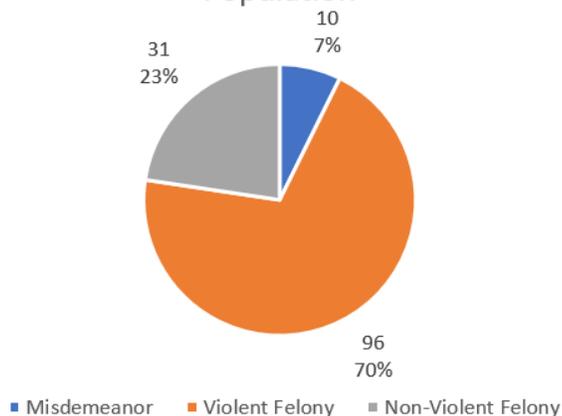
NYCDS has effectively utilized various legal strategies to secure our clients' release. We have filed dozens of bail applications to request lower bail amounts that families can afford to pay. When the bail applications fail, we file writs of habeas corpus to challenge the legality of incarceration. In addition, a few people were released at the direction of the city (if they were serving a misdemeanor sentence) or the governor (if they were detained on a parole hold).

C. People who remain incarcerated as of May 14, 2020

We currently represent 137 people in custody. This number includes 47 people who have been arrested and incarcerated after March 22 (15 of whom have since been released). As you can see from the graphs below, the vast majority of people who are detained pre-trial are incarcerated on allegations of violent felony charges. We are now seeing more people arrested and more judges setting bail at arraignments as compared to the months of March and April. This has severe implications for the ability of our city to control the spread of the coronavirus in our city jails.

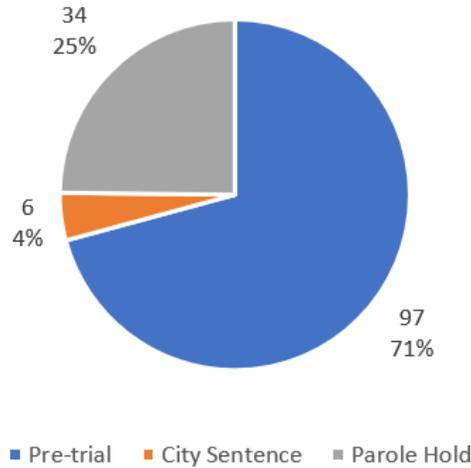
GRAPH 4 - Charge Class of Current Jail Population

Charge Class of Current Jail Population

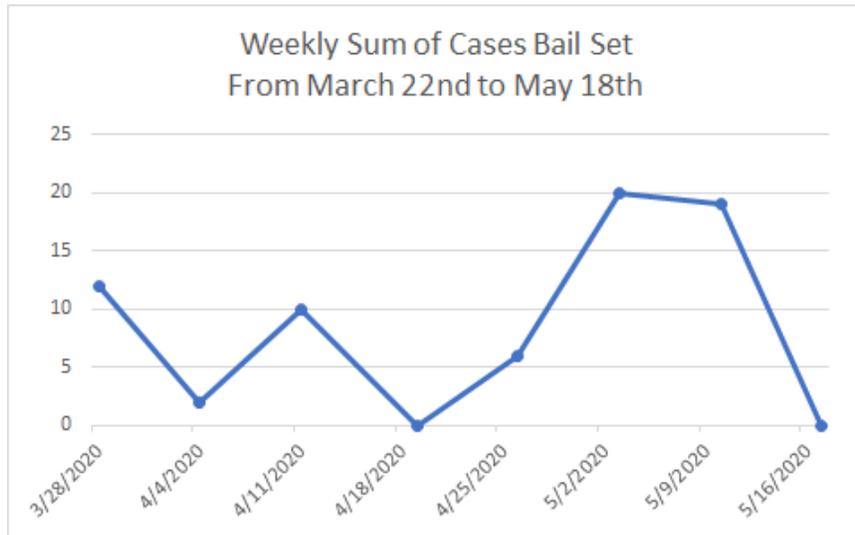


GRAPH 5 - Reason for Current Incarceration

Reason for Current Incarceration



GRAPH 6 - Weekly Sum of Cases (Bail Set), March 22-May 18, 2020



IV. Youth in Juvenile Detention

We are deeply concerned about our youth clients in juvenile detention. It is our opinion that ACS has done a poor job of keeping our young clients safe, and conditions continue to deteriorate as the virus spreads. As of last month, we know that more than two dozen people at Crossroads tested positive for the coronavirus. We urge the City Council to take urgent action to protect incarcerated youth.

We currently represent four youth in city custody. It is our understanding that the month of April the city was only trying to house youth who have tested positive for the coronavirus in Horizon Juvenile Center in the Bronx, and teenagers who have not tested positive are, for the most part, being sent to Crossroads Juvenile Center in Brooklyn.¹³ They are dedicating the first floor of Horizons as the “sick” floor. However, we recently learned that they are now returning youth who are not sick to Horizons. We learned of one young person who tested positive for coronavirus, was sent to Horizon, and then was sent back to Crossroads a week later.

Our youth clients report to us truly dire and unsafe circumstances. They have insufficient access to critical supplies including face masks, socks, and underwear. They report that there is no hand soap in the bathrooms. The food they are provided is sometimes inedible, and youth report being served undercooked chicken or food with hair in it. Youth report seeing rodents in both the dormitories and the kitchens. Even the thermometer used to check the kids’ temperatures appears to be faulty: we hear that it only reports two different temperatures, 97.1 and 97.3.

Our clients no longer have in-person visits with their families, because of the pandemic, and are limited to only three skype calls with loved ones every week. As on Rikers, there are no programs at all to keep the young people occupied. They were only given recreation time for the first time in months last week.

Social distancing is not happening. While they sleep in individual cells, they eat all together in the dayroom. They were only distributed single-use masks for the first-time last week and have not received new clean ones since. Even employees at the facility were not provided masks until April 10th.¹⁴ We have heard reports that staff are coming into contact with Covid-infected people, and then coming in close proximity to the youth before getting tested.

While DOC falls short in their reporting on COVID conditions, ACS has been even less transparent. They do not report on their website the number of youth or staff who have been tested for coronavirus, how many have tested positive, and how many have required medical interventions. We do not know if daily testing is occurring or what measures to protect our young clients are being taken, if any.

It is becoming increasingly clear that children, including teenagers like our clients, are susceptible to the coronavirus and can suffer severe consequences. The New York State Department of Health is currently investigating 119 reported cases and 3 deaths in New York of children - predominantly school-aged - experiencing symptoms similar to Kawasaki disease and toxic shock-like syndrome, possibly due to COVID-19.¹⁵ Current conditions at Horizons and Crossroads are unacceptable and City Council must intervene to keep incarcerated youth safe.

¹³ Shant Shahrigian, “A ‘dangerous decision’: NYC is putting all juvenile delinquents with coronavirus symptoms under one roof,” *Daily News*, April 3, 2020, available at <https://www.nydailynews.com/coronavirus/ny-coronavirus-new-york-city-juvenile-detention-centers-20200403-ocalk5dctjad3ngolxwlgqhs6a-story.html>.

¹⁴ Michael Gartland, “Worker and kids in Brooklyn juvenile detention center test positive for coronavirus at alarming rate,” *Daily News*, April 19, 2020, available at <https://www.nydailynews.com/coronavirus/ny-coronavirus-acs-outbreak-test-positive-20200419-a4ow2weqhjbplawqzypnd57w2y-story.html>.

¹⁵ New York State Department of Health, *Childhood Inflammatory Disease Related to COVID-19*, <https://coronavirus.health.ny.gov/childhood-inflammatory-disease-related-covid-19>.

V. Proposed Legislation

A. *T2020-6175 - A Local Law to amend the New York city charter, in relation to adding a new section creating a local conditional release commission.*

NYCDS supports the passage of T2020-6175, with reservations. If the Council decides to pass this bill, you should do so with the explicit intent of decarceration. As the coronavirus pandemic has shown, our city can safely decrease the number of people who are incarcerated. We must learn from the experience of the commission's past to ensure that the possibility for early release is available to all New Yorkers, not just those who are wealthy or well-connected.

In 1989, New York State lawmakers created local conditional release commissions to relieve overcrowding in local jails. Under the law, people serving sentences of 90 days to a year could apply for early release after serving 60 days. According to the New York Times, in the early years of the New York City commission, thousands of people were released from city jails. "But over time, as crime declined jail populations slumped and the political environment shifted, the panel of mayoral appointees began to release fewer and fewer inmates, a tiny fraction of the thousands of cases it reviewed each year."¹⁶ In the early 2000s, the commission only released 15 people over the course of five years, one of whom was a former state senator and another who was a former New York Jets player.

We need to learn from the previous iteration of this commission and work to ensure that the possibility for release is extended equally to all. We also advise the Council to ensure that members of the commission should not just be law enforcement. The governing state correction law allows for the five appointees to have a wide variety of professional experience, including backgrounds in law, social work, social science, psychology or psychiatry.¹⁷ The 21st commissioners should be reflective of the diversity of experiences across our city, including people who are directly impacted by incarceration and public defenders. With these caveats, we support passage of this bill.

B. *T2020-6183 - 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.*

NYCDS supports passage of T2020-6183 with amendments. There is no doubt that DOC and CHS must improve their reporting on the current pandemic. But we recommend additional amendments.

For example, the text of T2020-6183 would require DOC and/or CHS to report daily numbers of newly diagnosed infections, hospitalizations, and deaths, disaggregated into various categories. DOC and/or CHS would also be required to report the number of newly diagnosed cases from "the preceding day, week, and month." This seemingly would not force DOC/CHS to give day-by-day

¹⁶ Benjamin Weiser and Kevin Flynn, "A Back Door Out of Rikers, Suddenly Famous," *N.Y. Times*, Oct. 17, 2004, available at <https://www.nytimes.com/2004/10/17/nyregion/a-back-door-out-of-rikers-suddenly-famous.html>.

¹⁷ Correction Law Section 271, available at <https://www.nysenate.gov/legislation/laws/COR/271>.

data from the past, which we really need in order to know where we stand on the overall curve. From CHS's testimony at the May 12 Board of Correction hearing, we know that CHS apparently already has most, if not all, of this data in day-by-day form, so requiring them to report the data that way would impose little or no additional cost.

In addition, T2020-6183 fails to require DOC and/or CHS to report the proportion of *current* incarcerated people who have been tested, nor the proportion of tests coming back positive on a day-by-day basis. T2020-6183 would mandate reporting of merely the total number of tests *ever* administered, essentially broken down in terms of inmates vs. staff. This leaves a big gap in our knowledge concerning how much of the current inmate population at any given time has actually been tested, which we sorely need to know because this would serve as a good measure of how comprehensive/"aggressive" the jail testing regime truly is.

We also recommend a similar reporting mandate re: masks and other PPE. The Council should mandate provision of supplies to inmates at a certain level throughout the duration of the pandemic, based on the recommendation of public health experts. If DOC fails to meet that level, they should be required to report that you have a shortage.

We also urge the Council to consider mandating either (1) regular universal testing of inmates, or (2) if DOC/CHS believes their testing supply is inadequate to support regular universal testing, they have to say so in their weekly reports.

Finally, we believe that these reporting requirements should be extended to ACS to ensure that we have similar information about incarcerated youth. We are currently unable to find any information about ACS's approach to protecting youth from COVID-19 in their detention facilities.

C. T2020-6184 - 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

NYCDS opposes T2020-6184 because we believe there should be no fees to either loved ones or their incarcerated family members for putting money into a person's commissary account. The City Council proudly passed legislation in 2018 to eliminate fees for phone calls. We strongly oppose the imposition of fines or fees on our indigent clients or their family members, while incarcerated or during any point in the criminal legal system process. The city should end its contract with JPAY and figure out our own system to allow families to make free payments to their loved ones in city jails. There is no need for the city to continue to contract with JPAY, a company that is well-known to exploit families who are desperate to communicate and support their incarcerated loved ones.¹⁸

¹⁸ See, e.g., Victoria Law, "Captive Audience: How Companies Make Millions Charging Prisoners to Send An Email," *Wired*, Aug. 3, 2018, <https://www.wired.com/story/jpay-securus-prison-email-charging-millions/>.

VI. Conclusion

The coronavirus is spreading throughout our city jails and back into our communities. New York City must take action to require meaningful reporting from adult jails and juvenile detention facilities that will allow public health officials to make a plan to allow social distancing in our city jails and halt the spread of disease. We also must work together to free as many people as possible.

If you have any questions about my testimony, please contact me at cboyle@nycds.org.



*As prepared for delivery
May 19, 2020*

**Testimony before the
New York City Council
Committee on Criminal Justice
Committee on the Justice System
Keith Powers, Chair
Rory Lancman, Chair
By
Cynthia Brann, Commissioner
NYC Department of Correction**

Tuesday, May 19th

Good morning Chair Powers, Chair Lancman, and members of the Committee on Criminal Justice and the Committee on the Justice System. I am glad to see that you all are healthy and well. I am pleased to be joined today by the dedicated members of my leadership team and our valuable partners from across our city's criminal justice agencies. Since the pandemic began, this Department has worked around the clock to keep those living and working in our facilities safe, and I thank you for the opportunity to discuss our response to this unprecedented crisis.

Before I begin, I would like to take a moment and thank the dedicated and hard-working employees of the Department of Correction and Correctional Health Services for their incredible service during this difficult time. They have remained committed to protecting the safety and wellbeing of those entrusted to their care, at a great personal sacrifice. As Commissioner, I am proud to work beside them and want them to know their heroic efforts have not gone unnoticed.

Throughout this crisis, the Department has worked tirelessly with our partners at CHS to mitigate the spread of COVID-19 and keep those under our care safe. As a result of the Department's longstanding emergency preparedness protocols, our considerable experience in contagious disease management, adherence to CDC and DOHMH guidelines, and innovative problem-solving, we are seeing success. The number of new positive cases and quarantined housing units across the facilities is steadily declining, a clear indication that our containment strategies are working.

PPE and Sanitation:

Over the past two months, there have been many concerns raised about sanitation procedures, the availability of soap, and the provision of PPE. Here are the facts: **First**, the Department has established robust sanitation procedures where housing units, dayrooms, transport vehicles, and other congregate spaces are sanitized on a daily basis, high-touch areas are sanitized every two hours, and showers are sanitized three times per day. Supervisors check these processes nine times a day and the Quality Assurance and Integrity Division and staff from the Bureau Chief of Facility Operations perform an additional



*As prepared for delivery
May 19, 2020*

audit. **Second**, All individuals in custody have access to soap and cleaning supplies **free of charge**. **And lastly**, at every stage of this pandemic, the Department has provided all staff and everyone in custody with ample PPE. We first began providing masks **on March 11th** and, as our understanding of the situation progressed, **on April 3rd**, we made face coverings a **requirement** for all staff and those in custody, nearly two weeks before the State ordered it. Our supply of PPE is sufficient and all staff and people in custody have direct access to replacement PPE as frequently as desired. As a further protection mechanism, all staff entering the facilities must submit to a temperature and COVID-like symptoms screening prior to entry.

Housing Density, Social Distancing, and Releases:

Since the beginning of this crisis, the Department has worked closely with our partners to identify individuals eligible for release. As a result of this action, the number of New Yorkers held in NYC jails has plummeted, **shrinking by nearly 30% in just over one month**. The Department is currently operating at an overall occupancy rate of 49%, with more than half of the beds empty in open units. Significantly, the overwhelming majority of dorm units are less than half full.

Additionally, we have been in constant communication with staff and people in custody to raise awareness and educate them on prevention practices, including painting cues on chairs and benches that support appropriate social distancing. The Department's multilingual COVID-19 awareness campaign includes conspicuously placed posters, informational one pager, and an informational slide show displayed in intake.

Safety and Security

Despite the challenges we faced due to COVID-19's impact on our staff sick rate and the temporary suspension of congregate programming, in-person visitation and most in-person court appearances, April 2020 has been one of the safest months in recent history. Use of Force has decreased by 47% as compared to March 2020 and by 37% as compared to April 2019. Fights among people in custody also decreased by 47% as compared to March 2020 and by 48% as compared to the same time last year. Further, in April 2020, the Department saw nearly 50% fewer slashings and stabbings as compared to the previous month and a 21% reduction in the total number of assaults on staff in the same time period. These are significant reductions and we are sustaining this progress in May.

Programming and Community Connections:

The pandemic has forced many of us to significantly restrict our contact with others. As Commissioner, I understand how important connections with friends, family, and legal support are to those in our custody and the Department has made every effort to afford visits remotely. For critical communication with attorneys and the court system, the Department has expanded its Skype teleconference booths. To ensure contact with loved ones, over a matter of days in March the Department has created a brand new family televisit initiative enabling video visitation from a personal electronic device. The



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Department has continued to provide free telephone calls, and is offering three free stamps or pre-stamped envelopes to persons in custody on a weekly basis. For spiritual care and guidance, the Department established a hotline for chaplaincy services. In addition, to support continued program delivery, the Department has worked with our contract service providers to create activity packets with program-specific material, established a discharge planning hotline to assist with reentry, and is providing tablets with educational resources to all people in custody.

Transparency:

Throughout this pandemic, we have endeavored to be as transparent as possible to ensure that the public and our oversight bodies are aware of our approach and our outcomes. Since March 17, we have provided detailed data to the Board of Correction, who began posting information publically as of April 1. We are in regular communication with elected officials, defender organizations and other advocacy groups and we plan to continue this collaboration. Our Office of Public Information has responded to more than 600 media inquiries from across the globe since the pandemic began.

Legislation:

Regarding the preconsidered legislation that requires the reporting of certain information during public health emergencies, the Department is committed to transparency and stands ready to discuss the ways we can improve in this effort. The bill as drafted presents administrative challenges, however, and we look forward to continuing to discuss this bill with the Council.

Regarding the preconsidered legislation regarding fees related to adding money to commissary funds, the Department supports the intent of the bill. We are continuing to analyze the impact of this legislation and look forward to continuing to discuss this matter with the Council.

Conclusion

Despite this unprecedented crisis and its many challenges, the Department remains committed to protecting all those living and working within our facilities. We will continue to collaborate with our partners to develop creative practices and policies to effectively manage this public health emergency, and we will come out stronger and bolder as a result.



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Margaret Egan
Executive Director

Chair Powers, Chair Lancman and members of the Criminal Justice and Justice System Committees, my name is Margaret Egan. I am the Executive Director of the New York City Board of Correction. Thank you for the opportunity to speak to you today about the COVID response in the New York City Jail system. I would like to speak to you today about the Board's response and what we are seeing in the jails through our oversight work.

Like all others, the New York City Board of Correction (BOC), the City's independent jail system oversight agency, has been forced to quickly adapt to this new normal in response to the COVID-19 public health crisis. The Board has redirected its oversight, setting priorities to monitor both the Department of Correction (DOC) and Correctional Health Services (CHS)' evolving COVID-19 response and facility compliance with agency plans; and DOC and CHS' general operations and compliance with BOC Minimum Standards amidst the public health crisis. Our work seeks to independently and publicly document the scope of the public health crisis in the jails and the criminal justice system's response to understand successes and challenges and, ultimately, ensure that lessons can be learned quickly.

At the beginning of the crisis, the Board called on all criminal justice system stakeholders to reduce the population of the jail. We believe this is one of the best tools at our disposal to minimize the transmission of COVID-19 in the jails. The Board has publicly advocated for the District Attorneys, defenders, City officials, New York State Department of Corrections and Community Supervision, advocates, and providers, to come together to release as many people as is safely possible. Since March 16, the population has been reduced by just over 1,600 people. However, we have seen in our daily analysis that admissions are beginning to increase again. This is concerning and we will continue to monitor the population.

Board of Correction COVID-19 Oversight Strategy

The Board also quickly began producing daily public reports outlining DOC and CHS's response to the pandemic. These daily updates, available on our website, include data on the number of people currently incarcerated who are confirmed or symptomatic for COVID-19, exposed but asymptomatic, DOC staff who have been confirmed, CHS staff who have been confirmed, and the number of people who have passed away in custody. We also include a full analysis of the jail population to show custody status as well as certain demographic information. We believe

that these daily updates are critical to provide the public, defenders, advocates, policy makers, and families with information on what is happening in the jails.

In addition to daily data reports, the Board has developed a new, crisis-responsive jail monitoring program. Given our very small staff, our approach has been focused on leveraging the Board's access to DOC's data systems, surveillance cameras, grievance tracking system, daily sanitation supply audits, updated policies, preliminary incident reports, and complaints the Board receives directly from people in custody, staff, family members, and advocates. Additionally, Board Members and staff have had at least weekly calls with DOC and CHS leadership. There are certain obvious limitations to each of these methods but taken together, the Board seeks to provide an objective assessment of the response to the crisis and the function of the jails during the crisis while also raising issues for immediate action by DOC and CHS.

Based on guidance from the Mayor and DOHMH, Board staff have been working remotely since mid-March. For the last week, we have begun to slowly reintroduce in-jail monitoring taking a very targeted and strategic approach. The Board will continue to follow local guidance on agency work conditions and to reduce the risk for spreading COVID-19. The Board's oversight work in the jails will be guided by the "do no harm" principle, meaning the Board will prioritize the safety of BOC staff and the safety of all those who live and work in the jails when planning jail inspections.

Genetec Surveillance Camera Audits

On May 11, 2020, the Board issued a report on our observation of housing areas designated for confirmed COVID-19 patients, symptomatic patients, and those likely exposed but asymptomatic for adherence to DOC statements and CHS guidance. We reviewed Genetec surveillance cameras footage conducting 72 audits in 56 unique housing areas to monitor: (1) Social Distancing, (2) Use of PPE Among Staff, (3) Use of Masks Among People in Custody, (4) Phone Access and Cleaning, and (5) DOC Rounding Practices (in cell units).

Our observations found that while the majority of staff were observed wearing PPE including masks and gloves, there were challenges with people in custody wearing masks. We don't believe there are issues with mask availability, but we have recommended that CHS and DOC should identify and address barriers to the use of PPE for staff and people in custody and renew their efforts to educate on the importance and proper use of PPE. DOHMH has advised that public health communication should be conducted by non-security staff.

DOC Grievance System Analysis and Audits

Another critical piece of our oversight is to understand the COVID-related complaints submitted to DOC. The Board is working closely with DOC's Office of Constituent and Grievance Services (OCGS), the office responsible for handling complaints. Board staff review COVID-related complaints daily, analyze grievance data, and audit complaint resolutions regularly providing analysis and feedback to OCGS. We plan to publish our own analysis and audit findings in the future.

Since March 5, OCGS has been tracking COVID-related complaints in three categories: Environmental (e.g., lack of access to PPE and cleaning supplies), Medical (e.g., concerns about COVID-19 exposure safety and access to medical care), and Staff (e.g., complaints about DOC

staff from people in custody as well as complaints made by DOC staff members or their families regarding staff working conditions). As of May 5, the Department had received 1,029 COVID-related complaints, representing 18% of the 5,606 complaints received by DOC since March 5th when the Department began tracking COVID-complaints.

DOC Sanitation and Supply Availability Audit Analysis

Since March 16, the Department's Environmental Health Unit and Facility Operations office have conducted daily audits of a sample of housing areas at each facility to check for the availability of sanitation supplies and, as of April 8th, mask availability for people in custody and usage. DOC provides the Board with its documentation daily and Board staff analyze each audit. From April 5 through April 18, DOC audited an average total of 64 areas daily DOC-wide and an average of six areas per facility each day, ranging from an average of five areas at AMKC to an average of 12 areas at VCBC.

In general, the DOC audit documentation shows high rates of sanitation supply availability and that work orders are submitted for inoperable sinks identified. Board staff will seek to independently verify this documentation through jail monitoring, genetec review, and other oversight sources.

BOC Complaints

Everyday the Board receives complaints directly from people in custody, staff, family members, defense counsel, and advocates via phone, email, mail, and web form, just as we did before the crisis. Phone calls from jail to the Board are free and not monitored. Board staff developed a new complaint protocol to review these complaints and refer them to the appropriate agency for a response. The Board also reviews to identify systemic and urgent issues which are escalated to DOC and CHS as appropriate. From March 30 to April 30, the Board received 370 complaints. This is a 99% increase from the same period in 2019 when the Board received a total of 186 complaints. Of the 370 complaints received from March 30 to April 30, 2020, around a third (n=119) were related to COVID-19.

The Board's oversight work has been and will continue to be critically important to this crisis response. We have and will continue to provide necessary information to the public outlining essential data and independently confirming what is actually happening in the jails. We will continue to advocate for as small a jail system as is safely possible. And we will continue to recommend that DOC and CHS provide as much information to people in custody, staff, families, and the public at large. As in the community, it is a public health challenge for trusted messengers to continue to deliver critical information on how people can protect themselves and the people around them. While a jail setting creates unique and increased barriers to this work and will take a creative and intensive approach, the importance of communication remains. The Board of Correction will continue to provide oversight and we will encourage the City to further its efforts to engage with people in custody, staff, and the public to ensure people are taking all necessary steps to protect themselves and their communities.

The number of people in custody in COVID-confirmed or symptomatic housing has dropped from a high of 286 people on April 1 to 67 people on May 17. DOC and CHS leadership and staff as well as people in custody who work in the jails and have taken measures to protect themselves should be proud of their efforts. However, the pandemic is not over and the risk of getting sick in the jails is still significant. Further, as the City carefully considers when and how it can re-open, the jail system must have clear, safe, and transparent plans for managing new risks introduced in coming months.

Thank you and we are now happy to take your questions.



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Margaret Egan
Executive Director

Testimony of Board Member Robert Cohen

City Council Oversight Hearing on “COVID-19 in City Jails and Juvenile Detention Centers”

May 19, 2020

Part of the public health and clinical response to the COVID-19 pandemic has been to decrease the population in the jails by almost 30%. CHS has stated that the most important factor in their ability to manage this pandemic, without minimizing the extraordinary clinical care provided, has been the releases, particularly the release of older and medically vulnerable persons. The City did an amazing job getting many, many people out.

Over the past three weeks the population in the jails has been going up. We should be concerned. The population on April 24 was 3869 people, yesterday, May 18th it had increased to 3954. It is important to look at this data by category to understand what actions are driving this increase.

The number of City Sentenced persons in the jails has decreased over this period, from 134 on April 24 to 115 on May 18. This makes sense at a time when the city’s criminal courts are not functioning normally.

The number of persons with Technical Parole Violations, incarcerated on the order of DOCCS, has also decreased, from 267 people on April 24 to 199 yesterday. The number of persons with a Technical Parole Violation and an open criminal case decreased slightly from 626 people on April 24 to 612 yesterday.

The population which is increasing is the pre-trial detainee population. Essentially these are people who have been arrested by NYPD, arraigned before a judge, been remanded or had bail set, and have been unable to afford bail. The pre-trial population on April 24 was 3316 people, on May 18 was 3484, an increase of 168.

We do not know if the increase in the pre-trial population represents a change in police arrest policy, a change in district attorney practice, or a change in the bail practice of the city's Judges.

We live today in hope of a better tomorrow, but we live in clear expectation that there will be a surge in infections, and a surge in deaths later this year. It is vitally important that the jail population not be allowed to increase to pre-Covid levels. The decrease in population was intentional, the result of joint action by the City's agencies -- DOC, CHS, MOCJ -- , the elected DA's, the Defense Bar, and the Judges. Population increase in the jail, if it occurs, will also be intentional, and will follow from changes in the City's agencies, particularly Police, the elected District Attorneys, and the practice of the Judges with regard to bail.

Our task is clear. We must intentionally work to keep the population in our jails as low as possible, carefully tracking each of these categories. We must work particularly hard, during the pandemic, to release medically vulnerable persons at increased risk of serious illness and death from COVID-19. I'm very proud to be your representative on the Board of Correction and I am grateful for the hard and creative work of Board staff to adapt our oversight efforts. I'm very proud of the extraordinary effort of the Department of Correction and Correctional Health Services during this pandemic. I mourn with you those who have died.



UNITED PROBATION OFFICERS ASSOCIATION

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Mr. Speaker, Chairpersons, and Council members,

My name is Dalvanie K. Powell, proud President of the more than 800 majority African-American, female members of the United Probation Officers Association (UPOA). For more than 33 years, I worked in adult and family court services as a Probation Officer and Supervising Probation Officer.

Probation Officers—prior to appointment—must minimally have a four-year college degree with related experience, or a master’s degree. As peace officers, we carry firearms, and undergo eight weeks of training.

We are community corrections supervision, the best incarceration alternative. We provide services to adults and to youth who have been convicted of a misdemeanor or a felony. Youth can be placed on Probation from six months to two years, while an adult can be sentenced to Probation for as long as ten years. Probation Officers enforce the conditions of probation.

Officer teams interview potential clients and supervise probationers/clients 24 hours a day, seven days a week. After court findings and convictions, officers complete mandated pre-sentence investigations. These critical documents include recommendations for community supervision, or incarceration. Officers make sure services are provided to those under our supervision. The objective is to keep people out of jail.

Every probationer is an individual. We do not believe in “one size fits all”. We prepare supervision plans to meet the needs of our clients/probationers. These plans are adjusted accordingly as each goal is met. Probation’s primary objective is community safety and to assist those we serve to become law-abiding citizens as well have new and meaningful lives. Probation is a second chance.

Covid-19 has not changed our work. Probation Officers and Supervising Probation Officers are required to make home visits. We are on the streets, essential personnel protecting our city.

Electronic monitoring is now an important tool for many reasons. It allows keeping more people out of City prisons while providing additional safety for the community at large.

Whether an adult or youth should be incarcerated or placed in a juvenile facility during the Covid-19 pandemic must be contingent upon public safety risks. Who can effectively provide this oversight? Trained, experienced probation officers can and will. To the extent that we have to come in direct contact, for their safety and the safety of my members, we must take all recommended safety precautions. Therefore, to keep us on the street, we need proper equipment. PPEs are a beginning. We also will require larger vehicles, continuous cleaning of our offices and reception areas, and the installation of plexiglass in our offices.

To repeat, Covid-19 has not changed our mission. Probation Officers and Supervising Probation Officers are working remotely, continuing to make home visits. Covid-19 has only made our job more dangerous. Thank you.

Dalvanie K. Powell
President
United Probation Officers Association



TESTIMONY OF:

Kelsey De Avila – Project Director, Jail Services

Yung-Mi Lee – Supervising Attorney, Criminal Defense Practice

BROOKLYN DEFENDER SERVICES

Presented Before

The New York City Council Committees on

Criminal Justice & Committee on Justice System

Oversight Hearing on COVID-19 in City Jails and Juvenile Detention Centers

May 19, 2020

Brooklyn Defender Services (BDS) provides comprehensive public defense services to nearly 30,000 people each year, thousands of whom are detained or incarcerated in the City jail system either while fighting their cases or upon conviction of a misdemeanor and a sentence of a year or less. NYC jails are at the epicenter of a public health crisis as COVID-19 continues to ravage our communities. We thank the Committees on Criminal Justice and the Justice System and Chair Powers and Chair Lancman for calling this necessary hearing. Our testimony below is based on the experiences of the people our office represents who are currently in the custody of NYC Department of Correction.

COVID-19 has spread throughout NYC jails at an alarming rate.¹ Elected officials, correctional and medical experts, and even health care staff working in DOC have repeated time and again that our strategy for containing the virus must include decarcerating the jail population. If the population is not reduced, the virus will continue to circulate throughout the jails, exposing

¹ The Legal Aid Society, *COVID-19 Infection Tracking in NYC Jails*, <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (last visited May 15, 2020).

people in custody, exposing staff and exposing their communities every day they shuttle between home and work. Jail environments allow contagious diseases to spread like wildfire, and Rikers is the consummate exemplar: it is virtually impossible to sanitize facilities, and largely impractical to implement or enforce the guidance of the Centers for Disease Control and Prevention. This reality is broadly recognized. Correctional Health Services' own Chief Medical Officer Dr. Ross MacDonald² and former CHS Vice President Dr. Homer Venters³ have both acknowledged that even if the agencies were at their best, they will never be able to keep those we incarcerate, and the staff overseeing them, safe.

New York City is responsible for the safety and welfare of those it chooses to incarcerate. This critical obligation is not discretionary – so long as the City incarcerates people, the City is responsible for their care and safety. It is undisputed that fulfilling this role is extremely challenging, and the demanding work being done by frontline healthcare workers risking their own lives to secure the safety of others deserves to be applauded. Yet this reality does not excuse systemic deficiencies that endanger thousands. The lived reality of the people we represent who remain in custody illustrate thematic categories of concerns across all NYC jails. Since the pandemic began, we have received hundreds of calls from people in custody describing the lack of information on COVID-19, inadequate cleaning supplies and personal protective equipment, and difficulty accessing healthcare.

The public is now aware of at least 1,895 confirmed cases of COVID-19 among people in custody and staff at Rikers, where three people in custody and at least ten DOC staff members have lost their lives due to COVID-19.⁴ The City must not turn a blind eye to what happens on Rikers Island. The safety and well-being of those detained inside the City's jails is our moral and ethical responsibility. Moreover, the City should make no mistake: what happens at Rikers hardly stays at Rikers, as we regularly see the virus cycle between the jail and outside communities, and the impacts of outbreaks are felt City-wide.

Adolescents and NYC Juvenile Detention Facilities

The onset of COVID-19 has presented challenges for all New Yorkers, but among the most pressing are those challenges impacting youth detained in the City's two Juvenile Detention Centers. Nationally and internationally, doctors and media have presented study after study that congregate care is not safe and that many children in detention should be released.⁵ New York City's children are no exception. Children that remain in the City's care must be provided with comprehensive, quality services, education and support mandated by the court and regulations.

² Jan Ransom and Alan Feuer, '*A Storm is Coming*': Fears of an Inmate Epidemic as the Virus Spreads in the Jails, New York Times, Available at <https://www.nytimes.com/2020/03/20/nyregion/nyc-coronavirus-rikers-island.html>

³ PBS News Hour, *U.S. prisons are crowded, dirty and opaque. COVID-19 is running rampant*, Available at <https://www.pbs.org/newshour/show/u-s-prisons-are-crowded-dirty-and-opaque-covid-19-is-running-rampant>

⁴ CNN, *Inside New York's notorious Rikers Island jails, 'the epicenter of the epicenter' of the coronavirus pandemic*, <https://www.cnn.com/2020/05/16/us/rikers-coronavirus/index.html>

⁵ See the American Bar Association's *Advocating for Kids in Detention and Congregate Care Amidst COVID-19 Concerns* for more information, <https://www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2020/advocating-for-kids-in-detention-and-congregate-care-amidst-covid19-concerns/>

All of the City’s youth—those inside and outside of detention facilities—are vulnerable at this time, and services are more difficult than ever to access. The youth we serve are almost entirely from low-income communities with divested resources during the best of times. We know that our clients already face many obstacles including living in heavily policed neighborhoods where normative behavior is criminalized. Without services and structure, adolescent arrests will only increase. BDS seeks to support the young people we serve by providing structure and guidance inside and outside of the courtroom, yet we are limited during this. Alarming, when the DOE’s virtual schooling ends in June, many youth will be left without programming or structure.

We call on the City Council to address this vital need by restoring funding to the Summer Youth Employment Program, which is critical to providing kids a structured purpose, essential income, mentorship and life-skills. We further urge the state and City to restore funding to programs that can mitigate against an increase in adolescent arrests while providing a valuable and much needed service to the City. The City should commit to finding ways our youth can safely participate in the Summer Youth Employment Program. Many jobs can be handled remotely, and community spaces can provide employment opportunities. Investment into these neighborhoods and these programs will only result in safer communities in the long run.

NYC Jails – Rikers Island and Borough-Based Jails

As New York City’s jails have become the epicenter of the global pandemic, multiple narratives of the situation are emerging. One narrative is shared by City agencies and largely reflects policies and official guidance to describe how things *should* be, while the other story is described by directly impacted people, who see firsthand how those policies are failing. It is the words and experiences of those at the center of this pandemic that must shape how this City responds to this once-in-a-generation crisis. Unfortunately, without proper training, oversight, and accountability, written policy rarely equates to consistent on-the-ground practice.

We call on the City Council, the Department of Correction, and the Board of Correction to immediately address the following key categories of concern:

Availability of Personal Protective Equipment for People in Custody and Staff

According to DOC, by early April, jail staff were required to wear masks and gloves at all times while on duty. By mid-April, masks were allegedly available for all people in custody and adequate supply was to be provided by the end of the tour. This necessary and lifesaving policy has not properly implemented. During a two-week audit in April, the Board of Correction found that DOC staff were not wearing their masks correctly almost 50% of the time.⁶ Our office has received numerous accounts from people in custody reporting that staff are not wearing masks. In one instance an individual stated that the captain who regularly comes through his unit never wears a mask. When asked why, the officer responded that she was waiting to receive a pink mask because she did not like the blue ones. Meanwhile, people in custody consistently report

⁶ NYC Board of Correction Monitoring COVID-19 Responses in New York City Jails, April 5-April 16, 2020, 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

using the same face mask for weeks at a time. When they ask for a new one, staff respond that there are no new masks available and they must wait at least two weeks.

Cleaning and Sanitation Supplies

Although DOC policy emphasizes increased cleaning and sanitation during this pandemic, both the Board and people in custody report far more deficient cleaning. For instance, the Board used Genetec CCTV to observe an entire 24-hour period in each housing area, and found phones were not cleaned or sanitized consistently. “Across 45 instances of phone use, a person in custody cleaned the phone with a cloth or sponge before use three times. In all other instances, Board staff did not find disinfectant or cleaning agents within the vicinity of the phone areas.”⁷ Board staff frequently observed people in custody using socks or other fabric to cover phones during use. Consistent with those findings, people in custody regularly report being reluctant to use the phone because it is not cleaned and there are no cleaning supplies available to properly sanitize. BDS has received reports where people have resorted to using their own bars of soap and shampoo to attempt to sanitize the receiver, and to cover the phone with their sock to attempt to find any protection.

Staff Rounding

According to DOC’s policy, “Housing Area Logbooks,” officers posted within nondisciplinary celled housing areas are required to conduct active supervision tours every 30 minutes during times that people in custody are confined to their cells. Yet the reality is far different. In fact, people in custody report that housing officers hardly leave “the bubble” because they fear exposure to COVID-19. Due to DOC policy requiring escorts for all movement by people in custody, this results in greater delays and difficulty accessing the clinic or other services.

Grievance Accountability and Follow Up

Over the last two months, DOC’s grievance system has become a flawed structure that people are not able to access, nor would they feel safe if they did. Because of the virus, DOC’s Office of Constituent and Grievance Services (“OCGS”) staff are now primarily working remotely from their homes, while eight uniform grievance officers are purportedly distributing resolutions to people in custody directly in the facilities. According to the Board’s May 12 Monitoring Response, the new protocol is that OCGS encourages people in custody to share their grievances with correctional officers, who are then to share it with grievance staff.

Unfortunately, this system is fundamentally flawed. It fails to provide adequate avenues for people to voice concerns and fails to address the very real problem of submitting complaints to officers in unit. Several people in custody report never seeing a grievance officer, difficulty accessing grievance forms, and barriers to submitting the forms themselves. In some cases, people seeking to submit grievances have no choice but to submit them to their steady housing officer, which eliminates any notion of privacy and endangers people who voice complaints about conditions on the housing unit. In one incident, an individual filed multiple grievances over the course of several weeks since the start of the pandemic. He was told to turn in his

⁷ NYC Board of Correction Monitoring COVID-19 Responses in New York City Jails, April 5-April 16, 2020, 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

grievances with his housing officer, but to-date he has received no confirmation of receipt or follow up.

Accessing Healthcare Treatment

The COVID-19 pandemic only exacerbates the long-standing problems with accessing healthcare on Rikers Island. Although the creation of a hotline for people in custody to call CHS directly is a sensible, important step, the design and implementation have been flawed. Further, even if the hotline itself was as robust as possible, it would still not be a cure all to address all medical needs.

The hotline is far too limited. It is our understanding that CHS will only be available on the line during the hours of 5AM – 10AM. Unfortunately, though, medical needs arise 24 hours each day. Even during those hours, people in custody are sometimes met with a voicemail message, and never receive confirmation that their requests are heard or will be followed up on. For those that do reach CHS, the wait time for in-person medical care can be over a week, during which time new conditions and symptoms develop. For example, in one instance, a man reported increased difficulty breathing due to his asthma, despite repeated calls to the CHS hotline he did not receive treatment. Furthermore, this limited lifeline is unavailable for those in need of mental health care, unless they are housed in a COVID-19 positive unit.

Int. 2020-6175

BDS supports Int. 2020-6175 which would create a local conditional release commission with the power and duty of determining which persons sentenced within the city of New York may be released on conditional release and under what conditions. The re-establishment of a local conditional release commission in New York City can accomplish the goal of reducing the population at Rikers Island. However, it can only accomplish this goal with transparency, accountability, and fairness.

Currently, the New York State Board of Parole has discretion to grant local conditional release (LCR) for those serving definite sentences at Riker's Island. If granted LCR, those who are released are subject to a one-year period of supervision regardless of the time remaining on the sentence. In the past, the possibility of technical violations and a return to jail has discouraged applications for such release and thus this important law has been underutilized. That fear has proved founded: even in the midst of the pandemic, parole has continued to issue technical violations and returned hundreds of people to jail. Defenders have undertaken herculean efforts to release those people in an attempt to mitigate the risk of COVID-19.

Any local commission charged with evaluating conditions of release for people from Rikers Island can serve an important role in ensuring conditions are imposed fairly and equitably. Any commission fulfilling this duty must include strong representation from defenders. Our voices are necessary to ensure that conditions of release are individualized and tailored to the specific circumstances each person faces. Including defenders in any commission is a necessary step towards ensuring that conditions are not imposed arbitrarily, that consequences of violations are not overly punitive, and that conditions of release provide a meaningful opportunity for the City to move towards decarceration.

Finally, the commission must operate with transparency and should issue reports on a regular basis. Such reports should remain anonymized but must include the number of applications, the number of those granted or denied correlated to the length of sentences and the conditions of release, if any. Finally, the reports must include the number of violations filed, the time spent incarcerated pending any hearings upon such violations, as well as the number of founded violations.

Int. 2020-6183

BDS supports Int. 2020-6183 requiring the Department and CHS to issue reports during public health emergencies. We have now seen the deaths of at least three people in custody and twelve DOC staff members. We know that at least 1,895 people in custody and staff have been infected as of May 17, 2020,⁸ and we know that the actual total is almost definitely even higher than the reported numbers because DOC and CHS have failed to report the cumulative number of incarcerated people who have tested positive. The information trickle out of DOC has been limited and slow. In order to best prepare advocates and the public, transparency and accountability are crucial.

Recommendations related to Int. 2020-6183

Int. 2020-6183 is necessary, and to strengthen its effectiveness BDS recommends the following points of data collection:

- The Department of Correction must report the total number of COVID-19 related grievances received, the manner in which the grievance was received such as 3-1-1 calls, attorneys, grievance form shared by DOC officers or OCGS staff, and average time of response. Additionally:
 - o How many of the filed grievances were related to environmental – sanitation?
 - o How many of the filed grievances were related to PPE?
 - o How many of the filed grievances were related to access to care?
 - o How many of the filed grievances were related to medical care?
- The Department of Correction should report comprehensive data about video visits, distinguishing between legal and non-legal visits:
 - o How many of each type of request were submitted?
 - o How many requests were fulfilled?
 - o How many were rejected, disaggregated by reason?
 - o What is the average wait time for a video visits disaggregated by facility?
- Correctional Health Services should report comprehensive data about the hotline provided to people in custody:
 - o How many calls are received daily?

⁸ NYC Board of Correction Daily COVID-19 Update, Sunday, May 17, 2020:

https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_5_14_2020.pdf

- How many calls are directly picked up by staff versus sent to voicemail, disaggregated by facility?
- What is the average response time to an individual's request?
- How many calls are COVID-19 related needs?
- How many calls are related to chronic care and treatment?
- How many calls are mental health related?

Int. 2020-6184

BDS supports Int. 2020-6184 to cap the fees charged by private companies when community members send money to their loved ones in City jails. Many people remain incarcerated because their families cannot afford to pay bail to free them, yet the same families are forced to pay predatory fees of up to \$11.95 per transfer to JPay and Western Union to support their loved ones in custody. Commissary funds are now more essential than ever to purchase hygiene and cleaning products to mitigate the risk of COVID-19. These funds are also more precious as communities are hit by an ever-worsening economic crisis. Private companies should not be the ones profiting off this tragedy.

Recommendations related to Int. 2020-6184

While Int. 2020-6184 is a positive first step, it does not go nearly far enough. We urge the City Council to pass a stronger bill eliminating deposit fees, at least for the duration of the pandemic. Usually, the families and friends of people in detention have a fee-free option to transfer money: cash deposits at a Department of Correction payment window. While these windows remain open, our City should not require people to risk exposure to COVID-19 to provide funds to a loved one — already at high risk of contracting the virus within the City's jails — without paying exorbitant fees. We have safer, public health-promoting remote options in place: online and phone deposits, which should be free while the crisis continues.

The \$5 cap proposed by Int. 6184 is mandated by state regulation (9 N.Y.C.R.R. 7016.2(b)). New York City has applied for, and received, a variance for much of the last decade permitting it to charge fees of up to \$11.95 per transaction. Int. 6184 thus only requires the City to follow existing state law.

People in DOC custody face unreasonable and extractive costs throughout their incarceration, including disciplinary fines for violations like unclean cells and mark-ups on essential commissary goods. The City Council has taken positive steps in the past to reduce this burden, eliminating phone call fees in City jails as well as the bail payment surcharge previously imposed by the City. We urge the Council to build on this progress and closely examine all costs borne by people in custody and their communities, particularly in this critical moment.

Conclusion

Transparency is essential during this crisis, and we must not gloss over the struggles many people are actively facing in NYC jails and juvenile detention facilities. In the midst of this pandemic, the City must take all possible precaution to protect all people and should take steps to ensure adequate resources and oversight for youth and adults in detention. The City Council

must continue to support and ensure the NYC Board of Correction abide by their responsibility to provide true oversight of the jails and portray to the public the facts of this crisis, and not the image given by the Department of Correction. As New Yorkers, we must understand that the crisis in our jails affects not just those we incarcerate, but all of our communities.

We thank you for the opportunity to testify today on this critically important topic. If you have any questions, please contact Kelsey De Avila, Jail Services Project Director, at kdeavila@bds.org.

**The Bronx
Defenders**

**Redefining
public
defense**

**New York City Council
Committee on Criminal Justice and Committee on the Justice System
Re: COVID-19 in City Jails and Juvenile Detention Facilities
May 19th, 2020**

Written Testimony of The Bronx Defenders

By Tahanee Dunn, Robyn Goldberg, Martha Grieco, Deborah Lolai & Julia Solomons

Good afternoon Chair Powers, Chair Lancman, and committee members. My name is Tahanee Dunn and I am a criminal defense and prisoners' rights attorney with The Bronx Defenders. The Bronx Defenders ("BxD") has provided innovative, holistic, and client-centered criminal defense for adults and youth, family defense, immigration representation, civil legal services, social work support, and other advocacy to indigent people in the Bronx for more than 20 years. Our staff of close to 400 represents approximately 22,000 people every year and reaches thousands more through community outreach. The primary goal of our model is to provide high-quality legal representation; address the underlying issues that drive people into the various legal systems; and mitigate the devastating impact of that system involvement, such as deportation, eviction, loss of employment and public benefits, or family separation and dissolution. Our team-based structure is designed to provide seamless access to multiple advocates and services to meet our clients' legal and related needs.

Thank you for your attention to these critical matters and for the opportunity to testify before you today. This testimony will address the response to COVID-19 in both the city jails (Section I) and juvenile detention facilities (Section II).

I. COVID-19 IN THE CITY JAILS

A. Introduction

The onset of COVID-19 has dramatically worsened conditions in our city jails, exposed persistent violations of the minimum standards, illuminated a complete lack of transparency and accountability, revealed negligible communication efforts between DOC, their staff and the

people in their custody, a disregard for proper training on the use of PPE and implementation of CDC recommended safeguards, and inspired urgency in defense efforts to secure our clients' release from custody. As a member of BxD's Prisoners' Rights team, I receive referrals from other advocates in my office on behalf of their incarcerated clients who are experiencing below standard care, ineffective or non-existent due process in disciplinary procedures, or are facing other sometimes life-threatening collateral consequences of being in custody. My colleagues and I then follow up with these clients and try to rectify the situation, advocating with relevant parties within the Department of Correction ("DOC"), Correctional Health Services ("CHS"), and the Board of Correction ("BOC"). The stories we hear from our clients have always been very troubling, but since the onset of COVID-19, the reports we hear are nothing short of horrifying.

Conditions in the city's jail facilities are unacceptable, and our clients are afraid for their lives. In the course of hundreds of conversations with our clients, we have heard repeated accounts of the following:

- **Failure to provide adequate protection and supplies for people in jail.** We continue to hear reports of how the movement practices within the Department pose increased risks of exposure to the virus, and the provision of Personal Protective Equipment ("PPE") is limited at best. Those who have a mask report that they wear the same dirty mask for weeks at a time because they are not provided new masks, thus rendering them ineffective against infection. We hear the same about gloves. Individuals who perform sanitation services in the housing units report that they must use the same pair of gloves for weeks. Our clients also report that staff are not consistently wearing masks. Finally, despite reassurances from DOC, we continue to hear reports of shortages of soap and cleaning supplies. Clients also tell us that facilities—including common areas posing particular risk of transmission, like dayroom benches and phones—are not being sanitized regularly, and certainly not consistent with guidance from the Centers for Disease Control and Prevention regarding Correctional and Detention Facilities.
- **Lack of due process for punitive segregation.** A once skeletal due process structure appears to have ceased to exist, with every single one of our clients who has been placed in punitive segregation reporting that it happened without a hearing. They are denied the opportunity to participate in the disciplinary process, and their rights to due process are being compromised in ways that are unacceptable no matter what the circumstances may be. To make matters worse, our clients have reported that when they inquire into these due process violations and attempt to assert their rights, they are told by correctional officers that the disciplinary process has been suspended due to COVID-19. To our knowledge, no such suspension was granted by any governing board, body or agency.

- **Insufficient access to healthcare.** The reports regarding reduced access to healthcare are equally concerning. In March, CHS announced that medical care would be accessible through “sick call triage”, whereby people in custody could “directly call CHS nurses about their concerns.”¹ This has not worked in practice. Our clients report that phone lines are not answered, there is no way to leave a message, and for those able to report concerns, little or no follow up with medical staff occurs. Our clients report that mental health treatment is likewise plagued by these issues, as clients must utilize the telehealth system unless they are housed in a Mental Observation or PACE unit where staff are onsite.
- **Delays in healthcare services.** Despite the fact that the current pandemic has created widespread fear and anxiety among incarcerated persons, especially the large numbers of those with chronic illness and mental health conditions, it now takes days, sometimes weeks, of efforts by our clients and their advocates before they are able to talk to someone from mental health. Clients repeatedly tell us they cannot get access to a clinician through this system.
- **Additional risk presented to transgender and gender non-conforming (TGNC) individuals.** TGNC people in custody often experience frequent movement between housing areas and facilities, and are at particular risk because it is common for them to be initially housed incorrectly and subsequently moved to another facility more aligned with their gender identity. Additionally, when TGNC people need to be removed from the unit they are housed in, DOC will move them to an entirely new facility, not aligned with their gender identity, instead of moving them to different housing in the facility they are in. This is problematic because every transfer involves a stop at “intake,” and exposure to even more staff and incarcerated persons.

The city jail conditions themselves are unacceptable, but that is not the only problem. The responses from DOC, as well as the collateral consequences for our clients, are extremely concerning. We ask the City Council to provide oversight and take action to achieve the following goals:

- Make more detailed public data regarding the state of healthcare and COVID-19 testing in city jails available.
- Increase scrutiny of DOC policies and practices and do not rely solely on self-reported self-serving reports in order to remove barriers to decarceration.

¹ Correctional Health Services Update, presented at NYC Board of Correction Meeting, March 10, 2020 https://www1.nyc.gov/assets/boc/downloads/pdf/chs_boc_presentation_final.pdf at 5.

- Improve access to counsel for our clients in custody

We need the City's help in providing true oversight over DOC in order to improve our ability to access our clients and to be able to successfully advocate for their release, in a time when incarceration or release could be a life or death distinction.

B. Make more detailed public data regarding the state of healthcare and COVID-19 testing in city jails available.

Given the conditions being reported by our clients, it is critical that DOC make comprehensive data about the current conditions in the city's jails publicly available. We very much appreciate and recognize the value of BOC's daily report regarding COVID-19 in the jails, as well as their recently published monitoring report regarding the implementation of new policies responsive to COVID-19². However, we believe even broader data gathering and information sharing is necessary both to serve the greater public interest and to improve our ability to advocate for our clients. **We strongly support the legislation proposed by Councilmember Powers, Int. 6183, requiring public reporting by DOC and CHS during a public health emergency.** We ask that the City Council require DOC to publish answers to the following questions with regard to COVID-19 testing:

1. How many people have been tested overall?
2. Who is administering the tests?
3. What are the conditions under which tests are administered?
4. What types and brands of tests are being administered?
5. What lab or medical entity is analyzing the tests?
6. What is the cumulative number of people in custody who have tested positive?
7. What is the positive test rate compared to that number in the community?
8. How many people in custody are being tested vs. testing of staff?
9. What is the specific criteria used to determine who (both staff and incarcerated persons) is tested? Are asymptomatic people being tested? If not, why not?
10. Are there discharge and or medical clearance procedures in place? If so, what are they?
11. What is the number of DOC staff (i.e. not just CHS staff) who are out sick or under observation?

² New York City Board of Correction Monitoring COVID-19 Responses in City Jails, April 5-16, 2020. Retrieved from 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

12. Was CHS involved in creating and facilitating COVID-19 response DOC housing areas, such as quarantine versus non-quarantine areas? If so, what is the housing placement criteria and who oversees this process to ensure the health and safety of those detained in those areas and the staff assigned to work in those housing areas?

Additionally, we ask that the City Council require Correctional Health to publish answers to the following questions regarding access to both physical and mental healthcare:

1. How has the implementation of telehealth services within the jails impacted the ability of people in custody to access services?
2. How does this impact vary between mental healthcare and physical healthcare?
3. What is the CHS staff capacity to answer the telehealth phone lines?
4. What percentage of calls are answered?
5. What is the system for addressing missed calls? How are voicemails responded to?
6. Do the correctional officers have control over when and who accesses the telehealth phone lines?

At a time when direct access to the city jail facilities is extremely limited, family members, advocates, and concerned community members are reliant on this type of public reporting to understand what is happening inside and what people in custody are experiencing. Additionally, advocates require clear, indisputable data in order to effectively argue for our clients' release, and the self-reporting currently offered by these agencies is insufficient.

C. Increase scrutiny of policies and practices and do not rely solely on self-reported self-serving reports in order to remove barriers to decarceration.

1. *Conditions in NYC jails as reported by our clients and the Board of Correction do not match public messaging from DOC*

The public statements of DOC are often in conflict with our clients' reports about their realities. For example, each month, BOC holds a public meeting. During that meeting, DOC and CHS speak about current policy and frequently request some variation from the Board's minimum standards, or what the Board considers to be "basic elements necessary to ensure the safe and humane housing of inmates."³ In defense of these requests, the agencies give an abbreviated update on the state of the conditions related to the policy, for example mental healthcare, and the predicted effect of changing the proposed policy, relying on data they do not make available to

³Retrieved from <https://www1.nyc.gov/site/boc/jail-regulations/minimum-standards.page>

the public. Rarely does either agency share a negative consequence for people in custody. Since the onset of COVID-19, the conflict between the public reports and our clients' reports is the starkest it has ever been, and with the most significant consequences. Now, more than ever before, the reports from our clients are desperate and scared for their lives.

On April 1, the Board began publishing daily COVID-19 reports updating the numbers of staff and people in custody who have tested positive and the fluctuating total numbers and demographics of people in custody. Due, in part, to mounting public pressure and calls for more concrete reporting on the implementation of DOC's reported policies, on May 11 the Board published its first observational report since the onset of the COVID-19 crisis.⁴ In this report, BOC reports their observations between April 5 and April 16, quantifying the anecdotal information we have heard from our clients. Regarding sanitation, the Board reports that out of 45 instances of phone use, it was only cleaned three times, and in all three of these instances, it was a person in custody who wiped down the phone with a cloth. Cleaning supplies were not observed anywhere nearby. Out of 249 observations of people in custody across housing areas, only 17% of all visible people were correctly wearing masks.

2. Judges and District Attorneys are relying on DOC affidavits when making release decisions despite conflicting reports from clients

As the Council is likely aware, since COVID-19 hit NYC in early March, defender organizations across the boroughs have been advocating for our clients' release with even greater urgency. This has taken the form of negotiations with District Attorneys outside of court, emergency bail applications and writ arguments in front of judges on behalf of individual clients, and mass writ arguments on behalf of multiple clients at one time. We have focused heavily in our writ litigation on our most medically at risk clients and have argued that DOC has acted with "deliberate indifference" to individuals' serious, unmet medical needs. With each writ argument, DOC submits an affirmation stating their CDC-compliant policies. Advocates submit affirmations as well, detailing the reports they have heard from their clients who are incarcerated. The difference between the reported policy and what our clients experience in reality is striking. It is for this reason that accurate, detailed public reporting by DOC and CHS is so critical. If proposed legislation Int. 6183 had been in effect at the beginning of this crisis, defense organizations may have seen more success in securing the releases of our clients.

⁴ New York City Board of Correction Monitoring COVID-19 Responses in City Jails, April 5-16, 2020. Retrieved from 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

Despite submitting countering affirmations sharing the reports of so many of our clients in custody, judges across the city generally accept DOC's assertion of facts and subsequently deny our petitions for release. After BOC released its report last week, we are hopeful that some of the gaps between policy and implementation validated by the report will convince judges to issue different decisions moving forward, but unfortunately we need more reliable data in order to truly see a difference in how many of our clients are released.

D. Improved access to counsel for our clients in custody

1. Expanded video conference availability

Access to counsel has been significantly limited since the onset of the crisis, greatly inhibiting defenders' abilities to advocate for our clients' release. Without in-person visits, videoconferences are the only way for attorneys and advocates to proactively communicate with our clients in custody. They are also the only means to conduct virtual court appearances and competency exams to determine whether people can aid in their own defense. Now, with grand jury proceedings conducted by video, there are even fewer slots available for attorney conferences. . It is our understanding that EMTC remains without skype videoconferencing capability at all. In the facilities where videoconferences are available, they are significantly backlogged, requiring requests for video conferences to be made several weeks in advance. Given the fluidity of this health crisis, and therefore the importance of collecting data as situations occur, the lack of access to our clients has severely impeded our ability to advocate on their behalf and meaningfully engage in decarceration efforts.

Currently, video conferences are only available from 9am-5pm for defense organizations that rely on the Office of Court Administration ("OCA") to connect, more limited than traditional counsel visit hours from 8am-8pm, and they are only available on weekdays when counsel visit hours previously extended to weekends as well. This creates significant barriers to our ability to advocate for our clients' release and to negotiate more favorable resolutions to their cases. We ask that the City Council inquire into efforts to increase and systematize video conferencing capabilities and advocate for expanded capabilities where needed.

2. Improved confidentiality protections and technological troubleshooting

Not only is accessing our clients via videoconference exceedingly difficult, but when we do make contact with our client via Skype, there are additional issues that prevent productive conversations with our clients. Most concerning is that it is often possible to hear the conversation happening between another person in custody and their attorney in a neighboring

booth. We assume that our conversations are similarly audible to others nearby. This presents significant challenges to attorney-client privilege, and limits our ability to speak freely with our clients about the details of their case or possible plea negotiations. This was not previously the case with videoconferences.

Beyond the urgent issue of confidentiality, there are often issues with sound on either side, either no sound at all or loud background noise in the facility making it difficult to hear one another. Our clients are rarely in the booth at the start time of the video conference, cutting significantly into the 30 minute time slot. This problem was common pre-COVID but was less pressing because it was not the only way we could speak to our clients. Thirty-minute video conferences were useful for relatively quick conversations, but are inadequate for serious conversations, social history interviews, reviewing discovery or discussing a possible plea. These conditions are not suitable for those types of conversations, impairing our clients' right to have access to their defense team in a way that could have devastating effects on the outcomes of their cases.

3. Additional mailing supplies be made available to people in custody and the consistent forwarding of legal mail upon facility transfer

It is our understanding, based on public statements by DOC, that people in custody were provided with a round of free stamps and pre-stamped envelopes at the beginning of the COVID-19 crisis. We applaud DOC for this compassionate measure and request that it be repeated. We have not seen an uptick in letters from our clients despite the difficulties of communication and suspect that our clients used their first round of mailing supplies to contact family members. This must be an ongoing offering; in fact, we request that mailing supplies be continuously available upon request to anyone for as much as they need during this crisis as long as in-person visits are suspended.

In addition to our request for ongoing mailing supplies, we request that DOC implement a mail forwarding process for all mail, but specifically legal mail. It is frequently reported to us by our clients that they have not received mail from our office. This seems to be due in part to the increase in facility transfers on Rikers Island and NYC jails. While advocates understand the need to move people in custody around to keep them and others safe and healthy, placement in a new facility should not hinder one's ability to receive their legal mail. Legal mail almost always contains sensitive and confidential information relating to a person's ongoing case, thus the importance of having a mail forwarding system in place is essential. Furthermore, advocates send their clients documents that require signature and a notary stamp. These documents are essential to our ability to file motions and make record requests. Therefore, it is crucial that DOC not only implement a mail forwarding system, but that they also provide access to a notary in each housing facility, especially restrictive housing units and the punitive segregation unit.

II. COVID-19 IN JUVENILE DETENTION FACILITIES

A. Introduction

The Bronx Defenders Adolescent Defense Project (ADP) was launched in 2012 to provide specialized representation to some of BxD's most vulnerable clients: 14 through 17 year-olds whose cases originate in adult criminal court. Our youngest clients always face unique obstacles. Even in the best of times, incarceration causes children long-term physical and mental harm that lasts well into adulthood.⁵ Moreover, economists have shown that incarcerating youth reduces their future earning potential and their ability to remain in the workforce.⁶ This is far from the best of times. New York City is the epicenter of the COVID-19 pandemic, and it has caused dramatic changes to everyone's lives. This massive disruption has only exacerbated the challenges faced by incarcerated youth, who are isolated from their families and support networks.

Social distancing within the juvenile facilities is impossible: children conduct most of their lives within 6 feet of the other residents on their hall, eating, showering, and spending most of the day together. Staff travel into and out of the building on a daily basis, possibly bringing the disease with them. Youth continue to be arrested and incarcerated at these facilities, another possible vector of contagion. In an attempt to mitigate the spread of coronavirus, the children incarcerated at these facilities have been isolated from any in-person contact with their community: family visits and attorney visits have been prohibited since March; teachers no longer teach classes in the buildings; and all in-person recreational, educational, and mentor programs have been stopped.

We recognize and appreciate that the Administration for Children's Services (ACS) has made efforts to lessen the effects of this isolation, and we hope to work with ACS as it continues in these endeavors. We urge the City Council to work with ACS, the Mayor, and all other necessary agencies to address the following issues:

- Provide greater transparency and open communication for parents and advocates of incarcerated youth.
- Guarantee greater access to education and services.

The effects of the global pandemic will be felt for decades to come. It is critical that the City address these issues quickly so that our youth are not left behind.

⁵ Elizabeth S. Barnert et al., *Child incarceration and long-term adult health outcomes: a longitudinal study*, 14(1) INT'L J. OF PRISONER HEALTH 26 (2018).

⁶ BARRY HOLMAN & JASON ZEIDENBERG, JUSTICE POLICY INSTITUTE, THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES (2006).

B. Provide greater transparency and open communication for parents and advocates of incarcerated youth.

Unlike adult facilities, Horizon and Crossroads are not overseen by BOC. As a result, BOC's daily reports do not include information from these facilities. We urge City Council to work with ACS to ensure regular public data reporting on at least a biweekly basis to inform parents and attorneys about ACS's COVID-19 response. We ask ACS to follow the example set by New Jersey's Juvenile Justice Commission (JJC). On its website, JJC provides an accounting of how many staff and residents have tested positive at each facility and the total numbers of residents tested for COVID-19, as well as a list of new or altered procedures regarding social distancing, family to resident communication, education, and programming.⁷ It is imperative that ACS provide updates not only about the disease itself, but also about all of the other changes occurring due to the pandemic. This communication should include:

- Current and cumulative number of youth tested and confirmed cases;
- Current testing criteria for youth and staff, including frequency of testing, how ACS determines who is tested, and numbers of tests administered;
- Information about social distancing practices; and
- Updates on how education, programming, health care, mental health, and recreation are provided to residents.

Parents and advocates require this information to know how best to fight for incarcerated youth.

In addition to making information public, ACS must also allow for more robust communication between parents and incarcerated youth. Kids need their families. When tragedy strikes, most people want to go home and hug their families. Incarcerated children are no different. Their relationships remind them of who and what is waiting for them upon release. In this uncertain time, youth need more contact with their families than ever. A lack of family involvement creates emotional and mental health challenges for not only the incarcerated youth, but for the entire family.⁸ And multiple studies have shown that a lack of family contact increases the likelihood of future recidivism.⁹ Currently, youth receive a number of 10 minutes telephone calls per week based on their behavior level. Families are also able to arrange Skype visits when there is availability. Only children on the very highest behavior level, however, receive enough access to contact their families every day. While this public health crisis continues and in-person visits are suspended, youth need daily access to telephone or Skype visits to communicate with families, regardless of behavior level. In addition to the telephone calls earned by good behavior, ACS should provide every child an opportunity to call or Skype a parent or other family member every day, seven days a week.

B. Guarantee greater access to education and services.

⁷ <https://www.nj.gov/oag/jjc/covid19-facilities.html>

⁸ DONALD BRAMAN, *DOING TIME ON THE OUTSIDE: INCARCERATION AND FAMILY LIFE IN URBAN AMERICA* (2004).

⁹ Joseph P. Ryan & Huilan Yang, *Family Contact and Recidivism: A Longitudinal Study of Adjudicated Delinquents in Residential Care*, 29(1) SOC. WORK RES. 31 (2005).

We also urge the City Council to collaborate with the Department of Education and ACS to bring live-streamed school classes into the juvenile facilities. Remote schooling presents a particular challenge in a juvenile detention facility. While we commend the efforts to create a hotline where incarcerated youth can contact teachers for help on assignments, it is not enough. Currently, there are no teachers actually teaching classes to any student at Horizon or Crossroads Juvenile Centers. Residents' education consists solely of worksheets and computerized packets. Despite studies which show that the average student learns better and learns more when receiving instruction from trained professionals than from self-study.¹⁰ We cannot place the onus on children to teach themselves from worksheets or packets and only afford them access to a professional's expertise as a last resort.

Teachers are even more important to students with disabilities, who are over-represented in the juvenile legal system.¹¹ In the community, NYC teachers and occupational therapists are providing services online to the city's special education students. Through video chats and telephone calls, teachers are attempting to recreate necessary classes and therapy.¹² Even with these structures, students are falling behind. Special needs youth in juvenile facilities do not even have these supports. The City Council should ensure that incarcerated special needs youth receive access to the same services as their counterparts in the community.

Moreover, multiple studies have demonstrated that detention and incarceration harm the overall well-being of youth and the communities they live in over the long term. It is essential to provide rehabilitation, education, and productive recreational opportunities to youth during their time in custody. ACS had already begun to bring some programming back into the facility. Outside agencies, such as Center for Community Alternatives, have provided pre-recorded videos that are available to certain residents on a tablet (though access to tablets is dependent on behavior level). Writing competitions and questionnaires based on the videos are also available. Just as in the educational setting, however, children lack interaction with program leaders and mentors. At present, service providers are unable to stream live, digital sessions. The relationships built between children and mentors have been completely disrupted. Children should receive access to all programming, particularly interactive programming, regardless of behavior level.

We are particularly concerned about the opportunities available to residents over the upcoming summer. Programs work to keep our clients from future contact with the criminal legal system, to prepare children for successful community living, and to keep them engaged. In addition to the programs available to youth year-round, two summer-specific programs have always made a

¹⁰ See John Leddo et al., *The effectiveness of self-directed learning vs. teacher-led learning on gifted and talented vs. non-gifted and talented students*, 2(6) INT. J. OF ADVANCED EDU. RES. 18 (2017).

¹¹ Sue Burrell and Loren Warboys, *Special Education and the Juvenile Justice System*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (July 2000), available at <https://www.ncjrs.gov/pdffiles1/ojdp/179359.pdf>.

¹² Eliza Shapiro and Elizabeth A. Harris, *This is Schooling Now for 200,000 N.Y.C. Children in Special Education*, N.Y. TIMES, April 16, 2020, <https://www.nytimes.com/2020/04/16/nyregion/special-education-coronavirus-nyc.html>

huge impact: Freedom School and the Summer Youth Employment Program. This summer, neither of these programs will run unless immediate changes are made. We ask the City Council to ensure that the necessary funding and staffing are secured to continue these programs.

III. CONCLUSION

While we believe the establishment of a conditional release commission, as proposed by Councilmember Powers as part of Int. 6175, is a positive step, we fear that it will not reduce the current jail population as significantly as is necessary at this juncture. We encourage the City Council to consider involving the advocacy community as well as those directly impacted by incarceration as part of the commission, and urge the Council to think creatively about other ways to reduce barriers to decarceration. Defense organizations continue to advocate for the release of our clients, both from city jails and juvenile detention centers, and transparency on the part of the agencies who manage and staff those facilities is critical to our ability to be able to secure releases for our clients. While finding ways to release as many people as possible, for those who remain incarcerated it is critical that conditions be improved wherever possible. Young people need access to education. Everyone in custody needs thorough, confidential access to their defense team. This crisis has placed significant limitations on the City's ability to keep people safe in custody but as long as anyone remains in the city jails and juvenile detention facilities, it is the City's responsibility to do everything possible to protect and address the needs of those individuals.

Thank you for your time and attention to these important matters.



NYC Council Testimony: T2020-6184

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Good Afternoon. Thank you, Council Members Powers and Lander and Mr. Williams for Intro. No. 6184, setting a maximum allowed when transferring money to a person in the custody of the department of correction. While limiting money transfer fees is an important step in the right direction, New Yorkers need stronger fines and fees reforms to protect them from the predatory practices of third-party contractors, who are exacerbating the disparities faced by our low-income communities and communities of color. The need for these reforms is especially urgent during the current COVID-19 public health and economic crisis.

My name is Katie Adamides. I am the New York State Director for the Fines and Fees Justice Center, a national organization that seeks to reform the use of fines and fees that harm communities and distort justice. Specifically, FFJC is working to end the use of criminal legal fees and ensure that any fines are imposed and collected fairly. Fines and fees hurt New Yorkers and New York City. They make our communities less safe, they perpetuate and exacerbate poverty, and they extract millions of dollars from our most vulnerable communities, particularly Black and Brown communities. These practices were wrong before COVID-19, but they are even more egregious now that families need to use all of their financial resources to survive this public health and economic crisis. Fines and fees extract wealth and disproportionately harm the very same communities that are suffering the worst health and economic consequences of COVID-19.

The Fines and Fees Justice Center supports Intro 6184, but this reform is not enough. As written, this bill will not prevent JPay and other companies from continuing to extract millions of dollars in fees from people in City jails, as well as from their loved ones. For example, when families and friends put money into their loved ones' commissary accounts to support their basic needs, JPay's fee—even at just \$5—can be a huge percentage of smaller deposits, often 20%. This private profiteering from our most vulnerable communities must end, and we are asking for the Council's help to pass the strongest reforms possible.

Fees should be abolished, especially now, but if the City does not end money transfer fees entirely and only lowers existing fees, it must do so in a way that stops the worst forms of gouging people who are supporting the basic needs of their loved ones behind bars. The law must prohibit vendors like JPay from reducing the current allowable deposit amount. The City should also consider imposing a cap in the form of a percentage combined with a flat maximum, rather than a standalone flat fee cap. For example, current fees charged by various vendors like JPay can be up to \$12 on larger deposit amounts, with lower fees for smaller amounts. If the fee cap is a flat maximum of \$5, these vendors could limit how much people can deposit at one time, forcing people to make smaller deposits subject to higher fee rates. If vendors were to impose deposit amount restrictions, fees would be an even higher percentage of total deposit amounts than they are at current rates.

A better fee limit would combine a percentage of the deposit up to maximum of \$5. Anything less than a 4% cap with a \$5 maximum would be a better deal than current rates. Abolishing these fees altogether should be the goal, but we understand that the City has to negotiate with vendors to ensure services remain available to people currently behind bars. We encourage the City to consider renegotiating and absorbing these costs, rather than passing them onto our most vulnerable communities.

The Council should also require that the Department of Corrections make public all of its contracts with private entities that provide services to people who are incarcerated in City jails. Contracts with private entities must explicitly prohibit profiteering through fees, markups, interest, or other costs imposed on people behind bars and their communities. These contracts should also require that public data be made available on the fees these companies collect.

Additionally, City Council should eliminate all criminal legal fees in New York City, including fees imposed by the City itself, such as the DWI probation fee, and fees for diversion programs that are assessed by the Mayor's Office of Criminal Justice. The Council should stop the City from using fees assessed by private entities, including diversion fees and the array of fees charged to people in City Jails.

Finally, the Council should provide access to diversion programs for anyone who is eligible, regardless of their financial circumstances. When the City or third-party providers charge fees for diversion programs, they deny access to people who can't afford those fees. Diversion programs allow people to remain in their communities, keep their jobs, support their families, and practice physical distancing. Not only is this the right thing to do, but offering someone free diversion is better fiscal policy than paying nearly \$200,000 per year to put them behind bars. No one should be denied a diversion program simply because they cannot afford to pay fees, especially now, when incarceration elevates COVID-19 risk on top of the many other harms it causes.

Thank you. We look forward to continuing to work with the Council to abolish fees in the criminal legal system.



Written Testimony to the New York City Council

May 19, 2020

By Sarita Daftary, Senior Community Organizer, JustLeadershipUSA

Attn: Committee Chairs Council Member, Council Members Lancman, and committee members

I'm testifying today on behalf of JustLeadershipUSA and as a member of the Jails Action Coalition.

First, I want to thank the Council, and in particular these committees, for your work, in partnership with the #CLOSErikers campaign, to advocate for reducing the use of incarceration in New York City. It is frightening to think of how COVID19 would have affected the people in our jails if there were still more than 10,000 people in them, as there were when we started the #CLOSErikers campaign. The urgency of your work to decarcerate and to close Rikers, in partnership with directly impacted people and advocates, is more clear than ever.

The effects of COVID19 in New York City jails, and the conditions in the jails during this outbreak, have magnified both the completely unacceptable physical environment in the jails, and also, the disregard and disorganization with which the Department of Corrections operates.

Today, I want to ask for the Council's attention to certain aspects of the Department's emergency response to COVID19 that continue to be insufficient.

First, we continue to hear a great discrepancy between what DOC says is being done, and what people in the jails are reporting to us and their family members. Here are a two recent examples:

- A mother reported last week that her son and others being held on the Boat have not been given a new mask in more than a month, and are expected to reuse the masks they have indefinitely. The soap her son has received has no antibacterial ingredients, and they frequently run out of cleaning supplies and have to use plain water.
- A mother reported that her son and others in GRVC were given only 3 masks each, about one month ago. She also reported that not even the COs consistently have masks. The other day, when they did not have any clean dishes, they were told to wash their dishes in the slop sink where they clean mops. She also reported that she has been giving her son extra commissary funds so that he can buy shampoo and use it for cleaning in his

housing unit. The people in his unit have not been provided with adequate cleaning supplies.

It is striking that two different people, who have no contact with each other and whose loved ones are in two different jails, reported the exact same information about unavailability of masks, while Commissioner Brann reported to the Board of Corrections last week that masks are readily available in every housing unit in all of the City's jails, and that no one has been asked to reuse a mask. Either the Commissioner's gave a false report to the Board of Corrections, or the Department is completely unable to manage their staff to ensure that policies are being followed. Either way, it is deeply concerning. It has been well-documented, the Federal Independent Monitor and others, that this is a department that is consistently violating minimum standards for responsible treatment of people in their custody.

I also want to urge the Council to investigate the City's failure to immediately implement the guidelines outlined by DOHMH Commissioner Barbot in her March 25, 2020 Order. This order was sent to FEMA to notify them of the City's plans, consistent with the FEMA Public Assistance eligibility criteria, to use non-congregate shelter options for a number of groups of people, including "asymptomatic individuals...in City programs such as....the Department of Corrections whose programs do not have appropriate facilities to provide them housing." The directive from DOHMH ordered any "agency that may be responsible for providing shelter to any person in the City to locate, secure, operate, and make available non-congregate sheltering to any person needing to be isolated or quarantined to prevent the spread of COVID-19." Given their design, there is no jail facility in this City that could be considered non-congregate shelter, no matter how much excess capacity the jails have. While the most important action is to release people from the custody of the Department of Corrections as quickly and broadly as possible, this order would indicate that the Department should have already secured non-congregate shelter for any of the remaining people in their custody. It seems clear that the failure to do so has already cost lives - of people in custody and people who work in the jails - and continued delays in implementation will risk more lives.

Thank you,

Sarita Daftary
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Testimony to the Criminal Justice & Justice Committees
Re: COVID-19 in City Jails

Submitted by Brandon J. Holmes

I am a lifelong New Yorker whose family has been on the other side of those bars. I'm testifying on behalf of JustLeadershipUSA and the #CLOSErikers campaign and as a member of Jails Action Coalition. Thank you to the City Council, and all central or Members staff, who have shown a commitment over the last two months to holding this administration and its agencies accountable to protecting the most vulnerable New Yorkers during this pandemic. We have a long way to go to complete the New York City we are all fighting to build, and because of this I want to acknowledge the urgency of the current budget making process.

We need a Council that is going to be relentless. Many of you have participated in the height of a grassroots movement to end mass incarceration, respect black lives, and invest in the infrastructure needed to afford housing, education, and healthcare as a right for all New Yorkers. The urgency of your work to shrink the jail population, demolish the facilities on Rikers Island, and enforce true culture transformation within the justice system is directly tied to the urgency of fully funding and supporting communities, not only in a time of crisis and panic, but always. The mission to close Rikers in partnership with directly impacted people and advocates is more urgent than ever. The Mayor, District Attorneys, and NYPD Commissioner Shea are set on hoarding resources for law enforcement during a global pandemic while their cops have been recorded on multiple occasions assaulting New Yorkers of color. New York City has faced a deficit before. There is no shortage of money during this pandemic, what we have is a misalignment of priorities which will dig us deeper into the current depression if you do not fight for budget justice.

The #CLOSErikers campaign and our leaders support the reporting amendment to improve transparency and oversight of DOC and CHS pandemic response efforts.

We enthusiastically support the creation of a local conditions release commission. In April, over 1500 New Yorkers were released through COVID-19 advocacy efforts. Many of these people are reunited with loved ones, continuing education, or receiving treatment in their communities. We have seen more than 95% of the people released avoid re-arrest. Despite fear mongering and racism from media and law enforcement bigs, there is no crime wave. In the past several weeks, we have seen a slight increase from the City's low of around 3,808 to 3,943. We have seen

significant results from the City's more cost-effective hotel placement programs in partnership with non-profit service providers who can support people recently released. The City should invest in future resources that will further the progress we have made towards closing Rikers Island and ending mass incarceration.

This Commission should also serve a more transparent and aggressive role for correcting harmful trends within the justice system through challenging District Attorneys and judicial discretion or enhancing NYC-based ATD and ATI programs to protect New Yorkers from Governor Cuomo's failures on bail reform. As the only population on Rikers Island that has steadily increased over the past several years, the City must do everything in its power to contribute to the elimination of a broken parole and supervision system.

Lastly, we believe the legislation limiting fees on deposits can be bolder. We know that justice involved families are extorted for millions of dollars each year by private profiteers through bail bonds, commissary, and—until this Council voted—phone calls. Advocates at Worth Rises shared that, in 2016, the City of New York testified that the average deposit amount was \$48 on about 380,000 total money deposits. A number of city agencies already accept dozens of online payments with no fees. The City should examine the cost burden for absorbing these fees with a significantly reduced jail population and identify opportunities to divest from the inflated Dept. of Corrections budget to implement this when this bill goes into effect.

I appreciate the opportunity to share support for these bills, and I thank you all for your work in preparing them and addressing both the present and long term needs for people who are currently incarcerated. We have a clear and urgent budget making process ahead of us and we will be actively fighting to build communities.

Brandon J. Holmes
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New York City Council

**Committee on Criminal Justice and Committee on the Justice System
Joint Hearing
May 19, 2020**

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

T2020-6175: A Local Law to amend the New York City charter, in relation to adding a new section creating a local conditional release commission.

T2020-6183: 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.

T2020-6184: 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.

Testimony

**The Legal Aid Society's
Juvenile Rights Practice Special Litigation and Law Reform Unit**

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Lisa Freeman
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The Legal Aid Society thanks Chairman Powers, Chairman Lancman and the members of the Committees for holding this hearing on the COVID-19 pandemic. Incarcerated youth face dangerous conditions putting their very lives at risk. It is therefore essential that we examine those conditions and take all steps possible to reduce the risks our youth face. We therefore commend the Council for shining a light on this important issue.

New York City's Juvenile Justice System

The Legal Aid Society has dedicated teams of lawyers, social workers, paralegals and investigators devoted to serving the unique needs of children and youth charged as juvenile delinquents, adolescent offenders and juvenile offenders in the Family and Criminal Courts across the City. Since the implementation of Raise the Age, the Juvenile Rights Practice and the Criminal Defense Practice's Adolescent Intervention and Diversion Project have adopted an integrated representation model to ensure seamless and comprehensive representation of 16 and 17 year old youth who appear in the Youth Part and are removed to Family Court. In addition to representing our clients in trial and appellate courts, we also pursue impact litigation and other law reform initiatives.

Juvenile Detention and Placement

The COVID pandemic has put unprecedented pressure on the juvenile justice system in NYC, a system that is not designed to manage under such pressure. At the same time, the pandemic has revealed the capacity of the juvenile justice system to prosecute and incarcerate fewer youth, thereby functioning in a more just and less punitive fashion. Because the juvenile justice system, like the criminal justice system has a disproportionate, destructive impact on communities of color in NYC, these steps forward during the COVID pandemic must be acknowledged and built upon so that NYC can move towards greater justice.

In recognition of the dangers associated with the COVID-19 pandemic to youth and staff in congregate settings, the City made concerted efforts to release youth deemed appropriate from detention and placement beginning in March. Since that time, we have seen a precipitous drop in the number of youth arrested, prosecuted and detained by the courts. Relatedly, the number of children held in juvenile detention awaiting disposition of their cases in Family Court has plummeted. As of May 13, 2020, a total of 71 youth were in secure detention, including 5 youth charged as juvenile delinquents (JDs), 22 youth charged as juvenile offenders (JOs) and 44 youth charged as adolescent offenders (AOs). For youth charged as JDs, who may be held in secure or non-secure detention, the census has shrunk significantly as well. Last month, a total of four youth charged as JDs were held in secure detention and another eleven youth were held in non-secure detention, totaling 15 youth charged as JDs in detention. In contrast, in January 2019, the average daily census of youth charged as JDs in detention was 39.¹ The recent juvenile delinquency census thus represents a drop of more than 50%. This data reveals that many youth, have been previously held unnecessarily in detention. Needless detention exposes youth to trauma, prevents youth from engaging in rehabilitative services and has a long term negative impact on youth.

This reduction in census is particularly important to acknowledge because is disproportionately affects youth of color. Appalling and longstanding racial disparities exist in NYC's juvenile justice system; justice- involved children and teens are almost exclusively poor, and African-American or Latinx. Additionally, many youth of color have experienced trauma and at least one significant issue beyond poverty that causes instability in their lives. These injustices are rooted in racial inequities that permeate society; the juvenile justice system included. According to the Administration for Children's Services (ACS) Detention Demographic Data for

¹ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/02.pdf>

FY 19, 66.9% of all New York City youth admitted to secure detention facilities in 2019 self-identified as black and 28.5% identified as Hispanic; similarly, 67% of those admitted to non-secure detention facilities identified as black and 26.7% as Hispanic.² Nearly 100% of all NYC youth admitted to non-secure and limited secure placement (youth held pursuant to a disposition of their Family Court case) are African-American or Latino.³

NYC’s Juvenile Justice Detention and Placement System

The ACS Division of Youth and Family Justice (DYFJ) is responsible for juvenile detention and placement services in New York City. In New York City youth charged as juvenile delinquents (JDs) can be remanded by the Family Courts to either secure or non-secure detention. ACS DYFJ operates secure detention and it contracts with non-for-profit providers who operate non-secure detention. Only JD youth can be remanded to non-secure detention. Non-secure detention facilities, while designated as “non-secure,” are locked facilities. Each facility has the capacity to house twelve detained youth.⁴ Prior to the COVID-19 pandemic, youth in non-secure detention were taken to one of two specially designated schools outside of their facility. Youth are no longer transported to school, and remain locked into their housing facility, where they eat together, use common bathrooms and showers and spend their time together in common areas.

Three groups of youth are housed in the ACS DYFJ Crossroads Juvenile Center, located in Brooklyn: youth prosecuted in Family Court (“JDs”), youth charged with crimes at age 13-15 who are prosecuted in criminal court (“juvenile offenders” or “JOs”), and youth charged with crimes at age 16 or 17 (“adolescent offenders” or “AOs”). The Horizon Juvenile Center in the

² <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2019/LL44DDRFY19.pdf>

³ <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2019/LL44CTHDRReportFY19.pdf>

⁴ 9 NYCRR § 180-1.3(D)(3).

Bronx houses adolescent offenders and pre-Raise the Age youth who were moved from Rikers Island.. as well as available space for youth in detention and placement who exhibit COVID symptoms.⁵

In addition to detention, ACS DYFJ is responsible for and oversees the “Close to Home” placement facilities where adjudicated JD youth are placed by the New York City Family Courts. Like non-secure detention, ACS DYFJ contracts with not-for-profit agencies who operate the placement facilities, both non-secure and limited secure. In recognition of the dangers that COVID-19 presents in congregate residential settings, the City has made concerted efforts to reduce the number of youth in placement by releasing some youth to aftercare with services and supports. Others were released home on extended visits. Keeping as few youth in congregate care facilities is critically important in order to protect them from harm.

COVID-19 Is Dangerous, At Times Deadly to Youth

COVID-19 harms children as well as adults. Like adults, children with underlying health conditions face a higher risk for serious illness from COVID-19.⁶ Such underlying conditions include: moderate to severe asthma, heart conditions, diabetes, chronic kidney disease, liver disease, cancer, immunocompromise, and severe obesity. While the full consequences of COVID-19 infection are unknown, they can be long-lasting and severe, including permanent loss of respiratory capacity and damage to other vital organs. Patients with serious cases of COVID-19 require advanced medical support, including treatment in intensive care units. Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive

⁵ In New York City, all 16 and 17 year olds were moved from Rikers Island to Horizon Juvenile Center prior to October 1, 2018. N.Y. Corr. Law § 500-p.

⁶ <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Higher-Risk>.

rehabilitation from neurological damage and loss of respiratory capacity. There is no vaccine, no approved course of treatment for patients infected with COVID-19, and an asymptomatic person infected with the virus can transmit the virus to others.⁷

Though scientists have learned much about COVID-19 in recent months, they continue to be confounded by it. Initially, COVID-19 appeared to pose a less serious risk to children than adults, however, new health advisories regarding Pediatric Multi-System Inflammatory Syndrome (PMSIS), a syndrome believed to be associated with COVID-19, provide a new basis for alarm.⁸ PMSIS results in children presenting with symptoms consistent with toxic shock and Kawasaki's disease, including persistent fever, abdominal symptoms, rash, and cardiovascular symptoms requiring intensive care.⁹ As of May 14, 2020, New York State was investigating over 100 cases where children, predominantly school-aged, were experiencing significant inflammatory complications from COVID-19.¹⁰ At least 17 states, including New York, as well as other countries are reporting cases of PMSIS. COVID-19 has taken the lives of three children in New York State to date, while two more deaths are under investigation.¹¹

⁷ See CDC Clinical Questions about COVID-19: Questions and Answers, available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html#Transmission>.

⁸ *Health Advisory: Pediatric Multi-System Inflammatory Syndrome Potentially Associated with Coronavirus Disease (COVID-19) In Children*, https://www.health.ny.gov/press/releases/2020/docs/2020-05-06_covid19_pediatric_inflammatory_syndrome.pdf, Department of Health, (May 6, 2020).

⁹ *Id.*

¹⁰ *Amid Ongoing COVID-19 Pandemic, Governor Cuomo Announces New York is Notifying 49 Other States of COVID-related Illness in Children*, <https://www.governor.ny.gov/news/amid-ongoing-covid-19-pandemic-governor-cuomo-announces-new-york-notifying-49-other-states> (May 10, 2020). Elizabeth Kim, *NY Health Officials Caught Off Guard By New Childhood Illness Linked To COVID-19*, https://gothamist.com/news/ny-health-officials-caught-guard-new-childhood-illness-linked-covid-19?mc_cid=1907ec5984&mc_eid=bda5d0039c, The Gothamist (May 11, 2020).

¹¹ *Id.*

NYC's Juvenile Detention and Placement Systems Put Youth At Risk of Harm From COVID-19

The recommended strategies for preventing and mitigating the risk of COVID-19 infection include social distancing, testing, supplying preventive protective equipment, enhanced cleaning and hygiene, contact tracing and isolation/quarantine. These strategies are virtually impossible to impose in detention and placement facilities. Much like jails, by physical design, juvenile detention and placement facilities house multiple youth in close quarters, with shared dining rooms, common recreational areas, and communal bathrooms and showers. Residents share facility computers, phones, utensils, and recreational equipment, among other objects. In non-secure detention and non-secure placement, youth may be sharing bedrooms still. The implementation of remote learning in facilities has meant youth spend almost all of their time, with the exception of meals and recreation, on the housing unit. While this may limit the youth's contact with other youth, it makes social distancing even more difficult.

New youth are admitted into the facility regularly, and, absent active symptoms, are immediately housed with other youth. In addition, the facilities are staffed by rotating shifts of workers during multiple tours who commute from heavily affected neighborhoods across the city, many of whom travel by public transportation.¹² All of these factors combine to create unduly dangerous conditions in juvenile detention and placement facilities. With a low census of youth, ACS should be able to house fewer youth in each housing area. Absent mandatory and prompt testing to ensure that youth who may be in the incubation period of the virus or asymptomatic

¹² Michael Fitzgerald, *Foster Care Workers Face Coronavirus Risk With Uncertain Hazard Pay*, https://chronicleofsocialchange.org/news-2/foster-care-coronavirus-covid-hazard-pay-testing/43249?utm_medium=email&utm_source=govdelivery, The Chronicle of Social Change (May 11, 2020).

carriers are not exposing other youth and staff,¹³ the only solution is for NYC to take all steps possible to reduce the number of youth held, to hold youth in as sparsely populated units as possible, and to provide adequate personal protective equipment and rigorous cleaning. While the City has taken some steps in this direction, more must be done.

Not surprisingly, youth and staff in juvenile detention and placement have already become sick with COVID-19. While there is no comprehensive testing of youth or staff, nor comprehensive reporting, we know that by early April, at least 5 youth had tested positive in detention. In addition, as of late March/early April over 40 secure detention staff had tested positive or were symptomatic for COVID, including one death of a case manager at Crossroads. At least three youth in three different placement facilities have also tested positive for COVID-19. We urge ACS to evaluate each youth in placement and make every effort to get these young people home with proper supports. We continue to press for the release of more youth from detention. We further urge the City Council to require regular reporting of data on youth and staff who have tested positive and updates on implementation of critical health and safety measures.

The Legal Aid Society's Writ on Behalf of Detained Youth

Due to COVID-19 related safety concerns, in late March, The Legal Aid Society filed a writ of *habeus corpus* in New York County Supreme Court on behalf of certain JD youth in both secure and non-secure detention asking for their immediate release. In addition to release, we sought to ensure that JD youth remaining in detention are held in safe and appropriate conditions. We called on ACS to decrease the density of its housing areas; increase telephone and video access

¹³ *Coronavirus: Are Asymptomatic Still Capable of Spreading COVID-19?* Independent. Available at <https://www.independent.co.uk/life-style/health-and-families/coronavirus-symptoms-asymptomatic-covid-19-spread-virus-a9403311.html>.

with family and friends; provide confidential access between attorneys and clients; and provide youth with adequate education, programming and recreation supports under shelter in place.

At the hearing on the writ, ACS staff testified that they lacked adequate personal protective equipment, there was little to no contact tracing, and cleaning and social distancing were inadequate in the facilities. Other problems revealed through testimony included the lack of quarantine for newly admitted youth, the failure to engage in methodical testing or symptoms monitoring of youth and staff, and the failure to engage in adequate cleaning of congregate bathrooms and transport vans.

Although the judge denied the writ, in his written decision he called for ACS's increased vigilance to further mitigate the COVID-19 risk in detention. Specifically, the Court called on ACS to implement the following --- (i) ensure that necessary personal protective equipment, including masks, are distributed to and worn by all staff members (even if asymptomatic); (ii) increase its oversight to ensure that instructions regarding social distancing are consistently and uniformly followed in all areas of the facility; and (iii) ensure that clearer guidelines, subject to rigorous oversight, are issued for the cleaning of the facility and transport vans. In addition, the court called on ACS to (a) ensure that detailed cleaning instructions and information are consistently disseminated to all institutional aides and temporary housekeeping individuals who are responsible for cleaning the facilities; and (b) clearly designate those individuals who are responsible for cleaning the Court Services' vans.

We have been told that ACS has provided PPE to staff and youth and that efforts are being made to consistently clean the facilities and provide soap to the youth, but encourage City Council to utilize its oversight function to ensure that all of the concerns raised by the Court have been addressed.

Confidential Communication With Arrested Youth

As lawyers for the youth in detention, we require confidential and timely access to clients in detention, especially in advance of and during virtual court appearances. Although ACS DYFJ has been working diligently to address this issue, it remains a challenge. While phones are available to youth on their halls in secure detention, these phones do not afford adequate privacy. They are in a relatively open space where conversations may be overheard by other residents or staff. At certain times set aside for court appearances and legal counsel calls, youth may also access a room with tele-visit video equipment that provides for private communications. At other times, ACS restricts use of this room to allow for calls to family. Given the logistical challenges, such as staff limitations and security concerns, legal staff are asked to make a reservation a day ahead of time and are told that this this space is not available at all on weekends, unless it is urgent in which case telephone, but no video access, may be arranged. Additional technology is required to ensure adequate, timely and confidential access. We continue to work with ACS DYFJ to address this issue.

Programming and Supports For Incarcerated Youth Must Be Maintained

The COVID pandemic has caused detained youth to be further isolated from family and community. ACS has suspended all in-person visitation between youth in detention and placement and their families. The suspension of all visits for youth in detention during this incredibly stressful period places them at risk of significant emotional harm. The vast majority of youth in the juvenile justice system have experienced trauma and suffer from mental health disorders.¹⁴

¹⁴ According to the Vera Institute, in 2014 “approximately 85 percent of young people assessed in secure detention intake reported at least one traumatic event, including sexual and physical abuse, and domestic or intimate partner violence. Furthermore, one in three young people screened positive for Post-Traumatic

Family engagement and visitation are “essential” to the protecting the emotional well-being of incarcerated youth.¹⁵

In order to enable family contact, ACS DYFJ and its contract agencies have taken steps to provide telephones and data to some family members and clients to facilitate visitation. We urge that the City ensure that all families have access to the technology necessary to remain connected to their incarcerated children. Technological resources should be seen as an essential tool to facilitate communication and should be maintained even after in person visitation is resumed. Increased family engagement and communication can reduce the trauma to a young person in detention and placement and can help preserve and nurture familial relationships. This technological fix is a major step forward and should continue once the crisis is over.

The pandemic has also caused an interruption in the provision of services and programming for youth in custody. For the past nine weeks, youth attending school through Passages Academy have had no opportunity to communicate directly with teachers. They have been receiving work packets, but they have been unable to ask questions and receive instructional support from a teacher. Placement agency staff members have tried to assist youth with their assigned work, but they are not teachers and cannot be expected to play that role. We have been told that Passages is working to put together a system to provide youth with teacher access, but we have not received confirmation that a system is in place yet. This must be done immediately

Stress Disorder (PTSD) and/or depression.” https://www.vera.org/downloads/Publications/innovations-in-nyc-health-and-human-services-policy-juvenile-detention-reform/legacy_downloads/transition-brief-juvenile-detention-reform.pdf at 12. See also, <https://www.nctsn.org/trauma-informed-care/trauma-informed-systems/justice/essential-elements>

¹⁵ Recommendations for Youth Justice Systems During the COVID-19 Emergency; <https://yclj.org/covid19statement>.

In addition, other programming has been restricted. For example, the Summer Youth Employment Program has historically provided many youth with an opportunity to have paid employment and develop critical skills and experience. We encourage the City Council to ensure that this important program continues. In addition, we recently learned that at least one Close to Home placement is currently not permitting youth outside at all. The shelter in place orders notwithstanding, youth need to have access to outdoor space to exercise and get some natural light and fresh air. Twenty-four hour confinement can only add to heightened stress and anxiety.

The Need For Timely Action In Juvenile Delinquency Cases

We are deeply concerned that the NYC Family Court is adjourning cases in which youth charged as juvenile delinquents are remanded for excessively long periods of time. This deprives youth of fact findings and disposition of their cases, which would then allow the implementation of services they require to begin rehabilitation. Instead, these youth are left to languish in detention. In addition, other youth are subjected to extended surveillance in alternatives to detention, overwhelming these services, while awaiting prosecution of their cases. We believe these adjournments violate the Family Court Act and constitutional protections and urge the City Council to advocate with the Administrative Judge to ensure JD youth's cases are timely heard.

CONCLUSION

We thank you for holding this hearing in order to address this important topic during this difficult time. We look forward to continuing to work with the City Council.

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New York City Council

**Committee on Criminal Justice and Committee on the Justice System
Joint Hearing
May 19, 2020**

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

T2020-6175: A Local Law to amend the New York City charter, in relation to adding a new section creating a local conditional release commission.

T2020-6183: 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.

T2020-6184: 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.

**Testimony of The Legal Aid Society
Special Litigation Unit and
Prisoners' Rights Project**

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The Legal Aid Society thanks Chairman Powers, Chairman Lancman and the members of the Committees for holding this hearing on the COVID-19 pandemic. Today's hearing addresses the extraordinarily dangerous role that incarceration plays in spreading this deadly virus throughout our City, especially in communities of color, and the urgent measures we must take address that threat. Simply put, when it comes to COVID-19, there is no more dangerous place to be in New York than the City's jails.

Many healthcare and correctional workers have been working ceaselessly, at great personal cost, to respond to this crisis. We call on the City to support these workers with modern and proper equipment, safe working conditions and responsive leadership. But their efforts alone cannot contain the pandemic in the failed state that is our City jails. It will take the concerted action of all City stakeholders to implement the carceral and public health protections needed to slow the spread of this disease and protect incarcerated people and jail workers, and their families and communities.

To these ends, we **support** the three bills being heard today as concrete steps towards a solution. In particular, we note the importance of T2020-6183, which seeks to ensure that the public response to this crisis is rooted in facts and not conjecture. By providing for complete and accurate data to be made available the public and policy makers, this bill strengthens the foundation for all public policy decisions ahead.

In addition to passing these bills, the Council can exercise its oversight and moral authority to ensure that other City stakeholders move faster to ensure that more people are released from City jails and those who remain are treated with care. Below we provide specific recommendations for Council action.

Introduction: The Coercive Mission of Jails in a Pandemic

People held in the jails are particularly vulnerable during outbreaks of infectious disease not only because of the physical environment, which marries close proximity with poor ventilation, but also because of the profound constraints on self-help imposed by the coercive power of incarceration. The actions that public health authorities recommend we take to protect ourselves and each other – such as washing hands with soap frequently, seeking physical distance, and finding medical care if experiencing symptoms – are available to incarcerated people only with the overt assistance of their jailers. Nor do incarcerated people have any choice over who comes or goes from their living quarters, whether it is fellow incarcerated people or the rotating shifts of an extremely large workforce.

Compounding the problem in our City is the neglected and outdated physical condition of the jails themselves, the appalling recent record of violence by correctional staff, and the persistence of an “occupational ideology [that] runs counter to modern and professional correctional practice.”¹ A jail system in which staff are “often hyper-confrontational and respond to incidents

¹ *Eighth Report of the Nunez Independent Monitor (“Eighth Report”) in Nunez v. City of New York et. al.*, 11-cv-5845 (LTS) (SDNY), filed October 28, 2019, at 4.

in a manner that is hasty, hurried, thoughtless, reckless, careless or in disregard of consequences”² is a particularly dangerous setting in which to confront a pandemic.

What You Don’t Know Will Kill You: COVID-19 Prevalence in the City Jails and the Critical Importance of Data Transparency

It is not possible to fix a problem that you do not understand. And even this far into a pandemic, the full extent of COVID-19 infection among the incarcerated people in the City jails remains unknown. While the Board of Correction publishes data about COVID-19 prevalence among clinical and correctional *staff*, it does not similarly publish the prevalence among *incarcerated people*.³ The public presentation thus juxtaposes two separate infection measures: the cumulative *total* number of staff afflicted with the virus, but only the *non-cumulative* number of incarcerated people similarly affected, on any given day.

As of May 14, 2020, the Board of Corrections reported that there were, at that time, 362 currently incarcerated COVID-19 patients. However, this number, by definition, does not include any of the COVID-19 patients who have been released or transferred—a significant number given the fluidity of a local jail. Therefore, it is impossible to know the true number of infections that have occurred in DOC custody or the true rate of infection. We do not know how many people are leaving the facility with the infection, nor do we know where they are going. The information DOC currently provides is only a snapshot. It dramatically understates the extent of the problem and does not allow an accurate view of the past or future course of the pandemic.

Unless and until the City reports information about the *cumulative* numbers of people in custody with confirmed COVID-19; the criteria for COVID testing; and numbers of tests administered to the incarcerated population, the data we have risks obscuring the full extent of the outbreak within DOC facilities.

Moreover, CHS and DOC have published little if any data on the likely source or timing of infections among incarcerated people. We do not know whether any of the 362 current COVID-19 patients contracted the infection within the facility or prior to arriving. For those that contracted it within the facility, we do not know their housing area, nor work assignments. The data does include the number of people in quarantine units, i.e, the units where DOC is isolating people who are confirmed and symptomatic, or asymptomatic but likely exposed. But if the census in a confirmed symptomatic unit declines from one report to the next, is this because sick people were transferred, or recovered, and how many of each? Without the above kinds of information, there is no way to discern where or how the disease is spreading the fastest.

In addition, Legal Aid has received many reports from our clients that isolation protocols have not been properly observed, such by transferring people out of quarantine units well before the

² *Id.*

³ The New York City Board of Correction publishes daily data on this figure.

https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_5_08_2020.pdf.

CDC-recommended time, or by failure to isolate known or suspected cases in a timely manner. BOC should publish data on how long incarcerated people are spending at quarantine units to ensure that there is sufficient public oversight. While perfect knowledge about the individual contacts between all individuals is not possible, by the nature of their operations, corrections facilities are in a unique position to do contact tracing. They can learn in detail how, where and when their populations of incarcerated people and staff members are moving and interacting. The health authorities should use this valuable information and provide it to decisionmakers.

Jail populations are sicker than free populations. Because the health conditions that put people at risk for more severe illness from COVID-19 are overrepresented in the jail population, it is important for reporting also to include significant information connected to the severity of disease: number of hospitalizations, number of people placed on ventilators, number of people discharged from custody while hospitalized, and average length of stay in the hospital.

Requests:

The Council should pass T2020-6183 to help provide transparency and accountability during this and any future public health crisis that affects DOC facilities. This bill would appropriately require BOC to publish cumulative data about the total number of incarcerated people who have tested positive for COVID-19 since the beginning of the pandemic. The bill could be strengthened by adding metrics that would support better analysis of where and how the disease is spreading and what measures are effective, including (but not limited to):

- The number of people placed on ventilators, number of people discharged from custody while hospitalized, and average length of stay in the hospital;
- The length and severity of the illness for incarcerated people, and in particular what treatments or medical interventions are most needed;
- Information on the COVID-19 status of any people leaving DOC custody; and
- Information on how, when and where those people were infected, including:
 - Whether they were infected before or after entrance into the facility;
 - What housing units or work assignments they were assigned near in time to their tests; and
 - The reasons and timing of incarcerated people's admission to and transfer from quarantine.

The City Must Expand Its Testing Regime Beyond the Ineffective Symptom-Based Testing Systems in Place Now

Managing a captive population during a pandemic requires widespread if not universal testing for a disease that spreads as easily as COVID-19. Frequent, close contact with other people is unavoidable in a jail, and three correctional officer shift changes per day mean that new sources of contamination are constantly introduced. For that reason, a negative test result for an incarcerated person or a staff member cannot be considered reliable for very long; information about who has been infected must be frequently and diligently updated.

CHS and DOC currently use symptom-based systems for screening and infection management. The appearance of symptoms governs which intake facility takes a person in custody⁴ and whether staff is sent home or permitted to work.⁵ The BOC data reports that people are housed according to both testing and symptom statuses: “Confirmed Positives,” “Symptomatic,” and “Likely Exposed but Asymptomatic.”⁶

But evidence about how COVID-19 is transmitted shows that protections based on *symptoms* will be ineffective to control the spread of the virus because of the prevalence of people who are contagious before they show symptoms (presymptomatic transmission) or who never show symptoms at all (asymptomatic transmission).⁷ This characteristic of COVID-19 counsels an emphasis on measures not based on symptoms, like wide scale testing throughout the jail population and aggressive contact tracing.

Our understanding of CHS and DOC protocols, however, is that, as a matter of policy, testing is largely limited to two groups: new admissions and people exhibiting symptoms. Our clients report that when a person in their housing unit tests positive, the protocol from DOC is often just to remove the person and place the unit under “quarantine.” Even if that protocol was implemented with fidelity—which our clients report that it is not—it is unclear to us why the entire unit is not then tested for the virus as a form of aggressive contact tracing.

The reported number of infections thus likely undercounts the true prevalence of COVID-19 cases because of the lack of comprehensive testing. If the City were to undertake widespread testing, there is reason to believe that the number of diagnosed infections would skyrocket. In the federal prison system, for example, more than 70% of inmates who have been tested have tested positive.⁸ Montgomery County, Pennsylvania found after testing each of member of its incarcerated population that infection rate was 30 times greater than that reported before mass testing. A prison in North Carolina similarly found a rate almost 40 times greater. In both facilities, this spike was in large part due to the number of infected inmates who have been asymptomatic.⁹ The lack of mass testing in the NYC jail system is likely to be a serious impediment to management of the crisis.

⁴ DOC Presentation at May 12 BOC Meeting, *supra*, p. 17.

⁵ *Id.* at p.20.

⁶ *Daily Covid-19 Update, Friday, May 15, 2020, supra*, p.3

⁷ See Mandavilli, Apoorva. *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, The New York Times (March 31, 2020), <https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html> (quoting a warning from CDC director Dr. Robert Redfield that as many as 25% of people infected with COVID-19 may not show symptoms); Presymptomatic Transmission of SARS-CoV-2 — Singapore, January 23–March 16, 2020. *MMWR. Morbidity and Mortality Weekly Reports*, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6914-H.pdf> (study indicating that “[t]he potential for presymptomatic transmission underscores the importance of social distancing, including the avoidance of congregate settings, to reduce COVID-19 spread”).

⁸ Michael Balsamo, Over 70% of tested inmates in federal prisons have COVID-19, AP News (Apr. 29, 2020), <https://apnews.com/fb43e3ebc447355a4f71e3563dbdca4f>.

⁹ *United States v. Pabon*, No. CR 17-165-1, 2020 WL 2112265, at *4 (E.D. Pa. May 4, 2020).

Requests:

- The Council should inquire with CHS and DOC about the operations relating to scale of testing, and contact tracing.
- Bill T2020-6183 appropriately requires BOC to publish data on the daily number of positive, negative, and pending tests. The bill could be strengthened by mandating that the reports are broken down by facility and housing area and census of that area on the day of the test, and mandating testing for all people in the facility, as often as changes in circumstances require.

The Ongoing, Urgent Need to Release Medically Vulnerable People from the City Jails

Notwithstanding the steps the Department of Correction (“DOC”) has taken to attempt to address the COVID-19 pandemic, which we discuss in more detail below, the virus continues to spread in the City’s jails and the situation remains a crisis. On March 20, 2020, there was only one confirmed case of a resident with a positive COVID-19 diagnosis.¹⁰ Just one day later, on March 21, 2020, the New York City Board of Correction (“BOC”) reported that at least 21 people in the jails had tested positive for the virus, along with twelve DOC employees and five Correctional Health Services (“CHS”) employees.¹¹ The percentage of incarcerated people testing positive has ranged between 9% and 10% of the total jail population since April 17, giving the jails a rate of infection between four and eight times higher than the rest of New York City.¹² Cumulatively, 1,529 DOC and CHS staff have contracted the virus.¹³ Already, there have been at least three tragic deaths of incarcerated people due to the spread of the virus in the City’s jails and dozens of corrections officers and jail staff have died.

Certain populations – those over the age of 50 and those with specific underlying medical conditions – are particularly vulnerable to serious illness and death from COVID-19. The highest risk populations face a fatality rate as high as 15 percent. The mortality rate for people of any age with cardiovascular disease, diabetes, hypertension, chronic respiratory disease, chronic liver or kidney disease (including hepatitis and dialysis patients) and compromised immune systems (such as from cancer, HIV or auto-immune disease) are significantly elevated. Preliminary research from China suggests that people aged 50-59 face a mortality rate nearly three times higher than people under the age of 40; people aged 60-69 have a mortality rate 18 times higher; the rate is 40 times higher for people aged 70-79 years old. Even if a COVID-19 infection is not

¹⁰ Chelsia Rose Marcus, *Rikers Island inmate has contracted coronavirus: officials*, N.Y. DAILY NEWS (Mar. 18, 2020), <https://www.nydailynews.com/coronavirus/ny-coronavirus-rikers-island-inmate-tests-positive-20200318-gf3r7q4cefaxzlqmwrmuevzz3y-story.html>.

¹¹ Jacqueline Sherman, Interim Chair of NYC Board of Correction, letter, Mar. 21, 2020, *available at* <https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf> (last visited Mar. 22, 2020).

¹² https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/BOC%20Board%20Update%20-%20COVID-19_5.11.2020.pdf (last visited May 18, 2020).

¹³ <https://www1.nyc.gov/site/boc/covid-19.page> (last visited May 18, 2020).

fatal, it can often require highly specialized care for people over the age of 50 and result in longstanding medical complications, including permanent loss of respiratory capacity, damage other vital organs including the heart, kidneys and liver, and neurological damage.¹⁴

For this reason, correctional public health experts – including leading doctors from New York’s own correctional health system – and the Board of Correction have pressed for the release from custody of vulnerable people. On March 17, 2020, the BOC called on New York City to “immediately remove from jail all people at higher risk from COVID-19 infection” including “[p]eople who are over 50; [and] [p]eople who have underlying health conditions, including lung disease, heart disease, diabetes, cancer, or a weakened immune system” and to “drastically reduce the number of people in jail right now and limit new admissions to exceptional circumstances.”¹⁵ On March 21, 2020, BOC issued a second advisory, urging judges and prosecutors to act quickly to release more people, and concluding that, based on having “closely monitored Rikers Island and the borough jails for over sixty years” that “*DOC’s and CHS’s best efforts will not be enough to prevent viral transmission in the jails.*”¹⁶

The failure to aggressively decarcerate the City’s jails is a human rights failure, showing inhumane disregard for the lives of people we place in cages. It is also a public health failure. A recent epidemiological study commissioned by the ACLU and carried out by researchers from three major universities indicates that — even if communities across the United States continue practicing social distancing and following public health guidance — we will still experience much higher death rates if no substantial action is taken to reduce jail populations, because jails acts as vectors for disease spread into surrounding communities, many of which – as in New York – are already experiencing disproportionate rates of illness from COVID-19.¹⁷

¹⁴ *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, World Health Organization (Feb. 28, 2020), at 12, <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>; *Age, Sex, Existing Conditions of COVID-19 Cases and Deaths Chart*, <https://www.worldometers.info/coronavirus/coronavirus-age-sex-demographics/>; Wei-jie Guan et al., *Comorbidity and its impact on 1,590 patients with COVID-19 in China: A Nationwide Analysis*, medRxiv (Feb. 27, 2020), at 5,

<https://www.medrxiv.org/content/10.1101/2020.02.25.20027664v1.full.pdf>; Fei Zhou et al., *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*, *Lancet* (March 11, 2020), tb. 1, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext); *Characteristics of an Outbreak of 2019 Novel Coronavirus Diseases (COVID-19) — China, 2020*, *China CDC Weekly*, 2020, 2(8): 113-122, at <http://weekly.chinacdc.cn/en/article/id/e53946e2-c6c4-41e9-9a9b-fea8db1a8f51>.

¹⁵ Press Release, N.Y.C. Bd. of Corr., New York City Board of Correction Calls for City to Begin Releasing People from Jail as Part of Public Health Response to COVID-19 (Mar. 17, 2020), <https://www1.nyc.gov/assets/boc/downloads/pdf/News/2020.03.17%20-%20Board%20of%20Correction%20Statement%20re%20Release.pdf>.

¹⁶ Jacqueline Sherman, Interim Chair of NYC Board of Correction, letter, Mar. 21, 2020, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf> (last visited Mar. 22, 2020).

¹⁷ <https://www.aclu.org/report/flattening-curve-why-reducing-jail-populations-key-beating-covid-19>

Nonetheless, today many hundreds of elderly and medically vulnerable people remain incarcerated in the City’s jails where they face the risk of life-threatening exposure to COVID-19. The population of the City’s jails has dropped significantly, a development that represents meaningful progress and should be celebrated. But – as correctional medical professionals have warned for months – it is simply not enough. The Council should not mistake progress for a solution.

While many stakeholders in the criminal justice system have worked hard to release some people, other parts of the system have opposed releases that are necessary to protect medically vulnerable people and reduce the public health threat. For example, prosecutors’ offices – especially the District Attorney’s Office of New York – have aggressively opposed releasing even very ill people from Rikers Island, manipulating DOC’s lack of data transparency to suggest that COVID-19 is not a serious threat and making the spurious claim that jail is a safer place for medically vulnerable people than returning to their own communities. Unfortunately, judges across the city hearing emergency motions for the release of medically vulnerable people have often agreed with this claim, and many hundreds of people Legal Aid has identified as having serious medical conditions leaving them extremely vulnerable to death or long-term disability from contracting COVID-19 have been denied release.

Even those people who are legally freed from DOC custody don’t get out when they should. This is because DOC’s byzantine, bureaucratic, and often callous policies delay both court-ordered release and release on bail.

Speaking to unacceptable delays in bail release, Speaker Johnson said in 2019, “no presumptively innocent New Yorker should spend a single minute in jail unnecessarily, but they are because of our system’s inadequacies.”¹⁸ This is even more true during the pandemic. Yet even after courts order our clients released on writs of habeas corpus, DOC frequently holds our clients for not just additional minutes, but hours or even days after these writs are granted.

The Council has already legislated to combat the delay in release with the passage in 2017 of Local Laws 123, 124 and 125.¹⁹ These laws require, among other things, that bail payments be made widely-accessible for communities through bail payment windows, bail facilitators, and online bail payment options.²⁰ The purpose of these laws was to prevent DOC from holding presumptively innocent people in jail for any amount of “extra” time.²¹

¹⁸ Rocco Parascandola and Thomas Tracy, “Posting bail in New York is too hard — and Correction Department ignores 2017 law meant to make it easier, City Council report says,” *New York Daily News*, Mr. 31, 2019, available at <https://www.nydailynews.com/new-york/nyc-crime/ny-council-report-blasts-department-correction-bail-system-20190331-6m6724usq5dr5pts6n3va2yvem-story.html>

¹⁹ New York City Council Local Law 123.

²⁰ *See* Local L. 123, sec. 1(c); Local L. 125.

²¹ *See* The Council of the City of New York, Oversight and Investigations Unit, Report: An Investigation Into the Difficulties with Posting Bail in New York City (March 2019), *available at*: <http://council.nyc.gov/wp-content/uploads/2019/04/FINAL-DOC-Report-3-30-19-1.49PM.pdf> [Council Bail Report].

Unfortunately, according to a Council report issued in July 2019, DOC largely does not comply with these laws--leaving people who pay bail in jail for many hours, if not days, beyond the three-hour limit.²² In fact, DOC “routinely fails to release people who post bail within a three-hour window mandated by city law,” according to data collected by the Council and defenders.²³ DOC’s prolonged detention of people who should be freed, these reports found, was due to inaccessible cash payment locations,²⁴ lack of functionality of online bail payment,²⁵ and DOC’s administrative “paperwork” delays.²⁶

The administrative delays reported in 2019 paint a particularly maddening portrait of DOC’s byzantine process for release. The Council report details the long and “unnecessarily complicated” journey that individual pieces of paper must make from courthouse, to facility, to housing unit.²⁷ It also described instances of advocates being forced to “rely on intervention by personal contacts at DOC, MOCJ, and UCS to prevent their clients from unnecessarily spending the weekend in custody.” These findings led the Council to direct DOC to “modernize its communication systems” and “upgrade” its administrative process for release.²⁸ It also directed DOC to provide regular reporting and audits.²⁹

Yet little has changed. What in ordinary times is a frustrating and distressing injustice becomes, during the pandemic, a public health crisis not just for our clients and their families, but for the entire city. To paraphrase Speaker Johnson, no New Yorker should spend a single minute in jail unnecessarily during the COVID-19 pandemic, but they are because of our system’s inadequacies.

During the past three months, we have tracked data on release times for people who were granted release specifically because of the COVID-19 risk. This group includes people whom the Mayor’s office agreed to release on work release, whom the City DAs’ office agreed to re-sentence, and people granted habeas corpus relief because they are so medically vulnerable that their continued detention violates the constitution. These delays, we have found, are mostly due to DOC procedures that show disorganization, inflexibility, and deliberate indifference to our client’s lives.

²² *Id.*

²³ David Brand, *NYC jails violate the law by holding people hours after posting bail, report finds*, Queens Daily Eagle (May 10, 2019), available at <https://queenseagle.com/all/bail-fail-hours-after-posting-bail-report-nyc>. See also The Bronx Freedom Fund and Decarceration Project, *Implementation of New York City Council’s Local Law 123 2019 Mid-Year Report* (May 2019), available at https://www.legalaidnyc.org/wp-content/uploads/2019/07/BFF_LAS_Release_Time_Report_Jan-June_2019.pdf [Defenders Bail Report].

²⁴ See Council Bail Report, pp. 7, 27.

²⁵ See Council Bail Report, pp. 8, 35.

²⁶ See Council Bail Report, pp. 37-40.

²⁷ See Council Bail Report, pp. 37-38.

²⁸ See Council Bail Report, p. 49.

²⁹ See Council Bail Report, p. 49.

Several of our clients were held for prolonged periods due to DOC's rigid adherence to unannounced paperwork requirements. Here are two examples:

In one instance, our medically vulnerable client was serving a short misdemeanor sentence on Rikers Island. The Bronx District Attorney's Office agreed to his re-sentencing to an amount of time that would secure his immediate release. But his release was delayed by *five days* because, according to DOC, his paperwork did not contain the words "revoked" next to his original sentence. Corrections officers we spoke with agreed that the intent of the paperwork sent from the court was that this man should be released, but said that he could not be freed until the court put these specific words on the paper. No one contacted anyone at Legal Aid to alert them of the issue once our client's paperwork came in; instead, this man was simply left to be imprisoned until his attorneys, on their own, discovered the issue and followed up.

Another client was granted a writ of habeas corpus because, according to the judge, he was "high risk" of death if he remained at Rikers. But despite the Court's clear language that this man should be released immediately, DOC would not let him go, claiming the order is invalid because it did not contain sufficiently precise language. Again, DOC did nothing to contact the court, prosecutor or this client's attorney.

DOC's procedures for receiving release orders also continue to be overly complex and frustrating. At least two of our clients were detained for more than 48 hours because, even though the judge e-mailed orders directing their immediate release, DOC would not accept them because they were not properly signed and sent from the clerk of court. Again, DOC did not so much as reply to the judge's e-mailed orders, instead leaving it to counsel to navigate a maze of phone calls and emails with DOC officials to figure out what was keeping our clients in jail. And oftentimes we don't even know why our clients' release under these circumstances are delayed, just that it frequently takes several calls and emails just to figure out where our client's paperwork is and why it hasn't timely reached the appropriate facility.

This is not to say that bail problems also aren't persistent during the pandemic--they surely are. One client was held in for almost a week, despite paying bail, because the "bail pay" option on the DOC website was not working. Just like the Council observed in 2019, it took correspondence with MOCJ and DOC general counsel to finally get this woman released. Another client's release was delayed more than a day due to problems with the online bail payment system. When our office asked DOC the reason for the delay, we were told that the employee who enters the "code" for online bail was not in; apparently, the absence of a single employee caused our presumptively innocent client to be held not just minutes, but hours, after he was supposed to be released. And, with courts largely closed and social distancing orders in place, access to in-person bail payment is even more difficult for our clients than ever before. This makes it even more important that DOC immediately fix its broken online bail payment process.

Requests:

- The Council should join BOC and correctional medical professionals in calling for the release from City jails of *all* people over the age of 50 or with CDC-identified medical vulnerabilities.
- The Council should exercise greater oversight of prosecutors' policy objections to the release of medically vulnerable people from City jails, hold them accountable for spurious and inhumane claims that Rikers is safe, and call on them to facilitate the release of more medically vulnerable people.
- The Council should expand Local Laws 123, 124 and 125 to include not just bail, but also all release orders, so that medically vulnerable New Yorkers do not sit in jail any longer than needed.
- The Council should audit release times for all people who paid bail, were released on work release, or on court order from the beginning on the City's pandemic response through the present.
- The Council should direct DOC immediately to increase staffing for processing release orders, including having a person permanently on staff to manage release delays, including online bail payment and resolving any questions about court-ordered release.

The Reality of Life in the Jails Precludes Social Distancing and Effective Sanitation

The only known ways to protect oneself from COVID-19 are keeping physical distance from others and frequently cleaning hands and anything they touch. Both the physical design of the City jails, and the nature of their operations which put people in intimate contact with each other, simply do not allow for the necessary degree of physical distance from other people nor sufficient cleaning of shared space. We describe some of the most significant areas for COVID-19 transmission here, but note that these risks exist throughout the facilities given the enormous amount of necessary movement -- for meal distribution, cleaning, staff assignment -- that heightens risks of cross-contamination.

Facility Intake Areas:

Every DOC facility has a high-traffic intake area (also called a "receiving room") which holds incarcerated people before their entry to or exit from the facility, or as a way station while they are moving within the jails. Intakes vary, but principally consist of large open "pens" -- communal rooms containing only a bench and open toilet and sink, with some also having smaller rooms or cells. While they were designed for short-term use, in practice DOC holds people in these intake areas for hours on end, and often many *days*.

The DOC intake pens are not fit for communal human habitation during this pandemic. There is no way to sanitize the benches and toilets, nor, in many of them, to afford adequate distance between people.

Requests:

- We ask the Council to obtain from CHS its infection management plan for each jail's intake area, including identification of which, if any, of the intake pens can safely hold more than one person, and what specific protocols incarcerated workers should use in cleaning the areas.
- We further ask the Council to monitor via the Department's video surveillance system whether the CHS protocols have been implemented.

Housing Areas

DOC housing areas were never intended to afford privacy or individual living quarters. Most people in custody are housed in dormitories with shared bathrooms; others sleep in individual small cells, with a toilet and sink, but by day share showers, dayrooms, chairs and phones. They rely on other incarcerated people and DOC staff for their meals, laundry, personal hygiene items, and sanitation. Their living areas are notoriously poorly ventilated.

Despite the reductions in population and huge excess of space in the jails, DOC housing areas remain too densely populated to provide minimal infection control. Only a dramatic reduction in the number of people living in each room, and a sanitation program the Department has never before implemented, could even begin to make these areas safe for habitation.

As a threshold matter, there is little information available to assess the density of housing areas within DOC facilities. The first public information, from a BOC report issued May 11, 2020, showed that of the 20 units observed in April, nearly half were "above 50% capacity."³⁰ We implore the City to provide the data behind this aggregate number: a dorm operating at 75% of capacity presents very different public health risks than a dorm operating at 15% of capacity.

The Department provided some additional housing density information in a May 12, 2020 BOC public meeting, citing housing densities ranging from 36% to 49% of capacity.³¹ But these averages provide little meaningful information about the health risks to people in custody. DOC provided no data about the occupancy rates in single-cell housing, which pose significant transmission risks to people in custody due to operational realities, discussed further below. Nor do these average occupancy percentages or ranges give the information needed to assess risk in *this* pandemic, which is measured by aerosolized viral particles and feet, if not inches—averages cannot provide information adequate to assess the threat.

³⁰ The New York City Board of Correction, *Monitoring COVID-19 Responses in New York City Jails, April 5 – April 16, 2020* (May 11, 2020), 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 (last visited May 15, 2020).

³¹ NYC Department of Correction, *DOC Presentation re: COVID-19 Preparedness and Response*, given at May 12, 2020 Public Meeting of the New York City Board of Correction, https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/May/May%202020%20COVID-19%20Preparedness%20and%20Response_5.12.20.pdf, p.7 (last visited May 15, 2020).

The Council must query of our public health experts whether the common measures of “social distancing” recommended for contact among strangers in the public provide the proper infection disease control for communal living. We all know, for example, to remain 6 feet away from one another to avoid contracting the virus through aerosolized viral particles and droplets expelled when we cough, sneeze, or speak. But as we learn more about COVID-19 transmission—especially indoors with subpar ventilation conditions³²—it becomes increasingly clear that protocols in the community do not provide enough protection in the 24-hour environment of a custodial setting. The space and protective measures that keep us safe in a passing encounter in a grocery store are not the same space and preventative measures necessary to keep us safe when we must sleep, shower, brush our teeth, defecate, wash our hands, sit on benches, use phones, and breathe together.

In any event, reports from our clients and monitoring from BOC raise questions about whether the Department is capable of following its own minimal protocols. For example, the Department asserted in the May 12 BOC meeting that telephones are cleaned every 30 minutes.³³ Our clients, however, have reported to us for weeks that phones are not being cleaned regularly and that they are forced to hold them with socks if they want to risk using them to access legal counsel, medical care through the new CHS telehealth system, or loved ones. When Board staff conducted monitoring of phone access and cleaning, they confirmed that holding phones with socks and other fabric was a “frequent” practice, and that of the 45 phone usages they observed, the phone was only cleaned 3 times prior to use.³⁴ The Board also reported troubling findings about social distancing. In an audit of 20 housing areas, Board staff observed social distancing failures in 50% of units observed.³⁵

Requests:

- The Council should obtain data on the census and capacity of all housing areas holding individuals.
- The Council should seek input from CHS and health authorities on the safe number of people who can live together in each housing unit in the City jails, and mandate compliance with these limits.
- The Council should ensure that the sanitation workforce—incarcerated people responsible for cleaning the jails--has full protective equipment.
- The Council should obtain information on cross-contamination in the jails introduced by meal delivery and sanitation workers moving from housing area to housing area.

Medical Isolation Units

³² Quia, Hua, et.al. *Indoor transmission of SARS-CoV-2* (April 7, 2020), Department of Mechanical Engineering and School of Public Health, The University of Hong Kong, <https://www.medrxiv.org/content/10.1101/2020.04.04.20053058v1.full.pdf> (last visited May 15, 2020). *Note: this study has not yet completed the peer review process, but due to the dynamic and rapid pace of the novel coronavirus, we felt it important to bring to the attention of the Council.*

³³ DOC Presentation at May 12 BOC Meeting, *supra*, p. 2.

³⁴ BOC COVID-19 Monitoring Report, May 11, p. 9.

³⁵ *Id.* at p. 6.

Much of the infrastructure that DOC developed for addressing contagious disease arose during the drug-resistant tuberculosis crisis of the 1980s. Then, pursuant to a court order obtained by our office in response to the City’s failure to provide adequate care, DOC constructed 140 respiratory isolation beds in the “sprungs”—temporary housing areas—in a Contagious Disease Unit of West Facility. These included very specific ventilation and construction systems to provide the necessary care. With the waning of the TB response and declining DOC population, these facilities were put to different uses, including *de facto* protective custody or *de facto* punitive segregation in violation of BOC standards.³⁶

At the start of the COVID-19 pandemic, the City stated the Contagious Disease Unit had a capacity of 70 beds.³⁷ We do not know how many beds were occupied before the pandemic, but in any event, this capacity was reached quickly. We understand that Correctional Health Services and DOC then created new isolation areas inside the recently-shuttered Eric M. Taylor Center, the former jail for serving misdemeanor sentences. We not know the total capacity of any of these units, nor their functional characteristics; their current occupancy; and whether they provide clinicians with the setting needed for disease management.

Request: We ask that the Council ascertain:

- The number of respiratory isolation beds fully operational and occupied and unoccupied in DOC today.
- The capacity of CHS and DOC respectively, to staff a contagious disease unit with appropriately trained staff.
- The number at which CDU admissions would exceed current staffing capabilities, and the plan for care at that point.

The Expertise of Correctional Health Services is Underutilized Because the Systems to Connect Clinicians and Patients are Broken

Our clients in the City jails are terrified, anxious and angry, and desperately want their doctor’s advice on what they can do to stay safe. Hundreds of clients have called us since the pandemic began and reported that the medical systems the City touts—telehealth, phones, posters—do not work in practice to connect incarcerated people and clinical staff. Collectively, they describe an overwhelmed system, and a sick call protocol that is not working.

There are many indicators of the increased stress on the system of medical care in the NYC jails. Individuals with chronic medical conditions and substance abuse needs unrelated to COVID-19 find those needs are neglected. In a well-intentioned effort to reduce movement within and among the jails, visits to specialists, physical therapy, dental care, and medication are diminished or stopped. For example, one individual held at OBCC who survived pancreatic cancer reported to us that he was informed that elevated antibodies in a blood test indicated that he should be

³⁶ See Board of Correction, Notice of Violation of Minimum Standards at West Facility, September 29, 2016, available at <https://www.politico.com/states/f/?id=00000157-8837-d9e5-a35f-e8bf11870000>.

³⁷ See <https://rikers.cityofnewyork.us/wp-content/uploads/Justice-Implementation-Task-Force-Materials-2018-03-16.pdf>.

seen by an oncologist. An appointment was made for March 23rd but it was canceled. He has left repeated messages on the sick call line but receives no response. He lately started experiencing symptoms associated with COVID-19, including body aches and loss of smell and taste, but as of April 30 he still had not been seen by a medical staff person.

Most critically, the need for mental health care during this difficult time continues to increase. While the jail population has reduced, the percentage of individuals in DOC custody receiving mental health care has risen to over 50%.³⁸ CHS is seeking to change its protocols for regular psychiatric checkups with much of this population from every two weeks to every eight weeks.³⁹ While measures to delivery services more efficiently are laudable, when the patient population is reporting great difficulty accessing care, reductions in doctor-initiated patient contacts during a crisis exacerbate fear and tension.

While CHS asserts that individuals who need and want care will receive it, our clients report that failures in a new sick call system belie those claims. This spring, DOC and CHS unveiled a new sick call system, a telephone number that incarcerated people are instructed to call if they need access to care and a separate number for mental health services. This “ telephonic sick call triage” is open during specified hours and is supposed to allow patients direct access to CHS nursing staff for consultation and to make appointments. If the caller does not reach a nurse they are told to leave a message. And, they are told, “in case of an emergency, please contact DOC.”

From what our clients report, these are not reliable avenues to obtaining care. Since telephone triage system began, we have received several reports each day from incarcerated people who say that no one picks up the line, and it hangs up on them without the opportunity to leave a message. For those who can leave a message, we have heard that it is rare to receive follow-up to those messages. During the week of May 4th through May 8th, we heard from individuals in OBCC, AMKC, GRVC and West Facility that the sick call line does not work. The cause of these problems is unclear; it might be staffing, it might be technical, it could be a failure to communicate between CHS and DOC, or a combination of issues. But the end result is that individuals are not receiving the medical attention that they need.

And even when the phone system operates properly, there is complete perversity in requiring people to contact their clinicians during this pandemic exclusively by *shared* handsets, in areas with phones fewer than 6 feet apart, with little or no cleaning between callers. We are surprised that public health experts would counsel their patients to touch such a device during a pandemic without the opportunity to disinfect it completely.

Request: We ask that the Council ascertain from CHS and/or DOC

³⁸ Board of Correction Daily Covid-19 Update for Sunday, May 17, 2020, available at: https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board-of-Correction-Daily-Public-Report-5-17-2020.pdf, at 2.

³⁹ Correctional Health Services’ request for renewed variances to Mental Health Minimum Standards, dated May 4, 2020, available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/May/CHS%20Variance%20Renewal%2020200504.pdf>

- Data on the calls being made, by facility, to the triage telephonic sick call line, including the number of completed calls (where the caller speaks to a medical professional), the number of messages left on voicemail and the number of calls that were dropped.
- Whether individuals who speak to nursing staff and request clinic appointments are subsequently seen in the clinic.
- The capacity for DOC to escort individuals requiring medical care who have made appointments through the telephonic line and whether, independent of this capacity, staff is escorting individuals to scheduled appointments.
- Whether, based on the call data and available nursing staff, CHS has the capacity to staff the telephonic sick call line, and whether the staffing and the hours of the telephonic line can be expanded.
- Whether there are technological means to address the problem of dropped calls and unavailable voicemail.
- A plan for medical and mental health staff to conduct rounds in units that do not have dedicated in unit medical staff, to follow-up on medical and mental health issues raised through the telephonic sick line.
- Auditing and documentation that Virex solution and other cleaning supplies are stocked in all housing areas, including near shared telephones.

Health Education is Desperately Needed in the Housing Areas

From every facility, we routinely hear from people whose questions about their personal health and safety go unanswered, or wrongly answered, by correctional or health staff. People do not understand why they are or are not tested; why they are housed in certain areas; whether symptomatic individuals will cause infection in the unit as a whole; and what they can do, or where they can go, if their living quarters are unclean. Moreover, they ponder these risks cut off from contact with their parents, children or loved ones, and worry constantly about family members they are not allowed to see or whose funerals they could not attend. While the response to the pandemic is necessarily dynamic, and represents new terrain for many of the correctional staff, the lack of community healthcare information in the jails is causing fear, confusion and distrust that will linger long after the virus is resolved.

It is abundantly clear that people in the jails desperately want and need patient education from credible messengers about the true facts of the pandemic, and what measures they can and should take to mitigate risk. Posters about hand-washing or admonitions from correction officers are no substitutes for community healthcare workers who can bring medical education to the patient population.

Request:

- The Council should fund and require community healthworker presence and education in the housing areas of the jails.

New Admissions to the City Jails Threaten Progress Made so Far Contain COVID-19

The reduction in the City jail population represents a significant positive step. The Council and other actors must watch closely for indications that the population will rise again, putting stress on all of the systems within the facilities and increasing the health and safety risks to people in custody and staff. This is happening already. From late March to mid-April, the number of new admissions to DOC per week ranged from 113 to 138.⁴⁰ Beginning in late April, however, that number began to rise and nearly double, with 241 new admissions in the week of May 3.

Week	New Admissions to DOC
March 22 – March 28	138
March 29 – April 4	122
April 5 – April 11	121
April 12 – April 18	113
April 19 – April 25	138
April 26 – May 2	209
May 3 – May 9	241
May 10 – May 16	234

There are many potential reasons that the number of new admissions to Department facilities is increasing, but one of those reasons is policing.

COVID-19 has disrupted nearly every aspect of everyday life in New York City. People, government and businesses have drastically modified their practices to limit physical contact, refrain from everyday activities, and prioritize actions that prevent community spread. The glaring exception to this rule is the NYPD. Police Commissioner Dermot Shea has steadfastly refused to adjust policing practices in light of the pandemic, despite a decrease in crime and a rapid increase of confirmed COVID-19 cases among police officers. Legal Aid continues to see clients accused of low-level crimes going through the system on a regular basis, and every day we see new admissions to the City jails for pre-trial detention. Over one-third of all custodial arrests continue to be for petty misdemeanors and non-violent felonies.

On April 8, Legal Aid sent a letter to Mayor DeBlasio and Commissioner Shea calling for Public health experts echoed the calls to refrain from aggressive policing in order avoid exacerbating the COVID pandemic, calling for limitations on police interactions for low-level or “quality of life” offenses and reductions in custodial arrests, including by increasing the use of verbal warnings, non-criminal citations, and appearance tickets for all low-level offenses and refraining from the criminalization of the failure to social distance. Public health experts echoed the calls to refrain from aggressive policing in order avoid exacerbating the COVID pandemic.⁴¹ Instead of

⁴⁰ Data taken from daily reporting from the Board of Correction at <https://www1.nyc.gov/site/boc/covid-19.page> (last visited May 15, 2020).

⁴¹ Medical Workers Letter re: Public Health Concerns on NYPD Spread of COVID19 Virus, April 23, 2020, available at https://www.changethenypd.org/sites/default/files/covid_policing_medical_letter_to_mayor_nypd_4-23-2020.pdf; Dr. D.L. Marshall and Abdullah Shihpar, *We Can't Police Our Way Out of a Pandemic*, NYT Opinion (April 7, 2020) <https://www.nytimes.com/2020/04/27/opinion/coronavirus-police.html>

responding to these calls for appropriately restrained policing, the Mayor and the NYPD used the pandemic and its requirement of social distancing as a platform for more aggressive policing, resulting in a spate of scandals in recent weeks with the release of videos showing violent police encounters and data demonstrating extreme racial disproportionality in enforcement.

The City Council should formally condemn these actions and join the calls for limitations on low-level police interactions, including but not limited to interactions stemming from the enforcement of social distancing rules. More generally, it should recognize that the NYPD's aggressive pandemic policing is a natural result of the City's weak system of police accountability and a lack of transparency surrounding the actions of the police department. The City Council should:

Requests:

- The Council should monitor changes in the jail population, and engage stakeholders through public hearings and otherwise to ensure that new admissions are reduced and reductions in the jail population are made permanent.
- The Council should pass a budget that puts community safety, not criminalization, first, by funding critical social services and decreasing the NYPD budget.
- The Council should pass the resolution in support of repealing Police Secrecy Law 50-a (Resolution 750).

Conclusion

We thank the Council for turning its attention to this critical public health topic. We look forward to working together to respond to this crisis, protect each other, and make New York a safer and fairer city.



New York City Council

May 19, 2020

Joint Meeting of the Committee on Justice System and Committee on Criminal Justice

Hearing re: Oversight – COVID-19 in City Jails and Juvenile Detention Centers

**Written Testimony of the Neighborhood Defender Service of Harlem
By Elizabeth Fischer, Managing Attorney of the Criminal Defense Practice**

Neighborhood Defender Service of Harlem (NDS) is a community-based public defender office that provides high-quality legal services. Since 1990, NDS has been working to improve the quality and depth of criminal and civil defense representation for those unable to afford an attorney through holistic, cross-practice representation.

From March, 2020 when the pandemic first hit New York City, we have been fighting through the courts for the release of as many of our clients from city jails and juvenile detention centers as possible in order to protect them and those who must remain from this too-often deadly disease. Our indigent clients, living in Harlem and upper Manhattan, as well as those incarcerated, are disparately impacted by the pandemic. For those who have not been released, we have witnessed the devastation COVID-19 has wrought on those incarcerated in the city's correctional system, speaking daily with our frightened clients and their families, and watching our incarcerated clients fall ill, one by one, and learning of their hospitalizations and in some cases, their deaths.

While the rate of infection and hospitalizations in New York City has slowed, we cannot forget that the situation in our city jails and juvenile detention centers is still critical. Our incarcerated clients do not have the privilege of social distancing and are often without masks, soap, hand sanitizer, cleaning products, and so are completely unable to take basic precautions. Our city jails take in dozens of new detainees every day. Each of these people who could unknowingly carry COVID-19 are placed into housing units with those already incarcerated. They share the same telephones and bathroom facilities, they eat at communal tables, and sleep in bunks two feet apart. Social distancing is an impossibility. Our clients continue to report that they lack items like soap and masks. Hundreds of Corrections Officers move in and out of these facilities daily and have unavoidably close contact with our clients. These Officers inevitably bring

COVID-19 into the facilities, and our clients report that Officers are not always wearing masks or regularly washing their hands. Essential precautions are not being taken, but due to the nature of jails even with all precautions taken those incarcerated in our city jails and juvenile detention centers will not be safe from COVID-19 until there is a vaccine.

Despite what we hear every day from our incarcerated clients about the alarming conditions and rampant spread of COVID-19 in city jails, prosecutors and DOC officials have continuously urged judges not to believe our clients' reports, claiming in arguments that defy logic that our clients are actually safer on Rikers and that infection rates are lower in city jails than in the community. We know, however, that DOC's numbers do not accurately reflect what is truly happening. Our clients report that they are not being tested, many even after experiencing symptoms, and therefore the number of COVID-19 positive cases is being drastically underreported. Several of our clients have also been hospitalized after being released, having contracted COVID-19 while in a city jail, but are not counted in DOC's official numbers. It is because of this lack of transparency and underreporting during the pandemic that Councilmember Powers' bill mandating DOC provide regular reports on matters such as the number of inmates tested and the number of deaths including those occurring after discharge is a crucial step toward addressing the spread of COVID-19 in our city jails and juvenile detention centers.

The need to further decrease the incarcerated population in jail and juvenile secure detention centers is urgent. The population of incarcerated individuals has decreased since the beginning of the pandemic, but housing units remain crowded, many medically vulnerable remain incarcerated, and the virus continues to spread. Attorneys at NDS and across the city have continued to bring the cases of clients who face increased risk of morbidity to the attention of the District Attorneys and judges, pleading for their release. Although some judges have responded appropriately to the risk COVID-19 poses for those detained and have released the medically vulnerable, Assistant District Attorneys and judges have too often dismissed or minimized the risk of death COVID-19 poses to medically vulnerable clients as though it were an excuse to get them out of jail. We saw how dangerous this dismissive and cynical attitude can be when a New York County Assistant District Attorney callously claimed that our client's diabetes and kidney disease did not place him at greater risk and then the judge refused to release him. After his release was denied, our client contracted COVID-19 on Rikers Island and later passed away from the virus. COVID-19 is not an excuse or a 'get out of jail free card' being played by scheming defense attorneys. It is an imminent and serious risk to each of our clients' lives every day that they remain incarcerated, and judges and prosecutors need to begin treating it as such.

It was because of judges' and prosecutors' reluctance to release our clients due to the rampant spread of COVID-19 in city jails and juvenile detention facilities that we were pleased to hear that electronic monitoring had become available on April 20, 2020 to allow for the release of additional pre-trial detainees. Upon learning of the new initiative coordinated by the Mayor's Office of Criminal Justice and the Sheriff's Department, our attorneys immediately began to ask prosecutors to consent and to make applications to judges to release our clients on electronic monitoring. Despite the availability of electronic monitoring units and timely applications by our attorneys, a month into the electronic monitoring program, we have been unable to get a single

client released on electronic monitoring. Indeed, as of the submission of this testimony, only 3 people have been released on electronic monitoring across all five boroughs.

This initial failure of electronic monitoring to secure pre-trial detainees' release has two primary causes. One is that the requirements for eligibility favor people of means--people who have largely been able to pay bail already and therefore are not in need of electronic monitoring to secure their release. The other is the refusal of judges and prosecutors to allow electronic monitoring and the mitigation of the risk of flight it offers, to have any impact on their determinations of who should be released during the pandemic.

It is our poorest clients from the most economically vulnerable families who are still stuck in city jails and juvenile detention facilities. Given the danger posed by COVID-19 to those incarcerated, even families with the most meager of resources have pooled together what financial resources they have to bail their family members out of jail wherever possible. Our clients typically exist on the margins of our economy. They often do not have permanent addresses or families who are able to provide a residence or a reliable telephone. The very things needed to make them eligible for electronic monitoring are unavailable to them. Under the electronic monitoring program as it operates now, clients who cannot show sufficiently stable housing or provide a phone number are rejected from consideration for electronic monitoring and potential release. Our cash bail system has already ensured that whether someone remains incarcerated pending trial depends solely on whether they are rich or poor, and the electronic monitoring eligibility requirements exacerbate this inequity. Rather than requiring that clients show they already have access to stable housing and a phone, the city should ensure that anyone being considered for electronic monitoring be provided with stable housing and a phone so that no New Yorker is rejected from consideration for release due to poverty.

Even when our clients do have the resources to be eligible for electronic monitoring, prosecutors have been unwilling to consent to release and judges have denied our applications for release on electronic monitoring. This refusal to consider release on electronic monitoring illustrates the need for prosecutors and judges to stop using pre-trial detention as pre-emptive punishment for the charged crime and instead to use it only for its intended purpose. The only lawful consideration in New York for assessing whether someone should be detained pre-trial is the risk of flight. Electronic Monitoring completely mitigates that risk. Through GPS in the ankle bracelet a client's location is monitored at all times. The court can set specific conditions for the Sheriff's Department to monitor, including home confinement, and the person on electronic monitoring can be re-incarcerated if they violate those conditions. Although courts are not allowed to consider dangerousness when considering release, electronic monitoring can ensure the safety of witnesses by monitoring that the client does not go near certain locations. Despite these assurances prosecutors and judges have been largely unwilling to consent to release with its use. If prosecutors and judges begin using pretrial detention only for its intended purpose of assuring a client's return to court, and not as punishment or as a tool to induce a client to plead guilty, there are very few people in our city jails who should not at least be considered for release on electronic monitoring.

In addition to pre-trial detainees, persons serving city jail sentences who have not yet been found eligible for conditional release should also be released with electronic monitoring. While many

non-violent offenders serving sentences in our city jails have been conditionally released, our clients sentenced for violent offenses, domestic violence offenses and sex offenses have been largely passed over. Many of these clients also suffer from medical conditions that make them highly vulnerable to COVID-19. The fact that these clients are serving city jail sentences means that their offenses and records were not severe enough to justify state prison sentences. They are also therefore not severe enough to justify the unnecessary risk of infection and death that incarceration in our city jails currently poses. We urge the city to grant all inmates currently serving city jail sentences conditional release and to use electronic monitoring wherever necessary to accomplish this goal. We support Councilmember Powers' bill to create a Conditional Release Commission for New York City and urge the Mayor to appoint to the Commission stakeholders representative of all sides of the legal justice system so that the Commission can achieve its purpose of releasing as many people as possible from our city jails and juvenile detention centers.

Lastly, in order to prevent the need for pre-trial and conditional release, we urge the city to be particularly cognizant at this time of the over-policing of poor neighborhoods of color and of the disparate impact this over-policing causes. As the weather warms up and youth spend more time outdoors in Harlem and the other neighborhoods we represent, we have seen the police presence on our streets increase dramatically. We cannot police our way out of this crisis. The over-policing of communities of color means that these communities that have already been hit hardest by the virus are hit even harder. A punitive response to the pandemic means that even more youth end up in the very city jail system we are trying to depopulate. Rather than surveilling our city's under-served youth, we need to provide them with safe resources and opportunities during the pandemic. One such opportunity that has an impact across the city on the lives of youth in poor neighborhoods is the Summer Youth Employment Program (SYEP). For years SYEP has provided valuable work and learning experiences to tens of thousands of disadvantaged youth. Now, with job and education opportunities even more severely limited by the pandemic, SYEP and similar programs are more necessary than ever to support our youth. Rather than putting money into over-policing and exacerbating already existing social inequities, money should be put into restoring SYEP and other opportunities for disadvantaged youth into the budget. We urge the City Council and the Mayor to fund pro social youth programs to engage young people, particularly once school ends for the Summer.

Testimony of Berenice Peck for New York City Council

Budget Hearing

May 21, 2020

Thank you for the opportunity to speak with you. My name is Berenice Peck, and I live in Queens. I am the mother of Andrew, a four-year-old preschooler who is diagnosed with autism.

During Andrew's IEP meeting in October, the DOE told me that Andrew needed a *full-day* preschool special education class and speech therapy. However, at the same meeting, the DOE told me there were no full-day, preschool special class seats available, so they could only place Andrew in a *half-day* special education class. I knew – and the DOE agreed – that a half-day class would not be enough to meet his needs. I wanted Andrew in the full-day class on his IEP.

Instead, he received no preschool special education instruction or services until April when the DOE finally began providing him with remote services. I am so frustrated that Andrew has had to go the entire year without the full-day class he needs. He has a legal right to this class. Andrew is four years old; yet he still can't use complete sentences and struggles to pronounce some basic sounds.

While parents of preschoolers are having a hard time with schools closed because of COVID-19, Andrew and other preschoolers with disabilities have been out of school all year because the DOE does not have enough preschool special education classes for the children who need them. I know that the early years are the most important for children with autism. It's not fair that my son had to go without the class he needs.

I'm asking the City Council to help children like Andrew by making sure that there is funding in the budget for preschool special education programs for every child who needs one. Andrew can never get this year back. But I want to make sure that no other preschooler has to wait months – or longer – for a seat in the preschool special education class they need. Thank you.

The Starfish Program was created by the Hepatology Division at Montefiore Medical Center and tasked with providing Hepatitis B awareness to the West African community in the Bronx. Educational seminars are conducted in churches, mosques and community organizations. To date, approximately 2500 West African people have been educated.

Among the last 9 sessions that were held, we reached a total of 550 individuals. 332 (60%) individuals requested testing, and 207 (62%) were screened. Of those screened, 24 (12%) were determined to be HBs Ag positive. A faith-based program included within a culturally sensitive educational outreach event is effective in promoting hepatitis B awareness and screening in the West African community. During the COVID 19 we were able to connect multiple positive patients who were vulnerable and could not reach their Doctors for their medication refills and other issues and others who needed support from us due to their loved ones once demised or on admission at the hospital for COVID 19.

Reaching patients during the Covid19 pandemic presented great challenges which we had to overcome. Patients were reluctant to come to the hospitals to get tested, they even stopped taking calls from their Doctors office for fear of being called in for their routine tests. All this information we got when we called them during our regular follow ups.

As a result of this, we had to work on reassuring them that it would not be necessary for them to come in and that they could communicate with their doctors via telemedicine and get their necessary prescriptions. In addition, we helped the uninsured obtain insurance coverage. We were also able to communicate with our patients who were outside the country and could not make it back due to the lockdown. They were able to continue care, and we assisted them in obtaining their medications.

We are also in the process of implementing a virtual communication platform. This is being done in conjunction with the religious leaders who have offered to share their platforms with us. Our last presentation which included 30 attendees, had 6 patients come in for testing just before the COVID 19 lockdown and had 3 patients test positive, emphasizing the urgent need for us to continue our outreach program.

As a result, the Viral Hepatitis initiative is very important to be funded all year across the nation.

To the Committee on Criminal Justice (Jointly with the Committee Justice System,

Hello, my name is Carley Callis and I am a resident of District 36 in Brooklyn, NY.

First, I want to thank the council for allowing this dialogue to exist digitally. As we make the necessary safety accommodations to protect each other from COVID-19, we must extend these efforts to our incarcerated population. I'd like to use my voice during this Committee on Criminal Justice, to demand our city joins our brothers and sisters on the grassroots level to decrease the population of our jails and prisons.

The safest way to ensure that any jail does not become a vector for COVID-19's spread is to reduce the number of people who are incarcerated. This is particularly imperative for anyone who a judge has already approved for release pending payment of money bail or anyone who would be released but for a technical parole, probation, or warrant violation. Release is also crucial for those who are elderly, immunocompromised, pregnant, medically fragile, or otherwise particularly vulnerable to COVID-19.

What Governor Cuomo has done on these efforts is not nearly enough. In addition to expediting the release of prisoners that fall within these conditions, our police force must prioritize citations and releases for people charged with misdemeanors and gross misdemeanors. Further more we must ensure care and hygiene for people who remain incarcerated. Journalists have revealed the inhumane and lethal conditions are imprisoned populations are enduring throughout this pandemic, and it is your responsibility to stop these atrocities.

Grassroots organizations like The Bail Project, Crisical Resistance and COVID Bail Out NYC should be uplifted and used by the city.

Pandemic times demand solidarity. Together we can use our power to ensure those in jail are not left behind as our city navigates the impact of this virus

Sincerely,
Carley Callis, District 36

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New York, NY 10036

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May 18, 2020

To the City Council:

I want to add my support for T2020-6175 for a conditional release commission, in-person on zoom or in writing, depending on your schedule. I think this is very important for three reasons:

- 1) I knew someone falsely accused of violence and acquitted 100% by jurors in a 10-day trial, but, because of the charges, he had to wait 14 months in Rikers Seven Main, one of the cellblocks with gang members and other charged with violence, where "social" distancing is almost impossible.
- 2) New York City, compared to other cities, has often modeled fairness to prisoners. By setting up a conditional release commission, today for covid19 and for hurricane flooding or whatever other reasons in the future, will encourage jails around the country to show compassion for prisoners.
- 3) Most inmates in NYC jails are accused but not yet convicted and there may be many innocent people as well as people who, if released during emergencies, would not be violent threats to the public.

After I saw how easily an innocent person can end up in Rikers for more than a year until jury and judge see evidence and acquit, I joined NYC Jails Advocacy Coalition because they take stands for fair treatment of inmates.

Tita Beal



May 22nd, 2020

Testimony of Bianca Tylek, Executive Director of Worth Rises

On Pre-considered Int. T2020-6184 - Maximum fee allowed when transferring money to a person in the custody of the department of correction

New York City Council Committee on Criminal Justice

Thank you Chair Powers and the New York City Council members for addressing the egregious fees which are currently associated with the transfer of funds into jail commissary accounts managed by the New York City Department of Corrections (DOC). Worth Rises is a national nonprofit that works to dismantle the prison industry and end the exploitation of those it touches. To that end, Worth Rises supports the attention to this issue, but respectfully finds it altogether absurd that New York City must pass a local law in order to come into compliance with what is already mandated through New York State law. New York City, as the shining city on an island, needs to and can be doing better in this moment of crisis and beyond.

New York City has allowed its vendors to violate state law. The New York Minimum Standards, which apply to every correctional facility in New York, state that facilities may charge "a service fee *not to exceed* \$5 per transaction."¹ The limit applies to *facilities*, and neither addresses the use of vendors nor asserts that the fee limit should be passed through to vendors. Accordingly, nothing in the regulation prevents the DOC from creating a lower limit for vendors or eliminating the fee completely. Moreover, the Minimum Standards are, after all, the *minimum* level of conditions allowed under the

¹ 9 NYCRR § 7016.2 (b) (emphasis added).

New York Constitution.² If New York City is going to live up its reputation, it must do more than the legal minimum to protect New Yorkers.

The COVID-19 pandemic has hit New York City harder than any other metropolis in the world.³ The DOC has done almost nothing to ensure safety measures for incarcerated New Yorkers throughout this pandemic. There is no such thing as social distancing at Rikers Island.⁴ People cannot sanitize food preparation, common areas, or even the phones they use to connect with family members, loved ones, and attorneys. The inhumane and deleterious conditions of Rikers are made exponentially worse by these realities.

As a result of these failures, the virus has spread wildly through New York City's jails, like it has through the Black and Brown communities and those with low income disproportionately supporting incarcerated loved ones. These communities are both made up of essential frontline workers in grocery stores and transportation and those experiencing layoffs, furloughs, and hunger at unforeseen rates. And the economic forecast for the City's residents is dire: The pandemic may lead to the worst recession since the 1970s fiscal crisis. The City's Independent Budget Office estimates that nearly a half million City workers will lose their jobs and that job levels are not likely to return to pre-COVID levels until 2024.⁵ In the interim, the families struggling most with providing food for hungry children and paying rent are also stressing about how they will insulate their incarcerated loved ones from unsanitary and unsafe conditions in our jails.

Families are using their increasingly scarce resources to provide basic necessities—soap, Vitamin C, and Aspirin—for their incarcerated loved ones, many of whom cannot afford bail. In fact, over 1,300 people at Rikers Island are currently being held simply because they cannot afford to post bail to secure their own freedom, while their families pay exorbitant fees to just transfer money and they pay ridiculous rates for everyday commodities.

Families are charged fees upwards of 40%—amid a worldwide pandemic—to merely transfer money through one of the City's two vendors: JPay (owned by Securus) and Western Union. According to the City, between April 2018 and April 2019, families paid at least \$1.8 million in fees on 246,864

² 9 NYCRR § 7000.1 (a).

³ See, e.g., Jennifer Millman, "New York Has Most COVID-19 Deaths Cases in the World," NBC News, Apr. 10, 2020, <https://www.nbcnewyork.com/news/local/new-york-has-most-covid-19-cases-in-globe-cuomo-warns-of-more-death-even-as-curve-flattens/2366721/>.

⁴ Aleks Kajstura & Jenny Landon, "Since You Asked: Is Social Distancing Possible Behind Bars?" Prison Policy Initiative, Apr. 3, 2020, <https://www.prisonpolicy.org/blog/2020/04/03/density/>.

⁵ Henry Goldman, "NYC May Lose 475,000 Jobs & \$10 Billion in Taxes, Budget Office Says," Bloomberg, Apr. 15, 2020, <https://www.bloomberg.com/news/articles/2020-04-15/nyc-may-lose-475-000-jobs-and-10-billion-in-taxes-report-says>.

deposits, with the average deposit fee being \$7.50.⁶ In other words, we are exploiting our most economically distressed neighbors at a time of immense need, and all for corporate gain.

Worse yet, the DOC has long enabled its vendors to ignore state law, claiming, despite evidence to the contrary, that vendors must be allowed to charge families higher fees or the City risks losing the service.⁷ The City has gone as far as to request annual waivers from the state on behalf of their vendors to charge more than permissible under state law. It is actually the *only* local jurisdiction to make such request. At least 44 other counties across the state have money transfers fees in compliance with the state law maximum of \$5 using other vendors.⁸ The DOC and its vendors have clearly no basis for their assertion.

Rather than working in partnership with these predatory vendors, the City should be doing everything in its power to make money transfers free, and it can do so using the city-operated systems that it uses for other types of fees. In fact, in 2016, Public Advocate Letitia James testified that many other city agencies have figured out to make 60 different types of payments online free. We do not need predatory prison vendors to facilitate money transfers from economically marginalized communities to their loved ones. As one of the largest cities in the world, it is ludicrous for the DOC to suggest that we must bend to the will of corporations, particularly when their mission is to exploit the City's most vulnerable residents.

If New York City will not make transfers free, it must make them as low as possible. Fees should be determined as a percentage of the deposit—typical of payment processing fees outside prisons and jails⁹—rather than as a flat fee that incentivizes corporations to set low deposit limits to encourage more transactions. If any fee should be assessed, we urge the city to set a max rate of 3% with a \$5 cap per transactions for vendors, which would still allow them to recoup costs and make a modest profit. It should also require vendors allow deposits up to \$300.

Whatever the model, the fact is that the City is behind the curve on this. Correctional departments across the country have lower transfer fees for commissary accounts. Maine uses a state-operated

⁶ "Variance #10-V-02," New York State Commission of Corrections, June 26, 2019. Available upon request.

⁷ "Variance #10-V-02," New York State Commission of Corrections, June 26, 2019. Available upon request.

⁸ Access Corrections provide money transfer services in the following New York counties and charges a flat fee of \$4.95 as per a customer representative reached on May 22, 2020: Albany, Allegany, Broome, Buffalo Detention Facility, Cattaraugus, Cayuga, Chautauqua, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Erie, Franklin, Fulton, GEO QUEENS, Herkimer, Jefferson, Madison, Monroe, Montgomery Correctional Facility, Niagara, Oneida, Onandaga, Ontario, Orleans, Otsego, Putnam, Rockland, Saratoga, Schenectady, Schuyler, Seneca, St Lawrence, Steuben, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, and Yates.

⁹ See, e.g., "Credit Card Processing Fees: The Complete Guide," Fundera, Apr. 15, 2020, <https://www.fundera.com/blog/credit-card-processing-fees>.

system and charges a flat fee of \$2.40 for any deposit up to \$100.¹⁰ Michigan contracts with GTL and charges a flat fee of \$2.95 for deposits up to \$300.¹¹ Pennsylvania, which also contracts with JPay, charges on a fee scale that tops out at \$3.25 for a maximum deposit of \$300.¹²

Even before the spread of COVID-19, these fees that the DOC allows vendors to charge were unethical—and illegal. They further extract wealth from families struggling financially, now more than ever, and provide no benefit to the City. New York City must do more than meet the bare minimum required by state law. It must end these exploitative fees entirely.

Sincerely,



Bianca Tylek
Executive Director

¹⁰ "Money Deposit Service," Maine Dept. of Corrs., available at <https://www.maine.gov/online/correctionsdeposit/main.cgi>.

¹¹ "Sending a Prisoner Funds with GTL Financial Services," Mich. Dept. of Corrs., available at https://www.michigan.gov/corrections/0,4551,7-119-9741_12798-25072-,00.html.

¹² "Pennsylvania Department of Corrections," JPay, available at <https://www.jpays.com/Agency-Details/Pennsylvania-Department-of-Corrections.aspx>.

**Written Comments of Kate Rubin, Youth Represent
Before the New York City Council
Committee on the Justice System
Committee on Criminal Justice
RE: Oversight -- COVID-19 in City Jails and Juvenile Detention Centers
May 19, 2020**

Good morning, my name is Kate Rubin and I am the Director of Policy at Youth Represent. Thank you to Chair Powers, Chair Lancman, and the Committee members and staff for holding this crucial hearing and for the opportunity to testify.

Youth Represent provides holistic criminal and civil reentry legal representation to young people age 24 and under who are involved in the criminal justice system or who are experiencing legal problems because of past system involvement. We also engage in policy advocacy and train young leaders through our Youth Speakers Institute.

Since we opened our doors in 2007, Youth Represent has advocated for teenagers to be treated as children in the justice system. We played a pivotal role in the passage of Raise the Age legislation and we appreciate the Council's long-term advocacy and support for Raise the Age and for system-involved youth generally. We look forward to ongoing partnership.

As you well know, the past two months have been unlike any other in New York City's history. Week after week, the City has taken previously unthinkable steps—shuttering businesses, closing schools, suspending overnight subway service. We have taken these extreme measures because of the extreme dangers presented by the coronavirus and COVID-19, and because we know that even when exceptional care is taken—masks, personal protective equipment, diligent hand washing, and social distancing—it is simply not safe for groups of people to gather.

We have also taken these extreme measures because of what we don't know about the coronavirus. With each week we are learning more about how it spreads and how it harms different groups of people. As the Governor said last week in response to emerging cases of children—including teenagers—afflicted with a rare, sometimes deadly, inflammatory condition linked to coronavirus: “We have been behind this virus every step of the way and even as we are now beginning to see the numbers on the decline, the virus is still surprising us.”

Yet when it comes to jails and detention centers, we have stopped short of the truly bold measures that are necessary. This is not to say that nothing has been done. Because the City has taken significant steps towards reducing populations and protecting incarcerated people as well as staff, the number of children in juvenile detention and the number of older youth and adults in city jails are at historic lows. This is good. But given how efficiently and silently coronavirus spreads, how deadly it can be, and how much we still don't know about it, we must do more. This is true for all incarcerated New Yorkers, but my focus here is specifically on vulnerable youth.

First, to continue to reduce the number of youth in detention and jail, and to keep the number as low as possible, we must keep youth arrests extremely low. This will be especially important as weather gets warmer and the stress, fatigue, and boredom of quarantine build. Researchers are already finding signs of “quarantine fatigue” even among adults.¹ Because their brains are still developing, young adults even into their early 20’s are wired to be more impulsive and less able than adults to weigh risk and reward.² The coming summer will be extremely difficult for all of us, but it will be especially difficult for youth who rely on the Summer Youth Employment Program, publicly funded camps, pools, and other city resources.

Because every arrest puts young people and police officers at serious risk, we must severely limit police contact with young people, including arrests, to the narrowest categories of the most serious offenses. At minimum, this means the City must transfer responsibility for social distancing enforcement away from the NYPD; suspend all arrests for “quality of life” and other low-level offenses; and work with courts to administratively vacate bench warrants. When police absolutely must interact with youth, they must prioritize de-escalation at every level and make referrals to community-based services in lieu of arrests.

Second, in addition to severely limiting the number of youth entering detention and jail, the City must work closely with judges and District Attorneys to release young people being held pretrial, including youth under 18 being tried as adults and older youth age 18-25.

These efforts must not be limited to young people charged with lower-level and non-violent offenses. They must not automatically exclude young people with multiple open charges. Rather, each individualized decision should take into account the serious health risk faced by any person in a jail or detention setting and the risks to public health of potentially spreading the virus further.

For many in law enforcement and even the public, releasing people charged with serious and violent offenses, or charged with multiple serious offenses, is unthinkable. And doing so may be unpopular with some, especially given the general anxiety and uncertainty that the virus has caused for all of us. But our city is facing a humanitarian crisis that has already killed 15,000 New Yorkers and sickened many more, and it is sickening and killing people of color at alarmingly and disproportionately high rates. We have already taken extraordinary steps to protect people young and old, and we owe people charged with crimes no less. We must release as many people as possible from jail and detention, and provide them support in the community.

For those young people who remain in detention and jail, basic measures must be met to ensure their safety in both DOC and ACS custody: access to masks and to antibody and viral testing; access to sufficient hand sanitizer, soap, and disinfecting cleaning products; and daily opportunities to call family members. In addition, both DOC and ACS should make publicly

¹ See, for example, *Quarantine Fatigue Is Real* in the Atlantic by Julia Marcus, Professor of population medicine at Harvard Medical School (<https://www.theatlantic.com/ideas/archive/2020/05/quarantine-fatigue-real-and-shaming-people-wont-help/611482/>); ‘Quarantine Fatigue’ Has More People Going Outside in the New York Times by Mihir Zaveri, reporting on research showing that by late April phone data showed increasing rates of personal travel (<https://www.nytimes.com/2020/04/27/us/coronavirus-social-distancing-lockdown.html>).

² See, for example, *A Social Neuroscience Perspective on Adolescent Risk-Taking* by Laurence Steinberg, Department of Psychology, Temple University, in the Journal of Developmental Review (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2396566/>).

available not just their protocols for testing, cleaning, and social distancing, but also the current and cumulative number of people in custody tested and confirmed to have Covid-19. Finally, gaps in communication from DOC and ACS with families of incarcerated youth has created fear among parents about their children's health and safety. DOC and ACS must share with parents and guardians key contacts in each facility and at agency headquarters to escalate issues concerning health, mental health, phone calls/tele-visits, education, or programming.

Finally, even while the City faces unprecedented budget challenges, we must preserve funding for truly essential community supports for youth that will keep young people from entering detention and jail and help those who have been released remain in the community. Youth Represent echoes dozens of community-based organizations, young people, and elected officials in calling for funding for six-week SYEP positions with minimum wage pay for any in-person positions and a \$1,000 stipend for remote jobs, training courses, or career-readiness programs. We also stand with our Raise the Age NY partners calling on the City to plan for escalating mental health needs among adolescents with the lengthening period of home confinement, the impacts of unemployment, and the community loss of life that has resulted from COVID-19. Mental health resources across agencies must be coordinated and deployed to support youth and families in their homes through the summer and as long as stay-at-home orders are in effect.

In these incredibly difficult times, we are especially thankful to the leadership of the Council and for your tireless work to ensure the health and safety of all New Yorkers, including the most vulnerable court involved youth. Given the economic fallout of this crisis and its impact on the budget, our City is at a crossroads. We must address racial and economic inequality, public health, education, and other real problems head-on; they cannot be solved by policing, prosecutors and incarceration. We look forward to continuing to work together.