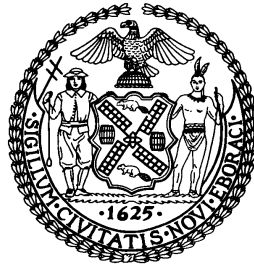


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THE COUNCIL OF THE CITY OF NEW YORK

Briefing Paper of the Human Services Division and Justice Division

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COMMITTEE ON HOSPITALS

Hon. Carlina Rivera, Chair

COMMITTEE ON CRIMINAL JUSTICE

Hon. Keith Powers, Chair

September 21, 2020

Oversight

**The Department of Correction and Correctional Health Services Management
of COVID-19**

I. Introduction

On September 21, 2020, the Committee on Hospitals, chaired by Council Member Carlina Rivera, and the Committee on Criminal Justice, chaired by Council Member Keith Powers, will hold an oversight hearing examining the Department of Correction and Correctional Health Services management of COVID-19 in New York City jails. The Department of Correction (“DOC” or “The Department”), Correctional Health Services (“CHS”), the Board of Correction (“BOC” or “The Board”), defense providers, and members of the public are expected to testify.

II. Efforts to Curb the Spread of COVID-19

A novel coronavirus, called SARS-CoV-2, first emerged in late 2019 and spread rapidly around the world.¹ As of September 18, 2020, there have been more than 30,415,271 confirmed cases of COVID-19, the disease caused by SARS-CoV-2, and more than 951,604 deaths worldwide, including more than 6,879,675 cases and more than 202,304 deaths in United States² New York State and New York City have been hit particularly hard by this pandemic. As of September, there have been more than 448,052³ and more than 25,423⁴ including more than 234,500 cases and 23,767.⁵

On March 7, 2020, Governor Andrew Cuomo declared a State of Emergency and has since issued a series of orders that have closed schools and businesses, and changed the day-to-

¹ *The COVID-19 Tracker*, Axios, available at <https://www.statnews.com/feature/coronavirus/covid-19-tracker/>.

² Worldometer, COVID-19 Coronavirus Pandemic, <https://www.worldometers.info/coronavirus/>.

³ NYS DOH COVID-19 Tracker, Persons Tested Positive by County, <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Map?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n>.

⁴ NYS DOH COVID-19 Tracker, Fatalities, <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n>.

⁵ In addition to confirmed deaths, the City tracks “probable” COVID-19 deaths. See NYC DOHMH, COVID-19: Data, <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>.

day lives of millions of New York residents.⁶ These unprecedented measures were to slow the spread of COVID-19, ensure that the number of people who required hospitalization was limited as much as possible, and put hospitals in a better position to manage a surge in cases.⁷ These measures were followed by safety guidelines from the New York City Department of Health and Mental Hygiene (DOHMH)⁸ and New York State Department of Health (NYS DOH) for businesses and individuals.⁹ In some ways, these safety guidelines mirror the prevention and safety guidelines issued by the Center for Disease Control and Prevention (CDC), which encourages individuals to wear face coverings that cover their noses and mouths, practice social distancing by putting six feet of distance between themselves and others, and frequently wash their hands to avoid exposure to the virus, as the virus is thought to mainly spread from person-to-person.¹⁰

A. COVID-19 Impact on New York State and City

In the weeks following Governor Cuomo's emergency orders, the immediate concern regarding hospital capacity was abated as the number of new COVID-19 cases, hospitalizations, and deaths declined significantly.¹¹ As of September 7, New York State has experienced a full

⁶ Syracuse.com, Coronavirus timeline in NY: Here's how Gov. Cuomo has responded to COVID-19 pandemic since January, Apr. 14, 2020, <https://www.syracuse.com/coronavirus/2020/04/coronavirus-timeline-in-ny-heres-how-gov-cuomo-has-responded-to-covid-19-pandemic-since-january.html>.

⁷ Harry Stevens, *Why outbreaks like coronavirus spread exponentially, and how to "flatten the curve,"* THE WASHINGTON POST (Mar. 14, 2020), available at <https://www.washingtonpost.com/graphics/2020/world/corona-simulator/>.

⁸ *Coronavirus Disease 2019 (COVID-19)*, New York City Department of Health and Mental Hygiene, available at <https://www1.nyc.gov/site/doh/covid/covid-19-main.page>.

⁹ *Protect Yourself and Your Family from Coronavirus (COVID-19)*, The Official Website of New York State, available at <https://coronavirus.health.ny.gov/protect-yourself-and-your-family-coronavirus-covid-19>.

¹⁰ *How to Protect Yourself & Others*, The Centers for Disease Control & Prevention, updated July 31, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

¹¹ CBS News, New York Governor Andrew Cuomo touts "exciting new phase" as virus cases continue to decline, May 11, 2020, <https://www.cbsnews.com/news/new-york-coronavirus-economic-reopening-new-phase-governor-cuomo/>.

month with the COVID-19 infection rate below one percent¹² while testing between about 50,000 and 100,000 people per day.¹³ Comparatively, in March and April, during the peak of the pandemic in New York State, the infection rate was over 40 percent.¹⁴ Although testing capacity was much more limited during this time, over 10,000 per day tested positive regularly.¹⁵ Nowadays, below 900 people are testing positive every day despite testing tens of thousands of residents.¹⁶

As rates of infection remain low, New York State has been steadily easing restrictions and reopening. For example, New York City public schools are planning to resume some in-person classes this fall,¹⁷ and indoor dining has resumed in most of the state, with New York City following suit on September 30.¹⁸ Despite these actions, restrictions remain, such as keeping movie theaters and amusement parks closed,¹⁹ and reopening is dependent upon continuing to meet health and safety guidelines.²⁰ The virus remains very closely monitored to avoid a second wave of cases, with many concerned that a second wave may occur as we see restrictions ease and as we approach the Fall and flu season.²¹

¹² *Governor Cuomo Announces One Month with COVID-19 Infection Rate Below 1 Percent*, The Official Website of New York State, September 7, 2020, available at <https://www.governor.ny.gov/news/governor-cuomo-announces-one-month-covid-19-infection-rate-below-1-percent>.

¹³ *Percentage Positive Results By Region Dashboard*, The Official Website of the State of New York, accessed on September 9, 2020, available at <https://forward.ny.gov/percentage-positive-results-region-dashboard>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Health and Safety*, New York City Department of Education, available at <https://www.schools.nyc.gov/school-year-20-21/return-to-school-2020/health-and-safety>.

¹⁸ Jesse McKinley, *N.Y.C. to Allow Indoor Dining, in Milestone on Recovery From Pandemic*, The New York Times, September 9, 2020, available at <https://www.nytimes.com/2020/09/09/nyregion/indoor-dining-coronavirus.html>.

¹⁹ Jasmine C. Lee et. al., *See How All 50 States Are Reopening (and Closing Again)*, The New York Times, updated September 9, 2020, available at <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>.

²⁰ *New York City Phase Four Industries*, The Official Website of New York State, available at <https://forward.ny.gov/new-york-city-phase-four-industries>.

²¹ Bernadette Hogan, *New Yorkers fear second wave as COVID-19 restrictions relax, new survey finds*, The New York Post, September 2, 2020, available at <https://nypost.com/2020/09/02/new-yorkers-fear-second-wave-as-covid-19-restrictions-relax/> & J. David Goodman, *New York Has Tamed the Virus. Can It Hold Off a Second Wave?*, The

B. National COVID Guidelines for Prisons

On July 14, 2020, the CDC issued guidance for healthcare and non-healthcare administrators of correctional facilities and detention centers during the outbreak of COVID-19 to ensure continuation of essential public services and protection of the health and safety of incarcerated and detained persons, staff, and visitors.²² The CDC recognized in this guidance that incarcerated/detained persons live, work, eat, study, and participate in activities within congregate environments, and in most cases are not permitted to leave the facilities, which increases the potential for SARS-CoV-2 to spread once introduced.²³ This potential is further exacerbated by other factors, such as high turnover of new entrants arriving from varied geographic areas; limited or no access to soap, paper towels, alcohol-based hand sanitizers and disinfectants; inability to social distance due to crowded living conditions; and inadequate levels of healthcare staffing, among other factors.²⁴ The *COVID-19 Guidance for Correctional Facilities* includes three sections of recommendations: operational preparedness, prevention, and management.²⁵

On operational procedures, the CDC recommends that administrators plan and prepare for COVID-19 by ensuring that all persons in the facility know the symptoms of COVID-19 and the importance of reporting those symptoms if they develop.²⁶ Other essential actions include: developing contingency plans for reduced workforces due to absences; coordinating with public health and correctional partners and developing information-sharing systems; reviewing existing

New York Times, August 17, 2020, available at <https://www.nytimes.com/2020/08/17/nyregion/coronavirus-second-wave-nyc.html>.

²² Centers for Disease Control and Prevention, *Guidance for Correctional & Detention Facilities* (last updated Jul. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

disaster plans and revising for COVID-19; ensuring sufficient stocks of cleaning, hygiene, and medical supplies; training staff on proper use of personal protective equipment (PPE) that may be needed in the course of their duties; and communicating clearly with staff and incarcerated/detained persons about these preparations.²⁷

On prevention procedures, the CDC recommends good hygiene practices, vigilant symptom screening, wearing cloth face coverings, and social distancing, as well as testing symptomatic and asymptomatic individuals and initiating isolation for suspected and confirmed cases and quarantine for close contacts.²⁸ Additional recommendations include: limiting transfers of incarcerated/detained persons unless necessary; minimizing movement across housing units and other areas of the facility as much as possible; and providing no-cost access to soap, running water, tissues, cloth face coverings, alcohol-based hand sanitizer, and hand drying machines or disposable towels.²⁹

Management strategies that the CDC recommends include placing individuals with suspected or confirmed COVID-19 under medical care, while observing relevant infection control and environmental disinfection protocols and wearing recommended PPE.³⁰ They also include coordinating with state and local health departments, quarantining and/or testing new intakes if possible, and incorporating COVID-19 prevention practices into release planning and re-entry programming.³¹

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

C. Guidelines for Other Congregate Settings

The CDC additionally issued guidance for living in or visiting retirement communities, and considerations for administrators of retirement communities and independent living facilities.³² These shared housing communities are also at higher risk for severe illness from COVID-19 both because of increased risk with age and/or underlying health conditions, such as heart disease, diabetes, or lung disease, and because such facilities typically operate with frequent social and community activities and shared spaces.³³ The guidance instructs administrators to review, update, and implement emergency operations plans in consultation with local public health departments, local and state regulatory agencies, and other partners, and provides guidance through a checklist, and other free tools and resources through the Administration for Community Living's Emergency Preparedness webpage and the CDC's Emergency Preparedness for Older Adults webpage.³⁴ The CDC's guidance for retirement communities and independent living facilities involves promoting behaviors that reduce spread, such as educating staff, visitors, and residents through trainings, signs, and messaging; staying home and self-isolating where appropriate; recommending and reinforcing hand hygiene and respiratory etiquette and mask-wearing, encouraging social distancing, and ensuring adequate supplies in common areas.³⁵ The guidance also recommends maintaining healthy environments in common areas, such as cleaning and disinfecting frequently touched surfaces; safely and correctly using and storing cleaners and disinfectants; ensuring proper ventilation and ensuring that all water systems are safe; modifying layouts to encourage social distancing and minimize

³² Centers for Disease Control and Prevention, *Living in or Visiting Retirement Communities* (last updated Jul. 29, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/retirement/residents.html>; Centers for Disease Control and Prevention, *Considerations for Retirement Communities & Independent Living Facilities* (last updated Jul. 31, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/retirement/considerations.html>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

traffic, installing physical barriers and guides, and closing communal spaces, or taking specific precautions with regards to communal spaces, such as shared kitchens, dining rooms, laundry rooms, recreational rooms, pools and hot tubs, and shared bathrooms.³⁶ Lastly, the guidance instructs administrators to consider different strategies to maintain healthy operations, such as: protections for residents, workers, volunteers, and visitors who are at higher risk for severe illness from COVID-19; regulatory awareness, telework and virtual meetings; limiting non-essential travel, designating a COVID-19 point of contact; establishing communicating systems; worker trainings; recognizing signs and symptoms; supporting residents, including medically and with their coping/resilience; and most importantly, preparing for when someone gets sick.³⁷

III. DOC/CHS Management of COVID-19 in New York City Jails

A. DOC Testing and Housing Protocols

CHS's testing protocols for COVID-19 have evolved throughout the pandemic. According to the Department's timeline of significant events produced pursuant to Local Law 59 of 2020,³⁸ testing was made available for people in custody in mid-March. Around the same time period, DOC and CHS implemented a COVID-19 symptom screening for all persons entering jail facilities.³⁹

According to the significant events timeline, a Northwell Health-Go First Responder hotline was activated to give staff the option to schedule COVID-19 testing free of charge.⁴⁰ However, the DOC has made no indication that testing is required for staff. According to Deputy

³⁶ *Id.*

³⁷ *Id.*

³⁸ DOC COVID-19 Response Timeline, Updated August 8, 2020, available at <https://hhinternet.blob.core.windows.net/uploads/2020/08/covid-19-significant-events-timeline.pdf>.

³⁹ DOC COVID-19 Response Timeline, Updated August 8, 2020, available at <https://hhinternet.blob.core.windows.net/uploads/2020/08/covid-19-significant-events-timeline.pdf>.

⁴⁰ DOC COVID-19 Response Timeline, Updated August 8, 2020, available at <https://hhinternet.blob.core.windows.net/uploads/2020/08/covid-19-significant-events-timeline.pdf>.

Commissioner Villalona, if a staff member of any type reports COVID-19 symptoms, they are instructed to stay home and self-quarantine, and are instructed not to return to work until 7 days have passed from the initial symptoms or until 3 days have passed without symptoms.⁴¹ When a staff member calls in sick due to COVID-19 symptoms, they are assigned a doctor to track symptoms, and often provided a physician’s letter before returning to work.⁴² Medical clearance or second tests, however, are not required before an employee can return to work.⁴³ On March 18, CHS began reporting positive COVID-19 cases among staff and patients to the Board; the DOC followed suit on March 21.⁴⁴ Since then, 205 CHS staff and 1,423 DOC staff have reported positive infections.⁴⁵

Testing for all new admissions was made available between May 3 and May 9 of this year, according to the DOC’s significant events timeline.⁴⁶ However, a significant number of those individuals are not tested, which CHS has attributed to refusals due to the unpleasant nature of the test.⁴⁷ According to data provided by CHS under Local Law 59, 8,110 people in custody have been tested between June 29 and August 16.⁴⁸ An average of approximately 89 percent of those people were tested as new admissions; the reasons for testing the remaining 11 percent are unknown, although CHS has testified that “many of the tests that we do are driven by

⁴¹ NYC Council Hearing, COVID-19 in City Jails and Juvenile Detention Facilities, 5/19/20, hearing transcript p 50-53, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4456846&GUID=BDC8F3B3-EFDF-430A-A13C-5AC52EDA8C33&Options=ID|Text|&Search=in+city+jails>.

⁴² NYC Council Hearing, COVID-19 in City Jails and Juvenile Detention Facilities, 5/19/20, hearing transcript p 50-53, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4456846&GUID=BDC8F3B3-EFDF-430A-A13C-5AC52EDA8C33&Options=ID|Text|&Search=in+city+jails>.

⁴³ *Id.*

⁴⁴ New York City Board of Correction Weekly COVID-19 Update, Week of August 15 – August 21, available at https://www1.nyc.gov/assets/boc/downloads/pdf/boc_weekly_report_8_15_8_21_2020_final.pdf.

⁴⁵ *Id.*

⁴⁶ DOC COVID-19 Response Timeline, Updated August 8, 2020, available at

<https://hhinternet.blob.core.windows.net/uploads/2020/08/covid-19-significant-events-timeline.pdf>.

⁴⁷ Board of Correction Meeting Minutes, June 9, 2020, p 18-23, available at

https://www1.nyc.gov/assets/boc/downloads/pdf/2020_06_09_board_meeting_minutes_transcript_final.pdf.

⁴⁸ Correctional Health Services, City Council Local Law 59 Reports for weeks of June 29-July 5 to August 3 – August 9, available at <https://www.nychealthandhospitals.org/correctionalhealthservices/publications-reports/>

symptoms of COVID⁴⁹ and medical vulnerability.⁵⁰ The Committees are interested in learning from CHS the range of reasons why a given individual may be tested. For example, the Committees are interested in learning how many people in custody have been tested due to being symptomatic, exposed, admitted to the hospital, being a member of vulnerable population, being part of unit-wide testing, or another reason.

On March 22, 2020, the Manhattan Detention Center (MDC) was designated for newly admitted men who were asymptomatic, while the Eric M. Taylor Center (EMTC) was used for newly admitted men who were symptomatic.⁵¹ Since June 27, 2020, however, EMTC is no longer being used for new admissions.⁵² Rather, symptomatic men are held in the Contagious Disease Unit (CDU) in West Facility and the Anna M. Kross Center (AMKC) for those in need of detox.⁵³ Upon entering MDC, newly admitted men in custody are kept there for 14 days prior to receiving a housing assignment.⁵⁴ If an individual housed in the general population tests positive after demonstrating COVID-19 symptoms, they are moved to one of the symptomatic units, and their previous unit is placed under quarantine.⁵⁵ The process is similar for women in custody: asymptomatic women who are newly admitted are housed in the Rose M. Singer Center, while symptomatic women are also housed in the CDU.⁵⁶

⁴⁹ NYC Council Hearing, COVID-19 in City Jails and Juvenile Detention Facilities, 5/19/20, hearing transcript p 46, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4456846&GUID=BDC8F3B3-EFDF-430A-A13C-5AC52EDA8C33&Options=ID|Text|&Search=in+city+jails>

⁵⁰ *Id.*

⁵¹ DOC COVID-19 Response Timeline, Updated August 8, 2020, available at <https://hhinternet.blob.core.windows.net/uploads/2020/08/covid-19-significant-events-timeline.pdf>.

⁵² Confirmed by the Board of Correction per Department of Correction 5:00AM Census.

⁵³ *Id.*

⁵⁴ NYC Council Hearing, COVID-19 in City Jails and Juvenile Detention Facilities, 5/19/20, hearing transcript p 60, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4456846&GUID=BDC8F3B3-EFDF-430A-A13C-5AC52EDA8C33&Options=ID|Text|&Search=in+city+jails>.

⁵⁵ *Id.*

⁵⁶ NYC Department of Correction's presentation: "DOC Update: COVID1-19 Preparedness & Response" before the Board of Correction May 12, 2020 Public Meeting, available at

CHS began making data on the number of individuals tested for infection available daily on June 29, including data from as early as March 13.⁵⁷ On average, 73 percent of results on a given day are listed as “pending” rather than either a “positive” or a “negative” test result.⁵⁸ This implies that the results from these “pending” tests are never being reported by CHS in the data on individuals tested for infection. Without understanding how many new infections were confirmed on any given day, it becomes impossible to understand the COVID-19 infection rate. The Committees are interested in learning from CHS about the COVID-19 infection rate among individuals tested. For example, the Committees are interested in learning about how many tests administered each day eventually come back positive or negative and how long it takes to get these results.

B. Telehealth and Access to Medical Care

CHS has taken several measures to improve the care of people in custody during the pandemic. Primarily, and notably, CHS staff at the height of the pandemic called for the release of vulnerable populations. Current Chief Medical Officer Dr. Ross McDonald stated via Twitter that “[w]e cannot change the fundamental nature of jail . . . [w]e cannot socially distance dozens of elderly men living in a dorm, sharing a bathroom[,]”⁵⁹ and urged District Attorneys and Courts to “let out as many people as you possibly can.”⁶⁰ CHS continues to recommend the release of people in custody who are medically vulnerable; under Local Law 59, they have

https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/May/May%202020%20COVID-19%20Preparedness%20and%20Response_5.12.20.pdf

⁵⁷ Correctional Health Services, City Council Local Law 59 Reports for weeks of June 29-July 5, available at <https://hhinternet.blob.core.windows.net/uploads/2020/07/report-for-the-week-of-june-29-2020-to-july-5-2020.pdf>.

⁵⁸ Correctional Health Services, City Council Local Law 59 Reports for weeks of June 29-July 5 to August 17 – August 23, available at <https://www.nychealthandhospitals.org/correctionalhealthservices/publications-reports/>.

⁵⁹ <https://twitter.com/RossMacDonaldMD/status/1240455801397018624>.

⁶⁰ *Id.*

recommended the release of 1,397 people.⁶¹ However, the reports do not indicate the number of people who have been released pursuant to those recommendations.

CHS has also developed two COVID-related phone lines for people in custody. The first, which is available from 10:00AM to 5:00PM, is designated for individuals who are “asymptomatic exposed” to call, report symptoms, and seek advice.⁶² The second is a mental health line, available from 10:00AM to 2:00 PM, which is available for people who are either symptomatic or confirmed to speak with any CHS staff about their anxieties and concerns regarding the virus.⁶³ This is in addition to the sick call triage, which CHS implemented on March 30, 2020. Under this new system, patients can directly call CHS nurses about their concerns weekday mornings between 5:00AM and 10:00AM. The nurses will determine if the concern can be handled administratively, telephonically, or during an in-person clinic appointment.⁶⁴

Although Local Law 59 requires that CHS report on the number of voicemails left on all CHS phone calls to the Board of Correction and the Speaker, CHS claims that “[t]he Department is not able to determine whether a phone call placed to a Correctional Health Services number resulted in a voice message and does not have access to the CHS voice message system, and therefore cannot determine the number of voice messages left on such phone numbers.”⁶⁵

⁶¹ ⁶¹Correctional Health Services, City Council Local Law 59 Reports for weeks of June 29-July 5 to August 3 – August 9, available at <https://hhinternet.blob.core.windows.net/uploads/2020/08/report-for-the-week-of-august-3-2020-to-august-9-2020.pdf>.

⁶² NYC Council Hearing, COVID-19 in City Jails and Juvenile Detention Facilities, 5/19/20, hearing transcript p 85, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4456846&GUID=BDC8F3B3-EFDF-430A-A13C-5AC52EDA8C33&Options=ID|Text|&Search=in+city+jails>.

⁶³ NYC Council Hearing, COVID-19 in City Jails and Juvenile Detention Facilities, 5/19/20, hearing transcript p 85, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4456846&GUID=BDC8F3B3-EFDF-430A-A13C-5AC52EDA8C33&Options=ID|Text|&Search=in+city+jails>.

⁶⁴ CHS Presentation to the Board of Correction: Re-envisioning Initiative Update, July 14, 2020, available at <https://hhinternet.blob.core.windows.net/uploads/2020/07/nyc-health-hospitals-correctional-health-services-update-to-nyc-board-of-correction.pdf>.

⁶⁵ Local Law 59 Reports sent to the Council.

Despite this claim, CHS reported to the Board of Correction on July 14, 2020 that a total of 6,488 calls were placed to CHS's sick call during the scheduled hours of 5AM-10AM, where 82 percent were answered live and 18 percent were received by a voicemail.⁶⁶ It is unclear why CHS cannot comply with Local Law 59 and provide these numbers for all CHS phone calls.

C. Visitation

When the pandemic reached its height in mid-March, Mayor de Blasio signed Executive Order Number 100, exempting DOC from various BOC minimum standards requiring the provision of congregate services and visitation in jails.⁶⁷ Visitation has been suspended since early March, and the Committee is unaware of the Department's plan or criteria for when it will be reinstated. In the meantime, the DOC has instituted a tele-visitation program. The Department has indicated to the Council that it will use DOHMH guidelines in determining when and how in-person visitation is appropriate. The Committee is interested in learning more about these guidelines.

D. Cleaning

The Department also publicly committed to a series of precautionary measures to prevent the spread of COVID-19 in jails. On April 3, DOC announced that it would issue masks to all staff and people in custody.⁶⁸ DOC's policy is to make masks available on an as-needed basis in all housing units and intake areas.⁶⁹ On April 14, DOC issued enhanced social distancing

⁶⁶ HS Presentation to the Board of Correction: Re-envisioning Initiative Update, July 14, 2020, *available at* <https://hhinternet.blob.core.windows.net/uploads/2020/07/nyc-health-hospitals-correctional-health-services-update-to-nyc-board-of-correction.pdf>.

⁶⁷ ⁶⁷ DOC COVID-19 Response Timeline, Updated August 8, 2020, *available at* <https://hhinternet.blob.core.windows.net/uploads/2020/08/covid-19-significant-events-timeline.pdf>.

⁶⁸ NYC Department of Correction's presentation: "DOC Update: COVID1-19 Preparedness & Response" before the Board of Correction May 12, 2020 Public Meeting, *available at* https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/May/May%202020%20COVID19%20Preparedness%20and%20Response_5.12.20.pdf.

⁶⁹ *Id.*

guidelines, which limits the number of people in custody in communal areas, such as dayrooms, bathrooms, and shower areas, and allows for alternating bed spacing in dorm areas where housing areas are below 50 percent capacity.⁷⁰ Close to half of the housing units in the Department are at such capacity.⁷¹ Moreover, the DOC committed to sanitation protocols in all facilities, which includes cleaning and sanitizing all housing units and communal spaces once per day, all contact surfaces and phones every two hours, and all shower areas three times a day.⁷² According to DOC sanitation protocols, hand soap and cleaning supplies (such as disinfectant, general cleaner, floor cleaner, and gentle scrub) are provided to people in custody and are replenished upon request, as needed.⁷³

IV. BOC's Assessment of COVID-19 Responses in New York City Jails

Since the outbreak of COVID-19 in New York City, the Board of Correction (the Board) has been monitoring DOC's response to the spread of COVID-19 among people in custody and staff in the City's jails. The Board published two reports examining DOC's compliance with its own directive in key areas to curb the spread of COVID-19, including use of PPE among staff, use of mask among people in custody, phone cleaning, and social distancing.⁷⁴ On May 11, 2020, the Board published its first report covering the period of April 5 through April 16, 2020.⁷⁵ That report found that mask use among people in custody and PPE use among staff were not

⁷⁰ NYC Department of Correction, Social Distancing Guidelines for Staff and People in Custody, available at <https://www1.nyc.gov/site/doc/media/socialdistancing.page>.

⁷¹ *Id.*

⁷² NYC Department of Correction, Cleaning & Prevention: Prevention & Sanitation, available at <https://www1.nyc.gov/site/doc/media/cleaningandprevention.page>

⁷³ NYC Department of Correction, Social Distancing Guidelines for Staff and People in Custody, available at <https://www1.nyc.gov/site/doc/media/socialdistancing.page>

⁷⁴ NYC Board of Correction, New York City Board of Correction Monitoring COVID-19 Responses in New York City Jails, April 5- April 16, 2020, May 11, 2020, available at https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/COVID%20Housing%20Public%20Report%204.5-4.16%20DRAFT%205.11.20_FINAL_1.pdf.

⁷⁵ *Id.*

consistently practiced in the housing areas Board staff observed, cleaning of high-touch surfaces (phones) was infrequent, and social distancing among people in custody was rarely practiced.⁷⁶ On June 8, 2020, the Board published its second report covering the period of April 19 through April 30, 2020.⁷⁷ This report found no notable improvement in the key areas discussed in the first report.⁷⁸

Like the first report, the June 8 report noted that people in custody were not practicing social distancing in communal spaces. Board staff observed people in custody congregating in dayrooms, especially around TV sets, phones, and main doors, and during meals.⁷⁹ Board staff also observed that people in custody were not practicing social distancing in 57 percent of the 21 celled areas observed housing asymptomatic but likely exposed persons.⁸⁰ The first report made a similar finding: about 50 percent of the 16 celled areas housing asymptomatic but likely exposed individuals were not practicing social distancing.⁸¹ However, unlike the first reporting period, “Board staff did not identify social distancing issues in areas housing symptomatic or confirmed COVID-19 patients.”⁸²

The report also found during the second reporting period that few people in custody were correctly wearing masks (meaning the mask covered their nose and mouth). Board staff observed that “[in] 14% of the 440 observations all visible people in custody were correctly wearing masks. In 34% of observations some visible people in custody were correctly wearing masks,

⁷⁶ *Id.*

⁷⁷ NYC Board of Correction, New York City Board of Correction Monitoring COVID-19 Responses in New York City Jails, April 19-April 30, 2020, June 8, 2020, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/June/COVID%20Housing%20PUBLIC%20Report%204.19-4.30%20TO%20POST%206.8.20.pdf>.

⁷⁸ *Id.* at 1.

⁷⁹ *Id.* at 2.

⁸⁰ *Id.*

⁸¹ *Supra* note 75, p. 3.

⁸² *Supra* note 78, p. 2.

and in 52% of observations none of the visible people in custody were correctly.”⁸³ When compared to the prior reporting period, the report found that the percentage of people in custody wearing masks correctly during the second reporting period was lower.⁸⁴ However, mask use among staff was slightly higher during second reporting period than the first. Of the 686 staff that the Board staff observed during second reporting period, 91 percent were wearing masks correctly⁸⁵ compared to 86 percent of all staff observed during the prior period.⁸⁶ Mask use among staff was consistent in the 53 percent of the 62 housing areas audits conducted during the second reporting period.⁸⁷

Board staff also found that the phones were not frequently cleaned before use during the second reporting period. Like the first report, Board staff documented 45 instances of phone use in which the phone was cleaned only three time before use during the second reporting period.⁸⁸ According to the report, “on each of these three occasions the person in custody appeared to wipe the phone with a cloth or sponge.”⁸⁹ The report noted that people in custody were observed using socks or other fabric to cover phones during use.”⁹⁰ However, unlike the first reporting period where there were no visible cleaning supplies near the phones, “Board staff observed buckets of water positioned near phones in some housing areas.”⁹¹

A. COVID-19 Related Grievances

To understand the issues and concerns raised by incarcerated individuals, staff, and their families in the first two months of the COVID-19 pandemic, the Board surveyed complaints and

⁸³ Id., p. 3.

⁸⁴ Id.

⁸⁵ Id., p. 9.

⁸⁶ Supra note 75, p. 8.

⁸⁷ Supra note 78, p. 3.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id., p. 11.

⁹¹ Id.

requests for information received by Office of Constituent & Grievance Services (OCGS) from March 5 to April 30, 2020.⁹² To identify lessons learned to inform COVID-19 response efforts, the Board published its findings on June 8, 2020.⁹³ The Board found both staff and people in custody had similar concerns: not having more information or access to PPE to feel safe during the pandemic.⁹⁴ According to the report, 19 percent (n=1,016) of the more than 5,000 total grievances that OCGS received during the two-month period were identified as COVID-19 related.⁹⁵ Of the COVID-19 related grievances, 42 percent (n=432) were categorized as Environmental (e.g. lack of access to PPE and cleaning supplies), 36 percent (n=367) were categorized as Medical H+H (e.g. concerns about COVID-19 exposure and access to medical care), and 21 percent (n=217) were categorized as Staff (e.g. concerns about DOC staff from people in custody and grievances made by staff or their families regarding working conditions).⁹⁶

Even though people in custody, staff, and their families filed 1,016 COVID-19 related grievances in the two month period, OCGS rejected 20 percent (n=203) of these grievances, returned 3 percent (n=28) of them, and accepted 76 percent (n=775).⁹⁷ Of those grievances that OCGS accepted, “29% (n=231) were unsubstantiated, 14% (n=112) were abated, and 56% (n=441) were recorded as ‘not assigned’ in Service Desk.”⁹⁸ Of those grievances that were not assigned, close to half were referred to CHS.⁹⁹ Since CHS is responsible for investigating and

⁹² NYC Board of Correction, NYC Board of Correction Analysis of COVID-19 Related Grievances Received by Department of Correction’s Office of Constituent & Grievances Services (OCGS) March 5th to April 30th, 2020, published June 8, 2020, available at https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/June/BOC%20Analysis%20of%20COVID-Related%20Complaints_clean%20version_6.8.20%20_final.pdf.

⁹³ *Id.*

⁹⁴ *Id.* at 2.

⁹⁵ *Id.*

⁹⁶ *Id.* at 6.

⁹⁷ *Id.* at 2.

⁹⁸ *Id.*

⁹⁹ *Id.*

resolving these grievances, the Board does not have access to these resolutions.¹⁰⁰ This is of high concern considering that the Board found that medical and mental health complaints were the most frequent kind of grievances OCGS received. The Board’s findings show that for the COVID-19 grievances in the Medical H+H, 30 percent (n=110) were about access to medical care, which were filed by people in custody, 23 percent (n=83) were from people concerned about exposure to COVID-19, and 12 percent (n=45) were about the lack of preventive measures in the facilities, including the lack of testing.¹⁰¹ The high frequency of medical and mental health complaints seems logical as people were concerned about exposure to COVID-19 and how to prevent the spread during the height of the outbreak, according to the Board.¹⁰²

V. Advocates’ Concerns About Jails Conditions

BOC’s findings support some of the concerns that advocates have raised since the outbreak of COVID-19 in the City’s jails. On May 8, 2020, the City’s public defenders issued a letter to BOC expressing concerns that their clients were unable to practice social distancing in dorms and single cell units because people in custody share communal spaces and phones, and cell units are so narrow that people in custody walk within six feet of each other whenever they leave their cell.¹⁰³ In the letter, the public defenders raised alarm about incarcerated people’s lack of access to masks, and staff not consistently wearing masks.¹⁰⁴ They noted that even in cases where people in custody have masks, “they wear the same dirty mask for week at a time because

¹⁰⁰ *Id.* at 9.

¹⁰¹ *Id.*

¹⁰² *Id.* at 2.

¹⁰³ Legal Aid Society of New York City et al., Re: NYC Jail Conditions During the COVID-19 Pandemic, available at https://www1.nyc.gov/assets/boc/downloads/pdf/nyc_defender_letter_5_8_2020.pdf.

¹⁰⁴ *Id.* at 4.

they are not provided with new masks.”¹⁰⁵ They also raised concerns about the shortage of soap and cleaning supplies, especially in common spaces, such as the dayrooms.¹⁰⁶

Another issue that the public defenders identified was the lack of access to medical, mental health, and substance use treatment. In regards to accessibility to medical care treatment, public defenders have taken issue with CHS using “sick call triage” in which incarcerated people could call CHS nurses about their medical issues, because people in custody have reported that their phone calls are not answered, they are unable to leave a message, and for those who were able to report concerns, they received little or no follow up from medical staff.¹⁰⁷ The same issues exist for mental health treatment, according to public defenders, as people in custody “must utilize telehealth systems unless they are housed in a Mental Observation or PACE unit where staff are onsite.”¹⁰⁸ Equally concerning to the public defenders is the suspension of substance abuse counseling for people in custody and the reduced capacity of medicated-assisted treatment (MAT).¹⁰⁹

Public defenders also took issue with the limited videoconferencing capability in light of the restriction on in-person visits. The letter noted that videoconferences are the only way people in custody can communicate with their attorney and to conduct virtual court appearances.¹¹⁰ It also mentioned that “West Facility... remain without Skype [sic] videoconferencing capability...and in the facilities where videoconferences are available, they are significantly backlogged, requiring request for video conferences to be made several weeks in advance.”¹¹¹

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 2-3.

¹⁰⁸ *Id.* at 3.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 7.

¹¹¹ *Id.*

VI. Conclusion

The Committees on Hospitals and Criminal Justice intend to examine the ways in which DOC and CHS have instituted operational changes and change to the delivery of medical care in New York City Jails in light of the COVID-19 pandemic. This includes an examination of testing and housing protocols, cleaning protocols, and policies regarding visitation and access to medical care, as well the implementation of these policies and the BOC's assessment of the COVID-19 responses in New York City jails. The Committees also intend to address the concerns that advocates have raised regarding jail conditions to ensure that DOC and CHS are in compliance with national COVID-19 guidelines regarding correctional facilities and detention centers.