

**New York City Council Meeting
Committee on Criminal Justice
Committee on Hospitals
Keith Powers, Chair
Carlina Rivera, Chair
September 21, 2020**

Testimony for Commissioner Brann

Good morning Chair Powers, Chair Rivera, and members of the Committee on Criminal Justice and the Committee on Hospitals. I am glad to see that you are all are healthy and well. I am pleased to be joined today by the dedicated members of my leadership team and our valued partners from across our city's criminal justice agencies. Since we last testified before your Committees, the Department has continued to work around the clock to keep those living and working in our facilities safe. In the past three months, as correctional institutions across the country have had record numbers of COVID cases, the Department has had no new jail-based transmissions among those in custody and 14 new staff cases. Our success is evident by the health of our staff and our population and we have been proud to share our COVID-19 mitigation strategies with correctional institutions around the country. I thank you for the opportunity to discuss how the Department's effort to manage COVID-19 within our facilities and our plans to continue achieving this success in the event of a second wave.

First, however, I would like to recognize the dedicated and hard-working employees of the Department of Correction and Correctional Health Services for their incredible efforts throughout this pandemic. Since day one, 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 of their heroic efforts and remain honored to work beside them.

Progress Made:

COVID-19 continues to be an unprecedented crisis, the likes of which this City has never seen. Since the first days of the pandemic and every day after, the Department has taken swift and decisive action to keep everyone living and working in our facilities safe. Following an initial spike in cases in March and April, the total number of active cases among people in custody quickly declined. While other correctional jurisdictions are continuing to see the infection spread rapidly across their facilities with positivity rates among those in custody spiking as high as 17% and 18% in prisons across Florida and Texas, the Department has seen no new jail-based transmissions in over three months.

We have achieved this success through strict adherence to several mitigation measures, which I will recap for you briefly:

- **First**, the Department has implemented policies focusing on preventing the virus from coming into our facilities in the first place. This includes screening all staff upon entry to the facilities and testing all new admissions for the virus upon

intake. Asymptomatic individuals newly admitted to custody are cohorted separately from the general population until they receive a negative COVID test or satisfy a quarantine period. Any new admissions testing positive are quarantined for a period of at least 14 days or until symptoms subside. All staff with a temperature above 100.4 or experiencing any symptoms are not allowed to be at work and are directed to stay home and contact our Health Management Division..

- **Second**, the Department took critical steps to contain the spread of the virus. We leveraged and expanded our existing robust sanitation practices, activated protocols to provide personal protective equipment to both staff and individuals in custody, and established a tiered housing structure that separates individuals who are symptomatic, positive, or exposed to COVID-19 from the general population. Individuals in custody continue to be made aware of vital public health guidance surrounding mask use and social distancing via posters, informational flyers, and conversations with DOC and CHS staff.
- **Third**, with its citywide partners, the Department thoughtfully examined its population with the goal of identifying who was most vulnerable to the disease and could be better served in the community. As a result, the Department released over 2,000 individuals over the past six months, with the effect of reducing housing capacity and increasing the feasibility for effective social distancing.

While these procedures I have described were put in place in mere days, the Department has internally re-examined and re-evaluated them, addressing any challenges or gaps. We will continue to build upon these measures and make changes as necessary to ensure everyone living and working in the jails remains safe.

Reopening Plan:

Thankfully, the curve remains flat in New York City and in the jails, and we are preparing to begin reopening certain services that have been paused to prevent COVID's spread. The Department has worked closely with DOHMH, CHS, and the Law Department to develop a safe plan to reinstate these services in a manner that protects against the spread of COVID-19. In order to do so, we plan to reopen services in a deliberate and staggered manner, beginning with those required by the Board's minimum standards.

The first service the Department will reinstate are barbershop services. Taking into consideration the guidelines governing these services in the community, the Department will resume these services in a manner that affords effective social distancing, includes necessary personal protective equipment (PPE) for all parties involved, and involves robust sanitation practices between each haircut. To reduce movement around its

facilities, the Department will provide socially distanced barber services in each housing unit rather than have all individuals be transported to a centralized location. Barbers will perform one haircut at a time utilizing appropriate sanitation practices between each cut.

Next the Department will resume congregate religious services for all denominations. Consistent with New York State's reopening guidelines, services will initially be capped at 10 individuals, and to accommodate this reduced capacity, more services will be hosted daily in all facilities. All participants will be required to wear masks and will be asked to bring their own religious texts to reduce sharing. Appropriate sanitation will be performed in between each service.

Finally, the Department will look to reinstate in-person family visits. As we prepare, the Department is considering precautions like pre-registration, reduction of visit floor capacity to ensure social distancing, and screening. Televisits will continue to be available as in person visitation resumes.

As these plans develop and services are reinstated, we will continue to communicate closely with our partners in health and labor to assure that we are returning these services in a manner that takes into account the health, safety, security, and well being of those who are in our custody and work in our facilities.

Preparation for Second Wave

While the Department is optimistic about its reopening plans and the continuation of its successful mitigation efforts, we are prepared to address a second wave if it arrives. This preparation includes continuing our close relationship with CHS to monitor COVID-19 cases in the facilities, securing enough supplies to be ready for a resurgence, and reinforcing the COVID-19 specific policies and practices through additional trainings, posters, and teletypes. Additionally, the Department has no plans to halt or interrupt the practices that have been successful for mitigation - such as enhanced sanitation, new admission work-flow, and tiered housing structure - and will continue efforts that have been beneficial to the happiness and wellbeing of individuals in custody - such as televisits, chaplaincy hotlines, social service requests, and attorney videoconferences. We recognize that jails, as a closed, congregate setting, are especially vulnerable during this time and will continue to build upon the lessons we learned this spring to keep everyone safe.

Conclusion

Throughout this unprecedented crisis and its many challenges, the Department has and will continue to remain 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. I thank the Council for their continued support during this time and am happy to answer any questions you have.

Testimony to the New York City Council Committees on Hospitals and Criminal Justice
September 21, 2020 Oversight: The Department of Correction and Correctional Health
Services Management of COVID-19 in Jails

Good morning Chairpersons Powers and Rivera and members of the Criminal Justice and Hospitals 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, and Carlos Castellanos, our Chief Operations Officer. We appreciate the opportunity to update you, since I last testified in May, on our considerable efforts to manage COVID-19 in New York City’s jails.

I would first like to acknowledge that our last confirmed case of in-jail transmission of COVID-19 was May 19th. Although we did have fifteen positive cases since then, all were individuals newly admitted from the community, and we were able to prevent spread of the disease to other patients. Most fortunately, we have had no COVID-related patient deaths since April. While other correctional facilities across the country continue to contend with the rapid spread of COVID-19, we have effectively bent down the curve in New York City jails.

Our ability to manage such a highly contagious virus in such a uniquely challenging setting speaks to the efficacy of our COVID-19 response strategy. When I last testified in May, I outlined the three cornerstones of our approach to reducing transmission in the jails: decarceration, containment, and maintenance. We continue to adhere to the principles of this approach, while modifying our practices to meet the current needs of our patient population and stay aligned with evolving public health guidance. While our jail system, and New York City more broadly, have achieved remarkable progress in combatting COVID-19, we know that the SARS-CoV-2 virus is still here, and the magnitude of any resurgence will depend, in large part, on vigilance and rapid response. In partnership with the Department of Correction, the clinical, operations, and administrative professionals at CHS have continued to plan and prepare for reemergence of the virus in the jails, using our initial COVID-19 response as a blueprint for keeping patients and staff healthy and safe.

To return to our three-pronged approach, our decarceration efforts centered on identifying patients who would prove most vulnerable to a severe course of COVID-19, should they contract the virus. Our compassionate release efforts, which preceded but were expanded as a result of COVID-19, continued through the summer. We continue to work with defense, prosecution, courts, and City and State partners to help arrange for patients’ safe release. We know the virus is most effectively transmitted between persons in close, prolonged contact while in enclosed, densely populated spaces where practicing physical distancing and good hygiene can be difficult - the precise definition of a jail. Reducing the number of individuals in the jails through targeted decarceration efforts, therefore, proves vital to limiting transmission in the jails – and to protecting the health of the individuals who continue to live and work on Rikers Island. We also help protect the health of people in the community by screening every patient whom DOC brings prior to discharge, so that we can educate people who need to self-isolate and assist those who need accommodations in which to do so.

To effectuate the second component of our approach - containment - we implemented a robust testing strategy and an integrated housing plan. During the height of the pandemic, we tested at a rate higher than that in the larger community. As of September 16th, 2020, we have tested approximately 5,000 patients for COVID-19. Cumulatively, 570 patients have tested positive for the virus; it is important to remember, however, that not all of these patients remain in the system and none of our current patients are actively infectious. During the last wave of the pandemic, we offered testing to symptomatic patients and patients who were asymptomatic but highly vulnerable. As of September 16th, approximately 51 percent of the individuals currently in custody have been tested for COVID-19, and our incidence rate stands at zero percent, compared to a rate of approximately one percent in New York City.

As you may be aware, CHS has not been immune to the delays the City and, in fact, the country, has experienced in testing turn-around-times. While testing is just one component of our COVID-19 response strategy, the data helps to inform decisions about housing placements and clinical care, and it is critical that we receive timely results. As of today, September 21, CHS has moved to the Pandemic Response Lab, a new City laboratory that will help the City process test results within 24-48 hours. We're confident that this new testing infrastructure will significantly improve turn-around-times in our system and help to streamline processes overall.

With no current transmission within the jails, we are now focused on universally testing all individuals entering the system, regardless of symptoms. All newly admitted patients are quarantined until they test negative and/or show no symptoms over the course of 14 days. Like our testing strategy, our housing model remains nimble enough to respond to the dynamic nature of the virus. At the beginning of the pandemic, we worked with DOC to adapt and expand our concept of therapeutic housing units - creating a new designation of therapeutic housing for patients on the COVID spectrum, based on clinical need and status. Our housing plan, which included the use of the 98-bed Communicable Disease Unit (CDU), separately housed patients who were highly vulnerable to severe course of disease, should they contract COVID-19; patients known to have been exposed (asymptomatic); patients exhibiting COVID-like symptoms; and confirmed COVID-19 cases. Given the current state in the jails, most of these special housing designations have been suspended – but they are ready to be reactivated when and if the need arises, as we did during the height of the crisis.

Since SARS-CoV-2 was identified in the jails, we have continued to modify our two-pronged containment strategy of testing and housing to best meet the needs of our patients and our evolving understanding of this disease. Additionally, we continue to monitor patients and staff for signs of the disease, including COVID-specific patient screening at every contact point within the criminal justice process: at pre-arraignment, admission, clinical encounters, and discharge.

Through the third component of our approach – maintenance - we have continued to provide access to health care services while adhering to physical distancing protocols in our clinics and waiting rooms. We have maintained access to medical, nursing, and mental health services, in addition to ongoing substance-use treatment. Maintaining the health of our patients is critical to helping patients best fend off the disease and to fight its worst effects, should they contract the virus. We have also maintained access to our

discharge services and, in several respects, expanded the provision of these services. As previously mentioned, CHS screens patients whom DOC presents prior to discharge from the jails for symptoms of COVID-19 and provides information about COVID and community testing sites. If someone reports symptoms or is confirmed positive for COVID at the time of discharge and does not have a place to safely self-isolate, arrangements are offered for an isolation hotel.

CHS is also working with DOHMH and with the NYC Health + Hospitals' Test & Trace Corps, also known as "T2," so that positive or symptomatic patients discharged to the community can be monitored and provided necessary COVID-specific support and follow-up care.

As part of its comprehensive discharge services, CHS also provides general information to patients about its established community services that can help support successful reentry. These include the Point of Reentry and Transition (PORT) program, which includes telephonic assistance and in-person navigation and patient care by CHS providers in community Health + Hospitals facilities; and Community Reentry Assistance Network (CRAN), which offers telephonic and in-person referrals and assistance for health and human services. We also encourage all patients to call the PORT phone line after their release in order to speak with a peer about accessing community-based services.

Finally, I would like to note that we have worked to make our COVID-19 data more publicly available. We now provide COVID-19 metrics, including the current incidence and prevalence rates, on the CHS website, in addition to the data we report through Local Law 59. We appreciate that the sharing of accurate and timely information is paramount during a public health crisis, and we remain committed to transparency and accessibility.

On a daily basis, I read reports criticizing the management of COVID-19 in prisons and jails across the country. Here in New York City, once the epicenter of the epidemic, I am both proud and humbled by what CHS and DOC together have accomplished throughout this pandemic. We made decisions together based on an unprecedented pooling of the wealth of our respective clinical and security experience and expertise. The evolving science about this shape-shifting virus always informed our approach. We were powered by frontline, essential professionals who made personal sacrifices and exhibited unwavering professionalism. I'm honored to work with such dedicated individuals during one of the most trying times in our City's history, and I know we stand ready to face what challenges may lie ahead.



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK
Jumaane D. Williams

**TESTIMONY OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE NEW YORK CITY COUNCIL COMMITTEE ON HOSPITALS AND
COMMITTEE ON CRIMINAL JUSTICE
SEPTEMBER 21, 2020**

Good morning,

My name is Jumaane D. Williams, and I am the Public Advocate for the City of New York. I would like to thank Chairs Rivera and Powers for holding this very important hearing today on the Department of Corrections and the Correctional Health Services management of COVID-19 in jails. While our City is recovering from the worst of this pandemic, our correctional facilities have yet to implement strong protocols to protect our imprisoned populations from contracting and spreading COVID-19. The DOC's public health standards were low before the Coronavirus came into existence, so this virus has only exacerbated this problem.

Earlier this year, approximately 2,500 prisoners were released from Rikers Island due to concerns about the spread of COVID-19. In March there was a coordinated effort by City and State agencies to release some individuals, mainly those who were city-sentenced, detained for parole violations, and others who met an obscure criterion. While we can acknowledge that the City and State took the right course of action by granting some individuals early release, there are thousands of people who are still incarcerated – and several others – who remain at risk of contracting this virus. As of September 19, 1,326 staff members, 773 incarcerated individuals, and 90 parolees have tested positive for COVID-19. In addition, 5 staff members, 17 incarcerated individuals, and 4 parolees have died due to COVID-19. These statistics demonstrate just how slow our State and City were in containing the Coronavirus at its onset. Although cases of positive tests and fatalities are on the decline at the moment, these statistics are still very concerning. I would like to know the extent to which mask wearing and social distancing are being enforced in correctional facilities, as well as the availability of hand sanitizer and testing. Is the DOC providing testing to any incarcerated person who requests one? What are the CHS and DOC protocols for deciding how long to quarantine new admissions? Does CHS or DOC immediately test new admissions upon entry? These are the questions that we need answers to in order to adequately assess whether or not the DOC and CHS are keeping staff and incarcerated individuals safe during this pandemic.

Aside from the inadequate handling of COVID-19, it has been brought to my attention that the DOC is not securing the comfort and wellbeing of our incarcerated population. In July, public defenders reached out to my Office to voice concerns about the DOC's inability to keep incarcerated individuals cool without risking the spread of the Coronavirus. That month, the temperature of some prison units were as high as 94 degrees Fahrenheit. The Department has maintained that Rikers infrastructure poses a challenge to install air conditioners. To me, that justification is unacceptable.

In addition to the issue of cooling, there has been a lack of regard for the mental health of our incarcerated population. One of the public defenders who was in contact with my Office spoke of a client who was having seizures one to two times a week. He was admitted to Bellevue Hospital and afterwards, he returned to a unit that had no air conditioning. He was then moved to another location that also had no AC, and he had to stay there for five hours. Unfortunately, this individual subsequently suffered injuries to the head. He ended up back at Bellevue before he was finally put in an air conditioned unit. To make matters worse, this individual has not been able to see a psychiatrist since the onset of the pandemic. In fact, the only time he was able to see a psychiatrist was when he was at Bellevue. It is worth noting that this person is incarcerated because of a parole violation.

COVID-19, heat exhaustion, and mental health crises are not the only areas where DOC's management has fallen short. Videoconferencing has been essential for many individuals who are imprisoned because it allows them to connect with loved ones and interact with their legal representatives. And yet, the DOC has done nothing to safeguard this service. Defenders have found that their pre-scheduled video conferencing sessions are being cancelled the day of, infringing on their ability to speak to their clients about time-sensitive matters. Video conferencing sessions are also being automatically cut off after 30 minutes. And perhaps the most concerning problem is the issue of confidentiality. My office has heard reports of correctional officers not respecting clients legal rights to have confidential and privileged discussions with their families or attorneys. Public defenders have also informed me that the DOC is recording video conferencing sessions with family members for law enforcement purposes, which is a complete violation of a privilege between incarcerated individuals and their families. My bill, Intro 2009, would require the DOC to provide video conferencing services to our incarcerated population at no cost to them or the people with whom they are contacting. Between health risks and legal matters, these individuals already have enough matters to worry about – the affordability of speaking to their families and lawyers should not be one of them.

As we go into the fall season, we face an even greater challenge in ensuring that the DOC protects the health of our incarcerated population. That challenge includes making sure the

facilities have enough functioning heaters to keep these individuals warm as the weather gets colder, providing COVID-19 testing to every admitted person upon entry, ensuring that incarcerated individuals are socially distancing in common areas, granting every incarcerated person access to the flu shot, and providing psychological counseling to those who are in need of it. We need to remember the humanity of detained persons, and not lose sight that they too deserve to have a high standard of health and safety during this pandemic. Thank you.



**Redefining
public
defense**

**New York City Council
Committee on Criminal Justice and Committee on Hospitals
Oversight - The Department of Correction and Correctional Health Services Management
of COVID-19 in Jails**

September 21st, 2020

**Written Testimony of The Bronx Defenders
By Orayne Williams, Julia Solomons, Tahanee Dunn, and Martha Grieco**

Good afternoon Chair Powers, Chair Rivera, and committee members. My name is Orayne Williams and I am a criminal defense social worker with The Bronx Defenders (“BxD”).¹ Thank you for your attention to these critical matters and for the opportunity to testify before you today.

A. Introduction

The impact of COVID-19 has dramatically worsened conditions in our city jails, exposing persistent violations of the Board of Correction’s minimum standards and a complete lack of transparency and accountability; revealing negligible communication efforts between the Department of Correction (“DOC”), their staff and the people in their custody, as well as a disregard for proper training on the use of PPE and implementation of CDC recommended safeguards; and inspiring a sense of urgency among defenders to secure our clients’ release from

¹ The Bronx Defenders is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called *holistic defense* that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

custody. Conditions in the City's jail facilities are unacceptable and our clients are afraid for their lives. Through our clients' experiences, we highlight for you today the following concerns:

- DOC and Correctional Health Services ("CHS") do not have the resources to follow adequate safety protocols with regard to COVID-19 while also maintaining humane conditions and responsive healthcare practices;
- Lack of transparency regarding policies and procedures creates barriers to decarceration; and
- Limitations in access to counsel are ongoing and must be addressed

Before the pandemic, our city jails were already isolated from the public eye. Over the past six months it has become dangerously so, and as we navigate ongoing COVID-19 precautions, increased visibility and oversight is critical for our clients in custody.

B. DOC and CHS do not have the resources to follow adequate safety protocols with regard to COVID-19 while also maintaining humane environmental conditions and responsive healthcare practices.

As social workers, we pay particular attention to the health and wellness of our clients held pre-trial in the city jails. In particular, we focus on the need of countless BxD clients for meaningful access to mental health services and necessary changes in environmental factors that put their lives at risk. Environmental factors such as extreme heat, unclean water from pipes, and physical isolation throughout this crisis have created inhumane crisis conditions. Coupled with the extreme risk posed by COVID-19 inherent in a congregate jail setting, these conditions reveal a disregard for the human lives inside those facilities. These conditions not only affect our clients' physical health but also their emotional and mental health, which can be life-threatening.

Throughout the COVID-19 crisis, we have seen our clients struggle to access necessary mental health support, a struggle that has become significantly worse due to the drain on Correctional Health resources. In many cases, clients who express ongoing suicidal ideations receive no attention despite regular advocacy by our staff on their behalf. Given the barriers to stability that our clients struggling with mental health concerns already face prior to incarceration, being held in such an inhumane environment only makes more difficult the task of overcoming those barriers upon release. Release rates for our clients with mental health concerns, however, have

been consistently lower than those without them, which we believe can be attributed to the lack of clinical support and discharge planning they have received throughout the past six months.²

Many of our clients' stories reflect the dangers of neglectful correctional healthcare. Our clients who suffer from asthma have been denied access to their inhalers. In August, while checking in with one of our clients via video conference, he explained that it was extremely hot in his cell. As a result of this heat, he experienced difficulty falling and staying asleep at night, woke up with nosebleeds, expressed feeling dizzy and having terrible headaches. When our client complained about the heat, he reports that he was only given lotion by the staff, which consequently only caused him to sweat more. As recently as this month, while checking in with a different client via video conference, he explained that he had some rashes appearing on his skin and the doctor informed him that it could be the water. Our client expressed that the water from the pipe is often blackish, or yellow with a bad odor. This is the same water that he showers in; disgusting and contaminated water that is causing damage not only to his skin, but also his self-worth.

Too often, the criminal legal system only deems someone worthy of rehabilitation after they have pleaded guilty and had participation in treatment imposed by a court. The procedural posture of a case, however, has no bearing whatsoever on our clients' health and wellness needs. All of our clients deserve compassion, respect, and the right to live in conditions that support their healing. Moreover, providing reliable mental health care throughout a pandemic, livable housing areas, and clean water, are vital to any human being's ability to be healthy and rehabilitate. Incarceration isolates our clients from regular life activities and socialization and creates barriers to developing healthy coping mechanisms. This increases depression, anxiety, and suicidal ideation among our clients. They are forced to be hyper-focused on keeping themselves alive while incarcerated, leaving them with little energy left to fight for their freedom.

C. Lack of transparency regarding policies and procedures creates barriers to decarceration.

The public statements of DOC are often in conflict with our clients' reports about the realities of their detention. For example, each month the Board of Correction ("BOC") holds a public meeting, during which DOC and CHS present information about current "policy" and frequently request some variation from the Board's minimum standards, what the Board considers to be

² NYC Open Data (September, 2020). Retrieved from https://vera-institute.shinyapps.io/nyc_jail_population/

“basic elements necessary to ensure the safe and humane housing of inmates.”³ In defense of these requests, DOC and CHS 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, all while relying on data they do not make available to the public. Rarely does either agency share a negative consequence for people in custody.

Since the onset of COVID-19, the contradictions between the public reports and our clients' reports are the starkest they have ever been, and with the most significant consequences. Most recently, as the number of new COVID-19 cases has remained low, our attorneys and advocates have been able to meet with clients in DOC custody both in court and at some of the facilities, and have observed firsthand some of the ways in which the policies cited by DOC and CHS do not match the practices. Defense attorneys and advocates attempting to visit their clients in person at the jail facilities report seeing many officers without masks entirely, or wearing them below their chin while interacting with the public and people in custody. Margaret Egan, Executive Director of the Board of Correction, echoed these concerns at the most recent Board meeting, but received very little reassurance from DOC that these issues would be corrected promptly. Our clients have been reporting this mismanagement of COVID-19 safety protocols since the onset of the pandemic, but DOC has never publicly acknowledged any struggle to properly implement protocols to keep our clients safe.

D. Limitations in access to counsel are ongoing and must be addressed.

1. We continue to need expanded video capability.

Access to counsel has been significantly limited since the onset of the crisis, greatly inhibiting defenders' abilities to advocate for our clients' release. Though some in-person counsel visits have resumed, the safety protocols to protect clients and defender staff remain unclear and the risks involved remain significant. As a result, videoconferences continue to be the only reliable and safe 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. In the last couple of months, with so many court appearances and proceedings being conducted by video in both Criminal and Supreme Court, there are even fewer slots on the videoconferencing calendars available for counsel visits. Additionally, we have seen DOC struggle to produce our clients by video for court appearances, sometimes requiring the case to be adjourned and creating unnecessary delays in due process. As long as courts are operating remotely for the safety of all parties involved,, it is critical that the City take the necessary measures to ensure that our clients are able to be

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

present for their court appearances. We believe this only makes more critical the expanded availability of videoconference time slots, both to adequately accommodate the increased scope of their use and to ensure meaningful access to counsel.

2. Confidentiality protections and technological troubleshooting

Not only is accessing our clients via videoconference exceedingly difficult, but when we do make contact with our clients via Skype, there are additional issues that prevent productive conversations. 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 minutes allotted for conferences. This problem was common pre-COVID, but was less pressing because it was not the only meaningful 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. The City Council must push the Board of Correction to include Access to Counsel in its proposed restrictive housing rule.

Advocates are eagerly awaiting BOC's proposed changes to their minimum standards regarding restrictive housing, anticipating an end to solitary confinement in New York City and a significant shift in how DOC must address violence in our jails. We are very concerned, however, that implementation of the Board's restrictive housing rule, due to be released in October, will not be successful without access to counsel in the disciplinary process. Since the onset of the pandemic, a once-skeletal due process structure has ceased to exist, with every single one of our clients who has been placed in punitive segregation reporting that it happened without a hearing. Our clients 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 the circumstances. 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. Without access to their advocates, our clients basic due process rights are denied regularly.

We regularly see the Board of Correction create rules and standards that do not trickle down to the rank-and-file officers. Just as regularly, we hear DOC leadership make expansive claims about their picture-perfect policies and procedures that directly contradict the reality in the jails portrayed by our clients. We need the involvement of an outside party, someone who is a step removed from the jail environment, but who understands the rules and rights of both parties and is invested in the ultimate well-being of the person in custody. DOC must notify an incarcerated person's advocate and offer the opportunity for them to be present at any fact finding involving an offense that could lead to status changes of any kind, to speak with their advocate before waiving any fact finding rights, and to share information about the incident with the advocate so that the advocate can support their client through the process.

Both the DOC Commissioner and the Board of Correction have spoken frequently about moving away from punitive approaches in our jails and towards rehabilitation. Approaches to violence that are truly restorative always involve a support person for the people on both sides of the conflict, as this increases accountability and investment in the process and in long-term change. Correctional staff are not our clients' support people, nor are they experts in due process. Yet due process is fundamental to a disciplinary system that seeks to be fair and not arbitrary, impactful and not cruel. As we move into the unknown and unexplored means to address violence in our jails, regardless of what form that takes, meaningfully involving the person in custody and their advocates will be critical to creating real change.

E. Conclusion

We urge the Council, first and foremost, to think creatively about how to reduce barriers to decarceration. Defense organizations continue to advocate for the release of our clients. 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 should always be the priority, for those who remain incarcerated it is critical that conditions be improved wherever possible. Everyone in custody deserves to live in humane conditions, have access to the medical and mental health care that they need, as well as 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, it is the City's responsibility to do everything possible to protect and address the needs of those individuals. These clients and so many others could have been released before pandemic ravaged

our jails. They could have avoided so much fear, pain, and anguish. This pandemic is not over. It has ceased to ravage our state for right now, but a second wave is predicted this fall. The Council must act *now* to prevent the pain and suffering of so many more people inside our city jails. They must learn from the mistakes made these past six months, and take real, tangible steps to protect New Yorkers in custody before more lives are lost or permanently damaged by this deadly disease.

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



“Oversight- The Department of Correction and Correctional Health Services Management of COVID-19 in Jails”

COBA PRESIDENT BENNY BOSCIO JR’s TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEES ON CRIMINAL JUSTICE AND HOSPITALS

**Keith Powers
Chairman**

**Carlina Rivera
Chairwoman**

NEW YORK CITY COUNCIL

September 21, 2020

Good morning Chairman Powers, Chairwoman Rivera, and the distinguished members of your committees. My name is Benny Boscio Jr. and I am the President of the Correction Officers' Benevolent Association, the second-largest law enforcement union in the City of New York. Our members, as you know, provide care, custody, and control of over 4,000 inmates daily in the nation's second-largest municipal jail system.

We are here today to discuss the Department of Correction and Correctional Health Services Management of COVID-19 in the city's jail system. Before I begin, I want to read the names of eight of my members who lost their lives due to COVID-19 and ask that we pause for a moment of silence after I read their names. Michelle Sumpter, Maurice Lacey Jr., Ely Galan, Elvester McKoy, Connie Jones Hawkins, Quinsey Simpson, David Williams, and Richard Closs.

These brave officers lost their lives during this unprecedented public health crisis. Another 1,400 Correction Officers tested positive for COVID-19. And at the height of the pandemic in March, 3,000 of our members were out sick. According to data collected by the New York Times, the virus has sickened more correction officers in New York, working in the epicenter of the epicenter, than in most other large American cities, including Chicago, Houston, Miami and Los Angeles combined.

The reality is that the City of New York failed to do everything possible to keep my members from dying and from getting sick. From the onset of this crisis, we sounded the alarm about the deadly threats our members were facing. Rather than

hearing our cries for help and collaborating with the boots on the ground, the Department of Correction fought us every step of the way.

Let me outline the biggest areas of contention.

First, COBA had to fight tooth and nail to convince the DOC to shutdown inmate visits. This process took two weeks and the visits only shutdown after the state prisons shutdown inmate visits. So, the question I pose to you is why did we have to wait?

Second, as the pandemic worsened and other agencies began to adopt protocols for protecting the health and well-being of other essential workers, we were met with silence from the senior managers of our agency. Recognizing that the agency was not actively and systematically distributing PPE, Correction Officers began bringing their own masks to wear. When this happened, they were told that bringing in their own masks wasn't permitted and they should go home.

The failure to allow officers to wear masks early on, coupled with the failure to provide PPE, dragged on for weeks throughout the month of March and into April.

Finally, after realizing help was never on the way, COBA purchased over 40,000 K-N95 masks and hundreds of gallons of hand sanitizers for our members to help keep them safe. In short, we did what the DOC and the City of New York failed to do. We also called for Correction Officers to receive COVID-19 testing on Rikers Island. That too fell on deaf ears.

Our union then filed a lawsuit in late March demanding that the City of New York be compelled to provide our members with PPE, COVID testing, and to increase the sanitization of the jails. It was our lawsuit that produced a settlement with the City to not only provide our members with adequate levels of PPE, but to also provide free COVID-19 testing at over 50 Northwell Health Urgent Care locations.

The Chief of the Department of Correction waited until April 18th to finally release a teletype calling for the commanding officer of each facility to ensure that an adequate amount of personal protective equipment (PPE) is available for all uniformed and non-uniformed members of service. So just to be clear, it took numerous officers getting sick and calling out sick and a lawsuit to finally make PPE distribution mandatory-some six to eight weeks into the pandemic.

That is inexcusable at best and borderline criminal at worse. To make matters worse, the Department's response to the staffing shortage was to force dozens of officers to work triple tours of duty, which required us to file yet another lawsuit on April 23rd, arguing that forcing officers to work for 24 hours straight, during the public health crisis, is a direct invitation to infection and disease because sleep deprivation negatively impacts physical and mental health. Even Mayor de Blasio publicly called this a "dumb managerial mistake."

Another dumb managerial mistake was when the DOC gave 30,000 N-95 masks to the FDNY from our stockpile, weeks after the Mayor said that the FDNY already had a sufficient supply of PPE.

So, if we are really going to sit here today and examine the impact of COVID-19 in the jails, we first need to face the facts that I've just outlined. The fact is the record shows a series of gross management failures, negligence, and leadership voids that led to the unnecessary and preventable deaths of 8 of my members and the suffering of my 1,400 members who tested positive. While all of this was going on, my members still went to work and had to grapple with inmates assaulting them and deliberately coughing and spitting in their faces. Correction Officers have always been the unsung heroes of law enforcement and their bravery in the face of adversity throughout the pandemic clearly illustrates that.

So, let's fast forward to today. Fall literally begins today and for months, the health experts at the CDC have been sounding the alarm about a second wave of COVID-19 returning. I have not, as of today, seen a written action plan from the DOC to ensure that the litany of mistakes made the first time around, never happens again.

To ensure the DOC is better prepared, I ask for you to join me in holding the City of New York fully accountable for protecting the thousands of lives in our jail facilities, including my members. To start, the DOC can immediately prepare for the next wave of COVID-19 by taking advantage of the low inmate population, which currently hovers around 4,000 inmates. Instead of consolidating the jails and piling inmates on top of inmates, where we are already outnumbered 50-1 in most housing areas, the DOC can spread the inmates out throughout the jails lowering the officer to inmate ratio to 15-1. This would allow us to practice better social distancing, while also increasing the safety of officers and inmates alike. As part of this redistribution of housing areas, the DOC should break up the gangs in our

facilities that are housed according to their gang affiliation. This practice has created little armies within the jails where inmates who weren't part of a gang initially, are now forced to join a gang just to stay safe. Breaking up the gangs would immediately help us mitigate a potential second wave of COVID-19 and make our facilities safer for everyone.

Secondly, we have attempted to compel the city to mandate that all Correction Officers test negative before returning back to work if they have tested positive for COVID-19. While the city has refused this request thus far, I ask that you support us in this critical effort to keep our members safe and to keep the inmates safe as well.

Finally, I call on each of you to meet or speak with me on a regular basis so you can see first-hand how Correction Officers are navigating the challenges posed to us by COVID-19 and to address any deficiencies in the agency's response.

We cannot afford to repeat the mistakes of the past. We cannot waste a single day as soon as the first COVID 19 case emerges. Thousands of lives are on the line and the actions you take now will play a vital role in protecting each and every one of those lives.

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



Testimony of

Stan Germán

Executive Director

New York County Defender Services

Before the

Committee on Criminal Justice and Committee on Hospitals

Oversight Hearing – The Department of Correction and Correctional Health Services

Management of COVID-19 in Jails

September 21, 2020

My name is Stan Germán and I am the Executive Director of 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. Thank you to Chairs Powers and Rivera for holding this hearing on the management of COVID-19 in city jails.

I. Introduction

My office has over 100 employees and 70 trial attorneys. We represent thousands of people, hundreds of whom are currently incarcerated in city jails. I am deeply concerned about the welfare of our incarcerated clients and the health and safety of my staff who are required to appear in person in our courts.

In my opinion, DOC has not taken adequate steps to halt the spread of the coronavirus. It is well-established that jails are veritable petri dishes for disease that then spreads back into surrounding communities.¹ Research now shows that mask wearing is crucial to preventing the spread of the

¹ See, e.g., Sandhya Kajeepta et al, “County Jail Incarceration Rates and County Mortality Rates in the United States, 1987-2016,” *American Journal of Public Health*, (Jan. 2020), available at

coronavirus.² Yet my staff consistently report that DOC staff are not wearing face masks, or are wearing them slung around the bottom of their chin, in shared spaces. We have seen this on multiple occasions in the holding areas at the courthouse on 100 Centre Street, during visits to clients at the Manhattan Detention Center, and in the background of daily videoconferences to our clients in city jails. At a minimum, the failure to wear face masks puts all of us at risk. Yet our incarcerated clients report to us much worse, which I outline in detail below.

I call on the City Council to hold DOC accountable when their staff fail to follow COVID-19 policies and procedures. DOC and CHS must produce written policies in line with recent CDC guidance and up-to-date research on coronavirus transmission. Furthermore, the city must continue to work with stakeholders to ensure that our jails contain as few people as possible throughout the duration of the pandemic to ensure social distancing. If the rest of the country is any indication, the next wave of COVID-19 is coming. Our city jails must be prepared. Right now, they are not.

II. NYCDS Coronavirus Survey

Today, NYCDS released a new report assessing the experiences of our incarcerated clients during the COVID-19 pandemic. We are aware of no other survey in the U.S. that has sought to collect data about the experiences of incarcerated people regarding coronavirus. Our 25-question survey received 47 responses from May 12 – June 25, 2020. A copy of the survey is included with my testimony.

Our analysis revealed that our surveyed incarcerated clients perceived that hygiene procedures were lacking, that they felt unsafe, and that jail staff did not address their concerns when they raised them. The results of the survey clash with safety assurances made by the Department of Corrections over the past six months.

Some of the results include:

- 32% of respondents reported that DOC staff were not consistently wearing masks.
- Only 26% said that DOC staff were conducting cleanliness inspections multiple times per day.
- Only 22% reported they could observe social distancing guidelines when needed.
- 40% had received a new, clean mask in the past week. 60% had access to cleaning supplies when needed.
- 69% had soap readily and freely available
- 82% said they did not feel safe regarding coronavirus transmission.
 - One client, Mr. R, in response to the last question, said “I would only feel safe at home.”

Our survey by no means captures the experiences of all people incarcerated in city jails. But the responses from this small group are troubling none the less. City officials should visit Rikers and talk to people about their experiences. They should be listened to and provided what they need to

<https://ajph.aphapublications.org/doi/10.2105/AJPH.2019.305413>.

² See, e.g., Susanna Esposito et al, “Universal use of face masks for success against COVID-19: evidence and implications for prevention policies,” *European Respiratory Journal* (June 2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7191114/>.

feel safe: space to social distance, cleaning products, regular testing of staff who are entering facilities from the outside, clean masks, and staff who wear masks all day every day when they are on duty. Failure to ameliorate these conditions will surely lead to a rise in cases, and death, on Rikers when cases begin to surge again in the general population.

III. Defender Request to DOC and CHS for Transparent Policies and Protocols

Two weeks ago, New York City public defender offices, including New York County Defender Services, sent a letter to the Department of Correction Commissioner and head of Correctional Health Services.³ We asked DOC and CHS to clarify how they have revised or supplemented their COVID-19 policies and procedures implemented at the outset of the pandemic to account for changing facts and scientific information acquired over the past six months. We also asked the Board of Correction to clarify how they intend to monitor the agencies' implementation of these policies going forward.

Since the beginning of the pandemic, it has been extremely difficult to ascertain what DOC and CHS' coronavirus policies are. The DOC COVID-19 Action Plan website is vague, to say the least.⁴ To date, the lack of clear information from DOC and CHS, including policies and procedures for testing people in custody and staff, and how incarcerated individuals will be able to quarantined and housed safely as facilities close and the population grows, has given us grave concerns that there have not been adequate preparations for a second wave of cases.

The Department, CHS, and the Board need only to look to the Centers for Disease Control for guidance. In July 2020, the CDC issued *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*.⁵ DOC, CHS, and BOC should strive to ensure that any and all NYC COVID jail policies comply with the CDC guidance.

NYC public defender offices have sought information on existing DOC and CHS policies over the course of the pandemic through FOIL, public calls for transparency, and direct requests to the agencies. The responses we have received have been insufficient to ensure the health and safety of our clients and our staff. For example, NYCDS submitted a FOIL request to DOC on August 13, 2020 asking for protocols for attorney visits during the pandemic, "including health screening required for entry, social distancing measures for visits, and other precautions that are being taken." This information is critical for an Executive Director like myself to have before deciding whether NYCDS staff should be allowed or encouraged to visit their clients in person in city jails.

On September 11, four hours after NYCDS sent the letter to DOC demanding they release their written policies and procedures, we received what can only be described as a non-responsive answer to our FOIL. We were informed: "As a preliminary matter, please note that your request for answers to a list of questions is not a request pursuant to FOIL...the Department is not required

³ Joint NYC Defender Letter Re: DOC and CHS COVID-19 Pandemic Procedures, Sept. 11, 2020, available at <https://nycds.org/wp-content/uploads/2020/09/Joint-Defender-BOC-letter-Sept-2020.pdf>.

⁴ NYC Dept. of Correction, DOC Covid-19 Action Plan, available at <https://www1.nyc.gov/site/doc/media/coronavirusap.page> (last visited 9/20/20).

⁵ Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

to create a new record in order to respond to a FOIL request. The Department will respond to your remaining requests for records by October 15, 2020.”

DOC’s response to our FOIL is, sadly, what we expected. Either they do not have policies and procedures in place that they intend to ensure that attorney visitors can be safe from coronavirus, or they do have them, but they will not share them. Whatever the case may be, how can a defender office like NYCDS balance our constitutionally-mandated duty to provide effective assistance of counsel to our clients without exposing our staff to a potentially-life threatening disease? Right now, we simply do not have sufficient information or confidence in DOC staff’s compliance with previous COVID-19 measures, such as mask wearing, to ensure our staff’s safety. Our clients, then, will be the ones to suffer.

Video conferences, as currently enacted, are an inadequate substitute for in-person attorney visits. They are loud, not private, there are technical difficulties, there are insufficient time slots to meet the needs of defense teams, sometimes our clients arrive late or not at all because guards will not bring them to their vid-con in a timely manner, our clients are transported without masks, or by guards who are not wearing them properly. For the past six months, we have done our best to make do. But we are now six months into this pandemic, with no vaccine or end in sight. DOC must do better. DOC must create reliable, available, and private vid-con capabilities, as well as ensure safe, clean spaces for in-person visitation.

In short, the status quo is untenable. The public, defenders, and incarcerated people and their families have the right to know what DOC is doing to keep people in their custody safe. There is no evidence that DOC and CHS have promulgated policies covering all of the necessary aspects of risk prevention and reduction, that there is robust enforcement of the policies that are in place, or that policies have been re-evaluated and revised to comport with new and emerging information about disease transmission and prevention.

IV. An Urgent Need for Improved Testing Protocols

As we noted above, it is not clear what DOC and CHS testing protocols are. The policy for employee testing appears to be located on the DOC COVID-19 Action Plan website, which states:

All DOC personnel, both uniformed and non-uniformed, will be provided access to COVID-19 testing at Northwell Health Urgent Care sites. Testing will be provided specifically to staff who are symptomatic and have been exposed to someone with COVID-19 and are exhibiting symptoms of this disease. Staff can register for an appointment by calling Northwell Health Urgent Care First Responder call center or walk in to any Northwell Health Urgent Care center.⁶

It appears from this policy that corrections staff are not required to undergo regular testing—despite research, promoted publicly by CHS’s own Chief Medical Officer, showing that workers in high-risk settings must be tested at least twice per week for that testing to actually assist in

⁶ *Id.*

curbing the spread of infection.⁷ NYC jails, which were among the most infected workplaces in America during the first outbreak here, surely qualify as a high-risk setting.⁸ Yet according to their own written policy, DOC personnel are merely “provided access” to testing—and even this testing “access” is limited to staff who are showing symptoms. This policy flies in the face of both the aforementioned research on testing high-risk workers as well as studies showing that many infected persons are highly contagious before the onset of symptoms.⁹ Rather than mandating frequent testing to protect incarcerated people, DOC staff, and our communities, DOC left its own rank and file in a position where they had to sue the city just to achieve this meager “access” to testing when they start feeling sick..

Testing for the NYC jail population has similarly focused on symptoms—if they’re being tested at all. During the first outbreak in NYC jails, the scope of testing for incarcerated people remained limited even as testing in NYC at large expanded drastically.¹⁰ In May 19 City Council testimony, CHS Senior Vice President Patsy Yang declared that all newly incarcerated people were being “universally” tested.¹¹ Yet according to data obtained by NYCDS from a CHS FOIL request in July, this was never true.¹² During the period from April 27 (when the jails began tracking new admissions testing) through June 2, only about one-third of the approximately 1,200 new jail admissions were tested upon intake.

We have been told that people are asked to consent to a COVID-19 test at intake, and if they do not, they are placed in quarantine for fourteen days. It feels unlikely to us that two out of three people refuse a nasal swab test and instead request two weeks of quarantine, but we have no way of knowing. The simple fact is that a huge proportion of people entering NYC’s jail population are not being tested. DOC’s ability to appropriately quarantine all those who have “refused” to be tested is of course dependent on the amount of space available to do so. That space may be available now, while community transmission in our jails is (apparently) low, but what happens when another outbreak hits? The walls at Rikers Island have not moved, and the impossibility of controlling the spread of infections in our jails has not changed. The only possible answer is that we must keep NYC’s jail population as minimal as possible.

⁷ See <https://twitter.com/NathanLo3579/status/1258141974940364801> (retweeted by CHS CMO Ross MacDonald on May 6, 2020).

⁸ 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>.

⁹ See, e.g., Harvard Health Publishing, “If you’ve been exposed to the coronavirus,” March 2020, available at <https://www.health.harvard.edu/diseases-and-conditions/if-youve-been-exposed-to-the-coronavirus> (last updated September 11, 2020); Tina Hesman Saey, “COVID-19 may be most contagious one to two days before symptoms appear,” *Science News*, April 15, 2020, available at <https://www.sciencenews.org/article/coronavirus-covid-19-infection-contagious-days-before-symptoms-appear>; National Foundation for Infectious Diseases, “Frequently Asked Questions About Novel Coronavirus (COVID-19),” available at <https://www.nfid.org/infectious-diseases/frequently-asked-questions-about-novel-coronavirus-2019-ncov/>.

¹⁰ Brad Maurer, Seth J. Prins & Sandhya Kajepta, “There must be mass releases from NYC jails immediately – it’s the only way to protect public health,” *The Appeal*, July 9, 2020, available at <https://theappeal.org/there-must-be-mass-releases-from-nyc-jails-immediately-its-the-only-way-to-protect-public-health/>.

¹¹ Testimony of Patsy Yang to the New York City Council Committees on Justice System and Criminal Justice, May 19, 2020, available at <https://hhinternetauto.blob.core.windows.net/uploads/2020/05/new-york-city-council-hearing-committee-on-criminal-justice-jointly-with-the-committee-on-the-justice-system.pdf>.

¹² NYC Health + Hospitals FOIL Data, July 2, 2020, available at <https://nycds.org/wp-content/uploads/2020/07/FOIL-Data.pdf>.

The combination of limited testing—even during periods of high incidence and prevalence—for incarcerated people and staff, DOC’s failure to implement basic infection-control measures like staff consistently and correctly wearing masks, and the steady and significant increase in the jail population over the past several weeks is a recipe for another public health disaster. Our most respected public health officials have sounded the alarm that this coming fall and winter will bring much more infection and death.¹³ NYC jails’ first outbreak led to more than 2,000 infections with potentially severe long-term effects, as well as at least 16 tragic deaths among those incarcerated and working in our jails. Given DOC’s apparent failure to learn from this history, I fear we are doomed to repeat it. We must reduce the jail population as much as we possibly can.

DOC’s COVID approach stands in stark contrast to the testing protocols put in place in New York’s nursing homes. At one-point Governor Cuomo mandated twice-weekly testing for nursing home workers, which was in keeping with the then-emerging studies of high-risk workers mentioned previously. News reports also indicate that a massive effort was undertaken to test every single one of New York’s 90,000 nursing home residents.

Nursing homes and jails obviously are not perfectly analogous. But both are congregate settings whose populations are especially vulnerable to COVID-19. And the heavy churn of admissions to and releases from local jails have a significant effect on spreading infections and deaths in the broader community.¹⁴ Yet our policy approaches to testing in these two congregate settings with high-risk populations have been starkly different, in terms of both those working and those living in these settings.

Even city schools have adopted a more robust testing protocol. According to the UFT, “[u]pon commencement of in-person learning, the NYC DOE will implement the Random Sample Survey of COVID-19 testing of adults and students present in DOC schools.”¹⁵ The testing policy is written, extensive and available to the public through a simple Google search.

Why are our jails not required to provide similar information to the public? This is the kind of information that all New Yorkers who interact with people who go in and out of our city jails, including public defenders, need to know. But as is so often the case with the Department of Correction, all we have are vague policies, lax compliance, a lack of accountability, and non-responsiveness to FOIL requests. In light of this, bold assurances from officials that that they can keep us all safe fall far short. Again: the only solution is to reduce the jail population as much as we possibly can.

¹³ Connor Perrett, “A top disease expert is warning of ‘another 12 to 14 months of a really hard road ahead of us’ and says the US has no national plan to stop it,” *Business Insider*, Sept. 13, 2020, available at <https://www.businessinsider.com/covid-19-fall-osterholm-really-hard-road-ahead-192020-9>.

¹⁴ American Civil Liberties Union, *COVID-19 Model Finds Nearly 100,000 More Deaths Than Current Estimates Due to Failures to Reduce Jails*, Aug. 1, 2020, available at https://www.aclu.org/sites/default/files/field_document/aclu_covid19-jail-report_2020-8_1.pdf.

¹⁵ NYC Department of Education and UFT, *School Testing Policy Agreement*, available at <https://www.uft.org/sites/default/files/attachments/coronavirus-school-testing-policy.pdf>.

VI. Conclusion

Our city jails need robust COVID-19 policies and procedures, yes, but the most effective solution is staring us all in the face. The city must not act as if the work to reduce our jail population is finished. We must release as many people as possible from our jails in advance of an inevitable uptick in COVID-19 cases.

The risk of coronavirus infection in New York City is currently low. Now is the time to get our house in order and ensure that we are ready for the next wave. I call on City Council to work with defenders and other stakeholders to require DOC and CHS to produce written policies and procedures related to COVID-19 that comply with CDC guidance, ensure accountability when policies are not followed, and continue to work with stakeholders to keep as many people as possible out of the jails in the first place.

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

STILL NOT SAFE



INCARCERATED CLIENT SURVEY RESULTS & THE ESCALATION OF A PUBLIC HEALTH CRISIS IN NEW YORK CITY JAILS

NEW YORK COUNTY
DEFENDER SERVICES

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Julia Kerbs
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September 2020

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EXECUTIVE SUMMARY

New York County Defender Services (NYCDS) created a questionnaire and surveyed willing incarcerated clients on their experiences in custody during the pandemic. We are aware of no other survey in the U.S. that sought to collect data about the experiences of incarcerated people regarding coronavirus. The survey received 47 responses by the end of the questionnaire administration period. NYCDS tabulated the responses and presented them along with quotes that exemplify client experiences. Survey analysis revealed that clients perceived that hygiene procedures were lacking, that they felt unsafe, and that jail staff did not address their concerns. These results clash with safety assurances made by the Department of Correction.

INTRODUCTION

New York County Defender Services is a public defense office in Manhattan that represents thousands of indigent people accused of crimes every year. Our Corrections Specialist Unit works directly with our clients incarcerated on Rikers Island and other city detention facilities. Prior to the emergence of COVID-19, our specialists were in the jails weekly to provide support for our clients and to monitor conditions.

When coronavirus first appeared in New York City in early 2020, we feared for the safety of our clients and immediately began advocating for mass release. News reports and stories from our clients quickly suggested that Rikers Island was a coronavirus hotspot. The *Wall Street Journal* called the Rikers Island Jail complex “among the most infected workplaces in the U.S.”[1] Despite relatively limited coronavirus testing for incarcerated people in city jails, more than 500 have tested positive and 3 have died. Thousands more were never tested but classified as likely exposed.[2] Conditions on Rikers are endangering our incarcerated clients, with alarming implications for community spread, as thousands of people cycle in and out of city jails on a daily basis.

In May 2020, our Corrections Specialists and Data Scientist designed a survey about daily life in New York City jails during the COVID-19 pandemic. The results of the NYCDS Coronavirus Survey demonstrate the stark and unsafe realities of pandemic conditions inside New York City jails. Over 80 percent of survey participants reported feeling unsafe. The specific anecdotes they provided are also deeply concerning. This report outlines the methods and results of the survey. We also offer policy recommendations to mitigate dangerous conditions in the jails and to protect incarcerated people from serious illness and death.

METHODS

Survey Design

The NYCDS Coronavirus Survey was designed to offer an account of life inside New York City jails during the 2020 coronavirus pandemic period, from the perspective of people imprisoned there. The appendix includes a list of the survey questions. Survey design and analysis were overseen by our Corrections Specialist and Data Research units.

We took measures to ensure that our survey results were not complicated by policy changes in the jails. To our knowledge, DOC made no changes to their coronavirus mitigation policy while the survey was active.

Survey Administration

The survey was conducted by NYCDS staff from May 12, 2020 through June 25, 2020 and administered via phone or video conferencing. The survey generally took 5-10 minutes to complete and responses were captured using Google Forms.

Data Analysis

Once the survey was closed, data was compiled through a comprehensive process of qualitative coding. We grouped similar responses together to form response categories. This enabled us to draw quantitative insights out of participants' qualitative responses. The prevalence of response categories was calculated based on the frequency of response categories out of the number of non-missing data entries for a specific question and is presented in tables below. Prevalence of demographic characteristics was computed similarly and is presented in its own table.

RESULTS

Demographic Information

We surveyed 47 incarcerated people during the survey administration period. People who chose to participate in the survey were imprisoned in 9 of the city's 11 jails.

Race, ethnicity, gender and age information were obtained from RAP sheets and DOC's Inmate Lookup Service website.

A majority of respondents' races were listed as Black (51.11%), followed by white (42.22%), with other and Latinx accounting for the final 6.66%. Additionally, most respondents' ethnicities were categorized as Hispanic (55%). A majority (63.83%) of respondents were below 40 years of age, while a large proportion (23.40%) were over the age of 50.

The demographic breakdown of survey participants was consistent with the general demographic breakdown of people in DOC custody.[3]

Table 1 – Demographic Characteristics of Survey Respondents

Demographic Characteristic	Number and Percent
Total	47
Race¹	
Black	23 (51.11%)
Latinx	2 (4.44%)
White	19 (42.22%)
Other	1 (2.22%)
Ethnicity²	
Hispanic	22 (55%)
Non-Hispanic	18 (45%)
Gender	
Male	45 (95.74%)
Female	2 (4.26%)
Age	
18-29	20 (42.55%)
30-39	10 (21.28%)
40-49	6 (12.77%)
50-59	10 (21.28%)
60+	1 (2.13%)
DOC Facility	
Anna M. Kross Center	13 (27.66%)
George R. Vierno Center	4 (8.51%)
Manhattan Detention Center	6 (12.77%)
North Infirmary Command	3 (6.38%)
Otis Bantum Correctional Center	3 (6.38%)
Rose M. Singer Center	2 (4.26%)
Robert N. Davoren Center	7 (14.89%)
Vernon C. Bain Center	8 (17.02%)
West Facility	1 (2.13%)

¹ Race information was available for 45 respondents.

² Ethnicity information was reported for 40 respondents.

Perceptions of DOC's Health and Safety Precautions

The survey asked respondents about their perceptions of health and safety precautions taken by the NYC Department of Correction during the pandemic. See Table 2 on the next page for details on responses.

Actions by DOC Staff

- 15 respondents (31.91%) reported that DOC staff were not consistently wearing masks.
- 12 respondents (26.09%) said that DOC staff were conducting cleanliness inspections multiple times per day.

Social Distancing

- While 42 respondents (89.36%) stated that they were in situations that required social distancing daily, only 10 (22.22%) respondents affirmed that they could observe social distancing guidelines when needed.
- A majority of respondents (35 or 77.78%) said that day rooms had at times more than 10 people, and 21 respondents (44.68%) stated that there were sometimes more than 4 people in bathroom or shower facilities.

PPE & Cleaning Supplies

- Only 19 respondents (40.43%) had received a new, clean mask in the past week.
- Additionally, 20 respondents (42.55%) pointed out that their masks were visibly dirty.
- 60.87% had access to cleaning supplies when needed, and 68.09% had soap readily and freely available.
- Some clients reported inconsistent access to PPE and cleaning supplies, having to share soap, or needing to pay for their own soap.

Official DOC Complaint Process

- 30 of 46 clients (65.22%) reported making at least one complaint to DOC staff. Of this group:
 - 21 respondents (70%) stated that staff never addressed their complaints;
 - 5 respondents (16.67%) stated that DOC staff sometimes addressed their complaints; and
 - 4 respondents (13.33%) felt that their complaints were fully addressed.

Overall Safety

- Most survey respondents (37 or 82.22%) indicated that they did not feel adequately protected from transmission of the coronavirus in city jails.
- Only 7 of 45 respondents (15.56%) stated that they felt safe and one person (2.22%) indicated that they felt "somewhat" safe.

Table 2 - Client Perceptions of DOC's Health and Safety Precautions

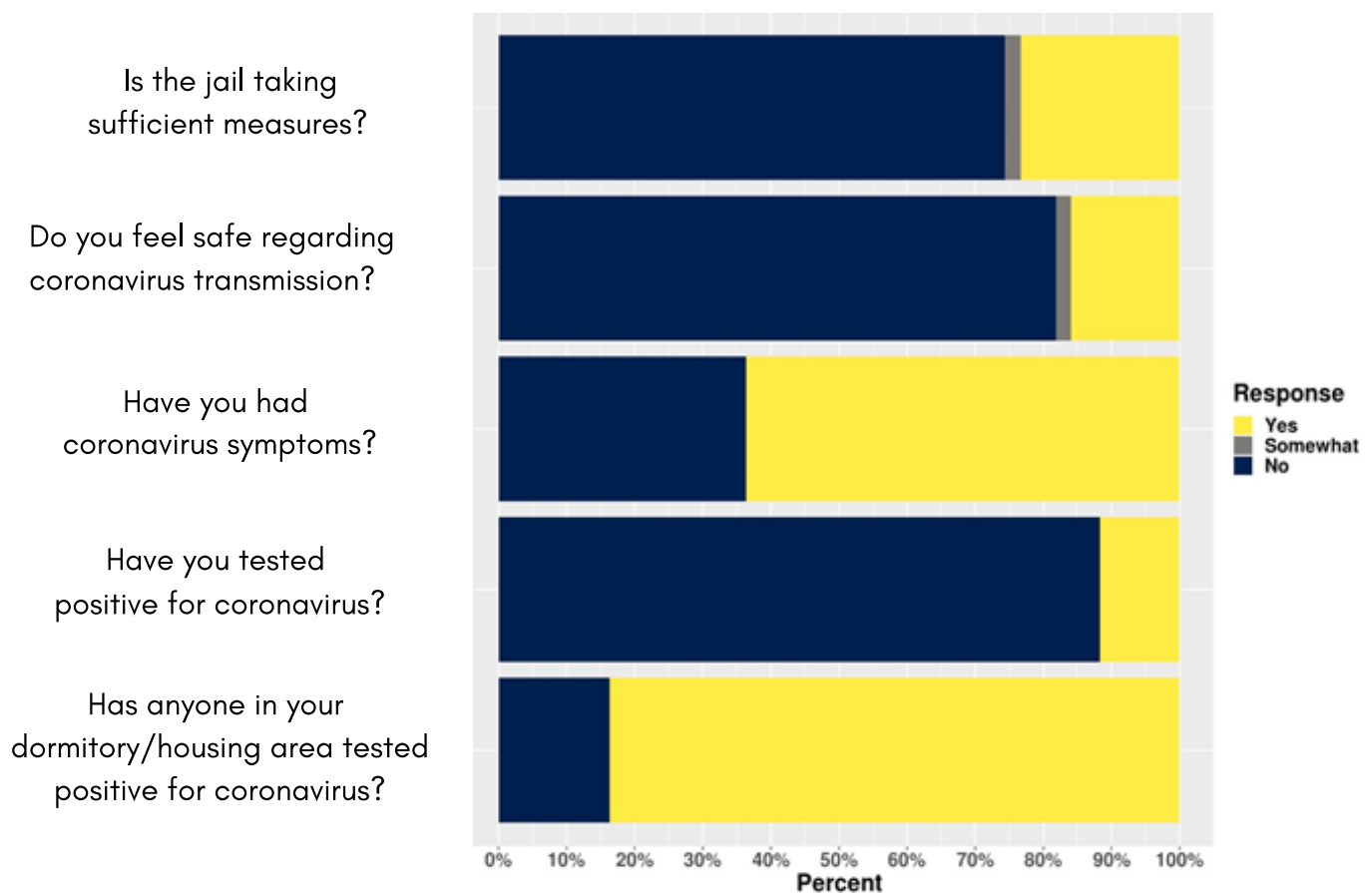
Survey Question	Number and Percent
Mask Use by Staff	
At all times	32 (68.09%)
Not at all times	15 (31.91%)
DOC Hygiene Practices	
Multiple Daily Cleanliness Inspections ¹	12 (26.09%)
Mask Hygiene	
Client Mask Visibly Dirty	20 (42.55%)
Client Mask Clean	27 (57.45%)
Time Since Last New Mask Received	
Past Week	19 (40.43%)
One to Four Weeks	19 (40.43%)
One Month or More	6 (12.77%)
Do Not Recall	3 (6.38%)
Ability to Social Distance When Needed²	
Yes	10 (22.22%)
No	35 (77.78%)
Overcrowding	
More than 10 in Day Room	35 (74.47%)
More than 4 in Bathroom/Shower	21 (44.68%)
Availability of Cleaning Supplies³	
Yes, When Needed	28 (60.87%)
Limited	3 (6.52%)
No	15 (32.61%)
Availability of Soap	
Soap readily and freely available	32 (68.09%)

¹ Based on 46 responses.² Based on 45 responses.³ Based on 46 responses.

Client Health Outcomes and Safety Concerns

Over the course of survey administration, a majority of respondents, 28 of 45 clients (62.22%), reported experiencing coronavirus symptoms while incarcerated. Five of 45 clients (11.11%) tested positive for coronavirus. Thirty-four of 45 clients (75.56%) reported that other people in their housing areas tested positive.

Figure 1 - Client Health Outcomes and Safety Concerns



Qualitative Responses - Client Experiences

While participating in these surveys, NYCDS clients reported concerning and egregious conditions that paint a fuller picture of what they face and how they attempt to keep themselves safe while incarcerated during a pandemic.

Limited PPE

- Mr. V reported receiving two masks at once. He hid one of his masks in toilet paper to keep it clean and safe, out of fear that it would be taken or soiled.

Clients report:

- Limited PPE
- Crowded dorms & showers
- People shackled together
- Complaint system yields no improvements

Social Distancing

- Mr. T sleeps in a 50-person dorm housing 40 people, far over the recommended capacity to allow for social distancing. He explained that the limit was supposed to be 25 to keep incarcerated people from occupying adjacent beds.
- Mr. C reports being shackled to another person while being transported. Though they were both wearing masks, they were physically touching for a sustained period of time while seated side-by-side.
- Mr. G explained that he showers at night, even though nighttime showering is against the rules in his facility, because the bathroom and showers are crowded during the day.
- Mr. C regularly reports unsafe conditions to officers and captains, telling them that there are no cleaning supplies such as rags. Over the course of several months, his concerns have never been addressed.

Official Complaints

- Mr. W made repeated reports to correction officers about coronavirus safety conditions. He was told to call 311, the city help line, an action that rarely yields productive outcomes for incarcerated people. In his case, it did not.

"I would only feel safe at home." - Mr. R

DISCUSSION

In the NYCDS Coronavirus Survey, our clients reported that they routinely face unsafe and unhygienic conditions with alarming implications for disease transmission. These lived experiences paint a picture of NYC jail conditions starkly different from DOC's public statements about its policies and practices. Though the scope of our survey is limited, the anecdotes that it sheds light on should be taken seriously by DOC staff and policymakers alike. We have yet to see any other formalized study of the perspectives of incarcerated people during the COVID-19 pandemic. Honest and uncensored opinions of people directly impacted by correctional policies are crucial to understanding and mitigating coronavirus spread in jails.

The survey underscores alarming discrepancies between DOC's public communications and observed conditions in the jails. The public necessarily relies on DOC for information on jail protocols. During the height of the pandemic, judges and prosecutors relied on DOC's public statements to deny release to incarcerated people from city jails. They relied on information, for example, that incarcerated people were receiving adequate PPE. In testimony before the New York City Board of Correction (BOC), DOC Commissioner Cynthia Brann stated that "No staff member and no person in custody is being required to reuse masks."^[4] Yet a plurality of our surveyed clients report that they are forced to reuse their masks regularly, for days or weeks at a time.

Similarly, judges and prosecutors often denied writs for release on the basis of claims by DOC that the Department was enforcing social distancing policies. DOC Deputy Commissioner Patricia Feeney asserted in a court affidavit that "DOC has implemented . . . social distancing strategies."^[5] However, the vast majority of our clients reported being unable to adhere to social distancing guidelines.

Relatedly, in mid-April, DOC officials announced a new mandate restricting capacities of day rooms to ten people, and of bathroom and shower areas to four people, to ensure social distancing.[6] Over three-fourths of survey respondents said day rooms were at least sometimes occupied by more than ten people, and nearly half of respondents stated that there were at times more than four people in bathroom or shower facilities. Our clients' experiences stand in stark contrast to the public statements of DOC officials. People incarcerated in city jails are not receiving the protections that have been allegedly enacted to protect them from sickness and death, and most live in constant fear of contracting the virus.

DOC has a duty to keep incarcerated people safe during this pandemic. Their failure to implement their own COVID-19 procedures could have long-term consequences for the health and safety of incarcerated people. The intersection of the known traumas of incarceration and the unprecedented stresses of surviving a pandemic in a correctional setting have potential to cause an equally unprecedented mental health crisis among currently incarcerated people. The extremely high proportion (82.22%) of incarcerated NYCDS clients who reported feeling unsafe regarding coronavirus transmission demonstrates that the pandemic is a grave and constant additional stressor.

Coronavirus is taking a toll on mental health conditions of the general public, and we can reasonably expect such harms to be magnified for incarcerated people. We must prepare to support people living and working in jails as we emerge from this crisis.

RECOMMENDATIONS

1. New York City must immediately and significantly reduce its jail population. The City must create an action plan to protect public health by pursuing alternatives to incarceration. Early research examining people released from NYC jails early in the pandemic shows that the vast majority of people released were not re-arrested.[7] There are also many tools available to courts to ensure that people who are released receive the support they need to attend future court dates. Many of the safe and effective alternatives to incarceration, such as electronic monitoring, are severely underutilized. Since they were unveiled in January 2020, only ten electronic monitoring devices have been granted for use in the entire city. In recent weeks, new admissions to New York City jails have risen sharply, and serious measures to reduce the jail population must be taken in anticipation of a second wave of coronavirus.

2. People with low-level charges and parole violations should be efficiently released to their communities. Many people detained on Rikers Island are serving sentences of less than one year, or are being held in on technical parole violations. People with these charge types were released in large numbers toward the beginning of the pandemic, but releases have since tapered off, even though the virus continues to rage on throughout the U.S.

3. City and State officials should pass legislation facilitating widespread releases for a larger purview of charges. Many other jurisdictions, including such states as New Jersey [8] and California [9], have led by example and enacted legislation to release thousands of incarcerated people charged with a wide range of offenses, including violent charges. Officials in New York must consider similar measures to prevent continued cycles of avoidable illness and death in our correctional facilities. Every person in custody deserves consideration for release, not just people accused or convicted of non-violent offenses.

4. Require DOC to release all written pandemic-related protocols to the public. As of the writing of this report, DOC has not publicly released its full coronavirus policies and procedures. We have made multiple requests asking for this information, with no clear answers. NYCDS worked with other city defenders to formally request all such protocols.[10]

5. Enforce accountability from DOC in properly enforcing its own pandemic-related measures. DOC's internal compliance must be reported and monitored to ensure the safety of incarcerated people and staff. The Board of Correction and city leaders must increase their auditing efforts to discourage negligence and ensure stringent adherence by DOC to its own rules.

CONCLUSION

The NYCDS Coronavirus Survey revealed dangerous conditions that threaten our clients' physical and mental health and accelerate the spread of COVID-19 -- not only in the jails, but also back into our communities.^[11] We refuse to accept the seemingly inevitable, and likely imminent, illness and death that will be wrought by the next outbreak in DOC facilities. Incarcerated people are not dispensable -- it is this very mentality that has caused such catastrophic outcomes in our jails thus far. By reducing the jail population and adopting transparent communication strategies, New York City and its Department of Correction have the opportunity to act now and save lives.

END NOTES

[1] 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>.

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

[3] "A More Just New York City: Closing the Chapter on Rikers," page 11, available at: [https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5da60eb59dac4376675bfe93/1571163845478/AMJNYC+-+Closing+the+Chapter+on+Rikers+\(Oct.+2019\).pdf](https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5da60eb59dac4376675bfe93/1571163845478/AMJNYC+-+Closing+the+Chapter+on+Rikers+(Oct.+2019).pdf).

[4] *Remarks from DOC Commissioner Cynthia Brann*, Board of Correction May 12, 2020 Meeting, available at <https://www1.nyc.gov/site/doc/media/commissioner-testimony-05-12-20.page>.

[5] *Affidavit of Patricia Feeney*, page 7, available at <https://www.clearinghouse.net/chDocs/public/JC-NY-0077-0002.pdf>.

[6] *DOC Update: COVID-19 Preparedness & Response*, page 14, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/May/May.2020.COVID-19.Preparedness.and.Response.5.12.20.pdf>.

[7] Alan Feuer, "The Mayor Blames the Virus for Shootings. Here's What Crime Data Shows," *NY Times*, Aug. 4, 2020, available at <https://www.nytimes.com/2020/08/04/nyregion/nyc-shootings-coronavirus.html>.

[8] Tracey Tulley, "About 20% of N.J. Prisoners Could Be Freed to Avoid Virus," *NY Times*, July 30, 2020, available at <https://www.nytimes.com/2020/07/30/nyregion/New-jersey-inmate-release-Covid.html>.

[9] California Department of Corrections and Rehabilitation, *Additional Actions to Reduce Population and Maximize Space*, available at <https://www.cdcr.ca.gov/covid19/frequently-asked-questions-expedited-releases>.

[10] Joint letter from New York City public defenders to DOC and CHS leaders, *DOC and CHS COVID-19 Pandemic Procedures*, Sept. 11, 2020, available at: <https://nycds.org/wp-content/uploads/2020/09/Joint-Defender-BOC-letter-Sept-2020.pdf>.

[11] Sandhya Kajepta et al, County Jail Incarceration Rates and County Mortality Rates in the United States, 1987-2016, *American Journal of Public Health*, (Jan. 2020), available at <https://ajph.aphapublications.org/doi/10.2105/AJPH.2019.305413>.

NYCDS Incarcerated Client Survey Questions

Pre-survey questions completed by NYCDS staff

- Today's date is:
- Client's name & B&C is:
- Client is housed in the following jail:

Questions Posed to Clients

- What housing area/cell block are you in?
- Do all staff in the facility where you are housed wear masks at all times?
- Has the Department of Corrections provided you with a mask to wear while you are around other people?
- When, approximately, was the last time you were given a new, clean mask?
- Is your mask visibly dirty?
- How often are you in situations with other people that require social distancing?
- Are you able to observe social distancing guidelines when you need to?
- Are there ever more than 10 people in the day room at the same time?
- Are there ever more than 4 people in the shower and bathroom area at the same time?
- Is soap available to you every time you wash your hands at a sink?
- How often are you able to use soap when you wash your hands?
- Are essential cleaning chemicals available to you to clean when you need them?
- When was the last time you were able to clean your cell?
- Have you observed DOC officers doing inspections of cleanliness and conditions every 8 hours?
- Have you personally made any complaints to an officer about cleanliness or safety conditions related to coronavirus?
 - If yes: Did the officer attempt to address your complaint?
- Do you feel that the jail where you are housed is taking sufficient measures to help prevent the spread of coronavirus?
- Do you feel safe in terms of avoiding transmission of coronavirus?
- At any time while in jail have you had coronavirus symptoms (fever, chills, shortness of breath, headache, etc.)?
 - If yes: When did you have these symptoms?
 - If yes: Did you make a sick call?
- At any time, have you tested positive for coronavirus?
 - If yes: When did you test positive for coronavirus?
- At any time, has anyone in your dormitory/housing area tested positive for the coronavirus?
 - If yes: What happened to the person who tested positive?

**Written Testimony to the New York City Council
September 21, 2020 Oversight Hearing (Criminal Justice & Health and Hospitals Committees)
By Sarita Daftary, member, Jails Action Coalition**

Attn: Committee Chairs Council Member Powers and Council Member Rivera, and committee members

Good afternoon, I'm testifying today as a member of the Jails Action Coalition, and the Justice 4 Women Task Force.

First, I want to thank the Chairs and the Council for holding this hearing and for your work, in partnership with the formerly incarcerated leaders and allies, to advocate for reducing the use of incarceration in New York City overall, and in response to Covid-19. The urgency of decarcerating, closing Rikers, and addressing unsafe conditions in all City jails is more clear than ever.

The last few months have magnified both the completely unacceptable physical environment in the jails, and also, the disregard and disorganization with which the Department of Corrections and its staff operate.

Again, 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. Recently, loved ones of people currently in DOC custody reported the following:

- One mother described that her son, and others in his housing unit at RNDC, have not had access to a barber since March. She said he looks neglected and sad in her weekly video calls with him. She said COs are not consistently wearing masks.
- A woman described that her partner, who is being held at the Boat, has watched DOC put up signs saying that they will be giving masks and gloves, but haven't. He said COs are not wearing masks and gloves themselves.
- A mother, reporting back from her son, who is also held on the Boat, said that DOC gives only small hotel size soap bars, and only "when they have them." He said they also give masks only when they have them, and when people in custody ask. Often they must reuse masks repeatedly, and he also noted that the COs are not wearing masks regularly at all. People in custody are expected to clean their own housing areas, but they are not provided with disinfectant regularly. He described a particularly dehumanizing incident last week, when a person in his cell block who was not mentally well overflowed his toilet. The people in custody were forced to clean feces and urine the best they could, without proper supplies.

While the behavior of DOC indicates that they feel no urgency to enforce the Covid-19 regulations among their staff, they continue with provisions that are convenient for them - prohibiting visiting and programming. The reason is pretty transparent - DOC has always viewed

visiting and programming as a nuisance, and is using this opportunity to deny those rights to people in custody.

There is a clear discrepancy between what DOC says they are doing, and what people in custody report. But that is not new. It is the City's duty and responsibility to keep people in custody safe. But people in DOC's custody were not safe before Covid, and they aren't safe now. It has been well-documented, by 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, and consistently fails to hold its staff accountable for following rules established to protect the human rights of people in their custody. Yet the Mayor has subjected the Board of Corrections to budget cuts that will reduce their staff, who provide crucial oversight, by 31%, without planning any similar cuts to the DOC, which employs two officers for every person in custody but still can't manage to consistently distribute masks? This Council simply cannot let that happen.

Given what we know about DOC, and their demonstrated disinterest or inability in treating people in their custody as humans, it is so important that this Council take every possible measure to keep people out of their custody. The average daily jail population has increased over 13% since April, from just about 3,800 people to now over 4,300 people, with more people being admitted daily. The number that has risen the most is the number of people being detained pre-trial, in response to a fear campaign from the NYPD suggesting that the courts were somehow not working and not enough people were being detained. It is imperative to remember that over 90% of people on Rikers Island are awaiting trial, and this Council must consider what you need to do to make the presumption of innocence apply to everyone, including withholding funding from DAs and looking at systems for reviewing judges' records.

In today's hearing, the Department of Corrections also noted that they are using a risk assessment tool to assess City Sentenced individuals for possible release under the 6A program. I want to strongly urge the Council to demand that the Department provide a detailed description of the factors considered by this risk assessment. These assessments almost always rely on information drawn from racially-biased policing practices (like age of first arrest) and class-biased measures of community ties (such that people experiencing homelessness are penalized). The Council should do everything in its power to move swiftly to establish the conditional release commission discussed in the hearing, so that these decisions do not lie solely in the hands of DOC.

Thank you,

Sarita Daftary
NYC Jails Action Coalition