

**Testimony before the
New York City Council
Committee on Criminal Justice
Chair Carlina Rivera**

**By
Louis A. Molina, Commissioner
NYC Department of Correction**

April 29, 2022

Good morning Chair Rivera, and members of the Committee on Criminal Justice. I am Louis Molina, Commissioner of the Department of Correction (DOC). I am joined today by Chief of Department Kenneth Stukes, Deputy General Counsel Melissa Guillaume, and Executive Director of Health Affairs Rabiah Gaynor. I thank you all for this opportunity to discuss these important matters and my commitment to addressing them.

I want to thank the panel members for sharing their stories and experiences. I know it's not easy to discuss the tragic experiences of you and your loved ones in a public setting. I take your experiences and the experiences of your loved ones to heart, and you have my sincere commitment as the leader of this agency to enacting meaningful change within our city's jail system, so that tragedies like these do not occur again.

As the panel has laid bare, it is undeniable that the past two years have brought about immense hardship, anxiety, and grief. Five individuals in custody have lost their lives to suicide since the beginning of the pandemic – Ryan Wilson, Javier Velasco, Wilson Diaz-Guzman, Segundo Guallpa, and Brandon Rodriguez. These deaths are tragic and my condolences go out to their families and loved ones.

I understand that the lack of information in the deaths that have occurred over the past two years has been painful and frustrating for the family and loved ones of these individuals. They deserve answers, and we are working with partners in the Bronx DA's office, the Department of Investigation, and the New York State Attorney General to ensure these matters are investigated fully. In order to preserve the integrity of the cases and ensure that outcomes are fair and just for everyone involved, the Department is unable to comment or provide information related to these incidents until all investigations have been closed. However, we are committed to working with family members and loved ones and providing them with information that is readily available to us, or directing them to the appropriate authority that is best positioned to provide a response.

Impact of the COVID-19 Pandemic on Mental Health within the Jails

Our jails, like jails everywhere, are a reflection of our community. The people that work and live in our jails come from our communities, and bring issues experienced by our communities with them to our facilities. Because of this, we cannot talk about issues related to mental health within our city jails without acknowledging the larger context, which is that all New Yorkers have collectively experienced tragedies and losses over the past two years. Our lives were utterly upended and, in all likelihood, forever changed by the global pandemic. We lost family, loved ones, co-workers and community members across the city; New York City jails were not spared. In the face of all this, Department staff continued to report to duty and people from our communities continued to be admitted into custody, into facilities that were not designed or equipped to handle the impact of a pandemic.

As a result of the pandemic, the Department was forced to fundamentally change how our jails operate. Programs and services that support people's wellbeing and hope for the future were suspended, leaving them with little to do and fewer means of coping with increased stressors. Visitation with family and loved ones was abruptly suspended during a time of incredible anxiety and many unknowns; when many of us wanted more contact with family and loved ones than ever, quarantine protocols further isolated individuals within the jails. The impacts of the pandemic were felt throughout the justice system, which led to delays in court processing, increasing lengths of stay. While many New Yorkers were able to shift to remote work, to grieve and adjust to the challenges of the pandemic from afar, the majority of our staff came to work during the height of

the pandemic and continue to do so today. Neither our jails nor our staff were ever intended to support a population under these circumstances; these measures and the systematic disinvestment in our city jails and workforce had a profound impact on the mental health and overall wellbeing of those in our care and those that work in the jails.

I do not think these challenges are insurmountable but I do acknowledge that we have a lot of work ahead of us. We must all, collectively as a city, work together to improve conditions within our jails. My vision for this agency is to create a culture of discipline and service to persons experiencing incarceration, working collaboratively with all stakeholders throughout the city and the justice system, to create an operational ecosystem of safety and rehabilitation. Some of this work is already begun.

While staffing is still not where we want it to be, over 1,300 officers have returned to work since the beginning of the year, which has allowed the Department to shift five out of eight facilities back to eight-hour tours of duty. These shifts have allowed us to begin normalizing operations and will enable us to move forward with strategic reforms that will create safer, more humane jails. As COVID positivity rates have come down, we have worked diligently to reinstate vital programs and services for people in custody. External programs returned to the facilities in January, in-person visitation resumed in February, and in March we held congregative religious services to celebrate Purim, Ramadan, Easter, and Orthodox Easter. We look forward to resuming more congregative programming in a safe, gradual manner in the coming weeks to help restore a sense of normalcy for people in custody and provide them with the support they need and deserve.

Mental Health Services and Housing

Although programs and services can provide an important baseline for wellness and stability, over the past several years, we have seen a significant increase in the percentage of the NYC jail population that struggles with mental illness. Today, roughly 50% of the jail population is receiving mental health services while in custody. Many of these individuals are entering our jails with pre-existing conditions, such as mental illness or substance abuse, and must contend with the psychological and emotional dysregulation of incarceration. We are proud to partner with

Correctional Health Services (CHS), who provides health and mental health services across our facilities, to support these individuals while they are in our custodial care.

In addition to health care services provided by CHS, the Department also partners with a number of contracted program providers to afford access to programming that enhances behavioral coping skills, supports anger management, addresses substance use, and encourages productive and prosocial behavior. It is our goal to address the needs of the whole person while in our custody, which includes providing varying levels of mental health support that meets the unique need of the individual.

For individuals in need of enhanced support, the Department runs several specialized housing units in collaboration with CHS. Safe and inclusive housing options are part of an evolving conversation about how to best to meet a wide spectrum of needs. There is no one size fits all approach, and the Department has worked tirelessly with CHS to ensure that we provide a responsive plan of action for incarcerated individuals with significant mental health needs.

Although all individuals have access to mental health providers, certain individuals may require structured support and more frequent observation. For that population, we operate Mental Observation units (MOs). MO units operate under the guidance of a multi-disciplinary team of unit-based mental health providers who conduct daily rounds, provide group programming and individual psychotherapy, and oversee medication treatment. MO units are not punitive and afford the same out-of-cell time as General Population units.

For individuals with serious mental illness who require intensive support but who do not require hospitalization, the Department works in conjunction with CHS to operate the Program for Accelerating Clinical Effectiveness, known as PACE. PACE focuses on enhancing coping skills, improving communication abilities, and promoting insight and competency in managing one's mental illness, emotions and behavior. CHS advises the Department on which individuals are suited for PACE placement based on their clinical need.

The Department recognizes that individuals with serious mental illness do not belong in any form of restrictive housing. Individuals with guilty adjudications for serious infractions may be assigned to Clinical Alternative to Punitive Segregation (CAPS) units, based on a clinical determination made by CHS. The CAPS units provide intensive mental health treatments for individuals with serious mental illness who have been adjudicated for a serious infraction but do not need to be hospitalized. Like PACE, CAPS units are staffed by both DOC and CHS personnel who support residents by helping them enhance their coping skills, improve their communication skills, and develop insight and competency in managing their mental illness as well as their emotions and behavior.

Self-Harm and Suicide Prevention

In addition to providing appropriate therapeutic housing, the Department also recognizes that maintaining robust policies and procedures for the prevention of suicide and self-harm is critically important to supporting those entrusted to our custodial care. During the pandemic, suicide rates rose across the United States for people aged 10-34, as well as for Black and Latino men specifically. Our jail population converges on three of these demographics: 57% of the overall NYC jail population is comprised of individuals aged 19-34, and the overwhelming majority of the population are Black and Latino men. In addition, roughly 80% of the Department's uniform workforce identify as Black or Latino, and they certainly have not been spared from the stresses of the pandemic or the failings of this agency over the past few decades.

All uniform members of service receive training in mental health, mental health first aid, suicide prevention, and CPR certification at the Academy. In addition, they are trained on the Department's suicide prevention policies, which are reiterated to them constantly through rollcall, posters placed throughout the facilities, and other means. These trainings educate staff on how to identify individuals who may be in distress or crisis, and instruct staff on the steps they must take to make timely and appropriate referrals to CHS for mental health evaluation, to monitor individuals who may be at risk of self-injury or suicide, and to immediately intervene if these behaviors are observed. All staff are equipped with a special duty knife to facilitate rapid disabling of ligatures that may be used as a means of self-injury or suicide.

Individuals entering the Department's custody are screened at intake for risk of suicide, and evaluated by CHS. Individuals who appear to be at risk for self-injury or suicide are immediately referred to CHS, who makes a determination as to whether that individual should be placed on suicide watch. Individuals in need of constant supervision, as determined by CHS, are placed in designated housing areas that can support enhanced observation and a higher level of mental health care. In addition, the Department maintains a work detail of Observation Aides, also known as Suicide Prevention Aides or SPAs. These are individuals in custody who are vetted and trained to identify unusual or suicidal behavior and immediately report these behaviors to a housing unit officer. They are deployed throughout housing areas in the Department where individuals may be at higher risk for suicide, as well as in the intake areas. They do not supersede an officer's duty to maintain supervision or intervene if an incident arises, but they offer a tangible means of safety and connection for individuals in our custody who are experiencing acute distress and are in need of additional support.

Tragically, despite our best efforts, some individuals succeed at taking their own lives. Whenever an individual in custody passes away, we deploy our Ministerial Services staff to make an in-person notification to the next of kin that has been identified by the individual. Our chaplains deliver this terrible news with compassion and stay with the family member or loved one to process the loss, pray, and help them cope. In addition, we have recently instituted a policy whereby DOC social workers and counselors will respond to a housing area or other affected area following a loss of life to engage with people in custody who may have witnessed the event and provide support and trauma-informed care. DOC staff will also make referrals to CHS mental health staff for further treatment and follow-up.

While these efforts provide a safety net for individuals in our custody experiencing profound mental distress, the reality is that a jail setting is not appropriate for individuals with acute mental health needs.

Commitment to Reform

As a City, we need to support efforts for alternatives to incarceration which will divert certain eligible people away from jail with appropriate supervision in the community in place of pre-trial

detention. We should be supporting efforts to increase the presence of mental health and substance abuse courts. These courts provide a holistic approach at case processing and in conjunction with treatment programs and case managers, these courts support people who enter into the criminal justice system as a result of mental health or substance issues and who should be treated as such during the criminal justice process. I believe we also need to bolster supportive housing, which I know is a focus for this City Council.

For my part, you have my continued commitment to improvement and reform. I know that implementing best practices and sustaining minimum standards can not exist without a timely and meaningful discipline process for our staff, which quite frankly has never existed in this Department. For all the public rhetoric of the prior Administrations, when comparing the same initial time in office to the prior two Commissioners, I have closed out and administered final disciplinary dispositions in 725 disciplinary cases, while the prior two Commissioners closed only 322 and 208 disciplinary cases respectively in the same timeframe. If leadership at its highest level does not hold people accountable that lack of accountability trickles down to all supervisory ranks, and does nothing but normalize mediocrity. This attitude, and the environment it has created in our jails, has led to the failures of the past two years, include the tragic losses of life, and it will not continue.

Intros 30 and 181

Now I will address the two pieces of legislation being heard today. Regarding Intro 30, related to medical access during lock-ins, my team is reviewing the language and looks forward to working with Council on this important issue. We are committed to providing access to healthcare to all people in custody, and we work closely with CHS to make that happen.

Regarding Intro 181, related to publicly available Departmental policies, we are also reviewing the language of this bill and are certainly willing to do a review of current policies and determine if there are more than can be posted online in the meantime.

Conclusion

Before I conclude, I would like to remind the Council and the public that my team and are limited in the ways in which we can publicly discuss any specific case related to self-harm or suicide. Regardless, we appreciate the opportunity to discuss mental health support and self-harm and suicide prevention efforts within our jails, and we welcome any questions you have at this time.

Correctional Health Services

Good morning Chair Rivera and members of the Committee on Criminal Justice. I am Dr. Bipin Subedi, Chief of the Mental Health Service at NYC Health + Hospitals/Correctional Health Services, also known as “CHS.” I appreciate the opportunity to testify today on the topic of self-harm and suicide prevention in NYC jails.

While Commissioner Molina and colleagues in the Department of Correction have spoken to the prevention of self-injury and suicide among incarcerated individuals from an environmental and operational perspective, I can address the clinical risk factors for these behaviors and contextualize self-injury in the jail setting. Even before the pandemic, persons detained in jail were more than five times more likely than in the community, and almost two times more likely than prisoners, to experience serious psychological distress. According to data from the Bureau of Justice Statistics, in 2019, national jail suicide rates were more than twice that of the community and almost double state prison rates.

The jail environment is associated with psychological instability, self-harm, and suicide for several reasons. Individuals enter jail with high levels of stress due to their recent detention, separation from family, disruptions in care, and loss of autonomy and access to usual outlets for coping. Uncertainty about the outcome of legal cases and the unpredictability of the jail environment can cause additional tension and anxiety. All these factors can exacerbate symptoms of an existing mental illness, as well as induce psychological distress and new self-injury in individuals without a history of mental health problems. The above conditions also contribute to suicide being the leading cause of death in jails across the United States, with a rate of about 49 deaths per 100,000 individuals in 2019.

While some incarcerated individuals harm themselves because of a desire to die, others self-harm to express and manage distress or to communicate an unmet need. In addition to relieving tension or anxiety, self-injury in a jail environment can also be a pathway for immediate attention when an individual does not believe other forms of communication would be successful.

The majority of the self-harming behavior in jails is defined as non-suicidal self-injury, or NSSI, which is self-inflicted damage to one’s own body (e.g., cutting) without the intent to die. Literature suggests that individuals in the criminal-legal system report NSSI at higher rates than people in the general population. The lack of lethal intent does not make NSSI any less serious or concerning because it can be fatal, even if not intentional. NSSI is particularly concerning in a population with extensive histories of trauma, which can lead to impulsivity and rapid emotional changes. This is why CHS uses a broad definition of self-injury when assessing and caring for patients.

Correctional Health Services

Understanding these challenges, in 2016, when CHS, as a new division of New York City Health + Hospitals, became the direct health care provider in NYC jails, it implemented a robust mental health system of care. CHS hired additional mental health professionals with a focus on strengthening oversight and supervision; created a strong clinically based suicide prevention program centered around early detection, individual risk assessment, and treatment planning, as well as the close monitoring and investigation of all self-injury regardless of severity; and established specialty units for individuals with serious mental illness (SMI), which improved access to care and medication adherence and decreased injury due to violence. These interventions significantly improved the mental health services available to people incarcerated in NYC.

As Commissioner Molina discussed in his testimony, the COVID-19 pandemic, destabilized the jails in profound and impactful ways at both the individual and systemic level. Since the spring of 2020, detained individuals have contended with court delays, restricted communication with family, friends, and attorneys, and health concerns – for themselves and for loved ones. The ongoing and far-reaching disruptions in the functioning of the jails throughout 2020 and 2021 served to exacerbate the pressures and stresses on detained persons.

Although rate of self-injury decreased during the first three months of the pandemic, it subsequently increased approximately 75% in the subsequent quarter across all housing areas and several age groups, peaked during the spring of 2021, and remains elevated from pre-pandemic levels. This increase in self-harm has been driven by non-suicidal self-injury in the non-SMI population, and the percentage of individuals requiring referral to the hospital for self-injury has not changed. Yearly suicide rates have remained generally stable since 2019. The global increase in non-suicidal self-harm and the fact that the percentage of patients self-injuring with SMI has decreased by more than 40% since the pandemic began, strongly suggests that systemic factors are inducing this phenomenon.

Since the pandemic, CHS has taken significant additional steps to minimize risk of self-harm and suicide related to, and independent of, mental illness. This includes focused efforts to ensure individuals with mental health needs are assessed early in the course of incarceration; the creation of additional mental health therapeutic housing areas, including one in the intake facility; central mechanisms to identify and escalate known high-risk individuals for evaluation; and instituting a lower threshold for referring and placing patients on suicide-watch observation and more stringent criteria for transferring them to general population. CHS has also provided education to clinical staff on suicide-risk assessment and to correctional officers on suicide prevention and the importance of taking all NSSI seriously.

Correctional Health Services

CHS also works with the Department of Correction and other City partners to advance criminal-legal reform efforts. This includes the creation of more normative and humane borough-based jails, in which approximately 50 percent of the housing units will be therapeutic, and hospital-based jail units for those who have significant medical and mental health needs. CHS also continues to support alternatives to incarceration and greater access to community-based mental health services and supports.

Prior to the pandemic, CHS was able to demonstrate that the implementation of robust clinical interventions could help mitigate the harms associated with the jail setting. Notably, from 2016 to 2020, the yearly rate of jail suicide in New York City was significantly lower than the national average, with one completed suicide during a four-year period between 2016 and 2020. There were four confirmed in-custody deaths from suicide in 2021, and one suicide-related death occurring just after release from custody. Since and in part due to the pandemic, there has been a significant increase in environmental and systemic stressors throughout the entire criminal-legal system that have negatively impacted the people we treat. Health care staff will continue to utilize all the tools we have to try to mitigate and manage the self-injury risks to our patients; however, it is crucial that all stakeholders recognize the inherent risks of involvement in the entire criminal-legal system, up to and including jail detention – especially during public health emergencies – and that a myriad of factors contribute to the distress and self-harm of incarcerated people.

Regarding Intro 30, related to medical access during lock-ins, CHS will work with the Department in reviewing the legislation. We, too, look forward to working with the Council on this important issue, as ensuring our patients can access health services is vital to their care and our operations.

I will close by taking a moment to acknowledge the remarkable work of CHS' health care workers. I am here representing a large team of professionals who have remained committed to treating people – our patients - during extremely difficult times. These past two years have been especially challenging, and I thank them for their ongoing dedication and sacrifice in performing this meaningful work.



Kelly Grace Price ● Creator, Close Rosie's ● 534 w 187th st #7 New York, NY 10033
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April 29, 2022

via Email: NYC Council Criminal Justice Committee:

To: Councilmember Carlina Rivera, Committee Chair

cc: Council Committee Members; NYC Council staff

Ref: NYC Criminal Justice Committee Hearing ref Deaths of People in Department of Correction Custody: April 29, 2022

Dear Chair Rivera and members of the Committee:

Thank you for holding this hearing ref deaths in City Jails and for allowing me to appear before you and speak. I have also turned in this testimony in written form. Not since the mid 1970's has an hearing been held to specifically address this tragic topic of deaths in NYC Jails. The last time such a horrifically-named hearing commenced was under the Page Commission resulting in a NYC Charter amendment in 1977 specifically aimed to curb

mayoral control of the NYC Board of Correction (“BOC”) after a period of violent riots and murders masked as suicides in City jails.



Fifteen Latinx and Brown men had been lynched in the jails and the murderous hanging of Young Lords Puerto Rican activist Julio Roldan¹ spurred a series of Grand Juries and

¹ “Two inmates were found hanged in their cells in city detention centers within 13 hours of one another, the Correction Department reported yesterday. Deaths in the Tombs and on Rikers Island Reported.

One of the men, Julio Roldan, a 34-year-old member of the Young Lords, was arrested early Wednesday and charged with attempted arson in connection with some garbage fires in East Harlem. He was found hanging by his belt in his eighth-floor cell in the Tombs at 8:15 P.M. Thursday.

The Young Lords, a militant Puerto Rican group, charged that Mr. Roldan had been murdered by the police. “No Young Lord commits suicide,” said Pablo (Yoruba) Guzman, spokesman for the organization.”

“2 INMATES FOUND HANGED IN CELLS”; *The New York Times*; By Paul L. Montgomery; Oct. 17, 1970; <https://www.nytimes.com/1970/10/17/archives/2-inmates-found-hanged-in-cells-deaths-in-the-tombs-and-on-rikers.html>

Commissions² that eventually led to the BOC Charter revision wresting mayoral control away and redistributing it to the City Council and the First and Second Judicial Departments. Today the spate of deaths in our City Jails is GREATER in number at sixteen over the past year than it was in the Seventies and the number of people in our city jails is one fifth what it was in the Seventies!

The offshoot of the BOC Charter Revision was, among a few other changes, a rotating appointment mandate for Board of Correction Members was instigated as each vacancy occurs and added into the language of the NYC Charter. Former BOC Executive Director John Brickman describes the importance of the BOC Charter Revision's appointment mandate in 1977:

"From the establishment of the Board until 1977, the mayor selected all nine members and appointed its chair. Consequently, the Board was only as independent and aggressive as the mayor wished, and a mayor who preferred seeming harmony, or to avoid public criticism of one mayoral appointee (the correction commissioner) by others (the Board), had the obvious opportunity to defang the Board. In practice, mayors have taken various approaches. For example, Rudolph Giuliani tried repeatedly to abolish the Board. Conversely, after riots raged throughout the department in October 1970, John V. Lindsay revived the Board by appointing William J. vanden Heuvel as chair, and tolerated, indeed welcomed, the Board as activist foil to the department, a move that led to the "retirement"

² "Power to the People!" Young Lords Puerto Rican activist Julio Roldan chanted from his holding cell in Manhattan's infamous "Tombs" prison in 1970. A few hours later he was found dead, having hanged himself according to an official investigation, murdered by guards according to his supporters... Julio Roldan's case is still a matter of controversy. After a second examination of the body, the pathologist called in by Roldan's family, Dr. David Spain, reversed his initial finding (reported in this press conference) of suicide, citing possible evidence of a beating." **An Unexplained Death and an Unacceptable System;** **WNYC**; Sep 21, 2017; [Philip Quarles](https://www.wnyc.org/story/unexplained-death-and-unacceptable-system/)
<https://www.wnyc.org/story/unexplained-death-and-unacceptable-system/>

of the incumbent correction commissioner. It was clear that allowing the mayor to appoint, and thus control, both the watchdog and the watched made little sense. Accordingly, since the 1977 City Charter changes, the mayor has shared the authority to appoint board members with the City Council (the city's legislative body) and the presiding justices of the Appellate Division for the First and Second Judicial Departments (the two intermediate state appellate courts located in the city). Each appoints three members for terms of six years, with staggered expirations. Although the mayor appoints the chair, the arrangement is structured to avoid mayoral dominance. The practical result has varied.”³

For the past nine years the selection process for appointing board members as it is described in the NYC Charter has not been followed or enforced allowing the previous NYC Mayor, Bill de Blasio, to manipulate votes and true oversight capabilities of the BOC and to completely annihilate the Board's oversight abilities in many respects. When accused in the media of doing just this, (manipulating the BOC), the Mayor's spokesperson, Avery Cohen appears to admit to gerrymandering the BOC votes openly:

“Mayoral spokesperson Avery Cohen Tuesday described the mayor's office's attempts to influence the Board of Correction solitary rules as standard practice:

³ “The Role of Civilian Organizations with Prison Access and Citizen Members—The New York Experience;” John M. Brickman; Pace Law Review; 11-18-2010; Volume 30; Issue 5; Fall 2010; Opening Up a Closed World: A Sourcebook on Prison Oversight; pps 4-5; https://www.prisonlegalnews.org/media/publications/pace_law_review_prison_oversight_sourcebook_article_13_role_of_ny_civilian_orgs_2010.pdf

‘It would be completely naive and irresponsible to believe that we wouldn’t play a role in the rule-making process, as these are policies that directly impact the day to day operations of our facilities,...’⁴

BACKGROUND: New York City Charter (“the Charter,”) requires that: “Members shall be appointed for a term of six years. Vacancies shall be filled for the remainder of the unexpired term. Three members shall be appointed by the mayor, three by the council, and three by the mayor on the nomination jointly by the presiding justices of the appellate division of the Supreme Court for the first and second judicial departments.

Appointments shall be made by the three respective appointing authorities on a rotating basis to fill any vacancy...⁵

But Board members under the previous mayor were not selected by ‘the three respective appointing authorities’ on a ‘rotating basis’: instead the previous Mayor chose to interpret the City Charter to allow him to replace his appointments without rotating the selection power between the three appointing authorities. The Mayor’s own press officer, Avery Cohen, has affirmed this mis-reading of the BOC’s Charter when in October of 2019 former judge and long-time board member Hon. Bryanne Hamill was ousted from her position by the mayor and replaced by an administrator from ACS without any correction knowledge or

⁴ [Mayor ‘Interfered’ With Jails Overseer on Solitary Confinement, Member Charges](#); **THE CITY**: October 22, 2019; By [Eileen Grench](#) and [Rosa Goldensohn](#)

⁵ Charter of the City of New York; Chapter 25, Section 626; linked November 8, 2019; <https://nyccharter.readthedocs.io/c25>.

experience just before several contentious votes re the curbing of solitary confinement and solitary-like practices employed by the NYC Department of Correction Mr Cohen publicly stated:

“We thank Bryanne Hamill her for her service and for the commitment she has demonstrated to the board throughout her tenure,” said mayoral spokesperson Avery Cohen. **“As is common with appointees from previous administrations, a mayor replaces board members whose terms expire.”**⁶

[Emphasis added]

Over the pendency of the previous municipal administration, whenever an important vote has been pending within the BOC the Mayor has plucked board members from the panel and replaced them with people he believed would vote in a manner that dovetails with his current needs or that of the NYC DOC: the entity the BOC is charged with oversight of. New York City has not complied with the rotating appointment process since at least 2014 when Mayor de Blasio took office. Over the pendency of the previous municipal administration there have been at least SIXTEEN appointments to the NYC BOC and THIRTEEN appointment renewals. This is TWENTY NINE opportunities to appoint that should have rotated between the three appointing entities respectively. However, the NYC Council has only been afforded SEVEN of these appointment opportunities—fewer than the fair number of the appointing opportunities that should have been mandated to the Council by the NYC Charter while the Mayor has essentially enjoyed the appointment authority of

⁶ The City; [“De Blasio Ousts Key Solitary Confinement Foe as Reform Nears”](#); By [Reuven Blau](#) and [Rosa Goldensohn](#); Oct. 17, 2019. Linked November 8, 2019.

the other TWENTY TWO APPOINTMENTS. The net effect of New York City's lack of adherence to the rotating appointment mandate of the NYC DOC/BOC Charter is that the mayor has been able to control key votes and stifle real oversight of the DOC virtually guaranteeing torturous conditions and practices remain stalwart within DOC/BOC operating methodologies. It appears that the First and Second Judicial Departments have also NOT had the opportunity to appoint their selected BOC members WITH THE AUTONOMY INTENDED TO THEM in the past NINE YEARS as well: leaving the remaining APPOINTMENTS TO THE SINGULAR WHIM OF THE PREVIOUS MAYOR.

Against the intentions of the City Charter, the previous Mayoral administration of NYC inserted itself into the decision making process of the First and Second Judicial Departments in making its appointments to the BOC. The previous Mayor would pull either the First or Second Department presiding judge aside and foist his pick on them individually, then rotate to the other Department when another judicial appointment was available—against the intentions of the appointment process outlined in the City Charter. Several letters dated October/November 1977 from former BOC Chair Peter Tufo to the Judiciary and the City Council⁷ belie that the judges are meant to make their decision together and submit their candidate to the Mayor to make their official appointment:

"On October 13, 1977, the terms of three of the nine members of the Board of Correction expired. Under the requirements of Section 626(a) of the revised City Charter, appointments are now to be made in rotation as vacancies occur by the Mayor, the Council, and by the Mayor on the joint nomination of the Presiding Justices of the Appellate Division

⁷ See Attachment I: Archival BOC letters ref BOC appointments FOILed by Kelly Grace Price 2019

of the Supreme Court for the First and Second Judicial Departments..." urging re appointments to be made "thoughtfully and expeditiously" and suggesting candidates.

These letters re-inforce my stance that BOC appointments are to be made on a rotating basis as vacancies occur. Here is just one of the letters addended to this testimony:

October 18, 1977

Hon. Frank A. Gulotta
Presiding Justice
New York State Supreme Court
Appellate Division - Second Department
45 Monroe Place
Brooklyn, New York 11201

Dear Judge Gulotta:

On October 13, 1977, the terms of three of the nine members of the Board of Correction expired. Under the requirements of Section 626(a) of the revised City Charter, appointments are now to be made in rotation as vacancies occur by the Mayor, the Council, and by the Mayor on the joint nomination of the Presiding Justices of the Appellate Division of the Supreme Court for the First and Second Judicial Departments. These are difficult times for the City's prison system, and the Board has major new responsibilities to fill under the new Charter. Accordingly, I think it would be unfortunate if there were any substantial delays in appointing persons to these positions on the Board. This is particularly the case since the positions are unsalaried and all Board members necessarily have heavy demands on their time.

I know that you and Justice Francis J. Murphy will act thoughtfully and expeditiously in making your nomination to the Mayor.

If I can be of any assistance in that process, please let me know.

Sincerely,

Peter Tufo

Please review the attached letter dated March 6, 2012 from Hon William Mastro and Hon Luis Gonzalez, (the presiding justices of the First & Second Departments of NY Supreme court) to former Mayor Bloomberg informing the Mayor of their nomination of Greg Berman to the Board of Correction:



WILLIAM F. MASTRO
ASSOCIATE JUSTICE

Appellate Division
Supreme Court of the State of New York
Second Judicial Department
60 Bay Street
Staten Island, New York 10301

(718) 675-8680
FAX (718) 816-4587

March 6, 2012

Honorable Michael Bloomberg
Mayor, New York City
Office of the Mayor
City Hall
New York, New York 10007

Dear Mayor Bloomberg:

It is our understanding that a vacancy exists on the Board of Corrections for the City of New York due to the term expiration of Ms. Hildy J. Simmons.

After consultation, it is with great pride that we hereby submit the following name to be considered for appointment on the Board of Corrections:

Mr. Greg Berman
520 8th Avenue
New York, New York 10018
646-386-3830
bermang@courtinnovation.org

Enclosed please find a copy of Mr. Berman's resumé.

Thank you for your consideration and cooperation.

Very truly yours,

WILLIAM F. MASTRO
Acting Presiding Justice
Appellate Division
Second Judicial Department

LUIS A. GONZALEZ
Presiding Justice
Appellate Division
First Judicial Department

WFM/rd
Enclosure

This is significant because the Mayor is not meant to have a say in choosing the Judiciary's candidate--he is merely meant to appoint the candidate. ***Following, this letter proves that it is the presiding justices that make the selection together and only then do they present their nominee to the mayor for official appointment. The mayor has no say on who the candidate actually is.***

There is language in the NYS CPLR or public officers law somewhere that says judges are not allowed to make political appointments: following they can't legally appoint their candidate--the Mayor has to do that part. But this letter is significant because it belies the fact that the Mayor has NO SAY in the actual selection of the judiciary's candidates: his role is merely a functional one. However--this is NOT what the previous mayor of NYC did--he literally inserted his closest pals/advisors into the slots the judiciary had been meant to select: Jennifer Jones Austin, Dr. Sayfer and Jacqueline Sherman, Felipe Franco AND Marco Carrion and are the Mayor's people--not the judiciary's: Franco was a deputy Mayor, Jackie was De Blasio's General COunsel when he was Public Advocate, JJA is a close friend of the Mayor etc.. I doubt presiding justices still even know that the Mayor can't insert his choices or weigh in onto their decision making process for the Judiciary's appointments.

Here is a document I obtained via FOIL in late 2019 from the BOC regarding BOC appointments:

Seat	Name	Appointment Date	Left Board	Next Member	Appointment Date	Left Board	Next Member	Appointment Date	Left Board
Mayor 1	Gordon Campbell ***	June 24, 2013 - Oct 13, 2015 (designated Chair Oct 15, 2013)	resigned April 7, 2015	Stanley Brezenoff ***	April 9, 2015 - Oct 13, 2015	resigned Nov 2016	James Perrino	Feb 13, 2017 - Oct 13, 2021	Current Member
Mayor 2	Pamela Silverblatt	Feb 26, 2013 - Oct 13, 2017		Steve Salyer	October 27, 2014 - October 13, 2017	Current Member, expired			
Mayor 3	Gerald Harris ***	Nov 16, 2011 - Oct 13, 2013 (designated Chair Nov 16, 2011)		Bryanne A. Hamil	Oct 16, 2013 - Oct 13, 2019	Current Member			
PJ / Mayor 1	Catherine Abate	Dec 23, 2008 - Oct 13, 2009	died in 2014	Derrick Cephas***	Oct. 27, 2014 (appointed Chair June 7, 2018) - Oct 13, 2015	resigned on 5/6/19 and Tino took seat	Tino Hernandez	June 5, 2019 - Oct 13, 2021	Current Member
PJ / Mayor 2	Greg Berman	April 30, 2012 - Oct 13, 2017	resigned March 2015	Gerard Bryant	Jan 11, 2016 - Oct 13, 2017	resigned on 2/7/18	Jacqueline Sherman ***	July 8, 2018 - Oct 13, 2023	Current Member
PJ / Mayor 3	Milton Williams Jr.	Oct 11, 2005 - Oct 13, 2009					Jennifer Jones-Austin	Oct 27, 2014 - Oct 13, 2015	PJ/Mayor
City Council 1	Robert Cohen	April 22, 2009 (reappt. Dec. 2011, 10/17/17) - Oct 12, 2023	Current Member						
City Council 2	Michael J. Regan	Dec. 19, 2001 (reapptd. on 7-29-2009, 4-7-2016) - Oct 12, 2020	Current Member						
City Council 3	Alexander Rovt	April 18, 2005 - Oct 12, 2008	Resigned 2015	Stanley Richards	May 27, 2015 - Oct 12, 2020 (Vice Chair)	Current Member			

In the above document Mayoral Appointees James Perrino has been replaced by [Freya Rigterink](#) as a Mayoral BOC select on 12/31/21; Judicial Appointee Tino Hernandez (RIP) was replaced by Marco Carrion on December 1, 2020; Mayoral Appointee Hon Bryanne

Hammill has been replaced by Felipe Franco as of October 13, 2019; Jennifer Jones Austin's seat, a Judiciary selection, remains open as does Mike Regan's City Council Appointed selection and; Stanley Richards has been replaced as a City Council select by Jose Medina in September of 2021. This means in the past nine years:

The City Council has only had the opportunity to make seven (7) of the available twenty-nine appointments to the BOC;

The First and Second Judiciary has had the opportunity to make ten (10) appointments to the BOC (with interference in the actual selection from the mayor) of the available twenty-nine available appointment openings and;

The Mayor has had the opportunity to make twelve (12) appointments to the BOC of the available twenty-nine open slots: almost TWICE THAT OF THE CITY COUNCIL. The City Council, unknowingly, has been robbed of your oversight voice regarding the BOC because of this political gamesmanship.

Start Date	End Date	BOC Member	Appt by	Renewal Date	Renewed by	Succeeded	Chair of	Reason for De	FUTURE
19-Dec-01	23-Dec-20	Mike Regan	Bloomberg	reappt 2x: 7-29-09, 4-7-16, 10-12-20 not renewed	Bloomberg, City Council			not reappointed	
4/1/2009		Robert L. Cohen, M.D.	City Council	[reappt 2x: Dec. 2011, 10/17/17]	City Council	Paul A. Vallone			10/12/202
11/16/2011	02-Oct-19	Hon Bryanne Hamill	Bloomberg	10/13/2013	Bloomberg	Gerald Harris	Chair 11/	not renewed	
10/27/2014	01-Nov-21	Jennifer Jones Austin	de Blasio & Jus	10/13/2015	de Blasio & Jus	Milton Williams Jr.		resigned/not renewed	
10/27/2014		Steven M. Safyer, M.D.	de Blasio	10/13/2017	de Blasio	Pamela Silverblatt			10/13/202
10/27/2014	16-May-19	Derek Cephas	de Blasio & Jus	10/13/2015	de Blasio & Jus	Catherine Abate	June 7, 20	resigned	
4/1/2015	16-Dec-16	Stanley Brezenef	de Blasio	10/13/2015	de Blasio	Gordon Campbell	Oct 15, 20	resigned	
5/27/2015	21-May-22	Stanley Richards	City Council	10/12/2020	City Council	Alexander Rovt	VChair 0c	resigned	
1/11/2016	07-Feb-18	Dr. Gerard Bryant	de Blasio & Jus	10/13/2017	de Blasio & Jus	Greg Berman		resigned	
2/14/2017	31-Dec-21	James Perrino	de Blasio	10/13/2021	de Blasio	Stanley Brezenef	y	not renewed	
7/1/2018		Jacqueline Sherman	de Blasio & Justices			Dr. Gerard Bryant			10/13/202
6/5/2019	20-Dec-20	Tino Hernandez	de Blasio & Justices			Derek Cephas		perished-RIP	
10/13/2019		Felipe Franco	de Blasio			Honorable Bryanne Hamill			10/13/202
12/1/2020		Marco Carrion	de blas & Justi	10/31/2021		Tino Hernandez			10/13/202
9/23/2021		Julio Medina	City Council			Stanley Richards	Chair March 22		10/26/202
12/31/2021		Freya Rigterink	De Blasio			James Perrino			10/13/202
*Stayed past term									
**Current BOC Member									

This lack of balance in appointments to the NYC BOC has created exactly the kind of oversight void that has birthed the chaos and insecurity that has fed the death machine that Rikers has become today.⁸ One of the most important and impactful things the NYC Council can do is to ensure the BOC is again a free and independent entity in its oversight capabilities and not hamstrung by the politics of a corrupted appointment process. I look forward to working with the council further on this issue among others.

Thank you for taking the time to read and internalize this analysis and for heeding my warning that unless we rigorously ensure the BOC appointment process is followed as per the NYC Charter in the future.

Yours,

Kelly Grace Price
www.CloseRosies.org
Fort George, Manhattan
April 28, 2022
gorgeous212@gmail.com

⁸ Link to spreadsheet of BOC appointments by appointing authority by CClose Rosies:
<https://docs.google.com/spreadsheets/d/1Mlu1Bf3jzGWfjU6wS1QROq0Yd6cEWCM9PpccyMzPsDc/edit?usp=sharing>



Peter Tufo, *Chairman*
John R. Horan, *Vice-Chairman*
Angelo Giordani
Rev. Samuel R. Holder
David Lenefsky, Esq.
Wilbert Kirby
Jack I. Poses
David A. Schulte
Rose M. Singer
Michael Austin,
Executive Director

**BOARD OF CORRECTION
CITY OF NEW YORK
51 CHAMBERS STREET
NEW YORK, N.Y. 10007
212 964-6307**

November 3, 1980

Mr. William Doyle
Editor
The City Record
Municipal Building, Rm. 2223
New York, New York 10007

Dear Mr. Doyle:

As we discussed, I have enclosed a statement describing the Board of Correction, and an updated listing of Board Members and staff.

In order to appropriately set-off the Board of Correction as an independent agency, I would suggest that the Board of Correction be listed separately in the General Index as "CORRECTION, BOARD OF (CITY)", and delete the 374-8419 telephone number. In addition, each of the letters in the heading Board of Correction should be capitalized and spaced to reflect the fact that the Board of Correction is a separate, independent City agency.

Please do not hesitate to contact me should you require any additional information.

Sincerely,

Michael Austin

Michael Austin
Executive Director

MA/ed
Enclosure

BOARD OF CORRECTION
51 Chambers St., New York, N.Y. 10007 964-6307

Pursuant to the New York City Charter, the Board of Correction evaluates the performance of the Department of Correction, establishes and insures compliance with minimum standards of confinement in all city correctional facilities, reviews inmate and employee grievances, investigates serious incidents and makes recommendations in critical areas of correctional planning.

The Board is composed of nine members, three appointed by the Mayor, three by the Council, and three by the Mayor on the nomination jointly by the presiding justices of the appellate division of the supreme court for the first and second judicial departments on a rotating basis. Its members are appointed for six year terms and serve without compensation. The Chairman is designated by the Mayor from among its members.

The Board of Correction	Terms Expires
Peter Tufo, Chairman, Tufo, Johnston & Zuccotti 645 Madison Ave., N.Y.C. 10017	October 13, 1985
John R. Horan, Esq., Vice-Chairman, Fox, Glynn & Melamed, 299 Park Ave., N.Y.C. 10017	October 13, 1985
Wilbert Kirby, 45 West 132nd St., N.Y.C. 10027	October 13, 1985
David Lenefsky, Esq., c/o DiFalco, Field & Lorenzo, 605 Third Ave., 11th Fl., N.Y.C. 10016	October 13, 1981
Rev. Samuel R. Holder, Dunton Presbyterian Church 109-29 135th St., South Ozone Park, N.Y. 11420	October 13, 1981
Angelo Giordani, Arawak Corp., 210 East 86th St., N.Y.C. 10028	October 13, 1983
Jack Poses, 400 Madison Ave., N.Y.C. 10017, Rm. 501	October 13, 1983
David A. Schulte, 501 Fifth Ave., N.Y.C. 10017	October 13, 1981
Mrs. Rose M. Singer, 125 East 72nd St., N.Y.C. 10021	October 13, 1981

Executive Director	- Michael Austin
Deputy Executive Director	- Michael D. Cleary
Counsel	- Judith LaPook

October 12, 1977

Mr. Thomas J. Culte
Vice Chairman and Majority Leader
The Council
City of New York
City Hall
New York, New York 10007

Dear Tom,

Tomorrow, October 13, the terms of three of the nine members of the Board of Correction expire. Under the requirements of section 626 (a) of the revised City Charter, appointments are now to be made in rotation as vacancies occur by the Mayor, the Council, and the Mayor on the joint nomination of the Presiding Justices of the Appellate Division of the Supreme Court for the First and Second Judicial Departments.

These are difficult times for the City's prison system, and the Board has major new responsibilities to fill under the new Charter. Accordingly, I think it would be unfortunate if there were any substantial delays in appointing persons to these positions on the Board. This is particularly the case since the positions are unsalaried and all Board members necessarily have heavy demands on their time.

I know that you and your colleagues on the Council will act thoughtfully and expeditiously in making your appointment.

If I can be of any assistance to the Council in that process, please let me know.

Sincerely,

Peter Tufo

October 18, 1977

Hon. Francis J. Murphy
Presiding Justice
New York State Supreme Court
Appellate Division - First Department
27 Madison Avenue at 25th Street
New York, New York 10010

Dear Judge Murphy:

On October 13, 1977, the terms of three of the nine members of the Board of Correction expired. Under the requirements of Section 626(a) of the revised City Charter, appointments are now to be made in rotation as vacancies occur by the Mayor, the Council, and by the Mayor on the joint nomination of the Presiding Justices of the Appellate Division of the Supreme Court for the First and Second Judicial Departments. These are difficult times for the City's prison system, and the Board has major new responsibilities to fill under the new Charter. Accordingly, I think it would be unfortunate if there were any substantial delays in appointing persons to these positions on the Board. This is particularly the case since the positions are unsalaried and all Board members necessarily have heavy demands on their time.

I know that you and Justice Frank A. Gulotta will act thoughtfully and expeditiously in making your nomination to the Mayor.

If I can be of any assistance in that process, please let me know.

Sincerely,

Peter Tufo

October 18, 1977

Hon. Frank A. Gulotta
Presiding Justice
New York State Supreme Court
Appellate Division - Second Department
45 Monroe Place
Brooklyn, New York 11201

Dear Judge Gulotta:

On October 13, 1977, the terms of three of the nine members of the Board of Correction expired. Under the requirements of Section 626(a) of the revised City Charter, appointments are now to be made in rotation as vacancies occur by the Mayor, the Council, and by the Mayor on the joint nomination of the Presiding Justices of the Appellate Division of the Supreme Court for the First and Second Judicial Departments. These are difficult times for the City's prison system, and the Board has major new responsibilities to fill under the new Charter. Accordingly, I think it would be unfortunate if there were any substantial delays in appointing persons to these positions on the Board. This is particularly the case since the positions are unsalaried and all Board members necessarily have heavy demands on their time.

I know that you and Justice Francis J. Murphy will act thoughtfully and expeditiously in making your nomination to the Mayor.

If I can be of any assistance in that process, please let me know.

Sincerely,

Peter Tufo

November 7, 1977

Mr. Thomas J. Culte
Vice Chairman and Majority Leader
The Council
City of New York
City Hall
New York, New York 10007

Dear Tom,

As I wrote you last month, the terms of three members of the Board of Correction have recently expired and appointments are to be made in rotation by the Mayor, the Council, and by the Presiding Justices of the Appellate Division. I would like to recommend that you and your colleagues on the Council nominate Mr. Angelo Giordani to fill one of those terms. Mr. Giordani has served for the past year as a member of the Board and has conclusively demonstrated his commitment and ability.

I am attaching for your information a copy of Mr. Giordani's resume and would of course welcome a chance to talk with you in greater detail about this subject if you think it would be useful.

Sincerely,

Peter Tufo

Enclosure



WILLIAM F. MASTRO
ASSOCIATE JUSTICE

Appellate Division
Supreme Court of the State of New York
Second Judicial Department
60 Bay Street
Staten Island, New York 10301

(718) 675-8680
FAX (718) 816-4587

March 6, 2012

Honorable Michael Bloomberg
Mayor, New York City
Office of the Mayor
City Hall
New York, New York 10007

Dear Mayor Bloomberg:

It is our understanding that a vacancy exists on the Board of Corrections for the City of New York due to the term expiration of Ms. Hildy J. Simmons.

After consultation, it is with great pride that we hereby submit the following name to be considered for appointment on the Board of Corrections:

Mr. Greg Berman
520 8th Avenue
New York, New York 10018
646-386-3830
berman@courtinnovation.org

Enclosed please find a copy of Mr. Berman's resumé.

Thank you for your consideration and cooperation.

Very truly yours,

WILLIAM F. MASTRO
Acting Presiding Justice
Appellate Division
Second Judicial Department

LUIS A. GONZALEZ
Presiding Justice
Appellate Division
First Judicial Department

WFM/rd
Enclosure

cc: Gerald Harris, Chair, NYC Board of Corrections
Richard T. Wolf, Executive Director, NYC Board of Corrections

Testimony to New York City Council Committee on Criminal Justice

April 29, 2022

Thank you Chair Rivera and Council Members, for holding this hearing and introducing legislation to increase transparency in the City jails.

You've heard stories of torture, anguish, and human rights violations today and for the past several years from formerly incarcerated people and family members. Because of their bravery, what happens on Rikers is no longer hidden. Their bravery needs to be rewarded with action.

The Department of Correction is still allowed to operate a penal colony where the rules depend on the whims of staff who repeatedly abuse their power with impunity. Of course, a system that operates with no compassion will generate horrific amounts of trauma, self-harm, and suicide. This month, one of our members went to visit her son. He's 22 years old, and has been on Rikers for four years awaiting trial, since he was 18. Due to the suspensions of visits during Covid and the difficulty of traveling to Rikers from her home in outer Brooklyn, this is the first time she'd seen her son in more than two years. Unfortunately, while she was there, a visitor was arrested on suspicion of bringing contraband, so they didn't allow anyone to have contact visits with their loved ones. After two years, and traveling nearly 2 hours on three trains and a bus, she could not hug her son. This, in a system where everyone knows that officers are bringing in contraband every day, and rarely face consequences.

NYC jails are in a state of acute crisis right now, and they were in a state of crisis before. The illegal strike by sickout that guards have engaged in has had horrific impacts, but consider what staff have done when they are present in housing units. They failed to intervene for 8 minutes while Nicholas Feliciano attempted suicide. They failed to check on Layleen Polanco and they laughed when they found her unconscious. They beat Kalief Browder. Addressing mass absenteeism with accountability is essential and will take a fight, but even that won't be enough. It will only bring us back to an unacceptable status quo. We need to end solitary confinement. We need to decarcerate using every tool we have – such as those outlined by CCI and More Just NYC's [report](#), including the recommendation to establish [population review teams](#). We need to invest to meet the full need in our City for [supportive housing](#) and healthcare. We need to pass legislation to end solitary confinement but also to mandate public reporting of both death investigations and officer disciplinary records. And we need to expedite the closure of Rikers.

COBA will fight all these urgent changes, like they have fought every single effort at reform for decades. We need our electeds to be able to see that for what it is – fearmongering to protect decades of corruption that does a disservice to their own members, as well incarcerated people. Balancing perspective isn't a frame that fits here. This is about human rights. You don't balance between torture, abuse, corruption on the one hand, and human rights on the other hand. You stand on the side of human rights, and we need the Council to do that.

Sincerely,

Sarita Daftary

Co-Director, Freedom Agenda

Sdaftary@urbanjustice.org



New York City Council Committee on Criminal Justice

April 29, 2022
10:00 a.m.

Oversight: Self-Harm and Suicide Prevention in New York City Jails

Testimony of
The Legal Aid Society
Prisoners' Rights Project

Robert M. Quackenbush
Stefen R. Short
Kayla Simpson
Mary Lynne Werlwas
Prisoners' Rights Project
The Legal Aid Society
199 Water Street
New York, NY 10038
212-577-3530

CHAIRMAN RIVERA and MEMBERS AND STAFF OF THE COMMITTEE:

Thank you for providing The Legal Aid Society with the opportunity to address the Committee about prevention of suicide and self-harm in the New York City jails. We applaud the Committee for seeking information from the Department of Correction (DOC) and Correctional Health Services (CHS) about the prevalence of self-harm and suicide in the City jails, for holding City officials responsible for caring for those in its custody, and for exploring measures to prevent any more deaths or self-harm in the jails.

We base this testimony on the Prisoners' Rights Project's 50 years of experience investigating and remediating unconstitutional and dangerous conditions in the City jails through individual and class action lawsuits and advocacy. Currently, we serve as counsel for plaintiffs in *Nuñez v. City of New York*¹, a federal class action about use of force and safety in the City jails; *Agnew v. New York City Dep't of Correction*,² a class action challenging DOC's failure to provide access to medical care services; and *Muñoz v. City of New York*³, a lawsuit against DOC and CHS about the systemic failure of suicide prevention protocols, leading to the tragic death in custody of Javier Polanco Muñoz in 2016. We also routinely engage with the Board of Correction to ensure that they perform their oversight role in promulgating and monitoring Minimum Standards for correctional practices in the jails.

Calls for Help From the Jails

On a weekly basis, the Prisoners' Rights Project hotline and the Criminal Defense Practice trial offices receive desperate calls from clients incarcerated in the New York City jails seeking help for suicidal ideation or intent to self-harm. The experience of these individuals often is not reflected in statistics or graphs about self-harm or suicide, as they may not ever be seen by mental health staff. Individuals report being despondent over their inability to get mental health treatment; terrified by delays or denial of medical treatment for illnesses or injuries; afraid for their safety given ubiquitous staff violence and violence among incarcerated people; and threatened by deplorable and inhumane conditions. While we immediately contact the health and correctional authorities about these issues, clients and their families frequently report that they do not receive the help they need until we have made multiple requests, and sometimes not even then. The frequency with which these initial pleas for help go unredressed is an alarming indicator of the depth of indifference to the true suffering inside the jails.

¹ *Nuñez v. City of New York et. al.*, 11-cv-5845 (LTS) (SDNY).

² *Agnew v. New York City Dep't of Correction*, Bronx Supreme Court, Index No. 813431/2021E.

³ *Muñoz v. City of New York, et al.* 17-cv-4407 (NRB) (SDNY).

New York's Failed Suicide and Self-Harm Policies and Practices

It is well established that incarceration increases suicide risk, and that people who are incarcerated are more likely to report multiple suicide attempts rather than a single suicide attempt.⁴ Moreover, “many more individuals attempt, contemplate, or threaten suicide prior to a fatal suicide attempt in a jail setting and self-harming behaviors may be a risk factor or precursor for more serious attempts on one’s life.”⁵ Experts in the field have produced an abundant body of literature to provide correctional agencies with policies and best practices for detection and prevention of self-harm and jail suicide.⁶

But New York City has failed to implement these best practices for suicide prevention, in both policy and lived practice. In May 2020, the court-appointed federal monitor in *Nuñez*, reviewing DOC’s suicide and self-harm policies, warned that “the Department’s [self-harm] directives are outdated, do not reflect best practice for suicide prevention, and do not provide Staff with the necessary guidance for timely response to an inmate who is actively engaging in self-injurious behavior.”⁷ The Monitor made several recommendations “for improving Staff’s response in the moment, closely supervising those placed on suicide precautions, ensuring the availability of emergency response equipment, reporting self-harming behavior and conducting morbidity/mortality reviews following significant incidents of self-harm.”⁸

But DOC did not effectively implement those recommendations. Five months later, the Monitor emphasized concern about “Staff fail[ing] to use force timely to intervene in acts of self-harm,” raised concerns about the number of suicide attempts in intake and the physical design of those spaces, and reiterated the Monitoring Team’s prior recommendations.⁹

Even when the Monitor reported in May 2021 that the Department updated various *policies*, the agency continued to fail to adequately elevate staff *practice*—the Monitor described ongoing concerns that “Staff are not responding in the moment with the necessary urgency and/or are not taking threats and self-harm gestures seriously,” that “Captains, when on scene, rarely direct Staff to enact proper protocols for addressing self-harming behavior,” and that a review of cases “provided limited evidence of appropriate follow-up and intervention by mental health care staff.”¹⁰ The Monitor also noted that despite creating a reporting mechanism to evaluate responses to self-harm, the “template [was] not completed as required.”¹¹

⁴ See, e.g., Calli M. McCain and Jared M. Ellison (2022), *Identifying Individuals at Risk of Suicide and Self-Harm in Jail*, Corrections, DOI: 10.1080/23774657.2022.2031350, available at <https://www.tandfonline.com/doi/full/10.1080/23774657.2022.2031350>.

⁵ *Id.*

⁶⁶ See *id.*; see also Lindsay Hayes, *National Study of Jail Suicides: 20 Years Later*, U.S. Department of Justice National Institute on Corrections, 2010, available at <https://s3.amazonaws.com/static.nicic.gov/Library/024308.pdf>.

⁷ Ninth Report of the *Nuñez* Independent Monitor, at 22. All reports of the *Nuñez* Monitor and case filings cited herein are available on the court docket and are re-printed at: <http://tillidgroup.com/projects/nunez-monitorship/>.

⁸ *Id.* at 22-23.

⁹ Tenth Report of the *Nuñez* Independent Monitor, at 23.

¹⁰ Eleventh Report of the *Nuñez* Independent Monitor, at 33-34.

¹¹ *Id.* at 34-35.

These failures continued throughout 2021, with deadly consequences.¹² The federal court ordered DOC to improve staff practices involving self-harm prevention and responses.¹³ But six months after the court’s order, the Monitor reported in March 2022 that the DOC had utterly failed to abide by the order’s requirements:

- DOC “developed some informational posters and television content to remind staff of their obligations”—none of which were visible to the Monitoring Team during a March 2022 site visit—and “ha[d] made no further efforts to help staff to improve their practices... (e.g., further messaging, guidance, support or coaching).”¹⁴
- The Monitoring Team helped the Department develop staff memo book inserts to serve as a resource in responding to self-harm, but DOC “*never printed or disseminated [the inserts] to staff despite being finalized in October 2021.*”¹⁵
- Finally, while DOC claimed that supervisors used roll calls and tours to remind staff of their obligations, the Monitoring Team called those claims “suspect,” noting that “Roll Call occurs infrequently if at all and that supervisory tours, when they do occur, do not appear to be substantive in nature.”¹⁶

The deficiencies that DOC has failed to correct cause shocking and avoidable harm. The Twelfth Report of the Monitor describes how those failures manifest:

[W]hen individuals begin the process of tearing sheets, shirts, or other materials for the purpose of making a noose, the behavior is either undetected, underestimated or ignored by Staff... Even when individuals are observed with a noose around their neck, often tightened or attached to a fixed object, Staff sometimes leave the individual unattended, are slow to call for assistance, are slow to enter the cell, attempt to negotiate with the individual and/or fail to make an immediate intervention. These poor Staff practices, with potentially deadly consequences, go unnoticed across the various forms of incident review with the relevant supervisors and facility leaders failing to understand or appreciate the serious nature of events. The number of deaths caused by suicide in the jails has skyrocketed.”¹⁷

Inter-Agency Cooperation and Accountability Is Crucial to Suicide Prevention

Suicide prevention in the jails is a core responsibility of *both* correctional leaders and medical providers, and requires an extraordinary degree of inter-agency coordination integration

¹² August 24, 2021 Letter to the Court from the Monitor , at 3 (“The Monitoring Team is aware of at least four presumed in-custody suicides and other troubling self-harm incidents involving detainees since December 2020, with most, if not all cases, raising questions about the adequacy of staff’s response to detainees who are at risk of self-harm.”)

¹³ Second Remedial Order ¶ 1(i)(b), September 29, 2021.

¹⁴ March 16, 2022 Special Report of the Nuñez Independent Monitor, at 46.

¹⁵ *Id.* (emphasis supplied).

¹⁶ *Id.*

¹⁷ Twelfth Report of the Nuñez Independent Monitor at 31.

and coordination. Almost uniformly, official investigations of suicides in the City jails point to failures by *both* DOC and the medical staff of Correctional Health Services. A recent New York State Commission of Correction report on death of Legal Aid client David McPeck is illustrative:

FINDINGS: David McPeck Jr. was a 43-year-old Caucasian male who died on 8/27/18 of a suicide due to asphyxia from an airway obstruction by foreign material while in the custody of the New York City Department of Correction (NYC DOC) while at the Anna M. Kross Center (AMKC). The Medical Review Board finds that NYC DOC failed to provide adequate security and supervision and failed to discover McPeck’s suicide attempt in a timely manner. The Medical Review Board found numerous violations of minimum standards regarding security and supervision in the matter, for which if adequate compliance had occurred, McPeck may have been discovered in a timely manner and his death prevented. Additionally, the Medical Review Board found there were systemic deficiencies in McPeck’s healthcare prior to his terminal event including failures to provide medication and necessary follow-ups.¹⁸

Over the years, we have seen too much finger-pointing between DOC and CHS when systems break down and preventable self-harm results. For example, the New York City Board of Correction’s report on the 2019 attempted suicide of Nicholas Feliciano described how failures of both CHS and DOC caused Mr. Feliciano’s injuries, and made concrete recommendations for reform to each agency.¹⁹ While CHS, unlike DOC, publicly responded to these recommendations in writing, its response to those recommendations made jointly to DOC and CHS was to shift the blame to DOC.²⁰ New York City must close these real or perceived gaps in accountability to protect people in custody.

Recommendations

1. To align its policies and performance with the best practices, New York City should retain an expert in suicide and self-harm prevention in custody. New York State retained Lindsay Hayes, the foremost expert in suicide prevention in custody, to provide such technical assistance, and New York City could do the same. An expert such as Mr. Hayes could provide an independent, politically unbiased view of what we can do better.
2. Following an expert analysis, the City should designate an individual akin to a suicide prevention “czar” to coordinate *across* city agencies to implement suicide and self-harm prevention protocols. There should no longer be any room for bureaucratic finger-pointing about suicide in the jails.

¹⁸ Final Report of the New York State Commission of Correction in the Matter of the Death of David McPeck, December 21, 2021, at 2, *available at* <https://scoc.ny.gov/pdfdocs/mrb/McPeck,%20David%20-%20AMKC.pdf>.

¹⁹ Board of Correction, A Report and Recommendations on the November 2019 Attempted Suicide of Mr. Nicholas Feliciano, October 18, 2021, *available at* <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/nicholas-feliciano-final-report-and-recommendations-with-chs-response-20211018.pdf>.

²⁰ *Id.* at 20.

3. The Council should closely monitor DOC and CHS' implementation of the changes recommended by the Board of Correction in the Feliciano report, described above.²¹
4. Through our litigation, we have identified several concrete operational practices that could save lives in the New York City jails. We encourage the Council to ensure that DOC and CHS implement these recommendations:
 - a. Staff conducting mental-health assessments at intake must have the system's records concerning that person's previous suicide attempts. Our litigation has shown that these records exist, but intake officers do not have them, and instead make critical risk assessments based exclusively on the self-reports of a person who may be in crisis and may not be an accurate reporter. HIPAA is no bar to this kind of information sharing between DOC and CHS, as it contains a ready-made exception for medical information sharing in the correctional context, and these agencies must take advantage of that provision.
 - b. Every person entering DOC custody who has engaged in self-harm should be referred to CHS for an emergency mental health referral. City practice has been to require this "mandatory referral" only for suicide attempts within the previous 12 months. This artificial 12-month period is insufficient to protect from harm.
 - c. CHS and DOC must guarantee that all emergency mental-health referrals take place as scheduled, without delay, even when there is a security lockdown. Preventable deaths can and do occur when services are suspended during a lockdown. Emergency mental-health referrals should never be suspended.

We again thank the Committee for its attention to this issue, and for listening to the experiences of survivors of the City jails and families of people who tragically did not survive their incarceration. We can and must do better to avoid any more preventable deaths in custody.

²¹ *Id.* at 15-17.



Testimony of

Natalie Fiorenzo
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Corrections Specialists

New York County Defender Services

Before the
Committee on Criminal Justice

Oversight Hearing on Self-Harm and Suicide Prevention in City Jails

Intros 30-2022 & 181-2022

April 29, 2022

We are Natalie Fiorenzo and Rachel Sznajderman, Corrections Specialists at New York County Defender Services (NYCDS). NYCDS is a public defense office that represents New Yorkers in thousands of cases in Manhattan’s Criminal Court and Supreme Court every year. Since 1997 NYCDS has represented more than 300,000 clients in their criminal cases and developed decades of expertise on the workings of the criminal legal system. Our Corrections Specialists Team provides critical support to our incarcerated clients and we are an important link between our clients, their trial teams and their family members. We advocate directly with DOC for transfer requests, medical referrals, and release from incarceration. We meet with clients and perform wellness checks, including when there are reports of self-harm or suicidal ideations. And we monitor and report on conditions on Rikers Island by collecting data and client stories, drafting reports, and testifying before this body and the Board of Correction. As such, we have a front seat to the realities of self-harm and suicide attempts by our clients due to the horrors of incarceration in city jails.

Thank you to Chair Rivera for holding this hearing to allow us to provide the City Council with feedback on the Department of Correction’s dismissal record of preventing self harm and suicide in city jails. We are grateful for the opportunity to elevate our clients’ experiences and propose steps that the Council can take to improve the bills before this committee on today’s agenda.

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1. Background

NYCDS currently represents roughly three-hundred people detained at Rikers Island. Of those, 47% are deemed as having “Brad H Status,” meaning they were diagnosed with some form of mental illness prior to being incarcerated at Rikers.¹ However, this statistic does not begin to capture the extent of the mental health crisis that has been unfolding on Rikers Island for months. Though not all of our clients have been identified by Rikers as having mental illness, every single person currently languishing on Rikers is being stripped of their humanity and forced to witness or be subject to unending violence. They are all suffering from the trauma of their detention. Thus, it should come as no surprise that self-harm and suicide attempts are at an all time high in the jails.²

The most common statement that we hear from our incarcerated clients is that “DOC is violating our rights”. Every basic service that a person should be afforded while incarcerated is tied up in dysfunction. The written rules, protections, directives, and statutes that you all see on paper are not actually being followed. Troublingly, DOC is deliberately disregarding the HALT solitary confinement statute, passed last year that went into effect statewide on April 1, 2022.³ DOC claims that they are in full compliance with the law, but it does not seem that way based on the experiences of our clients. HALT limits lock-in time to no more than 17 hours, but we have clients still experiencing 24-hour lock-ins. *These lock-in violations affect not only our clients in solitary settings, but our clients in general population, as well.* Specifically, RNDC (the facility that houses our youngest clients), has frequent days-long lock-ins where clients are not allowed out of their cells at all. For our clients that do get at least some time out of their cell, they either don’t get rec at all or go sporadically. Only once have we heard a client say they were getting rec regularly. We have clients that haven’t seen the sun in 6 months besides being taken to court.

Lack of out-of-cell time is not the only minimum standards violation our clients face. There are also glaring failures in terms of getting meals, access to showers, heat, commissary, mail, law library, access to counsel and family visits. Being locked in a confined space all day, not knowing when your next meal or shower will come, not interacting with other humans in any meaningful way is enough to test anyone’s psyche, especially if on top of that you are living in constant fear of violence.⁴

¹ See Urban Justice Center: Mental Health Project, *Brad H. v City of New York*, available at <https://mhp.urbanjustice.org/2019/11/25/brad-h-v-city-of-new-york/>.

² George Joseph and Reuven Blau, “Self-Harm Is Exploding In New York City Jails, Internal Numbers Show,” *Gothamist*, Sept. 6, 2021, available at <https://gothamist.com/news/self-harm-exploding-new-york-city-jails-internal-numbers-show-rikers>.

³ See Bill Text of NY S.2836 (signed into law on March 31, 2021), available at <https://www.nysenate.gov/legislation/bills/2021/s2836>.

⁴ See, e.g., Jan Ransom, A Look Inside Rikers: ‘Fight Night’ and Gang Rule, Captured on Video, *NY Times*, Jan. 12, 2022, available at <https://www.nytimes.com/2022/01/12/nyregion/rikers-jail-videos.html>.

These inhumane conditions of confinement, mixed with the fact that available DOC staff refuse to man posts in housing areas, lead to frequent violent attacks. Our clients describe being in constant fear of violence from attacks from other detainees, and also ESU searches. When ESU does a random “search,” a team of 40 or so heavily armed guards barge into our clients’ housing areas and steal or destroy our clients’ clothes, personal effects, and commissary food. This can happen at any time and it happens frequently. Amidst this culture of violence as currency and surprise attacks, our clients are on edge to say the least. It is clear in client meetings that they are traumatized, whether that means they are even too terrified to speak on it, or so traumatized that they think it’s normal.

2. Client Narratives

Self-harm and suicide are persistent concerns for us as Corrections Specialists working directly with NYCDS clients incarcerated on Rikers. Time and again we hear from our clients that they cannot make it one more day, that we might not hear from them again, that they need help and no one is helping them. Such was the case for J, a client with a history of depression and suicide attempts. J was not only receptive and open to treatment, he begged for it. And though his facility was aware of his situation, he was repeatedly cut off from his medication, and bounced around to different housing areas. J’s incarceration followed a recurring pattern: he was first housed in the Mental Observation Unit (MOU). Once he was deemed well enough, he was transferred to General Population, where the delivery of his medication was uncertain, and he had significantly limited access to mental health staff. And then he would call me, fearful that he might hurt himself, pleading to be placed on suicide watch, so that one day he could be reunited with his 3-year-old son. And the cycle continued on and on. This is common practice for our clients with diagnosed mental illnesses. The MOU is one of the only places where they are able to obtain the treatment necessary to remain stable during their stay on Rikers. Yet, they are routinely moved out, leading to the deterioration of their mental health.

Though this story helps paint a picture of the experience of mentally ill people in Rikers, it does not shed light on the countless individuals who have developed suicidal ideation and tendencies precisely *because* of their incarceration in Rikers. M had a stable job and living situation before going to Rikers. But since his incarceration, he feels like he’s lost everything, that he has nothing left to live for. That by the time he gets out, he’ll have to start all over again, living in a shelter, trying to find a place willing to hire someone with a criminal record. So when I meet with him, he tells me that it will probably be the last time, that he’s not sure if he’ll see me again. M told me that he’s not a violent person, has never been much of a fighter, so being surrounded by violence, witnessing unprovoked slashes and stabbings, seeing fellow detainees being forced to fight, he is in constant distress. He does not sleep. He feels that he can’t let his guard down one second, fearing what might happen. It is no wonder he is unsure that he will survive to see his day in court.

Recently, one of our clients raised issues of the inhumanity and dysfunctionality that he was facing through a writ of habeas corpus that was brought to the court. The court recognized that “there's a crisis of "patently unsafe conditions" at Rikers, due to what the *Nunez Monitor*⁵ describes as "the most complicated and dysfunctional system" it has worked with. Identifying and remedying these problems is, according to the Monitor, "complex and time-consuming." During his last hearing after the judge denied his petition, our client made it clear to the court that self-harm has become one of the only methods of communication for many incarcerated people that is given attention. The extremity of self-harm is not chosen by clients to speak, but rather the Department of Corrections has turned a blind eye to so many other expressions of our clients.

Our client shared with the court when pleading while having his hands in forced and chain mitts that the judge allow him, an 85-year-old man awaiting trial, to be released from DOC custody to await his next court date in housing provided by Exodus. “The last time I was here, they had me in a cell where I couldn't use the toilet or nothing,” he told the judge. “I'm trying to get these things (mitts) off so I can use the bathroom. I wind up going to the bathroom on myself and nobody is doing nothing to ensure that I be taken care of. I wind up being on the bus all day last night.” To which the court simply responded, “That shouldn't happen anymore.” Eventually, our client had to leave the court record with the acknowledgement, “It shouldn't happen, but it's happening and nobody's doing nothing. In order to get something done, I have to hurt myself.”⁶

Moreover, even when using every single vehicle for recourse against the dysfunction at Rikers Island, people are being driven to self-harm as both a means and ends of coping with the treacherous conditions that they face. These circumstances are not an exception, but the norm.

3. Legislation

- a. **Int. 30 - A Local Law** to amend the administrative code of the city of New York, in relation to requiring the department of correction to create and implement policies to address medical needs during and after lock-ins.

As has been reported widely in the press, in recent months thousands of incarcerated people have been denied access to medical treatment by DOC. There were more than 1,000 instances in December 2021 alone in which an incarcerated person did not make a scheduled medical appointment.⁷ DOC still claims that our clients refuse these visits, while our clients adamantly insist this is not the case. The Council initially passed legislation in 2019 to address the issue of failure to produce people to their medical appointments after concerted efforts by advocates to

⁵ See, *Nunez Monitor Reports*, <https://www1.nyc.gov/site/doc/media/nunez-reports.page>.

⁶ Petitioner v. Department of Corrections case: SMZ-70339/2022, March 23, 2022.

⁷ Jonah E. Bromwich, Medical Care at Rikers Is Delayed for Thousands, Records Show, NY Times, Feb. 1, 2022, available at <https://www.nytimes.com/2022/02/01/nyregion/rikers-island-medical-care.html>.

raise attention to this issue. Yet the problem persists. This draft of Intro 30 is a good step in the right direction but could benefit from the following amendments.

The existing law requiring reporting of non-production for medical appointments should be further strengthened. Specifically, on page 1, line 12, we recommend deleting the words “if given.” The new language would read “If the reason for non-production is a refusal or walkout, the department [will] shall also record the reason for refusal or walkout [, if given]. If no reason is actually given by an incarcerated person for refusal to be transported to a medical visit, DOC should still be required to record it with whatever detail is available, e.g. *Incarcerated person was in their cell but refused to come out after 2 requests*. By allowing the department not to put anything at all so long as they say no answer was given, we are allowing them to not comply with the spirit of this reporting statute. If a person is legitimately refusing to attend an appointment, DOC should still be required to report all information about the refusal.

Similarly, we recommend deleting the phrase “wherever practicable” from page 2, line 7. This language, like the “if given” language on page 1, creates an excuse for DOC to not comply with the spirit of the law. In our experience, if DOC has an out, they will take it. Here, the language should read “Such plan shall ensure that department staff continue to escort patients to medical appointments during a lock-in [whenever practicable].” If DOC only has to comply with the plan “whenever practicable,” then they will always say it was not practicable. If an entire housing unit is on lockdown for a week because of a COVID breakout, DOC will say “no visits, not practicable.” If no staff is available because DOC chooses not to ensure that all housing units have proper coverage, they will say “not practicable.” The “whenever practicable” loophole will ensure that nothing changes for our clients.

We urge the Council to adopt these proposed amendments and pass an amended Intro 30 this year.

- b. **Int. 181 - A Local Law** to amend the administrative code of the city of New York, in relation to requiring the department of correction to publish all of its rules, policies and directives.

NYCDS strongly supports Intro 181, but urges the sponsors to consider amending the bill to include language that would set a time frame for DOC to post departmental rules, policies and directives to no later than 7 days after they are promulgated. We worry that without a time frame that DOC will fail to post new rules or directives for weeks or months at a time. But if they were required to post within 7 days, we could go back to them on day 8 and ask that the rules be posted. Other than this suggestion, we believe this bill is long overdue and urge the Council to pass it expeditiously.

4. New York City Council Should Pass a Resolution in Support of the Treatment Not Jail Act (S.2881B-Ramos/A.8524A-Forrest).

The surge in self-harm incidents at Rikers reflects the urgent need to expand access to community-based treatment for those who are caught in the criminal legal system due to underlying mental health issues. We therefore call on the City Council to support state legislation to expand pre-trial diversion for people with mental health challenges and other disabilities. Pre-trial diversion allows those charged with crimes to resolve their criminal cases by successfully completing community-based treatment, rather than letting them languish and decompensate in our jails and prison.

Roughly half of all those detained in our city jails are recommended to receive mental health services,⁸ and the numbers are going up. In 2020, an average of 17% were diagnosed with a “serious mental illness,” up from 10% four years earlier.⁹ New York state incarcerates more people with serious mental illnesses in its jails and prisons than it treats in its hospitals.¹⁰ There are more people with serious mental illness living in Rikers Island than in *any* psychiatric hospital in the United States.¹¹

Of course, even under ideal circumstances, jail is hardly an appropriate environment to administer psychiatric and mental health services, but in the current humanitarian crisis, most are unlikely to receive any treatment at all.¹² And as we have extensively documented in Section 2 of our testimony, whether or not mental healthcare is provided, incarceration in and of itself is proven to exacerbate underlying issues and leave those exposed to it - even for short periods - even more destabilized and traumatized.

Meanwhile, studies consistently show that people who successfully complete mental health or drug diversion courts have a significantly lower rate of recidivism.¹³ In addition, diversion is materially

⁸ Greater Justice NY, “People in Jail in New York City: Daily Snapshot,” Vera Institute, <https://greaterjusticenyc.vera.org/nycjail/> (last accessed April 28, 2022).

⁹ New York City Comptroller. (March 2021). FY 2022 Agency Watch List: Department of Correction. Available at: https://comptroller.nyc.gov/wp-content/uploads/documents/Watch_List_DOC_FY2022.pdf

¹⁰ Treatment Advocacy Center, “New York,” available at <https://www.treatmentadvocacycenter.org/browse-by-state/new-york>

¹¹ *Id.*

¹² Jonah E. Bromwich, The New York Times, *Medical Care at Rikers Is Delayed for Thousands, Records Show* (Feb. 1, 2022), available at <https://www.nytimes.com/2022/02/01/nyregion/rikers-island-medical-care.html>.

¹³ Michael Mueller-Smith & Kevin T. Schnepel, *Diversion in the Criminal Justice System*, 8 THE REV. OF ECON. STUD. 2, 883–936 (2021), <https://doi.org/10.1093/restud/rdaa030> (finding that diversion cuts reoffending rates in half and grows quarterly employment rates by nearly 50% over 10 years); Amanda Agan, Jennifer Doleac & Anna Harvey, *Misdemeanor Prosecution* (Nat’l Bureau of Econ. Res., Working Paper No. 28600, 2021), https://www.nber.org/system/files/working_papers/w28600/w28600.pdf (finding non-prosecution of a nonviolent

more cost-efficient than incarceration. While every \$1 invested in treatment courts yields \$2.21 in savings,¹⁴ New York City expends \$556,539 per person, per year on incarceration.

The Treatment Not Jail Act (S.2881B-Ramos/A.8524A-Forrest) addresses this massive, systemic failure by dramatically expanding access to and improving upon the pre-trial diversion courts that already exist throughout New York. First, the Treatment Not Jail Act will amend the provisions in the Criminal Procedure Law that authorize drug diversion courts to allow admission for people with mental health diagnoses, intellectual disabilities and other disorders which have led to their involvement in the criminal legal system. The decision to admit these individuals will fall to judges, not prosecutors, who will be empowered to order diversion - regardless of the underlying charge - where the court determines that the person's underlying mental health or substance use issue has contributed to their criminal legal system involvement, such underlying issue can be effectively treated, and it is in the best interest of the public to offer the individual community-based treatment. If successful in completing the treatment plan, the judge will be empowered to dismiss or reduce the person's criminal charges. In addition to expanding access to these courts, the Treatment Not Jail Act improves upon the treatment court model by incorporating many evidence-based best practices that have already been successfully implemented in ad hoc diversion courts throughout the state.

The horrifying rates of self-harm incidents and suicides within New York City jails demand that we fundamentally upend our city's default reliance on jails and prisons to serve as our primary mental healthcare providers. The Treatment Not Jail Act provides a safe and structured path to achieving this, and to effectively offer community-based mental health treatment for those who need it. We call on the City Council to support this state legislation.

If you have any questions about our testimony, you can reach us both directly at correctionsspecialists@nycds.org.

misdemeanor offense leads to large reductions in the likelihood of a new criminal complaint over the next two years); David Huizinga & Kimberly L. Henry, The Effect of Arrest and Justice System Sanctions on Subsequent Behavior: Findings from Longitudinal and Other Studies, in, THE LONG VIEW ON CRIME: A SYNTHESIS OF LONGITUDINAL RESEARCH 244 (Akiva M. Liberman, ed., 2008); John Laub & Robert Sampson, Life-Course and Developmental Criminology: Looking Back, Moving Forward, J. OF DEV. AND LIFE-COURSE CRIMINOLOGY (2020); Shelli B. Rossman, Janeen Buck Willison, Kamala Mallik-Kane, KiDeuk Kim, Sara Debus Sherrill, P. Mitchell Downey, Criminal Justice Interventions for Offenders with Mental Illness: Evaluation of Mental Health Courts in Bronx and Brooklyn, New York, Nat'l Inst. of Justice (April 2012), <https://www.ojp.gov/pdffiles1/nij/grants/238264.pdf>.

¹⁴ New York State Unified Court System, The Future of Drug Courts in New York State: A Strategic Plan (2017), https://www.nycourts.gov/legacyPDFS/courts/problem_solving/drugcourts/The-Future-of-Drug-Courts-in-NY-State-A-Strategic-Plan.pdf.

April 29th, 2022

Testimony Before the New York City Council Board of Corrections on Self Harm and Suicide in all New York City DOCS facilities.

Good morning. Thank you for allowing me to testify this morning. I am Eileen Maher and I am a Civil Rights Union Leader with Vocal-New York. I am also a woman who is a survivor of domestic violence and who was formerly incarcerated. Before I begin I would like to show you my arm, this is one of my 'favored' spots when I relapse into self harm. I do not have the greatest lighting where I am so it may be hard to see. I am including a better photo with my written testimony. You will see that there are old scars in addition to much newer scars. With that said:

I would like to begin by saying that Suicidal Ideations and sometimes the follow through are not Self Harming and Self Harmers, when doing so—we are not experiencing suicidal ideations. We don't wish to die when self harming.

As a self harmer who has relapsed on and off for thirty years I can attest to this. And as a woman who was detained on Rikers Island for over 420 days. I can also attest to the fact that after a long period of having been in recovery for self harming, (prior to becoming a detainee), I relapsed within days of my detainment. And while yes, items that one can use to self harm and/or attempt to commit suicide are taken away from the detainee at intake and are not readily available in the facility, where there is a will, there is a way. I knew of other women and men on the Island who were self harming as I was. I was not an anomaly. Why did I relapse? Self harming is a means in which I have control over something, anything when I lose control over any and/or everything. The dehumanizing, ignorant, abusive and despicable ways in which the so-called Correction Officers treat the detainees and behave in general were another reason. And finally—the completely inadequate mental and physical health services that are provided. It took well over a week to secure my correct psychotropic medication and other than a brief how do you do at intake—see a mental health professional. When I finally did see a mental health counselor she only continuously asked me and said 'cheer up, I don't know why you are so upset about being here.' All I could say to that is well, Anyway. I mean, it's jail, come on. Of course I never divulged my secret to her or any staff there. As many others did not.

When I was detained and later incarcerated I lost control over everything—my home, my companion animals, relationships with family and friends, my own health and well being, my finances and even what bra I was allowed to wear.

When self harming it becomes a distorted version of ‘me time’ where I could be in my own head and have control over something. And you will find this with many other individuals who self harm. Contrary to what the physician testified today—I do not, nor have I ever self harmed as a means to “get attention”. That is not a thing.

As for suicidal ideations and the follow through or at least the attempt to follow through—this can be a means to an end when one has lost control of everything and sees no hope or light at the end of the tunnel. They have lost their children, their family, their lives and their humanity.

The same poor mental and physical health care services which are coupled with the ignorant, barbaric and abusive manner in which the corruption officers treat the detainees and behave in general are a breeding ground for suicide as well for someone who has lost and is losing much of their life, say facing the loss of, for example— their children/family and are facing a possible long sentence or other similar issues. Taking their own life or even just trying to (hopefully unsuccessfully) may feel and seem like a logical solution to everything.

I mentioned the barbaric ways in which the corruption officers behave and treat the detainees, this was never more clear to me when I would be in the intake pens awaiting an outside medical appointment or video court and I saw and heard a fellow detainee in the “why me” pen in intake verbally threatening to take their own life—screaming it at times—to have it met with a Corruption officer yelling back something like : “just do it already.” or “dumb bitch no one cares about you, go ahead.” Rather than having a mental health professional or really a psychiatrist brought into the fold. In fact I witnessed this on a regular basis and the women’s cries of wanting to end their own life were always met with the same ignorant, abusive and dehumanizing remarks at the hands of people who were supposed to be “Correcting” aka helping the individual.

The Why Me pen is a small one person pen in intake where people who are experiencing mental health crises or are in the midst of a verbal and physical addression episode are basically thrown in rather than receiving any kind of mental health intervention/assistance. Like I said I never saw a medical professional requested to assist.

Self Harming, suicidal ideations and acts/attempts and follow through are vastly different in the sense that one group wishes to end their life, while the other group—the self harmers wish to gain some control and numb some anger and pain—they are alike in the fact that the individuals who are diagnosed with and/or identify with either of these issues require intensive mental health services and an environment where he or she is not abused, belittled and dehumanized on a continuous basis by the officers entrusted to correct them. They should never be residing in an environment where physical and sexual abuse by said officers and staff are a part of the daily routine. These factors alone could cause a relapse for either issue. And since—the correct services to help and treat the individual simply do not exist on the Island and in the current Borough Facilities—all it does is turn into a nasty deterioration of one's mental and physical health. Rikers/NYC DOCS simply does not, nor have they ever had the services or appropriately trained officers who would be able to intervene in a life saving, healthy and compassionate manner, instead they encourage someone to do something so devastating and permanent as ending one's life. And then laugh.

An individual who has been self harming or has been contemplating suicide does not need to also live in fear that he or she would be sent to the Bing/Solitary if their secret was discovered. Truthfully, no one does.

In order to curb and hopefully end both of these issues on the Island and in the Borough facilities the following needs to occur: Rikers needs to close, immediately. The detainees must be transferred to smaller borough based facilities or the like which are not staffed by any of the current officers and medical staff. These individuals must have their employment with NYC DOCS ended immediately. New, educated, psychologically 'fit' and properly trained officers must be brought in and hired immediately.

This also goes for the medical and mental health staff.

And also, at this time, I would like to note that the current plan, when the closure of Rikers is completed- to have the women and female identifying detainees at a separate unit in the Queens facility is simply ridiculous. The women must get their own free standing facility (the old Lincoln and Bayview buildings are available now)--a facility that is in Manhattan.

Only a small percentage of the female and female identifying individuals have cases in Queens. Both the old Lincoln and Bayview buildings are in a more centralized location so that in addition to court appointments, their families and children would be able to visit their mothers and grandmothers in a more expeditious manner.

I would like to additionally note at this time that the law to end Solitary Confinement in New York must be complied with by New York City DOCS. I have a dear friend who spent over 12 years in solitary--between NYC and NYS. While he was in the Bing on the Island he was repeatedly raped by male officers. Which only caused his already poor mental and physical health to deteriorate even further. And now, twenty years later he has died --the PTSD he endured in solitary being a main factor in what caused his death. A mother lost a child, I lost one of my dearest and best friends and the world lost a very special soul, whether they know it or not. Again, I repeat: His and other individuals who are and were previously incarcerated and died directly or indirectly from the PTSD, psychosis and other physical and of course mental illnesses from solitary confinement and the dehumanization he/they endured from the so-called 'corrections' officers and system which began for him on Rikers Island are nothing short of murder. My friend was detained on the Island for a stretch of time during the mid 1990's and nothing has changed, it has only escalated as far as violence and the abuse of solitary confinement and what occurs in solitary confinement. And I am going to say it even more plainly: Solitary Confinement is torture and leads to Psychosis, PTSD and a multitude of other illnesses. If the detainee/incarcerated individual dies due to PTSD, psychosis and any other illnesses caused or exacerbated by his/her/their torturous confinement in solitary--those officers who placed said individual and kept he/she/they caged and tortured as such --those officers and staff are complicit in this person's unnecessary, excruciatingly painful (in many ways, physical and emotional) and devastating DEATH.

They all have blood on their hands. The Rikers Island officers that physically threw my friend into the a brick wall in the Bing and kept him there for their amusement and torture back in the mid 1990's have his blood on their hands. As do officers from New York State. Don't worry you can share this with them. You all have his and other's blood on your hands. I keep repeating this for you because it could have been prevented. If the Corrections Department (s) had actually provided correction he and thousands of others would still be here. My best friend would be here today, on his birthday, yapping at me because I decided to trim my own hair myself, with nail scissors. But they did not "correct". They tortured him, they tortured me when I was incarcerated and they torture everyone else entrusted to them.

Not only torturing but treating human beings like throw away toys and punching bags. In fact—they also torture visitors who are just trying to spend time with their loved ones. The minute the visitor crosses that bridge it begins. Oh and let us not forget—rather than own up to their weapons and narcotics trafficking into Rikers the officers, the supervisors and COBA throw the visitors under the bus and blame them for their illegal activities. Even when the visits were canceled as a result of the pandemic DOC and COBA continue to blame the weapons and narcotics trafficking on—visitors? But there were no visitors—so what happened? Was it a ghost, or Santa? I know—it's the Fentanyl Fairy who brings a massive amount of weapons and narcotics onto the island and sprinkles it around like magic. Yes that sounds absurd—but this is the way you sound when you blame non existent visitors trafficking in large amounts of weapons via the non existent floor during the non existent visit. No it is not. Please stop insulting the entire universe's intelligence. Own up to what you do and have done.

In conclusion, I would like to reiterate that there is absolutely nothing that NYC DOCS offers and provides that can help—well anyone— but especially those who are suicidal or are self harming in any of the current New York City DOC facilities. Instead, changes must be made in staffing and training of new officers and employees as well as the closure of all of the facilities on Rikers Island—via the D.A. There needs to be a mass termination of the current "so called" correction officers and then a hiring of individuals educated and trained to correct rather than instigate violence and traffic in narcotics and weapons on a continuous basis, even during the pandemic. And of course **truly** psychiatrically evaluated.

The Courts must begin complying with the eighth amendment of the U.S Constitution and the current New York State Bail and Discovery Laws that were changed a couple of years back and have a mass, judicially authorized mass release of individuals accused of non violent felonies and all misdemeanors.

Just close it already, knock all the dilapidated buildings, scrap the metal and call it a day. The turkeys, muskrats, groundhogs and I have heard even possibly a deer family out there on the Island will love you.

Thank you again for allowing me to speak.
Eileen M. Maher (She/Her/Hers)

.p.s. I do not believe one word that the Department of Corrections has testified today. I watched a Corrections Officer supervising in the Infirmary leave and smoke crack in the bubble. Incidents such as this are still continuing to this every day in every facility in NYC DOCS. The officers are rapists, liars and murderers and in reality more dangerous to the community than most of the detainees entrusted to their care and custody. –Eileen M. Maher (She/Her/Hers)

This is photo of what I tried to show you via zoom but was not working out. I took this, I believe, last week. Currently my arm looks similar to the photo. There are other places as well.

I am showing you this because I believe that the City Council needs to see that the mental illnesses and PTSD acquired at Rikers sometimes do have physical scars and wounds.

These are just a few:



**New York City Council
Committee on Criminal Justice
Self-Harm and Suicide Prevention in New York City Jails
Written Comments of Simmi Kaur, Staff Attorney, Youth Represent
April 29, 2022**

Good morning, my name is Simmi Kaur and I am an attorney at Youth Represent, where we serve criminalized young people through direct legal services, impact litigation, and policy advocacy. Prior to my time at Youth Represent, I was a public defender for four and a half years. In that time, I represented numerous individuals incarcerated at Rikers and at the Boat, and bore witness to the violence they experienced on a daily basis.

THE CITY's George Joseph and Reuven Blau reported in September 2021 that reported rates of self-harm and suicide in NYC jails (95 per every thousand) were at a 5-year high.¹ These numbers are not surprising given what I and my colleagues have been hearing from incarcerated people.

The majority of my incarcerated clients expressed feelings of hopelessness, despair and depression due to the conditions they were trapped in. Person after person reported not receiving enough food, or adequate medical attention. People with broken bones were told to make do with painkillers. Grievances and 311 calls went ignored. Corrections officers constantly maced people, and then locked them in.

It's important to note that these statistics don't even capture the full scope of the issue. Most of the harm - self-harm and other harm- that occurs at Rikers goes unreported, and the effects on mental health continue for many people long after they are released. My formerly incarcerated clients expressed feeling anxiety, mood changes, difficulty sleeping, paranoia and more, weeks and months after their release.

These alarming statistics also don't capture the impact of witnessing suicide and self-harm on other incarcerated individuals. A young person I represented was incarcerated pretrial because his family was not wealthy enough to afford bail. In his very first week at Rikers, he watched another person attempt to hang themselves and saw someone else be raped. He expressed difficulty eating and sleeping afterwards. He received no mental health services or support after seeing these horrific events. The charges against him were eventually dismissed and sealed, but the trauma of what he experienced at Rikers cannot be erased.

¹ <https://www.thecity.nyc/2021/9/7/22659614/self-harm-suicide-rikers-island-new-york-city-jails-rising>

Despite having the power to release him or lower bail, judges ignored applications for release or lower bail, and said they had no power over DOC and could not change the jail conditions. The prosecution's only response was that my client could participate in an investigation as a witness to a sexual assault (with no regard for the risk this would cause to his life).

Now, despite years of lawsuits against DOC, reports, and ultimately federal monitorship, the conditions at Rikers have only worsened.

LACK OF ACCOUNTABILITY:

These powerful actors in the courts saw violence and harm as par for the course and had become desensitized to it, and they are not the only ones. Actors with power in the jails constantly shirk responsibility and deny the experiences of incarcerated people, as evidenced by DOC's culture of referring to suicide and self-harm as "manipulative gestures" in official reports.²

The March 16, 2022 Nunez report documented a similar dynamic with use of force in NYC jails, finding that an "unfortunate and dangerous side effect of these high rates of use of force and violence is that they have become normalized and have seemingly lost their power to instill a sense of urgency among those with the power to make change."³

All of these things signal a systematic lack of accountability and an unwillingness to be honest about the conditions on the ground. This creates a cycle where ultimately, no one takes responsibility for the horrific conditions and suffering of incarcerated people. Instead, officials blame incarcerated people for their own suffering.

LACK OF TRANSPARENCY:

The violence and despair at Rikers doesn't just impact the people caged there - it also affects their loved ones on the outside. Parents, partners, children and entire communities suffer with their incarcerated loved ones.⁴

When my clients' family members didn't hear from their loved one at the regular time, their first thought was often fear that their loved one had been harmed or had harmed themselves. A lack of

² See, e.g., Report and Recommendations on the November 2019 Attempted Suicide of Nicholas Feliciano,

<https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/nicholas-feliciano-final-report-and-recommendations-with-chs-response-20211018.pdf>

³ <http://tillidgroup.com/wp-content/uploads/2022/03/Special-Report-03-16-22-As-Filed.pdf>

⁴ <https://www.usatoday.com/story/opinion/policing/spotlight/2019/04/23/kalief-browder-suicide-solitary-confinement-venida-browder-policing-the-usa/3540366002/>

access to information further compounded the panic. I spent hours calling the jails and having the phone ring endlessly, or having someone from DOC pick up and hang up without saying a word. I had better luck than the families did.

Creating grievance processes is useless if those in power don't actually change things. My clients and their families filed numerous grievances regarding egregious abuse and neglect by DOC. They wrote desperate letters to the judges handling their cases. I myself called 311 to make complaints. No action was ever taken. There was no accountability or consequences.

RECOMMENDATIONS:

1. The focus must continue to be on decarceration and closing Rikers *without* putting people in different cages elsewhere. The problems that cause self-harm and despair in jails are deeply entrenched and systemic. Jail cannot and has not provided true safety for incarcerated and unincarcerated New Yorkers.

The evidence continues to show that DOC fails to do its job, exacerbating the horrific conditions inside the jails. A Freedom Agenda report found that “in 2021, [New York City spent almost 3 times \(290%\) more](#) per incarcerated person than the second most expensive jail system in the country, more than \$556,000 per incarcerated person per year, yet people in DOC custody are subjected to [some of the worst jail conditions in the nation.](#)”

And yet, Mayor Adam's budget proposes giving the agency even more money and rewarding it for its failures. The Council must reject this funding increase in the budget, and decrease DOC's budget.

2. A larger share of DOC's funding should be reallocated to Correctional Health Services to provide adequate mental and physical healthcare. Freedom Agenda's report also found that, in 2018, DOC neglected to escort incarcerated people to their medical appointments *89,861* times.⁵
3. We endorse the [Brooklyn Movement Center's Invest in Black Futures Report](#), a comprehensive safety plan and budget proposal authored by public health researchers, community safety organizers and public policy advocates.

The billions of dollars spent on NYPD and DOC should be reinvested in marginalized communities to meet basic human needs like affordable housing, education, food access

⁵ <https://fa.urbanjustice.org/wp-content/uploads/sites/22/2021/05/Deflate-DOC.pdf>

and more. Mental health resources that are not tied to legal system involvement are essential.

4. Proposed Local Law 181-2022 is a necessary first step towards transparency, but change will not come without consequences and accountability. A broad exception allowing redactions for “safety and security” without any oversight will likely consume the provision.
5. As we move towards decarceration, access to in-person visitation must be expanded. Additional video visits and faster mail processing time at Rikers would further help incarcerated individuals communicate with their loved ones and their advocates.

DOC should also stop recording phone calls. Phone calls are currently recorded and used against people in court, but are often their only way of communication with loved ones on the outside and to process what is happening to them.

Thank you for the opportunity today. My name is Debbie Meyer. I am an A'lelia Bundles Community Scholar at Columbia University, a member of the Arise Coalition and The Dyslexia Alliance for Black Children. Most importantly, I am the mother of a dyslexic son and wife of a dyslexic man.

I want to first ask you all, did you know 95% of people can learn to read? Do you know how few do learn? Do you know how many of these have parents that can outsource the reading instruction because school failed to teach these kids? The ability to read is not connected to intelligence! It isn't connected to poverty. It is connected to reading and writing instruction.

It is heartening to hear the new Mayor address the dyslexia-to-prison pipeline and the School Chancellor talk the literacy crisis in their remarks. The statistics are shocking, but not surprising: 80% of prisoners are underliterate- under 6th grade level. But several peer reviewed studies have shown nearly 50% of prisoners are dyslexic and functionally illiterate. This is due to poor instruction and lack of recognition of dyslexia. Dyslexic kids do not need special instruction, rather, they need more and often repeated good instruction that benefits all students.

It's clearly the responsibility of the school system to teach students to read, and for teaching colleges to prepare teachers to teach kids to read. Until this happens, however, what can our criminal justice system do to make sure those involved in it can learn to read or receive the accommodations they deserve to access literacy challenges.

My son is lucky. We had the resources for a private neuropsych evaluation; we didn't need to wait years for one from the public system. We had the resources for an attorney to help us navigate the education system and get our son in to the Windward School for dyslexic students. We had the resources to front two years of tuition at Windward while the DOE and comptroller's office held our reimbursement. It takes twice as long for a fourth grader to learn to read than it would take a first grader. We thank the taxpayers for supporting my son in his education. He's back in public school now. He left so many kids behind.

Let's invest in literacy screening in the criminal justice system. Let's invest in reading instruction. With little funding, defense attorneys and social service organizations can offer screenings. Clearly there is time to screen and teach people to read in our jails and prisons. Let's let the underliterate have a **first chance** at an education that can help them with career, or even college.

**The Bronx
Defenders**

**Redefining
public
defense**

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

**Oversight Hearing re: Self-Harm and Suicide Prevention in City Jails
April 29, 2022**

**Written Testimony of The Bronx Defenders
By Tahanee Dunn, Daiana Griffith, Nikita Rahman, Tadd Vassell, Zakya Warkeno, and
Elizabeth Williams**

Chair Rivera, thank you for the opportunity to provide testimony on this critical issue. The pandemic has put a spotlight on mental health. As public defenders, we have seen what happens when issues of mental health go unquestioned, unchecked, and unvoiced: all too often, suicide and self-harm become a means of escaping emotional pain and trauma, especially in our jails. We hope that, as a city, we are finally ready to acknowledge that mental health struggles can no longer be ignored, especially among our incarcerated community members. Our clients' experiences demonstrate firsthand that the crisis surrounding mental health care on Rikers Island has reached dire levels and must be addressed immediately and with meaningful solutions or more lives will be lost. The Bronx Defenders (BxD)¹ submits this testimony to share the relevant experiences of some of our clients on Rikers Island.

Suicide Prevention Services on Rikers Island Are Wholly Inadequate

Rafael Rosado

Our client, Mr. Rafael Rosado, whose permission we have to use his name and share his experiences, was emphatic about having us share his story. He said if it wasn't for the advocacy of his legal team while he was actively suicidal, he would not be here today. Mr. Rosado has

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.

struggled with suicidal ideation while in Department of Corrections (DOC) custody after the loss of his son. He has been fighting to stay alive under DOC's inhumane lack of care for months. Despite his legal advocates' repeated requests to Correctional Health Services (CHS) and DOC to keep him under suicide watch due to his high risk, Mr. Rosado has been arbitrarily taken off suicide watch multiple times. During the time that he was under suicide watch, clinicians discovered that he had been without correct supervision for days on end. Tragically, the neglect of Mr. Rosado's mental health needs led him to attempt suicide by hanging himself on March 4, 2022. His suicide attempt was later labeled as "a manipulative gesture" on his medical records; this shows the DOC's callous attitude towards the lives of those they are obligated to protect. As a result of the incoherent, inconsistent, and poor care Mr. Rosado was receiving, he attempted to take his own life two additional times, with one of those attempts not being documented at all.

Mr. Rosado also reports that a DOC supervisor has been urging him to be taken off of suicide watch yet again. The supervisor's negotiation with our vulnerable client is appalling and should echo deep concern that a person of power, a decision-maker, is not taking mental health seriously. As described by Mr. Rosado, he was told that if he agrees to be moved to general population, the supervisor will make sure that he still gets clinical visits twice a day. Mr. Rosado shared that where he would be moved to would have a different supervisor who has worked with high-risk individuals. While it is extremely important that Mr. Rosado continues to be seen twice a day by a clinician, as he already is and has benefited from therapy, moving him to general population is a stressor and a risk factor for someone in such a vulnerable state.

Client 2

Another client, who agreed to share his story but not his identity, housed at RNDC, attempted suicide three times while being locked in his cell with no reprieve. This client's extensive history in Enhanced Supervision Housing and in isolation negatively impacted his mental health.² He reported being locked in his cell for 24 hours daily with no access to showers, recreation, or phone calls for two weeks from March 19, 2022 through April 7, 2022. During mealtimes, corrections officers pass food through slots in their cells. On April 4, 2022, during dinner, our client's face was near the opening awaiting his food, and another inmate walked by and slashed his nose. Suicide felt like a way to escape the hell he experienced at Rikers. In his first suicide attempt, he swallowed pills and corrections officers took him to the clinic. He pleaded with officers to not be returned to his cell but was returned regardless. The second time, he attempted to hang himself but couldn't secure his bed sheet to a stable place. The third time, he tried to cut his wrist. He was finally sent to a Mental Observation housing unit for clinical observation, and he felt safer in this housing unit. However, shortly after his attempt the clinicians cleared him to

² Empirical studies show that solitary confinement is linked to impaired concentration, confusion, depression, anxiety, and paranoia. Knowles, J. (2015). The Shameful Wall of Exclusion: How Solitary Confinement for Inmates with Mental Illness Violates the Americans with Disabilities Act. Wash. L. Rev., 90, 893.

return to the General Population housing area in 2 Lower North. Yet, the cycle of lock-ins continues today, as he remains in his cell the entire day unless he is brought to court.

A Lack of Stability, Care, and Trust

Stability and consistency in mental health care are a matter of life-or-death for those struggling with suicidal ideation. Yet mental health treatment is a constant source of uncertainty for our clients, which is only compounded by the stress of their criminal case and community separation. Clients under suicide watch have reported inconsistent assignment of Emergency Service Officers (ESO), who are responsible for monitoring them closely to prevent suicide. Our clients do not have necessary access to mental health professionals who are familiarized with their mental health backgrounds. Clinical counselors fail to share critical information about our clients' cases among other attending clinical staff. As a result, our clients are forced to retell their stories to different clinicians and relive their trauma, adding to their mental distress. Furthermore, this also causes a constant breakdown in care, often during critical moments when our clients are most vulnerable and susceptible to suicide and self-harm.

Our clients often have a deeply entrenched lack of trust in medical and non-medical staff. Some said they do not believe the medical staff have a genuine interest in their well-being and their health progress. There are countless incidents to point to as reasons for why our clients would be deeply distrustful. On November 27, 2019, Mr. Nicholas Feliciano attempted suicide and hung motionless for several minutes, while corrections officers watched from outside the cell he was in.³ This is just one of the many instances when DOC staff showed complete apathy towards the suffering of our clients. From that same report from the Board of Corrections that highlighted Mr. Feliciano's death, it was recounted that Mr. Ryan Wilson died by suicide on November 22, 2020. Mr. Wilson was hanging for 14 minutes before DOC staff intervened.

It is no surprise that under these harrowing circumstances, the rate of self-harm in city jails has skyrocketed over the last few years. Data available from the second quarter of the year 2021 show that there were 539 acts of self-harm reported in city jails—this is a rate of 95 incidents per 1,000 detainees.⁴ Despite these alarming numbers, DOC employees refuse to complete the necessary training to save lives. An investigation showed that only 27% of DOC employees had completed annual suicide prevention training in 2021.⁵ DOC employees refuse to do the bare minimum to keep our clients safe.

CHS chooses not to advocate for MH clients who are suffering as a result of DOC staff misconduct. It becomes an ethical issue for CHS to concede to DOC when patients are not produced for their appointments for mental health and medical services. CHS has a duty to

³ <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/nicholas-feliciano-final-report-and-recommendations-with-chs-response-20211018.pdf>

⁴ <https://www.wnyc.org/story/rise-suicides-rikers-island/>

⁵ <https://nypost.com/2021/11/26/only-27-of-rikers-island-staff-completed-suicide-training/>

protect clients from harm, and that harm is often directly related to DOC. The absence of challenging DOC speaks to a power differential that impedes the receipt of care. It has been delineated by DOC that security and safety are always the priority. However, a proactive way to safety and security is making sure that people in custody get to their mental health and medical appointments with CHS. Without care, stress is elevated, and people are forced into a survival mode, spilling into violent behaviors. With care, people feel acknowledged, seen, and heard and the uncertainty of care dissipates.

A Starting Post for DOC Accountability for Patient Production

Int. 0030-2022 is meant to address the challenges of getting our incarcerated community members to their much-needed medical and mental health appointments during and after a facility being on lockdown. Bronx Defenders is certainly supportive of a piece of legislation that will uphold the needed care of our clients and other community members in custody. However, the bill does not acknowledge the lack of production due to staffing issues. Perhaps along with many stated reasons for non-production, “staffing” should be an explicit option that officers can mark in order to have this data recorded.

The federal monitoring body over the NYC Department of Correction has declared staffing issues the root cause of much of the crisis on Rikers Island.⁶ Staffing issues gravely impact access to medical care for incarcerated persons on Rikers Island. The Department of Correction’s Monthly Report on Medical Appointment Non-Production for January 2022 indicates that there was a 70% refusal rate for medical appointments without the individual providing a reason; this leaves room to wonder what the situational nuances were that led 3,722 people to refuse their medical attention without providing a reason. The numbers for refusal do not coincide with reality. Our clients’ constant cries for help and pleas for advocacy speak to the probability that refusal designations are just another example of DOC’s misconduct and apathetic behavior. It does not add up that there would be this many people who requested care, only to refuse it. Our clients have repeatedly attested to that there was no one who came to get them for their appointments. According to the CHS Access Report from December 2021, 36% of patients were not produced for their scheduled services.⁷ During that same period, there were 241 referrals made to mental health services, and only 67% of individuals were seen within 72 hours.

There have been countless times that our clients have shared with us that they have had an appointment for medical or mental health and that no officer ever came to pick them up to produce them for their appointment. During the April 29th Hearing before this Committee, DOC’s own Rabiah Gaynor, Executive Director of Health Services, shared with us all that since

⁶ Office of the Monitor Nunez, et al. V. City of New York, et al. (2021, August 24). <https://storage.courtlistener.com/recap/gov.uscourts.nysd.383754/gov.uscourts.nysd.383754.378.0.pdf>

⁷ NYC Health + Hospitals Correctional Health Services. (2021, December). CHS access report: December 2021. <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/Correctional-Health-Authority-Reports/CHS-Access-Report-CY21Q4.pdf>

March 2022 – during which the jail population was approximately 5,459 people⁸, there have been 12,745 missed medical and mental health appointments. Those numbers bring into perspective the amount of rescheduling and repeated efforts of incarcerated community members to get the care that they require. Without Int. 0030-2022, all of those missed opportunities for care would remain without reason for being missed. The lack of DOC accountability around production to appointments does not keep incarcerated New Yorkers safe. DOC's non-production of individuals to their appointments catalyzes the violence they attempt to control because it perpetuates unknowns, the unknown answers to their mental health and medical care, the unknowns of what is happening with their cases, and the unknowns of connecting with their loved ones. Non-production does not keep incarcerated New Yorkers sound and healthy and quite literally impedes them from being able to fight their cases while in custody. Int. 0030-2022 could be a road to resolving the issues of non-production.

Int. 0030-2022 says that individuals will be seen by medical staff after a lockdown based on medical necessity. What remains to be answered is how the medical necessity will be determined outside of emergency needs. One of our clients sat for two months with a swollen face due to an advanced oral infection without receiving treatment. If officers are the ones to escort people to the clinic, technically they will be the ones to see the patient first and make that determination

Part of Int. 0030-2022 requires officers to record when people refuse to go to court, visits, or programming. A client reported to us just on Monday that he had seen officers with recorders asking people whether they refuse court or medical appointments. He was skeptical that the recorders were even on. Our client pointed out that correctional officers can easily shut the cameras off. Many of our clients who were marked as refusing remain skeptical about whether this approach will be effective, when many times they are not even given the chance to refuse because officers simply do not show up to escort them to appointments.

Shifting Perceptions about and Care for Incarcerated Community Members

The oral and written advocacy in the name of care for our incarcerated New York City community members is not just for addressing what is happening now but also serves to affect their outcomes upon reentry. Jails and prisons are fear-based tools for incapacitation and punishment. In order to truly equip our incarcerated New York City community with the tools they need to succeed, we must establish and uphold standards of mental health care beyond confinement.

The City's new administration has made clear a mission that centers public safety. A solid means to achieve that is through a continuum of care that includes the tenets of mental health services. Some individuals who become court-involved enter the legal system have deeply rooted trauma, behavioral health challenges, and addiction. Even after, the *Brad H vs. City of New York* settlement and the Local Law 190 to support incarcerated clients with serious mental illness, there still stands the need for increased communication between mental health service staff

⁸ https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf

inside of jail and outside of jail. A comprehensive continuum of care is the only way to truly meet individuals where they are and prepare them for success on the outside. Addressing self-harm and suicide ideation as well as other mental health needs while folks are inside in addition to affirming bridges of care upon release is how we should move forward. This makes Int.0030-2022 that much more salient as it has potential to change the trajectory of folks' ability to build with mental health service inside that carry over into community. If individuals are not produced for their appointments, continuum of care is disrupted.



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BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council Committee on Criminal Justice

Oversight Hearing on Self-Harm and Suicide Prevention in City Jails

April 29, 2022

Introduction

My name is Claudia Forrester and I am a Jail Services Advocate at Brooklyn Defender Services (BDS). BDS provides comprehensive public defense services to approximately 25,000 people each year who are accused of a crime, facing loss of liberty, their home, their children, or deportation. Thousands of the people we serve are detained or incarcerated in the City jail system either while fighting their cases in court or upon conviction of a misdemeanor and a sentence of a year or less. We thank the Committee on Criminal Justice and Chair Rivera for the opportunity to address the Council about the prevention of suicide and self-harm in the City jails.

For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Our Jail Services Project addresses urgent needs related to basic civil rights and conditions of confinement for our clients who are incarcerated. We work to secure access to essential medical, mental health, safety and education needs through individual administrative advocacy, participation in Board of Correction (BOC) hearings and numerous working groups. We monitor and document the conditions incarcerated New Yorkers experience and advocate for their rights and well-being.

The best way for the City to prevent suicide and self-harm in the jails is to stop sending people to Rikers Island and focus on diverting them from the criminal legal system altogether. New York City jails have long been in a state of crisis; a violent, mismanaged disaster and a stain on this city. It has been clearly documented by endless testimonies from

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people in custody,¹ health and correctional staff,² correctional experts, major newspapers and networks, and by the federal monitor who has released over a dozen reports.³ The level of crisis in the jails cannot be overstated. People are suffering and dying. They are enduring mental health and medical crises without access to medication or care. They are starving without regular or sufficient meals. They are living in filthy conditions, held in units surrounded by literal garbage. Toilets are broken and overflowing into living areas. Intake cells are over capacity, people are being confined for days and weeks inside showers with no beds, mattresses, or toilets, and are sleeping on floors of showers covered in urine, vomit, and feces. People in custody—including those with no preexisting conditions—are experiencing rapid deterioration of their physical and mental health. With units going unstaffed, New Yorkers are left crying out for help while locked in a cell with no officer at their post.

For years now, this Council has heard stories of horrific abuse in the City’s jails. With repeating evidence of dysfunction, the NYC Department of Correction (DOC) cannot and will not keep people safe.

Disfunction and Mismanagement in a Time of Crisis

Incarcerated people, their families and advocates, like our office, have been coming before this Council for years to share the dangerous actions of DOC. DOC has provided excuses for their own mismanagement of staff and access to services. This mismanagement has only heightened during the COVID-19 pandemic during which DOC failed to protect people in their care, escalating a culture of dysfunction. The NYC jails are in an acute humanitarian crisis, requiring the Nunez Monitor to publish two Special Reports on the status of the jails almost a month apart. The Monitoring team states that “The Department’s multitude of nonfunctional systems and ineffective practices and procedures combine to form a deeply entrenched culture of dysfunction. Deficiencies in core foundational practices have been normalized and embedded in every facet of the Department’s work.”⁴ Conditions in DOC custody have reached crisis level, exacerbating a culture of violence, isolation, and trauma in the NYC DOC jails.

¹Rebecca McCray, What It’s Like at Rikers, According to People Who Just Got Out: “They’re not feeding people, there’s no water, no showers, no phone calls,” *New York Magazine*, Sept. 23, 2021, Available online <https://www.curbed.com/2021/09/rikers-jail-conditions.html>.

² Gloria Pazmino, Staffing Dysfunction and Unsafe Conditions lead to Crisis on Rikers Island, NY1, September 9, 2021, Available online <https://www.ny1.com/nyc/all-boroughs/public-safety/2021/09/10/rikers-island-staffing-issues-correction-officers-calling-out-unsafe-conditions-what-happened>.

³ All Nunez Monitor Reports are available online at <https://www1.nyc.gov/site/doc/media/nunez-reports.page>

⁴ Nunez Monitor Special report page 3

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Basic services have broken down to become inconsistent, ineffective or completely non-existent across all NYC DOC facilities. The following is not an exhaustive list of broken services people in custody describe:

- Meals arrive hours late or sometimes not at all;
- Commissary stock is low or severely limited;
- DOC fails to provide clean clothing, blankets, and mattresses;
- Access to recreation and fresh air is not prioritized for DOC. People report being locked in their cells for days, weeks, even months.

In my role, I visit people in DOC custody on a weekly basis and witness first hand the impact of the jails on the physical and mental health of the people the City detains.

Mr. A shared that he doesn't get more than one meal a day and believes he has lost about 20 pounds since he entered restrictive housing. He has stopped taking his psychiatric medications all together because he was only getting them "about twice a week anyway."

Mr. B is a young adult who typically calls his family daily. Neither his family nor his legal team were able to contact him for about 10 days, despite multiple scheduled video conferences and requests for urgent calls. Our team learned that *Mr. B* was being held in deadlock⁵ in a general population (GP) unit. For most of this time, he had no mattress and had to sleep sitting up on his bed frame. DOC did not provide any meals during this time. The only food he received was shared by other incarcerated people from their commissaries. After 6 days he started hallucinating from lack of sleep and food. During these 10 days, *Mr. B* had no access to the phone, counsel, or medical or mental health services.

Mr. C has been locked in his cell for two months. He shared that he has not seen the sun or been outside for the entirety of this time. While the ratio of officers to incarcerated people is one of the highest in the country,⁶ when our staff asked that *Mr. C* be released from his cell, the response from DOC remained "we're understaffed. There's nothing we can do."

Mr. D has been in and out of Rikers Island for most of his life. In a recent counsel visit, he appeared demoralized and shared "this is the worst I have ever seen it. Nothing works. There is nothing to do. No one cares. It has never been this bad."

⁵Clients represented by Brooklyn Defender Services have reported they were held on Deadlock status, referring to 24 hours a day lock-in with no access to showers, telephones, law library and recreation. BDS submitted a Freedom of Information Law request to the Board and the Department for policies, procedures or directives concerning Deadlock status but thus far have not received any responsive documents. Even if no such records exist, "Deadlock status" is apparently well-known within DOC

⁶ <https://www.vera.org/downloads/publications/a-look-inside-the-new-york-city-correction-budget.pdf>

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While data suggests that spending time outdoors is essential for physical and mental health,⁷ people in custody are regularly denied outside recreation. As the Nunez Special Report shared, “The level of dysfunction within the Department’s staffing framework is unmatched by any jurisdiction with which the Monitoring Team has had experience.”⁸ These excessive issues preventing access to basic rights have been going on for years and nothing has changed.

Once incarcerated, people are almost guaranteed to have their basic rights and needs denied, leading to feelings of hopelessness, isolation and suicidal ideation.⁹ *Mr. E* said, “We are being treated like animals. It is impossible to get anything without pulling something. I don’t want to be that person. So I don’t get what I need. The only thing these people respond to is violence. Like animals we have to make a scene to get the most basic things.”

People who are denied basic human needs—such as food, medication, fresh air, communication with family, and physical safety—will resort to desperate and sometimes even dangerous actions to be heard and seen. *Mr. E* shared that his voice has become hoarse from calling for the COs to get medical care for another person and he has had to beg for his own medications and for a COVID vaccine. He described that there is feces and urine all over the Enhanced Supervision Housing (ESH) level 1 housing unit, as others have resorted to throwing their own waste to attract attention. In an environment with such extreme breakdowns in care, it is no surprise that rates of self-harm and attempted suicides have skyrocketed.¹⁰

Impact of Isolation and Idleness

Solitary confinement, by any name, is torture, and this City must end the practice in the City jails. The devastating harms of solitary confinement come not from being in one particular space but instead from being alone without meaningful engagement. Meaningful out-of-cell time plays a critical role in preventing decompensation and ensuring the most basic level of mental, physical, and emotional safety for people who are isolated in restrictive housing. Medical professionals, security experts, human rights scholars, and advocates have all stressed that people

⁷ Kirsten Weir, Nurtured by Nature: Psychological research is advancing our understanding of how time in nature can improve our mental health and sharpen our cognition, *Monitor on Psychology*, April 2020, Available at <https://www.apa.org/monitor/2020/04/nurtured-nature>.

⁸ Nunez Special Report page 32

⁹ Shumaila Khadim Ali and Sarmad Muhammad Soomar, Hopelessness Leading to Self-harm and Suicide, *Journal of Neurology and Neuroscience*, January 2019, Available online at <https://www.itmedicalteam.pl/articles/hopelessness-leading-to-selfharm-and-suicide-107615.html>

¹⁰ George Joseph and Raven Blau, Self-harm is Exploding in New York City Jails, Internal Numbers Show, *The City*, September 2021, Available online at <https://www.thecity.nyc/2021/9/7/22659614/self-harm-suicide-rikers-island-new-york-city-jails-rising>.

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in isolation must have access to out-of-cell time, and that this time must be meaningful and provide human engagement.¹¹

Studies support what those with direct experience of solitary confinement report, that meaningful engagement is key to reducing self-harm, psychological deterioration, and interpersonal violence in carceral settings.¹² Despite this, the Department continues to advocate for harmful policies, settings, and attitudes that actively isolate people and increase risk.

Inside and outside of restrictive housing units, access to programming has become rare and largely only accessible only to those in special units, ultimately preventing the majority of people in custody from accessing these resources. The Department must provide adequate and effective programming for all people to combat the effects of idleness.

Mr. F has been on and off of suicide watch during his 3 years of incarceration. For one month, Mr. F was placed in a Mental Observation (MO) unit where he received dialectical behavioral therapy (DBT), which he found incredibly helpful. He shared, "These emotional skills I'm learning have changed my whole outlook. It's changing the way I interact with other guys and COs too." Mr. F described that the most enriching part of the experience was the meaningful time spent with other people. He described discussing the program material with other people and practicing the skills they learned together on days they did not have programming. He said, "I feel like I've formed real connections for the first time in here. I now have other guys who I know would check me in a positive way, especially if I start to get in my head again. [The programming] has really helped me with my mental state, helping me to calm down and remember that everyone is just trying to live their lives. These are skills I can pass on to my kids. It's crazy that I've learned anything in here, but this is the first positive thing to come out of my time here." Shortly after, Mr. F was moved out of the MO unit and no longer had access to DBT programming. When asked if the skills he learned and the progress he had made would've been possible if he were isolated from others, he answered "not a chance. The only way this works is

¹¹ The concept that out-of-cell time should be "meaningful" stems from the "Mandela Rules" promulgated by the United Nations. The UN recognized that humans require mental, physical, and emotional contact to survive. The American Bar Association has similarly recognized that all people, including those in segregation, must be provided with "meaningful forms of mental, physical, and social stimulation." This concept recognizes that incidental or obligatory contact is insufficient. For more see United Nations General Assembly Resolution 70/175, adopted 17 December 2015, United Nations Standard Minimum Rules for the Treatment of Prisoners, <https://undocs.org/A/RES/70/175> ("Mandela Rules") or the American Bar Association, Standards on Treatment of Prisoners, Segregated Housing, Standard 23-3.8(c), Available online at https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners/

¹² Louis Favril, et al, Risk factors for self-harm in prison: A systematic review and meta-analysis, *The Lancet: Psychiatry*, August 2020, Available online at [https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(20\)30190-5/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(20)30190-5/fulltext).

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by connecting with other people and being able to open up. No one can do that if they're being treated like an animal."

With the passage and implementation of the Humane Alternatives to Long Term (HALT) Solitary Confinement Act, DOC is required to ensure all people are provided with a minimum of 7 hours out of their cells daily. Yet numerous people, as recent as this week, are reporting being locked in their cells for 23 to 24 hours a day without access to programming, recreation, or due process. We know that incarcerated New Yorkers across all housing units are suffering under DOC's extreme mismanagement, but the neglect being experienced by those in restrictive housing is exacerbated by the inherent isolation of these units. The Council must acknowledge the role any form of isolation, regardless of the name, has on individuals and its catalyst to self-harm within the jails and take steps to ensure no person in New York City jail is held in solitary confinement.

Mr. G was held in ESH Level 1 for over 6 months. DOC violated his due process rights and failed to provide him with an infraction notice, hearing, or review. Additionally, the only out of cell time he was provided was 15 minutes to shower once a week – for months. He essentially experienced 24 hours of lock-in a day for 6 months with no guarantee of an end date. During these 6 months, *Mr. G* was placed on suicide watch three times. Upon his release from ESH, he shared that the only thing that got him through was being able to speak with his family over the phone.

DOC is willingly violating the HALT Law. People are locked in their cells for up to 24 hours a day with no water, food, adequate heat, access to healthcare, or access to their loved ones. DOC's continued isolation of people will only feed the crisis in the City jails. This Council must pass legislation to ensure all people, regardless of security status, have a minimum of 14 hours out of cell time and access to meaningful and engaging programming. The City must also hold DOC accountable when they violate existing standards and laws that are knowingly harming people in custody.

Restricting Visits with Loved Ones

Visits from loved ones are critical for the emotional wellbeing of people in custody. The very nature of incarceration isolates people from their families, friends, and communities. The location of Rikers Island makes visiting the jails difficult for many, and DOC adds additional barriers to receiving support from the outside by limiting visits to specific days and times that are usually an obstacle to those who work and or are primary caregivers. Additionally, with the expanded use of televisiting, technical issues have prevented many from scheduled virtual time

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with their support systems. Delays in scheduling and connecting to visits is often discouraging and may ultimately dissuade families from continuing in the process.

While DOC resumed in-person visits in February of this year, the Department has not fully opened its visiting rooms. For more than two months, EMTC's visiting house has been closed off and family visits have been relocated to the two legal visit booths. This means that families for all of the people incarcerated at EMTC and legal counsel are restricted to the use of two spaces for visiting – instead of having separate access to confidential counsel visits and congregate visiting rooms. DOC has stated verbally that counsel visits are given priority over family visits, so families are required to wait while attorneys meet with clients. The DOC has not shared a plan to reopen EMTC's visiting house.

DOC must commit to increasing access to family connections for all incarcerated people. Contact with support networks is an essential part of mental health care and building hope. Opening the EMTC visit room is just one example of easy changes DOC could be making to promote these connections. The intense level of isolation resulting from the excessive use of restrictive housing, lack of meaningful out-of-cell time, and barriers to outside support systems dramatically exacerbates mental health crises and promotes self-harm and suicide in City jails.

Gatekeepers to Mental Healthcare

DOC's mismanagement of its staff, primarily its failure to provide escorts to mental health appointments and critical services, is dangerous and has fatal outcomes. We know that many people in custody enter the correctional system with risk factors for self-harm such as having a history of trauma, mental health issues, and/or substance use.¹³ Despite policies and efforts by correctional health clinicians to provide intake services, medication, and schedule recurring appointments, the Department is a regular barrier for people in custody to access essential treatment and care.

Under current policy, the Department requires a majority of people in custody to have a DOC officer assigned to escort them to the clinic, legal visits, family visits, barbershop, and other

¹³ Laura Frank and Regina T.P. Aguirre, "Suicide Within United States Jails: A Qualitative Interpretive Meta-Synthesis," *Journal of Sociology and Social Welfare* XL, no.3 (2013): 31-52; Doris J. James and Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2006, NCJ 213600); Henry J. Steadman, Fred C. Osher, Pamela Clark Robbins, Brian Case, and Steven Samuels, "Prevalence of Serious Mental Illness Among Jail Inmates," *Psychiatric Services* 60, no.6 (2009): 761-765.

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locations inside the facilities. However, data shows that the Department aggressively fails to produce people; in May 2022, over 12,000 cases of non-productions were reported.¹⁴

Mr. H is diagnosed with schizophrenia. He told our staff that he stopped taking his psychiatric medication completely because DOC staff repeatedly failed to escort him to the clinic, so he was only receiving his prescribed medications about once a week. As a result, Mr. H experienced severe withdrawal symptoms, which contributed to the deterioration of this mental health, and suicidal ideation.

The NYC jails are managed by two primary agencies, the Department of Correction and H+H Correctional Health Services (CHS). Both agencies operate with their own policies and procedures that often overlap, contradict, and cause dual loyalty concerns. Regardless of the condition, the Department maintains the ultimate veto power when it comes to a person in need of medical or mental health care. Correctional officers routinely serve as gatekeepers to medical and mental health care without the requisite knowledge or training. This system is rife with opportunities for abuse or human error. For instance, to access healthcare in a DOC facility, an individual must submit a “sick call” request to officers in their housing unit, who are responsible for forwarding requests to clinical staff. Far too often, correctional staff can—and do—fail to forward sick call requests to CHS staff, or falsely claim that an individual “refused” to be brought to their appointment, as a tool of control or punishment. Relatedly, if a mental illness or developmental or cognitive disability goes unnoticed by CHS during intake, behavioral manifestations of these conditions may be punished by DOC and lead to time in restrictive housing.

In a recent case, our office made CHS and DOC aware of a person in crisis. This Person had decompensated significantly over a short period of time and was reportedly smearing feces on the walls of this cell. Both agencies failed to respond to the emergency.

Mr. I was diagnosed with schizophrenia and for months our team tried to meet with him but were given excuses by DOC for why the visit was not allowed. Thanks to his medical records, we learned that, despite protections in place preventing people with SMIs from entering solitary, DOC was locking him in his cell for weeks at a time. This resulted in Mr. I making a suicide attempt, causing extreme physical harm and requiring Mr. I to be transferred to a hospital ICU where he was intubated. Prior to his suicide attempt, our office raised concerns about Mr. I’s wellbeing for weeks—but both agencies showed little urgency to address the crisis he was experiencing. BDS sent multiple referrals regarding Mr. I’s mental health, yet CHS still cleared him for placement in isolation. Despite our advocacy, and his obvious and immediate needs, Mr.

¹⁴ New York City Department of Correction, Monthly Report on Medical Appointment Non-Production, March 2022, https://www1.nyc.gov/assets/doc/downloads/pdf/Medical_Non_Production_March_2022.pdf

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I was failed by both CHS, who should have advocated for his placement in a higher level of care, and DOC, who refused to transfer him to an appropriate unit.

Department staff are not medically trained to recognize contraindications to isolating placements. It is not possible nor appropriate for Department staff to make housing decisions when input from healthcare staff is ignored. Instead, Correctional Health Services must ensure that people's medical and mental health needs are met and they must be given the authority to override DOC's harm placements.

DOC Fails to Respond and Protect

While the conditions of the City's jails have contributed to increased rates of self-harm and attempted suicides, DOC's response to these incidents within the jails is delayed, poorly performed, and inappropriate. People in crisis do not receive preventative services and emergency responses are slow and mismanaged.

Mr. J shared that he has watched individuals wait hours to be brought to the clinic for medical emergencies. In one instance, he helped carry another person to the clinic when officers were not available during a medical emergency. "They will let you bleed out on the floor until you're at death's door before they do something. The response is always 'I called already. I've done everything I can do. You have to be patient.' Meanwhile the guy is literally dying in front of all of us." These traumatic events add to the climate of hopelessness and extreme stress in the City's jails.

When someone is flagged at risk of self-harm or suicide, DOC places them on "suicide watch," though in practice the placement is rarely effective. *Mr. K* shared that he has been on suicide watch since he entered DOC custody almost a month ago. He reported that the quality of supervision varies greatly based on which officer is on duty. While he is supposed to be under constant supervision, *Mr. K* told our office that the majority of the time his assigned officer is in the bubble talking with other officers, or is asleep. This experience is not unique to *Mr. K*, our team frequently hears this description from people who are placed on suicide watch. Even when DOC has been actively warned of an individual's risk to themselves, they fail to carry out the procedures to keep that individual safe.

Perhaps the most concerning part of DOC's mishandling of issues around self-harm and suicide in the NYC jails is their response to suicide attempts. *Mr. L* watched another individual in his unit attempt to hang himself with his bedsheets. The officer in his unit ran into the cell and deployed chemical agent spray as a primary response before cutting down the bedsheet. This incredibly inappropriate response to a mental health crisis is a familiar story to our team, as

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DOC's use of chemical agent spray in these systems is procedural. It should be obvious that inflicting chemical agent spray on an individual who is already struggling to breathe is inhumane, yet that behavior has been applauded within DOC as "life-saving."

DOC is unsuited, due to its ingrained culture of violence and unwillingness to provide effective training, to house individuals experiencing mental health crises. Rather than de-escalating situations and moving people to places of safety, DOC constantly antagonizes people already pushed to the edge.

Mr. M has been on suicide watch for most of the time that he has been incarcerated. He shared that he was sexually assaulted while being held at EMTC. Seeing a PREA poster in his unit, he reported the incident and was taken to Bellevue to be evaluated. During the trip to the hospital, the DOC officers assigned to transport him taunted *Mr. M* and made fun of the sexual violence he had experienced. *Mr. M* made it back to his unit and made a plan to attempt suicide the following morning. "I did what it said on the walls. I followed the rules and I was only more traumatized. I wish I had done nothing. I'm not going to make it out of here. I can not survive this."

Proposed Legislation

Conditions within the City's jails are horrific and continue to deteriorate. The Council must take all available steps to decarcerate New Yorkers to dismantle the culture of chaos in DOC.

Int 30

BDS supports the spirit of Int 30, requiring the DOC and CHS to develop a plan to address access to medical care during and after lock-ins. We fear that this bill suggests that someone will not be produced for a medical appointment due to a lock-in, which is not and should not be policy. We offer the following recommendations to strengthen this legislation:

- Add language to specify the timeframe in which DOC and CHS must create and publish the plan;
- § 2(d): Add "no escort available" to the list of reasons someone is not produced to a medical appointment;
- § 3(f): Replace "a plan to address clinic production" to "a plan to address production to medical appointments" access to clinic, emergency, and planned medical care;
- § 4(e): Reporting on emergency lock-ins in mental health units should be expanded to require reporting on lock-ins inside all units and also breakdown the reports to include each unit separately;

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- Additionally, If the reason for non-production is a refusal or walkout, the department should be required to report the reason for refusal;
- In addition to requiring DOC to report this, CHS should be required to report these same numbers (to compare the two agencies).

We welcome the opportunity to collaborate with the Council to strengthen this bill further to ensure that all people in custody have access to care.

Int 181

BDS supports Int 181, which would require the DOC to publish all policies, procedures, and directives online. We applaud this step toward transparency and urge the Council to further strengthen the bill language by requiring the DOC to document the reason any policies are redacting and establishing a timeframe in which policies must be uploaded to the website when they are added, amended, or eliminated.

Conclusion

In the last year and a half, nineteen people have lost their lives in DOC's custody and control, and at least five people are known to have died by suicide. Numerous people we serve have shared witnessing suicide attempts and watching people be carried out in body bags. Incarcerated people are bearing witness to the horrors this Department has created, and as a City, our elected officials and Department staff must be held responsible for the trauma imposed onto people in custody and their loved ones. The City must abolish any form of solitary confinement, hold DOC accountable for their harmful practices, and provide people with resources and access to treatment without delay or barriers. We call on the City Council to tour the City jails regularly and without notice, speak with people in custody and their family members about their harms and trauma, and use this learned information to make effective change.

If you have any questions or concerns, please feel free to contact Kelsey De Avila, Jail Services Project Director, at kdeavila@bds.org.

Residents of this city should not be afraid to walk in the streets or take the subway. Incidents of asian hate crime must be addressed.