



Dwayne C. Sampson, Chair
DeAnna Hoskins, Vice Chair
Rachael Bedard, M.D.
Robert L. Cohen, M.D.
Felipe Franco
Jacqueline Miriam Pitts
Joseph Ramos
Jacqueline Sherman
Jude Torchenaud

Jasmine Georges-Yilla
Executive Director

BOARD OF CORRECTION
CITY OF NEW YORK
2 LAFAYETTE STREET, SUITE 1221
NEW YORK, NY 10007
212 669-7900 (Office)

Testimony before the New York City Council Committee on Criminal Justice
Regarding the Complaint and Grievance Procedures for People in NYC Department of
Correction Custody

April 24, 2024

By Jasmine Georges-Yilla, Executive Director
New York City Board of Correction

Good morning, Chair Nurse, and members of the New York City Council Committee on Criminal Justice. I am Jasmine Georges-Yilla, Executive Director of the New York City Board of Correction (“BOC” or “the Board”). I am joined today by BOC’s General Counsel, Melissa Cintrón Hernández, our Director of Public Accountability and Oversight, Barbie Melendez, and our Director of Violence Prevention, Bart Baily. Thank you for the opportunity to testify today.

Grievance Procedures for People in DOC Custody

Despite a lack of resources, BOC continues to carry out critical independent oversight of the City’s jails. The Board has monitoring staff assigned to each jail, serving as the Board’s eyes and ears, and identifying systemic issues that impact people in custody and staff. BOC receives complaints directly from individuals in custody and New York City Department of Correction (“DOC” or “the Department”) staff through various channels, including phone calls, emails, visits to our website or office, and in person during BOC staff’s daily tours in the jails. Our staff is charged with investigating and resolving issues that are brought to their attention, including issues with the DOC grievance system. My testimony today identifies certain systemic shortcomings in the grievance process. Our goal is to shed light on these issues to prevent their recurrence.

A person in custody can file a grievance by filling out a “Request for Grievance Slip,” completing a grievance statement form that should be available in their housing area, or by writing their grievance on any available piece of paper. All jails are required to make these forms available to people in custody. However, paper grievance forms are rarely readily available in the housing areas. Furthermore, the locked grievance boxes where these forms are submitted are often located in restricted areas, making them difficult for people in custody to access independently. Many facilities have only one box, making it inconvenient for submission of a paper grievance.

Alternatively, a person in custody may call 311 to file their grievance electronically. These grievances are logged by the 311 operator, bypassing barriers such as needing access to a corridor to reach a grievance box in the jails. Grievances received through 311 are reviewed by the Department’s Office of Constituent and Grievance Services (“OCGS”) and forwarded to the staff at the relevant facility for grievance review.

Of the 41,079 grievances filed in calendar year 2023, 36,669 were electronic and 4,410 were on paper. This trend continues in 2024. OCGS reports that out of nearly 9,200 grievances filed between January 2024 and March 2024, approximately 78% were filed through 311, while only 10% were filed using the grievance box. This suggests that calling 311 is a preferred method to file a grievance because it is more efficient than waiting for a grievance officer or coordinator to visit the housing area or the locked grievance box.

Grievance Appeal Procedures

If a person in custody is not satisfied with the outcome of an investigation or resolution to a paper-based grievance, they may check off a box on the grievance disposition form requesting to appeal the determination. In contrast, grievances filed electronically through 311 may not be appealed. Instead, they are solely investigated by the captain or a uniformed staff member at the facility, with their resolution determined at that level. However, there are no quiet, confidential spaces for individuals to discuss electronic grievances with Department uniformed staff. Instead, discussions often occur in noisy dayrooms. This results in people in custody refusing to provide statements or reduce their electronic grievances to paper form, which precludes their grievance from the grievance appeal process.

The Department’s appeals process begins with a preliminary evidentiary review. If the grievance is not resolved at that level, it must be escalated to a commanding officer. If a person in custody does not accept the commanding officer’s disposition, they may appeal the decision to the Central Office Review Committee (“CORC”). Once a grievance or request reaches CORC, the Board has five business days to provide a recommendation.

The Board's Oversight of the Complaint and Grievance Process

The Board reviews grievances that are filed with the Department, whether they are submitted in writing or electronically through 311. Specifically, BOC staff review data that has been inserted in the Department's Service Desk system, a record-keeping system used by the Department to track grievances. BOC staff identify areas for discussion with facility leadership regarding recurring issues and facilitate follow-up processes with grievance coordinators at the relevant facilities.

Moreover, the Board hears concerns directly from individuals in custody, either during BOC staff's facility tours or through our toll-free hotline. We also receive emails raising concerns on behalf of people in custody. BOC monitors review the Service Desk system to determine if the Department has already addressed the issue. In most cases, OCGS has not yet resolved the issue, or the individual's concern has been forwarded to the facility and is awaiting a response. If an issue does not fall into one of the 26 grievable categories, OCGS staff considers it non-grievable, and it becomes a request. Such requests are directed to a separate DOC office where they are not subject to the grievance process outlined in the Department's grievance Directive. The Board has found that many non-grievable requests are associated with fear for safety, concerns about DOC staff, interpersonal violence, and sexual abuse.

The Board maintains records of all complaints submitted directly to BOC regarding alleged violations of the Board's minimum standards. Once a complaint is received, the Board's staff investigate, speak with the impacted person in custody and follow up with the relevant facility staff to ensure compliance with the Board's minimum standards and make recommendations for practice and policy changes where appropriate.

Observed Trends and Recommendations for Improving the Grievance System for People in Custody

Between January 1, 2023 and March 31, 2024, the Department received over 55,000 grievances, 40,000 of which were considered grievable. Only 261 were formally resolved through the appeal process. In the first quarter of 2024 (January 2024 through March 2024), only two grievances were resolved via appeal, which is a significant drop from 54 in the previous quarter.

Between January 1, 2024, and March 31, 2024, the Enhanced Supervision Housing unit at the Rose M. Singer Center ("RESH") had the highest rate of grievances filed per 100 people in custody. The grievance rate at RESH was 52.7% higher than the system-wide rate, and the top grievance categories include concerns regarding medical care, housing placement, staff conduct, allegations of sexual abuse, and food.

Based on BOC staff's observations, the Board recommends that grievances submitted by people in custody through 311 be handled similarly to a written statement. When an electronic grievance is received, the Department should offer private and confidential areas for the complainant to voice their concerns and provide further details about the cause of their grievance. Similarly, DOC should simplify and streamline the electronic grievance process, providing clear explanations and educational materials in each housing area on the differences between paper and electronic grievances. DOC should also implement mechanisms for the timely acknowledgment of electronic grievances, separate from resolution timeframes.

Moreover, DOC should establish independent review teams within each facility to examine grievances, identify delays, and monitor trends. This will ensure the identification of recurring systemic issues and will highlight deficiencies, improve conditions, and increase awareness of issues among DOC leadership. The Department should also conduct regular evaluations of the grievance system and implement necessary reforms based on feedback and best practices.

Furthermore, it is imperative for the Department to guarantee unrestricted and consistent access to grievance boxes by installing them in each housing area, checking them daily, and rapidly providing receipts, facilitating ease of access and timely submission of grievances. DOC must also ensure the confidentiality of grievances and protect grievance filers against retaliation or intimidation.

The Board is dedicated to continuously monitoring the complaint and grievance systems in NYC jails. These systems should be procedurally fair, safe, accessible, transparent, responsive, coordinated, and consistent across all facilities. The Board plans to release a report in December that evaluates DOC's grievance system. The report will incorporate direct feedback from incarcerated individuals and propose recommendations for improvements, including improving the grievance process for vulnerable populations including people in custody who are lesbian, gay, bisexual, transgender, intersex, and gender nonconforming.

Thank you again for the opportunity to testify today. We are happy to take any questions.

**Testimony before the
New York City Council
Committee on Criminal Justice
Chair Sandy Nurse**

**By
Sherrieann Rembert, Assistant Chief
NYC Department of Correction**

April 24, 2024

Good morning, Chair Nurse and members of the Committee on Criminal Justice. I am Sherrieann Rembert, Assistant Chief at the New York City Department of Correction (“Department” or “DOC”). I am here today with my colleagues to discuss the Department’s complaint and grievance procedures, and the work that is underway to enhance and improve this vital system. We recognize that a transparent grievance process and timely and meaningful resolution of complaints reinforces a safe and humane environment for all. For several years the Department has striven to improve the grievance process by using technology, innovation, and streamlining procedures. We remain committed to these efforts.

The Grievance Process

It is our goal to make the grievance process as accessible and clear as possible, in order for people in custody to know they have a meaningful avenue to have complaints heard and addressed. Individuals in the Department’s care have multiple avenues to submit a complaint to DOC, including calling 311, placing complaint forms in grievance boxes distributed throughout the facilities, and speaking directly with Departmental staff. In addition, complaints can be

submitted directly to the Board of Correction, the Department of Investigation, and other oversight and investigative bodies. The grievance process, including how to submit a complaint, is outlined on posters throughout the facilities and in the *Individual in Custody Handbook*, which is distributed to all people in custody upon intake and made available on the tablets.

Complaints that are submitted to DOC are managed by the Department's Office of Constituent and Grievance Services ("OCGS"). OCGS triages, tracks, follows up on individual complaints, and reports complaint trends to Departmental leadership to ensure systemic issues can be identified and addressed. A team of dedicated OCGS staff tour the facilities regularly to make people in custody aware of the grievance process, replenish complaint forms, collect forms left in grievance boxes, and discuss and investigate complaints that are filed. Members of the public and other third parties can also submit a complaint on behalf of a person in custody by calling 311 or submitting a grievance form. A centralized team of OCGS staff manage the information phone line and inbox, as well as complaints routed from 311, and ensure that all complaints submitted to the Department are properly recorded in a centralized database and monitored until resolution.

The Department categorizes complaints in one of three different ways to determine how the complaint will be managed: grievable, non-grievable, or rejected. Grievable complaints are related to conditions of confinement and subsequently addressed by OCGS staff or staff from other units that are based in the facilities. These include complaints related to clothing, law library, or commissary, to name a few. OCGS staff will work with people in custody to address complaints related to missing items such as linens or toiletries; complaints related to identified services, such as religion, programs, and visitation, will be tasked out to the unit or command

that oversees the operation for resolution. Grievable issues are expected to be resolved expeditiously. OCGS tracks all complaints for their lifecycle and will send out reminders to Command Leadership, or otherwise escalate as needed until the complaint has been addressed and subsequently closed out. Once a grievable complaint has been closed out, it is assigned an outcome status, and the person in custody is notified of the outcome.

Non-grievable complaints typically involve an allegation that must undergo an administrative investigative process, complaints that are related to conditions of confinement that cannot be immediately addressed by OCGS. These include complaints related to fear for safety, assaults, medical or mental health care, and disability accommodations, to name a few. Complaints that are non-grievable are forwarded to the appropriate units or provider partners for further investigation and resolution. OCGS continues to track the life cycle of these complaints and is notified when they are addressed but is not made aware of the details or contents of the investigations. Because OCGS does not manage the investigations or resolutions for these matters, OCGS does not provide an outcome status to the person in custody who filed the complaint. People in custody may be notified of the outcome of their complaint by the unit that manages the investigation, depending on the matter.

Complaints that pertain to matters that the Department cannot provide a response to, such as a complaint about New York State prisons, external institutions, or a complaint that does not contain enough information to process further, are rejected. If a grievable complaint made by a person in custody is rejected, OCGS staff will notify the individual as to the reason the complaint was rejected so that the matter can be addressed or for them to file the complaint with the applicable entity. If a non-grievable complaint is rejected, the person in custody typically

will not be notified, either because the complaint does not have enough information to identify the complainant or because the complaint is outside the scope of the Department's work.

Appeals

Grievable complaints managed directly by OCGS staff can be appealed if an individual in custody is not satisfied with the outcome. Information on how to appeal a grievance outcome is provided on the disposition returned to the person in custody with the grievance outcome. As a first step in the process, people in custody may request that the evidence submitted to support the outcome of their complaint be reviewed by a facility's or unit's Command Leadership. Upon review, the Commanding Officer will either affirm the original outcome or provide a different outcome. If the person in custody is still not satisfied with the resolution, they can appeal to the Central Office Review Committee ("Committee"), which is comprised of individuals who are not involved in the initial investigation or resolution processes, and includes the Executive Director of OCGS, a uniformed leader, a non-uniformed leader, and a representative from the Department's Legal Division. At this stage, an independent investigation is conducted by the Committee utilizing all evidence, statements, and documents gathered, and a final disposition is provided to the person in custody. This disposition is final and cannot be appealed further.

Grievable complaints that are not investigated and addressed by OCGS staff cannot be appealed. However, if OCGS observes continued complaints about a grievable issue tasked out to another unit, they will reach out to the unit leadership to alert them in order for the unit to work towards a resolution. Non-grievable issues cannot be appealed through OCGS, as they are governed by regulations and procedures that fall outside the scope of OCGS's work, such as use of force or FOIL requests.

Improving Transparency, Access, & Outcomes

The work of OCGS is critical to ensure that our jails remain safe and humane, and the Department is continuously exploring ways to leverage complaint data and improve the complaint and grievance process. OCGS utilizes data to inform Department leadership about emerging issues, and to drive operational change in areas that can be improved. Reports that capture the rate of incoming complaints and trends in top complaint categories are shared with facility and unit leadership daily, so that systemic issues can be identified early and strategically addressed. When facilities are newly commissioned or a new initiative has been implemented, OCGS provides a recurring 30-day complaint trend report to aid leadership in making any needed changes to operations. OCGS also engages in heightened monitoring and reporting during inclement weather and other emergency events that may impact facility operations and the people in the Department's care, to ensure issues that may impact health or safety can be identified and addressed quickly.

In January of this year, the Department launched a public platform on its site that allows members of the public to check the status or outcome of a complaint they have submitted. On the heels of this initiative, the Department is actively working to develop an application that will allow people in custody to submit grievances via tablets, to increase access to the grievance process. We anticipate launching this new application in the summer of this year.

Conclusion

The goal of the complaint and grievance processes is to provide a greater voice and support for those in our care, so that everyone who lives and works in the jails can return home to their families and communities safely. We appreciate the Council's interest and support in this

very important work and thank you for the opportunity to testify today. My colleagues and I are happy to answer any questions you may have.

Testimony to the New York City Council Committee on Criminal Justice

**by Jeanette Merrill, MPH, Assistant Vice President, Communications and External Affairs,
NYC Health + Hospitals/Correctional Health Services**

April 24, 2024, Oversight – Complaint and Grievance Procedures for People in Custody

Good morning Chair Nurse and members of the Committee on Criminal Justice. I am Jeanette Merrill, Assistant Vice President of Communications and External Affairs for NYC Health + Hospitals/Correctional Health Services, also known as “CHS.” I appreciate the opportunity to speak about CHS’ processes for addressing patient complaints about the health care provided in the jails.

NYC Health + Hospitals/Correctional Health Services

CHS was established in 2016 as a new division of NYC Health + Hospitals in order to provide high-quality health care to people in the custody of the Department of Correction (DOC) – not as a contracted service but as the direct provider of care. To provide a sense of volume within our service – last calendar year, CHS provided or facilitated more than 433,600 scheduled health services to more than 26,000 patients. This includes approximately 223,000 Nursing appointments, 18,800 Medicine appointments, 105,600 Mental Health appointments, 42,400 Reentry Service appointments, 9,000 Dental appointments, 15,500 Substance Use appointments, 15,500 On-Island Specialty Services appointments, and 3,700 Off-Island Specialty Services appointments. Additionally, more than 20,000 clinical intakes were conducted at the point of admission, and there were 50,000 referred visits. CHS also provides non-scheduled health services, including injury evaluations.

CHS Health Triage Line

In addition to increasing the breadth and quality of health care provided in the jails, CHS has endeavored to improve the communication with people in custody – our patients – concerning the health services we provide. We encourage our patients to discuss their health care concerns, complaints, and requests directly with their providers during clinical encounters; however, we also recognize the importance of maintaining other pathways for patients to communicate their needs and concerns.

Accordingly, CHS developed and implemented, in early 2020, the CHS Health Triage Line to enable our patients to contact CHS directly about their non-emergency health concerns. Using their tablets or the phones in their housing areas, patients can call the Health Triage Line to speak directly and confidentially with a CHS nurse or, during off-hours, to leave a voicemail, all of which are reviewed and appropriately handled.

Last calendar year, patients made 48,622 calls to the Health Triage Line, 90 percent of which were answered live. Sixty-three percent of the total calls resulted in the Triage Nurse scheduling a clinic appointment for the patient, and 37 percent of the calls were handled administratively. If the patient calls to share a complaint or concern about the health services received in custody, CHS’ Patient Relations department will manage the inquiry.

CHS Patient Relations

CHS Patient Relations manages requests and complaints from patients, family members, attorneys, and other external parties relating to the health care CHS provides. The Patient Relations team receives these inquiries via email or phone and then determines whether the inquiry is a request for services or a complaint about services provided. Last calendar year, CHS Patient Relations received 12,998 inquiries, including 5,361 requests for health services, 4,643 complaints about health services, and 2,994 requests and complaints concerning DOC – which Patient Relations sends to DOC to address.

If the inquiry concerns a request for health services, Patient Relations contacts the clinic in the facility where the patient is housed in order to process the request. If the inquiry concerns a complaint about health services, Patient Relations assigns the case to one of its Registered Nurse (RN) Investigators. Regarding the largest categories of health care complaints that Patient Relations received last calendar year, 36 percent concerned medication, 33 percent concerned access to care, and 20 percent concerned quality of care. The 4,643 complaints were made by 2,803 unique individuals.

Patient Relations RN Investigation

After reviewing the patient's medical chart and relevant CHS policies, the RN Investigator sends a preliminary case summary to the clinical and operations teams in the relevant facility to review and to provide feedback and next steps within 48 hours. The RN Investigator follows up with the clinical team to ensure CHS has addressed the patient's concerns and to compile a preliminary investigation determination.

Following the investigation, preliminarily confirmed complaints are reviewed during Patient Relations' monthly Quality Improvement Committee meetings to make a final determination. During these meetings, an interdisciplinary team that includes staff from Medicine, Nursing, Mental Health, Pharmacy, and Operations reviews the claim, the investigative findings, and the preliminary determination. Examples of recent confirmed complaints include a patient who experienced a delay in receiving eyeglasses because the vendor did not send the order and a patient who did not receive Tylenol despite it being referenced as part of the plan of care because the provider did not submit the medication during the injury encounter.

Last calendar year, less than one percent of the 4,643 complaints about health services were clinically confirmed to be valid, meaning that the vast majority of complaints were not supported after review of the medical record and of the effect on the patient's care. For example, a patient recently issued a complaint that CHS had denied him access to dental services, but during the investigation process, the RN determined that there was an active referral for dental services in the patient's health record and the appointment was scheduled within the appropriate timeframe; therefore, the complaint was deemed unconfirmed.

Regardless of whether the Patient Relations team confirms the clinical validity of the complaint, CHS works to address every patient's complaint or concern at the facility-level. Each investigation is used to identify opportunities for improvement within CHS.

Conclusion

We recognize we have a profound responsibility - and opportunity - to care for some of the most marginalized New Yorkers while they are in the city's custody, and CHS is committed to continuing to find ways to improve the quality of the health care we provide. The mission-driven professionals who work for CHS work each day on behalf of our patients to provide a community-standard of care despite the challenges and restrictions of a jail environment.



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

**STATEMENT OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE NEW YORK CITY COUNCIL COMMITTEE ON CRIMINAL JUSTICE
APRIL 24, 2024**

Good morning,

My name is Jumaane D. Williams and I am the Public Advocate for the City of New York. I would like to thank Chair Nurse and the members of the Committee on Criminal Justice for holding this hearing.

First, I want to acknowledge that officers on Rikers Island do experience assault, sexual harassment, and sexual assault, and that is unacceptable and should be taken seriously—but today’s hearing is about the grievance process for incarcerated people, who are at heightened risk for abuse and assault during their time in jail.

Last month, an analysis published by Gothamist found that, of the 1,256 lawsuits filed under the Adult Survivors Act, 719—or almost 60 percent—were filed against the NYC Department of Correction.¹ The allegations span decades, from 1976 to just last year, and are appalling, shocking, but, sadly, unsurprising. Not only do the suits detail allegations including harassment, sexual assault, and rape, but also that the department knew about the abuse and failed to act, thereby tacitly encouraging it to continue. And while the administration may shirk responsibility by pointing out that some of these alleged assaults occurred many years ago, roughly 30 of the people who filed lawsuits said they were sexually abused at Rikers within the past five years.² Though much of this history precedes the current administration, not rooting out and addressing this known culture encourages this abuse and does nothing to prevent it in the future, endangering everyone in the city’s custody. This is unacceptable, unconscionable, and the city must take swift action to ensure that nobody experiences sexual harassment or assault in our jails.

In November 2022, THE CITY reported on the experience of a woman (who asked not to be named) who was incarcerated on Rikers Island and in 2015 had a sexual relationship with officer Leonard McNeill.³ While the woman said the relationship was consensual, under the Prison Rape

1

<https://gothamist.com/news/late-night-sex-assaults-invasive-searches-the-700-women-alleging-abuse-at-rikers>

2

<https://gothamist.com/news/ny-lawmakers-vow-legislation-and-hearings-in-response-to-sexual-abuse-allegations-at-rikers>

³ <https://www.thecity.nyc/2022/11/28/rikers-sexual-assault-prison-rape/>

Elimination Act (PREA), any sexual relationship between an incarcerated person and a staff member is not only not consensual, but criminal. Additionally, this woman alleges that this officer coerced her into delaying reporting that she had been raped by another officer. (Thankfully, this woman preserved evidence of her rape and that officer was not only fired but criminally charged and convicted.) Though the woman reported her relationship with McNeill, it took seven years before he was fired, and that she continues to face retaliation from officers where she is incarcerated in a state prison. This is unacceptable; any delay in thoroughly investigating a report of sexual abuse or assault puts every other incarcerated person at risk, and allows a culture of impunity and silence to continue.

Those who have filed grievances have reported a frustrating process that rarely ends in their complaints—including not only reports of abuse and assault but other issues like frequently missing medical appointments—being resolved. In 2015, DOC made calls to 311 free for people in custody, which led to a significant increase in complaints.⁴ DOC failed to effectively communicate that calling 311 does not technically trigger the formal grievance process. The person taking the call must contact the Office of Constituent and Grievance Services, and then a staff member must follow up with and assist the person in filing a grievance. At every step of the complaint process, from filing to its outcome, there are confusing hurdles an incarcerated person must overcome. Something as small as failing to check a box can lead to a grievance being informally resolved.

Further, in many cases, the DOC is tasked with investigating their own wrongdoing. It is unreasonable to expect people who have experienced abuse to trust that the agency abusing them can effectively police itself, especially when reports of retaliation for filing complaints are so widespread. Incarcerated people have reported that they fear speaking up about abuse they experience because officers control every part of their lives, and can easily block their visits with family, extend their jail time, or respond with further violence.⁵ Additionally, many of those who filed lawsuits under the Adult Survivors Act did not know the real or full name of the person who allegedly abused them; they only knew the officer's last name or a nickname. This makes it not only difficult to file a grievance or lawsuit but for DOC and the city to track which officers are repeatedly abusing or assaulting people in custody. An article published in Gothamist just yesterday detailed the lawsuits filed against medical providers on Rikers Island for sexual assaulting women in their care.⁶ In one suit, a woman noted that she filed a grievance following her assault, "but that no one ever followed up on her complaint."

⁴ <https://gothamist.com/news/nyc-inmates-call-311-to-report-mistreatment-but-is-anyone-listening>

⁵

<https://gothamist.com/news/late-night-sex-assaults-invasive-searches-the-700-women-alleging-abuse-at-rikers>

⁶

<https://gothamist.com/news/women-held-at-rikers-say-they-were-sexually-assaulted-during-routine-medical-exams>

Another Gothamist analysis found that the federal monitor neither investigated nor documented most allegations of sexual abuse and assault, because it is outside the scope of the consent decree that outlines what the monitor does and does not oversee.⁷ The original legal settlement—*Nunez v. City of New York*—tasks the monitor only with investigating sexual assault committed against those under the age of 18, which meant that when 16- and 17-year-olds were moved out of Rikers, the number of sexual assaults the monitor investigated dropped significantly. For the few cases of sexual abuse that the monitor did examine, he found that DOC “grossly mishandled” the investigations. This underscores why there are so many calls for a federal receiver, as the department has consistently failed to protect those in its custody from abuse and assault.

These problems are not only present in city jails; throughout New York State, incarcerated people describe the grievance process as broken, with many jails reportedly failing to adhere to the state-mandated process, instead following their own regulations.⁸ The NYS Division of Human Rights considers prisons, jails, and police departments exempt from human rights law.⁹ Agency attorneys have argued that police and correctional facilities are not “open to the public” and therefore don’t fall under the umbrella of “public accommodations” protected under human rights law. State legislation—S6611¹⁰/A2746A¹¹—would include “correctional facilities and local correctional facilities as publicly-assisted housing accommodations for purposes of the division of human rights.” Another state bill, S7796¹²/A8407¹³—also known as the Fair Access to Justice Act—would start the statute of limitation for sexual abuse that happens while a person is in prison, jail, a public mental health facility or in other state custody after a person is released, and it would lift certain onerous reporting requirements, such as needing to include the exact time, location and date of the violation.¹⁴ The State Legislature should pass both of these bills to protect people in jails and prisons across the state.

Lastly, the city should increase the budget and the headcount for the Board of Correction, a nine-person, non-judicial oversight board that carries out independent oversight and enacts regulations to support safer, fairer, smaller, and more humane NYC jails. At a time when the administration is decreasing transparency, it is more important than ever that the BOC has enough staff to do its job. At present, BOC has 24 active staff and 9 vacant positions, and does not currently have any staff monitoring the standards on the elimination of sexual abuse and

⁷ <https://gothamist.com/news/rikers-sexual-assault-allegations-went-unexamined-by-18m-federal-overseer>

⁸ <https://nysfocus.com/2023/12/04/county-jails-grievance-scoc>

⁹ <https://nysfocus.com/2023/08/10/deanna-letray-human-rights-law-prison-jail-police-gallagher>

¹⁰

<https://www.nysenate.gov/legislation/bills/2023/S6611#:~:text=BILL%20NUMBER%3A%20S6611%20SPONSOR%3A%20BROUK,BILL%3A%20This%20bill%20adds%20correctional>

¹¹ <https://www.nysenate.gov/legislation/bills/2023/A2746/amendment/A>

¹² <https://www.nysenate.gov/legislation/bills/2023/S7796>

¹³ <https://www.nysenate.gov/legislation/bills/2023/A8407>

¹⁴

<https://spectrumlocalnews.com/nys/central-ny/politics/2023/12/19/sexual-abuse-survivors-and-advocates-lay-out-n-y--legislative-priorities>

harassment under PREA. This is a moment for expansion of independent jail oversight, not retraction, and it is imperative that the BOC has the budget and staff to fulfill its responsibilities.

Thank you.



Testimony of

Natalie Fiorenzo
Corrections Specialist

Rachel Sznajderman
Corrections Specialist

New York County Defender Services

Oversight Hearing on Complaint and Grievance Procedures for People in Custody

April 24, 2024

We are Natalie Fiorenzo and Rachel Sznajderman, Corrections Specialists at New York County Defender Services (NYCDS). NYCDS is an indigent defense office that represents tens of thousands of New Yorkers in Manhattan’s Criminal, Family, and Supreme Courts every year. The NYCDS Corrections Specialist Team provides a direct channel of communication with and advocacy for our clients who are incarcerated.

I. Introduction

As Corrections Specialists, our primary role is to ensure that our incarcerated clients' are safe and healthy, and that their basic needs are met. In the eight years since our unit was created, we have developed several avenues to do this work, some of which rely on the official NYC Department of Correction (DOC) grievance procedure, and some that do not. This process can differ depending on the client’s facility, the day of the week, or which DOC staff member we reach over the phone. In other words, the mechanism through which incarcerated people are able to grieve the many human rights violations they experience on a daily basis is extremely disorganized and convoluted, both for those seeking institutional or administrative remedies, and those seeking legal action.

II. “Grievable” v. “Non-grievable” Categories

At the outset, we must note that only a handful of the many serious issues facing our clients at Rikers are considered “grievable” according to DOC policy. Thus, the complaints we file with the Office of Constituent and Grievance Services are quite limited. On one hand, if a client does not have access to food or water, or if the door or window in their cell is broken, or if it is too hot or too cold in their unit, these are grievable issues and we follow the protocol loosely outlined in the [Inmate Grievance Procedure Directive](#), which we describe in more detail in Section III below.

On the other hand, many of the gravest safety issues that our clients face - e.g., assaults and/or threats of violence at the hands of corrections staff or other people in custody - fall outside of the scope of the grievance procedure. While the protocol for grievable offenses is at least outlined - even if not actually followed - the process for non-grievable offenses is exasperatingly opaque. Our efforts to remediate these violations are far more convoluted, highly case-specific, and, by all accounts, maddening. We attempt to describe this labyrinthian, mostly *ad hoc* process in Section IV.

The New York City Department of Correction is unusual in its categorization of grievable and non-grievable offenses. In fact, in the state system, New York Department of Correction and Community Supervision, the only aspects of incarceration that are not-grievable are those which have a separate appeals process. This is also typical in other jurisdictions such as Massachusetts and Washington DC. In a sample of 1500 grievances filed in Massachusetts state prisons over 3 years, only 11 were rejected as non-grievable.¹

III. Process for Grievable Offenses.

For the last several years, DOC’s preferred method of lodging a “grievable” grievance is by calling 311. While seemingly straightforward, this avenue poses many problems. First, phone access is highly unreliable at Rikers Island. Oftentimes, the phones are controlled by a small number of people in a housing area, leaving everyone else little to no time to make calls. Tablets correct for this discrepancy somewhat, but when these tablets break or malfunction, DOC refuses to replace or repair them. Moreover, when a person is moved from one facility to the next, their tablet does not come with them, and they are often denied a replacement upon arriving in the new facility. And those who do manage to get access to a phone and place a call to 311 struggle to get their complaint relayed in the little time they are allotted.

¹ “Rubber stamp’ justice? In Mass., prison officials almost always deny prisoners’ claims of abuse behind bars.” Boston Globe, December 29, 2021, <https://www.bostonglobe.com/2021/12/29/metro/rubber-stamp-justice-mass-prison-officials-almost-always-deny-prisoners-claims-abuse-behind-bars/>.

Then, for those who are able to clear all these hurdles and successfully make a 311 complaint, it is very difficult to actually track or follow up on that complaint. Individuals are provided with “EC numbers” at the end of the phone call, which, theoretically, can be used to track the complaint in an online system. Even if the individual is able to write down the number when it is reported on the phone, these individuals have no access to the internet, meaning they have no way of checking this complaint-tracking website. And if they get someone else to look up their case on the online portal, the website itself is of limited use. It only reports whether the complaint has been resolved or is still under review. The site provides no details about how the grievance was or will be investigated, when it was or will be resolved, who adjudicated or will adjudicate the grievance and by what standard, or any other details.

Alternatively, incarcerated people can also file grievances by filling out a grievance form that is supposed to be freely available in every housing unit and in the law library. First, our clients often report that these forms are nowhere to be found anywhere in their facilities. Moreover, when grievances are filed this way, it is even more difficult to receive adequate resolution. Written responses are rarely received. Rather, grievances are often resolved “informally,” regardless of whether the issue being grieved has actually been resolved.

Indeed, this lack of documentation makes appealing any resolved grievance nearly impossible. Under New York law, grievances must be resolved twice before legal action can be taken. But it is unclear to us how this could happen given the lack of transparency and documentation involved in this “formal” grievance process.

IV. No Official Process for Non-Grievable Categories

Fortunately, DOC provides [quarterly reporting](#) on the volume of grievances lodged. While this data is helpful, it leaves more questions than answers. According to DOC’s own data, there were 2,357 complaints filed that were “non-grievable” from January - March 2024 alone. This includes 639 complaints against staff, 304 housing complaints, 281 complainants fearing for their own safety, 225 sexual abuse complaints, and the list goes on. In the last calendar year of DOC’s provided data, (from April 1, 2023-March 30, 2024), there have been 3,008 complaints made about DOC staff. On average, there are 250 complaints about DOC staff made every month. Yet, these staff complaints are non-grievable offenses, meaning they fall outside the formal grievance process.

When DOC receives these “non-grievable” complaints, they still maintain a responsibility to investigate and resolve them, but it is entirely unclear how DOC resolves these complaints. The people making these complaints are never privy to any information regarding the investigation. They have no means of determining what happened to their complaint, whether it was resolved

and how. If they are lucky, they might receive some formal resolution paperwork, but instances of this actually happening are few and far between.

V. NYCDS's Attempts to Navigate the DOC Complaint System For Non-Grievable Offenses.

At our office, in lieu of any meaningful grievance procedure, we have come up with our own methods for ensuring that our clients' "non-grievable" needs are met and these urgent complaints are investigated. This is especially true for staff complaints and complaints of safety, which are some of our most frequent requests.

When we hear from a client that they want to transfer to a different housing area, they want protective custody, or they would like to be housed according to their gender identity, we first reach out to DOC's Legal Department. We also typically include the Board of Correction in case they are able to do any on-the-ground advocacy. If the reason for their transfer is related to fear for their safety, as is usually the case with housing transfers, we also copy the Office of Security and Intelligence Unit. If a client would like to remain in their specific facility, but simply wants to move units, we will also include facility leadership, i.e. Assistant Commissioners, Deputy Wardens of Security, and Tour Commanders. Typically, none of these offices respond with any information or updates on these requests. If we are lucky, we may hear that our request was denied, but we are not informed why.

If our clients' complaints include instances of sexual violence or abuse, we also make sure to include the DOC Prison and Rape Elimination Act (PREA) Team on all correspondence. Clients have shared that PREA will sometimes conduct a follow-up interview, but they rarely hear the outcome of the investigation. In recent memory, our unit has only been provided with one investigation response for a PREA-related claim, out of the dozens filed. The correspondence from DOC simply stated that the sexual assault did not occur. Our client in that instance was never contacted or interviewed by PREA or any other DOC investigator. We were not provided with any details about how the Department reached this conclusion, or with any mechanism to appeal this outcome.

This case is notable, however, because we actually received a communication - however barebones - from the Department. Once again, we never are updated throughout an investigation, or provided its outcome. Typically all of our outreach attempts are met with radio silence.

If a client is injured, experiences a use of force, or is physically assaulted, we will always write a medical attention request to CHS. If our client has a violative experience with a CHS staff member, there is currently no clear procedure to file a complaint. In the three years we have

spent working with incarcerated clients, clients have relayed a number of complaints regarding CHS staff: CHS staff members breaking patient confidentiality by sharing their privileged medical information with DOC staff; nurses refusing to provide medical attention because our clients “complain too much;” nurses providing medication for high blood pressure, when a patient has low blood pressure, the list goes on. We have shared all of these stories directly with CHS but have never received a response. In short, no proper procedure exists for incarcerated people and their advocates to grieve the medical malpractice they experience.

VI. Recommendations for Improvement

To fix this chaotic, dysfunctional system, we recommend DOC make the following changes to its grievance procedures:

1. DOC must redefine what are considered “grievable offenses” or alternatively, provide a clear grievance process for those categories not covered in the formal grievance procedures.

As mentioned, the current process is not in line with most other peer correctional institutions.

2. DOC should provide more expansive and detailed data.

We appreciate the data that DOC has provided about the volume of grievances lodged. But we need more detail. First and foremost, we need more clear information on how grievances are received and who is submitting them. Second, it needs to be made clear how and to which departments each of the “non-grievable” complaints are being forwarded. How many 311 calls get forwarded to PREA? How many to the Department of Investigation? These are numbers that should be made publicly available.

In addition, given that staff complaints are consistently complained about at the highest rate, data should exist about which officers are being grieved. From January to March of 2024, were there 639 complaints about 639 different staff members, or were certain staff members grieved again and again and again? Maybe this cannot be made publicly available, but certainly DOC should be able to access that information if their staff members’ behavior warrants disciplinary action or even criminal investigation.

3. DOC should expand its complaint tracking procedures.

The current tracking procedure is not sufficient to understand what has actually happened to a grievance and how it has been resolved. Also, if someone files something “non-grievable,” through OCGS or 311, it will be marked as resolved because it has been forwarded to another

agency, even though it is not clear to which agency it is forwarded, or if that agency has resolved it. There should be tracking in place for all forms of complaints: housing requests, PREA complaints, staff complaints, OSIU complaints, CIB, DOI, ID, etc. In other words, DOC should establish a competent, centralized tracking system for complaints lodged in its facilities.

VII. Conclusion

The process by which people incarcerated on Rikers Island can grieve the human rights violations they experience is so convoluted and confusing that it requires NYCDS to have two people whose full time job requires them to navigate it. DOC must meaningfully and comprehensively overhaul their grievance procedure so that it is actually possible for a person in custody to flag the serious, sometimes urgent and life-threatening, challenges they face while incarcerated.



Brooklyn Defender Services
177 Livingston St, 7th Fl
Brooklyn, NY 11201

Tel (718) 254-0700
Fax (347) 457-5194
info@bds.org

TESTIMONY OF:

Michael Klinger, Jail Services Attorney

BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council

Committee on Criminal Justice

Sandy Nurse, Chair

Oversight - Complaint and Grievance Procedures for People in Custody

April 24, 2024

My name is Michael Klinger and I am a Jail Services attorney at Brooklyn Defender Services. BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. 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. We want to thank the Committee on Criminal Justice and Chair Nurse for inviting us to testify today about the complaint and grievance procedures available to those people, including many people represented by BDS, in the custody of the New York City Department of Correction.

BDS represents approximately 22,000 people each year who are accused of a crime, facing the removal of their children to the foster system, or challenging deportation. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing, and benefits advocacy, as well as immigration advice and representation.

We appreciate the City Council's commitment to ensuring that people detained in New York City jails are able to effectively and efficiently access the Department of Correction's complaint and grievance system to lodge complaints and notify officials when they believe that they have been subjected to harms or that their rights have been otherwise violated.



OVERVIEW

When this Committee last convened a hearing on this topic,¹ the Department of Correction (“the Department”), the Board of Correction (“the Board”), and advocates, each examined the processes as they were then instantiated, highlighting ways in which they could be improved. In submitted testimony from the Board and advocates, areas of broad agreement emphasized a gap between the process-as-written and the process-as-experienced by people in custody, and a consensus that those processes were broken, ineffective, and opaque. They remain so today.

In its testimony, the Board cited a need for a more coordinated, accountable and transparent system, generally found the grievance appeal process to be “broken,” and identified particular categories of complaint that predominated over a period of years, suggesting a need for the Department to demonstrate a plan for addressing these “drivers” of grievances and complaints.² Of particular concern, the Board reported that its own assessment of the complaint and grievance process showed that nearly 95% of complaints were closed after an initial DOC response, while 58% of audited complaints “did not indicate if the grievant accepted or rejected the resolution, and, of these, 64% were also missing the signature of the complainant.”³ Furthermore, to the extent that exhaustion of the available grievance process is a requirement for individuals who may wish to seek vindication of their rights in court,⁴ that goal was seemingly hampered by an unnecessarily complicated appellate process that was successfully navigated in FY17 in only 0.4% of all grievances at the first stage, with only 10 appeals proceeding to the final stage of review.⁵

BDS testified that the grievance process was inaccessible; its rules inscrutable and poorly understood by Department staff, people in custody, and advocates alike; and that any policy of responding in writing to grievances was illusory in practice, with grievances and complaints typically going unanswered or without resolution.⁶

The Legal Aid Society, in its testimony, spotlighted a range of concerns, including the lack of clarity in how the Department’s Office of Constituent and Grievance Services (“OCGS”) processes

¹ The Committee on Criminal Justice held a hearing (“Oversight – The Grievance Process, Committee on Criminal Justice”) on January 29, 2019. Meeting information available at <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=670684&GUID=83813BDD-8F03-4F43-9ACB-6D3D039B121A&>.

² See Martha W. King, Executive Director, New York City Board of Correction, “Statement before the New York City Council,” January 29, 2019. Available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3835272&GUID=3643777D-6D88-4B75-AE88-7768E2DFAF25&Options=&Search=>.

³ *Id.*

⁴ See 42 U.S. Code Section 1997e.

⁵ See King, *supra* Note 2, at 3.

⁶ See, e.g., Testimony of Brooke Menschel, Civil Rights Counsel, Brooklyn Defender Services, January 29, 2019. Available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3835272&GUID=3643777D-6D88-4B75-AE88-7768E2DFAF25&Options=&Search=>.

Brooklyn Defenders

311 calls made by people in custody versus how it handles complaints made by third parties (including legal services organizations) on behalf of people in custody, both through email and by calling 311.⁷

The Department, in its own testimony, claimed, among other things, to have addressed the issue of “difficulty reconciling duplicate grievances made by inmates who used both the 311 system and the filed paper grievances.”⁸ It claimed that the 2017 merger of the formerly separate Inmate Grievance Resolution Program and the Office of Constituent Services into the new Office of Constituent and Grievance Services was “a reflection of the Department’s commitment to improve and be innovative in capturing and resolving inmate complaints,” and particularly highlighted its adoption of “Service Desk,” which it described as a “bold and innovative” technological system to “track the life cycle of complaints” that would “allow[] OCGS to centralize all inmate complaints, grievances and request [sic] regardless the [sic] method the inmate submitted the complaint via grievance staff, including 311, mail, advocates or third-parties [sic].”⁹

Nothing of substance has changed for our clients in the years since the last hearing; their stories from 2019 are as relevant today as they were then: one person had filed “approximately 35 grievances related to issues stemming from his incarceration, yet he [had] never received an acknowledgment or response.”¹⁰ Also still relevant is the distrust we see in our clients when we advise that they submit grievances through the Department’s designated processes (“Our clients frequently ask us why they should bother submitting grievances ... The few clients who receive responses are left with no course of action when their complaints come back unresolved.”).¹¹

FROM 2019 TO 2024, NO MEANINGFUL CHANGE

The Grievance Process Remains Fundamentally Illusory

In 2019, the Department touted its implementation of the “Service Desk” program to allow the public to keep track of the status of complaints and grievances. The program amounts to a public-

⁷ Dale A. Wilker, Prisoners’ Rights Project, The Legal Aid Society, “Testimony of The Legal Aid Society Prisoners’ Rights Project,” January 29, 2019. Available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3835272&GUID=3643777D-6D88-4B75-AE88-7768E2DFAF25&Options=&Search=>.

⁸ James Boyd, Director of Constituent and Grievance Services and Becky Scott, Acting Bureau Chief of Facility Operation, New York City Department of Correction, “On Oversight – The Grievance Process,” January 29, 2019. <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3835272&GUID=3643777D-6D88-4B75-AE88-7768E2DFAF25&Options=&Search=>.

⁹ *Id.*

¹⁰ Testimony of Brooke Menschel, Civil Rights Counsel, Brooklyn Defender Services, January 29, 2019. Available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3835272&GUID=3643777D-6D88-4B75-AE88-7768E2DFAF25&Options=&Search=>.

¹¹ *Id.*



facing web page that displays a “Complaint Status”¹² for most complaints and grievances, including those filed on Form 7101R, those received through calls to 311 by people in custody or third parties, and those sent by offices like ours via email. For reasons explained below, Service Desk is an inadequate tool for navigating the grievance process.

The reality for people in the Department’s custody is that conditions in the jails fail to meet even the most basic levels that humane treatment requires. These levels are expressed in clear terms by the Board of Correction through its Minimum Standards policies. Every violation of those standards is potentially grievable, but our clients routinely express a sense of futility and despair based on the failure of the grievance process even to acknowledge, let alone address, their justifiable concerns over failures in such basic conditions as personal hygiene, access to medical care, or any of dozens of other areas that occur on a daily basis.

The complaints and grievances that the people we represent submit are systematically ignored. There is no method of complaint submission that is reliable or effective for producing actual results. Moreover, there is no consistent application of the written grievance policy. Instead, the Department has created a policy that its officers follow only occasionally and that may, at its best, be able to track a complaint, and to provide a vague, boilerplate status update, accessible online only to people who are not in the Department’s custody.

We routinely hear that the people in the Department’s custody struggle to locate grievance forms; that once they find a form or any other piece of paper on which they may submit a complaint, they may not have access to a pen or pencil; that even if they are able to write their complaint, they may have to wait weeks before seeing a grievance officer to whom they could submit it; that even if they find a grievance officer, they may be reluctant to hand their grievance to that person because that person may be the subject of their grievance; and that even if their complaint involves other staff members than the grievance officer, people in custody often have a reasonable fear of retaliation from staff.

Written Grievances Are Not Processed According to Directive 3376R-A

We often hear a wide range of concerns from the people we represent regarding the process of submitting written grievances or complaints.

Grievance Officers’ Failure to Tour

Clients report that grievance officers do not consistently or routinely tour the housing areas,¹³ and particularly note that this is a concern at special population units like RESH and at a unit in the

¹² See <https://www.nyc.gov/site/doc/about/complaint-status.page>.

¹³ Directive 3376R-A Section IV.I.1. states: “OCGS Grievance Coordinators and Officers shall: (1) Tour all housing areas weekly. A minimum of three (3) times per week, OCGS staff shall visit punitive segregation, hospital wards, mental observation units, and other special population housing areas where the inmate cannot directly access a grievance box or the OCGS office.”



North Infirmiry Command that we understand serves as an “isolation unit.”¹⁴ Individuals in these units report they are often unable to submit grievances for this reason.

Lack of Access to Grievance Forms

Clients regularly report that they have no access to Form 7101R (the Department’s grievance form). They report that officers in housing units will frequently inform residents that they have no forms available to provide.¹⁵

Failure of Staff to Provide Receipts for Any Submitted Complaints or Grievances

Clients regularly report that even when they are able to complete a grievance or complaint form and submit it, they do not consistently receive receipts.¹⁶

Failure of Department to Provide Proposed Resolutions to Submitted Grievances

Clients regularly report that even in instances where their grievance falls into a category such that it should be considered as grievable,¹⁷ and therefore subject to the OCGS process, they do not receive any response as required by the that process.¹⁸ In such cases, the complainant is therefore never presented with a proposed resolution, as required by the Department’s “Formal Resolution Process,” and thus never given the opportunity to either accept it, or reject it and appeal, which

¹⁴ The North Infirmiry Command includes some “Separation Status” housing designated for people who have “failed to clear, or refused to clear, a body scan.” Department of Correction Directive No. 4597R-C (“Use of Body Scanners and Separation Status Housing, Effective May 27, 2022”), as cited in the Board of Correction’s “Special Investigation Report: New York City Department of Correction’s North Infirmiry Command April 6, 2023 Fire,” at 7, available at <https://www.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/BOC-April-6-Fire-Report-2023.12.22-FINAL.pdf>.

¹⁵ Directive 3376R-A Section IV.I.3. requires OCGS Grievance Coordinators and Officers to “[p]rovide copies of Form 7101R to inmates.” It also requires them to “[e]nsure grievance forms are stocked on all units and areas where inmates congregate.”

¹⁶ Directive 3376R-A Section IV.I.4 requires OCGS Grievance Coordinators and Officers to “[p]rovide receipts to inmates who file any grievances, complaints not subjected to the OCGS process, or needs pertaining to their confinement.”

¹⁷ The Department of Correction provides a list of “Grievance” and “Complaint” categories in its Form 7100R-A. It states that “complaint” categories “are not subject to the Office of Constituent and Grievance Services,” and that OCGS staff “shall forward the complaint or request to the appropriate entity for review and resolution,” and shall “complete the OCGS Disposition Form and provide it to the inmate.” Available at https://www.nyc.gov/assets/doc/downloads/directives/Attachement_A.pdf.

¹⁸ Directive 3376R-A Section IV.I.8 requires OCGS Grievance Coordinators and Officers to “[p]rocess all grievances and submissions not subject to the OCGS process in a timely manner via the Service Desk system. OCGS staff shall review each grievance and formulate a resolution in accordance with this directive.”



would otherwise allow for a “Preliminary Evidentiary Review” and possible escalation to the Commanding Officer, all of which is required under the Department’s directives.¹⁹

Department Fails to Follow Policies for Handling 311 Calls

Access to phones and the phone application on tablets is curtailed by the Department at the Department’s discretion and without notice.

As a threshold concern, clients regularly report that the phone system, whether being accessed by land-line phones in the housing areas, or through the phone application on individuals’ tablets, is arbitrarily shut down so that no calls can be placed. Individuals are then unable to call to request medical attention, to call family members, and relevant for the purposes of today’s hearing, to place calls to 311.

Based on our clients’ consistent reporting, this frequently happens during lockdowns, during which housing units stop receiving services including, but not limited to, laundry, library, recreation, programming, mail, and visits. Under these circumstances, access to phones is a vital lifeline for communicating with family members, as well as communicating with Correctional Health Services (CHS) to request medical attention. Clients often report that Correction Officers will admit they have turned off the ability to call 311 because they know people would take the opportunity to lodge complaints about the deprivations caused by the lockdown. Thus, it appears Department staff are intentionally preventing access to the grievance system because they wish to prevent certain grievances from being filed, subverting the very purpose of the grievance system.

Lack of Any Follow-up by Department After Receiving a 311 Complaint

Clients regularly report that even when they are able to use the phones to call 311, where their complaints are generally assigned an “EC” tracking number,²⁰ there is rarely any further indication by the Department that they have received the complaint, let alone that they intend to conduct the follow-up that is required under the Directive.²¹

Service Desk Provides Unspecific Information and No Means to Appeal

Service Desk provides an opportunity for people with access to the internet, such as defender organizations, to check the status of any grievance or complaint that has been assigned a reference number. However, the responses we typically see are unspecific in their language, and thus

¹⁹ See generally, Directive 3376R-A Section VI. (“The Grievance Coordinator shall then enter the proposed resolution on the of the grievance on Form 7102R and input the necessary information into Service Desk. The Grievance Coordinator shall meet with the inmate to review the proposed resolution.”).

²⁰ Generally, 311 calls are assigned 8-digit “EC” numbers, while written grievances are assigned 6-digit ID numbers.

²¹ Directive 3376R-A includes detailed instructions for Department staff when handling 311 complaints, with different actions required depending on whether the complaint is appropriate for the OCGS process or “non-grievable” and thus in need of forwarding to the appropriate unit for handling. Under all circumstances – whether the grievance stays with OCGS for resolution or is sent to a different unit – staff are required to provide the individual who submitted the complaint with an “acknowledgement.” See Directive 3376R-A at Section V. (H-K).

unhelpful in determining whether an appeal may be warranted. Moreover, Service Desk provides no opportunity to appeal an adverse decision, such as when it reports simply: “Rejected.”²²

Written Responses to Grievances Fail to Follow Grievance Policy

On occasion, individuals do receive written responses to grievance form submissions. In the experiences of our clients, this is often in instances where the Grievance Officer has determined to “return” the grievance.²³ These written responses typically comprise a terse assessment on the bottom of the originally-submitted Form 7101R, stating that the grievance is being returned, along with a cover sheet that contains a list of possible reasons why the complaint has been returned, usually with a checkmark next to the reason alleged by the grievance officer to support their decision.

Frequently, the reason provided for the return is that “[t]he issue in this grievance was reviewed and addressed previously in Grievance No. _____,” listing – without explanation – the EC-number or ID number of an allegedly related grievance. However, no instance that we have reviewed has borne out the Department’s claim that the previous complaint or grievance was addressed. In each instance we have reviewed, the citation given by the Department refers to a grievance that was not handled according to the procedures in Directive 3376R-A. Specifically, although the Department claims in Form 7117R that a previously-submitted complaint was “addressed,” we have seen no situation in which the grievance cited generated a proposed resolution and opportunity to accept or appeal, or – when not grievable – a substantive explanation of whether and why the complaint has been forwarded to another unit, as required under the Directive.

²² Service Desk typically provides, with no additional explanation, the following “status” reports:

• **Unsubstantiated:** The investigation conducted lacks evidence to support the complainant's issue. •

Rejected: The complaint matter response cannot be provided on behalf of the New York City Department of Correction.

Addressed: The complaint/inquiry was reviewed, and actions were implemented in accordance with Departmental policy.

Abated: The complaint was substantiated, and a resolution was provided in accordance with Departmental policy.

Pending: The complaint matter is under review and will be addressed in accordance with Departmental policy.

ID Not Found

²³ Directive 3376R-A Section V.G. states: “If the Grievance Coordinator or Grievance Officer determines the inmate grievance is not in compliance with the policy set forth in this Directive, the inmate’s grievance shall be returned to the inmate with an indicated reason listed on Form 7117R, ‘Return of Grievance Form.’”



Third Party Complaints Remain Outside of Grievance System, Accountability

In the absence of readily available grievance forms, regularly touring grievance officers, and a reliably functional method for making complaints and grievances by calling 311, our clients often rely on staff at BDS to send complaints on their behalf by email to OCGS. These are referred to by the Department as “third-party” complaints.²⁴

Such complaints include “grievable” and “nongrievable” concerns.²⁵ To the extent some of these complaints are grievable, they would be subject to the OCGS process of appeal and exhaustion if placed directly by our clients. But as The Legal Aid Society wrote in its 2019 testimony, “the fate of third-party complaints made via 311, mail, email, or other means remains a mystery.”²⁶ Five years later, this statement remains accurate.

In the years since the 2019 hearing, there has been no substantive change in the Department’s approach to handling third-party complaints; there remains no process for either the third party or the person in custody on whose behalf a complaint is made to be presented with a proposed resolution and any opportunity to either accept or appeal such a resolution. In fact, there is no indication that, beyond the assignment of an index number by the Service Desk program, the complaint has been integrated into the complaint and grievance system. There is thus no accountability to the third-party complainant or to the person in custody whose experiences form the basis of the complaint.

RECOMMENDATIONS

1. Increase Department accountability. The Board of Correction’s 2016 and 2018 audits revealed data on the grievance process that is critical for oversight. The Council should require the Department to produce reports on a regular basis, as follows:
 - a. The number of grievance and complaint forms received from people in custody over a given reporting period, disaggregated by factors including, but not limited to: date of submission, facility, housing unit, and whether subject to OCGS process;

²⁴ In its 2019 testimony, the Department of Correction touted the Service Desk application’s ability to “centralize all inmate complaints, grievances and request [sic] regardless [sic] the method the inmate submitted the complaint via grievance staff, including 311, mail, advocates or third-parties.” See James Boyd, Director of Constituent and Grievance Services and Becky Scott, Acting Bureau Chief of Facility Operation, New York City Department of Correction, “On Oversight – The Grievance Process,” January 29, 2019. <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3835272&GUID=3643777D-6D88-4B75-AE88-7768E2DFAF25&Options=&Search=>.

²⁵ A sample of recently-submitted complaints by our office include the following categories: lack of access to recreation; lack of access to laundry services; lack of access to counsel; lack of proper bedding; lack of access to law library; lack of access/failure to provide tablet; loss of property; and lack of access to grievance process.

²⁶ See Dale A. Wilker, Prisoners’ Rights Project, The Legal Aid Society, “Testimony of The Legal Aid Society Prisoners’ Rights Project,” January 29, 2019. Available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3835272&GUID=3643777D-6D88-4B75-AE88-7768E2DFAF25&Options=&Search=>.

- b. The number of grievance and complaint forms received from people in custody that are not timestamped, disaggregated by factors including, but not limited to: date of submission, facility, housing unit, and whether subject to OCGS process;
 - c. The number of grievances in which a grievant in custody accepted the proposed resolution, disaggregated by factors including, but not limited to: date of submission, facility, and housing unit; and
 - d. The number of grievances in which an appeal was taken by a person in custody, disaggregated by factors including, but not limited to: date of submission, facility, and housing unit.
2. Third-party complaints should be fully integrated into the complaint and grievance process, including for purposes of appeal and exhaustion of remedies wherever applicable. The Council should require regular reporting to include the number of third-party complaints received over a given period of time, disaggregated by factors including, but not limited to: date of complaint, topic of complaint, facility giving rise to complaint, housing unit giving rise to complaint, whether complaint is subject to OCGS process, and relationship of third-party to person in custody (*i.e.*, “attorney/advocate,” “family member,” “clergy,” etc.).
3. The Department should ensure that all people in custody have access to Service Desk tracking information for all grievances in complaints. Because the Department is not currently providing every person in custody with a working tablet, this access must not be dependent on access to tablets.

CONCLUSION

The reality of life for our clients in the Department’s custody is one of constant and unrelenting deprivation. That deprivation takes many forms, including a lack of access to vital and basic services that are often required by, among other rules and regulations, the Board of Correction’s Minimum Standards. Many, if not all, of these deprivations are grievable, under the Department’s own rules. Those that are not technically grievable (and thus subject to OCGS processing) are often viable as complaints that the Department is required to address through other departments or units. In all instances, the complainant/grievant is entitled to an acknowledgment of their concern, and a meaningful indication that it is being reviewed. In many instances, the issue raised in the complaint or grievance should also be rectified.

The experiences of our clients in 2024 – just as they did in 2019 – tell us that the Department not only fails to address the substance of the many grievances it receives arising from the conditions in the jails but fails to follow even its own Directives when it comes to acknowledging and otherwise responding to those grievances.

The Department and its Office of Constituent and Grievance Services must come into compliance with its own Directives. More importantly, it must create a culture of accountability.

Brooklyn Defenders

We remain encouraged by the Council's commitment to monitoring the Department in its stated efforts to increase transparency and accountability. Thank you for your time and consideration. We look forward to further discussing these and other issues impacting our clients.

If you have any questions, please feel free to reach out to us. I can be reached at mklinger@bds.org.



Freedom
Agenda

Testimony to the City Council Committee on Criminal Justice

April 24, 2024

Submitted by Darren Mack, Co-Director, Freedom Agenda

Good afternoon Chair Nurse and Council Members,

Thank you for the opportunity to testify today and for holding this hearing to highlight the means incarcerated people *should* have to make their voices heard and get some form of redress when their rights are violated in the custody of the City of New York. Incarcerated people are dependent on guards for so many things that those of us on the outside take for granted – including access to meals, medical care, clean laundry, outside time, visits, mail, and even toilet paper. Which means guards also have the power to provide or deny those things. Sometimes it's just neglect, and other times it's intentional abuse of power, but so many of these basic human needs are being denied to people in DOC custody on a regular basis. What makes that worse, and what allows it to continue, is that there is no functioning system for people in custody to voice their complaints and have them addressed. Guards know that, and people in custody know that. It breeds frustration, and people end up using the only tools they have available to them, which guards then characterize as evidence of a “violent” population and try to use that to justify oppressive measure like shackling and solitary confinement that will only breed more frustration.

When I was incarcerated at Rikers as a teenager for nineteen months, the idea of a real system of addressing grievances was non-existent. There was a wooden box attached to the wall in the hallway with “snitch box” written on it to submit paper complaints that few people dared to go near, and I’m sure there was in theory some kind of system for filing and hearing complaints. Whatever DOC’s official policy was, the reality that I understood, and that people inside are still facing now, is that DOC can do almost anything they want, and there’s not much you can do.

[Research](#) on the concept of procedural justice in jails shows the single most important factor in a person’s decision to follow or not follow rules when they are detained is whether they felt they’d been treated fairly. That was a more important factor than a person’s previous history of misconduct. When DOC is asked about violence reduction at Rikers, they have increasingly tried to hide behind an excuse that a greater portion of people in

their custody are now facing serious charges. First of all, limiting incarceration to people facing the most serious charges should not be a surprise or cause for complaint from jail staff. Detaining less people facing lower-level charges is a good thing, a trend that should continue, not be reversed. Second, DOC has no evidence people facing serious charges are any more likely to engage in violence while in custody. Instead of making assumptions about the people in their custody based on charges they haven't even been convicted of, DOC should focus on a commonsense way of creating a calmer jail environment – make sure people's basic needs are met, and when they aren't, give them a real way to complain, be heard, and get the issues addressed. That shouldn't be that hard.

Finally, everything that we heard today is just further evidence that we need to use every possible tool to reduce the number of people sent to Rikers and exposed to that environment, and we need to close Rikers with urgency.

Thank you,

Darren Mack

Co-Director, Freedom Agenda

Dmack@urbanjustice.org

My name is Ibrahim Xavier Johnson and I regularly patrol the streets of Harlem for my cardiovascular fitness. Since January 2022, I have walked north to 155th ST, west to Broadway, east to 1st Ave (with a detour to Pleasant Avenue), and south to 110th Street. This is my Harlem patrol which crosses multiple City Council districts. This is my Harlem which I have named Greater Harlem (West Harlem, Central Harlem, and El Barrio). I have always felt safe and have walked without fear of assault or robbery. I personally want to thank the New York Police Department, the Manhattan District Attorney's Office, and my esteemed Council representative Yusuf Salaam, for making my Harlem patrol safe and enjoyable.

I have lived in some of the most dangerous neighbourhoods in Los Angeles, California, Washington, DC, Baltimore, Maryland, Philadelphia (aka Killadelphia). As a soldier, I was in harm's way in such places as Nicaragua and El Salvador. I have travelled to Mexico and lived in Sierra Leone. New York City, and especially my Harlem, is one of the safest places I have ever been. I survived the "war on drugs" in the 1980s. Harlem is not perfect, but compared to places I have been it is the closest that I have been to heaven.

I encourage the NYPD to continue to work with federal law enforcement to stop the guns coming in from down south. The community, represented by organizations like Street Corner Resources, is committed to peace and is actively organizing our youth to counter violent cultural influences. The District Attorney continues to prosecute violent offenders. Alvin Bragg Jr is doing a respectable job. Every now and then there is a shooting incident. However, I will keep patrolling Harlem if my legs can walk, and the weather is warm. Let the City Council continue to support legislation that supports the NYPD and a safe, walkable, New York City. Thank you.

In conclusion, I leave you with a quote from the great Curtis Mayfield:

"We got to keep on pushing. Can't stop now. Move up a little higher. Some way. Somehow.

Ibrahim Xavier Johnson

Harlem resident

Toella Pliakas and Cleo Nevakivi-Callanan
Legal Interns, Urban Justice Center's Mental Health Project

Testimony on Behalf of an Incarcerated Person Regarding Conditions in Restrictive Housing and Grievance Procedures on Rikers Island

I am in my 30s and incarcerated in the restrictive housing unit at Otis Bantum Correctional Center on Rikers Island. I also spent several months in solitary confinement in the RESH unit at RNDC, and I want the world to know what the Department of Correction is doing to people in New York's jails.

I am alone here. The Department of Correction cut off my access to visits and packages months ago, after staff blamed me for contraband that belonged to someone else and then physically attacked me. I have not been allowed to see anyone since then. My partner and my children have not been able to visit me in months, so I haven't been able to see them or hold them. And it's hard to communicate with my family via telephone, because a floor of about 21 people has to share three phones. I am a family-oriented man. I miss the life we had together: we would go for walks with my dogs and my young son by the river, watching the squirrels and enjoying the view, the fresh air, and the sun.

In solitary confinement, there is no fresh air. There is no sun. We are put in filthy, tiny cells alone, stuck breathing in fumes from people setting fires in their cells to get staff to respond to their concerns. They treat us like animals here. We are strip searched everywhere we go. It is often either too cold or too hot. Portion sizes are tiny and we sometimes receive only two meals a day, leaving me hungry.

The intake process to get into solitary is awful. I spent 48 hours alone in a cell with no water—the toilets and sinks were cut off. I didn't receive a blanket, and the mattress was thin, like a workout mat. It was so cold I watched my fingertips turn purple. Staff ignored me when I asked for food at intake, even though I was hungry.

Once I was put in solitary in what's called "Level 1," I had to spend 21 hours a day alone in a tiny cell with nothing to do but listen to my thoughts and the sounds of people banging and screaming in their cells. It was hard to speak to my family, because calls were limited and I was told to get off quickly by staff. We were supposed to receive recreational exercise time, but we never received it. Instead, I was put in a small dog cage where all I could do was move around in circles alone. I was even brought to the shower in handcuffs.

Level 2 is supposed to be less restrictive, but it's even worse than Level 1. All of us on the unit share four tiny showers, and there are ceramic scalpels everywhere that correctional officers smuggle in and sell to incarcerated people. I saw someone get slashed in the neck down to the vein in front of me, and I wear a towel around my neck now to protect myself in case I get attacked. I'm not safe here.

I feel like I am slowly dying. Every issue in my life has become worse. I experience severe pain because of cardiovascular issues for which I have requested medical treatment at

Rikers but received no response. My mental health has also worsened because of my experiences in the criminal system. I have developed PTSD and I struggle with OCD related to cleanliness, which is hard in a space that is filthy and hard to disinfect. I have only been able to speak to a mental health professional once, after I complained to 311, and I had to spend hours in cuffs waiting to speak to them. Now, I receive some kind of medication for my mental health, but nobody has told me what I am taking. I have requested a comprehensive mental health evaluation but have not received one.

Everything about Rikers is either confusing, misleading, or a straight out lie. I have placed over fifty grievances about the conditions on Rikers Island with no response. Nobody is helping us and they're not following the legal standards they're supposed to follow to keep us safe.

The jail system in New York needs serious changes. All jails must stop being inhumane to our families and to us detainees. Instead of restrictive housing, there should be drug and self-help programs that involve our families, so that we can see them and get their support. It's horrible here, and I want people to hear my story so that this doesn't keep happening to others.

Thank you for your time.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Nuray Savutan, Acting PIC

Address: 4520 Astoria Blvd

I represent: DOC

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Rachel Sznajderman

Address: _____

I represent: NYCDS

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jonathan Levine, Assistant Commis

Address: 4520 Astoria Blvd

I represent: DOC

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/24/24

(PLEASE PRINT)

Name: Barbie Melendez

Address: _____

I represent: NYC Board of Correction

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/24/24

(PLEASE PRINT)

Name: Darren Mack

Address: 40 Rector St. NY, NY 10006

I represent: Freedom Agenda

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: April 24, 2024

(PLEASE PRINT)

Name: Michael Klinger, Jail Services Attorney

Address: 177 Livingston St., 7th Fl. BK, NY 11201

I represent: Brooklyn Defender Services

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: DIOMIS FERNANDEZ

Address: _____ E. Elmhurst NY 11369

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/24/24

(PLEASE PRINT)

Name: Victor Herrera

Address: Queens NY

I represent: Freedom Agenda

Address: NY, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 8/24/24

(PLEASE PRINT)

Name: Christopher Leon Johnson

Address: _____

I represent: self

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/24/24

(PLEASE PRINT)

Name: Lauren Nakamura

Address: 49 Thomas Street, NYC

I represent: The Legal Aid Society, Prisoner's Rights Project

Address: 49 Thomas Street, NYC

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jemalyn McFarlane

Address: 2 Lafayette St

I represent: Board of Correction

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Melissa Cintrón Hernández

Address: 2 Lafayette St. Room 1221

I represent: Board of Correction

Address: " "

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jasmine Georger-Yilla

Address: NYC BOC

I represent: 2 Lafayette Street

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Natalie Fiorenzo

Address: _____

I represent: NYCDS

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/24/24

(PLEASE PRINT)

Name: KATRINA BLACKMAN

Address: 2 LAFAYETTE ST. #1221 NY, NY 10007

I represent: BOARD OF CORRECTIONS

Address: 2 LAFAYETTE ST. #1221 NY, NY 10007

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/24/24

(PLEASE PRINT)

Name: Bart Bailey

Address: 2 LAFAYETTE

I represent: Board of Community

Address: 2 LAFAYETTE

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/24/24

(PLEASE PRINT)

Name: Jan Hassan - Butera

Address: [Redacted] Jackson Heights NY 11372

I represent: SCO Family of Services Close to Home Program

Address: 1870 Schieffelin Place Bk, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Michelle Stutzki, Executive Dir.

Address: 7920 Astoria Blvd

I represent: Doc

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Sherrill Ann Rembert, Assistant Chief

Address: 7520 Astoria Blvd

I represent: DOC

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: James G. ... Deputy Commis

Address: 7520 Astoria Blvd

I represent: DOC

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆