Mayor's Office of Criminal Justice
Testimony to the New York City Council
Committees on Justice System, Criminal Justice,
Housing and Buildings, General Welfare, and Public Housing
"Housing and Reentry"
October 21, 2020

Good afternoon, Chair Lancman, and Chairs Powers, Cornegy, Levin, and Ampry-Samuel, and the members of the Committees on Justice System, Criminal Justice, Housing, General Welfare, and Public Housing. I'm Dana Kaplan, Deputy Director for Justice Initiatives and Close Rikers with the Mayor's Office of Criminal Justice (MOCJ). Thank you for the opportunity to testify about MOCJ's work on housing and reentry.

MOCJ advises the Mayor on criminal justice policy and is the Mayor's representative to the courts, district attorneys, defenders, and state criminal justice agencies, among others. MOCJ designs, deploys, and evaluates citywide strategies to promote safety, reduce unnecessary arrests and incarceration, and improve fairness. MOCJ works with law enforcement, city agencies, not-for-profits, foundations, the public, and others to implement effective strategies that improve public safety, prevent unnecessary incarceration, and build strong neighborhoods that ensure enduring safety. As our country and city continue to grapple with the twin challenges of the COVID-19 pandemic and systemic racism, it is imperative that we examine our services and programs to ensure that we are deploying our city's resources in the most effective and fair way possible. Fairness and equity are paramount to MOCJ's mission, and are integrated into the design and implementation of our services, programs, and analyses.

In the last four years in New York City, we have seen an acceleration of the trends that have defined the public safety landscape in this city over the last three decades. New York City currently has the lowest incarceration rate of all large cities in the United States with an average daily jail population of approximately 4,400 as of October 2020, a 59% decline from the start of the administration and a number that has not been seen in more than three decades. That average daily population has significantly decreased over the last 7 months, due to circumstances surrounding the COVID-19 pandemic. These reductions were the product of the work of many focused on intentionally reducing the jail population while ensuring that crime also decreased. Our commitment to close Rikers Island is also dependent upon continuing to reduce the jail population.

The lightening touch of police and judges has meant that 43% fewer people left jails last year than at the start of this administration and we anticipate that number to fall to ~14,000 by 2026. During this administration, we have seen some encouraging reductions in the return to jail, with re-offending falling to 36%. While this reduction is promising, the numbers of those who return are still too high. We are currently making major investments in services, and

reshaping of the way we deliver those services to ensure they are effective. These investments and their effective deployment will be key in reducing the return rate further.

Stable housing and wraparound services are critical components in reducing the number of individuals who are re-admitted into the criminal justice system. Research shows that individuals who are housed have lower rates of re-arrest than those who are experiencing sheltered or unsheltered homelessness. In addition, for those individuals who cycle in to the jail system most frequently, supportive housing is one of the only evidence-based strategies that has been shown to reduce jail contact and decrease other systems use. A major component of MOCJ's enhanced reentry strategy is expanding access to housing for experiencing homelessness who have contact with the jail system. Current investments provide access to comprehensive community supports, including transitional employment, supportive and transitional housing, and community-based mental health services for justice-involved New Yorkers. I'll elaborate here on some of our core programs that provide these services, including the Justice Involved Supportive Housing program.

Justice Involved Supportive Housing (JISH) was originally funded by the office of the District Attorney of New York (DANY) as a recommendation of the Behavioral Health Task Force (BHTF), convened by MOCJ in December 2014. JISH targets individuals with significant behavioral health needs who continuously cycle through shelter and jail and places them in permanent supportive housing.

As part of the plan to invest in communities and close the jails on Rikers Island, MOCJ-funded transitional housing will expand to 500 beds, ensuring MOCJ will be able to serve approximately 1000 people per year who need housing to avoid detention or incarceration or require stable housing as they transition back to their communities after incarceration. This housing will also provide extensive supportive services, modeled on the existing MOCJ-funded women's transitional housing program. MOCJ currently funds 100 beds of transitional housing through the Fortune Society and its subcontracts, including Samaritan Daytop Village and Abraham House, as well as 55 beds of transitional housing for women and 10 beds of transitional housing for women and their children through the Women's Community Justice Project (6 beds for women through the Fortune Society and the rest through WCJP). MOCJ is currently finalizing a new Transitional Housing RFP for approximately 250 beds in FY22 and scaling up to 500 beds in FY23.

In addition to MOCJ's current and planned transitional and supportive housing programs, COVID-19 has presented our city with an unprecedented challenge, with a sudden and pressing imperative to move people from city jails and other congregate settings into non-congregate settings to help limit the spread of the coronavirus. In order to maximize safety, MOCJ worked with agency and non-profit partners to stand up an entirely new set of services in under-enrolled hotels in NYC. Beginning in late March, MOCJ worked with the New York City Office of Emergency Management and non-profit partner Exodus to provide transitional housing to 40 clients who were serving city sentences but eligible for release to community supervision via

Article 6A of State Corrections Law. These 40 clients were admitted to the LaGuardia Holiday Inn. From there, MOCJ continued to coordinate an increased number of releases of individuals from Rikers Island, many with underlying health conditions which increased their risk of serious health complications from COVID-19, and expanded the eligibility of the hotel program to be for all individuals recently released from State or local correctional facilities who do not have housing. By late July, MOCJ had contracted with three hotels, Holiday Inn LaGuardia Express and Wyndham Garden Fresh Meadows in Queens, and the Wolcott in Manhattan. For each of these hotels, we are utilizing the entire site to provide emergency housing and services for those released from custody. Our non-profit partner Exodus manages the program and provides services to released individuals. Clients are furnished with clothing, hygiene kits, face masks, and cell phones. Exodus arranges health services including medication assistance and enrollment in Medicaid, medical, mental health and substance abuse treatment. Exodus also assists clients with finding stable transitional or permanent housing, and with family reunification. Clients also participate in employment training and placement. Housing Works, another reentry provider in the Jails to Jobs transitional employment program currently provides onsite clinical services, including medical and behavioral health care. Additionally, other Jails to Jobs partners like Fortune Society, Osborne Association, CEO, 100 Suits and Fedcap have all worked together to provide critical elements of the services described above. To date, 507 individuals have been served by our non-profit partners at the reentry hotels.

In addition to services provided to released clients, the programs are also committed to being good neighbors. Exodus maintains open communication with community members, and hosts community meetings in order to provide a forum for community feedback. The program is an example of the extraordinary coordination that we were able to effect during the height of the pandemic in order to promote the health and safety of those released from Rikers at this difficult time. We are deeply proud of this program's success and we are grateful for the support of the Council to help protect lives while also allowing those released from Rikers to stabilize their lives during a time of significant upheaval.

While the reentry hotels are a feature of our COVID-19 response, MOCJ continues to work toward ensuring that the kinds of services that truly help individuals released from custody achieve stability are more consistently available, and offered to as many individuals as possible. MOCJ and the Department of Correction are working together to improve and expand tightly coordinated in-custody services and case-planning, in conjunction with transition and release planning. Upon release, interested individuals will work with a reentry mentor who will help facilitate all aspects of reentry on an individualized basis. The supports provided by this team of service providers will include assistance locating temporary or permanent stable housing, as well as other wraparound resources determined by the specific needs of each returning individual. The reentry mentor will develop relationships with released individuals to encourage participation in relevant services and programs. We anticipate that the case planning and coordination, combined with expanded service offerings and stronger relationships will help to ease the path to a stable life outside of custody and reduce the likelihood of return. We look

forward to implementing these supports along with DOC and our non-profit partners. We expect that the services will come online in January 2021. Awards have recently been made to the following non-profits: Center for Court Administration (CCA), Center for Court Innovation (CCI), Friends of Island Academy, Osborne Association, Fortune Society, Urban Youth Alliance, FEDCAP, Women's Prison Association, Exodus Transitional Community and Housing Works.

Our current re-entry services program, Jails to Jobs, has been operational since April of 2018. Since coming online Jails to Jobs has been providing comprehensive community-based reentry support to individuals leaving DOC custody. As the name suggests, the hallmark of J2J is offering paid-transitional employment to all participants in the program, however J2J is about much more than employment alone. J2J is built around offering reentrants the comprehensive care that can help someone reenter successful, reconnect with community and sustain employment.

COVID-19 has provided unprecedented challenges for J2J providers and participants, with some services being provided remotely since March 2020. However, the J2J community has risen to the challenge, adapted, and remained steadfast in it's commitment to reentrants. We are proud to say that since launch, J2J has achieved the following outcomes:

over 4,500 program intakes

~1,450 transitional job placements

~1,180 permanent job placements

~ 770 job training sessions per month

~1,700 supportive services provided each month, including substance use treatment, mental health and medical care, family supports and housing assistance.

The Mayor has demonstrated his commitment to reducing the justice system's impact on New Yorkers while maintaining the unprecedented improvements in our public safety. Maintaining and ultimately improving the housing and supportive resources available to individuals returning to their home communities from incarceration is a vital component of this work, and MOCJ will continue to work together with our city and non-profit partners to move toward a future where that return home is as seamless and well-supported as possible. While we understand that there are areas of the continuum and procurement process that can continue to be strengthened and are committed to working with our government and community partners towards that end, we are very proud of the progress that has happened to date and the increased funding and prioritization that the City has focused on these critical services. Effective re-entry benefits people coming home from incarceration and their families, as well as the neighborhoods that they return to and all New Yorkers, as we can disrupt the needless cycle of return to jail. Thank you for the opportunity to present this testimony, and I look forward to answering any questions you may have.

Testimony of the New York City Department of Housing Preservation and Development
Regarding Introduction 1760
October 21, 2020

Good morning, Chairs Cornegy, Powers, Lancman, Levin and Ampry-Samuel, and members of the Committees on Housing and Buildings, Criminal Justice, the Justice System, General Welfare and Public Housing. My name is Sarah Mallory and I am the Executive Director of Government Affairs with the New York City Department of Housing Preservation and Development (HPD). Thank you for the opportunity to testify on housing re-entry services and Introduction 1760 sponsored by Council Member Levine.

Just yesterday, Deputy Mayor for Housing and Economic Development Vicki Been released the final Where We Live NYC Plan, the City's blueprint for fair housing in the five boroughs. The plan is a culmination of a two-year planning process led by the Deputy Mayor's office, HPD, the New York City Housing Authority (NYCHA), and more than 30 City agencies. Where We Live NYC is the City's five-year plan to break down barriers to opportunity and build more integrated, equitable, and inclusive neighborhoods. Updated to reflect the disproportionate impact the COVID-19 pandemic has had on low-income communities of color, the plan includes enhanced metrics, strategies, policy proposals, and new priorities to address a legacy of housing segregation and build a more inclusive city. In this plan, the City advocates for increased policies designed to minimize the disproportionate impact that criminal records-based barriers pose, especially for people of color, while meeting the needs of New York City's diverse housing stock.

Even before the Administration's Where We Live NYC effort, HPD has always been tasked with creating safe, affordable housing and, under this Administration, we are especially committed to providing such housing opportunities for the most vulnerable New Yorkers. This is why we have taken additional steps to make our affordable housing application process fairer for formerly incarcerated New Yorkers and reducing barriers to access affordable housing. For example, since 2015, HPD has dramatically reduced allowable credit history criteria for housing applicants in our City-financed portfolio, prohibited home visits as criterion for resident selection, and ensured arrests that did not result in a conviction were not used against a housing applicant for any reason. We continue to evaluate our marketing guidelines and work with our partners in this area, as my colleague at the Mayor's Office of Criminal Justice noted by most recently partnering with the Department of Health and Mental Hygiene who released the Justice Involved Supportive Housing (JISH) RFP in December 2019 as a commitment to expand access to housing, including supportive housing, for people with a history of involvement with the criminal justice system. Supportive housing is one of HPD's best tools to meaningfully address the needs of people living on the street or in shelter with serious mental illness and/or substance use disorder who may also have a history of criminal justice involvement, by creating low barrier entry to high-quality, affordable, permanent housing. HPD also requires units in certain City-

financed affordable housing projects be set aside for formerly homeless individuals. With the Council's support, HPD has been providing homeless housing at a faster rate than ever before by building or preserving nearly 13,000 homes since 2014. We are grateful to the Council and Speaker Corey Johnson for their leadership on this issue.

In regards to Int. 1760, the de Blasio Administration has also made protecting tenants a core part of its strategy to confront the affordable housing crisis, and has worked in partnership with the City Council and various branches of government to tackle the issue with a comprehensive, multi-pronged approach. As a City, we are focused on keeping people in their homes and neighborhoods by creating and preserving historic numbers of affordable homes, empowering tenants with more resources, aggressively enforcing City codes, successfully advocating with many members of the Council to close loopholes in rent regulation laws at the State level, and utilizing all of our partnerships to create data-driven, innovative tools targeted at stopping harassment before it starts.

Physical security is an important part of ensuring that residents feel safe in their homes. Currently, HPD can and does issue violations for building entrance doors and individual unit doors without lock sets in rental buildings, or those with only electronic entry mechanisms. Intro 1760 would require owners of multiple dwellings that utilize keyless entry systems to provide tenants with a data retention and privacy policy, establish restrictions on the collection and use of data from such systems and from tenants' usage of utilities and internet services, including requiring consent from tenants to use such information, restricting the sharing of such information with third parties, and requiring that any data collected be destroyed within a given time. While the Administration supports the goal of protecting tenant data and this bill's requirement that owners provide tenants with a data retention and privacy policy, we encourage further conversation with other relevant partners in government to understand the best privacy practices and operational necessities this bill would require. HPD does not currently, nor would it alone, have expertise in privacy, data retention, and enforcement practices for violations. This type of initiative would need further assessment with the City's Chief Privacy Officer and other relevant City officials to identify the appropriate enforcement mechanisms and relevant expertise.

Thank you again for the invitation to testify and for hearing this bill today. I look forward to answering any questions you may have.

PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

**TESTIMONY OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE NEW YORK CITY COUNCIL COMMITTEE ON HOUSING & BUILDINGS, COMMITTEE ON JUSTICE SYSTEM, COMMITTEE ON GENERAL WELFARE, COMMITTEE ON PUBLIC HOUSING, AND COMMITTEE ON CRIMINAL JUSTICE - HEARING
OCTOBER 21, 2020**

Good afternoon,

My name is Jumaane Williams, and I am the Public Advocate for the City of New York. I would like to thank the Committee on Housing & Buildings chair Robert Cornegy, Committee on Justice System chair Rory Lancman, Committee on General Welfare chair Stephen Levin, Committee on Public Housing chair Alicka Ampry-Samuel, and Committee on Criminal Justice chair Keith Powers for holding today's hearing.

Housing is a major and pressing issue for New Yorkers today. From mid-July to September, about 23.5 percent of renter households could not keep up with the previous month's rent. For communities of color, it is worse. Black, Latinx, and Asian households reported higher rates of housing insecurity than white households over the same time period. Additionally, at a joint Committee hearing on September 17th, we heard from several people in public testimony that a flood of eviction cases may come if the state's moratorium was not extended and that more action was needed. The City and state must act to prevent the housing crisis from getting worse.

The bill by Councilmember Levine before the Committee is sensible. The legislation would ensure privacy and restrict data collection for keyless entry systems. Tenants who use these technologies in dwellings may not fully know their rights or whether their data is collected at all. Data may be sold because of use of these systems without the tenant knowing. I support the bill as it provides protections for tenants, which is what I fought for in and outside the Council.

I also agree with the need to focus on housing and re-entry for persons who are being released from custody. People who serve time and are released from jail have their lives frozen in place when applying for jobs or seeking housing. The barriers to the formerly incarcerated can cause long-lasting impacts. I recommend reviewing my legislation, Intro. No. 1881, amid today's discussion. Finding housing, obtaining benefits, or a job often requires identification. The legislation would mandate that the Department of Correction assist those who are incarcerated by obtaining school transcripts, social security cards, and driver's licenses upon request. DOC does not keep data on people who leave jails without their ID. Without an ID, people who leave jail

have their options limited and may even return to jail. This needs to be immediately addressed, and I suggest Intro. No. 1881 as a solution to this issue..

I welcome NYCHA's decision to ease its application process that prioritizes re-entry for people returning from jails and prisons with a committee review of applicants with records. In addition, the plan to add a minimum age for exclusion to the restrictive permanent exclusion program is a start. Permanent exclusion functions as a collateral consequence for persons who pose no threat to the NYCHA community and their families, and merely serves as a hindrance for those returning who need housing. We know that the shelter system is overburdened, and with COVID-19 infection rates at Rikers being far higher than the general public, there is a need to address where people go once they're released. Being able to reconnect with family and existing support systems decreases the likelihood of recidivism and improves a person's ability to make positive changes in their lives. This should be a top priority of our City and this administration.

With that said, we need other ideas. I suspect today's public testimony will have communities desiring more, and I agree. We need to remember those who do not have housing. I am particularly concerned about people in hotels who are facing protests over their status. I agree with the Administration's decision to use hotels as temporary housing for those who would otherwise be in homeless shelters to reduce the spread of COVID-19. What has been disappointing to see are protests and fear used against these people. The idea of re-entering society is simple. We need to see people succeed, not be set up for failure. In the case of re-entry, failure means poverty or returning to jail or prison. No one wants that.

The administration was smart in using hotels to house people who are homeless. It made sense as advocates requested this. I am glad that this policy will be extended for another six months as we remain vigilant over COVID-19. But now is not the time to cave to NIMBYism protests. People without housing should not be excluded because of their status. We need officials to stand by them and work toward solutions.

Back in June, I published the Systemic Inequity Preliminary Response and Recovery Report. In it, I detail ideas for housing equity and homelessness. One idea is for HPD to identify vacant and abandoned buildings to convert into permanent long-term housing. Back in 2018, my bill, Intro. No. 1039, became law. The law gives the agency authority to identify vacant buildings and lots. Therefore, why not move forward on this idea?

I again stress that we need to prioritize re-entry as a successful program in relation to housing. As lawmakers, we have the ability to make a difference. The legislation before us among other

ideas presented are examples of what could and must be done. I thank the chairs for the hearing, and I look forward to today's testimony. Thank you.

RSA

RENT STABILIZATION ASSOCIATION • 123 William Street • New York, NY 10038

INTRO. 1760

The Rent Stabilization Association represents 25,000 owners and managers who collectively manage over one million units of housing. We thank the Committees for giving us the opportunity to testify on behalf of our members on Intro. 1760 of 2019, which limits the use and retention of data collected through the deployment of smart access systems in multiple dwellings.

While the adoption of keyless entry systems is beneficial to tenants and owners alike for many reasons, most significantly for ease of use and increased security, there is no question that the personal data obtained to effectuate this system needs protection. Any misuse or exploitation could prove detrimental to the tenant and appropriate restrictions on its use as part of a regulatory scheme is a necessary protection for individual privacy rights.

Int. 1760 would establish restrictions on the collection and utilization of data obtained from the use of keyless entry systems, including but not limited to key fobs, biometric identifiers and electronic technologies. It delineates between reference data – used to establish identity - and authentication data - electronic records that record the tenant's use of the keyless entry system - and establishes timelines for retention and use of the data obtained.

Once a tenant has consented to the collection and retention of reference data, this information can be retained through the tenancy's duration, after which the owner would be required to destroy the data within 90 days. Authentication data must be destroyed within 90 days. Additionally, it limits utility data collection solely to a tenant's monthly usage.

It also enumerates prohibited collection purposes and functions. These prohibitions include: the sale, lease or utilization of data except for subpoena, court ordered warrant or other court processes; location tracking; reference of minors except with parental permission; to obtain information on the relationship status of tenants and guests; frequency and time of use by tenants and guests; and to obtain refence data for a non-tenant except as authorized by the tenant. Any violation of this law is subject to a $6,000 fine.

While we agree that some of these restrictions are necessary and appropriate such as the destruction of reference data after a tenancy cessation, limits on sale and lease of data, location tracking, and minor's data without consent, others pose a limit on the legitimate collection and retention of meaningful data that can be appropriately used. For example, capturing and sharing energy usage facilitates the energy benchmarking that is required by Local Law 97, The Climate Mobilization Act, which requires extensive environmental modifications in order to achieve the City's mandated environmental goals. Aggregated use of this data is crucial for reduction analysis and meeting future targets.

Among the prohibitions contained in the legislation, Section 27-2061.7(5) would make it unlawful to "collect information about the frequency and time of use of such system by a tenant and their guests."

The ability to investigate and uncover the existence of illegal short-terms rentals, sublets, and other illegal activities being conducted within a building requires a landlord to access the data and evaluate who is accessing the units in question. Landlords have a duty to protect the safety of a building's legal residents and a blanket prohibition on data use would hamper a landlord's ability to investigate such matters. Data should be allowed to be legitimately collected for investigations into illegal activities and uses. This limitation jeopardizes the ability to fully protect the legal building residents.

In addition, restricting authentication data retention to 90 days restrains a landlord's capacity to manage and engage in legitimate legal proceedings such as a holdover action. Information needed to build a case or important data relevant for a filed action could be mandated for destruction before a court order could be obtained.

Being able to determine occupancy issues requires that an owner- as well as a court- to see usage of an apartment over an extended period of time, extending well more than 90 days; lesser amounts of time could be aberrational. This would include, for example, whether a tenant actually occupied their apartment, whether the apartment is being used for Air BnB-type uses and whether unauthorized third parties have taken occupancy. In non-doorman buildings, utilization data may be the only way for an owner to prove or for a tenant to disprove such allegations. An extreme example is occurring right now during this time of Covid as court actions are suspended; the valuable evidentiary information that is necessary for proceedings could not legally exist once court actions resume under the structures of this law.

Another situation in which the destruction of collected data would hamstring both parties is when residency or succession to a regulated lease is in dispute. The best evidence for either party would no longer exist. It would be more difficult for tenants to prove their rights and for landlords to dispute such entitlements.

Among the current provisions there are also some points that need further clarification. In §27-2051.7(4) it is unclear what it encompassed by "relationship status of tenant and their guests" and what privacy protection it is attempting to afford. Without understanding what it is trying to protect It is difficult to assess how one might violate this vague provision.

The penalty provision necessitates further elaboration. Set forth in §27-2051.9, it states "[a] person who violates any provision of this article shall be liable for a civil penalty of not more than $6,000 for each violation." What constitutes a violation? Is it a single penalty for an owner to keep the data for a period exceeding 90 days or a penalty for each day beyond, for each prohibited use or prohibited use against each tenant?

Thank you for your consideration.

The Real Estate Board of New York to

The Committees on Criminal Justice, Justice System, General Welfare, Public Housing, and Housing and Buildings of the New York City Council Concerning Int. 1760

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY thanks the Committee for the opportunity to testify on legislation that would regulate the collection and retention of data associated with smart access systems in multiple dwelling buildings.

REBNY understands there is widespread concern about personal data and privacy. From social media hacking to sales of personal data to data breaches, technological advances have made individuals' sensitive information available for misuse. Because of the gravity of the concerns, REBNY supports efforts to develop an appropriate regulatory regime and appreciates the opportunity to help do so in the City of New York.

Many buildings have chosen to install smart access systems and have done so out of the interests of their tenants. These systems offer increased security, improved customer service, and greater efficiency. It is therefore important that the regulation of such systems strikes the correct balance in upholding privacy and data concerns while not undercutting the value of such systems, particularly in their ability to offer a safe living environment.

BILL: Int. 1760-2019

SUBJECT: A Local Law to amend the administrative code of the city of New York, in relation to tenant data privacy.

SPONSORS: Council Members Levine, Kallos, Torres, Rivera, Brannan, Cabrera, Rosenthal, Menchaca, Reynoso, Cornegy, Chin, Ampry-Samuel, Holden, Louis, Richards, Lander, Koo, Maisel, Rose, Constantinides, Ayala, Gibson, Grodenchik, Powers, Moya, Adams and Koslowitz

Int. 1760 would require owners of multiple dwelling buildings that use smart access systems, including but not limited to key fobs or biometric identifiers, to provide residents with a data collection, retention, and privacy policy. The bill would restrict the collected data to that which is necessary for confirming right of access to the property. It would also require the properties to receive consent from tenants to use such

Important Note

systems, regularly destroy the collected reference data, and restrict the sharing of data with third parties without consent.

REBNY shares the Council's concern for transparency and consent in the collection of any personally identifiable information as well as the policies governing the data retention. Protecting residents' privacy is a critical component of ensuring an equal and safe place to live. To that end, however, we encourage Council to consider how some provisions of the legislation could be improved.

Current bill language states that "a smart access system to collect information about the frequency and time of such system by a tenant and their guests" would be restricted. While REBNY respects residents' right to come and go freely and without observation, this clause limits the usefulness of smart access systems. Specifically, by preventing the collection of information about tenants and guests' frequency and timing of entry, it would significantly hinder an owner's ability to investigate illegal short-term rental operations. Such investigations are normally prompted from a complaint of a full-time resident. Out of an obligation to community safety as well as the City's law, building management will use the access data to help determine who is entering the building and if that person is legally authorized to be there. To better protect the building residents and enforce City law, Council should create an exception to this proviso that allows an owner to utilize the data to investigate in good faith – and consistent with existing protections for tenants relating to retaliation and harassment – lease violations relating to primary residency, illegal short-term sublets/hoteling, illegal conduct, subpoenas issued by law enforcement, insurance claims, etc.

The bill also establishes a restriction on the collection and use of data collected from tenants' utility usage and would require consent from tenants to use such information or share it with third parties. As the Council is well-aware, sustainability is central to the real estate industry and many companies have set ambitious climate goals. To manage their progress, however, it is essential buildings be able to measure energy use. As written, the bill will meaningfully limit owners' ability to drive ESG initiatives where the information is tied to energy use in dwelling units. The utility use information is typically shared with third parties with all personal associated data redacted, in order to analyze building performance and help orient plans for better environmental outcomes. To ensure that legislation not undercut any building's environmental goals, it should provide an exemption for the sharing of utility information with third parties, provided that it is void of all personally identifiable information and shared only with the intention of providing greater understanding of the building's environmental profile.

Another point for consideration is that the bill states that ownership of the authentication data remains to the tenant unless also granted to the owner by the tenant. It is important to note that much of the data covered is not maintained by the management company or the building but is embedded in applications set up by the resident, the vendor, or the vendor's contractor. While the data is owned by the tenant and their landlord, with consent, it is stored and maintained by those service providers and data processors. To better ensure the protection of individuals' data and privacy, the legislation could be strengthened by making the data management companies' responsibility more explicit. We offer the following suggestion:

> "§ 27-2051.7 Prohibitions. a. It shall be unlawful for any entity that collects, stores, maintains or processes data pursuant to section 27- 2051.6…."

This slight amendment will clarify that the protection and retention policy for data is not solely the responsibility of the property owner and explicitly extends the same obligations to any company that is granted access to the data.

Important Note

Thank you for the consideration of these points.

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Important Note

New York State NURSES ASSOCIATION One strong, united voice for nurses and patients

New York City Council Committee on Contracts

Oversight Hearing:
Sourcing Local Personal Protective Equipment
for the Next COVID-19 Wave or a Future Pandemic
Thursday, October 22, 2020

Testimony of the New York State Nurses Association
Presented by Judy Sheridan-Gonzalez, RN, President

Background

My name is Judy Sheridan-Gonzalez and I am the President of the New York State Nurses Association. NYSNA is the largest union of registered nurses in NY State, and we represent more than 20,000 nurses working in NY City-area hospitals.

There is no question that frontline healthcare workers went into battle last spring lacking the tools needed to provide quality care for patients while keeping themselves, their coworkers, families and communities safe from the virus. I know because I was there. In my hospital there was no safe zone. Between symptomatic COVID-positive patients and those not showing symptoms but shedding and transmitting the virus, we were from bottom to top, from front to back of the house, exposed.

You wouldn't ask firefighters to run into burning buildings without equipment and proper safety gear. But that is what we asked of bedside healthcare workers. Of course we fought for proper protection: a minimum of an N95 respirator for every care session as required for proper infection control, negative air pressure and better ventilation in the rooms, and enough gowns and face shields.

What we got was far short of proper protection. N95s were rationed to one per week or every 2 weeks. We won the right to one new N95 a shift, at best, worn between many different patients and care sessions – an infection control nightmare that, at any other time, would lead to worker discipline if you were caught doing it. In some hospitals – not mine – we won some measure of improved ventilation and the use of negative air pressure to protect hospital employees and other patients.

Failures and Shortcomings of the Federal and State Response to PPE Supply

NYSNA and other nurses unions loudly sounded the alarm about the acute shortages of PPE in our hospitals and demanded strong Federal action to invoke the powers of the Defense Production Act to ramp up the production of PPE (N95 respirators, surgical masks, impermeable gowns, face shields and other PPE supplies that were in critical shortage). Sadly, calls for use of the Defense Production Act fell on deaf ears at the Federal level.

At the state level, efforts were made to obtain PPE supplies, but these efforts were in some ways haphazard and not fully effective. The supplies of PPE remained inadequate and there was a lack of clarity about how the sufficiency of supplies was defined. The State frequently implied that PPE supplies in the hospitals were adequate, but these assertions were often based on protocols that relied on the extended use and res-use of disposable equipment and relaxed infection control standards that were driven by supply shortages rather than good medical and scientific standards.

Another problem was that the inadequate PPE supplies were also unequally distributed within the hospital system. Some hospitals were able to leverage better organizational connections and financial resources to obtain supplies for their systems, but in many safety-net hospitals, the public NYC H+H system, long-term care facilities, and home care programs, all of which had fewer resources, PPE supplies were never adequate.

And while many non-profit agencies stepped in to some degree to help alleviate the PPE shortages being experienced on the front line, there were precious few steps taken towards expanding the range of respirators available, and little sustained encouragement of local production of PPE and organized distribution of PPE supplies based on local needs.

NYSNA Recommendations

The key to effective emergency management is to learn from past shortcomings and mistakes. We've learned a lot from COVID19 Round One. Now we need take what was learned and use it to be better prepared for Round Two and beyond. We have that chance during this window of time by making sure that our plan for respirators is more resilient, more effective, more cost effective and safer for everyone involved.

One way to do that is to expand the array of respirators available – especially ones that are designed to be worn for extended periods of time and can be safely cleaned and reused.

This is where elastomeric half-face respirators come in. Elastomeric respirators provide better infection control than reused disposable N95s. They also typically fit better and, with the increase in prices of N95s during the COVID crisis, make more sense financially. In fact, according to a recent article in the Journal of the American College of Surgeons, using elastomeric respirators costs at least 10 times less per month than disinfecting and reusing N95 masks meant to be for single use

It is critical that elastomerics become part of the surge plan for all of our healthcare facilities, otherwise it will be "Déjà vu all over again," to quote a famous New Yorker.

Every elastomeric respirator used eliminates the need for hundreds or thousands of N95s. If we do the math –and the safety – right, a single nurse should be using 20-30 N95s per shift. Multiply that by the staff needed in a busy ICU or Emergency Department and we have saved thousands of N95s just on one shift. Multiply that by many units and shifts and hospitals, and we have eased the pressure tremendously on the need to source and deal with tens of thousands of N95s that are in short supply.

PPE Supplies and Stockpiles

Our current stockpiles of N95s are insufficient and our over-dependence on N95s a weak link in emergency planning. The 90-day supply mandate from NYS, and dependence on N95s, is terribly flawed in key ways:

- It is based on burn rates during the height of the crisis in April, when healthcare workers were forced to reuse disposable, single-use equipment, often for a week or more – or go without.
- It has meant that meanwhile staff are doing without proper respiratory protection, often, because facilities are "saving it" in order to maintain their 90-day supply.
- It has twisted some systems into contortions, resorting to suspect N95 "reprocessing schemes" that are costly, not proven to be effective and safe and complicated to operationalize.
- Last, but not least, not only do we have no evidence that the national Defense Production Act has been used to boost the supply of N95s, we can see clearly that the spread of the virus across the U.S. and the world has led to even greater demand and, consequently, shortages. Add the need for respirator protection due to the climate change driven fires, and demand far exceeds what can be provided.

Expand Local Production, Procurement and Distribution of Re-Usable PPE

Elastomerics are one way to get off the N95 treadmill – or at least reduce the pressure while improving safety. We are not suggesting a total sea change – dump all N95s, replace with elastomerics, even though some health systems have done so. But if every facility in the city incorporated elastomerics into their PPE plan, it would reduce the need for N95s significantly during future surges of the virus.

Recently, the National Institutes for Occupational Safety and Health (NIOSH) recognized this, creating a program that will distribute a couple hundred thousand elastomeric respirators, free of charge, to facilities willing to evaluate their use. And many facilities are already incorporating them into their PPE programs, including:

- Interfaith, Brookdale, Kingsbrook and Brooklyn Hospital Center in New York City;

- University of Maryland Medical Center;
- Allegheny Health Network in western PA;
- The Bronx VA Hospital; and
- Texas Center for Infectious Disease.

We need to follow their example and expand on this, STAT. We need to get this equipment built into all stockpiles – state, city, large facilities and small. We need to develop the means to increase PPE production right here in our backyard.

NYSNA is committed to help make it happen, but it will take action by political, community and emergency response leadership to move it ahead at this critical time.

Testimony NYCHA

I am a long-time resident and I have previously testified at hearings concerning domestic violence survivors. for women who have escaped their abusers, many relied on shelters to be safe from their batterer. At that time, NYCHA asked for two orders of protection instead of one. There is a complicated process for Orders of Protection. To obtain another order of protection is re-victimization. I am a founding member of Voices of Women Organizing Project, and we held a campaign to protest this policy as women were dying for housing. However, the safety and availability of affordable housing is still an issue. Reunification of families impacted by the criminal justice system has also been burdened by the policies that deny people housing based on criminal records both in NYCHA and in Private housing. This injustice still prevails for men and women who have been incarcerated and have lost their housing as a result. Their ability to apply for safe and affordable housing has led them to shelters. The stringent criminal record requirements of both NYCHA and Private Landlords have created homelessness.

The right to housing has unjustly been denied due to criminal history. The opportunity to live in a safe environment and gain employment is denied as well. It's sad to say, but some incarcerated people returned to criminal behavior. The Justice System is to blame. Therefore, the jails and prisons become a revolving door. The remedy is the Fair Housing Act- it is a Light for incarcerated individuals, it prevents the darkness of the justice system. But this Act will only change private housing policies- NYCHA must follow suit.

I just want to clarify. Where it says at the time, NYCHA has requested two orders of protection. NYCHA required evidence of being physically abused twice (we would say being beaten twice at that time) and an order or protection document they would accept, if a survivor had two orders

of protection and both were not a year old then they met the requirement to apply for housing under DV priority. If the survivor did not have an order of protection they had to get other acceptable documentation, which was not always easy and created limited housing options.

“Now is the time to raise your brow, bring awareness to accountability, to transparency, to authority and question policies”

Testimony of

Kingsley Rowe

Forensic Social Worker, Reentry Unit

New York County Defender Services

Before the

Committee on Justice System

Jointly with the Committee on Criminal Justice, Committee on General Welfare,

Committee on Public Housing and the Committee on Housing and Building

Oversight Hearing – Housing and Reentry (Remote Meeting)

October 21, 2020

My name is Kingsley Rowe. I am a forensic social worker in the reentry unit at New York County Defender Services. NYCDS is a public defender office that represents people in thousands of cases in Manhattan criminal courts every year. I have been helping people to reenter their communities after incarceration since 2006. In my current role at NYCDS, I support our clients leaving Rikers Island and other city jails. The largest challenge facing our clients is housing. I am pleased to testify today about steps that City Council should take to support returning citizens.

In addition to nearly 15 years of social work reentry experience, I am also a person directly impacted by the criminal legal system. I strongly believe that access to safe housing was crucial to my subsequent success and ability to gain my social work degree, pursue my chosen career, and start a family.

Unlike many of our clients, when I was released from my prison, I had a safe place to go. My father owns his own home and he invited me to come live with him while I got back on my feet. I had my own room and the support of my family as I entered the job market and went back to

school. Fortunately, unlike most New Yorkers returning from jail or prison, I obtained my associate's degree while incarcerated. This meant that when I returned home, I already had a leg up in my job search. I also applied and was accepted to New York University where I received my undergraduate and social work degrees. During my first year at home, I lived with my family rent-free. This gave me the peace and safety to reacclimate, find my footing, and ultimately pursue my goals. But for most of our clients at NYCDS, this option is not available to them.

Lack of Affordable Housing

The number one barrier to successful reentry in New York City is affordable housing. This is the biggest problem that I see with our reentry clients, and the problem that it most difficult for me to support them with. Almost all New Yorkers, aside from the wealthy, struggle to access affordable housing. Access is even more difficult for people returning from jail or prison who have no savings and a criminal record. Investing in housing for people returning from jail and prison is not just the right thing to do, it will also make all of our communities safer. When people have safe and secure housing, employment and education they are better equipped to avoid future criminal legal system involvement and pursue their own ambitions. Forcing homelessness, poverty, and exclusion from mainstream society on our returning citizens only makes it less likely that they will succeed. City Council can start addressing reentry and housing issues by putting in place policies that make housing more affordable for all New Yorkers, including rental subsidies, building new housing, and supporting and improving NYCHA housing.[1]

Supportive Housing and ACT Teams

Supportive housing is permanent, affordable housing in which support services are offered on-site to help homeless, disabled and low-income people live independently in the community.[2] A 2015 study by Dr. Ross MacDonald and other doctors from NYC Correctional Health Services followed the people most frequently admitted to city jails and found that tailored supportive housing was the most effective way to stop the revolving door of incarceration for high-needs individuals.[3] Yet supportive housing remains severely underfunded. It's estimated there are four potential new residents for every opening in supportive housing in our city.[4] Assertive Community Treatment (ACT) Teams also play a crucial role in supporting high-needs New Yorkers but are not available to all of our clients who need them.[5] New York City must increase the number of supportive

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[1] *See, e.g.,* Alex Schwartz, "The Daunting Math of Solving New York's Housing Crisis," The New School Center for New York City Affairs, Jan. 29, 2020, available at http://www.centernyc.org/the-daunting-math-of-solving-new-york-housing-crisis; NYU Furman Center, *Housing for an Inclusive New York: Affordable Housing Strategies for High-Cost New York*, available at https://furmancenter.org/nychousing/housinginclusiveny.

[2] Supportive Housing Network of New York, "Supportive Housing FAQs," available at https://shnny.org/supportive-housing/faq/.

[3] Ross MacDonald et al, "The Rikers Island Hot Spotters: Defining the Needs of the Most Frequently Incarcerated," 105 *Am J Public Health* 2262-8 (2015), available at https://pubmed.ncbi.nlm.nih.gov/26378829/.

[4] Jarrett Murphy, "Housing for NYC's Most Vulnerable Under Scrutiny for 'Screening,'" *City Limits*, July 5, 2018, available at https://citylimits.org/2018/07/05/debate-about-whether-nyc-housing-for-the-most-vulnerable-rebuffs-some-who-need-help/.

[5] Assertive Community Treatment (ACT) teams include mental health and substance use professionals and, at times, peer specialists. ACT teams typically meet with clients six times per month in their home or community to provide long-term behavioral health treatment, including medication. *See* Mayor's Office of ThriveNYC, Assertive

housing beds and ACT Teams available to support the most vulnerable New Yorkers. Even in a fiscal crisis, we must continue to fund existing beds and bring more beds online.

Reentry-specific Housing

NYCDS clients who do not qualify for supportive housing or other specialty housing are in some ways even worse off then clients who do. For the average person leaving Rikers Island who does not have an SMI or substance use disorder, there is no safe transitional housing available outside of the city's notoriously troubled shelter system. Returning citizens without these specific needs still require additional support – the kind of support that I benefited from during my return. Fortune Society's Academy (aka The Castle) is the model for supporting people returning from jail and prison.[6] But there is simply not enough reentry housing in New York City, particularly for people without SMI or substance use issues. The City Council must invest in more.

Phones Upon Release from City Jails

A related but equally critical problem for NYCDS clients leaving Rikers is access to a cell phone. These days a cell phone is necessary for anyone looking to find a job, housing, or access education. Now because of COVID-19, more aspects of life have gone virtual, making it even more crucial for our clients to have a phone. They need phones with video capability to attend court appearances or classes, do telehealth visits, attend AA meetings, and submit paperwork.

During the early days of the pandemic, the Mayor's Office of Criminal Justice provided free phones to people being released from city jails. These phones were a lifeline for our clients while the city was on lockdown, allowing them to access services and stay in contact with their defense teams. Yet when the new fiscal year began in July 2020, the MOCJ funding for phones dried up. Clients who are being released now are not receiving free phones. This makes it difficult to impossible for me to contact clients who don't have a family member or friend from whom they can borrow a phone.

Solving the city's housing crisis is not likely to happen in the next six months. But City Council can reinstate funds to ensure that every person leaving a city jail is provided a free phone to facilitate their re-entry, as they were given during the height of the pandemic. Ideally the phones should be smart phones preloaded with zoom and Microsoft teams (the app used by the courts) to allow people to use the phones in lieu of in-person court appearances or in-person mental health or other social service appointments. It costs the City $460 to incarcerate a person for a single day on Rikers. An entire year of city jail incarceration costs more than $337,000 per person. For less than $100, we can put a phone in the hands of every person leaving jail to facilitate their reentry and hopefully prevent future incarceration. The free phones program piloted by MOCJ from March-June of this year was a success. The City Council should fully fund this program going forward.

Community Treatment Teams, available at https://thrivenyc.cityofnewyork.us/program/assertive-community-treatment-teams-act.

[6] Learn more about all of Fortune Society's reentry services, including The Castle, at www.fortunesociety.org.

Recommendations

NYCDS offers the following recommendations to facilitate a successful reentry for people leaving city jails:

1. Work with public defenders, the NYPD, the Mayor's Office, the District Attorneys' Offices and community groups to decrease arrests, eliminate pretrial detention in most circumstances, and support alternatives to incarceration programs. We can eliminate or significantly reduce reentry housing needs by sending fewer people to jail or prison.

2. Fully fund supportive housing, ACT Teams and reentry housing programs like The Castle to ensure that people returning from jails and prisons have a safe place to live.

3. Pass all 7 housing related bills that were on the agenda before the Committees on General Welfare and Civil & Human Rights in September 2020. Those bills include: Intros. 2020-146, 2020-1020, 2020-2018, 2020-1339, & 2020-2047; T2020-6576 and T2019-4051. You can read our complete testimony in favor of those bills on the NYCDS website.[7]

4. Ensure that every person leaving city jails is provided a free cell phone to facilitate their reentry.

If you have any questions about my testimony or New York County Defender Service's re-entry work, please email me at krowe@nycds.org.

[7] Testimony of Yamina Sara Chekroun, NYC Council Committees on General Welfare and Civil & Human Rights, Sept. 15, 2020, available at https://nycds.org/wp-content/uploads/2020/09/NYCDS-Council-Testimony-9.15.20.pdf.

Committees on Housing and Re-Entry

By Directly impacted community member Victor M Herrera

Intro T2020-6472 Oversight Rental Assistance and Source of Income Discrimination

Intro 0146-2018 Rental Assistance Vouchers (Stephen T. Levin)

Intro 1020-2018 Track and Report Certain Data rental assistance Programs (Alicka Ampry-Samuel)

Intro 1339-2019 Information lawful source of income discrimination City Rental Applicants (Diana Ayala)

Intro 2047-2020 Prohibiting Housing Discrimination on the basis of arrest or criminal record (Stephen T. Levin)

Intro T2019-4051 Prohibition against discrimination in housing accommodations based on lawful source of income. (Keith Powers)

I am a directly impacted individual who spent 12 years incarcerated and 3 years in the Department of Homeless Services inadequate shelter system, advocating for changes on the treatment of individuals seeking permanent housing, forced to entertain the highly structurally oppressed policed shelters that manifest the serious trauma each and every individual is subjected to no different than those found in a Correctional Setting. While in the Shelter system, including 30th Street Men's Shelter, I was criminalized and subjected to unlawful use of practices under the guise of Reporting of Emotionally Disturbed persons by the DHS Police on account of my reform activities and have provided previous testimony on the subject of housing discrimination. Many of the discrimination faced by the Homeless and formerly incarcerated are three-fold, Mental Health discrimination, Criminalization and the use of Homeless Status income-based discrimination to keep the economically challenged from equally benefiting from the programs as enforced.

As NYCHA reconsiders its criminal justice policies, it is also imperative that NYCHA remove any blanket exclusions based on arrest or conviction records. These policies only serve to prevent people from accessing housing as a Human right, and do not improve public safety. People with convictions are being diverted to Shelters in record numbers by the Department of Corrections and the Division of Parole on account of their criminal records steadily increasing the homeless. The re-entry programs as slated are not sufficient to meet the actual need to reducing the homeless if the city continues to hamper by the waste in funding programs that have failed repeatedly with no assistance in reducing the numbers. Too much of the resources and investments are being put into not-for-profits in shelter services yet with no true impact on housing being met. Individuals can spend years in shelter under the NYCHA practices in which recidivism would be high in as much as transitional remedies in place fail. I have yet to hear any real serious solution from any of the agencies providing testimony here. It is clear that housing is a Human Right.

Changes cannot occur if we continue to deny those human beings' economic equality with programs that are truly intended to work. The biggest disadvantage to housing is the discrimination in forms that include past criminal history and to ignore it will only create additional difficulties in housing the homeless community. The growth in homelessness is presently the problem of the City in allowing these policies to keep individuals from housing (I don't mean shelter) intended to house the homeless and risk of homeless individuals and collectively the need to pass the Bills is the only solution to remove the stigma of which many of us have been subjected to in violation of the Equal Housing and Opportunity Act.

Thank you.

Best and Warmest

Victor M Herrera
Leader and Member
Freedom Agenda Urban Justice

Dear Housing Committee,

The death rate on the NYCHA side of the Rockaway peninsula in Queens is 6 times greater than the non-NYCHA side (recent RPA study). I have been a thoracic surgeon in East Harlem for over 10 years and have had to remove people's lungs because of mold contamination in their homes. This is happening throughout the city.

The voices of the community have voraciously raised the issue of unsafe living conditions for quite some time now but it always seems to fall on deaf ears. NYCHA residents have not seen any recent advances in remedying their unsafe living conditions. The number of lung cases because of poor NYCHA housing living conditions is rising with each passing year. A greater number of people are getting sick, some will require preventable surgery, and some will die unnecessary deaths. There is an urgency with regard to time, yet every year yields worse conditions and more sick patients.

We need legislation and action NOW. The people who live in NYCHA keep going to work every day to protect our city as COVID attacks us. Yet their living conditions predispose them to contracting COVID and dying from it.

Your pen can save more lives than my scalpel.

Please note I just gave a seminar with the NYC public advocate on this topic 2 months ago. I cite the pertinent studies. The link is below. My presentation, with pictures of the NYCHA living conditions, starts at the 5:30 period and lasts about 10 minutes.

https://www.facebook.com/726983121049640/videos/1213292195674058/?__so__=channel_tab&__rv__=all_videos_card<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.facebook.com_726983121049640_videos_1213292195674058_-3F-5F-5Fso-5F-5F-3Dchannel-5Ftab-26-5F-5Frv-5F-5F-3Dall-5Fvideos-5Fcard&d=DwMFaQ&c=shNJtf5dKgNcPZ6Yh64b-A&r=rKd-AkZCCqLmJ5t92Ax1lq8sdkpuNduozvc_d_W2jt8&m=JEzjAtEf1k1hOoLcaN1yBukaEdZyNPUp9JKxwPw5RTI&s=f3t8ClTzVb2RqBKRh8akLsRChdB5jcFOvYq_mvuJGKA&e=><https://urldefense.proofpoint.com/v2/url?u=https-3A__www.facebook.com_726983121049640_videos_1213292195674058_-3F-5F-5Fso-5F-5F-3Dchannel-5Ftab-26-5F-5Frv-5F-5F-3Dall-5Fvideos-5Fcard&d=DwMFaQ&c=shNJtf5dKgNcPZ6Yh64b-A&r=rKd-AkZCCqLmJ5t92Ax1lq8sdkpuNduozvc_d_W2jt8&m=76jPydvI_IC4vTAv2UzNji0JiRzflq7BMrllOnuEceU&s=j_WuE6ZBj2Dgwu3YPgzvc1C_WpnnN_cY1_7YGymKBQg&e=>

Sincerely,
Raja Flores, MD

TESTIMONY OF:

Alexandra Dougherty, Senior Staff Attorney and Policy Counsel
Civil Justice Practice

BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council
Committee on Criminal Justice
Jointly with the Committees on Justice System, General Welfare, Public Housing and Housing and Buildings

Oversight Hearing on Housing and Reentry

October 21, 2020

I. Introduction

My name is Alexandra Dougherty, and I am a Senior Staff Attorney and Policy Counsel of the Civil Justice Practice at Brooklyn Defender Services (BDS). I want to thank the Committee on Criminal Justice, Committee on Justice System, Committee on General Welfare, Committee on Public Housing and Committee on Housing and Buildings for the opportunity to testify today. I would like to take this opportunity to speak in support of removing barriers to public housing for New York City residents with arrest or conviction histories.

Brooklyn Defender Services provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for nearly 30,000 people in Brooklyn every year. BDS' Civil Justice Practice (CJP) aims to reduce the civil collateral consequences for people who have had interaction with the criminal, family or immigration legal systems. We also serve our clients with additional civil legal needs; we know that even a minor housing or benefits issue, if unaddressed, can have insurmountable repercussions, especially for people who are already dealing with serious problems in other forums. In this work, we routinely assist clients in a wide range of NYCHA issues including defending residents facing the termination of their tenancies due to allegations of criminal conduct by a household member, advocating for family court-involved clients to be approved for

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NYCHA housing to facilitate reunification, and lobbying for the safety transfers or repairs necessary to ensure our client's homes are safe for them and their children to live in.

II. Background

NYCHA has a practice of denying applicants and evicting households based any contact with the criminal legal system. We know that stable housing is a vital prerequisite to successful recently. By relying on the mere existence of an arrest or conviction record, NYCHA exacerbates the disparate impact of the criminal legal system on Black and Latinx New Yorkers, who make up about 90% of NYCHA tenants. There is no evidence that these policies have made NYCHA residents safer. Instead, NYCHA's punitive policies disrupt families and contribute to the City's homelessness crisis by barring New Yorkers with conviction records from stable affordable housing.

As the Council knows, New York City's existing homelessness crisis will soon be compounded by the looming wave of evictions brought by the Covid-19 pandemic. Like the pandemic itself, this eviction crisis is expected to disproportionately affect Black tenants and other communities of color. In this context, it is particularly urgent for NYCHA to overhaul its existing web of exclusionary policies that exacerbates the city's homelessness crisis and bars system-involved New Yorkers from stable affordable housing.

We commend the Council for its effort to acknowledge and address barriers to affordable housing with Intro 2047-2020, which would ban discriminatory criminal background checks in private housing. We urge the Council to pass Intro 2047. But that bill, if passed, will not apply to public housing, where arrest and conviction history is explicitly incorporated into the eligibility criteria and termination procedures.

III. Existing NYCHA policies

Eligibility

NYCHA tenancy requirements are governed by federal law, but NYCHA's own regulations go significantly further than legally required in barring potential tenants with conviction records and in evicting current tenants who have any contact with the criminal legal system. Federal law only requires housing authorities to deny applicants who have been evicted from public housing for drug-related criminal activity, convicted of methamphetamine production, or are subject to a lifetime sex offender registration.[1] Housing authorities are also granted broad discretion to screen for illegal drug use and alcohol abuse. Despite that discretion, NYCHA's policy is to automatically deny any applicant with a conviction from the past three to six years, depending on the level of conviction. NYCHA also mandates denial based on any illegal drug use within the past three years. These strict eligibility criteria, which are not required by HUD, have the harshest impact on families and communities with minor law enforcement contact who are excluded from public housing.

Clients of the Civil Justice Practice routinely face multiple barriers to stable and affordable housing, and for many, housing options are even further limited by an old arrest or conviction

[1] 24 CFR § 960.204.

history. These clients are also ineligible for federally subsidized and public housing—supposedly the housing of last resort. Each year we represent dozens of people appealing a finding of ineligibility based on an arrest or conviction record. One such client, Ms. S, was living in shelter after she left her abuser. Securing stable housing was the last barrier to reunification with her son, and she expected that her N-0 priority code would result in an imminent approval for a NYCHA apartment. However, NYCHA automatically found her ineligible based her single arrest, which stemmed from an incident in which she was a domestic violence victim, and which triggered her homelessness in the first place. Ms. S's criminal case eventually resolved with a non-criminal disposition, and she had a strong argument and robust evidence to present in a hearing appealing her denial. But instead of proceeding with the lengthy informal hearing process to appeal the denial, she decided to prioritize reuniting with her son and moved into an apartment where she would be severely rent-burdened. She opted for housing that was ultimately less stable and affordable, even though should likely would have succeeded in reversing her NYCHA denial, because NYCHA's strict eligibility criteria delayed her family's reunification.

Termination of Tenancy Procedures

NYCHA routinely seeks to terminate the tenancy of entire households based on a single arrest or conviction of one family member. The pretext for pursuing termination is to maintain safety in public housing by evicting "dangerous" tenants. But rather than examining the circumstances of the arrest or determining whether the allegations indicate that the tenant poses a threat to safety, NYCHA pursues termination in most cases.

Ms. A and Mr. V are recent CJP clients who live in NYCHA with their ten-year-old daughter with special needs. NYCHA started a termination proceeding against Ms. A, who was the head of household, based on Mr. V's arrest. At the first hearing date NYCHA offered a settlement agreement in which Mr. V would be permanently excluded from the apartment on the basis of his arrest. His permanent exclusion would have been devastating for the family because Mr. V is their daughter's primary caregiver during the day while Ms. A is getting treatment for a chronic health issue. Instead of advising Mr. V and Ms. A to settle, we showed NYCHA proof that the criminal case had been dismissed and sealed; permanent exclusion based on that arrest would be a violation of New York State sealing statutes. NYCHA declined to pursue the termination proceeding and our clients were able to avoid any threat of eviction and disruption to their family's stability. This case is an exception to the norm: NYCHA routinely rushes termination of tenancy proceedings before a criminal case can be resolved in the tenant's favor, and pushes tenants to accept permanent exclusion settlements regardless of the disposition of the criminal case.

IV. Proposed NYCHA Policy and Recommendations

Brooklyn Defender Services is submitting joint comments regarding NYCHA's proposed policy change directly to NYCHA, but we would like to highlight several points today:

- We support the goal—to provide applicants with a conviction history a pathway to access stable housing—of NYCHA's proposed committee review process. Yet this goal is inconsistent with NYCHA's existing eligibility criteria. An additional procedural hurdle in the form of a panel review is not a substitute for necessary reform to NYCHA's

eligibility criteria and strict eligibility bars based on conviction history. NYCHA's goal is also hindered by their existing practice of seeking termination based on a single arrest, and litigating those termination cases for several years after the alleged incident. Together, NYCHA's eligibility rules and termination of tenancy procedures extend the punitive effects of the criminal justice system and must both be changed.

- Similarly, BDS supports NYCHA's attempt to change its permanent exclusion policy, but the proposed change is insufficient. The proposal fails to address the underlying problem with NYCHA's practice of settling termination of tenancy cases. When NYCHA does consent to settle, their attorneys are only authorized to use pre-written universal stipulations. By limiting settlement options, these stipulations pressure tenants into certain outcomes that put them at heightened risk of eviction. While we agree that permanent exclusion should never be indefinite, tenants facing termination should be able to enter into individualized settlements that are tailored to the underlying allegations.

V. Conclusion

BDS supports NYCHA's efforts to remove barriers to public housing for New Yorkers with conviction records but their proposed changes to policy must go further to ensure that those with criminal system involvement have access to and can maintain stable housing for themselves and their families. Thank you for considering my comments. If you have any questions, please feel free to reach out to me at 718-254-0700 ext. 141 or adougherty@bds.org.

Central Synagogue Testimony to NYC Council Committee Hearing on Housing and Reentry
Oct. 21, 2020

Committee on Criminal Justice jointly with the Committee on Justice System, Committee on General Welfare, Committee on Public Housing and the Committee on Housing and Buildings

Good afternoon, my name is Amy Glickman and I am a Board trustee of Central Synagogue. Central is a proud Reform Jewish congregation, one of the largest in the United States, and a member of the Union for Reform Judaism, the largest Jewish movement in North America. We're an inclusive community of over 2,600 families, most of us in and around New York City. We livestream our weekly services to many thousands more from our landmark synagogue in midtown Manhattan.

Central is proud to be part of an interfaith coalition, *Faith Communities for Just Reentry,* with the National Action Network, Riverside Church, Catholic Charities of the Archdiocese of New York, Trinity Church Wall Street, and many others. ***Faith Communities for Just Reentry*** **calls on the New York City Council and Mayor Bill de Blasio to step up to ensure that returning New Yorkers have at least the basic tools they need to rejoin society.**

What are these tools?

- Give everyone leaving Rikers an IDNYC card. In NYC in 2020, people can't pick up medication, apply for employment, housing, education, or health insurance without an ID. People leaving State prison can get this IDNYC, so why not people leaving City jails?
- Make city homelessness prevention vouchers usable. NYC Council bill Intro. 146 would raise rental assistance vouchers to market rates, a more effective and less expensive use of public funds than congregate shelters and hotels.
- Stop NYCHA from separating families. Eliminating the City policy to exclude people from NYCHA housing after arrests and releases would allow them to be reunited with their families, a minimum step toward reentering society.

Central's clergy and congregants have volunteered our time and energy to help some of the nearly 20,000 New Yorkers caught each year in the cycle of homelessness and incarceration. For almost 40 years, we've hosted a food program that continues to serve over 200 homeless guests each week through the pandemic, although now at a social distance. We work with Exodus Transitional Community, Hudson Link, and College & Community Fellowship to help support people in and after incarceration. And we've advocated for bail reform and for the release of some of New York's most vulnerable from prisons and jails during this pandemic.

In the words of our Senior Rabbi Angela Warnick Buchdahl, we Jews are

> a people who believe in the power of repentance and atonement. We urge our city to not only welcome home our brothers and sisters who have served their time, but to embrace their personal transformations as models for all of us embarking on personal and collective journeys of change and evolution.

We at Central Synagogue, and the *Faith Communities for Just Reentry* coalition, urge the NYC Council to clear a path for New Yorkers to return home from city jails to rejoin their families and to seek employment and health care. This helps them, and it helps us. Thank you for the opportunity to testify today.

Supplemental Testimony from Erobos Abzu Lamashtu pertaining to Intro 2047-2020:

On June 30th, 2009, after accomplishing my prison sentence of a total 18 years and paying my debt of incarceration to New York City, I was transferred to an ICE detention facility to be deported. When it became clear that I have no travel documents and would not be deported, instead of being indefinitely detained for years on end, I submitted a Writ of Habeas Corpus Petition and was ordered released, January 10th, 2010. As I had no family or friends of any kind and because of The Callahan Consent Decree, I was instructed once released, to enter into the NYCDHS shelter system. One of the first people I met there was a guy who was already there *10 years* in the shelter system because of his undocumented status with no assistance, help, or support of any kind other than signing in every night for the bed. I myself was in that system for *4½ years* and met several men who were warehoused for years before I got there and cannot receive any services! Because of my Undocumented and/or Stateless status, I am precluded from participating in any housing, cash assistance, or any relief beyond basic health insurance. Shelters, for the record, are constructs of Social Darwinism, where dog eats dog, everyone for themselves and the vulnerable are exploited by residents and staff alike. It's basically a medium level security prison environment with the caveat that you leave and return. This the reason why there are thousands of people who will take their chances sleeping on the trains, streets, and anywhere else other than the shelter system. Due to an intervention on my behalf from the CEO of GMHC to the CEO of The Fortune Society, I was granted an opportunity to leave the shelter system and become part of the "Academy Program at The Castle" which is Fortune Society's West Harlem transitional housing program. I have been here since Sept. 14, 2014. For reasons aforestated, the only move for me is returning to the shelter system. I am employed part time and I pay $215.00 a month in rent. Thanks to the support and stability of the healthy and safe standards in Fortune's transitional housing program, I have been in a situation overall vastly superior to *any* shelter. And yet, the reality is, without a change or an accommodation in the law, undocumented and/or stateless people will not be housed in any of the assistance programs currently available. According to a Pew Research study of 2016, New York was home to 1.1 million undocumented people; a report by the Institute of Taxation and Economic Policy, indicates that more than half of undocumented immigrants in the US pay income taxes. Specifically, the report found that undocumented immigrants contributed $11.7 billion in taxes per year. This also means we pay into city and state taxes as well, and yet its taxation without representation as we, I, cannot participate in any of the housing, rental, retirement or any other type of assistance even though we directly pay for *all* city, state, federal, and any private organization taking tax dollars and providing social and financial assistance services. In addition to being part of a formerly incarcerated, undocumented, marginalized, stigmatized, ostracized, and demonized community, there is also the ever looming issue of public safety. Even though studies are helpful, we have more than enough collective awareness and life experience to know that healthy and safe housing is the foundation of stability, health, wealth, and progress in the life of any human being in society. When people are not safely housed and we are reduced by poverty and discrimination into survival by any means, this puts the overall society at risk and endangerment. Crime is the natural response to poverty and discrimination. Always have been and always will be. Even President Franklin D. Roosevelt in his Second Bill of Rights understood this. Intro 2047 is a much needed step towards assisting formerly incarcerated people by implementing economic justice, housing justice, and social equality. Thank you for your time and the opportunity to submit this testimony in support of Intro 2047 and to shed light upon our formerly incarcerated-undocumented community. If there are any questions of me, please feel free to ask them, if not, thank you again.

Preferred Name: Erobos Abzu Lamashtu
Govt. Name: David Williams

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New York City Council
Committee on Housing and Buildings
Committee on Justice System

Public Hearing

Intro 1760, The Tenant Data Privacy Act

Wednesday, October 21, 2020

Testimony of Michael McKee, Treasurer

My name is Michael McKee. I am treasurer of the Tenants Political Action Committee. We work to elect pro-tenant candidates to office, and we advocate for stronger tenant protection laws and the preservation and creation of affordable housing.

Over the last two decades, keyless "smart access" technologies that use fobs, pin codes, smartphone apps — and most alarmingly, biometric recognition technology — have become widely adopted, transforming the way tenants access their homes and live their lives. For those whose buildings have gone keyless, many, if not most, would be surprised to find that every time they tap into their apartment or building with a fob, a piece of reference data is created and tracked by their landlord or property manager.

As unsettling as this is, I have yet to find a single law on the books anywhere in the country that protects tenant data, and for the moment at least, landlords can do whatever they want with this information.

It's the wild west, and few have even noticed the problem, which is why I am proud to be here today to endorse Intro 1760, the Tenant Data Privacy Act sponsored by Council Member Mark Levine and 26 others.

Consider a tenant who wakes up every morning to walk the dog or to go to the gym: The fob system records the time the tenant comes back to the apartment and the entrance used. The same happens when that tenant returns from work or goes out with friends for dinner. These data give landlords the ability to paint a picture of when a tenant is home, who the tenant shares

access with and how often, and when the tenant's kids come home from school. In the most concerning cases, some smart home systems give landlords access to a resident's utility data, such as heat, electricity and Wi-Fi usage rates. Using this information, bad actor landlords have a new tool at their disposal to harass tenants — and in some cases, to try to evict them.

But this technology also offers some benefits to tenants. Those with an access system that uses a smartphone app are able to maintain a record of who enters their home and when, in addition to being able to grant and revoke guest access with relative ease. This is a major step forward for tenants who have been harassed by abusive landlords entering their homes during the day, victims of theft, and domestic violence survivors who have struggled to keep abusive partners out of their homes.

Smart access technology could usher in significant improvements in the future. Take the blight of urban traffic congestion as an example. One of the biggest causes of congestion in cities across the country is trucks making deliveries during peak hours, blocking traffic and clogging major roads. Through smart access, these deliveries could be made more easily during off-hours and more efficient delivery routes could be designed, reducing a major cause of congestion, truck idling and carbon emissions. The economic value of this could reach upward of $200 million a year in New York City alone, according to a study by the United States Department of Transportation. This is to say nothing of how many tenants routinely fail to see many of the packages they order online, a problem easily fixed for those with the ability to make sure a delivery service can drop off packages in their building by giving deliverers unique temporary access codes.

Seizing the momentum from New York's historic housing law reform victory last year, passing the Tenant Data Privacy Act would be a significant step forward towards holding smart access companies accountable to the highest possible standards, while also making certain that their technology is safe, secure and reliable for tenants.

Int. 1760 would ensure that a tenant's personal unit access logs are completely shielded from landlords, unless the tenant consents otherwise. When an individual enters a tenant's home, those data should be available only to the tenant. Residents should have complete ownership over their data, and where the technology allows, they should always be able to see when anyone, including their landlord or a building staff member, has entered their home.

Additionally, the bill's requirement that tenant data be permanently deleted after 90 days (unless tenants decide for themselves to keep it longer) while making it illegal for smart access devices to capture GPS tracking data is a simple but important measure that allows tenants to decide for themselves whether they want to use a digital means of entry or a metal key for their personal unit.

Int. 1760 offers a new road map for how we can begin to regulate the world of smart-access technology. But there are some ways in which it can be strengthened.

Most importantly, the language of the bill should be even more explicit that no tenant's

data can ever in any circumstances be used as evidence to evict them.

Moreover, the bill must go further to ensure that smart access technologies are as secure as possible. To that end, the legislation should require that smart access systems containing software must be upgradeable – which, as I understand it, is all of them – ensuring that should any access system be compromised, such vulnerabilities could be corrected.

Tenants have a right to access their homes, and the means by which they do so must be secure and reliable. Whether you use a brass key, a fob, an app or a plastic key card, what matters most are the legal rights of tenants. States and cities should pass laws codifying those rights and embrace the potential of keyless access technology while protecting tenant privacy.

We urge the New York City Council to make these changes to this important bill and pass it without delay. Thanks for the opportunity to testify.

TESTIMONY OF
THE FORTUNE SOCIETY

THE COMMITTEE ON HOUSING AND BUILDINGS (JOINTLY WITH THE COMMITTEE ON CRIMINAL JUSTICE, COMMITTEE ON JUSTICE SYSTEM, COMMITTEE ON GENERAL WELFARE, AND THE COMMITTEE ON PUBLIC HOUSING) OF THE NEW YORK CITY COUNCIL
250 Broadway,
New York, NY

Wednesday, October 21st, 2020

SUBJECT: Housing and Re-Entry in New York City
PURPOSE: To discuss how The Fortune Society supports the goals behind The New York City Housing Commission's proposed new rules but believes that they can be significantly improved

Presented by

Rebecca Engel
Senior Policy Counsel

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Testimony by The Fortune Society, 10/21/20

Good afternoon. My name is Rebecca Engel and I am Senior Policy Counsel at the Fortune Society. The Fortune Society is a 53 year old organization that supports successful reentry from incarceration and promotes alternatives to incarceration, thus strengthening the fabric of our communities. We do this by: believing in the power of people to change; building lives through service programs shaped by the experiences of our participants; and changing minds through education and advocacy to promote the creation of a fair, humane, and truly rehabilitative correctional system.

Fortune is here today to talk about the problems that individuals re-entering society from jail or prison face in simply trying to find a place to live. 20% of Fortune's clients are homeless. This is an enormous number and one that reflects the "prison to shelter" pipeline. Data from 2017 shows that 54% of individuals released from state prison to New York City were released directly to the city's shelters. This lack of housing affects our clients' ability to successfully take on almost any other essential re-entry task, such as employment or drug rehabilitation, raising their potential rates of recidivism in the process.

Why are these numbers so high and these stories so prominent within Fortune's client basis? One of the most significant causes involves the rules of The New York City Housing Authority (NYCHA). Many of our clients rely on NYCHA, due to the expenses of the private market. But NYCHA currently mandates a blanket denial for admission to anyone with a B misdemeanor conviction in the past 3 years, an A misdemeanor conviction in the past 4 years, an E or D felony conviction in the past 5 years, and an C, B, or A felony conviction in the past 6 years. It also *permanently* excludes certain tenants that it decides to place under the label of "non-desirability." This makes it so that a former tenant who committed a dangerous act as a teenager --and whose prison sentence ended perhaps twenty years ago—is still not able to come and visit his new granddaughter on NYCHA premises.

The New York City Council recently released its recommendations for tackling homelessness and specifically called out NYCHA's policies that exclude individuals with conviction records. And indeed, NYCHA has now released for public comment a number of proposed changes to its admission and occupancy policies related to criminal justice. The Fortune Society values the fact that current restrictive policies are being reassessed and that new policies are being considered. They reflect the *potential* for a shift in values at NYCHA, mainly through a proposed process of individualized review, rather than automatic exclusion.

Under its proposed new rules, NYCHA states that it will change its admissions process from one of blanket denials to one of individualized review, similar to the one that it currently uses under its Family Reentry Program (FRP). Individualized review involves a committee that looks at applicants with criminal records one by one, with the goal of allowing people to rejoin their families. But in addition, it is more about spotting a few red flags (i.e., if the applicant has an open order of protection filed by an individual who still resides in the development) than about asking an individual to provide "proof" of his or her rehabilitation. Indeed, a 2016 evaluation of the pilot phase of FRP also found that it had good results, in terms of allowing individuals to restart their lives: of 85 participants, 41 found or kept a job, 11 attended employment training, 12 were

receiving training toward certifications, 12 were attending school, and 15 were in substance-use treatment programs. These statistics go hand in hand with the massive amount of research that shows that stable housing of almost any kind drastically reduces the rates of recidivism among the formerly incarcerated.

NYCHA does, however, need to take a few critical steps in order to improve its proposed individualized review process, which it describes only in very general terms in its rules. First, NYCHA should put, in writing, a decisional standard for the new committee that performs the individualized review, so that an applicant shall be found eligible unless there is specific and credible evidence that the person poses a current threat to the safety of the development in which they would reside or to a specific individual or individuals. This is necessary because the current standard used in "*McNair* hearings" for occupancy is that a finding of ineligibility can only be reversed where "there is a reasonable probability that the offender's future conduct would not be likely to affect adversely the health, safety or welfare of other tenants, and would not be likely to affect adversely the physical environment or the financial stability of an Authority project." This standard allows almost unfettered discretion for a person to be denied for reasons unrelated to a conviction record. NYCHA should also require the same individualized review process for remaining family members, after an originally admitted tenant dies or moves away. They should be treated the same as new applicants, rather than having blanket denials placed upon them-- but the new rules do not take this critical step.

In addition, NYCHA should require that when the committee denies an application, it provides the reason in writing to the applicant, so that the applicant can provide additional information, or cure any defect in the information considered by the committee, to address concerns raised in subsequent stages of review. However, the written decision should only be provided to the applicant, and not to staff or hearing officers who will make subsequent decisions. Finally, NYCHA should require that the committee's membership includes at least two members who have conviction histories.

When it comes to permanent exclusions, Fortune fully supports NYCHA's proposal to extinguish old permanent exclusions after five years have elapsed. This proposed change shows NYCHA's willingness to change one of the most broadly restrictive and damaging elements of its current rules and regulations. The permanent exclusion rules simply do not acknowledge the reality that at the core of re-entry is the ability of individuals to fundamentally change who they are and what they would ever do, and that they deserve to be individually assessed rather than permanently barred from NYCHA housing no matter how much they have changed their lives.

However, in order to more completely rid the agency of the unethical burden of permanent exclusions, NYCHA also needs to do at least two more things. First, it needs to immediately notify individuals or former family members, who are hampered with permanent exclusion orders older than five years old, that the exclusion is no longer in place and they or a family the can apply to rejoin the household. NYCHA should continue to review cases and make such notifications on a monthly basis thereafter.

Then, when using permanent exclusions in stipulations with tenants, which is the current norm, NYCHA should again engage in individualized determinations that allow for settlement

stipulations to include permanent exclusion for a period of *up to* five years, rather than a *rote* period of five years. Indeed, NYCHA should allow for individualized settlement for *all* the terms contained in stipulations. Currently, NYCHA has one form for settlement stipulations that it will not negotiate. However, this stance neither goes along with its projected new values nor is it consistent with any other practice in the civil legal context.

We strongly recommend that NYCHA develop these procedures, to supplement its new commitment to individualized review. We must see people for who they are, and not what they once did. We must support and offer redemption by practicing and implementing guidance, and laws that uphold the principles of inclusion, and a fair chance. The move to true individualized assessment is about treating each tenant or potential tenant as a person--worthy of full context, consideration, and respect.

Thank you.
Rebecca Engel,
Senior Policy Counsel
The Fortune Society

New York City Council
Committee on Criminal Justice, Committee on the Justice System, Committee on General Welfare, Committee on Public Housing, and the Committee on Housing and Buildings

Oversight: Housing and Reentry
October 21, 2020

Written Testimony of The Bronx Defenders

By Elizabeth Williams, Julia Solomons, Kate Johnson-Powers, Siya Hegde, Sharitza Lopez-Rodriguez, Steven T. Hasty, & Gillian Stoddard Leatherberry

Chairs and Committee Members, we are social workers and civil public defenders at The Bronx Defenders ("BxD").[1] Thank you for your attention to these critical matters and for the opportunity to testify before you today.

INTRODUCTION

Housing is a human right and one of the most fundamental building blocks of a stable life. For many of our clients with contact with carceral systems, housing justice is elusive. Arrests and criminal convictions may lead to eviction, denial of housing applications, permanent exclusion from public housing, and homelessness. The lack of adequate stable housing, in turn, exacerbates cycles of criminalization and poverty.

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

Over the past seven months, the COVID-19 pandemic has laid bare our clients' need for safe and stable housing. It has exposed the weaknesses and cruelty of a system that renders people with legal system involvement vulnerable to near-permanent housing insecurity, particularly in the Bronx, which has endured decades of sustained structural and institutional racism.[2] In some instances, however, it has also disrupted old ways of thinking and presented opportunities to do things differently.

Our testimony proceeds in two parts. **Section I** addresses the City's emergency response to the pandemic, including making vacant hotel rooms available to provide temporary housing to some of the most vulnerable New Yorkers. This program has had significant positive impacts for our clients. The Council and the City should embrace the lessons of this emergency response:

- The City should invest in expanding temporary housing for all system-involved New Yorkers;
- Anyone being released from custody of any kind should receive basic necessities to ensure they have what they need to stabilize and reduce the likelihood of future system contact; and
- The City must invest in more long-term and specialized housing, accessible across immigration statuses, in order to be responsive to the needs of the most vulnerable New Yorkers.

Section II urges the Council to apply the lessons learned during the public health crisis—namely, the urgent need to eliminate barriers to stable housing for people with legal system involvement—to longstanding and deeply entrenched problems in the New York City Housing Authority ("NYCHA"). We call on the City to:

- Eliminate NYCHA's Permanent Exclusion policy;
- Reform NYCHA's admissions procedures to accord with the minimum requirements under federal law; and
- Reform the Family Reentry Program to make it more accessible.

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[2] Lydia Chavez, *Two Bronx Schools: Study in Inequality*, N.Y. Times, July 2, 1987, *available at* https://www.nytimes.com/1987/07/02/nyregion/two-bronx-schools-study-in-inequality.html; David R. Jones, Unequal Education in New York's Public School System, May 29, 2014, *available at* https://www.cssny.org/news/entry/unequal-education-in-new-yorks-public-school-system1; *see generally* David E. Kirkland & Joy L. Sanzone, Separate and Unequal: A Comparison of Student Outcomes in New York City's Most and Least Diverse Schools, Oct. 2017, *available at* https://research.steinhardt.nyu.edu/scmsAdmin/media/users/dk64/SeparateButUnequal_20171023.pdf; Neil Calman, *Making Health Equality A Reality: The Bronx Takes Action*, April 2005, *available at* https://www.healthaffairs.org/doi/full/10.1377/hlthaff.24.2.491; Danielle Pasquel, Health Disparities and Environmental Justice in the Bronx, March 23, 2015, *available at* https://theejbm.wordpress.com/2015/03/23/health-disparities-and-environmental-justice-in-the-bronx/ (cataloguing decisions to locate factories, power plants, and waste transfer stations in the Bronx, and route industrial truck traffic through the Bronx).

These recommendations would signal a significant step forward in making the right to safe, stable housing a reality.

SECTION I

The danger of congregate shelter settings during the COVID-19 pandemic has pushed us to be creative and think about how to reduce density in the City's overcrowded and under-resourced shelters. Over the past seven months, the City has been able to take advantage of thousands of vacant hotel rooms to provide some of the most vulnerable New Yorkers safe, temporary housing. The Mayor's Office of Criminal Justice ("MOCJ") has been able to offer these hotel rooms to people exiting city and state custody who would otherwise be forced to enter the shelter system. We have also seen service providers provide basic necessities such as transportation, food, and connections to healthcare—all seemingly small things that can make a tremendous difference in our clients' ability to regain stability after leaving a period of incarceration.

Creative responses to community needs during the pandemic have taught us that shifting resources from inside jail walls and detention centers to investment in our most vulnerable communities is critical to keeping all New Yorkers safe. While the existing resources are a great starting point, there is more we can do to support people with what they truly need to thrive.

A. The City should invest in expanding temporary housing solutions for all system-involved New Yorkers.

MOCJ's hotel initiative has had a significant impact on our clients who have been released from jail during this unprecedented time. This initiative has not only reduced the jail population by supporting defenders' release efforts—both through strengthening bail applications in court and providing bail funds with reassurance that someone will be stably housed upon release—but has also provided our clients with critical support upon release that they never would have been able to access in a shelter. The case management support that Exodus Transitional Community ("Exodus") provides our clients in the hotels is a breath of fresh air for many—providing reminders and support to achieve critical personal goals, which in turn positively impacts the outcomes of legal cases.

Despite the slanted and sometimes overtly racist coverage of this program in the media, public defenders know what an incredible impact these resources have on improving case outcomes, reducing the likelihood of future system involvement and lowering the jail population. We know

now that expanding this initiative to more people whose housing status is jeopardized by legal system involvement would only continue to decarcerate and strengthen our city.

1. *Expand existing hotel programs to temporarily house people made homeless at arraignment by orders of protection*

Our office represents tens of thousands of clients each year, including many who are marginally housed or become homeless as a result of their criminal case. At each arraignment shift there are clients rendered homeless when a temporary order of protection is issued. These orders of protection, meant to separate people while a criminal case is ongoing, are often issued between members of a family who share housing. As a result, for instance, a person who has been arrested for a domestic offense is barred from returning to their home, often for months on end, while the case slowly winds its way through court. While difficult during normal times, this problem has only been exacerbated by the pandemic, as staying with friends and family presents increased risk for everyone, and the crowded shelter system is a public health nightmare.

Expanding the hotel initiative to cover individuals in this situation would further reduce shelter population density (critical as we enter a second wave of the pandemic in New York City), while also reducing further justice system contact for this population. Because of the pandemic, clients who cannot return home due to temporary orders of protection have very few options. People are wary of the conditions of shelters, and fewer friends and family members are able to take people in. A person who returns home in violation of an order of protection risks rearrest, prosecution, and pretrial detention, since, in most cases, simply being present on the premises constitutes criminal contempt, a bail-eligible offense. The lack of viable housing options pushes many people into a cycle of homelessness and incarceration that tends to inhibit rehabilitation or positive change.

2. *Create a formal referral pathway for individuals leaving federal detention facilities to access the reentry hotel rooms.*

BxD clients exiting Immigration and Customs Enforcement ("ICE") custody have many of the same needs as our clients exiting city custody, with far fewer resources available to them. MOCJ has been able to accommodate a few of our clients in this situation over the past several months, and for those few people, it has been hugely beneficial. For example, clients are often released from detention without their medication; having access to case management through the hotels has allowed our clients to get reconnected to critical medications immediately. The same things that the hotel program has offered our clients reentering from jail—safe, secure housing with access to food and case management services—are just as critical to our clients returning home from ICE custody, and it should be explicitly offered to them. When our clients in immigration proceedings have the opportunity to ask a judge to grant bond, offering a stable housing plan

strengthens the case in the same way it does a bail application in criminal court. Making this option available to this population means fewer New Yorkers will languish in ICE custody as they await a hearing. The City Council must expand their concepts of "reentry" to include all New Yorkers returning to their community after being caged, and "decarceration" to include efforts to reduce the amount of New Yorkers held in cages, regardless of how those cages are labeled. Increased housing stability for individuals leaving ICE custody benefits all New Yorkers.

B. Anyone being released from city, state, or federal custody should receive the basic necessities they need to stabilize and reduce the likelihood of future system contact.

When the new bail reform laws went into effect in January of 2020, we prepared for people being released from custody in larger numbers, with the expectation that people exiting custody would have concrete, immediate needs that the City has an obligation to meet. In preparing to meet those needs, the City created so-called "reentry packets," a very simple package containing metrocards, a food card, a cell phone with prepaid minutes, and other assorted essentials. Our staff were able to walk our clients across the street from the courthouse to pick one up as soon as they were released from arraignments. Such a simple thing made a tremendous difference for our clients in that moment, a moment that for many can have a long lasting impact depending on the concrete support, or lack thereof, that they receive. This is a moment where our clients are extremely vulnerable, and their transition home from custody sets in motion the future of their legal case, their ability to access critical services, communicate with their legal team, and so much more.

Historically, the Department of Corrections' release practices have been characterized by a general disregard for the safety and needs of the people rejoining the community. Whether or not our clients receive even a metrocard to take the subway home upon release is dependent on which correctional officers are on duty on a particular day. Our clients may not have anywhere to go. Often, weeks or months may have passed since they were originally held in custody, seasons changed, leaving people with weather inappropriate clothing. We hope that they leave with the medication and connections to care that they need, but those discharge planning services are primarily only available for those with acute mental health needs. This is a direct result of the Brad H settlement,[3] and even people with Brad H status, with some of the most acute needs, are often released without the critical supports to which they are entitled, such as transportation to shelter and connections to care in the community. When they do receive appropriate planning, those supports do not include access to concrete resources like food, housing, and a cell phone.

[3] Stipulation of Settlement, Brad H. v. City of New York, No. 117882/99 (Sup. Ct. N.Y. Cnty.).

The same holds true for New Yorkers leaving ICE custody who have no legal protections to guarantee that their basic needs are met upon their release. They are released without any discharge plan and lack crucial medications even when they have immediate mental health needs. Individuals leaving an ICE facility are often released in remote areas of New Jersey or upstate New York with limited public transportation, making access to social supports and resources even more challenging. Upon their arrival to New York City, individuals leaving ICE detention have, on multiple occasions, been forced to sleep on the street solely because they did not have a phone, metrocard, or money to contact their family. Compounding the obstacles, ICE frequently withholds an individual's personal items, such as personal identification, creating additional barriers to accessing already limited services, including critical medications.

Since the onset of COVID-19, the release process and accompanying resources (or lack thereof) have become all the more critical for the stability of people returning from custody. Whether or not a person has access to a phone, for example, is the difference between whether they are able to speak to their defense team, attend virtual court dates, or maintain contact with the treatment program they are mandated to participate in via telehealth and losing touch with all of the people and services they need. Failing to acknowledge the financial and logistical challenges facing people exiting custody and the importance of this moment in terms of people's ability to untangle themselves from the criminal legal system would represent a significant missed opportunity. Especially now, when accessing support services in the community can be much more challenging, elected officials and city agencies must do more to ensure people have their basic needs met upon exiting custody. Many clients who access the MOCJ hotels are provided with a phone, food, and transportation, and those resources should not be limited to those staying in the hotels. With increased funding and coordination by the City, those resources can and should be made available to every New Yorker exiting custody in a streamlined and proactive manner.

C. The City must invest in more long-term and specialized housing, accessible across immigration statuses, in order to be truly responsive to the needs of the most vulnerable New Yorkers.

While we want to highlight the positive impacts of the MOCJ hotel program, it is also important to note that temporary housing options can only go so far towards the goal of long-term stability. For our clients in MOCJ's hotels, Exodus case managers can facilitate a connection to Fortune Society's permanent housing options, but that is one of the only options that our clients are able to access reliably, in or out of the hotels. Homeless advocacy groups have been pushing for years for more long-term, affordable, and supportive housing options. In July of this year, there were 58,089 homeless people in New York City, with the number of homeless single men 122%

higher than it was 10 years ago.[4] The lack of affordable housing is devastating for so many New Yorkers, without even considering the additional barriers facing many of our clients. Those struggling with mental health or substance use needs, people whose convictions require sex offender registration, and non-citizens, are just a few examples of people whose ability to access permanent housing in New York City is limited, at best.

At BxD, many of our clients live within a web of interconnected obstacles. The same barriers that entangle them in these oppressive legal systems also prevent them from achieving the stability necessary to break free of system involvement, and the limited resources that do exist often exclude the most vulnerable of our clients. For example, though the MOCJ hotels have been an incredible resource in terms of temporary housing, they cannot accommodate those with acute mental health needs, a barrier that excludes that population from many transitional and long-term housing options as well. Additionally, our clients that return to the community from jail or prison following a conviction that results in sex offender registration of a certain level can no longer live within 1,000 feet of a school (nearly impossible in New York City), or stay with family that has small children. Combine that with the lack of affordable housing options in general and the only option left is Ward's Island, an isolated shelter that is notoriously unsafe and lacking in any type of support.

Moreover, many of our non-citizen clients are automatically ineligible for many forms of subsidized and supportive housing. There are very few of these options available to these clients—namely certain vouchers accessed through shelters—but as is true with all voucher programs, there is a great deal of competition. At a bare minimum, our non-citizen clients exiting ICE detention or a city jail need specialized reentry services and support, and part of this support should include knowledge and understanding of these barriers to housing, and fast-tracking of this population to the few forms of subsidized housing for which they are eligible. Creating pathways to long-term housing is essential, but those pathways must be inclusive and without barriers related to citizenship, criminal record, or health needs in order to truly make a difference.

D. Conclusion

With thousands of empty hotel rooms across the city, we have the opportunity to reallocate resources to those who truly need them, while also helping New York City combat an economic crisis. As the City continues to think through the reentry and housing needs of New Yorkers, we urge the City Council to pay particular attention to the specialized needs and unique barriers facing system-involved individuals, and create accessible, barrier-free options that truly make a

[4] Basic Facts About Homelessness. *Coalition for the Homeless.* Retrieved October 18th, 2020, from https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/

dent in the homeless population and reduce the jail population. We encourage you to learn from COVID-19 responses such as MOCJ's hotel program, and to go a step further in offering reentering New Yorkers concrete monetary resources, expanded temporary housing eligibility, and true long-term housing solutions that support the stabilization of the most vulnerable and often overlooked populations.

SECTION II

In mid-September 2020, NYCHA proposed rule changes related to "admission and occupancy policies related to criminal justice."[5] The proposed rules, however, fail to address adequately the housing crisis our clients with criminal legal system involvement face. The Council should work with NYCHA to: eliminate NYCHA's Permanent Exclusion policy; reform NYCHA's admissions procedures to accord with the minimum requirements under federal law; and reform the Family Reentry Program to make it more accessible.

A. The Council should work with NYCHA to end the use of Permanent Exclusion as the alternative to termination of tenancy and stop the decades-long practice of separating families.

1. Permanent Exclusion separates families and destabilizes communities.

NYCHA has broad powers to initiate termination of tenancy proceedings for (1) any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; or (2) drug-related criminal activity on or off the premises. Neither federal law nor case law, however, *requires* NYCHA to initiate termination proceedings or to offer "permanent exclusion" of certain family members from a residence ("PE") to settle such proceedings for criminal activity except in certain circumstances.[6]

[5] NYCHA, New York City Housing Authority Changes to Policies Related to Criminal Justice, 1 (last accessed Oct. 21, 2020 at 8:56 a.m.) *available at* https://www1.nyc.gov/assets/nycha/downloads/pdf/CJ-Policies-For-Public-Comment-FINAL.pdf?mc_cid=340626dd4c&mc_eid=96c45388fd. As a preliminary matter, NYCHA's proposed changes are difficult to assess because NYCHA does not believe it is subject to any formal notice and comment period. Thus, it has created its own process wherein it *describes* the current and proposed rules without including the language of the text. The actual language of the text is always key to evaluating proposed rules. Thus, we urge the Council to call for NYCHA to engage in more formal notice and comment rule-making and/or explicitly clarify that NYCHA is covered under the City Administrative Procedure Act.

[6] 24 CFR § 966.4 (i)(5) Other than limited federal mandates relating to convictions of sex offenses and the production of methamphetamine on public housing premises, NYCHA has the discretion whether to terminate a tenancy on the basis of criminal activity, and further use permanent exclusion as a resolution to such termination.

NYCHA's policy of permanently excluding a family member when the tenant of record is not accused of the alleged criminal behavior is a disproportionately punitive and highly invasive policy that rips families apart. PE as a housing "enforcement" tool forces families to choose whether to evict and ban family members from the household permanently for their alleged "criminal activity," or risk eviction of the entire family. In the PE context, the "criminal activity" may only be an arrest and does not have to lead to a conviction for a termination to be initiated by NYCHA. PE, as the term implies, is permanent; it remains in effect for the life of the tenancy, in the current apartment or any subsequent NYCHA apartment the tenant moves to. The excluded individual cannot live in the apartment or even visit the apartment or NYCHA premises. This forces families to make the difficult decision to ban the excluded individual not only from the household but their community. It is effectively a form of forced banishment and family separation.

PE, however, does not only impact the excluded individual, the familial relationship, and community relationships, but it continues to punish the tenant with invasive monitoring as long as PE remains in place. To make sure the tenant complies with PE, NYCHA will conduct surprise inspections of the entire apartment, any time between 9:00 am and 7:00 pm. If the excluded individual is found on premises or the tenant fails to open the door to NYCHA investigators, NYCHA will move to terminate the tenancy for violation of permanent exclusion. Because this exclusion is permanent, tenants have to affirmatively apply to remove it but have to use the information of the excluded individual, including supporting documents of rehabilitation or criminal records, documents that are not available to tenants unless a relationship exists with the excluded individual or the excluded individual gives the tenant permission to access such documents or records.

PE is not just a policy about an apartment; it is a policy that often breaks up families past the point of repair. As a holistic legal services provider in the Bronx, we have witnessed the impact PE can have on not only the tenant but on the excluded individual. Further, we have witnessed situations in which the tenant of record wishes to file an application to lift PE, but the excluded individual does not want to participate in the application because of their distrust of NYCHA or because of the now-strained familial relationships.

2. *The Council should work with NYCHA to eliminate the use of PE as an enforcement mechanism.*

NYCHA has proposed rule changes to amend PE stipulations to include language automatically lifting the exclusion after five crime-free years. The proposed rule changes do not go far enough. Rather, the proposed changes encourage the Law Department to continue to separate families. Despite NYCHA's repeated assertion of its ability to exercise its discretion, it continues to use a one-size-fits-all approach, with permanent exclusion their default, preferred result, rather than

the individualized approach they claim.[7] Rather than terminating families or separating them permanently, NYCHA should utilize its discretion to review cases on an individual basis and avoid the use of prosecutorial and punitive policies for alleged "criminal activity" without due process for the excluded person or a criminal disposition.

3. *NYCHA's proposed increase of minimum age for PE does not minimize the impact that PE has on the tenant of record or the long-term impact on the excluded individual.*

NYCHA does not provide any evidence-based reports or research to support the claim that PE makes public housing, its residents, or the community safer. Further, it has not provided a justification for permanently excluding young people—at first 16 and now proposed to be 18—from their families. NYCHA has also failed to consider its own published data on the demographics of its residents and families living in public housing.[8] As of January 1, 2020, NYCHA data shows a total of 162,721 families living in NYCHA developments. In 126,361 families, the head of household is a female. The number of minors under 18 years was documented at 91,509, and individual residents between the age of 18 and 20 years accounted for 19,440 of residents. Individuals between the ages of 21 to 49 years accounted for 116,147 of residents. Female-headed households with residents between 18 and 49 years old account for 135,587 of NYCHA's total population of 365,806. The average number of years in public housing is 23.5 years.

Increasing the minimum age from 16 to 18 for PE demonstrates NYCHA's unwillingness to deviate from its one-size-fits-all policies. NYCHA refuses to consider the impact that a PE settlement has on its residents. Further, NYCHA refuses to revise its own version of the prison pipeline. PE destabilizes young people and exposes them to homelessness and other possible system involvement. NYCHA fails to recognize the impact that disproportionate policing policies have on its residents and relies on law enforcement to dehumanize and punish individuals with PE policies that can force someone with a 23.5 year tenancy to choose between severing ties with a family member or ending up homeless. NYCHA should focus on creating policies that reduce the impact that criminal legal system involvement may have on an individual by allowing access to family support rather than taking a prosecutorial approach.

[7] In NYCHA's own website under PE- Frequently Asked Questions it states, "NYCHA is not governed by rigid rules that require it to pursue eviction or exclusion based on the type or level of criminal charge or any specific conduct; rather, NYCHA examines each case individually, including the nature and seriousness of the conduct, the extent of the individuals' involvement, the danger the individual poses to the NYCHA community, whether there are any serious prior convictions, and whether there is any mitigating evidence." Found at https://www1.nyc.gov/site/nycha/residents/permanent-exclusion-faq.page

[8] NYCHA Residents Data Summary January 2020 found at https://www1.nyc.gov/assets/nycha/downloads/pdf/Resident-Data-Book-Summary-Pages-2020.pdf

B. The Council should work with NYCHA to end its outdated and draconian admissions procedures that negatively affect the most vulnerable New Yorkers.

NYCHA's admissions procedures are the harshest of any housing entity or program in New York City when it comes to the exclusion of people due to interaction with the criminal legal system. These unduly strict procedures separate families, many of whom are some of the most vulnerable New Yorkers, and who are disproportionately Black and Brown people. At BxD, many of our clients live in NYCHA or apply for NYCHA tenancy through standard applications, succession rights, following family reunification, or through other processes. After being called from a lengthy waiting list, many of our clients are denied because NYCHA rejects applicants if they have an open criminal case or a recent conviction, even for a minor or non-violent offense.

NYCHA has proposed changes to its admissions process for applicants with criminal histories and where there is a claimed use of illegal drugs. Specifically, the proposed changes replace the current admissions process with an "individualized review" wherein a committee would conduct an "in-depth review of the application," including interviews and evidence of rehabilitation, among other information.[9] The committee structure would be modeled from the admissions committee for the NYCHA Family Reentry Program. The proposal also eliminates lookback periods following a conviction and replaces these periods with the individualized review process. In its current form, the lookback periods result in a presumption of inadmissibility based on criminal history, which can then be challenged by applicants through a hearing process. Of the few applicants who request hearings, even fewer are able to successfully gain admission to NYCHA after a hearing, since NYCHA impartial hearing officers rarely look behind the conviction itself or question the presumption. Current lookback periods are 5-6 years for felonies depending on class and 3-4 years for misdemeanors depending on class. Lastly, NYCHA proposes to reduce the lookback period for current drug use from 3 years to 1 year.

NYCHA's proposed rule changes to its admission policies are a step in the right direction, but they do not go far enough. First, while elimination of most lookback periods is an improvement, any lookback period that does not allow for meaningful consideration of rehabilitative evidence should be eliminated. Therefore, NYCHA should discontinue the use of presumptive ineligibility across the board. Second, the description of the individualized review process in the proposed rule changes is vague to a fault. The content of the "in-depth review" is only minimally described, and the description makes no mention of the criteria the committee will use to evaluate applicants. We have frequently seen hearing officers issue decisions that address our clients' rehabilitative evidence in a single throwaway clause such as "after considering all the

[9] NYCHA, New York City Housing Authority Changes to Policies Related to Criminal Justice, 2 (last accessed Oct. 21, 2020 at 8:56 a.m.) *available at* https://www1.nyc.gov/assets/nycha/downloads/pdf/CJ-Policies-For-Public-Comment-FINAL.pdf?mc_cid=340626dd4c&mc_eid=96c45388fd.

evidence." A review process without specific criteria and standards will continue to leave our clients without any real recourse to substantively appeal the decision-making when they continue to be denied by NYCHA. Similarly, there appear to be no time limits associated with the individualized review process, a key due process oversight. The process also replaces the opportunity for a hearing that in the past has provided some of our clients with the only available relief from initial denial. Further, NYCHA purports to base the process on the Family Reentry Program, which, as discussed below, is currently flawed.

Lastly, NYCHA's proposed rule changes do not address NYCHA's policy with regard to adjournments in contemplation of dismissal ("ACDs").[10] No conviction results from an ACD, and the case is dismissed and sealed following the waiting period, unless the court revokes the ACD and the case is restored to the criminal court calendar. NYCHA has no written policy regarding its treatment of ACDs, and thus applicants are left wondering whether their ACD will result in the complete denial of their application. Denying an application based on an ACD runs counter to New York policy on ACDs in the employment context: the New York State Human Rights Law prohibits discrimination in employment based on a disposition of an ACD, and a case resulting in ACD status is no longer considered a pending case under the law.[11] The same should be true in the housing context. The Council should work with NYCHA to make clear in writing its policy regarding ACDs.

A cosmetic process change to NYCHA's admissions policies alone cannot save a broken system that has failed time after time to recognize that people with criminal convictions should not be defined forever by their criminal convictions. NYCHA should reform its review of applications by requiring a full review of an applicant's history and circumstances, including all rehabilitative evidence, and it should limit presumptions of ineligibility to the narrow categories required by federal law.

C. The Council should work with NYCHA to loosen the eligibility criteria for formerly incarcerated individuals to qualify for the Family Reentry Program or eliminate its Permanent Exclusion policy to allow families to reunite in the long-term.

The NYCHA Family Reentry Program (the "Program") was created as an alternative to NYCHA's usual exclusionary policies and was designed to reduce homelessness and system involvement for formerly incarcerated individuals.[12] Stable, affordable housing and supportive

[10] An ACD is a non-criminal disposition where, if the ACD is not revoked and the case is not restored within the waiting period, the case is automatically dismissed. *See* N.Y. Crim. Pro. Law § 170.55(8) (McKinney's 2020) (stating that upon the dismissal of an open case pursuant to an ACD, "the arrest and prosecution shall be deemed a nullity and the defendant shall be restored . . . to the status he occupied before his arrest and prosecution").
[11] N.Y. Exec. Law § 296(16).
[12] The Vera Institute of Justice guided the implementation of the Family Reentry Program in 2017 in collaboration with NYCHA, the U.S. Department of Housing and Urban Development, NYC Department of Homeless Services,

services upon reentry into community are critical to support people returning from incarceration, and their families.[13] Yet many of our clients wait months, if not years, on NYCHA waitlists unless they are granted priority placement.

While the Program itself is an attempt to achieve family reunification, the experiences of our clients who navigate the system report significant problems in securing stable housing. The Program is extremely cumbersome to qualify for and does not create long-term housing stability unless the tenant follows additional processes after a waiting period. There are five main criteria set forth to determine an individual's eligibility for the Program: (1) Applicant must be at least sixteen years of age; (2) Applicant and the family member(s) must want the applicant to reside in the NYCHA apartment; (3) Applicant must have been released from a correctional facility within the last three years; (4) Applicant must be willing to participate in case management services with partner community organizations for six months to ensure that their basic civil needs are met; and (5) Applicant must be a sibling, child, parent, grandparent, grandchild, spouse, or domestic partner of the primary leaseholder, or head of household.[14] We believe the latter three criteria are particularly problematic for our clients, and we will be analyzing the shortcomings of each of those in turn.

1. *The requirement that a person be released from a "prison, jail, juvenile facility, or federal facility within the last three years" can often undermine an individual's eligibility for NYCHA housing through the Family Reentry Program.*

While an individual's experience with punitive, carceral systems begins at least as early as the moment of their arrest, even after their release, the unjust consequences of a conviction continue to hamper their ability to navigate affordable housing reentry procedures and other critical aspects of their daily life. Recently released individuals who were released on parole or who are on probation must satisfy numerous, strict, court-ordered conditions[15] under the supervision of an

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and the Corporation of Supportive Housing. *See Family Re-entry Pilot Program Brochure*, *available at* https://www1.nyc.gov/assets/nycha/downloads/pdf/re-entry-brochure-20151109-en.pdf. *See also* John Bae, Margaret diZerega, Jacob Kang-Brown, et al., *Coming Home: An Evaluation of the New York City Housing Authority's Family Reentry Pilot Program*, Vera Institute of Justice (2016), *available at* https://www.vera.org/downloads/publications/NYCHA_report-032917.pdf.

[13] The list of community provider organizations facilitating the Family Reentry Program includes, but is not limited to, the Center for Community Alternatives, Exodus Transitional Community, Fortune Society, Friends of Island Academy, Harlem Community Justice Center, Housing Works, Inc., Services for the Underserved, and the Women's Prison Association. *See* Family Re-entry Pilot Program Brochure, p. 1, *available at* https://www1.nyc.gov/assets/nycha/downloads/pdf/re-entry-brochure-20151109-en.pdf.

[14] *See Family Reentry Program*, *available at* https://www.backtonycha.org/family-reentry-program-1.

[15] Release conditions imposed on individuals serving parole or probation in New York State include, but are not limited to, the attempt to obtain "suitable employment if [they] are able to work, a suitable educational program or other program specified by the board," making written or office reports as directed by their officer, discussing any proposed changes in their residence, employment, or program status with the officer, neither using nor possessing drug paraphernalia or any controlled substance without adequate medical authorization, and not being in the company of anyone they know to have a criminal record "or whom [they know] to have been adjudicated a youthful

appointed officer. Our clients are expected to comply with onerous conditions that often erect barriers to employment and economic stability. Rather than facilitating successful reentry, the Program often acts as a shadow supervision system that subjects our clients to additional surveillance and carceral systems.

2. *A person's multi-system legal involvement upon reentry could affect their ability to maintain a six-month interaction with a community organization and, thus, keep them from accessing their basic civil needs through the Family Reentry Program.*

Community service providers are tasked with the responsibility to ensure that a released individual is provided the support services they need to reenter and fully reintegrate in their communities. These support services may include, but are not limited to: workforce preparation (i.e., job readiness, vocational training, continuing education, etc.), criminal record error and sealing assistance, financial aid and mentorship workshops, and wellness opportunities. While the Program enables these services to be made available to released individuals, the requirement of six months of participation is not always easy to satisfy. The mere fact of system involvement can severely undercut a person's ability to participate in the required six months of community organization and case management support services. A person returning to the community may be struggling with a host of immediate needs that make a six-month commitment to community organization services difficult.

3. *The relationship to the tenant of record that a person must demonstrate to qualify for the Program is too limited and should be expanded so that more people can be eligible for housing.*

The practical implications of the Program also pose challenges for individuals and families that have been separated by the family court system. A qualifying individual must demonstrate an immediate relationship to the head of the household. Under the Program, a recently released individual must move in with a spouse, child, parent, in-law, grandparent, or grandchild. This list excludes relationships that may be as or more important to the applicant than listed family members and may tie an individual to their community. It also excludes extended blood-family connections (i.e., aunt, uncle, cousin, nephew, niece, etc.).

offender" except if authorized by their parole officer or accidentally encountered. *See* 9 NYCRR, Subtitle CC, §§8002.3(e) ("Parole release decision"), 8003.2 ("Release Conditions").

4. *The challenges of securing tenancy after the Program's two-year occupancy period reflect the difficulty of securing stable, long-term housing with NYCHA generally.*

The temporary nature of the Program gives rise to a separate set of concerns regarding a newly re-integrated tenant's ability to stay in the NYCHA apartment for more than the initial two-year occupancy period. The availability of the Program hinges on the status and circumstances of the Tenant of Record ("ToR"), or primary leaseholder of the apartment. If the ToR moves out or passes away before the released individual is added to the lease, the burden falls on the latter to assert succession rights. It is typically the case that they would have no right to remain in the apartment unless another family member in the household with succession rights becomes the leaseholder upon being granted Remaining Family Member status. Applying for succession rights to an apartment has proven to be an incredibly difficult process. Applicants who are authorized to temporarily occupy a NYCHA apartment through the Family Reentry Program are commonly rejected based on their previous permanent exclusion or criminal record. An application to lift the exclusion (see above) creates an array of further hurdles to overcome, and the NYCHA occupant often struggles to retain a safety net and pathway for stability through NYCHA housing.

It is not only the pitfalls of the formerly incarcerated individual's experience that constrains the Program. The Program's impact on the ToR also raises serious concerns. The screening process that the ToR is expected to undergo can be both time and labor-intensive, while also exemplifying a broad overreach of authority and invasion of privacy. In its assessment of the family's situation, NYCHA conducts a home visit. In the course of this assessment, NYCHA considers overcrowding to be indicative of a recently released individual's ineligibility to reenter the household.

Of greater concern, perhaps, we have seen clients in our practice who are NYCHA leaseholders undergo invasive apartment searches by NYCHA Management, with personal information at the latter's disposal sought without any prior authorization. Such aggressive apartment searches can trigger NYPD involvement, which, consequently, can lead to additional cycles of criminalization of poverty, instability, and displacement of a person from their home. Thus, we view the Program as frequently serving as an alternative pipeline to a person's incarceration or reincarceration.

D. Conclusion

The Council should take every available step to end or drastically limit NYCHA Permanent Exclusion and encourage NYCHA to reform its broken and punitive admissions policies. Additionally, BxD urges the Council to pass Int. Nos. 146-2018, 1339-2019, 2018-2020,

2047-2020 and T2020-6576 to take essential steps in addressing criminal history and source of income discrimination in housing. We refer the Council to BxD's September 15, 2020 Testimony regarding those bills and incorporate it here.

Thank you again for the opportunity to submit these comments. We hope that this information was helpful to the Council and we are happy to provide any additional information.

Written Testimony to the New York City Council

Joint Hearing on Housing and Re-Entry (Committees on the Justice System, the Committee on Criminal Justice, the Committee on General Welfare, the Committee on Public Housing, and the Committee on Housing and Buildings).

Submitted by Sarita Daftary, Freedom Agenda

Wednesday October 21, 2020

Dear Committee Chairs CM Lancman, CM Powers, CM Levin, CM Ampry-Samuel, CM Cornegy, and committee members,

I am submitting this testimony as a co-director of Freedom Agenda, a new project at the Urban Justice Center focused on organizing with people directly impacted by incarceration to decarcerate New York City, defend the rights of incarcerated people, and divest from systems of punishment to redistribute those resources to the people and communities that have been most harmed by mass criminalization and systemic racism.

As a member of the Fair Chance for Housing Coalition, we urge this Council to work with NYCHA to remove all exclusions based on arrest or conviction records. These policies only prevent people from accessing housing as a human right, and do not improve public safety. Enabling people to secure stable housing is not only the right thing to do, it is the practical thing to do. Stable housing a key ingredient to a stable life. It impacts a person's ability to find and keep a job, to pursue education and training opportunities, to stay consistent with any treatment or counseling programs a person may need, and more.

In addition, we should all be aware at this point of how the criminal legal system targets Black and Brown people, starting with policing and continuing through the courts and prison systems. Our members have experienced police harassment – resulting in arrest and conviction records – from a very young age, and have been subject to both disproportionately harsh punishments and wrongful convictions. A city that is serious about community safety, about human rights, and about racial justice must treat housing as a human right for everyone. NYCHA's current policies fail to do that.

One positive development in recent months has been MOCJ's effort to provide hotel rooms, and services, for people released from jail and prison who do not have stable housing. With the collaboration of organizations like Exodus and Fortune Society, these efforts have been a success and have saved many people from months spent on Rikers or in congregate shelters. This program can and

should be expanded. There are currently 109 people on Rikers Island serving a sentence of a year or less. This number has increased 45% from a low of 75 people earlier this year. Using the discretion of the 6A program – and the Conditional Release Commission that was established new City legislation this year - everyone serving a City sentence can and should be offered release to alternative programs, and stable housing if needed. The City can also work with the State to secure the release of more people who are detained for technical parole violations. Regarding people detained pre-trial - it is our understanding that the MOCJ hotels program has been used in only limited instances for people with pending cases – but the administration should be negotiating with DAs and judges to utilize this option to offer stable housing, in addition to other supervised release programming, for people with pending cases, and prevent the jail population from climbing any further. Since July 1, pre-trial detention has increased by more than 16%. The administration should consider all cases within their release advocacy efforts, but can start with some obvious groups, including young adults 18-25, people over 50, people with mental health needs, people who are immunocompromised, women, and gender non-conforming people. To expand further one of these groups – let's consider women. There are currently 182 women on Rikers Island, where evidence has shown they are incredibly vulnerable, including to sexual victimization by officers. Seven of these women are serving a City sentence, 3 are awaiting a parole hearing, 15 are awaiting a parole hearing and are facing a new charge, 153 are awaiting trial, and 4 are awaiting transfer upstate. It seems fully in the range of possibility for the City to invest in supportive programming – like hotels along with service-based supervised release – to release 178, or almost all, of these women. While a number of these women are facing serious charges, they still deserve the presumption of innocence, and the Women's Community Justice Project, for example, has already successfully provided alternative to detention programs, along with housing, for women charged with serious offenses.

The experiences of this year - as our City has navigated the twin pandemics of Covid-19 and structural racism - have made the urgency of decarcerating, closing Rikers, and addressing unsafe conditions in all City jails is more clear than ever.

The Council should do everything in its power to move swiftly to open all possible paths to housing for all New Yorkers – including those with arrest and conviction records. That must include working with NYCHA to eliminate arrest and conviction-based exclusions, establishing the conditional release commission, and continuing the MOCJ hotel program and expanding it beyond its current scope.

Thank you,

Sarita Daftary

Co-Director, Freedom Agenda

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Testimony of
Alison Wilkey, Director of Public Policy
On behalf of
John Jay College Institute for Justice and Opportunity
Before
The Council of the City of New York
Committees on Justice System, Criminal Justice, General Welfare, Public Housing and Housing and Buildings
Hearing on Housing and Reentry

October 21, 2020

Good afternoon. My name is Alison Wilkey and I am the Director of Public Policy at the John Jay College Institute for Justice and Opportunity. I want to thank Councilmembers Lancman, Levine, Powers, Ampry-Samuel, Levin, and Cornegy for the opportunity to present testimony today about the need to address housing issues faced by people with conviction records. The John Jay College Institute for Justice and Opportunity's mission is to create opportunities for people to live successfully in the community after involvement with the criminal legal system by addressing structural racial and economic inequalities.

The widespread use of background checks in tenant selection is a contributor to the housing and shelter crisis and the deep racial inequality in this City. People with conviction histories face perpetual punishment through background checks when they seek a place to call home. In New York City each year, around 5,000 single adults enter shelters directly from institutional settings, like Rikers and state prisons.[1]

People living in shelter who have conviction histories have a hard time exiting shelter because they keep getting rejected, even when they have the financial means or assistance to afford an apartment. This is because national surveys found that have 90% of landlords do background checks on conviction history.[2] Research shows that a conviction record reduces the probability of New York City landlords' allowing prospective tenants to even *view* an apartment by over 50%.[3]

[1] Routhier, G., *State of the Homeless 2020*, (New York: Coalition for the Homeless, 2020), https://www.coalitionforthehomeless.org/state-of-the-homeless-2020/
[2] Nelson, A., *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing*, (Boston: National Consumer Law Center, 2019), https://www.nclc.org/issues/rpt-broken-records-redux.html.
[3] Evans, D.N. & Porter, J.R. Criminal history and landlord rental decisions: a New York quasi-experimental study. (2015). *Journal of Experimental Criminology*, 11(1), 21–42. doi: 10.1007/s11292-014-9217-4

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People with the lowest level of conviction—a B misdemeanor—are not eligible for public housing for three years after completing their sentence, and some people are ineligible for up to six years after serving their sentence.

Using background checks and conviction history to deny housing disproportionately impacts Black and Latinx New Yorkers because of well-documented racism in the criminal legal system. We perpetuate this racism when we continue to allow housing providers to make tenancy decisions based on background checks resulting from a criminal legal system that we know unjustly targets Black and Latinx New Yorkers.

There are solutions. If we care about fair housing, if we care about structural racism, if we care about families, and if we care about ending the crisis of homelessness in this City, then we must end the use of background checks to determine who is worthy of having a home.

Federal law requires NYCHA to exclude applicants for only two types of convictions. NYCHA goes far beyond federal law requirements, with sweeping exclusions. Although NYCHA has proposed changes to some of its policies, the proposed changes do not go nearly far enough. NYCHA's proposal does nothing to change its oppressive eligibility rules.

Instead of significantly changing this unjust rule, NYCHA's proposal only adds more bureaucracy and places more burden on housing applicants to prove that they deserve safe and affordable housing. Neither does the proposed rule change alter many of the inequities of NYCHA's practice of evicting families or individuals who are arrested or convicted. NYCHA's policy still allows eviction of people who have been arrested, but not convicted, in criminal court. Full comments on NYCHA's proposed policy are appended to my written testimony.

Turning to the private market, we have a solution to end discrimination with Int. 2047-2020. This bill would make it a discriminatory practice to deny a person housing because of their arrest or conviction history. The introduction of this bill by the Council has sparked lot of fear-mongering about safety and liability. It is clear that increasing access to housing increases safety. Research shows that a conviction history "does not provide good predictive information about the potential for housing success."[4] Removing the ability of landlords to deny housing based on a background check poses no risk of liability to landlords—landlords have never been expected to future behavior of tenants and this bill does not change that long-standing case law.

We cannot continue to deny people housing based on conviction records that are the product of a racist system. We will not end structural racism, nor will we end the housing crisis, without ending the use of background checks to determine who is worthy to have a home. If you have questions, you can reach me at awilkey@jjay.cuny.edu.

[4] Malone, D. Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults With Behavioral Health Disorders. (2009). *Psychiatric Services*, 60, 2. https://doi.org/10.1176/ps.2009.60.2.224

SUBMITTED VIA E-MAIL

October 28, 2020

Gregory Russ
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RE: Comments on *New York City Housing Authority Changes to Policies Related to Criminal Justice*

Dear Chairperson:

The undersigned organizations submit comments in response to NYCHA's request for public comments on the proposed changes to policies related to criminal justice. We appreciate NYCHA's reexamination of its policies related to applicants and residents with arrest and conviction records. We believe, however, that NYCHA can and should do more to lessen the disparate impact that the use of arrest and conviction records has on Black and Latinx applicants and residents.

I. Background

More people than ever must contend with the fallout of having a criminal record. Approximately 77 million Americans—or 1 in 3 people—have a criminal record.[1] By one rough estimate, more than 7 million New Yorkers have a criminal record.[2] Law enforcement resources have disproportionately targeted Black and Latinx communities, and as a result, 1 in 3 black men in the United States have felony convictions.[3]

Multiple studies have concluded that this era of "mass incarceration" has not increased safety.[4] The concomitant rise in the use of background checks as an obstacle to housing, employment, and other benefits has served to foreclose access to basic needs and supports for large numbers of Black and Latinx people with conviction records, and their families.

New York City is in the midst of a housing and homelessness crisis, due in part to exclusionary policies that foreclose housing options based on conviction records. The New York City Council recently released

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[1] "Barriers to Work: People with Criminal Records," National Conference of State Legislatures, https://www.ncsl.org/research/labor-and-employment/barriers-to-work-individuals-with-criminal-records.aspx

[2] Sarah Shannon, et. al., "Growth in the U.S. Ex-Felon and Ex-Prisoner Population, 1948 to 2010," Demography, (2017) 54:1795-1818, https://doi.org/10.1007/s13524-017-0611-1.

[3] Shannon, S.K.S. Uggen, C., Schnittker, J. et al. (2017). The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010. *Demography, 54*(5), 1795-1818. https://doi.org/10.1007/s13524-017-0611-1

[4] Don Stemen, "The Prison Paradox," Vera Institute of Justice (July 2017), https://www.vera.org/publications/for-the-record-prison-paradox-incarceration-not-safer; National Research Council, *The Growth of Incar-ceration in the United States: Exploring Causes and Consequences,* Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press (2014).

its recommendations for tackling homelessness and specifically called out NYCHA's policies that exclude individuals with conviction records.[5] Additionally, New York City's effort to support fair housing and alleviate segregation through the NYC Department of Housing Preservation and Development's Where We Live process acknowledged that criminal background checks are a barrier to fair access to housing and recommended limits on criminal background screening.[6]

Any NYCHA policy that excludes people based on contact with the criminal legal system should be given particular scrutiny due to the disparate impact of the city's policing and prosecution practices.[7] In New York City, mass criminalization and incarceration have played out in numerous, discredited policies that targeted Black and Latinx communities, such as "stop and frisk" and "vertical patrols" in public housing.[8] Marijuana enforcement is a particularly stark example of race-based law enforcement—in 2017, for every white person arrested for marijuana possession, 8.1 Black people were arrested, despite equal rates of use in the two populations.[9] Given that NYCHA's resident population is 90% Black and Latinx, these policies have a particular impact on those currently housed or seeking housing from NYCHA.

Disparate enforcement in the criminal legal system has a direct impact on the ability of people to access and retain public housing. It impacts those seeking to find housing at NYCHA for the first time, requests to join existing households, and remaining family members seeking succession when the head of household departs or passes away—all of these processes involve background checks and are points at which families are excluded from public housing. There are several hundred thousand people living in NYCHA who are not listed on household compositions, which is due, in part, to policies that exclude people based on conviction records. Families would rather live "under the radar" than go through background checks and face denials when there is a scarcity of affordable housing.

II. Federal Legal Requirements on Admission Eligibility

NYCHA's current admissions rules for conviction history and drug use history go far beyond what is required by federal law. This has a disparate impact on Black and Latinx people in New York City.

Federal law gives public housing authorities wide discretion to implement conviction records screening. The US Department of Housing and Urban Development (HUD) only requires that public housing authorities deny applicants who: (1) have been evicted from public housing within the past three years for drug-related criminal activity, (2) are on the lifetime sex offender registry in any state, or (3) have been convicted of manufacturing methamphetamines on public housing property. However, housing

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[5] New York City Council, "Our Homelessness Crisis: The Case for Change," (January 2020), available at http://council.nyc.gov/data/wp-content/uploads/sites/73/2020/01/FINAL-PAPER.pdf

[6] "Where We Live NYC: Draft Plan," New York City (January 2020), available at https://wherewelive.cityofnewyork.us/.

[7] HUD recognized the problem of racial disparities based on criminal legal system involvement in its April 4, 2016 "Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transaction," available at https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

[8] Office of the Inspector General for the N.Y.P.D., New York City Department of Investigations, "An Analysis of Quality-of-Life Summonses, Quality-of-Life Misdemeanor Arrests, and Felony Crime in New York City, 2010-2015" (2016), https://www1.nyc.gov/assets/oignypd/downloads/pdf/Quality-of-Life-Report-2010-2015.pdf.

[9] Erica Bond, Cecilia Low-Weinter, Meredith Patten, Quinn Hood, Olive Lu, Shannon Tomascak, and Preeti Chauhan, "Marijuana Enforcement in New York State, 1990-2017" (2019), http://www.datacollaborativeforjustice.org/publication/marijuana-report/.

authorities have discretion to admit people evicted within the past three years for drug-related criminal activity if the person has completed a drug rehabilitation program or if the circumstances leading to the eviction no longer exist.

NYCHA employs categorical exclusions in its admissions eligibility standards, mandating blanket denial for anyone with a B misdemeanor conviction in the past 3 years, an A misdemeanor conviction in the past 4 years, an E or D felony conviction in the past 5 years, and an C, B, or A felony conviction in the past 6 years.

HUD also gives housing authorities wide discretion to screen housing applicants who are: (1) currently engaging in illegal drug use, or (2) abusing alcohol in a manner that interferes with the public housing community.[10] HUD regulations require that the tenant selection plan screening criteria include standards for drug abuse and other criminal activity. Public Housing Authorities (PHAs) must deny admission to an applicant *currently* engaging in illegal drug use.[11] HUD defines "currently engaged in" as engaging in the activity "recently enough to believe the activity is current."[12] HUD requires PHAs to spell out what they consider to be "recent," e.g. past month, in their admissions policy.[13] The PHA may also consider rehabilitation which might indicate a "reasonable probability of favorable future conduct."[14] However, HUD regulations do not require PHAs to make an affirmative inquiry about current drug use, as NYCHA currently does. Rather, HUD's Public Housing Occupancy Handbook contemplates discovery of drug use through other means:

> Documented current use of illegal drugs by any applicant family member is grounds to reject the applicant family. Very often the verification process reveals evidence of some drug history, but the family member contends that the drug abuse is no longer occurring. If the PHA has received objective evidence that someone in the applicant family may be a current user of illegal drugs, it is the applicant's responsibility to demonstrate that this is not the case. . . PHAs should not engage in screening that excludes former users of illegal drugs (people in recovery).[15]

NYCHA's Tenant Selection and Admission Plan section VII(c)(3)(g) goes beyond what is required by law and mandates denial of admission of any persons who have illegally used a controlled substance within the last three years.[16] These families remain ineligible for a period of three years after the ineligibility finding, or until the family provides written verification from a state-licensed drug treatment agency that the person has been drug-free for 12 consecutive months and submits a current clean toxicology report. These exclusions are separate from the drug-related conviction record exclusions.

III. Comments and Recommendations

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[10] 24 CFR § 960.204.

[11] 24 CFR §§ 960.203(c)(3) and 960.204.

[12] HUD Public Housing Occupancy Guidebook, Part 2, Ch. 4, available at https://www.hud.gov/sites/documents/DOC_10760.PDF

[13] Id.

[14] Id.

[15] Id.

[16] "Tenant Selection and Admission Plan," New York City Housing Authority (2016), https://www1.nyc.gov/assets/nycha/downloads/pdf/TSAPlan.pdf

A. Individualized Reviews, Criminal History Lookback Period, and Scope for Applicants and Additions to Participating Families

1. Recommendations

NYCHA's proposal fails to change NYCHA's draconian ineligibility rules, which bar any person from living in NYCHA for 3 to 6 years after their conviction, depending on the level of conviction. Instead of significantly changing this unjust rule, the proposal only adds more bureaucracy and places more burden on New Yorkers to prove that they deserve safe and affordable housing.

NYCHA's admissions policy is part of the system of perpetual punishment and oppression faced by people with convictions. The criminal legal system intentionally targets Black and Latinx people in New York City.[17] Black and Latinx people are treated more harshly in the criminal legal system,[18] and institutions like NYCHA use this information to erect barriers to the basic human rights of housing, which have a disparate racial impact. Federal law prohibits admission of only three categories of people. Any exclusions beyond those three categories are indefensible given what we know about the injustice of the criminal legal system.

The current admissions policy has no effect on crime within NYCHA. The policy has been in effect for decades — largely unchanged — and crime rates have both increased and decreased during that time, showing that there is no correlation between rates of crime and the admissions policy. Given the disparate impact on Black and Latinx people, NYCHA has no justification for continuing the policy.

The admissions policy is also detrimental to NYCHA, as it has contributed to a large shadow population within NYCHA. People with conviction records know they will be denied permission to live with family members because of their records. Instead, they choose to live with family without being added to household compositions. This is a contributor to the 200,000 to 300,000 people who are living in NYCHA without permission. NYCHA has created this problem through its exclusionary policies.

Thus, we recommend that NYCHA:

- Limit its criminal background admissions ineligibility to the three categories of mandatory exclusions required by federal law. If an applicant has a conviction or eviction that falls under mandatory guidelines, NYCHA should automatically schedule an informal administrative review and then a formal administrative hearing. These reviews are necessary so that people excluded because of drug-related criminal activity in the past three years have an opportunity to show rehabilitative programming or changed circumstances. Automatic reviews and appeals—as opposed to tenant-initiated—are also warranted because conviction record information is known to be rife with errors, even records provided by the government.[19]

[17] See, e.g., Office of the Inspector General for the N.Y.P.D., New York City Department of Investigations, "An Analysis of Quality-of-Life Summonses, Quality-of-Life Misdemeanor Arrests, and Felony Crime in New York City, 2010-2015," (2016), https://www1.nyc.gov/assets/oignypd/downloads/pdf/Quality-of-Life-Report-2010-2015.pdf; Harold Stolper and Jeff Jones, "The Crime of Being Short $2.75: Policing Communities of Color at the Turnstile," Community Service Society (2017), https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Fare_Evasion_FINAL_10_6_17_smaller.pdf.

[18] National Research Council, "The Growth of Incarceration in the United States: Exploring Causes and Consequences." Washington, DC: The National Academies Press (2014), doi:10.17226/18613.

If NYCHA limited its admissions ineligibility to the three categories mandated by federal law, it would save resources by eliminating the need for staffing an extra review committee and legal staff to review and handle appeals of admissions denials. Such savings could be used toward physical improvements to buildings like working building locks—that directly impact residents' sense of safety.[20]

2. Comments on the Proposed Committee Review

NYCHA's proposed committee review raises two primary concerns. First, it would add even more administrative burden on applicants and residents. Applicants and residents would be subjected to three stages of review of their conviction records, in addition to potential appeals to the courts. This burden of time and preparation is unfair and unrealistic. Second, when the committee rejects an applicant, the likelihood that the applicant will be approved at subsequent stages will likely be lower. Decision-makers further down the line will defer to the Committee's rejection, or view an applicant more harshly because someone already made a negative determination.

Further, there is no evidence that the Committee will approve more applicants than are approved in the existing process. The proposed Committee would mimic the Committee used to assess applicants to the Family Reentry Program. That program has an approval rate of 71%. Through NYCHA's current informal *McNair* hearing process, 65% of people are ultimately approved. Adding an additional bureaucratic layer seems likely to only result in marginal differences in the approval rate.

NYCHA's proposal also lacks sufficient detail about the Committee process. If NYCHA moves forward with the Committee instead of changing its punitive eligibility restrictions, we recommend that the policy:

- List the titles of the people who will sit on the Committee, and include people with lived experience in the criminal legal system.
- Include a decisional standard for the Committee, and amend the current *McNair* standards, so that an applicant shall be found eligible unless there is specific and credible evidence that the person poses a future threat to an individual or individual(s) in the development in which they would reside. The current standard used in *McNair* hearings is that a finding of ineligibility can only be reversed where "there is a reasonable probability that the offender's future conduct would not be likely to affect adversely the health, safety or welfare of other tenants, and would not be likely to affect adversely the physical environment or the financial stability of an Authority project." This standard allows unfettered discretion for a person to be denied for reasons unrelated to a conviction record.
- Require that each member articulate the reason for their vote, as a safeguard against bias-driven decision-making.
- Require that, when the Committee denies an application, it provides the reason in writing to the applicant, such that the applicant can provide additional information, or cure any defect in the information considered by the committee, to address concerns raised in subsequent stages of review. However, the written decision should only be provided to the applicant, not to ATAD staff or hearing officers who will make subsequent decisions.

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[19] "The Problem with RAP Sheet Errors: An Analysis by the Legal Action Center," Legal Action Center (2013), available at https://www.lac.org/assets/files/LAC_rap_sheet_report_final_2013.pdf

[20] Press Releases & Statements: "Stringer Releases Investigative Survey of NYCHA Doors" (2018), available at https://comptroller.nyc.gov/newsroom/stringer-releases-investigative-survey-of-nycha-doors/

- Require that Committee members receive training on individual, organizational, and structural racism, and on racism in the criminal legal system, at least once per year.
- Require that committee membership include at least two members who have conviction histories.
- Give applicants a reasonable amount of time — at least 30 days — to provide documentation to be considered by the committee. Allow applicants to request additional time, and allow a grace period for late submissions.
- If an applicant does not provide any documentation, mandate that no unfavorable inference may be drawn.
- If the committee denies an application, any documentation provided should be transferred to subsequent stages of review, while allowing the applicant to submit additional documentation. This will alleviate some of the bureaucratic burden on applicants to provide multiple copies of documents at different stages.

3. Remaining Family Members

Any change in NYCHA's policies related to applicants with arrest and conviction records must explicitly incorporate remaining family members. Remaining family members are often decades-long NYCHA residents who suddenly find themselves facing eviction after a loved one passes away or moves out. Remaining family members must meet the same admissions standards as new applicants, yet receive less process from NYCHA when it comes to challenging ineligibility based on conviction records.

Current NYCHA policy requires a three-step grievance process for remaining family members. The first step is held with the Project Manager. If the manager finds the grievant ineligible, the next step is to appeal to the borough management department. The third and final step is to request a *McNair* hearing before an Impartial Hearing Officer. NYCHA has discretion to offer a lease to a grievant at any point during this process.

As part of the review, the development management office requests a criminal background check. Pursuant to its admissions standards, and under federal law, NYCHA is required to give applicants the opportunity to provide additional information for context, background, to explain the facts or rebut adverse information *prior* to a finding of ineligibility based on a conviction record.

In practice, however, remaining family members are automatically denied based on conviction record. Development and borough staff have repeatedly asserted that the only way to overcome a finding of ineligibility based on a conviction record is to go to a hearing, even though NYCHA's rules dictate a three-step consideration. According to NYCHA's own hearings data, only one finding of ineligibility based on conviction history was reversed following a *McNair* hearing in 2015, while zero were reversed in 2016 and 2017.

In contrast, new applicants to public housing receive a more meaningful opportunity to overcome a finding of ineligibility based on criminal background than current residents, who have lived in their homes for years. Applicants receive a pre-ineligibility notification and chance to submit additional information, and can meet with NYCHA staff at a Customer Contact Center for a pre-hearing conference to contextualize documentation and/or provide additional mitigating evidence. Ineligibility determinations can be reversed following these pre-hearing conferences, eliminating the need for a hearing. Remaining family members receive none of this process.

By finding longtime NYCHA residents presumptively ineligible prior to a hearing and failing to offer meaningful hearings with a real chance at reversal, NYCHA fails to guarantee remaining family members their procedural rights afforded by its own policy.[21]

B. Eligibility Based on Current Drug Use

As noted above, federal law and HUD regulations only require NYCHA to inquire about current drug use when there is evidence in the verification process of current drug use. Thus, NYCHA can and should eliminate any inquiry about past drug use in the application process because it is a screening that excludes former drug users. The policy should be revised to permit an inquiry about current drug use only where there is objective, external evidence that arises in the admissions process that suggests that an applicant is actively engaged in drug use.

C. Permanent Exclusion

1. Extinguishing Old Exclusions

We support NYCHA's proposal to extinguish old permanent exclusions after five years have elapsed. Old permanent exclusions should not be a bar to people accessing housing or visiting family. Families who have excluded someone in the past remain under threat of eviction for life if a previously-excluded family member visits. This is unfair to families and inhibits people who were excluded in the past from providing care and assistance. It is important to note that extinguishing a prior permanent exclusion does not limit the control that a resident has over who joins their household. Permission for temporary visitors or permanent additions to a household still requires an application from the head of household. To effectuate this change, we recommend that:

- NYCHA extend this permanent exclusion limit of 5 years to all permanent exclusion cases, including those with existing stipulations.
- NYCHA immediately notify residents subject to permanent exclusion orders older than five years that the exclusion is no longer in place and they can apply for the family member to rejoin the household. NYCHA should continue to review cases and make such notifications on a monthly basis thereafter.

2. Limiting Permanent Exclusion in Stipulations

Limiting permanent exclusions to five years as part of a settlement does not go far enough and goes against NYCHA's commitment to making individualized determinations. Moreover, including a five-year permanent exclusion provision in all settlements creates even more pressure to settle cases than currently exists. Residents, who are mostly unrepresented, feel pressured into settlement because they may face eviction if they exercise their right to a hearing. The magnitude of this pressure is demonstrated by the fact that in 2019, at least 90% of residents who answered their hearing notice

[21] See, e.g., Linares v. Jackson, 531 F. Supp. 2d 460, 471 (E.D.N.Y. 2008) (finding HUD regulation permitting evictions prior to proper notice and hearing unconstitutional and noting that it is "obvious that the process to be afforded should precede the initiation of eviction proceedings") (emphasis added), Owens v. Hous. Auth. of City of Stamford, 394 F. Supp. 1267, 1273 (D. Conn. 1975) (requiring robust pre-eviction administrative proceedings and "meaningful opportunity to be heard before their leasehold is placed in jeopardy")

settled cases by signing a stipulation rather than opting for a hearing.[22] Anecdotally, legal services providers report that when residents reject settlement agreements, they are treated more harshly by hearing officers as punishment for rejecting a settlement. This problem will only increase with the proposed stipulation change. Thus, we recommend that NYCHA:

- Engage in individualized determinations that allow for settlement stipulations to include permanent exclusion for a period of *up to* five years.
- Require probation, rather than permanent exclusion, for all residents who are facing non-desirability charges for the first time. This structure allows for increasing penalties for residents with multiple violations.
- Allow for individualized settlement for all terms contained in stipulations. Currently, NYCHA has one form for settlement stipulations that they will not negotiate. This is unheard of in any other civil legal context; settlement negotiations are never rigidly proscribed. NYCHA's policy should specifically allow for negotiation of all terms of a settlement, as in housing court. For example, terms that could be negotiated include probationary agreements that do not allow a person accused of criminal activity to live in the premises but allow for visits and other interactions.
- Limit settlement stipulation terms to those related to the charges and allegations that prompted the termination of tenancy case. The current settlement stipulation contains other terms that have no relationship to the behavior that instigated the termination case -- terms that are already covered by lease agreements. Inclusion of these extraneous terms has resulted in families facing subsequent termination charges for behavior that has no relationship to the original case, and puts residents on a fast-track to eviction.
- Prohibit case settlement and hearings until a resident is convicted in criminal court. Current policy allows NYCHA to evict or exclude residents even when their cases are dismissed in criminal court.
- Translate settlement stipulations to residents' first language. Currently, multiple-page settlement stipulations are orally translated at the time of settlement, but residents are left with no written record of the agreement.

3. Minors and Young Adults

NYCHA's proposed policy incorrectly asserts that minors are not subject to permanent exclusion. In fact, current policy dictates that youth whose cases are in family court cannot be excluded. However, 16- and 17-year-olds whose cases are in adult court can still face exclusion.[23] This policy does not reflect the vast science and knowledge showing that 16 to 26-year-olds are not yet fully capable of making responsible decisions and being independent from their parents.[24] Thus, we recommend that NYCHA:

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[22] NYCHA does not provide complete information about cases settled by stipulation versus hearing. Data made available by NYCHA can be found at https://www1.nyc.gov/assets/nycha/downloads/pdf/2019-permanent-exclusion-report.pdf

[23] NYCHA's "Guidelines on Handling of Termination Cases, Exclusion of Violent or Dangerous Individuals and the Lifting of Exclusions," available at https://www1.nyc.gov/assets/nycha/downloads/pdf/law-ansf-case-handling-guidelines.pdf, pg 5

[24] See, e.g., "Improving Emerging Adults' Safety and Well-Being," The Urban Institute (2020), available at https://www.urban.org/sites/default/files/2020/03/18/improving_emerging_adults_safety_and_well-being.pdf - "Emerging adults (people between 18 and 26 years old) are developmentally distinct from adolescents and adults. Emerging adulthood involves change and risk-taking, and a lack of opportunity and support during this stage can have lifelong consequences."

- Prohibit exclusion of any person under the age of 27. Probation should be the maximum penalty.

D. Future Procedures for Public Comment

We appreciate NYCHA's efforts to seek public input on policy changes. In the future, we recommend that NYCHA follow the provisions of the City Administrative Procedures Act (CAPA), specifically:

- Publish a policy change at least thirty days prior to the scheduled date of a hearing.
- Transmit the proposed rule to the City Council, Community Boards, news desks, and civic organizations. Publication marks the start of the public comment period, during which members of the public can submit comments or feedback on the rule by fax, mail, or email.
- Hold a public hearing at the conclusion of the comment period.
- Once the comment period closes, make public comments, including a summary of any oral testimony delivered at the hearing, available for inspection.
- Consider relevant comments (as defined by CAPA) and revise the rule in response to comments.
- A final policy can only become effective thirty days after the rule is revised and published.

IV. Conclusion

We appreciate that NYCHA is taking steps to review and reform its unjust policies related to people with arrest and conviction records. We are at a moment of reckoning—as a City and as a Nation—with the fundamental racism and injustice of the criminal legal system. Protests across the country for Black lives are not just about police brutality. They are about systems of racial oppression that continually deny low-income people of color basic needs, like the need for housing and the need for mutual support and care from families.

NYCHA is the largest landlord in New York City and it is a landlord of residents who are 91.5% Black and Latinx. We know—and recent protests have brought to the public eye—how Black and Brown people are disproportionately targeted by the police. We know that the disproportionate outcomes continue all the way through the criminal legal system. By continuing to penalize residents and applicants with conviction histories, and their families, NYCHA is relying on a fundamentally racist and unjust system and is a part of the system of perpetual punishment faced by over-policed communities of color. This must fundamentally change.

If you have any questions about our comments and recommendations, you can contact Alison Wilkey, Director of Public Policy, John Jay College Institute for Justice and Opportunity, at awilkey@jjay.cuny.edu.

Signed,

John Jay College Institute for Justice and Opportunity
Alliance of Families for Justice
Brooklyn Defender Services
Center for Community Alternatives
Children's Defense Fund-NY
Exodus Transitional Community

Fountain House
Freedom Agenda, Urban Justice Center
Legal Action Center
The Legal Aid Society
Neighborhood Defender Service of Harlem
New York Legal Assistance Group ("NYLAG")
Urban Justice Center
Visionary V
Women's Community Justice Association

Testimony of Judi Kende
Vice President and New York Market Leader
Enterprise Community Partners, Inc.

For the New York City Council
Committee on the Justice System
Committee on Criminal Justice
Committee on General Welfare
Committee on Public Housing
Committee on Housing and Buildings

Joint Hearing on Housing and Reentry

October 21st, 2020

My name is Judi Kende and I am the Vice President and Market Leader for the New York office of Enterprise Community Partners. Enterprise is a national affordable housing nonprofit whose mission is to create opportunity for low- and moderate-income people through affordable housing in diverse, thriving communities. We invest capital to create and preserve quality affordable homes, reinvest revenues to develop programmatic solutions, and scale these solutions through policy change. Since our New York office opened in 1987, we have invested over $3.8 billion across New York State helping build or preserve more than 63,000 affordable homes for over 167,000 New Yorkers.

On behalf of Enterprise, I would like to thank Chair Lancman, Chair Powers, Chair Levin, Chair Ampry-Samuel, and Chair Cornegy for the opportunity to submit testimony for this hearing on the critical need for safe, accessible, affordable housing for New Yorkers returning home from jail and prison, a priority for our organization that is more important than ever now amid the Covid-19 pandemic. Given the absence of sufficient federal resources to address the unprecedented level of housing insecurity that our city is currently facing, New York City government must step up with strong coordination between agencies to support all of our city's most vulnerable communities, including justice-involved individuals, with pathways to permanent affordable housing.

As part of our Regional Affordable and Fair Housing Roundtable, co-convened with the Fair Housing Justice Center, Enterprise advocates for the expansion of state and local protected classes to include arrest and conviction records. People exiting jails and prisons face enormous barriers of discrimination to securing housing. Due to these barriers, one in five entrants to the New York City Department of Homeless Services (DHS) shelter system come directly from state prison, and up to 80% of people leaving Rikers enter DHS shelter in the year following their discharge. Access to stable housing is the cornerstone of successful reentry, as people in shelter

or otherwise unstably housed often also face employment discrimination, additionally contributing to recidivism. This is an issue of civil liberties with deeply racialized impacts, as 90% of people in jail in New York City are Black or Latinx, a racial disparity even more stark than the rest of the United States, where one in three Black adult men has a felony conviction.

NYCHA Policy Changes:

As a critical stock of housing for the city, we thank NYCHA for their newly released set of policy changes to lower the barriers to entry for people exiting jails and prisons. This reexamination of policies related to applicants with arrest and conviction records will improve access to reentry housing, but we believe additional policy changes related to admissions and permanent exclusion could be made, especially to reduce the disparate impact on Black and Latinx New Yorkers. We propose for NYCHA to:

- Limit its criminal background admissions ineligibility only to the three categories of mandatory exclusions required by federal law of public housing authorities, rather than continuing to bar any person for 3 to 6 years after their conviction;
- Extend the new permanent exclusion limit of five years to all permanent exclusion cases, including family members and those with existing stipulations, and immediately notify residents subject to permanent exclusion orders older than five years that the exclusion is no longer in place and they can apply for the family member to rejoin the household, while continuing to review cases and make such notifications monthly;
- Engage in individualized determinations that allow for settlement stipulations to include permanent exclusion for a period of up to five years, and require probation, rather than permanent exclusion, for all residents who are facing non-desirability charges for the first time;
- Prohibit exclusion of any person under the age of 27, reflecting research that shows "emerging adults" (aged 18-26), in addition to minors, are developmentally distinct from adults and need opportunities to prevent lifelong consequences.

Disproportionate impacts of the criminal justice system continue to follow justice-involved New Yorkers throughout their lives, with the most painful outcomes for Black and Latinx people and their families. To support their successful reentry, prevent recidivism, and promote safety in our city, we urge these improvements to housing access at NYCHA.

Intro 2047:

Especially amidst a pandemic, it is critical that we take every step to intervene in the prison-to-shelter pipeline to end the debilitating cycle of recidivism and to protect public health. Ending the use of background checks is another key step to removing discriminatory barriers to reentry housing for justice-involved people and families.

To this end, we support Chair Levin's Intro 2047 to prohibit housing discrimination on the basis of arrest or criminal record in New York City as a step towards statewide fair housing protections. We recognize the need for conversation with housing providers on certain offenses of concern, but individualized assessment based on offenses and "ban the box" style legislation often lead to more discrimination. Research shows that a conviction record reduces the probability of a landlord allowing prospective tenants to even view a rental apartment by more

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than 50%. A ban on background checks by housing providers is crucial to removing this barrier to safe, successful reentry for New Yorkers.

In closing, thank you again for the opportunity to testify today and for your continued leadership to address housing insecurity for justice-involved New Yorkers, across agencies, especially amid the Covid-19 pandemic. We look forward to working with you to ensure equitable reentry for all.

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New York City Council

Joint Hearing on Housing and Reentry

Wednesday, October 21, 2020

1:00 PM

Testimony Presented By

Rev. Wendy Calderón-Payne,

Executive Director

Support for a Humane Approach to Housing and Reentry

I am Rev. Wendy Calderon Payne, the Executive Director of BronxConnect and ManhattanConnect. I am also a member of *Faith Communities for Just Reentry* and the NYC ATI Coaltion. Since 1999 we have successfully supported justice-involved young people and families as they navigate their way out of destructive lifestyles and into fulfilling productive lives.

We have found that a few components are central in helping a young person make the behavioral changes they need to live an adult life free of incarceration. For a young person to change, they need to believe they are *worthy* and capable of a different future. At BronxConnect, seeing an exciting future starts with seeing people who look like you and sound like you. BronxConnect youth are surrounded by staff and mentors who have walked in their shoes, and ended up on a healthy path. Our staff have highly similar stories of struggle. Yet they are living, breathing proof that things can, with the right support systems, change and people can overcome circumstance. Our model proves that a difficult circumstance, like justice system involvement, doesn't have to be a life sentence.

Our community based model works. In 2018, Dr. Trevor Milton, researched `161 graduataes of our program and found that 97% had gone three years without a felony conviction. This is quite a incredible fact given that 95% of these youth were referred into our program facing violent felonies.

Our community driven successful model demonstrates once again that those closest to the problem know the solutions to the problems they face, yet are farthest from the resources to solve the problem. When it comes to reentry there are three common sense changes that NYC can enact right now that will give those coming out of incarceration a better chance of succeeding:

1) **Give everyone leaving Rikers an ID card**. Without an ID card, it can be nearly impossible to apply for employment, housing, or many government benefit programs. The City can fix this for New Yorkers on Rikers Island easily. Such a simple solution, one has to ask why this has not been mandated already.

2) **Make homelessness prevention vouchers usable**. The City's homeless prevention vouchers currently fall far short of fair market rents, which means that families at risk of homelessness are unable to find apartments. I urge all City Council Members to support Intro. 146, which seeks to raise the amount of rental assistance vouchers to market rate and can help fix this issue for all New Yorkers, regardless of justice-involvement.

A hope deferred makes a heart sick, and its just unrighteous to give out these CityFHEPS vouchers that we know can not be used as they are too low in value. They also overcrowd families of 5 into two bedroom apaprtments, which risk the safety of children as they have to share bedrooms with the opposite sex. Given how many vouchers have not been used, there should be money in the budget to modify the rental amounts.

I also encourage City Council to investigate how the Department of Homeless Services has used the funding allocated to the unused CityFheps vouchers. The 11,000 unused vouches last year alone represent over 200 million dollars.

Stop NYCHA from separating families. City Council should push NYCHA to change its policies that discriminate against New Yorkers who have criminal histories. We know these sweeping policies do more harm than good.

In closing, if New York City is truly a progressing city, we must create policies that seek to support all people. These simple changes can make a wealth of difference and keep our neighbors at home working and away from the cycle of incarceration.

Thank you.

Testimony of Corey J. Brinson
Policy Counsel
Legal Action Center
New York City Council
Before the Committee on Criminal Justice
October 21, 2020

My name is Corey Brinson. I am testifying in favor of bill No. 2047. This bill would eliminate the practice of a landlord's discriminating against people with conviction histories who are seeking rental housing. I serve as a Policy Associate at the Legal Action Center. The Legal Action Center uses legal and policy strategies to fight discrimination, build health equity, and restore opportunity for people with arrest and conviction records, substance use disorders, and HIV or AIDS.

The City Council should pass this important next generation civil rights bill because people with criminal conviction already face difficult challenges—especially those returning from prisons and jails—to reintegrate into society. These challenges include, but are not limited to obtaining employment, reestablishing family connections, and community integration—but also includes securing safe and affordable housing. And while there are protections for people with criminal convictions who are seeking employment, there are no legal protections for people with criminal convictions who are seeking housing under local, state, and federal law. In fact, the law currently discourages the renting of apartments to people with criminal convictions in public housing. People who cannot find stable housing are less likely to establish positive, family relationships, find employment and successfully reintegrate into the community. According to the Coalition for the Homeless, in 2018, at least 20 percent of adults who entered New York City

shelters did so directly from a jail or prison.[1] And for the same reasons New York City passed the Fair Chance Act in 2015, so that people with criminal convictions would have a fair chance at employment, we must now act and provide the same meaningful opportunity so that people with criminal convictions can secure housing. In it no coincidence that in 2017, the Mayor's Office of Criminal Justice found that 40% of the people serving a short jail sentence were homeless.

The law in this area needs reform. Currently, the law permits a landlord the ability to refuse to rent an apartment or house to a person simply because of his or her criminal conviction—no matter how old. Bill 2047 would effectively prohibit discrimination against prospective tenants who have criminal convictions by making it an unlawful discriminatory practice under the New York City Human Rights Law for a real estate broker, landlord, or their employee or agent to inquire or take an "adverse action" because of an applicant's arrest or conviction history. "Adverse actions" would include a denial of a rental application, higher application fees, failure to act on an application, or the imposition of additional requirements or less favorable lease terms. The bill does not stop there. It would also prohibit landlords and their agents from stating in ads and applications that people with criminal histories are ineligible to become tenants.

The bill is reasonable in that it takes into consideration the landlord's business interests and state and federal housing regulatory requirements that concern background checks. Specifically, the bill does not restrict a landlord's ability to pursue legal remedies if a tenant violates his or her lease terms. This bill would do for housing what the Fair Chance Act did for

[1] https://www.coalitionforthehomeless.org/state-of-the-homeless-2020/

employment—it would bar the practice of irrelevant inquiries and adverse actions simply based on someone's conviction history. This bill would would not apply to people renting out a room in their family's home or to people seeking a roommate. This bill is designed for the profit-driven, commercial landlord where most of the housing is available. Furthermore, this bill helps to eradicate systemic racism, as our criminal legal system disproportionately effects New York's Black and Latinx communities. The lack of housing for these communities affects the ability to earn wages and provide for spouses and children. When we deny housing to a person with a criminal conviction, we are denying his or her entire family the opportunity to live the American dream. This discriminatory practice can last forever and impact a person's life indefinitely.

We know that the largest obstacle to this bill is from landlords. Landlords have argued that they need to know who is living in their buildings to provide safe housing for all their tenants. The problem with this argument is that prior criminal history is not a predictor of future behavior. In addition, criminal conviction background checks do not bar tenants from having visitors or overnight guests to their apartments. As a result, a landlord never actually knows who is in their building at any given time and cannot control all entry into the building from guests. Finally, permitting a landlord to charge additional fees, refuse to show an apartment, or deny housing to an applicant permits landlords to indirectly discriminate against people of color in a legal fashion considering the criminal conviction rates in New York. This practice is untenable, undesirable, and does not reflect the spirit of New York City.

Access to housing is a civil right for all New Yorkers. It is as important as access to employment, healthcare, and education. Too many New Yorkers are being denied access to housing simply because of their past when it is not a reflection of their future. This discriminatory practice does not make New York safer and ironically destabilizes communities

and increases recidivism and that is making New York less safe. It is time to ban the practice of legal discrimination in housing for people with criminal convictions. We ask that you enact bill 2047.

Testimony of the Corporation for Supportive Housing (CSH)
The New York City Council
Joint Committee on Housing and Reentry
October 21, 2020

Honorable NYC Councilmembers of the Committee on Justice System, Committee on Criminal Justice, Committee on General Welfare, Committee on Public Housing and Committee on Housing and Buildings:

Thank you for allowing CSH to testify before your committees. CSH's mission is to advance solutions that use housing as a platform to deliver services, improve the lives of the most vulnerable people, and build healthy communities. CSH is deeply committed to sustaining and increasing access to permanent housing solutions, especially for **people who are highly impacted like those in the justice**, homeless and emergency health systems. We have a nearly 30-year track record of innovation and investment in New York City, as a nonprofit and Community Developmental Financial Institution (CDFI) who partners with city agencies, affordable housing developers and nonprofits.

We encourage NYC Council to act boldly in expanding affordable housing and removing barriers to housing for people who are justice-involved.

First, housing, particularly supportive housing[1], helps to reduce recidivism for people who are justice involved. Through the Mayor's Taskforce on Behavioral Health and Criminal Justice System, Justice-Involved Supportive Housing (JISH) was developed.[2] JISH builds upon the Frequent Users Systems Engagement (FUSE) initiative that CSH piloted in collaboration with NYC over 10 years ago. The core of FUSE is the ability to identify the highest utilizers of jail, shelter, and healthcare system use, and assists them to stabilize and improve through engagement in supportive housing services. The FUSE pilot was proven to significantly decrease shelter, hospital, and jail stays which resulted in an overall reduction of public costs related to those services.[3] In other words, housing works.

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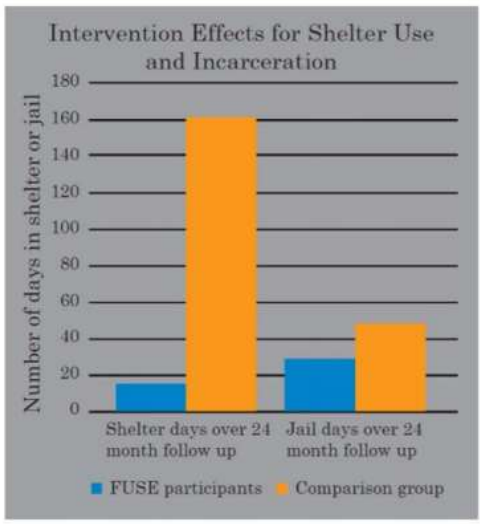
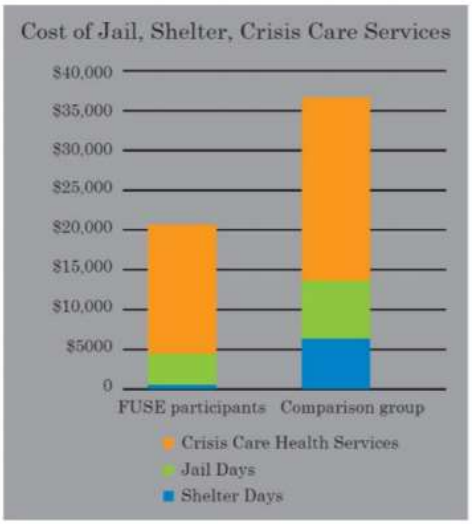
[1] Supportive housing provides supportive services so that people live and thrive in their communities just like any other New Yorker, and it is co-developed with affordable units for the community. It stabilizes people and communities, and serves as an economic generator.

[2] The taskforce is a $130-million-dollar committee with the goal of reducing the number of people with behavioral health needs cycling through the criminal justice system and created JISH. For more information on the Taskforce, please see http://criminaljustice.cityofnewyork.us/wp-content/uploads/2018/04/annual-report-complete.pdf

[3] https://www.csh.org/wp-content/uploads/2014/01/FUSE-Eval-Report-Final_Linked.pdf





Aidala, A., McAllister, W., Yomogida, M., Shubert, V. (2014) *NYC Frequent User Service Enhancement 'FUSE' Initiative Evaluation Report.*. Retreived from http://www.csh.org/wp-content/uploads/2014/01/FUSE-Eval-Report-Final_Linked.pdf

Similar to FUSE, in the JISH model, people are identified through a data match from both the NYC Department of Corrections (DOC) and NYC Department of Homeless Services (DHS) to target those with the highest jail and shelter use. These individuals who are identified are then directly connected to supportive housing. In the initial JISH model, there were 120 scattered site beds managed by three service providers. Given the need for increased beds, specifically for congregate settings for those with significant needs, JISH 2.0 was released in 2019. The goal of JISH 2.0 is to secure 150 units – 60 scattered site units and 90 congregate site units – to serve people with current justice involvement and homelessness. In October 2019, as part of the plan to close Rikers, New York City committed to developing an additional 230 units of JISH housing (for a total of 500 City-wide) and the Department of Health and Mental Hygiene (DOHMH) released an RFP. DOHMH is currently accepting applications for this RFP and if quality applications are received, the JISH 2.0 contracts will be awarded.

Recognizing the historical budget and social justice pressures before the City Council, **we strongly encourage the City to carefully examine budget priorities to ensure that social services and housing can step up in our communities, which will allow law enforcement and incarceration to take a step back.** As part of budget priorities, expanding affordable housing available for people leaving Rikers and state prison need to be prioritized. In order for social services and housing organizations to step up across the five boroughs, the affordable housing development pipeline – which includes development of supportive housing – must be protected. Over the summer, the Housing Preservation and Development capital budget was slashed by 40%, and as a CDFI, we know from experience that once the pipeline dries up, it takes *years* to begin again.

There is also a need for City Council to remove barriers to housing in both the private and public market. The COVID-19 pandemic has made it clearer than ever that each person's ability to thrive is inextricably linked to the overall health of our

communities. Well before COVID, BIPoC, particularly Black and Latinx communities, have been marginalized and discriminated against and are significantly overrepresented in New York's public systems, including the justice system. Moving forward, City Council legislation and budget allocations need to be anti-racist and designed to dismantle the existing disparities that have only been compounded by COVID.

In regards to the private market, it is imperative that City Council pass legislation that is focused on the private rental market that removes existing barriers for people with criminal convictions. We encourage the City Council to consider the Fair Chance for Housing (FH4H) Campaign legislation, #2047-2020, as a starting place.

For public housing, New York City Housing Authority (NYCHA) is currently considering significant changes to its policies related to criminal justice. As the city's largest landowner, it is important to reexamine NYCHA's policies related to applicants and residents with arrest and conviction records and we applaud these efforts. CSH is submitting comments that encourage NYCHA to go as far it can in removing existing barriers, based on federal HUD requirements. We recognize nearly all NYCHA residents are Black and Latinx[4], again, it is imperative to have anti-racist policies that will recognize and reduce the disparate impact that the use of an arrest or conviction has on BIPoC residents and applicants.

A permanent and stable home is what is needed to help individuals and communities thrive and remain safe. We urge City Council to pass legislation that allows social services and housing to have the resources to expand and support our communities, during a time when residents across this City are urging for an investment in communities, as opposed to continued investment in public safety. This includes protecting the affordable housing pipeline, expanding programs like JISH, as well as removing barriers to housing for the justice involved.

Thank you for your time and attention.

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[4] https://furmancenter.org/files/NYCHA_Diversity_Brief_Final-04-30-2019.pdf