



**TESTIMONY OF:**

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**Presented Before**

**The New York City Council Committees on**

**Criminal Justice & Committee on Justice System**

**Oversight Hearing on COVID-19 in City Jails and Juvenile Detention Centers**

**May 19, 2020**

Brooklyn Defender Services (BDS) provides comprehensive public defense services to nearly 30,000 people each year, thousands of whom are detained or incarcerated in the City jail system either while fighting their cases or upon conviction of a misdemeanor and a sentence of a year or less. NYC jails are at the epicenter of a public health crisis as COVID-19 continues to ravage our communities. We thank the Committees on Criminal Justice and the Justice System and Chair Powers and Chair Lancman for calling this necessary hearing. Our testimony below is based on the experiences of the people our office represents who are currently in the custody of NYC Department of Correction.

COVID-19 has spread throughout NYC jails at an alarming rate.<sup>1</sup> Elected officials, correctional and medical experts, and even health care staff working in DOC have repeated time and again that our strategy for containing the virus must include decarcerating the jail population. If the population is not reduced, the virus will continue to circulate throughout the jails, exposing

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<sup>1</sup> The Legal Aid Society, *COVID-19 Infection Tracking in NYC Jails*, <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (last visited May 15, 2020).

people in custody, exposing staff and exposing their communities every day they shuttle between home and work. Jail environments allow contagious diseases to spread like wildfire, and Rikers is the consummate exemplar: it is virtually impossible to sanitize facilities, and largely impractical to implement or enforce the guidance of the Centers for Disease Control and Prevention. This reality is broadly recognized. Correctional Health Services' own Chief Medical Officer Dr. Ross MacDonald<sup>2</sup> and former CHS Vice President Dr. Homer Venters<sup>3</sup> have both acknowledged that even if the agencies were at their best, they will never be able to keep those we incarcerate, and the staff overseeing them, safe.

New York City is responsible for the safety and welfare of those it chooses to incarcerate. This critical obligation is not discretionary – so long as the City incarcerates people, the City is responsible for their care and safety. It is undisputed that fulfilling this role is extremely challenging, and the demanding work being done by frontline healthcare workers risking their own lives to secure the safety of others deserves to be applauded. Yet this reality does not excuse systemic deficiencies that endanger thousands. The lived reality of the people we represent who remain in custody illustrate thematic categories of concerns across all NYC jails. Since the pandemic began, we have received hundreds of calls from people in custody describing the lack of information on COVID-19, inadequate cleaning supplies and personal protective equipment, and difficulty accessing healthcare.

The public is now aware of at least 1,895 confirmed cases of COVID-19 among people in custody and staff at Rikers, where three people in custody and at least ten DOC staff members have lost their lives due to COVID-19.<sup>4</sup> The City must not turn a blind eye to what happens on Rikers Island. The safety and well-being of those detained inside the City's jails is our moral and ethical responsibility. Moreover, the City should make no mistake: what happens at Rikers hardly stays at Rikers, as we regularly see the virus cycle between the jail and outside communities, and the impacts of outbreaks are felt City-wide.

### **Adolescents and NYC Juvenile Detention Facilities**

The onset of COVID-19 has presented challenges for all New Yorkers, but among the most pressing are those challenges impacting youth detained in the City's two Juvenile Detention Centers. Nationally and internationally, doctors and media have presented study after study that congregate care is not safe and that many children in detention should be released.<sup>5</sup> New York City's children are no exception. Children that remain in the City's care must be provided with comprehensive, quality services, education and support mandated by the court and regulations.

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<sup>2</sup> Jan Ransom and Alan Feuer, '*A Storm is Coming*': Fears of an Inmate Epidemic as the Virus Spreads in the Jails, New York Times, Available at <https://www.nytimes.com/2020/03/20/nyregion/nyc-coronavirus-rikers-island.html>

<sup>3</sup> PBS News Hour, *U.S. prisons are crowded, dirty and opaque. COVID-19 is running rampant*, Available at <https://www.pbs.org/newshour/show/u-s-prisons-are-crowded-dirty-and-opaque-covid-19-is-running-rampant>

<sup>4</sup> CNN, *Inside New York's notorious Rikers Island jails, 'the epicenter of the epicenter' of the coronavirus pandemic*, <https://www.cnn.com/2020/05/16/us/rikers-coronavirus/index.html>

<sup>5</sup> See the American Bar Association's *Advocating for Kids in Detention and Congregate Care Amidst COVID-19 Concerns* for more information, <https://www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2020/advocating-for-kids-in-detention-and-congregate-care-amidst-covid19-concerns/>

All of the City’s youth—those inside and outside of detention facilities—are vulnerable at this time, and services are more difficult than ever to access. The youth we serve are almost entirely from low-income communities with divested resources during the best of times. We know that our clients already face many obstacles including living in heavily policed neighborhoods where normative behavior is criminalized. Without services and structure, adolescent arrests will only increase. BDS seeks to support the young people we serve by providing structure and guidance inside and outside of the courtroom, yet we are limited during this. Alarming, when the DOE’s virtual schooling ends in June, many youth will be left without programming or structure.

We call on the City Council to address this vital need by restoring funding to the Summer Youth Employment Program, which is critical to providing kids a structured purpose, essential income, mentorship and life-skills. We further urge the state and City to restore funding to programs that can mitigate against an increase in adolescent arrests while providing a valuable and much needed service to the City. The City should commit to finding ways our youth can safely participate in the Summer Youth Employment Program. Many jobs can be handled remotely, and community spaces can provide employment opportunities. Investment into these neighborhoods and these programs will only result in safer communities in the long run.

### **NYC Jails – Rikers Island and Borough-Based Jails**

As New York City’s jails have become the epicenter of the global pandemic, multiple narratives of the situation are emerging. One narrative is shared by City agencies and largely reflects policies and official guidance to describe how things *should* be, while the other story is described by directly impacted people, who see firsthand how those policies are failing. It is the words and experiences of those at the center of this pandemic that must shape how this City responds to this once-in-a-generation crisis. Unfortunately, without proper training, oversight, and accountability, written policy rarely equates to consistent on-the-ground practice.

We call on the City Council, the Department of Correction, and the Board of Correction to immediately address the following key categories of concern:

#### *Availability of Personal Protective Equipment for People in Custody and Staff*

According to DOC, by early April, jail staff were required to wear masks and gloves at all times while on duty. By mid-April, masks were allegedly available for all people in custody and adequate supply was to be provided by the end of the tour. This necessary and lifesaving policy has not properly implemented. During a two-week audit in April, the Board of Correction found that DOC staff were not wearing their masks correctly almost 50% of the time.<sup>6</sup> Our office has received numerous accounts from people in custody reporting that staff are not wearing masks. In one instance an individual stated that the captain who regularly comes through his unit never wears a mask. When asked why, the officer responded that she was waiting to receive a pink mask because she did not like the blue ones. Meanwhile, people in custody consistently report

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<sup>6</sup> NYC Board of Correction Monitoring COVID-19 Responses in New York City Jails, April 5-April 16, 2020, [https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/COVID%20Housing%20Public%20Report%204.5-4.16%20DRAFT%205.11.20\\_FINAL\\_1.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/COVID%20Housing%20Public%20Report%204.5-4.16%20DRAFT%205.11.20_FINAL_1.pdf)

using the same face mask for weeks at a time. When they ask for a new one, staff respond that there are no new masks available and they must wait at least two weeks.

### *Cleaning and Sanitation Supplies*

Although DOC policy emphasizes increased cleaning and sanitation during this pandemic, both the Board and people in custody report far more deficient cleaning. For instance, the Board used Genetec CCTV to observe an entire 24-hour period in each housing area, and found phones were not cleaned or sanitized consistently. “Across 45 instances of phone use, a person in custody cleaned the phone with a cloth or sponge before use three times. In all other instances, Board staff did not find disinfectant or cleaning agents within the vicinity of the phone areas.”<sup>7</sup> Board staff frequently observed people in custody using socks or other fabric to cover phones during use. Consistent with those findings, people in custody regularly report being reluctant to use the phone because it is not cleaned and there are no cleaning supplies available to properly sanitize. BDS has received reports where people have resorted to using their own bars of soap and shampoo to attempt to sanitize the receiver, and to cover the phone with their sock to attempt to find any protection.

### *Staff Rounding*

According to DOC’s policy, “Housing Area Logbooks,” officers posted within nondisciplinary celled housing areas are required to conduct active supervision tours every 30 minutes during times that people in custody are confined to their cells. Yet the reality is far different. In fact, people in custody report that housing officers hardly leave “the bubble” because they fear exposure to COVID-19. Due to DOC policy requiring escorts for all movement by people in custody, this results in greater delays and difficulty accessing the clinic or other services.

### *Grievance Accountability and Follow Up*

Over the last two months, DOC’s grievance system has become a flawed structure that people are not able to access, nor would they feel safe if they did. Because of the virus, DOC’s Office of Constituent and Grievance Services (“OCGS”) staff are now primarily working remotely from their homes, while eight uniform grievance officers are purportedly distributing resolutions to people in custody directly in the facilities. According to the Board’s May 12 Monitoring Response, the new protocol is that OCGS encourages people in custody to share their grievances with correctional officers, who are then to share it with grievance staff.

Unfortunately, this system is fundamentally flawed. It fails to provide adequate avenues for people to voice concerns and fails to address the very real problem of submitting complaints to officers in unit. Several people in custody report never seeing a grievance officer, difficulty accessing grievance forms, and barriers to submitting the forms themselves. In some cases, people seeking to submit grievances have no choice but to submit them to their steady housing officer, which eliminates any notion of privacy and endangers people who voice complaints about conditions on the housing unit. In one incident, an individual filed multiple grievances over the course of several weeks since the start of the pandemic. He was told to turn in his

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<sup>7</sup> NYC Board of Correction Monitoring COVID-19 Responses in New York City Jails, April 5-April 16, 2020, [https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/COVID%20Housing%20Public%20Report%204.5-4.16%20DRAFT%205.11.20\\_FINAL\\_1.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/COVID%20Housing%20Public%20Report%204.5-4.16%20DRAFT%205.11.20_FINAL_1.pdf)

grievances with his housing officer, but to-date he has received no confirmation of receipt or follow up.

### *Accessing Healthcare Treatment*

The COVID-19 pandemic only exacerbates the long-standing problems with accessing healthcare on Rikers Island. Although the creation of a hotline for people in custody to call CHS directly is a sensible, important step, the design and implementation have been flawed. Further, even if the hotline itself was as robust as possible, it would still not be a cure all to address all medical needs.

The hotline is far too limited. It is our understanding that CHS will only be available on the line during the hours of 5AM – 10AM. Unfortunately, though, medical needs arise 24 hours each day. Even during those hours, people in custody are sometimes met with a voicemail message, and never receive confirmation that their requests are heard or will be followed up on. For those that do reach CHS, the wait time for in-person medical care can be over a week, during which time new conditions and symptoms develop. For example, in one instance, a man reported increased difficulty breathing due to his asthma, despite repeated calls to the CHS hotline he did not receive treatment. Furthermore, this limited lifeline is unavailable for those in need of mental health care, unless they are housed in a COVID-19 positive unit.

### **Int. 2020-6175**

BDS supports Int. 2020-6175 which would create a local conditional release commission with the power and duty of determining which persons sentenced within the city of New York may be released on conditional release and under what conditions. The re-establishment of a local conditional release commission in New York City can accomplish the goal of reducing the population at Rikers Island. However, it can only accomplish this goal with transparency, accountability, and fairness.

Currently, the New York State Board of Parole has discretion to grant local conditional release (LCR) for those serving definite sentences at Riker's Island. If granted LCR, those who are released are subject to a one-year period of supervision regardless of the time remaining on the sentence. In the past, the possibility of technical violations and a return to jail has discouraged applications for such release and thus this important law has been underutilized. That fear has proved founded: even in the midst of the pandemic, parole has continued to issue technical violations and returned hundreds of people to jail. Defenders have undertaken herculean efforts to release those people in an attempt to mitigate the risk of COVID-19.

Any local commission charged with evaluating conditions of release for people from Rikers Island can serve an important role in ensuring conditions are imposed fairly and equitably. Any commission fulfilling this duty must include strong representation from defenders. Our voices are necessary to ensure that conditions of release are individualized and tailored to the specific circumstances each person faces. Including defenders in any commission is a necessary step towards ensuring that conditions are not imposed arbitrarily, that consequences of violations are not overly punitive, and that conditions of release provide a meaningful opportunity for the City to move towards decarceration.

Finally, the commission must operate with transparency and should issue reports on a regular basis. Such reports should remain anonymized but must include the number of applications, the number of those granted or denied correlated to the length of sentences and the conditions of release, if any. Finally, the reports must include the number of violations filed, the time spent incarcerated pending any hearings upon such violations, as well as the number of founded violations.

### **Int. 2020-6183**

BDS supports Int. 2020-6183 requiring the Department and CHS to issue reports during public health emergencies. We have now seen the deaths of at least three people in custody and twelve DOC staff members. We know that at least 1,895 people in custody and staff have been infected as of May 17, 2020,<sup>8</sup> and we know that the actual total is almost definitely even higher than the reported numbers because DOC and CHS have failed to report the cumulative number of incarcerated people who have tested positive. The information trickle out of DOC has been limited and slow. In order to best prepare advocates and the public, transparency and accountability are crucial.

#### *Recommendations related to Int. 2020-6183*

Int. 2020-6183 is necessary, and to strengthen its effectiveness BDS recommends the following points of data collection:

- The Department of Correction must report the total number of COVID-19 related grievances received, the manner in which the grievance was received such as 3-1-1 calls, attorneys, grievance form shared by DOC officers or OCGS staff, and average time of response. Additionally:
  - o How many of the filed grievances were related to environmental – sanitation?
  - o How many of the filed grievances were related to PPE?
  - o How many of the filed grievances were related to access to care?
  - o How many of the filed grievances were related to medical care?
- The Department of Correction should report comprehensive data about video visits, distinguishing between legal and non-legal visits:
  - o How many of each type of request were submitted?
  - o How many requests were fulfilled?
  - o How many were rejected, disaggregated by reason?
  - o What is the average wait time for a video visits disaggregated by facility?
- Correctional Health Services should report comprehensive data about the hotline provided to people in custody:
  - o How many calls are received daily?

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<sup>8</sup> NYC Board of Correction Daily COVID-19 Update, Sunday, May 17, 2020:

[https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public\\_Reports/Board%20of%20Correction%20Daily%20Public%20Report\\_5\\_14\\_2020.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_5_14_2020.pdf)

- How many calls are directly picked up by staff versus sent to voicemail, disaggregated by facility?
- What is the average response time to an individual's request?
- How many calls are COVID-19 related needs?
- How many calls are related to chronic care and treatment?
- How many calls are mental health related?

### **Int. 2020-6184**

BDS supports Int. 2020-6184 to cap the fees charged by private companies when community members send money to their loved ones in City jails. Many people remain incarcerated because their families cannot afford to pay bail to free them, yet the same families are forced to pay predatory fees of up to \$11.95 per transfer to JPay and Western Union to support their loved ones in custody. Commissary funds are now more essential than ever to purchase hygiene and cleaning products to mitigate the risk of COVID-19. These funds are also more precious as communities are hit by an ever-worsening economic crisis. Private companies should not be the ones profiting off this tragedy.

#### *Recommendations related to Int. 2020-6184*

While Int. 2020-6184 is a positive first step, it does not go nearly far enough. We urge the City Council to pass a stronger bill eliminating deposit fees, at least for the duration of the pandemic. Usually, the families and friends of people in detention have a fee-free option to transfer money: cash deposits at a Department of Correction payment window. While these windows remain open, our City should not require people to risk exposure to COVID-19 to provide funds to a loved one — already at high risk of contracting the virus within the City's jails — without paying exorbitant fees. We have safer, public health-promoting remote options in place: online and phone deposits, which should be free while the crisis continues.

The \$5 cap proposed by Int. 6184 is mandated by state regulation (9 N.Y.C.R.R. 7016.2(b)). New York City has applied for, and received, a variance for much of the last decade permitting it to charge fees of up to \$11.95 per transaction. Int. 6184 thus only requires the City to follow existing state law.

People in DOC custody face unreasonable and extractive costs throughout their incarceration, including disciplinary fines for violations like unclean cells and mark-ups on essential commissary goods. The City Council has taken positive steps in the past to reduce this burden, eliminating phone call fees in City jails as well as the bail payment surcharge previously imposed by the City. We urge the Council to build on this progress and closely examine all costs borne by people in custody and their communities, particularly in this critical moment.

### **Conclusion**

Transparency is essential during this crisis, and we must not gloss over the struggles many people are actively facing in NYC jails and juvenile detention facilities. In the midst of this pandemic, the City must take all possible precaution to protect all people and should take steps to ensure adequate resources and oversight for youth and adults in detention. The City Council

must continue to support and ensure the NYC Board of Correction abide by their responsibility to provide true oversight of the jails and portray to the public the facts of this crisis, and not the image given by the Department of Correction. As New Yorkers, we must understand that the crisis in our jails affects not just those we incarcerate, but all of our communities.

We thank you for the opportunity to testify today on this critically important topic. If you have any questions, please contact Kelsey De Avila, Jail Services Project Director, at [kdeavila@bds.org](mailto:kdeavila@bds.org).