Committee on Criminal Justice

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**THE COUNCIL OF THE CITY OF NEW YORK**

**Committee Report of the Justice Division**

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**COMMITTEE ON CRIMINAL JUSTICE**

**Hon. Keith Powers*,* Chair**

**May 28, 2020**

**Preconsidered Int. no. 1954- a**

**(related to reporting):** By Council Member Powers

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of correction and correctional health services to issue reports during public health emergencies

**Preconsidered Int no. 1956- a**

**(related to release):** By Council Member Powers

**Title:** A Local Law to amend the New York City charter, in relation to adding a new section creating a local conditional release commission

1. **Introduction**

On May 28 2020, the Committee on Criminal Justice, chaired by Council Member Keith Powers, will hold a hearing on two pieces of legislation, as detailed above, relating to the establishment of a local conditional release commission, reporting during public health emergencies, and imposing a cap on fees for transfers to institutional accounts. These bills were last heard on May 19, 2020, in a joint hearing on COVID-19 in NYC Jails and Juvenile Detention Centers.

1. **Background**

Since the onset of the COVID-19 pandemic, the inherent difficulty of managing infectious diseases in jail environments has been the topic of much public discussion.[[1]](#footnote-2) In response to COVID-19 former Chief Medical Officer at Rikers Island, Dr. Homer Venters, stated:

“All of the new terms of art that everybody has learned in the last two weeks, like “social distancing” and “self-quarantine” and “flattening the curve” of the epidemic—all of these things are impossible in jails and prisons, or are made worse by the way jails and prisons are operated. Everything about incarceration is going to make that curve go more steeply up. . . For prison systems or jails that are full—or, let’s say, over seventy-five per cent capacity—this process may be almost impossible for them to do. They may not have room to spread out. So if you can’t do that, if you can’t effectively keep the people with symptoms away from the people without symptoms, then you have a brand-new way of promoting transmission, which is separate and apart from jails being dirty or not having soap or hand-washing capacity.”[[2]](#footnote-3)

Current Chief Medical Officer Dr. Ross McDonald stated via Twitter that “[w]e cannot change the fundamental nature of jail . . . [w]e cannot socially distance dozens of elderly men living in a dorm, sharing a bathroom[,]”[[3]](#footnote-4) and urged District Attorneys and Courts to “let out as many people as you possibly can.”[[4]](#footnote-5) Accordingly, throughout this pandemic, city agencies have worked not only to manage exceedingly difficult conditions within correctional and detention facilities, but also to reduce the jail population to allow for more effective social distancing. Several Mayoral agencies have worked collaboratively to facilitate the release of people in custody, and the Committees will examine those efforts across the court system, DOC jails, and juvenile detention facilities.

The New York State Correction Law allows every county, and the city of New York to create a local conditional release commission by local law.[[5]](#footnote-6) The law requires the commission to be appointed by the Mayor, “upon the advice and consent of the city council,” and requires the commission to have “at least five members”[[6]](#footnote-7) who “have graduated from an accredited four year college or university,”[[7]](#footnote-8) “five years experience in the field of criminology, administration of criminal justice, law enforcement, probation, parole, law, social work, social science, psychology, psychiatry, or corrections.”[[8]](#footnote-9) The director of probation, or the director’s designee, is required to serve on the commission as a non-voting member, and the local Department of Probation is tasked with assigning staff to support the commission.[[9]](#footnote-10)

The Correction Law grants any such commission the power and duty of determining which individuals sentenced within New York City and serving a definite sentence of imprisonment (“city-sentenced”) may be released under conditional release and under what conditions.[[10]](#footnote-11) The commission is also required to present an annual report to the city Council of its findings and actions on submitted applications.[[11]](#footnote-12) The law only allows the commission to release a person in custody if the person has verified community ties with respect to employment, residence, or family; has not been previously convicted or does not stand convicted for an offense which is ineligible for merit time as authorized by § 803; an offense defined in Penal Article 235 (obscenity offenses) where the victim was under 18 years of age; or an offense which a commission determines was a crime of domestic violence. The law also requires that people in custody serve a minimum of 60 days of their sentence before applying for conditional release and that the person in custody not be released until they have served at least 90 days of their sentence.[[12]](#footnote-13)

The original version of the legislation, which was allowed to sunset in 2005, did not require the Council to create local release commissions by law and did not require the Council to consent or advise on appointees.[[13]](#footnote-14) These sections were added following an analysis of the previous law’s shortcomings, and after seeing how the commission was perceived to function to aid the release of those with political connections.[[14]](#footnote-15) When discussing the value of the previous law in a public hearing, the Assembly highlighted its flaws, including “a lack of uniform standards and criteria for granting early release, deficient reporting and record-keeping concerning early release decisions, a lack of accountability for decisions about conditional release and the failure of commissions in some cases to follow lawful procedures in making their determinations.”[[15]](#footnote-16) Accordingly, the Legislature gave the City Council and other local legislative bodies increased power to oversee and consent to appointment of those on the commission.

**VII. Legislation**

1. *Preconsidered Introduction (Related to Reporting)*

Section one of this proposed legislation requires the Department and CHS to submit to the speaker of the council, and make publicly available on the department’s website, a weekly report related to the outbreak of infectious diseases in city jails during the public health emergency. The report must include cumulative numbers of individuals diagnosed, recommended for compassionate release, and hospitalized, if known to CHS. The legislation also requires the Department to report weekly on the number of people in custody serving determinate sentences who have 30 or less, 31- 60, and 60-90 days remaining to serve on such sentences and the number of people in custody with a serious mental illness. The proposed legislation also requires the Department and Correctional Health Services or the Department of Health and Mental Hygiene (DOHMH) to provide regular updates to people in custody about the public health emergency. Finally, the legislation requires the Department and CHS to publish a timeline of significant events.[[16]](#footnote-17) Section 2 makes the law take effect immediately.

1. *Preconsidered Introduction (Related to Release)*

Section one of this proposed legislation requires the Mayor to create a local conditional release commission pursuant to § 271 of the Correction Law. Section two makes it so that the law takes effect immediately.

Proposed Int. No. \_\_\_-A

By Council Member Powers

A LOCAL LAW

..Title

To amend the administrative code of the city of New York, in relation to requiring the department of correction and correctional health services to issue reports during public health emergencies

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-160 to read as follows:

§ 9-160 Reports during public health emergencies. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Application for compassionate release. The term “application for compassionate release” means an application submitted, with the consent of the incarcerated individual, by correctional health services to the incarcerated individual’s defense attorney to be used to request that a court release the incarcerated individual.

Cumulative infections. The term “cumulative infections” means the total number of positive infections of people who have been incarcerated during a given public health emergency, regardless of whether those individuals have been discharged after being confirmed positive while in the department's custody.

Infection. The term “infection” means any infection that is the subject of a public health emergency.

Public health emergency. The term “public health emergency” means any declared state of emergency made in response to an outbreak of an infectious disease.

Staff. The term “staff” means civilian and uniform staff of the department of correction and correctional health staff.

b. During the duration of any public health emergency, the department and correctional health services shall submit to the speaker of the council, and make publicly available on the correctional health services website, a weekly report related to the outbreak of infectious diseases in city jails. Such report shall be submitted in a machine-readable format and stored permanently on correctional health services’ website, and include the following information for each day in the preceding week:

1. The number of incarcerated individuals tested for the infection, disaggregated by each day starting from the first day of the announcement of the public health emergency, or for the COVID-19 pandemic, each day starting from March 13, 2020, in total and disaggregated by whether such tests were positive, negative, or pending results. For those dates following the effective date of the local law that added this section, the number of incarcerated individuals tested for the infection shall be further disaggregated by the reason the test was administered;

2. The number of incarcerated individuals currently diagnosed with the infection; unless otherwise reported by the board of correction;

3. The number of currently incarcerated individuals who have been diagnosed with the infection but are no longer contagious;

4. The number of tests administered to incarcerated individuals;

5. The cumulative number of unique incarcerated individuals who have been tested for the infection, disaggregated by whether test results were positive or negative;

6. Cumulative number of tests administered, disaggregated by whether test results were positive or negative;

7. The cumulative number of staff who voluntarily self reported to be medically confirmed with the infection; disaggregated by whether such infections were of uniform, civilian, or correctional health staff; unless otherwise reported by the board of correction.

8. The total number of staff employed by the department, disaggregated by uniform and non-uniform staff; and further disaggregated by out sick and not out sick;

9. The number of deaths of incarcerated individuals related to the infection;

10. The cumulative number of incarcerated individuals provided applications for compassionate release, in total and disaggregated by number of such individuals released;

11. The number of incarcerated individuals known to correctional health services to be hospitalized due to the infection;

12. The cumulative number of incarcerated individuals known to correctional health services to be hospitalized due to the infection;

13. The number of people in custody with a serious mental illness; and

c. During the duration of any public health emergency, the department of correction shall provide a weekly report related to the outbreak of infectious diseases in city jails to the board of correction and to the speaker. Such reports shall include, for the previous week and the previous month:

1. The number of individuals incarcerated solely on a definite sentence, disaggregated by how many such individuals have 30 or fewer, 31-60, and 60-90 days remaining to serve on such sentence;

2. The number of individuals incarcerated solely on a definite sentence, disaggregated by which individuals have been deemed medically vulnerable by correctional health services.

3. The number of calls made to any correctional health services phone number designed to handle calls from incarcerated individuals, and the number of voice messages left on such phone number;

d. Correctional health services in collaboration with the department of correction shall provide and ensure the distribution of a weekly written communication to persons in custody including information about the public health emergency and a frequently asked questions section.

e. During the duration of a public health emergency, the department and correctional health services shall submit to the speaker of the council, and make publicly available on the department’s website, a timeline of significant events related to the public health emergency, including but not limited to general criteria for testing and discharge planning related to the public health emergency. Such a timeline shall be updated weekly.

f. Privacy. Reports required pursuant to this section shall not contain identifying information as defined in section 23-1201 of the administrative code of the city of New York. If a category to be reported contains fewer than ten individuals or contains an amount that would allow another category that contains fewer than ten individuals to be deduced, the number shall be replaced with a symbol.

§2. This local law takes effect immediately.

AS

LS # 14664/14877/14878

5/20/20

Preconsidered Int. No. - A

By Council Member Powers and Louis

A LOCAL LAW

To amend the New York City charter, in relation to adding a new section creating a local conditional release commission

Be it enacted by the Council as follows:

Section 1. The New York city charter is amended by adding a new section 9-207 to read as follows:

Section 9-207 Local conditional release commission. There is hereby established a local conditional release commission. Such commission shall have the powers, duties, and composition outlined under article 12 of the correction law or any successor statute.

§ 2.This local law takes effect immediately.

AS

LS #14,445

5/20/20

1. E.g., Jan Ransom and Alan Feuer, *‘We’re Left for Dead’: Fears of Virus Catastrophe at Rikers Jail*, The New York Times, March 30, 2020, available at <https://www.nytimes.com/2020/03/30/nyregion/coronavirus-rikers-nyc-jail.html> [↑](#footnote-ref-2)
2. Jennifer Gonnerman, *How Prisons and Jails Can Respond to the Coronavirus,* The New Yorker, March 14, 2020, *available at* <https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus> [↑](#footnote-ref-3)
3. <https://twitter.com/RossMacDonaldMD/status/1240455801397018624> [↑](#footnote-ref-4)
4. Id. [↑](#footnote-ref-5)
5. N.Y. Correction Law § 271 [↑](#footnote-ref-6)
6. Id. [↑](#footnote-ref-7)
7. Id. [↑](#footnote-ref-8)
8. Id. [↑](#footnote-ref-9)
9. Id. [↑](#footnote-ref-10)
10. N.Y. Correction Law § 272 [↑](#footnote-ref-11)
11. Id. [↑](#footnote-ref-12)
12. N.Y. Correct. Law § Ch. 43, art. 12, Refs & Annos [↑](#footnote-ref-13)
13. LOCAL CONDITIONAL RELEASE COMMISSION, 1989 N.Y. Sess. Law Serv. 79 (McKinney) [↑](#footnote-ref-14)
14. ASSEMBLY STANDING COMMITTEE ON CORRECTION

    NOTICE OF PUBLIC HEARING, To consider how the statutes governing New York State's local conditional release system should be modified, January 11, 2005, *available at*

    <https://nyassembly.gov/comm/Correct/20041223/> [↑](#footnote-ref-15)
15. Id. [↑](#footnote-ref-16)
16. See Department of Corrections, Washington State, Coronavirus COVID-19 Significant Events Timeline, *available at* <https://www.doc.wa.gov/news/2020/docs/daily-situation-report.pdf> [↑](#footnote-ref-17)