Committee on Criminal Justice

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## THE COUNCIL OF THE CITY OF NEW YORK

# **briefing paper OF THE Justice Division**

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**COMMITTEE ON CRIMINAL JUSTICE**

*Hon. Keith Powers, Chair*

**COMMITTEE ON CIVIL SERVICE AND LABOR**

*Hon. I Daneek Miller, Chair*

#### September 15, 2021

**Oversight**

**The Condition in Our City's Jails**

# **Introduction**

On September 15, 2021, the Committee on Criminal Justice, chaired by Council Member Keith Powers and the Committee on Civil Service and Labor will hold a joint oversight hearing on the conditions in New York City's jails. In recent weeks, there have been reports from various news agencies and the federal monitor overseeing many reforms at the Department of Correction (“DOC”) on the deteriorating conditions in the jails. A September 10th letter from Correctional Health Service’s (“CHS”) Chief Medical Officer, alleged a “collapse in basic jail operations” that the “City is unable to remedy on its own.”[[1]](#footnote-2) The DOC’s Commissioner Vincent Schiraldi has acknowledged that there are “serious problems” plaguing the jails and has pledged to fix them.[[2]](#footnote-3)

Among the many issues facing DOC, there has been a steadily increasing rate of violence[[3]](#footnote-4) and the use of force[[4]](#footnote-5) in recent months. There have been ten reported deaths since December 2020; five were confirmed suicides, and the others are still being investigated.[[5]](#footnote-6) Those individuals who have been recently admitted are reportedly being left in the intake area for days at a time, during which they do not receive basic services such as food and medical care.[[6]](#footnote-7) Various reports have indicated a tremendous number of correction officers calling out sick or failing to appear to work. This forces the correction officers that do appear to work double, triple, and at times even quadruple shifts.[[7]](#footnote-8) It also means areas have gone understaffed or completely unstaffed, which creates a dangerous situation for the individuals in custody as well as DOC and CHS staff.[[8]](#footnote-9)

Yesterday, Mayor de Blasio announced an emergency plan to address the situation on Rikers Island. The plan would: (1) shift New York City Police Department officers to operate courts, allowing some DOC staff back to Rikers Island; (2) suspend staffers for 30 days when they do not show up to post; (3) expand medical evaluation capacity to evaluate DOC officers for duty; (4) engage in emergency contracting to repair broken doors, clean facilities more efficiently, distribute commissary more quickly, and scan mail onto tablets to reduce drugs entering facilities; and (5) speed intake to reduce crowding with a goal of moving people through the intake process in 24 hours or fewer by utilizing two currently closed clinic spaces.[[9]](#footnote-10)

The Committees expect to receive testimony from the DOC, the Bronx District Attorney’s Office, the Board of Correction (“BOC” or “the Board”), public defenders, unions, as well as advocates and members of the public.

# **Background**

In New York City, DOC provides for the care, custody and control of persons accused of crimes or convicted and sentenced to one year or less of jail time.[[10]](#footnote-11) The Department manages 10 correctional facilities, eight of which are located on Rikers Island, as well as two hospital prison wards and court pens in each of the City’s five boroughs.[[11]](#footnote-12) During Fiscal Year (“FY”) 2020, DOC handled over 23,000 admissions[[12]](#footnote-13) and the current jail census is over 6000.[[13]](#footnote-14) During the first six months of FY 2021, 56.2 percent of detainees identified as Black, 32.9 percent as Hispanic, 5.9 percent as white, 3.3 percent as Other, and 1.7 percent as Asian.[[14]](#footnote-15) Approximately four percent of detainees identified as women.[[15]](#footnote-16)

In 2020, DOC was budgeted to employ 7,460 correction officers but had a uniformed headcount of 9,237.[[16]](#footnote-17) In FY 2022, DOC increased its uniformed headcount by an additional 400 officers.[[17]](#footnote-18) DOC Commissioner Vincent Schiraldi recently announced that he is increasing that number to 600.[[18]](#footnote-19) DOC maintains one of the highest ratio of correction officer to individuals in custody in the nation. In FY 2020, DOC had five correction officers for every three people in custody.[[19]](#footnote-20) In 2018, the national average was five correction officers for every 21 people in custody.[[20]](#footnote-21)

1. **The *Nunez* Consent Judgment and the Federal Monitor**

In 2015, DOC entered into a consent settlement in the case of *Nunez vs. City of New York*,[[21]](#footnote-22) a class action lawsuit regarding DOC’s excessive use of force against those in its custody. The settlement requires DOC to implement specific policies and practices and meet certain goals. The process is overseen by a court-appointed monitor. The monitor assesses and reports on DOC’s progress in improving practices related to use-of-force every six months. These reports focus on qualitative and quantitative data, as well as compliance with the specific requirements in the settlement. These reports also provide insight into longstanding systemic problems in DOC and include recommendations on how to fix these problems. Five years and 11 reports later, DOC has made progress in reaching substantial or full compliance with some requirements in the consent settlement, but remains in partial or non-compliance with key requirements related to:

* + Implementation of the new use of force policy (Section IV, ¶ 1);
	+ Proper classification of use of force incidents (Section VII ¶ 5);
	+ Reporting and tracking of use of force incidents (Section V ¶¶ 2, 3, 6, 8, 10 & 11);
	+ Training and retraining of staff after a violation of policy (Section XIII ¶ 5(a-b) and (Section XIII ¶ 8));
	+ Identifying and responding to collusion in staff reports (Section V ¶ 7);
	+ Investigation of use of force incidents (Section VII ¶ ¶ 1, 9(a-f) & 12);
	+ Timely, appropriate and meaningful staff accountability (Section VIII. ¶ 1);
	+ Staffing of the trials division and ID investigators (Section VIII. ¶¶ 4 & 11);
	+ Prevention of fighting and assaults of individuals under 19 (Section XV ¶ 1);
	+ Supervision of individuals under 19 (Section XV ¶¶ 12 & 17);
	+ Use of body-worn cameras (Section IX ¶ 2(a-c));
	+ Development and implementation of early warning system to identify staff whose conduct warrants corrective action as well as systemic policy or training deficiencies (Section X ¶ 1); and
	+ Act in accordance with new disciplinary guidelines (Section VIII ¶ 2).[[22]](#footnote-23)

The monitor has indicated the DOC’s systemic and deep-seated dysfunction and disorder have been accepted by all staff in the agency, and therefore it cannot be addressed by merely “tinkering around the edges.”[[23]](#footnote-24) Meaningful reform will require “a granular focus on fundamental attitudes, correctional practices, and operations” within DOC.[[24]](#footnote-25)

On August 24, 2021, the monitor sent a letter to the judge overseeing the consent settlement detailing the deteriorating conditions of the jails. The letter read, in part:

“This status report is being provided to the Court because the conditions reported therein have further deteriorated in the past few months with a steady increase in serious use of force incidents, a disturbing rise in the level of security lapses and unchecked breaches and failures of basic security protocols, and instances of inadequate supervision, all of which are compounded by staffing challenges. The pervasive and systemic issues currently impacting Facility safety are: (1) the mismanagement of staff deployment within the Facilities; (2) staff’s failure to attend to basic security protocols and to provide basic services to people in custody; and (3) the lack of accountability for misconduct in this system.”[[25]](#footnote-26)

These issues have directly led to an increase in use of force and violence as well as disruptions in basic services such as food and medical care. Violent incidents were directly linked to “security lapses and breaches of the most fundamental duties of staff such as abandoning housing units, failing to secure doors, and allowing detainees access to highly secure areas that should never be entered by people in custody.”[[26]](#footnote-27) The monitor also wrote that the deterioration in conditions coincides with the spike in absenteeism that began in April 2021,[[27]](#footnote-28) as further detailed below in Section VII.The monitor called on DOC and the parties to the settlement to meet to discuss immediate solutions to the staffing issues and related security failures and failure to provide basic services.[[28]](#footnote-29)

On September 2, 2021, the monitor sent a follow up letter to the court writing that the “chaos and disorder in the jails has continued since our last report.”[[29]](#footnote-30) The monitor again called on DOC to improve the safety and management of the jails by taking steps such as: curtailing security breaches by ensuring doors are locked and secured and that staff remain on post at all times in the housing units; reducing reliance on probe teams by de-escalating incidents in a timely manner; processing individuals through intake efficiently within 24 hours; improving access to medical care; monitoring and intervening when individuals threaten to or engage in self-harm; ensuring access to food and water; and employing all video monitoring to supplement staff surveillance.[[30]](#footnote-31) To address the high rate of staff absenteeism, the monitor recommended the following actions: holding staff immediately accountable for failing to come to work and using city regulations to immediately discipline staff that repeatedly fail to come to work.[[31]](#footnote-32) The monitor anticipates providing another status report on or before October 1, 2021.[[32]](#footnote-33)

1. **Use of Force**

The rate of use of force by staff on incarcerated persons has increased in recent months and years. In the most recent reporting period (July 2020 to December 2020), the use of force rate was the highest it has been since monitoring began.[[33]](#footnote-34) The use of force rate has steadily increased every year since the consent judgment went into effect, despite the fact that the primary goal of the judgment was to reduce the use of force; the average use of force rate in 2020 (11.3) was 183 percent higher than the average use of force rate in 2016 (4.0).[[34]](#footnote-35) The monitor notes that at least 29 percent of incidents that occurred between July 2020 and December 2020 could have been avoided, and/or involved excessive or unnecessary force, and/or involved violations of the Use of Force Directive or Chemical Agents Directive.[[35]](#footnote-36) The report also notes that “Staff’s aggressive demeanor and lack of de-escalation skill contributes to use of force events, as does the prevalent failure to implement basic security protocols (*e.g.*, leaving doors unsecured, leaving one’s post) and poor supervision and incident management.”[[36]](#footnote-37)

The monitor has repeatedly noted the need to hold staff accountable for misconduct in a timely and appropriate manner. There are currently over 1,800 cases involving staff misconduct that are still awaiting discipline.[[37]](#footnote-38) To address this issue, the monitor developed a series of detailed recommendations for the City, the Office of Administrative Trials and Hearings, and DOC to consider. According to the August 24th letter, the agencies were evaluating these recommendations and were expected to advise the monitor of their plans to address them in the coming weeks.[[38]](#footnote-39)

1. **Recent Incidents of Violence**

The monitor’s last reporting period saw the rate of violence between 18-year-olds reach a five year high with 108 incidents in December 2020.[[39]](#footnote-40) The monitor blames this high rate of violence among 18-year-olds on “unstable leadership, sparse disciplinary options, lack of consistency in staff assignments to housing units, and inadequate supervision of Staff.”[[40]](#footnote-41) The monitor also noted that due to COVID-19 safety measures, educational services and programming was suspended which created “a lack of structure and predictability and excessive idle time, all of which are well-known precursors to stress, anxiety, fear and violence among young people in custody.”[[41]](#footnote-42) Assaults on staff have also seen an increase. According to the most recent Mayor’s Management Report, the rate of assaults on staff increased by 23.2 percent.[[42]](#footnote-43)

 On September 5, 2021, three incarcerated individuals assaulted a fourth individual.[[43]](#footnote-44) The victim was thrown on a bed and repeatedly pummeled for at least 25 seconds.[[44]](#footnote-45) The incident was captured on video and posted on TikTok.[[45]](#footnote-46)

 On August 30, 2021, a correction officer was violently attacked by an incarcerated individual, Mavens Thomas, at the George R. Vierno Center.[[46]](#footnote-47) The officer suffered a fractured skull, fractured eye orbitals, and a broken nose.[[47]](#footnote-48) Thomas was charged with attempted murder.[[48]](#footnote-49) The case is under the jurisdiction of the Bronx District Attorney.[[49]](#footnote-50)

 On August 5, 2021, reports indicate Luis Rivera, an incarcerated individual, attacked a correction officer and stole the officer’s keys and pepper spray at the North Infirmary Command.[[50]](#footnote-51) The correction officer fought back but was pepper sprayed by Rivera.[[51]](#footnote-52) Rivera then reportedly opened the cell of Brighton Montgomery, and they opened the cell of Erianny Fermin and began to attack him.[[52]](#footnote-53) Fermin suffered slash wounds to his chest and puncture wounds in his arms. Additional correction officers arrived to break up the fight, and two more officers were sprayed with the stolen pepper spray.[[53]](#footnote-54) Rivera and Montgomery have been rearrested and the cases are under the jurisdiction of the Bronx District Attorney.[[54]](#footnote-55) Union sources say the injured officer was the only one walking the unit when there should have been two officers in the unit.[[55]](#footnote-56)

 On June 23, 2021, an incarcerated individual threw scalding water on another incarcerated individual, causing 2nd degree burns all over the victim’s body.[[56]](#footnote-57) This incident led to multiple applications of force and multiple serious injuries to at least four incarcerated individuals and multiple officers.[[57]](#footnote-58) Four days later, one of the individuals involved in the attack was stabbed after being transferred to the Transitional Restorative Unit.[[58]](#footnote-59) On August 5, 2021, the assailant in the June 23rd incident assaulted and slashed a correction officer and then with the help of another incarcerated individual, assaulted another incarcerated individual.[[59]](#footnote-60) These assaults resulted in serious injuries to the correction officer and two incarcerated individuals.[[60]](#footnote-61)

1. **Self-harm and Suicide**

The incidents of self-harm in the City’s jails have risen in recent months. In June 2021, there were 198 self-harm incidents[[61]](#footnote-62) compared to 62 incidents in June 2020[[62]](#footnote-63) in the early stages of the COVID-19 lockdown. There were 540 more self-harm incidents reported in the first six months of 2021 than there were during the same period last year.[[63]](#footnote-64) The increased incidents of self-harm have pushed the rate up to 95 incidents per one thousand people in custody, the highest it has ever been in the last five years.[[64]](#footnote-65)

The rising number of self-harm incidents have included several suicides. Since December 2020, at least five people[[65]](#footnote-66) and as many as nine people[[66]](#footnote-67) have committed suicide in the City’s jails. In January, Wilson Diaz-Guzman, 30 years old, hung himself from a sprinkler head in his cell at Rikers.[[67]](#footnote-68) In March, Javier Velasco, 37 years old, was found dead with a bedsheet wrapped around his neck in his cell in the Mental Health Observation unit, where he was transferred after he attempted suicide previously.[[68]](#footnote-69) In August, Brandon Rodriguez, 25 years old, was found dead in an intake cell with a t-shirt wrapped around his neck,[[69]](#footnote-70) and Segundo Guallpa, 58 years old, was found unresponsive in his cell in the North Infirmary Command, which authorities reportedly believe to be a suicide.[[70]](#footnote-71) The number of suicides in the last nine months is alarming considering that there were no reported suicides in 2018, 2019, and most of 2020 in the City’s jails.[[71]](#footnote-72)

A *New York Times* article suggests that correction officers are ill-equipped to respond to suicide attempts. The article said that suicide prevention training for officers has lagged as just 10 percent of DOC’s 8,000 plus uniformed staff have received a required annual refresher course in suicide prevention since May 6th.[[72]](#footnote-73) The same article suggests that in some cases officers are slow to act when incarcerated people threaten to harm themselves.[[73]](#footnote-74) In April, a correction captain was charged with criminal negligent homicide after she left a man hanging in his cell for 15 minutes and stopped another officer from saving him.[[74]](#footnote-75) The many instances of suicides and other troubling self-harm incidents have caused the federal monitor to raise questions about the adequacy of staff’s response to people in custody who are at risk of self-harm.[[75]](#footnote-76)

1. **The Staffing Crisis**

Staff absenteeism underlies the problems the Department faces. In the August 24th letter filed with the court, the monitor noted that staff absenteeism has increased since the pandemic and has reached a “crisis level.”[[76]](#footnote-77) By the end of July, the monitor’s letter said, about 35 percent of DOC’s 8,500 uniformed staff were out on sick leave or were otherwise limited in working with people in custody.[[77]](#footnote-78) The federal monitor suggested that the increase use of unlimited stick time by staff has contributed to the incredibly high number of staff who are unavailable to work in the jails.[[78]](#footnote-79) The monitor also noted that DOC is grappling with staff not reporting to their shifts. By the end of July, the letter said, DOC reported that staff failed to report for 2,300 shifts without advanced notice, effectively going “AWOL”.[[79]](#footnote-80) Officers who are absent without leave can face salary deductions or a reduction in vacation days and can face further disciplinary action except immediate termination, according to DOC’s spokesperson.[[80]](#footnote-81)

The excessive staff absences, the monitor’s letter said, have led to other officers having to work double and triple shifts.[[81]](#footnote-82) Working double and triple shifts have been extremely taxing on officers. In a *New York Times* article, one correction officer said she worked fifteen 24-hour shifts since fall and had to sleep in her car between shifts because she was too tired to drive home.[[82]](#footnote-83) Another said she worked so many long hours that her health was impacted but she was not relieved until she suffered a medical emergency on duty.[[83]](#footnote-84) Others said they worked 20-hour shifts without breaks, food, and water.[[84]](#footnote-85) A jail union official claimed that such working conditions in the reason many officers are out on sick leave.[[85]](#footnote-86) The union representing correction officers filed a lawsuit in July against the City for such inhumane working conditions in the jails.[[86]](#footnote-87)

A jail union leader called on the de Blasio Administration to hire thousands more officers to address the crisis.[[87]](#footnote-88) However, DOC is set to recruit 600 new officers who will start their training in October[[88]](#footnote-89) and has enlisted a telemarketing firm to recruit recent retirees to address the staffing crisis.[[89]](#footnote-90) Formerly incarcerated people have called on the de Blasio Administration to cancel the new class of recruits.[[90]](#footnote-91) The monitor found that DOC has “one of the richest staffing ratios.”[[91]](#footnote-92) DOC has over 8,000 officers overseeing close to 6,000 people in the jails.[[92]](#footnote-93) The staffing crisis, the monitor said, is the result of the mismanagement of staff deployment in the facilities.[[93]](#footnote-94) The recent monitor report states that “the department struggles to manage its large number of staff productively, to deploy them effectively, to supervise them responsibly, and to elevate the base level of skill of its staff.”[[94]](#footnote-95) As a result, the monitor retained an expert in staffing correctional facilities to evaluate the department’s staffing model.[[95]](#footnote-96) The evaluation began in July, and once it is completed, the City, DOC, and the monitoring team will work to implement its recommendations.[[96]](#footnote-97)

1. **The Staffing Crisis Impact on Services and Safety**

 The staffing problem has limited access to jail services. During the COVID-19 lockdown, people in custody did not have access to jail services, including family visits, barbershops, and religious services.[[97]](#footnote-98) While some cuts in services were restored, the staffing problem has limited access to such services. [[98]](#footnote-99) A *New York Times* article revealed that inadequate staffing has forced people in custody to miss meetings with their attorneys and has limited their access to commissary and the law library.[[99]](#footnote-100) The *Chief Leader* reported that people in custody in Otis Barnes Correctional Center, an all-male facility, were left to coordinate rides to their court dates and facilitate video conferences themselves because no officers were present in the units for over twenty-four hours.[[100]](#footnote-101)

The staffing problem has made medical access even more of a challenge. *The* *City* reported that people in custody have missed thousands of medical appointments because officers are not available to escort incarcerated people to medical appointments.[[101]](#footnote-102) Jail data show that there were 15,009 missed medical appointments in June alone.[[102]](#footnote-103) That number is up by 6,324 since December 2020.[[103]](#footnote-104) Underscoring the issue, complaints about medical care dominated grievances filed by people in custody, representing a third of all grievances filed during the third quarter of fiscal year 2021.[[104]](#footnote-105)

 DOC’s staffing problem has also raised jail safety concerns. The monitor’s letter indicated that incarcerated people have languished in the Intake units for more than 24 hours – the period of time in which an incarcerated person should be assigned to a housing unit.[[105]](#footnote-106) A *New York Post* article indicated that the people in custody are unsupervised for hours amid the staffing problem.[[106]](#footnote-107) On September 4, about 33 guarded posts across the jail were unmanned, according to a jail union official.[[107]](#footnote-108) Moreover, a clip obtained by the *New York Post* shows a group of young men at Robert N. Davoren Complex filming themselves smoking, drinking, and dancing inside a jail cell.[[108]](#footnote-109) A jail union official said there are not enough officers to conduct searches, resulting in higher amount of contraband in the jails.[[109]](#footnote-110)

1. **The Commissioner’s Reform Plan**

Under Commissioner Schiraldi’s leadership, DOC announced a slew of reforms dubbed #NewDayDOC to improve jail conditions.[[110]](#footnote-111) The #NewDayDOC plan has five components: (1) better safety; (2) an end to triple shifts; (3) greater staff support; (4) a readjustment of discipline procedures; and (5) more programming for incarcerated people.[[111]](#footnote-112) Between the five parts are 21 action items, including accelerating repairs to broken cell doors, breaking up gang housing, providing free rides home and free catered meals to staff working triple shifts, and expanding the tablet program and restoring in-person programming.[[112]](#footnote-113) A *New York Post* article reported that the Commissioner Schiraldi said that half of the cell doors in RNDC for young males have been fixed, and repairs are ongoing and should be finished by the spring.[[113]](#footnote-114) The same article reported that a jail union official said about 500 doors remain broken and have been the cause of the violence by people in custody who are able to come and go at will.[[114]](#footnote-115)

The Department has also made changes to its sick leave policy to curtail the number of staff out on sick leave.[[115]](#footnote-116) Under the new policy, officers must be examined by medical staff within 24 hours of calling out, or they will be subject to discipline.[[116]](#footnote-117) Previously, officers had to submit medical documents to the Department if they were out more than two days.[[117]](#footnote-118) Jail union leaders promised to challenge the new sick leave policy, claiming that it was poorly thought out.[[118]](#footnote-119) Since the implementation of the new policy in August, “there had been an average of 70 percent less first-day sick call-outs compared to July.”[[119]](#footnote-120) According to the *Chief Leader*, “[f]or the 10-day period ending [August 11], 88 staff had called out, compared to 297 who did so during same period a month earlier.”[[120]](#footnote-121)

1. **Issues and Concerns**

The Committees are deeply concerned with the deteriorating conditions in our city jails, as detailed by the federal monitor and about which there have been numerous disturbing reports in the media. The level of dysfunction being described is simply unacceptable and the Committees intend to analyze DOC’s plans to improve jail conditions. Among other things, the Committees want greater detail about the DOC’s plan to address the staffing crisis, the disciplinary backlog, and the increases in violence, use of force, and self-harm, as well as the timeframe in which these changes will be implemented and the resources that have been identified to move the plan forward. Ultimately, the Committees want reassurance that the Administration is capable of remedying the “crisis” conditions in our city’s jails. The Committees also want greater detail about the Mayor’s plan announced yesterday to address this crisis.

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10. “About the New York City Department of Correction” New York City Department of Correction, <https://www1.nyc.gov/site/doc/about/about-doc.page>. [↑](#footnote-ref-11)
11. Id. [↑](#footnote-ref-12)
12. New York City [Preliminary Mayor’s](file:///C%3A%5CUsers%5Cbcrow%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CTSMAA5N4%5CPreliminary%20Mayor%E2%80%99s) Management Report for 2021, p. 21, available at https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2021/doc.pdf [↑](#footnote-ref-13)
13. Daily Inmates in Custody. NYC OpenData https://data.cityofnewyork.us/Public-Safety/Daily-Inmates-In-Custody/7479-ugqb/data. On September 8, there were 6025 people in DOC custody. [↑](#footnote-ref-14)
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