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COMMITTEE ON CRIMINAL JUSTICE

Hon. Keith Powers, Chair

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Oversight

Update on the Local Conditional Release Commission

I. INTRODUCTION

On October 22, 2021, the Committee on Criminal Justice, chaired by Council Member Keith Powers, will hold an oversight hearing on the Local Conditional Release Commission. Local Law 60 of 2020 mandated the establishment of a local conditional release commission in New York City, with the powers, duties, and composition as set forth in Article 12 of the New York Correction Law. However, almost 16 months later, the commission has not been established. The Committee expects to receive testimony from the New York City Department of Probation (“DOP”), public defenders, as well as advocates and members of the public.

II. BACKGROUND

The New York State Correction Law enables every county and the city of New York to create a local conditional release commission by local law.¹ The Correction Law requires the mayor to appoint members of the commission “upon the advice and consent of the city council,” and requires the commission to have “at least five members”² who “have graduated from an accredited four-year college or university”³ and have “Five years [of] experience in the field of criminology, administration of criminal justice, law enforcement, probation, parole, law, social work, social science, psychology, psychiatry, or corrections.”⁴ The director of probation, or the director’s designee, is required to serve on the commission as a non-voting member, and the local probation department is tasked with assigning staff to support the commission.⁵

The Correction Law grants any such commission the power and duty to determine which individuals sentenced within New York City and serving a definite sentence of imprisonment

¹ N.Y. Correction Law § 271.

² Id.

³ Id.

⁴ Id.

⁵ Id.

(“city-sentenced”) may be released under conditional release and under what conditions.⁶ The commission is also required to present an annual report to the City Council of its findings and actions on submitted applications.⁷ 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 of the Correction Law; has not been previously convicted or does not stand convicted for an offense defined in Penal Law Article 235 (obscenity offenses) where the victim was under 18 years of age; and has not been previously convicted or does not stand convicted for an offense which the 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.⁸

The original version of the state law, 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.⁹ These sections were added following an analysis of the previous law’s shortcomings, which showed that the commission was perceived to function to aid the release of those with political connections.¹⁰ 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,

⁶ N.Y. Correction Law § 272.

⁷ *Id.*

⁸ N.Y. Correction Law § Ch. 43, art. 12, Refs & Annos.

⁹ LOCAL CONDITIONAL RELEASE COMMISSION, 1989 N.Y. Sess. Law Serv. 79.

¹⁰ 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/>

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.”¹¹ Accordingly, the Legislature gave the City Council and other local legislative bodies increased oversight power and the power to reject appointments to the commission.

The last update on the progress of establishing the Local Conditional Release Commission was provided at the New York City Council Preliminary Budget Hearing in March 2021. DOP Commissioner Ana Bermudez testified that, “There has been progress in that and the vetting process for commission members is in full swing.”¹² No timeline was provided at that time.

III. CURRENT CONDITIONS OF THE CITY’S JAILS

The current conditions in the City’s jails underscore the need for the Local Conditional Release Commission to be established, staffed and convene as soon as possible. Fourteen people died in DOC custody this year.¹³ There has been a steady increase in the use of force¹⁴ and violence¹⁵ in recent months. The use of force rate is the highest it has been since monitoring began¹⁶ pursuant to the *Nunez* consent decree.¹⁷ 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).¹⁸ Violence among 18-year-olds

¹¹ Id.

¹² Testimony of Ana Bermudez, Council of the City of New York, Hearing: Preliminary Budget Hearing - Criminal Justice, p. 115, (March 22, 2021), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4809425&GUID=520FD426-0637-4563-A40D-DE1CDEF77373&Options=&Search=>

¹³ Ransom, Jan. “N.Y.C. Jail Deaths Climb to 14 as Detainee Is Taken off Life Support.” *The New York Times*, 19 Oct. 2021, <https://www.nytimes.com/2021/10/18/nyregion/rikers-death-toll.html#:~:text=A%20Harlem%20man%20who%20was,in%20the%20city's%20jail%20system>.

¹⁴ Martin, Steve J. “Eleventh Report of the Nunez Independent Monitor.” New York City Department of Correction, 11 May 2021, p 277-78, www1.nyc.gov/assets/doc/downloads/pdf/11th_Monitor_Report.pdf.

¹⁵ Id at 28.

¹⁶ Id.

¹⁷ A 2015 consent settlement in the case *Nunez vs. City of New York*, a class action lawsuit regarding the excessive use of force against people in custody.

¹⁸ Martin, Steve J. “Eleventh Report of the Nunez Independent Monitor.” New York City Department of Correction, 11 May 2021, p 28, www1.nyc.gov/assets/doc/downloads/pdf/11th_Monitor_Report.pdf

is at a five year high with 108 incidents in December 2020,¹⁹ and assaults on staff have increased by 23.2 percent.²⁰ There have also been numerous reports about violent incidents in the jails in recent months. The *New York Post* reported that on September 5, 2021, three incarcerated persons assaulted another incarcerated individual, which was captured on video and posted on TikTok.²¹ The *New York Daily News* reported that on August 30, 2021, a person in custody violently attacked a correction officer, causing the officer to suffer a fractured skull, fractured eye orbitals, and a broken nose.²²

Incidents of self-harm and suicide have also risen in recent months. In June 2021, there were 198 self-harm incidents²³ compared to 62 incidents in June 2020,²⁴ during the initial stages of the COVID-19 lockdown. 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.²⁵ The rising number of self-harm incidents have included several suicides. Since December 2020, at least five people²⁶ and as many as nine people²⁷ have committed suicide in the City's jails. The

¹⁹ Id at 277-278.

²⁰ Mayor's Office of Operations, *Preliminary Mayor's Management Report: January 2021*, p 61, https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2021/2021_pmmr.pdf

²¹ Fonrouge, Gabrielle. "Staffing Shortage on Rikers Spawning Violent Beatdowns, Wild Parties and Fatal ODs." *New York Post*, 9 Sept. 2021, nypost.com/2021/09/09/staffing-shortage-on-rikers-breeding-beatdowns-and-fatal-ods/.

²² Rayman, Graham. "Correction Officer's Skull Fractured by Inmate on Rikers Island: Officials." *New York Daily News*, 30 Aug. 2021, www.nydailynews.com/new-york/nyc-crime/ny-rikers-correction-officer-assaulted-20210830-sshail5wwjeg5kjtbrzlr6wzni-story.html.

²³ Correction Health Services. *CHS Injury Reporting: June 2021*, p 13,

<https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/chs-doc/chs-and-doc-joint-injury-report-june-2021.pdf>

²⁴ Correction Health Services, *CHS Injury Reporting: June 2020*, p. 15,

<https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/chs-doc/chs-and-doc-joint-injury-report-202006.pdf>

²⁵ Joseph, George, and Reuven Blau. "Self-Harm Is Exploding in New York City Jails, Internal Numbers Show." *The City*, 7 Sept. 2021, www.thecity.nyc/2021/9/7/22659614/self-harm-suicide-rikers-island-new-york-city-jails-rising.

²⁶ New York City Board of Correction. Statement on Recent Suicides in the New York City Jails, Sept. 1, 2021, <https://www1.nyc.gov/assets/boc/downloads/pdf/News/board-statement-on-recent-suicides-in-the-new-york-city-jails-20210901.pdf>

²⁷ Khavkine, Richard. "Rikers Inmates Run Units as Jail Suicides Spike." *The Chief Leader*, 2 Sept. 2021, https://thechiefleader.com/news/news_of_the_week/rikers-inmates-run-units-as-jail-suicides-spike/article_e30eaf08-0c25-11ec-af80-e71d6e78bca7.html

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.²⁸

Staff absenteeism has contributed to the deteriorating jail conditions. The federal monitor reported that close to 3,000 uniformed staff of the 8,500 were out on sick leave or were otherwise limited in working with people in custody by the end of July.²⁹ That is in addition to uniform staff failing to report for 2,300 shifts without advance notice, effectively going AWOL, during the same period.³⁰ The excessive staff absences have led to other officers having to work double and triple shifts,³¹ which has been extremely taxing on those officers. One officer reported sleeping in her car between shifts because she was too tired to drive home.³² Others said they worked 20-hour shifts without breaks, food, or water.³³

The staffing problem has impacted jail services. Inadequate staffing has forced people in custody to miss meetings with their attorney and has limited their access to commissary and the law library.³⁴ Incarcerated people have also missed thousands of medical appointments because officers are not available to escort them to their medical appointments.³⁵ Jail data show that there were 15,009 missed medical appointments in June alone.³⁶ That number has gone up by 6,324

²⁸ Letter from Steve J. Martin, Monitor, and staff to United States District Judge Laura T. Swain, August 24, 2021, p 3, <http://tillidgroup.com/wp-content/uploads/2021/08/2021-08-24-Letter-to-Court-re-Conditions-FINAL.pdf>

²⁹ Id.

³⁰ Id at 4.

³¹ Id at 3.

³² Ransom, Jan. "Disorder and Chaos' in N.Y.C. Jails as Pandemic Recedes." *The New York Times*, 19 June 2021, www.nytimes.com/2021/06/19/nyregion/rikers-island-chaos-suicides.html.

³³ Bromwich, Jonah E. "N.Y.C. Jail Officers Sue Over Working Conditions: 'It Was Hell.'" *The New York Times*, 16 July 2021, www.nytimes.com/2021/07/16/nyregion/nyc-jails-rikers-correction-officers-lawsuit.html.

³⁴ Ransom, Jan. "'Disorder and Chaos' in N.Y.C. Jails as Pandemic Recedes." *The New York Times*, 19 June 2021, <https://www.nytimes.com/2021/06/19/nyregion/rikers-island-chaos-suicides.html>

³⁵ Sherman, Rachel. "Rikers Staffing Crisis Limits Access to Medical Care." *The City*, 26 Aug. 2021, <https://www.thecity.nyc/health/2021/8/26/22643199/rikers-staffing-crisis-medical-care>

³⁶ New York City Department of Correction, Monthly Report on Medical Appointment Non-Production June 2021, [https://www1.nyc.gov/assets/doc/downloads/pdf/Medical Non-Production Report - June 2021.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Medical%20Non-Production%20Report%20-%20June%202021.pdf)

since December 2020.³⁷ Staffing shortages have also impacted the Department’s ability to bring incarcerated people to their court dates; according to one media analysis of DOC data, in one day in September of this year only 34 of 52 people with scheduled appearances in Queens were actually brought to court.³⁸

The staffing crisis has also impacted jail safety. A *New York Post* article indicated that the people in custody are unsupervised for hours amid the staffing problem.³⁹ On September 4, about 33 guarded posts across the jail were unmanned, according to a jail union official.⁴⁰ 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.⁴¹ A jail union official said there are not enough officers to conduct searches, resulting in a higher amount of contraband in the jails.⁴²

IV. ISSUES AND CONCERNS

The Committee is concerned with the length of time it has taken to establish the local conditional release commission. The Committee intends to analyze DOP’s timelines and efforts to establish, staff and convene the commission as soon as possible. Among other things, the Committee wants greater detail about the delay in confirming appointments, the resources necessary, as well as when to expect a fully functioning commission.

³⁷ New York City Department of Correction, Monthly Report on Medical Appointment Non-Production December 2020, https://www1.nyc.gov/assets/doc/downloads/pdf/Medical_Report-December_2020.pdf

³⁸ Reuven Blau, “Justice Delayed: City Jail Staff Shortage Keeps Detainees From Getting to Court.” *The City*, 14 September 2021, available at <https://www.thecity.nyc/2021/9/14/22674823/nyc-rikers-jail-staff-shortage-keeps-detainees-from-court>

³⁹ Fonrouge, Gabrielle. “Staffing Shortage on Rikers Spawning Violent Beatdowns, Wild Parties and Fatal ODs.” *New York Post*, 8 Sept. 2021, <https://nypost.com/2021/09/09/staffing-shortage-on-rikers-breeding-beatdowns-and-fatal-ods/>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*