



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

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BROOKLYN DEFENDER SERVICES**

Presented Before

**The New York City Council Committees on Fire and Criminal Justice Services, Health, and
Mental Health, Developmental Disability, Alcoholism, Substance Abuse and Disability
Services**

In relation to correctional healthcare

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My name is Riley Doyle Evans and I am the Jail Services Coordinator for Brooklyn Defender Services. BDS provides legal services to tens of thousands of people in Brooklyn each year in criminal, family and civil court proceedings. As part of our comprehensive mission, BDS provides dedicated supportive services and advocacy to our clients incarcerated in city jails. BDS deeply appreciates the Council's ongoing efforts to examine and take on issues of our criminal justice system. I especially want to recognize the work of Council Members on the Health and Fire and Criminal Justice Services Committees to improve conditions for people in our city jails. Thank you for the opportunity to share our perspective.

In New York City today, like elsewhere in the country, our jail system has become the city's largest mental health service provider. In fact, it is one of the largest mental health providers in the nation. We agree that adequate, humane medical and mental healthcare delivery in our jail system is of paramount importance. However, we emphasize that high-needs individuals who pass through our jail system cannot get adequate care in a correctional setting. These individuals should be diverted from the criminal justice system long before being sent to Rikers Island.

BDS attorneys spend their days and nights in arraignments vociferously opposing bail requests from prosecutors who send clients living with serious illness to jail for crimes of survival like jumping a turnstile or stealing toothpaste, or behaviors that likely result from mental illness. These individuals should never have been arrested, but even after the trauma of arrest, they could be diverted at arraignments, and certainly should not be incarcerated pre-trial on bail. There is no indication that public safety is served by incarcerating these individuals during the pendency of their case. Moreover, these cases are indicative of serious shortcomings in public health, housing and other service provision systems in the city. Pre-trial incarceration only compounds this issue. When people are unnecessarily incarcerated, the interruption in medical care, mental health treatment, housing and other essential services they endure have devastating consequences and pose a serious drain on scarce resources in the community.

Although BDS expends significant resources advocating for our clients' access to medical and mental healthcare while incarcerated, we acknowledge that jail is an inherently pathogenic institution – people who are sick will be made sicker, and those who enter healthy may leave bearing the scars of trauma, neglect, abuse, and mental illness, which they will carry for life.

Intro. No. 852-A

BDS supports this legislation to bolster access to care for people in city jails, and offers recommendations for amendments. Sick call represents the most important avenue through which people request medical, dental and mental health treatment in the jails and must be improved. Presently, sick call involves people signing up on a piece of paper in their housing unit, or informing a correction officer that they wish to sign up. Correctional staff are responsible for bringing the individuals who have signed up to the clinic to be seen for treatment. This system has many shortcomings, principally that Corrections Officers are the gatekeepers to medical care and medical staff are never provided the complete list of people who have requested care. Worse, many of our clients have been denied the opportunity even to sign up for sick call. Under the present system, denying access to medical treatment is one of the tools used by corrections officers to punish people in the jails. Even if someone is able to sign up for sick call, corrections staff can refuse to escort that person to the clinic and medical staff will never know about that person's condition.

BDS supports Intro. 852-A, and encourages the Council to amend the language to go further in facilitating access to care in the following ways:

- **Mandate H+H to facilitate sick call.** As the provider of healthcare services, Health and Hospitals should have sole responsibility for sick call. It is imperative that healthcare staff know who is requesting medical treatment from the beginning in order to help avoid lapses in treatment with tragic consequences. H+H management of the process will allow more efficient scheduling based on medical need and avoid unnecessarily long wait times. While DOC staff must be accountable for escorting people to the clinic, removing DOC staff from the actual sick call process will end the practice of denying care as a means of punishment. We note that if adjustments are made to sick call procedures, it is crucial that any triage that occurs outside of a clinic is conducted in a confidential setting.

- **Specialty Care Timelines:** We support the provision that specialty care be delivered in a timely fashion. We urge the Council to be even more specific in its delineation of timely treatment to reflect the orders of the treating provider – for example “...shall be notified of, escorted and transported to such care within the timeframe ordered by a medical provider.” Specialty care may be routine, urgent or emergent, and in each instance, different definitions of “timely” apply; what is crucial is that the treatment is completed within the timeframes ordered by the provider, as presently reflected in the Board of Correction Healthcare Minimum Standards. In general, Council legislation that allows DOC or HHC complete discretion might not have its intended effect, as the agency will remain legally unaccountable.
- **Escorts:** Presently, many jails operate on an “escort only” basis, which provides that any time a person leaves the housing unit for any reason, they must be escorted by a correction officer. Reasons may include family or legal visits, law library visits, educational or other programming, and medical care, among other services. This places a significant strain on escort officers who may also be inappropriately assigned to additional duties. We support the Council's effort to ensure that escorts are available for medical visits. We believe it may be beneficial to utilize staff more efficiently and create specific teams of officers assigned as “medical escorts” who are supervised by an independent captain. Such a change would ensure escorts are available to facilitate prompt access to medical care and return from the clinic after treatment, and avoid conflicting responsibilities.
- **Staffing:** We support the Council's effort to ensure adequate medical staff are present in city jails. We recommend an amendment to the language of this bill to clarify that staffing levels among medical staff should be determined and guaranteed by Health and Hospitals and not the Department of Correction. The bill as written suggests that DOC would make this determination, which would alter current practice in a detrimental way.

Intro No. 1013

BDS supports the Council's effort to increase the availability of discharge planning services. We believe discharge planning should be made available to all people in the jail system. As mentioned above, we believe many people in our jails should be offered services *before* their arrest, arraignment, and as an alternative to incarceration. Services offered should be voluntary and not mandated as a condition of release or housing. Additionally, Health and Hospitals already plays an important role in discharge planning for many individuals in the jail system and their expertise should guide discharge planning for all people with medical and mental health conditions who pass through our jail system. Furthermore, we would welcome enhanced discharge services for individuals released from court, particularly those people with serious medical and mental health needs.

Intro No. 1014

Brooklyn Defender Services supports the Council's effort to document the shortcomings of our current approach to responding to mental illness through recidivism data. It is important to acknowledge, however, that regardless of the quality discharge planning, all available evidence demonstrates that incarceration itself increases the likelihood that people will be arrested in the future. As noted above, incarceration is also likely to trigger or exacerbate mental illness. Jails are

fundamentally inappropriate places to deliver mental health treatment, and the compounding traumas that people experience as a result of incarceration cannot be undone through discharge planning. The primary driver of reform must be made to divert people with mental illness away from the criminal justice system before they are even arrested.

Intro No. 1144

Brooklyn Defender Services supports the requirement that all staff working in city jails receive training in trauma-informed care. We believe the Council should specify a minimum number of hours of training for all staff to ensure that this training is meaningful and effective. Furthermore, we believe the Council should require reporting regarding the implementation and utilization of training, rather than leaving it to the Department to ensure compliance.

T2015-3243

Brooklyn Defender Services supports the efforts of the council to improve practices to document medical and mental health conditions of people who are arrested. We believe continuity of care for this population is essential. However, we believe certain elements of the introduction as drafted may not be effective. Alternatively, we support the expansion of Health and Hospitals' role in pre-arraignment screening to all shifts in all boroughs. In Manhattan, H+H medical practitioners in pre-arraignment screening are able to document injuries, evaluate mental health symptoms, facilitate hospitalizations if necessary, and help ensure continuity of care for individuals with serious needs who enter the jail system. Additionally, because the providers are medical professionals with access to an Electronic Medical Record, the documentation and treatment they provide will be confidential. Some concerns about the proposal are listed below:

- **Documenting Arrest Injuries:** The proposed language suggests that NYPD officers will be responsible for documenting injuries suffered during arrest. While well intended, this provision seems unrealistic, and may ultimately serve as a tool for NYPD to claim that injuries inflicted during arrest were pre-existing. If a person is injured during arrest, they should receive treatment at a hospital from a medical professional who will document the injuries in a confidential medical record. In most cases, the treating hospital will be part of the Health and Hospitals system, thereby facilitating a relatively straightforward transfer of records to H+H Correctional Health Services (CHS).
- **Documenting Mental Health Symptoms:** The bill as written suggests that NYPD officers will speculate about the mental health symptoms exhibited during an arrest or in custody. It is inappropriate for a lay-person such as a police officer to speculate about a person's condition and expect that information to inform care delivered going forward. If a person is exhibiting symptoms of mental illness, they should be offered voluntary treatment by a mental health professional in a clinical setting who will document the symptoms and, if appropriate, provide a diagnosis and treatment plan in a confidential health record. Again, this record may be procured by CHS through H+H or a HIPPA release from the patient.

- **Transmission of Health Information:** The bill suggests that health information about people in custody should be transmitted to the Department of Health and Mental Health. The bill should be amended to reflect changes in the healthcare services provider in DOC facilities. Health and Hospitals Correctional Health Services now delivers care in NYC jails, not DOHMH. Furthermore, the bill suggests that NYPD will transmit healthcare information about people in custody. This raises concerns about confidentiality of medical information. NYPD should not be the custodian of confidential health information; diagnoses and treatment should be delivered by medical professionals who then generate confidential records which can be procured through H+H medical records or HIPPA release by the patient.

Resolution No. 461

Brooklyn Defender Services supports the resolution calling for the Federal Government to continue Medicaid coverage for individuals while incarcerated in New York City jails. In addition to the obvious financial implications of such a change, continuing Medicaid coverage for people in city jails will facilitate safer release for people returning to the community who may presently experience lapses in coverage. In addition, ongoing Medicaid coverage will obviate a cumbersome and expensive bureaucratic process people currently endure upon release from jail. Finally, Medicaid reimbursement for treatment received in the jails will likely improve quality of care through accountability mechanisms utilized in community hospitals, but presently absent in the jail system.

Thank you for your consideration of my comments. Please do not hesitate to reach out to me with any questions about these or other issues at (718) 254-0700 (ext. 225) or rdevans@bds.org.