BROOKLYN
DEFENDER
SERVICES

TESTIMONY OF:

Kelsey DeAvila – Jail Services Social Worker

BROOKLYN DEFENDER SERVICES

Presented before
The New York City Council
Committee on Fire and Criminal Justice Services
Hearing on
Proposed Legislation
Int. 0899-2015, Int. 1014-2015, Int. 1064-2016, Int. 1144-2016,
Int. 1152-2016A, Int. 1228-2016, Int. 1260-2016, Int. 1261-2016,
and Int. 1262-2016

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My name is Kelsey DeAvila. I am the Jail Services Social Worker at Brooklyn Defender Services (BDS). BDS provides innovative, multi-disciplinary, and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for over 40,000 clients in Brooklyn every year. Approximately 6,000 of our clients will pass through city custody each year, most of who are incarcerated pretrial because prosecutors ask for and judges set bail in amounts that they cannot afford.

The legislation before this Committee today is integral to reforming our jail system. Each of the bills seeks to address injustices our clients experience while incarcerated in city custody. We appreciate the initiative the Speaker, the Council, and the Public Advocate have taken in introducing these bills and thank chair Elizabeth Crowley for calling this hearing. We previously submitted testimony regarding introductions **0899-2015, 1014-2015, 1064-2016** and **1144-2016**. We refer the Council to our previous testimony regarding those pieces of legislation and wish to extend our strong support for their adoption, again.

We also support each piece of legislation under consideration by hearing today, and will share the experiences of our clients to illustrate why these bills are necessary to protect the dignity of our clients and their families. We will offer a few suggested amendments which we think will aid the bills in realizing their intent.

Intro 1152-A re: Maximum fee allowed when transferring money to a city inmate

BDS supports this introduction from the Public Advocate to cap the fees charged by private companies when community members send money to their loved ones in city jails. It is disturbing that the same poor families that cannot afford to buy their loved one's freedom are forced to pay exorbitant fees to JPay and Western Union in order to send the little money they can afford to support their loved one in city jails. Commissary funds sent from the outside are essential to our clients' lives while in custody. These funds are used to pay for phone calls that maintain community ties, essential toiletries and hygiene products, as well as food to supplement what is universally-described as inadequate and often inedible meals.

A family member's incarceration often means loss of income for the family at large, and a drain on resources for shared responsibilities like childcare. In this context, any money that is sent to an incarcerated client should be viewed as a tremendous hardship. That this hardship is compounded by fees that can cut in half the amount of money the client ultimately receives is simply unacceptable.

Recommendations related to Int. 1152-A
This bill is an important first step towards protecting families of people accused of crimes, but the Council can go even further. We urge the council to take similar action to cap, or better yet, eliminate, the myriad other fees poor New Yorkers are saddled with while in custody.

1. **Eliminate or cap fees on inmate phone calls**

Making a fifteen-minute call home costs people in jail several dollars - the bulk of which is paid to Securus, a private company operating on the same dubious premise as JPay - to profit on the detention our city's poorest residents. It is unclear how many millions of dollars Securus makes every year, though we know that the City anticipates $6 million per year from "inmate telephone fees."[1]

2. **Lower commissary prices**

Similarly, basic goods available through commissary are subject to steep mark-ups collected by private vendors. A recent federal lawsuit out of Oklahoma that has remarkably survived to the discovery stage has shed significantly light on the unconscionable markups that prisoners face to obtain necessary commissary goods.[2]

3. **Eliminate jailhouse fines and fees**

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[1] New York City Office of Management and Budget, *November 2015 Financial Plan: Revenue 2016-2019*, p. 47 (published Nov. 12, 2015), available at http://www.nyc.gov/html/omb/downloads/pdf/nov15_rfpd.pdf.
[2] Casey Tolan, "How one inmate discovered his private prison was ripping him off – and took his warden to court," *Fusion*, Sept. 19, 2016, available at http://fusion.net/story/348070/geo-group-lawton-commissary-michael-leatherwood-lawsuit/.

The Department of Correction levees steep fines for basic infractions in the jail for things like a dirty cell or talking back to staff. These fees are charged to incarcerated people's accounts, depriving funds otherwise used to maintain contact with family or basic hygiene.

It's essential for the City to look at **all** the fees people incarcerated in City Jails are forced to pay during the course of their confinement. It is our position that many of these services should be the obligation of the City. People should not be forced to rely on a private contractor to meet the essentials of life while incarcerated.

Intro 1261 re: Authorizing the waiver of fees in the collection of cash bail

For the same reasons, BDS supports the Speaker's legislation which would allow for a waiver of fees that families pay on top of cash bail. For most families, paying bail is a significant financial hardship. The three percent surcharge on cash bail comes as a surprise to families who have scraped together just enough to buy their loved-one's freedom and the waiver will come as a welcome relief.

Recommendations about Int. 1261

1. **We urge the Council to consider requiring a waiver of cash bail fees in all cases, rather than leaving it discretionary.**

2. **The City should create a campaign to educate the public about claiming cash bail.**

The City's unclaimed funds accounts consistently note unclaimed bail money as a significant contributor. This is because many people do not know that they can recover cash bail money at all at the end of the case.[3] The City could rectify this by increasing the availability of know your rights literature in the court houses and by reminding people of their right to cash bail monies at the conclusion of each case.

3. **The Council should continue to push judges and prosecutors to reduce bail amounts unlawfully used to detain people pre-trial**

Ultimately the City could also be playing a larger role in reducing bail amounts used by judges and prosecutors to preventatively detain people before trial. Reductions in bail amounts would dampen the financial impact of this system.

4. **The City should investigate its relationship with commercial bail bonds**

Additionally, and as it relates to the bills discussed above, the City should consider the role it plays in facilitating the use of Commercial Bail Bonds, private companies like J-Pay and Securus, that profit off the misery of incarceration. The bail bond process ensures that hundreds of thousands of dollars in non-refundable fees and premiums move from the communities that can least afford it, into the hands of private, for-profit companies backed by some of the largest insurance companies in the State.

Intro 1228-A re: Investigating, reviewing, studying and auditing of and making of recommendations relating to the operations, policies, programs and practices of the DOC by the commissioner of the DOI

[3] To learn more about cash bail refunds, visit https://www1.nyc.gov/site/finance/sheriff-courts/courts-cash-bail-refunds.page.

BDS supports the Speaker's introduction to codify the role of the Department of Investigation (DOI) in city jails. An independent rule-making body - the Board of Correction - and more independent investigations, should play an important role in moving our jails toward more humane and just conditions. Although DOI already has the authority to investigate criminal or corrupt activities by DOC staff, the Department of Corrections has been left to police itself in too many instances.

Client Stories
In one case, a BDS client was raped by a Corrections Officer and had retained physical evidence of the attack. Despite the seriousness of the allegation and the evidence showing that the allegation was credible, within 48 hours of the report, DOI had authorized DOC ID to conduct the investigation. DOI had not interviewed the victim or the officer, nor had they made an effort to collect the physical evidence.

DOC ID has a disturbing track record in conducting these investigations - none of the more than more than 60 alleged sexual assaults by staff were referred for prosecution in 2014.[4] We hope that clear guidance from the Council delineating a broad but specified range of investigations to be conducted by DOI will prevent such miscarriages of justice in the future.

Recommendations related to Int. 1228-A
In general terms, we believe DOI should be required and adequately funded to conduct investigations in any incident where an incarcerated person is injured, alleges sex abuse, or when correctional staff break the law. The Board of Corrections' Minimum Standards are city law governing correctional policies and practices in New York City. When the law is broken because Department staff failed to abide by the Minimum Standards, DOI should be empowered to investigate violations, be required to report its findings, and ensure staff is held accountable.

The notion that the DOC could be authorized to investigate its own staff in serious cases is in part what led Rikers Island down the path to the mess we face today. The recent conviction of several correctional staff in the brutal beatings of Jamal Lightfoot and Ronald Spear, and subsequent cover-ups, should serve as prescient reminders that outside investigations are foundational to uprooting the culture of opacity and violence that has plagued Rikers Island for too long. We are happy to engage with the Council in more detail and offer our expertise as you craft any amendments to the charter going forward.

Intro 1260 re: Transporting inmates in the custody of the DOC to all criminal court appearances

BDS supports introduction 1260 from the Speaker, which requires that all people in custody be produced for court appearances. The express purpose of pretrial detention is to ensure appearance at court, and it is foundational to principles of justice that people who are incarcerated before they are convicted be present in court to participate in their own defense. We have not seen data that suggests the DOC production rate is higher than the adjusted Failure to Appear Rate on ROR, which is less than 2 percent. Moreover, on any given court date, a client may be released, evaluated for an

[4] *See* Amicus Brief in Support of Leave to Appeal Denial of Class Certification at 14 (Declaration of Public Advocate Leticia James), Doe v. City of New York, No. 15 CV 03849 (S.D.N.Y. filed Oct. 9, 2015), available at http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/james_declaration.pdf

Brooklyn Defender Services 177 Livingston Street, 7th Floor Brooklyn, New York 11201 T (718) 254-0700 F (718) 254-0897 www.bds.org @bklyndefenders

alternative to incarceration program, mental health or drug court placement, or they may be offered a plea. When any person misses a court date, it may prolong their incarceration, close doors to possible off-ramps from the system, and exacerbate associated collateral consequences.

The proposed legislation may not solve every problem with production - for example that of falsified refusals - however, we believe it is an important reminder of the purpose our jails are intended to serve. There is not city-wide documentation to properly ascertain the extent of this problem.

Recommendations related to Int. 1260

We recommend that the Council consider two important amendments to this legislation.

1. **The bill should require that people be produced in the morning hours to their court appearances.**

In Brooklyn Supreme Court, many court parts close at the lunch break and do not re-open in the afternoon. Consequently anyone brought to court after noon may not actually appear in court.

2. **The bill should address transportation by DOC to any court date, not just those in criminal court**

This legislation should impact more than just criminal court appearances. In addition to their criminal cases, people in custody often have other intersecting cases in Family, Housing, and other civil courts. It is imperative that that the Department of Correction produce people to every court date as a matter of access to justice.

Intro 1262 re: Prohibiting DOC from producing inmates to court appearances in departmental uniforms

BDS vociferously supports this legislation requiring that people be produced to criminal court appearances in civilian clothing. Producing people to court in jail garments is prejudicial not only to juries but can inspire implicit biases in judges and court staff. It is simply more just for all people to appear in court in their own clothing - to appear innocent before proven guilty.

Despite constitutional protections ensuring that people who appear before a jury do so in civilian clothing, in recent months a number of our clients were produced to court on their grand jury dates wearing jail uniforms.[5]

Client Stories

In one recent incident when the individual intended to testify, their grand jury was adjourned in order to allow DOC to produce the person again in civilian clothing, thereby unjustly extending their incarceration. At least one trial was recently delayed because our client was denied his trial clothing despite multiple requests to correction officers, and calls to DOC from the court as well as our office. Every day our Jail Services staff fields urgent requests from attorneys at Court for clothing, both for trials and for releases. BDS relies on clothing donations to meet this demand. These jail uniforms are thrown out once people get street clothing, and the replacement of these must be a considerable expense for the City.

[5] *See Estelle v. Williams*, 425 U.S. 501, 512 (1976).

Although the Department has assured the Board of Correction that they receive "trial lists" daily to alert them of individuals who should be produced to court in civilian clothing - this is not an adequate guarantee.[6] Many trials begin after being "sent out" from a regular court appearance, and these individuals would not have been produced in appropriate clothing. Our experience suggests that grand jury appearances also are not consistently listed on the "trial lists" used by the Department. The right to appear as a civilian before a jury is fundamental to our justice system. This legislation is essential to protect this right from poor management on the part of the Department, which clearly does not understand the mechanics of criminal proceedings.

Another disturbing side-effect of producing people to court in jail garb is that they are released back to the community in jail garb. The nature of criminal proceedings can be unpredictable - frequently people are released to programs or on Recognizance unpredictably. Releasing people in jail uniforms is both degrading and dangerous.

Despite assurances that DOC would make civilian clothing available in courthouses, people are still routinely discharged from court in jail uniforms. In one recent case, the judge was concerned about our young female client's release in jail uniform and refused to release her until BDS brought clothing to the courthouse for her because court and DOC staff reported that they would not do so. In another recent instance a 16 year old client we represented was released from Rikers and was terrified of returning to his neighborhood in the uniform for fear of the police and gangs in the area. BDS was happy to provide him with clothing to make the journey home, but the defense bar should not be made to play this role. If anyone is to be produced to court in a uniform it is essential that the Department be required to provide civilian clothing for those discharged from court under the law. Again, we urge the Council to extend the sensible reforms included in this bill by amending the language to include other courts - the issues of prejudice and dignity hold in those settings as well.

Conclusion

We thank the Council for its continued attention to the needs of people in city jails and their families. We hope that you continue to adopt an aggressive stance toward making New York City humane for all people. To that end, we urge you to explore legislation that will cap unreasonable fees across the system. We also urge you to investigate the disturbing conditions families endure when they visit their loved-ones on Rikers Island.[7] On a good day, the process is degrading and can take many hours. On a bad day, it can involve sexual assault by corrections officers, or being denied a visit altogether.

Thank you for your consideration of my comments. We are grateful to the Council for bringing to light the issues these important criminal justice issues. Please do not hesitate to reach out to me with any questions about these or other issues at (718) 254-0700 (ext. 208) or kdeavila@bds.org.

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[6] Board of Correction November 10, 2015 Meeting Minutes at page 5, available at http://www1.nyc.gov/assets/boc/downloads/pdf/BOCMinutes%20(11.10.15).pdf.

[7] *See, e.g.,* NBC 4, "I-Team: More than 25 women allege sex abuse by correction officers at NYC jails," Sept. 15, 2016, available at http://www.nbcnewyork.com/investigations/Rikers-Island-Sex-Abuse-Correction-Officer-Lawsuit-Claim-Investigation-Department-Correction-393576031.html.