TESTIMONY OF:

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Presented before

The New York City Council Committee on Veterans

Public Hearing on Int. 793

In relation to creating a taskforce to study veterans in the criminal justice system.

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My name is Cameron Mease and I am a trial attorney with Brooklyn Defender Services (BDS). Our organization provides innovative, multi-disciplinary, and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy to more than 40,000 indigent Brooklyn residents every year. I thank the New York City Council Committee on Veterans, and in particular Chair Eric Ulrich, for the opportunity to testify in support of Intro 793 to create a taskforce to study veterans in the criminal justice system.

BDS is fortunate to have the support of the City Council, as well as other elected officials and the Office of Court Administration, to supplement the services we provide as the public defense office in Brooklyn for people who have been arrested, those who are facing child welfare allegations, and those who are facing deportation. We have developed a model of specialization to best represent certain types of clients, including those with mental illness, adolescents, human trafficking victims, and veterans. Through specialized units of the office we provide extensive wrap-around services that meet the needs of these traditionally under-served clients in a comprehensive way.

I have been a criminal defense attorney at BDS for four years, representing clients facing misdemeanor and felony charges. When BDS's Executive Director, Lisa Schreibersdorf, asked me to create a new, specialized unit for veterans, I took on this role as a challenge, but also as an

honor. My own grandfathers were combat veterans and shared (and didn't share) with me many of their experiences serving our country. My own personal history, specialized trainings, and my experience getting to know and representing dozens of men and women who honorably served our country give me a unique perspective on veterans involved with the criminal justice system. I hope that my comments are helpful to the Council.

As you may know, veterans are arrested at a greater frequency than non-veterans. Many of the veteran clients I see in my practice have mental health and/or addiction issues that were caused by active duty. The most prevalent and pernicious diagnoses involve Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI). Individuals with such diagnoses often suffer from depression, impulsivity, and a lack of self-control, leading to situations and behaviors that result in an arrest. Such individuals frequently turn to chemical substances to cope with the symptoms of their conditions, which can lead to allegations of drug possession or charges related to actions committed while under the influence of drugs or alcohol. The criminal justice system in general, and our jails and prisons in particular, are neither designed nor equipped to address their needs. I appreciate that Intro 793 stipulates that the taskforce study veterans' entry into the criminal justice system with an emphasis on how to limit their involvement with the system altogether and help those who are criminal-justice involved transition out of it. I also appreciate that the proposed task force would include at least one representative of an organization providing legal representation to veterans, though this provision should be narrowed to specify that the member be affiliated with a *criminal defense* organization that serves veterans. My colleagues and I on the defense bar have a unique understanding of how the system treats—and mistreats—our clients.

Ample research, as well as BDS's direct experience, has demonstrated that people with mental illness do not fare well in jails or prisons. Veterans with PTSD or TBI experience severe trauma due to the fact that the jail environment is likely to trigger their symptoms and greatly exacerbate their mental health. Anybody in our jails and prisons with mental illness is very likely to be subjected to the torture of solitary confinement for behaviors—the vast majority non-violent—related to their conditions. It is our strong belief that special consideration of veterans' experiences must be integrated into any court proceedings, in order to preclude, or at least minimize, their incarceration.

While veterans' service, trauma and acute health needs might be unique, the facets of the criminal justice system that oppress them are not. Despite certain recent reforms, our City, State, and Country continue to rely on over-policing and mass incarceration in lieu of effective policies and programs to address mental illness, poverty, addiction, homelessness, immigration, and widespread invidious discrimination. These issues disproportionately impact New York's veteran communities. For example, the ongoing war on drugs continues to ensnare large numbers of veterans. (Of course, there is significant overlap between veterans and communities of color in New York City.) Many of our clients return from service with unmet mental and physical health needs, and the resulting pain and anguish often leads to illicit drug use. As with other populations, law enforcement intervention and incarceration are among the most expensive and least effective approaches to veterans' use of drugs. The same can be true with other offenses; incarceration and criminal records destabilize our veteran clients and their families and communities.

Prior to Arrest

For our clients with mental health issues, the disruption of treatment and the path to possible decompensation begins at the moment police respond to the scene. This is why we believe that diversion is an essential starting point for reforms. BDS believes that the greatest good can be achieved by deciding not to arrest individuals with mental illness if there is another safe and viable alternative, particularly for low level offenses. In New York City today, when a 911 call comes in requesting emergency assistance for what is commonly referred to as "Emotionally Disturbed Person," or EDP, the options of the first responder teams, which are typically comprised entirely of police, are very limited. These first response teams should be expanded to include social workers and/or mental health clinicians trained to conduct critical assessments during moments of crisis. Additionally, the police should be better trained to interact with potentially mentally ill people and their families in a manner that de-escalates the situation. Linkages to treatment and hospitals or other service referrals should be the first steps before a consideration of further involvement by the criminal justice system. Mayor Bill de Blasio's NYC Safe plan might help to make that a reality, but implementation will be challenging if we continue to overuse the police to respond to community needs. If people are identified as having a mental illness, calling in community-based services, not the legal system, is the best first option whenever possible. The impact of incarceration on public health cannot be overstated; being locked up negatively affects family and community ties, employment, housing options, treatment access, and the experience of incarceration often leads to new trauma.

From Arrest to Arraignment

Generally, when our clients are arrested, they spend about 20 hours at the precinct and at Central Booking before they are arraigned by the court. This is true of veterans and non-veterans alike. During this time, most of our clients have not received any of the medication they were taking in the community. Many clients with health needs are treated dismissively by police officers. Only those people with what are deemed critical health care needs typically have a chance to gain access to hospital care. In an attempt to gain more information about this process, our office filed a Freedom of Information Act request with both the FDNY (which provides Emergency Medical Services screening at bookings) and the NYPD nearly a year ago with no response. In October 2014, a client of ours, Jasmine Lawrence, 22, died in police custody because of a failure to provide medical care.

Our experience is that police officers are generally unwilling to give any of our clients any medication while they are in custody immediately after arrest. There are hundreds of stories about family members at the precinct begging the officers to give their loved one blood pressure or asthma medicine to get them through the next 24 hours with little success. Last year, an elderly female client of ours died right after her arraignment because she was not provided with diabetes medicine during her stay in custody even though her sister came to the precinct with the insulin. In 2013, Kyam Livingston died in Brooklyn Central Booking after being denied needed medical care by officers who watched her perish rather than call an ambulance. Ms. Livingston was told by officers at Central Booking that they would intentionally delay her arraignment, and that they would "lose her papers" if she continued to make requests for a doctor.

Like Ms. Livingston, our clients who ask to see a doctor or go to the hospital are discouraged and even threatened by officers, resulting in few seeking treatment during this time. These practices are unacceptable on their face and result in serious harm (and even death) on a shockingly regular basis. For people with a mental illness, this unwillingness to meet the medical needs of arrested people results in significant decompensation. We recommend that the Committee review local police department policies and practices at the time of arrest and until the arresting officer turns over custody of the individual. Certainly, any person who needs medication should be able to receive this medical treatment regardless of whether they have been arrested.

Bail

Issues such as homelessness, substance abuse, and serious mental health issues can leave veterans more likely to have bail set and thus be incarcerated due to poverty. It is very common for clients who have been identified as suffering from serious mental illness at arraignment who are charged with low-level, non-violent offenses to be detained and sent to City jails. Once in pre-trial detention, their options are severely curtailed: They can either endure the hell of Rikers Island for months or years while they fight the charges or, as happens with approximately 95% of cases, accept a plea deal that involves an admission of guilt, whether or not that is true. Studies show that plea deals and other case dispositions are far worse for those in pre-trial detention compared to those who can fight their cases while at liberty.[1] I deeply appreciate that the Council has sought to address this issue, though it is unclear whether the proposals currently in development will help our clients who are charged with Veterans Treatment Court-eligible offenses.

In most cases, our clients should be released pending trial. Otherwise, judges should impose the least onerous form of bail—beginning with an unsecured appearance bond—that is required to secure a defendant's return to court, and show cause on the record for the use of any form other than unsecured sureties. In addition, Assistant District Attorneys should be required to submit unique written motions requesting bail conditions and explaining the reasons for the request. Lastly, courts should have to reconsider bail at the end of every week of a defendant's incarceration and consider her inability to pay as a "change of circumstance" that warrants a bail reduction or a conversion to a less onerous form. Ultimately, New York should live up to the American ideal of presumed innocence and end pre-trial detention for all but the most serious cases. Bail reform is one critical step to making that a reality.

Inside the Jails

On February 15, 2014, Jerome Murdough, a homeless former Marine, baked to death in a 101-degree cell on Rikers Island. As the Daily News later reported, his "only crime was trying to stay warm outdoors on a cold night." He had been arrested for trespassing after being caught in a public housing stairwell. Murdough was reportedly taking anti-psychotic medication with which exposure to heat was contraindicated when he was left alone to die. Jails were never designed to

[1] Ram Subramanian et al., Incarceration's Front Door: The Misuse of Jails in America (VERA 2015)

protect the people locked inside, and the culture among DOC staff does not prioritize their health needs. This is no less true for veterans than it is for other incarcerated people. In this case, City investigators found that the officer who was supposed to be making rounds on the floor had falsified her logbook entries, as video showed that she had skipped her tours.

Our social workers and jail services coordinator are able to advocate for our clients who are not receiving adequate care under the supervision of DOHMH in Rikers, but not every incarcerated person has this kind of support. The result is the now frequent horror stories in the media about health care neglect. Our social work team makes hundreds of referrals to DOHMH personnel each year, after being alerted by clients of serious medical needs. These include people whose methadone treatment is interrupted causing painful withdrawals, interruptions to medication regimens due to facility transfers, failure by medical staff to take suicidal ideations and depression seriously, medical staff at Rikers Island informing clients that they need treatment at a hospital and not providing for that transportation, and long delays or lapses in filling orders for glasses or hearing aids. Most of our female clients are concerned about the abysmal OB/GYN care. While our referrals to DOHMH typically provoke a speedy response, on several occasions in the past year alone we have had to make four or more contacts with DOHMH to secure treatment for a serious condition such as asthma, seizures or diabetes. Pressure by outside advocates to ensure basic healthcare should not be the procedure relied upon by medical staff to meet the needs of their patients, many of whom lack any supportive structure on the outside.

Contrary to the reports of DOHMH, many of our clients report that they do not promptly receive a mental health evaluation or medications once committed to City custody. In addition, there is not an appropriate range of mental health care options for people who are noticed to have needs by medical staff. Medication remains the only "treatment" for nearly all of our clients in City jails irrespective of mental health needs that require other interventions. Our clients report that they rarely receive the opportunity for group or individualized therapy, dual-diagnosis therapy, or treatment from specialists in trauma, post-traumatic stress, sexual violence, adolescence, family or other discrete fields, even though such modalities are considered part of, not supplemental to, medically appropriate treatment. One client summed it up like this recently: "Once a month someone renews my pills and asks me if I want to kill myself."

There are inherent problems with the provision of medication, as well, which significantly impact incarcerated veterans with mental illness. Medication should only be prescribed by a psychiatrist who spends adequate time with a patient. In our experience, this is not the typical procedure at Rikers Island. Not only are there not enough psychiatrists, the quality of doctors who work there is low. They are limited in what they will prescribe, keeping to low-cost medications that are not necessarily what the client was previously taking on the outside and which may not be medically appropriate. When they do get medication, most clients report disruption from their regimen at some point during their incarceration in city custody. This occurs for a variety of reasons, starting with delay or denial in the first instance. Once on medication, clients report failure by staff to renew medications, difficulty getting medications due to escort restrictions or facility lockdowns, transfer between facilities, and housing restrictions. Many medications must be given consistently to work. Any break can have drastic consequences, such as rapid decompensation, which then results in a cycle of infractions and punitive segregation. Pain medication is frequently withheld by medical staff who accuse our clients of drug-seeking rather than having a reasonable health need.

Confidential treatment space is extremely limited in DOC facilities; many mental health visits are performed at cell-front or in dorms within earshot of other patients or DOC staff. In punitive segregation units these interviews are done through a small slot in a closed cell door through which a clinician and patient must actually yell to each other in order to communicate. Information significant to mental health treatment is at times withheld by our clients as a means of self-protection. Something as routine as discussing the side-effects of a particular medication, such as drowsiness, can create a safety risk if overheard, as corrections officers and other incarcerated people can target those who are vulnerable and potentially unable to defend themselves.

DOC personnel are often part of the failure to deliver quality care. A lack of escorts is frequently given as an excuse for why an incarcerated individual might not get timely care. There is widespread brutality in the jails. Guards frequently assault and otherwise attack our clients, and then threaten them to "hold it down," which means not seeking medical attention. People have been beaten by correction officers following suicide attempts. In at least one recent case, medical staff did not properly document or treat a person who had had his teeth knocked out, in an apparent attempt to downplay or obfuscate the conditions of brutality.

It is clear that the amount of money being spent to essentially exacerbate the problems of sick, poor New Yorkers, including those who have served our country, should be re-directed into community treatment options to address the health needs of these very same people.

Veterans Courts

The only systemic response to the needs of veterans in New York's criminal justice system is the recent proliferation of Veterans Treatment Courts, which are currently operating in Brooklyn, Queens, the Bronx, and certain other Judicial Districts outside the City. Brooklyn's Veterans Treatment Court for felonies opened in 2009 and has been expanding its services and incorporating more and more veterans into its eligible pool of participants ever since. Additionally, I have been working with a judge, the Kings County District Attorney and program coordinators on the creation of the Brooklyn Misdemeanor Veterans Treatment Court, which will open later this month. Data from the Criminal Justice Agency shows that the vast majority of veterans who get arrested face these lower-level charges. In the course of my representation of veterans accused of criminal acts, I often pursue admission to the Brooklyn Veterans Treatment Court. In my experience, the Veterans Treatment Court is far more likely to provide critical avenues for healing and recovery to individuals who deserve, for their selfless service to our great nation, just, non-jail, evidence-based treatment interventions. All that said, veterans courts only hear cases on certain charges and, more consequentially, District Attorneys, who effectively serve as gatekeepers, keep the majority of eligible cases in traditional courts.

Based on my experience, the specialized focus of Veterans Courts is critical to reducing the long-term collateral consequences of a conviction, such as limited employment and educational options, loss of housing, deportation and loss of familial relationships. The targeted intervention of the Veterans Court also increases the likelihood of successful reintegration of veterans into community life, improves my clients' long-term treatment options, increases treatment compliance once the case is completed and reduces the chances of re-arrest.

Generally, the actors in Brooklyn Veterans Court—the judges, the Assistant District Attorneys and the public defenders—have an enhanced appreciation for the plight of our veteran clients. An Assistant District Attorney with the level of discretion necessary to authoritatively assess cases has been assigned to this task for a number of years and has developed a greater understanding for the unique considerations that go into such an assessment. One of the two judges adjudicating these cases is a veteran himself. Both judges endeavor to exercise great compassion and empathy in adjudicating cases. This is displayed in all of the protocols of the court, including the communication between judge and veteran-offender. For clients who may feel disillusioned or even betrayed by a government system that they once risked their lives to protect, this last piece is essential. When the judge sitting on the bench thanks my client for his or her service to our country during a first appearance in the court, my client immediately stands up straighter and listens more attentively. BDS strongly believes that the success of any treatment court requires that all personnel, from the judge, to the prosecutor, defense attorneys, court officers and service providers, have a shared mission: the creation of a meaningful diversion plan for clients and the facilitation of their success in its completion.

One of the essential functions of the Brooklyn Veterans Treatment Court is that it is a hub of resources for our veteran clients. These community-based services are really at the core of the solution for our clients and help them build ongoing relationships with the staff and judges in the treatment court. Following the example of other Veterans Courts, including the highly-successful Buffalo court, our veteran clients in the court are assigned a veteran-mentor. These mentors are drawn from a community of veterans, some of whom were previously incarcerated themselves. They are all volunteers and they help guide our clients through their treatment. These mentors are immediately able to connect with my clients due to their similar prior experience. The fact that such mentors are made available to my clients also signals to them that the court is invested in their success. This fact alone motivates many clients to direct their interest and energies into helping themselves. Utilizing community resources further widens the network of people that veterans can go to when they feel they need support, even after their cases have concluded. Community mentors are also uniquely well-positioned to engage a veteran client who might otherwise withhold information or be unwilling to seek assistance due to pride or misperceived notions about what they are experiencing.

Reentry

Veterans leaving correctional facilities, inpatient psychiatric facilities and other court-imposed placements have access to more reentry support services than their non-veteran peers, but the discharge planning varies from facility to facility and many eligible veterans do not receive help. For example, many honorably discharged veterans can apply to the Department of Veterans Affairs to recommence their benefits, but navigating such an immense Federal bureaucracy alone can be difficult, if not impossible, yet that is often what they are left to do. I understand and appreciate that the Council is considering legislation to require people entering New York City jails to receive Connections, the New York Public Library's reentry guide, which includes information for veterans. I also appreciate that the Council recently passed legislation to "ban the box" on job applications. Certainly, the City could do more. But many of the problems that reentering veterans encounter, like those that all reentering individuals encounter, are inherent to the disruption and destabilization caused by incarceration and involvement in the

criminal justice system. Disruptions in health care, including mental health care, can have permanently debilitating effects. Injuries sustained at the hands of corrections officers or other incarcerated people can have permanently debilitating effects. People living in affordable and/or supportive housing for veterans can permanently lose their beds or units while incarcerated, possibly leaving them homeless and at greater risk for committing future crimes. In New York, most criminal convictions cannot be sealed, and thus function as a permanent disability. In fact, given the ease and relatively low cost of obtaining arrest and conviction records from online for-profit databases, even "sealed" cases can leave a permanent stain. As a rule of thumb, people transitioning out of the criminal justice system must navigate the same challenges they faced upon entering it, such as unstable housing, unemployment, and mental illness, though now they must do so saddled with additional burdens and possible disconnections from their support networks.

Conclusion

The drawdown of deployments in our conflicts abroad means the return of many more veterans to New York City. These men and women are coming home from combat situations without the benefit of adequate transition time or programming to help them cope with the enormous adjustment they must make. Many of these individuals have had multiple deployments and are not even aware of the toll that the experiences had on them. Coming home, there is always a chance that they will commit an act that is not really in their nature, but that is rather a result of the stresses they are under or the ways in which they cope with such stress—namely drugs or alcohol. This is why it is more important than ever to expand the use of Veterans Courts and, more generally, to end the over-criminalization and mass incarceration that has torn apart vulnerable New Yorkers, including veterans, and underserved communities in our City for far too long.

The taskforce proposed in Intro 793 should explore all of these issues and more. As a preliminary step, BDS suggests that Council Members and taskforce members visit Rikers Island to see the "mental observation unit" where Jerome Murdough was left to bake to death. We also suggest that you track the path from Murdough's experiences as a homeless veteran, and his successes and failures in obtaining help from City social services, to his arrest for trespassing and eventual death in DOC custody. You should also visit the Restricted Housing Units—punitive segregation cells for people with mental illness, a form of solitary confinement—at Rikers to observe what happens to veterans and others with mental illness who infract. BDS is ready and willing to join any interested individuals in this investigation and we can share the experiences of our clients to help provide context.

I am grateful for your time and for this opportunity to speak on a topic that has provided the most meaningful experience of my professional career. I hope that you will do all that is in your power to secure effective treatment, rather than counterproductive incarceration and collateral consequences, to help all of the brave New Yorkers who served this country and who deserve compassion, kindness, mercy and our gratitude.