



Brooklyn Defender Services
177 Livingston St, 7th Fl
Brooklyn, NY 11201

Tel (718) 254-0700
Fax (718) 254-0897
info@bds.org

TESTIMONY OF:

Natalie Hession, LMSW

BROOKLYN DEFENDER SERVICES

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Committee on Criminal Justice

Oversight Hearing Examining Drugs in the New York City Jails

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My name is Natalie Hession and I am a Social Worker in the Criminal Defense Practice at Brooklyn Defender Services (BDS). BDS is a public defense office, representing approximately 22,000 people each year who are accused of a crime, facing the removal of their children, or deportation. Thousands of the people we serve each year are detained or incarcerated in New York City's jail system either while fighting their cases in court or upon conviction of a misdemeanor and a sentence of a year or less. We thank the Committee on Criminal Justice and Chair Rivera for the opportunity to address the Council about drug use inside city jails.

For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Through our work in the jails, our staff addresses urgent needs related to basic civil rights and conditions of confinement for our clients who are incarcerated. We work to secure access to essential medical, mental health, safety and education needs through individual administrative advocacy, participation in Board of Correction (BOC) hearings and numerous working groups. We monitor and document the conditions inside New York City's jails and advocate for the rights, safety and protection of those inside these facilities.

For too long, New York City has relied on policing and jails to address issues of mental illness and substance use instead of providing care or treatment. Individuals experiencing a mental health crisis are more likely to have contact with the police rather than medical providers.¹

Across the country, jails and prisons have become the largest provider of mental healthcare and detox. New York City is no exception.

Nearly 60 percent of people in jail in New York State have a substance use disorder.² City jails are not safe and are not a therapeutic environment to detox, stabilize, or receive treatment. We urge the City Council to work with Mayor Adams to begin to move funding away from criminalization and incarceration, toward community investment and community-based responses.

Treatment and diversion

People with substance use disorders should not be facing legal involvement and jail time, legal system involvement can further complicate a person's addiction and ability to access treatment. The city should work to prevent system involvement, increase access to affordable substance use programs, and—if charges are brought—use problem solving courts to provide pathways to treatment and dismissal of charges. In 2009, as part of the Rockefeller Drug Law Reforms, New York State passed the Judicial Diversion Program legislation. Under Criminal Procedure Law Article 216 (CPL 216), this legislation created a pathway for a small subset of people with substance use disorders to avoid prison and potentially have their charges reduced or dismissed after engaging in a course of treatment. This treatment is monitored by specialized courts in every county in New York. Judicial diversion has successfully enabled thousands of individuals to minimize or avoid a criminal record while receiving the benefit of potentially lifesaving substance use treatment. Judicial diversion has also realized the saving of tax dollars, from both reductions in recidivism and the decreased costs per capita of treatment versus incarceration. However, more access is needed for these courts, and the city can help by increasing funding for more programs, more providers, and more inpatient treatment beds.

Many of the people we serve become eligible for support services only because of their interaction with the NYPD and the criminal legal system. With the support of the City Council, we are able to provide robust support services to people who may have avoided court involvement if they had access to services sooner, such as help navigating public assistance and affordable housing applications as well as access to quality long-term mental health care, substance use treatment, educational support, respite centers, and immigration assistance. We are

¹ National Alliance on Mental Illness, Jailing people with mental illness, 2019, Available online: <https://www.nami.org/Learn-More/Mental-Health-Public-Policy/Jailing-People-with-Mental-Illness>

² Lauren Jones, Sandra van den Heuvel, and Amanda Lawson, The Cost of INcarceration in New York State: How Counties Outside New York City Can Reduce Jail Spending and Invest in Communities, January 2021, Available online at <https://www.vera.org/downloads/publications/the-cost-of-incarceration-in-new-york-state.pdf>

committed to providing client-centered services to the people who come through our doors but urge this administration and council to consider why it takes an arrest or criminal investigation for a New Yorker to access meaningful assistance and humane support.

The best way for the city to prevent drug use, overdose, and death in its jails is to stop sending people to Rikers Island and focus on diverting them from the criminal legal system altogether. The city jails are in a state of crisis and the Department of Correction (DOC) has continuously failed to protect the health and safety of people incarcerated in its custody.³ Just this weekend, Erick Tavira became the seventeenth person to die in DOC custody—surpassing last year’s death toll of sixteen lives lost. An unprecedented 33 people have died in the city jails in just under two years—many from overdose and suicide. Acute drug intoxication—or overdose—has been identified as the suspected cause of death in at least four of the deaths this year and four last year. The Council must take immediate action to call for decarceration and push stakeholders—including the mayor, district attorneys, and judges—to work together to stop sending people into DOC custody, increase use of supervised release, alternatives to detention (ATD) programs, and release people currently in city jails. This is critical for the safety of all, particularly those living with substance use disorders or mental illness.

Accessing Treatment and Medical Care in City Jails

For people in custody with a substance use disorder, access to treatment is critical. Due to DOC’s mismanagement—including its failure to ensure access to medical appointments and other critical services and provide emergency response—many people inside the jails are not getting access to the treatment they need. Despite policies and efforts by correctional health clinicians to provide intake services, medication, and schedule recurring appointments, the Department is a regular barrier for people in custody to access essential treatment and care.

New York City jails are managed by two primary agencies, DOC and Correctional Health Services (CHS). Both agencies operate with their own policies and procedures that often overlap, contradict, and cause dual loyalty concerns. Regardless of the condition, the Department maintains the ultimate veto power when it comes to a person in need of medical or mental health care. Correctional officers routinely serve as gatekeepers to medical and mental health care without the requisite knowledge or training. This system is rife with opportunities for abuse or human error. For instance, to access healthcare in a DOC facility, an individual must submit a “sick call” request to officers in their housing unit, who are responsible for forwarding requests to clinical staff. Far too often, correctional staff can—and do—fail to forward sick call requests to

³ Jonah Bromwich and Jen Ransom, 10 Deaths, Exhausted Guards, Rampant Violence: Why Rikers Is in Crisis, *New York Times*, Nov. 8, 2021, <https://www.nytimes.com/2021/09/15/nyregion/rikers-island-jail.html>.

CHS staff, or falsely claim that an individual “refused” to be brought to their appointment, as a tool of control or punishment.

Moreover, DOC is failing to both respond and protect the people in its custody. The Board of Correction recently released its report on 2021 suicides and drug-related deaths, showing chronic dysfunction, inhumanity, and indifference within DOC was at the root of deaths in city jails. The report detailed how correction officers’ failure to conduct rounds of housing units, provide emergency first aid, and bring people in custody to medical appointments played a role in at least six deaths by suicide and four drug-related deaths in 2021.⁴ Not only is mismanagement of staff and insufficient rounding a contributing factor in many of the drug-related deaths in custody, but also even when staff were present they did not provide appropriate first aid or administer naloxone.⁵ Tragically, DOC’s chronic dysfunction and indifference to the lives of the people in its custody is still evident, as people continue to overdose and die, including Michael Lopez, who missed 16 medical appointments from the end of May until mid-July 2022, including one on the day before his death.⁶ People in crisis inside the jails do not receive preventative services and emergency responses are slow and mismanaged. Department staff are both blocking access to preventative services and failing to respond in emergency situations.

Scapegoating of Families

Too often, the proliferation of drugs or other contraband materials in correctional facilities are blamed on family and community members visiting their loved ones in custody or sending mail or packages. Families and community members impacted by this carceral system must not be the scapegoats for systemic issues and failures. The State Department of Correction and Community Supervision recently restricted packages from loved ones in a purported effort to eliminate contraband.⁷ DOC has indicated that they plan to work with a vendor to digitize all incoming mail and deliver scanned copies to people in custody via tablets. We know that this will not have an impact on drug use at Rikers. The Department’s own data indicates that contraband is not entering the facilities through loved ones. In fact, while in-person visits were canceled during the height of the COVID-19 pandemic, the rates of contraband drugs in the city doubled.⁸ Instead, it

⁴ Melissa Cintrón Hernández, Rahzeem Gray and Imahnni Jeffries, Report and Recommendations on 2021 Suicides and Drug-Related Deaths in New York City Department of Correction Custody, Board of Correction, September 12, 2022, Available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2021-suicides-and-drug-related-deaths-report-and-chs-response.pdf>.

⁵ *Id.*

⁶ Courtney Gross, NY1 Investigation: Fatal overdoses rise on Rikers Island, *NY1*. October 6, 2022, Available online at <https://www.ny1.com/nyc/all-boroughs/public-safety/2022/10/06/ny1-investigation-fatal-drug-overdoses-rise-on-rikers-island>.

⁷ Sara Rivest, Rallies Call for an end to Prison Package Restrictions in New York, *Spectrum News*, September 27, 2022, Available at <https://spectrumlocalnews.com/nys/central-ny/news/2022/09/27/rallies-call-for-an-end-to-prison-package-restrictions>

⁸ *Id at 5.*

will serve to dehumanize people in custody and further isolate people from their children, parents, and loved ones on the outside.

Visits and mail from loved ones are critical for the emotional wellbeing of people in custody. The very nature of incarceration isolates people from their families, friends, and communities. The location of Rikers Island makes visiting the jails difficult for many, and DOC adds additional barriers to receiving support from the outside by limiting visits to specific days and times that are usually an obstacle to those who work and or are primary caregivers. It is critical that this Council works to ensure the continuation of contact visits with family and access to personal mail and packages. The solution to the crisis at Rikers is not further isolating people from their support systems.

Recommendations

1. Decarcerate

New York City's jail population continues to grow despite the current crisis inside the jails and the high rate overdose, suicide, and self-harm. The City Council should urge the courts to stop the pipeline of New Yorkers into jail, and increase the use of supervised release, alternatives to detention (ATD) programs, or—when medically appropriate—hospitalization.

Judges of the New York City Criminal Court are appointed by the mayor. The mayor and City Council must hold judges accountable for ensuring the proper implementation of the bail laws and the public safety of New Yorkers—including the safety of those who have been accused of a crime. Courts and district attorneys must remember that bail exists as a method of ensuring that litigants return to court, not a tool to detain as many people as possible. ATD programs are available but underutilized and the City Council should encourage courts to order these programs more regularly, and district attorneys to consent. Jail is not an appropriate environment for substance use treatment or mental health care.

2. Increase access to community-based substance use treatment

During the height of the COVID-19 pandemic, inpatient detox and substance use treatment beds were eliminated and outpatient programs were forced to move to remote formats. People who are living with substance use disorders who previously struggled to access or remain connected to care were left with even fewer resources. Prior to the pandemic, available treatment was already limited. As programs resume in-person programming, people continue to languish on wait lists and struggle to access or reconnect to treatment. We encourage this Council to work to restore and expand access to comprehensive substance use treatment for New Yorkers in need.

Many of the people we represent have tried for years to access substance use treatment, but faced barriers to accessing treatment in the community. When people are arrested and incarcerated, they face additional barriers to getting connected to treatment. In our experience, most community-based treatment programs are not equipped to work with court-mandated patients or to complete intake with people who are incarcerated. The process for obtaining medical records, treatment history, and medications from DOC and CHS is often complicated.

3. Require DOC to report on non-fatal overdoses and use of naloxone

The Board of Correction made a formal recommendation to DOC and CHS to “implement immediate measures to actively track suspected non-fatal overdoses in all housing areas,” including DOC and CHS response, and use of naloxone. We ask that this data be made available to the Council and the public.

4. Continue to fund and expand access to successful programs

While we do not believe jails can or should be used as a substitute for community-based treatment, we ask that the Council continue to fund Correctional Health Services’ Key Extended Entry Program (KEEP). KEEP, one of the first jailed-based opioid use disorder treatment programs in the country, provides critical access to methadone and buprenorphine maintenance to people in custody.⁹ The KEEP model centers reentry planning from the beginning of incarceration, assisting people in maintaining connections to their outside providers, communicating with defense counsel, and setting people up for success when they reenter their communities. This program saves lives. People are able to remain on methadone or buprenorphine while incarcerated, which greatly lowers the risk of fatal overdose upon return to the community.¹⁰ Others are able to access medicated assisted treatment (MAT) for the first time.

Additionally, expanded access to all programming in the jails—including mental health groups, trauma informed programming, school, and employment training programs is essential to help keep people positively engaged during their incarceration and build the skills necessary to reintegrate into the community and stay engaged in treatment upon release.

5. Fully fund MOCJ’s reentry hotel program and increase access to permanent, affordable housing

People with criminal legal system involvement face additional barriers to accessing housing. For people who are living with substance use disorder, mental illness or court mandates to receive

⁹ Jonathan Giftos, *Sustenance Use & Incarceration: Presentatio nto the NYC Board of Correction*, July 12, 2018, Available online at <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/BOC%20SUT%20Service%20Overview%20-%20July%202018%20-%20FINAL.pdf>.

¹⁰ *Id.*

services, homeless or housing insecurity creates additional barriers to access treatment. People experiencing homelessness may have difficulties connecting to providers, affording treatment or medication, or accessing transportation to appointments. The mayor has instructed NYPD to remove people experiencing homelessness from the subway, while simultaneously divesting from the Department of Homeless Services.¹¹

In the midst of the COVID-19 pandemic, as the city worked to decarcerate and we fought to get clients out of jail, MOCJ opened several hotels to provide emergency transitional housing to people leaving jail. This safe, stable housing addressed an unmet need that began far before the pandemic. Today, these hotels are closing and may be discontinued as of 2023. However, jail populations have risen back to pre-pandemic levels. They are overcrowded and the conditions deadly. Releasing people from jail is critical and the MOCJ hotels are a necessary component to decarceration.

The reentry hotel program has proven to be life-changing for many of the people we serve. In lieu of loud, chaotic and often violent congregate shelters, people have private rooms in clean, comfortable buildings where they are treated with dignity and respect. People are able to access direct transportation to the hotels, receive immediate connection to case management, drug and mental health treatment, and support finding employment and permanent housing on site.

It has recently been reported that the MOCJ reentry hotels will close by the end of the year. We urge the Council to baseline funding in the city budget for permanent emergency reentry housing. This critical resource must be maintained as a part of a continuum of housing options for New Yorkers. We urge the city to concurrently work to expand access to supportive housing for people with serious mental illness or substance use disorders, as well as ensure access to affordable housing for all.

6. Pass a resolution in support of the Treatment Not Jail Act

The City Council should call on the legislature to pass and Governor Hochul to sign the Treatment Not Jail Act, S.2881B (Ramos)/A.8524 (Forrest).

As mentioned above, Criminal Procedure Law Article 216 (CPL 216) created a pathway for some people with substance use disorders to avoid prison and potentially have their charges reduced or dismissed after engaging in a course of treatment. Unfortunately, CPL 216 diversion is limited to people with substance use disorders charged with a short list of crimes related to substance use. The current law leaves behind people who do not live with substance use disorders, but experience other mental illnesses, developmental disabilities, or cognitive

¹¹ David Brand, Mayor's Budget Plan Cuts \$615M from Homeless Services, as Subway Crackdowns Intensified, *City Limits*, (February 18, 2022),

impairments that can be effectively addressed through treatment. People living with mental health issues deserve treatment, not jail. Mental health intervention through courts can decrease the jail population and provide people with access to treatment they would not otherwise receive if incarcerated. This has been shown to increase mental health program enrollment and completion of these programs reduces homelessness, psychiatric hospitalizations, and rates of recidivism.¹² New York can become a leader in diverting people with mental health issues out of the criminal legal system and into treatment by passing the Treatment Not Jails Act.

Conclusion

Our city currently relies on jails to provide services for our community members *after* they have been arrested, but we know jails are not medical facilities and New Yorkers are not able to access the care they need even from inside the jails. In the last two years, 33 people have lost their lives in DOC's custody and control. We ask the Council to work to address the problems in our communities that create the risk of criminal legal system involvement in the first place, such as lack of stable housing, access to gainful employment and access to substance use and mental health care.

Thank you again for inviting us to testify today. If you have any questions, please reach out to Kathleen McKenna, Senior Policy Social Worker, at kmckenna@bds.org.

¹² Nazisha Dholakia and Daniela Gilbert, What Happens When We Send Mental Health Providers Instead of Police, Vera Institute of Justice: Think Justice Blog, 2021, Available online at <https://www.vera.org/blog/whathappenswhen-we-send-mental-health-providers-instead-of-police>.