

June 24, 2022

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*****FOR IMMEDIATE RELEASE*****

Data: DOC Still in Contempt of Court for Failing to Ensure Incarcerated New Yorkers' Access to Medical Care

Non-Production Data Does Not Support DOC's Claim of Compliance Given Troubling and Unexplained Shifts in the Reporting

(NEW YORK, NY) - The Legal Aid Society, Brooklyn Defender Services and Milbank LLP [filed](#) a [letter](#) in [Agnew v. New York City Department of Correction](#), litigation filed in October 2021 concerning incarcerated New Yorkers' access to medical care in local jails. Last month, a Court [found](#) the New York City Department of Correction (DOC) in [contempt](#) of a December order requiring DOC to remedy its unlawful failure to ensure incarcerated New Yorkers have access to medical services. The [contempt order](#) gave the City 30 days to demonstrate that it is no longer violating the Court's order or face a \$100 fine for each medical appointment missed from December 11, 2021 through January 2022.

Last week, DOC submitted an [affidavit](#) ("the Thomson Affidavit") to the Court claiming that it had complied with the order. That affidavit, however, not only demonstrates ongoing noncompliance with the Court's order but also raises serious concerns about how DOC has changed the way it collects and reports data. First, DOC admitted that it "failed to produce 186 inmates due to lack of escort availability." Under the law, claims of progress towards compliance do not constitute full compliance, as mandated by the order. Furthermore, there can be no comfort in DOC's purported progress if the 186 people who were not produced to medical appointments are repeatedly being denied care or are among those with chronic care needs. By admitting that it failed to escort nearly 200 people to medical appointments in less than 30 days, DOC admits failure to substantially comply with the Court's order.

The progress that DOC claims to have made appears largely due to unexplained changes in its metrics and shifts in the data reporting. Petitioners and the Court cannot verify DOC's assertions until DOC explains how it is now collecting and categorizing its data. The data DOC provided in the affidavit to show its apparent progress seems incongruous for two key reasons:

- DOC reports the number of people who have missed medical appointments, rather than the number of missed medical appointments;
- There has been a significant and unexplained increase in the "Other" category for non-productions, indicating a potential shift in data reporting rather than an actual decrease in the number of people who missed medical appointments due to lack of escorts.

First, the Thomson Affidavit claim of substantial compliance is measured by counting the number of *people* in its custody who missed appointments, not the number of *appointments* actually missed. However, this will not reflect when a single person, such as a class member with chronic illness who requires frequent care, misses *multiple* appointments due to a lack of escort.

By counting only people, DOC's data fails to capture the total instances of non-production, which could be multiples higher than 186 during this period. If those 186 people indeed missed multiple appointments during this period, that would further suggest that the people who are not being produced to their appointments are among the sickest in DOC custody.

Second, since March, there has been a significant and unexplained increase in the "Other" category for non-productions, indicating a potential shift in data reporting rather than an actual decrease in the number of people who missed medical appointments due to lack of escorts.

According to DOC, when excluding "No Escort," the "Other" category "includes but is not limited to instances where an incarcerated individual chooses to instead attend a work assignment, law library, school, religious services, or commissary...when movement is limited due to a lockdown, search, or alarm."

In its public reporting, DOC includes "No Escort" numbers in its "Other" category, but through this litigation, DOC has disclosed the "No Escort" numbers disaggregated from "Other."

These disaggregated numbers consistently showed that non-productions due to no escort made up approximately 60% to 85% of "Other" non-productions from December 2021 through February 2022. Indeed, [Chief Ada Pressley](#) testified at the hearing on this contempt motion that "the main driver of the Other category numbers have been no escort."

Starting in March, however, the DOC data shows the number of non-productions categorized as "Other" rose dramatically two to threefold, and the number of non-productions in the "Other" category excluding "no escort" increased significantly by several thousands. In May and June, as the "no escort" numbers purportedly decreased, the non-productions categorized as "Other" for reasons excluding "no escorts" stayed at these elevated levels, suggesting a shift in the reporting rather than a remediation of the medical access problem.

After years of being deprived of access to medical care, it is unbelievable that the number of people in DOC custody who are missing critical medical appointments in order "to instead attend a work assignment, law library, school, religious services, or commissary" has increased by *thousands* of instances.

Without a fulsome understanding of the methodology for collecting and reporting data and any recent changes, the troubling and unexplained changes make it impossible to credit DOC's assertion that it has made "substantial strides" as DOC claims in the Thomson Affidavit. This is particularly the case where counsel for Petitioners continue to receive regular complaints from people in custody that they are not produced to their medical appointments.

The Plaintiffs will appear **today, Friday June 24th at 11:00 AM** before the Honorable Elizabeth Taylor in New York State Supreme Court - The Bronx for a status conference on this matter. Media and members of the public should contact the New York State Office of Court Administration for virtual access.

The Legal Aid Society, Brooklyn Defender Services and Milbank LLP stated, "The Department of Correction's claim that it has complied with the Court's order is wrong. DOC has admitted that nearly 200 people were denied access to medical care from mid-May to mid-June, so its continued noncompliance is obvious. And we have serious concerns that DOC has completely reorganized, without explanation, how its data

is reported, raising questions as to whether DOC's alleged 'progress' matches the reality on the ground in the City's jails, where three people have died in just the last week."

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