

TESTIMONY OF:

Kathleen McKenna, LMSW

BROOKLYN DEFENDER SERVICES

Presented Before

New York City Council Committees on Health

Oversight Hearing on the Monkeypox Virus in New York City

August 24, 2022

My name is Kathleen McKenna and I am Senior Policy Social Worker at Brooklyn Defender Services (BDS). BDS represents approximately 25,000 people each year who are accused of a crime, facing loss of liberty, their home, their children, or deportation. Thousands of people we represent live or are detained in congregate and institutional settings in the city—including shelters, detention facilities, jails, and foster homes—putting them at risk for communicable disease including the monkeypox virus (MPV). I want to thank the Committees on Health and Chair Schulman holding this important hearing on MPV in New York City.

BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms. Our staff consists of specialized attorneys, social workers, investigators, paralegals and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing, and benefits advocacy, as well as immigration advice and representation.

Exposure Risk in Congregate Settings

We are here today to raise our concern for the health of the hundreds of thousands of New Yorkers who live or are detained in congregate and institutional settings, including the city's jails, juvenile detention facilities, shelters, residential treatment programs, and foster homes.

Brooklyn ^(BDS) Defenders

The city's lack of messaging about MPV prevention, vaccination, and treatment for people in congregate settings stokes fear and misinformation in the midst of an emerging public health emergency. We urge the council to take action to ensure all New Yorkers have access to the information, prevention, and the medical care they need.

The first case of MPV was confirmed in New York in early May 2022. In the interceding months, over 3,000 people have contracted the virus statewide, with over 90 percent of cases in New York City alone.¹ Because the MPV virus is spread via direct personal contact or contact with items that have been used by someone with MPV, including bedding or towels,² people who live and work in congregate and institutional settings are at heightened risk of MPV transmission. The Mayor declared a public health crisis due to MPV on July 30, 2022,³ yet plans for addressing this emergency situation in public congregate spaces have not been disseminated. It is not clear to providers, the public, or people in institutional settings if plans have been created and implemented to keep people safe.

At this time, the majority of reported cases in the United States have been among gay, bisexual, and other men who have sex with men.⁴ As with COVID-19, Black and Latine people have been disproportionately impacted by the virus.⁵ It is critical to continue outreach and education in the gay community, *and* expand outreach, education, and prevention strategies for others at risk. We must also acknowledge that these populations intersect and overlap. Gay and bisexual men—and their LGBTQ peers—are disproportionately represented in jails⁶ and the foster system,⁷ and in shelter or unstable housing.⁸ These settings are unsafe for LGBTQ people, particularly people of color, who consistently report high levels of abuse, harassment, discrimination, and physical and sexual violence.⁹

¹ NYS Department of Health, Update: Monkeypox in New York State – August 2022, [https://health.ny.gov/diseases/communicable/zoonoses/monkeypox/#:~:text=As%20of%20August%2024%202022,Control%20and%20Prevention%20\(CDC\).](https://health.ny.gov/diseases/communicable/zoonoses/monkeypox/#:~:text=As%20of%20August%2024%202022,Control%20and%20Prevention%20(CDC).)

² CDC, Monkeypox, July 29, 2022, <https://www.cdc.gov/poxvirus/monkeypox/transmission.html>

³ NYC Office of the Mayor, New York City Health Department Declares Monkeypox a Public Health Emergency, July 30, 2022, <https://www1.nyc.gov/office-of-the-mayor/news/555-22/new-york-city-health-department-declares-monkeypox-public-health-emergency>

⁴ David Philpott, et al. Epidemiologic and Clinical Characteristics of Monkeypox Cases — United States, May 17–July 22, 2022, *CDC Morbidity and Mortality Weekly Report*, August 12, 2022, <https://www.cdc.gov/mmwr/volumes/71/wr/mm7132e3.htm>.

⁵ *Id.*

⁶ Alexi Jones, Visualizing the Unequal treatment of LGBTQ People in the Criminal Justice System, *Prison Policy Initiative*, March 2, 2021, <https://www.prisonpolicy.org/blog/2021/03/02/lgbtq/>.

⁷ Laura Baams, et al., LGBTQ Youth in Unstable Housing and Foster Care, *123 Pediatrics* 3, March 2019, www.aappublications.org/news.

⁸ National Coalition for the Homeless, LGBT Homelessness, 2020, <https://nationalhomeless.org/issues/lgbt/>

⁹ See for example the [First Report of the Task Force on Issues Faced by TGNCNBI People in Custody](#), [Results of a Survey of LGBTQ New Yorkers](#), [Trans Activist Secures Groundbreaking Reforms to New York City Homeless Shelter System](#).

Current vaccine eligibility requires disclosure of sensitive information—including sexual orientation, gender identity, and sexual behavior—to medical providers, which may pose a barrier to a vaccine roll-out in both the community and congregate facilities. Having to disclose one's sexual history to be eligible for vaccination means New Yorkers in congregate care may have to choose between their health and their physical safety. Furthermore, in congregate settings the current vaccine eligibility does not necessarily correlate to the risk of transmission, because people are at risk for MPV *by virtue of* being in that congregate setting. This is especially true in congregate settings where there is no option to leave.

Learning from the COVID Pandemic in City Jails

Since the start of the COVID-19 pandemic, people in New York City jails, their loved ones, defenders, and advocates have requested transparency from the Department of Correction (DOC) and Correctional Health Services (CHS) on measures being taken to keep people in custody safe. While public health officials have maintained that the answer to keeping people safe was to decarcerate, the efforts to decrease jail populations have tapered and jail populations have risen to pre-pandemic levels. Today, there are over 5,700 people in custody.

At least two DOC staff members have tested positive for MPV, and we are concerned the virus may already be circulating among people in custody.¹⁰ As DOC now faces dual COVID and MPV pandemics, transparency, action, and clear messaging to people in custody, jail staff, and advocates in the community is critical to stop the spread. Yet, to date, DOC's plan to address MPV has not been shared with people in custody, defenders and advocates, or the Council.

Dr. Homer Venters, former Chief Medical Officer of CHS, has called on the CDC to create plans to stop the spread of MPV in jails, highlighting the failures of the jail system to keep people safe from COVID: “This requires being more explicit than they were with COVID about the extremely crowded and filthy conditions in facility intake and court pens, where people spend hours to days shoulder to shoulder, laying on the floor or sitting on benches as they wait to be processed into facilities or court appearances.”¹¹

As we have highlighted before this Council, the level of crisis in the city's jails cannot be overstated. DOC has repeatedly demonstrated an inability to keep people in its custody safe and the inhumane conditions put people at heightened risk for MPV transmission. New Yorkers are living in filthy conditions, held in units surrounded by literal garbage. Toilets are broken and overflowing into living areas. Intake cells are over capacity, people are being confined for days and weeks inside showers with no beds, mattresses, or toilets, and are sleeping on floors of

¹⁰Gabrielle Fonrouge, DOC Correction Captain who works on Rikers Island Contracts Monkeypox, *New York Post*, August 5, 2022, <https://nypost.com/2022/08/05/nyc-doc-captain-who-works-on-rikers-island-contracts-monkeypox/>

¹¹ Homer Venters, CDC Must act to prevent Monkeypox Explosion in Prisons, *The Hill*, July 27, 2022, <https://thehill.com/opinion/healthcare/3576465-cdc-must-act-to-prevent-monkeypox-explosion-in-prisons/>

showers covered in urine, vomit, and feces. Units are very hot without proper cooling or access to water resulting in people wearing as little clothes as possible. People in custody—including those with no preexisting conditions—are experiencing rapid deterioration of their physical and mental health. Gross mismanagement at DOC has led to units being unstaffed and understaffed and people in custody experiencing lockdowns and overcrowding. These environments are rife for spread of MPV and other viruses.

DOC's documented and egregious failure to fulfill its lawful and moral obligation to provide access to needed medical care has led to undue suffering and death, and raises serious concerns about DOC's ability to manage an MPV outbreak. Twelve New Yorkers have died in DOC custody this year alone. People are suffering and dying. They are enduring mental health and medical crises without access to medication or care.

In the fall of 2021, BDS, alongside the Legal Aid Society and Milbank LLP, filed a class action lawsuit against DOC on behalf of those being held in DOC custody who have been denied access to medical care in the city jails. Even after being ordered by the court in December 2021 to provide people immediate access to healthcare, DOC continues to fail to ensure the people in its custody have access to medical care. This month, after finding DOC in contempt of its Order, a New York State Supreme Court judge ordered DOC to pay a \$100 fine to incarcerated New Yorkers for each medical appointment missed from December 11, 2021 through January 2022 – a total of roughly \$200,000. As the city struggles to address both the COVID-19 pandemic and MPV, we call on the city to decarcerate our jails.

Recommendations:

1. Decarcerate city jails

Decarceration is the most effective way to keep people involved with the criminal legal system safe during the pandemic. Health experts have called for releasing incarcerated people for their own safety since the beginning of the COVID pandemic, and they are again calling for decarceration in light of MPV. We have learned from the more than two years of a worldwide pandemic that the best way to keep people safe from communicable diseases is to keep people out of crowded spaces, to ensure that people in congregate spaces have access to necessary protective equipment, hygienic spaces, and cleaning supplies, and to provide clear, actionable and medically accurate information. The city must now ensure communities at highest risk of MPV exposure receive critical information from trusted community members.

Releasing people from jail is paramount to protecting the health of people in custody and the broader public. Outbreaks behind bars threaten all New Yorkers, as many people, including thousands of staff, enter and exit the facilities each day. The Council must work with other stakeholders to reduce the jail population.

2. Ensure access to single beds for people leaving jail

At the height of the COVID pandemic, the Mayor’s Office of Criminal Justice (MOCJ) opened reentry hotels for people leaving jails to safely quarantine when returning to the community. These hotels have been an invaluable resource for New Yorkers, providing a safe, clean, and supportive place for people leaving the city’s jails. This month, advocates and hotel residents learned that the city has reduced the reentry hotel budget, forcing the closure of two of the hotels, which currently house 300 New Yorkers. The remaining hotels, which house another 500 people, are at risk of closing at the end of the year.

MOCJ’s reentry hotel program has provided more than just safe housing, it has provided support, connections to care, and a pathway out of jail for thousands of people. While the city continues to deal with COVID and the emerging MPV crisis, this indispensable resource must be fully funded and remain open.

3. Create, distribute, and implement plans to address MPV spread in congregate settings

Earlier this month, the CDC released guidelines to reduce MPV transmission in congregate living settings.¹² New York City’s Department of Health and Mental Hygiene (DOHMH) has only six isolation beds for people in shelters who have MPV.¹³ While New York City has released guidance for individual behavior modification, cleaning, and laundry, plans for addressing MPV in shelter, jails, and other congregate settings have not been disseminated.

Transparency in reducing spread and responding to cases of MPV in congregate settings is crucial. People in congregate settings are not receiving adequate information from the city. Clear messaging is critical to prevent the spread of misinformation and disinformation. The Council should work with DOHMH to ensure that protocols for congregate settings—including shelters and jails—are shared with residents and the public. Plans must include how to access medical treatment, housing and staffing changes, occupational risk for staff and residents.

4. Ensure equitable access for Black and Latine New Yorkers

¹² CDC, Considerations for Reducing Monkeypox Transmission in Congregate Living Settings, August 22, 2022, <https://www.cdc.gov/poxvirus/monkeypox/specific-settings/congregate.html#:~:text=Ensure%20that%20residents%20with%20monkeypox,areas%20are%20not%20yet%20available>.

¹³David Brand, NYC Opens 6 Isolation Beds for Homeless Shelter Residents with Monkeypox, *City Limits*, August 17, 2022, <https://citylimits.org/2022/08/17/nyc-now-has-6-isolation-beds-for-homeless-shelter-residents-with-monkeypox>

As we learned with COVID-19, timely and widespread vaccination is the most effective means of reducing transmission of infectious diseases. And yet the city's MPV vaccine rollout has been disjointed and slow. Black New Yorkers in particular have been underrepresented in vaccination efforts.¹⁴ Vaccine doses are in low supply and high demand has resulted in a narrow, targeted rollout. People who have MPV or have been exposed to the virus still struggle to access treatment or adequate pain management.¹⁵

The city must engage in clear, credible messaging about MPV, prevention, and vaccination for all New Yorkers. Black and Latino men who have sex with men have been disproportionately impacted by MPV, but are receiving vaccines at lower rates. There is skepticism surrounding vaccine dosage and access.

We encourage City Council to work with community providers and credible messengers to provide targeted information that addresses concerns. Education and access must be prioritized for these Black and Latine communities.

5. Visit congregate living settings and speak to impacted people

An immediate action members of this committee can take is visiting shelters, jails, and other congregate living and detention facilities and talking with people inside. We urge members of this Committee to visit, without giving prior notice to the agencies, and speak with people throughout these facilities to hear firsthand the experience of people inside.

Conclusion

New York City is again the epicenter of a global public health emergency. We must learn from the challenges of COVID response and ensure people in high risk communities and settings—particularly people in congregate living environments—are prioritized for education and prevention. We urge the Council and the Department of Health and Mental Hygiene to collaborate with the Department of Homeless Services, Department of Correction, Correctional Health Services, and other city agencies to ensure that the people this City is responsible for housing are kept from MPV.

Thank you for the opportunity to testify today. If you have any questions, please feel free to contact me at kmckenna@bds.org.

¹⁴ Sharon Otterman, et al., A Repeat of Covid: Data Show Racial Disparities in Monkeypox Response, *New York Times*, August 22, 2022, <https://www.nytimes.com/2022/08/18/nyregion/monkeypox-vaccine-racial-disparities.html>

¹⁵ Sharon Otterman, For Monkeypox Patients, Excruciating Symptoms and a Struggle for Care, *New York Times*, July 18, 2022, <https://www.nytimes.com/2022/07/18/nyregion/new-york-monkeypox-vaccine.html>