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TESTIMONY OF:

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Presented before

New York City Council

Committees on Public Safety, Mental Health, Disabilities and Addiction, Fire and Emergency Management, and Hospitals

Oversight Hearing on Mental Health Involuntary Removals and Mayor Adams' Recently Announced Plan

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My name is Danielle Regis and I am a Supervising Attorney in the Mental Health Representation Team of the Criminal Defense Practice at Brooklyn Defender Services (BDS). I have represented people in the Brooklyn Mental Health Court since 2018. I would like to thank the Committees on Mental Health, Disabilities and Addiction, Fire and Emergency Management and Public Safety for the opportunity to testify today about mental health involuntary removals and Mayor Adams' psychiatric crisis care legislative agenda.

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 by the government. We provide multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy in nearly 22,000 cases involving Brooklyn residents every year.

BDS' Mental Health Representation Team consists of specially trained attorneys and social workers who are experts in working with and for people who have been accused of a crime and who are living with serious mental illness or a developmental disability. We are proud of having

played an important role in the creation of the Brooklyn Mental Health Court in 2002. The Brooklyn Mental Health Court works with people accused of crimes who have serious and persistent mental illnesses, linking them to long-term treatment as an alternative to incarceration. BDS continues to collaborate with this court to advocate for its expansion to meet the needs of more people, including people with intellectual disabilities and people who have previous criminal legal system involvement. Outside of court, we also help people apply for benefits and supportive housing, access mental health and substance use treatment, and locate beds in respite centers and safe havens–as we know that access to services can help people avoid court involvement altogether.

Public Focus on Mental Illness and Crime

It is nearly impossible to divorce conversations about mental health from the criminal legal system. The media and public discourse have conflated the two–creating a false narrative which links mental illness to increased rates of violence.[1] This damaging and unfounded messaging exacerbates social stigma and reduces public support of policies that create alternatives to incarceration and the policing of mental illness.[2] With his proposed psychiatric crisis care legislative agenda, Mayor Adams seeks to deploy the NYPD to forcibly remove people who appear to be experiencing symptoms of mental illness from our communities, streets, and subways. This proposal includes detaining people simply because they do not have the economic resources to meet basic human needs–sweeping people up because they are a "risk to self" due to inability to afford treatment for an injury, wear appropriate clothing, or access stable housing. We fear this plan will increase contact between NYPD and both people living with mental illness and people who are unhoused, and will escalate tensions between the person being forcibly removed and the police. These situations will result in unnecessary forced hospitalizations, or arrests and the criminalization of resisting transportation to a hospital.

New York relies largely on policing and incarceration to address issues related to mental health and substance use. The rollout of non-police responses to mental health crises across New York City have been slow.[3] Police, rather than medical providers, are most likely to respond to people experiencing a mental health crisis.[4] Instances where the police respond to mental health crises

[1] Heather Stuart, Violence and mental illness: an overview, World Psychiatry, June 2003, Available online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1525086/
[2] *Id.*
[3] Greg Smith, Cops Still Handling Most 911 Mental Health Calls Despite Efforts to Keep them Away, The City, July 22, 2021, Available online at https://www.thecity.nyc/2021/7/22/22587983/nypd-cops-still-responding-to-most-911- mental-health-calls
[4] National Alliance on Mental Illness, Jailing people with mental illness, 2019, Available online at https://www.nami.org/Learn-More/Mental-Health-Public-Policy/Jailing-People-with-Mental-Illness.

often end in abuse or even death.[5] In his new plan, rather than trying to reverse this trend, Mayor Adams has called on the NYPD to conduct more involuntary removals and has given police even broader discretion when determining if someone is at risk of harm to themselves or others.[6]

During the height of the COVID-19 pandemic, inpatient psychiatric beds were eliminated and outpatient programs were forced to move to remote formats. People who are living with mental illness who previously struggled to access or remain connected to care were left with even fewer resources. As we emerge from the depths of the pandemic, the supply of inpatient psychiatric beds and availability of outpatient programming remains inadequate to meet the need.[7] The Council must work with the community to restore—and expand—access to mental health care for New Yorkers.

Policing, Instead of Treating, a Mental Health Crisis

The Mayor's response to the mental health crisis relies on a short-term emergency response which will not meet the short- *or* long-term needs of people living with mental illness. Forcibly removing people perceived to be mentally ill from the street to the most restrictive setting is not only inhumane, it also ineffective in facilitating the goal of engaging people in mental health treatment.

Forcible removals by the police entail a risk of danger to the person who is experiencing a mental health crisis. When police respond to calls related to mental health crises, they are frequently not trained nor prepared, which is why these calls commonly result in harmful, if not fatal, outcomes. These interactions with police do not result in obtaining proper care for the person in crisis—but rather, the opposite happens. These interactions routinely result in handcuffs and incarceration. "It's why some U.S. jails hold more people with serious mental health conditions than any treatment facility in the country."[8] These interactions also make people vulnerable to police violence; in 2021, at least 104 people across the country were killed after police responded to someone "behaving erratically or having a mental health crisis." [9]

Even when police are properly trained, the simple presence of an armed police officer can escalate tension and trigger anxiety and distress for those who are living with mental illness or behavioral health conditions. As public defenders, we have seen firsthand how police interactions play out all too often. Our most recent cases confirm that an increase in police encounters with those living

[5] Eric Umansky, It wasn't the first time the NYPD killed someone in crisis, *Propublica*, December 4, 2020, Available online at https://www.propublica.org/article/it-wasnt-the-first-time-the-nypd-killed-someone-in-crisis-for-kawaski -trawick-it-only-took-112-seconds

[6] Office of the Mayor, Mental Health Involuntary Removals, November 28, 2022, Available at https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2022/Mental-Health-Involuntary-Removals.pdf

[7] Bahar Ostadan, Patients Familiar with NYC Mental health System Skeptical of New Adams Policy, *Gothamist*, December 2022, Available at https://gothamist.com/news/patients-familiar-with-nyc-mental-health-system-skeptical-of-new-adams-policy

[8] *Id*.

[9] Nicholas Turner, We Need to Think Beyond Police in Mental health Crises, Vera institute, April 2022, Available at https://www.vera.org/news/we-need-to-think-beyond-police-in-mental-health-crises

with mental illness are not resulting in removal to a hospital or care facility, but are instead resulting in arrest, incarceration, and further decompensation.

One person we represent, Ms. C, was visibly experiencing grief and anxiety after she learned that a family member had died. At that moment, NYPD officers who were on patrol saw her and–because they believed she was in an acute crisis–immediately put her in handcuffs. When Ms. C tried to ask why she was being handcuffed, the officers claimed she was resisting arrest and later claimed she kicked one of the officers. She was brought to the local police precinct, where she suffered an anxiety attack, and was brought to Kings County Hospital. At the hospital, she was handcuffed to a hospital bed, surrounded by police for hours, and then brought to court for arraignment. Ms. C was charged with resisting arrest and a felony assault. The prosecution requested she be held on bail at Rikers Island, but fortunately, the judge released her under supervised release. After two court dates, and two check-ins with her supervised release program, her case was Adjourned in Contemplation of Dismissal (or ACD). Ms. C had no record and had never been arrested before this incident. This experience was incredibly traumatic and further exacerbated her anxiety and ability to grieve the loss of her family member.

When Mr. K, a young person we represent who lives with a mental illness, was experiencing a mental health emergency, his mother called 911 to request an ambulance to bring him to the hospital for mental health care. When the EMTs arrived, they were accompanied by a police officer who rode with Mr. K in the ambulance (a requirement under the Mayor's plan). While Mr. K was being transferred from the stretcher to a hospital bed, he was accused of headbutting the police officer at the hospital bedside. Mr. K was then arrested for a felony assault, handcuffed to the hospital bed, and brought to arraignment court the next day. His attorney successfully advocated for his release. Later, he met with his Assertive Community Treatment (ACT) team, where he was stabilized on his medication. Since then, his criminal charges have been reduced to a misdemeanor, and his attorney is working to have his case dismissed.

In New York, when someone is accused of assaulting a police officer, the charges are elevated from what would otherwise be a misdemeanor to a violent felony. That means that judges can set bail on these cases, sending more people with mental illness to jails that are already ill-equipped to care for them. Rates of self-harm and suicides have skyrocketed inside New York City jails. As we have repeatedly said, the level of crisis in the jails cannot be overstated. People are suffering and dying. They are enduring mental health and medical crises without access to medication or care. People in custody—including those with no preexisting conditions—are experiencing rapid deterioration of their physical and mental health. With units going unstaffed, New Yorkers are left crying out for help while locked in a cell with no officer at their post.

We are concerned that an increase in interactions between police officers and those living with mental illness or behavioral health issues will result in unsubstantiated assault allegations and send more people to jail instead of helping them access the care they may need.

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The Mayor's Plan Fails to Address the Root Causes of Mental Health Emergencies

In his rollout of his legislative plan, the Mayor conjured images of people experiencing street homelessness. He cited conditions related to poverty–riding the train to the end of the line, not wearing shoes in inclement weather–as markers of a mental illness and reason for police intervention. People living with SMI are more likely to experience homelessness, and the extreme stress and trauma of homelessness exacerbate existing mental illness or may cause a trauma exposure response. Forced hospitalization, however, does not help someone find a stable home. Physical and mental health outcomes are worse for people who struggle to meet their basic need for shelter, food, and safety. Investment in housing, social safety net programs, and free, voluntary mental health care is needed to address the Mayor's concerns.

Involuntary removals are inherently traumatic. People are torn from their homes, communities and support systems. For people experiencing homelessness, their belongings are often lost or thrown away. This forcible–often violent–removal creates a traumatic association with the hospital, a place that should be associated with access to treatment and care, not punishment. Involuntary removals create an additional barrier to care for people when they are ready and able to opt into treatment. People we serve who have a history of involuntary hospitalizations have shared with us that they avoid the hospital, even when they recognize they need critical mental or physical health treatment, because of a fear of loss of autonomy, forced treatment, and an association with a past traumatic event. Living with a mental illness is not a crime; New Yorkers must be provided the opportunities and resources to choose care without coercion.

Recommendations

Many of the people we represent have tried to access mental health treatment for years. Others have endured psychiatric hospitalizations but are discharged back to the community without connections to ongoing treatment or stable housing. At the best of times, services are limited but in the wake of the COVID-19 pandemic, finding appropriate mental health care seems near impossible. People seeking care remain on waitlists for months or years for Assertive Community Treatment (ACT) teams, supportive housing, psychiatrist appointments, or other care they require. Many are discharged from psychiatric hospitalization with a referral to first-come-first-serve walk in mental health care and a list of congregate shelters. Some are denied services for requiring a "higher level of care" or having a co-occurring substance use disorder. With no information on where to turn next, people with mental illness who are seeking care are often met with police, arrest, and incarceration.

Investment in the mental health of New Yorkers must include community-led mental health initiatives, increased access to long term mental health care, supportive housing, and programs that seek to minimize community violence and mitigate trauma exposure response. BDS respectfully offers the following recommendations:

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1. Remove NYPD from mental health emergency responses

For years, BDS has called for the removal of NYPD from all mental health responses, including mental health emergencies, and the expansion of mobile crisis teams. The City has attempted to change the response to serious mental illness (SMI) through piecemeal legislation and pilot programs. As we feared, in the neighborhoods where mental health teams are being piloted, NYPD officers are still responding to mental health emergencies in most cases.[10] Now Mayor Adams is encouraging officers to engage further with people they believe are experiencing mental illness. Allowing the NYPD to continue responding to these calls—even with additional training—does not address the real danger that police pose to people experiencing mental health crises. This plan criminalizes mental illness. Police are not mental health experts or medical professionals, and they should not be tasked with filling this role.

The Council should fully fund mental health crisis response teams to ensure mental health emergency calls are addressed by medical professions or clinicians who are trained in de-escalation methods.

2. Stop incarcerating people with mental illness

New York City jails have long been in a state of crisis; a violent, mismanaged disaster and a stain on this city. It has been clearly documented by endless testimonies from people in custody,[11] health and correctional staff,[12] correctional experts, major newspapers and networks, and by a federal monitor who has released over a dozen reports.[13] The level of crisis in the jails cannot be overstated.

DOC's mismanagement of its staff, primarily its failure to provide access to mental health appointments and critical services, is dangerous and has proven to have fatal outcomes. We know that many people in custody enter the correctional system with risk factors for self-harm such as having a history of trauma, mental health issues, and/or substance use.[14] Despite policies and

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[10] Greg Smith, Cops Still Handling Most 911 Mental Health Calls Despite Efforts to Keep them Away, The City, July 22, 2021, Available online at https://www.thecity.nyc/2021/7/22/22587983/nypd-cops-still-responding-to-most-911-mental-health-calls

[11] Rebecca McCray, What It's Like at Rikers, According to People Who Just Got Out: "They're not feeding people, there's no water, no showers, no phone calls," *New York Magazine, Sept. 23, 2021,* Available online https://www.curbed.com/2021/09/rikers-jail-conditions.html.

[12] Gloria Pazmino, Staffing Dysfunction and Unsafe Conditions lead to Crisis on Rikers Island, NY1, September 9, 2021, Available online https://www.ny1.com/nyc/all-boroughs/public-safety/2021/09/10/rikers-island- staffing-issues-correction-officers-calling-out-unsafe-conditions-what-happened.

[13] All Nunez Monitor Reports are available online at https://www1.nyc.gov/site/doc/media/nunez-reports.page

[14] Laura Frank and Regina T.P. Aguirre, "Suicide Within United States Jails: A Qualitative Interpretive Meta-Synthesis," Journal of Sociology and Social Welfare XL, no.3 (2013): 31-52; Doris J. James and Lauren E. Glaze, Mental Health Problems of Prison and Jail Inmates (Washington, DC: U.S. Department of Justice, Bureau of Justice

efforts by correctional health clinicians to provide medical intake services, medication, and schedule recurring appointments, the Department is a regular barrier for people in custody to access essential treatment and care.

We urge the City and this Council to take meaningful steps to decarcerate our jails and commit to funding programs and services that support and uplift our communities–not simply government systems that surveil, punish, and harm them.

3. Continue to provide respite centers and crisis beds for people with mental illness

Many of the people we serve would not have become court involved if they had safe housing, access to medications, and the support of mental health professionals while addressing a short-term crisis or mediating a concern with a family member or caretaker. While crisis respite centers are available, restrictive policies often prevent people who are court involved, suicidal, or deemed to be acting erratically to access beds.

When NYPD responds to a mental health emergency the person in crisis is handcuffed and transported to a hospital for evaluation or a police precinct. Mental health teams, on the other hand, have begun to move away from this practice by providing care in the community, outpatient referrals, and bringing people to crisis respite centers.[15]

The City should continue to fund these critical centers to ensure they are ready to meet the needs of people who choose to access care in crisis, are ready to engage in treatment and need help to stabilize, as well as individuals who are transported by a mental health response team or NYPD. We believe these spaces should be accessible in areas with the highest rates of emergency mental health calls and operated by trusted, community-based organizations, so people in crisis can remain in their own neighborhoods near their support systems while receiving care.

4. Close treatment gaps for individuals with serious mental illness

We recognize a need for high quality, trauma informed therapy and psychiatry services for adults with SMI. Inadequate community-based mental health and substance use treatment funnels people struggling with mental illness into handcuffs, jails, and prisons. For these individuals, time in City jails frequently exacerbates preexisting mental illness, as behavioral health needs are all too often met with violence and isolation rather than appropriate care. After serving time in jail or prison,

Statistics, 2006, NCJ 213600); Henry J. Steadman, Fred C. Osher, Pamela Clark Robbins, Brian Case, and Steven Samuels, "Prevalence of Serious Mental Illness Among Jail Inmates," Psychiatric Services 60, no.6 (2009): 761-765.

[15] B-Heard, Transforming NYC's Response to Mental health Crisis, *Mayor's Office of Community Mental Health,* July 2021, Available at https://mentalhealth.cityofnewyork.us/wp-content/uploads/2021/07/B-HEARD-First-Month-Data.pdf

people return to their communities frequently lacking adequate healthcare infrastructure and access to affordable and supportive resources. These inadequacies lead too often to tragic results–either irreversible sickness and death or the churning cycle of incarceration, lapses in treatment, homelessness, and rearrest.[16]

The Mayor's plan relies upon the highest level of care – Assisted Outpatient Treatment (AOT) and Kendra's Law. While many of our clients have thrived with Assertive Community Treatment (ACT) and Forensic Assertive Community Treatment (FACT) teams, this level of intervention is not needed for many people living with SMI. To ensure that every New Yorker is able to access the care they need, we ask that the City expand evidenced-based treatments available to people with severe mental illness before they become involved in the criminal legal system. This includes expanding access to Intensive Mobile Treatment Teams (IMT); investing in community based mental health treatment programs in low-income communities; expanding access to Article 31 and Article 32 clinics; and educating frontline workers on available mental health care options for New Yorkers with SMI. Free, voluntary mental health care must be made available in communities with the highest rates of mental health calls to EMS and must be expanded to include longer hours to reduce instances where people are turned away when seeking help.

The City must ensure that these programs are sufficiently staffed and that providers receive appropriate compensation. Intensive Mobile Treatment (IMT) Team and peer based support systems have been imperative, on the ground support for the people we serve. Providers must earn a living wage and the City must work to retain seasoned providers.

5. **Fully fund the Mayor's Office of Criminal Justice (MOCJ) reentry hotel program**

In April 2020, the City of New York partnered with direct service providers to establish the Emergency Reentry Hotel Program to provide emergency housing for people transitioning out of incarceration. With co-located wrap-around services including medical care, case management, and housing and vocational support, people returning to the community had a safe, stable place to stay. This setting has proven to be life-changing for many of the people we serve, particularly those living with SMI. 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. In the first two years of the program from March 2020 to 2022, over 2,100 returning to New York City from prison or jail have been served by this program.

The current emergency hotel program is scheduled to close on June 30, 2023, with the 530 current residents being moved into transitional housing. This plan, however, fails to serve the goal of using

[16] The National Commission on Correctional Healthcare has recognized these dangers. See Nat'l Comm. On Corr. Healthcare, About Us, https://www.ncchc.org/about (recognizing that improving the quality of care in jails and prisons not only "improve[s] the health of their inmates," but also "the communities to which they return").

transitional housing to decarcerate Rikers Island. As of February 2, 2023, there are over 375 people on a waitlist for a bed in the emergency hotel program–many of whom are incarcerated only because they do not have stable housing. The Council has a moral imperative to continue to fund this critical program as a step in a continuum of reentry housing.

6. **Expand access to permanent supportive and affordable housing**

As public defenders, we have seen how critical housing is for the people we serve who are living with SMI. With a safe and stable home, people can engage in treatment more effectively. When their basic needs are met, they can and choose to access medication, healthcare, counseling and services. People with serious mental health concerns are disproportionately homeless or housing insecure, which creates additional barriers for people to access the treatment they need. People experiencing homelessness may have difficulties connecting to providers, affording treatment or medication, or accessing transportation to appointments. We urge the Council to work with the Mayor to ensure funding for supportive housing, scattered site housing, crisis respite, and affordable, permanent housing are included in the FY24 budget.

The City must work to expand access to supportive housing for people with SMI or substance use disorders, as well as ensure access to affordable housing for all.

7. **Courts should increase the use of supervised release or ATD programs for people living with mental illness**

As mentioned above, the population in the City jails continues to grow despite the current crisis inside the jails. The City Council should urge the courts to stop the pipeline of New Yorkers into the jails, and increase use of supervised release, alternatives to detention (ATD) programs, or—when medically indicated—hospitalization, particularly for people with SMI charged with bail eligible cases.

Judges of the New York City Criminal Court are appointed by the mayor. The Mayor and the Council must hold judges accountable for ensuring the proper implementation of the bail laws and the public safety of New Yorkers—including those who have been accused of a crime. The City Council should strongly remind courts and DAs that bail should not be used to detain, but rather, to incentivize people to return to court. The Council should demand that judges and DAs are regularly using and offering all available options. 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 place for people with histories of mental illness. Courts should regularly order, and district attorneys should regularly consent to, these alternatives to incarceration.

8. **Pass a New York City Resolution in support of the Treatment Not Jail Act**

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

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 reoffending and the decreased costs per capita of treatment versus incarceration.

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 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 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.[17] 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

The City cannot arrest and involuntarily hospitalize its way to mental wellness and public safety. People experiencing mental illness deserve access to housing and treatment in a non-coercive manner. Involuntary commitment and an expansion of Kendra's Law are not the answer. The city should work to expand evidence-based treatment programs, services, and housing to address the needs of New Yorkers living with mental illness. BDS urges the City Council to work with the Mayor to invest in the continuum of stable and safe housing–including reentry hotels, respite programs, and permanent and supportive housing–that are the foundation of any mental health treatment plan. The city must move away from a mental health response that police and criminalize people and move towards real community investment and community-based responses. We

[17] 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/what-happenswhen-we-send-mental-health-providers-instead-of-police.

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encourage you and the Mayor to work collaboratively with community-based organizations, people with mental illness and their families, as well as defenders and advocates, to create real solutions. We look forward to partnering with you and continuing this important conversation.

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