Brooklyn Defenders

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TESTIMONY OF:

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Presented before New York City Council
Committee on Mental Health, Disabilities and Addiction

Oversight Hearing on the State of NYC's Mental Health and
Plans to Address the Mental Health Crisis.

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My name is Anthony Mayol and I am a Supervising Attorney in the Mental Health Representation Team of the Criminal Defense Practice at Brooklyn Defender Services (BDS). 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. I want to thank the Committee on Mental Health, Disabilities and Addiction, and in particular Chair Linda Lee, for holding this important hearing on the City's plans to address the mental health crisis.

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 attend competency evaluations and hearings, provide referrals to appropriate community resources, appear in the Brooklyn Mental Health Court, develop unique legal defenses, and address the needs of incarcerated people with mental illness or developmental disabilities. In addition, our specialized attorneys provide internal expertise across BDS' practice areas.

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.

BDS' interdisciplinary, wraparound model allows us to provide support to people who may have avoided court involvement if they had access to services sooner. We help people apply for benefits and supportive housing, refer to mental health and substance use treatment, and locate beds in respite centers and safe havens. We are committed to continuing to provide these services to the people who come through our doors but urge the City to consider why it takes an

arrest, investigation, or court involvement for a New Yorker to access meaningful assistance and humane support.

Public Focus on Mental Illness and Crime

In recent weeks, local media has been dominated by stories on mental illness, homelessness, and crime. The coverage continues to spin a false narrative, linking mental illness to increased rates of violence.[1] This damaging messaging exacerbates social stigma, reduces public support of policies to support people living with mental illness,[2] and falsely asserts policing as a solution. New York relies largely on policing and jails to address issues related to mental health and substance use. People experiencing a mental health crisis are more likely to be engaged by police than medical providers.[3] Instances where the police respond to mental health crises often end in abuse or even death.[4] The rollout of non-police responses to mental health crises across the City has been slow, and NYPD continues to respond in most cases.[5] Across the country, jails and prisons have become the largest provider of mental health care and New York is no exception. Punitive responses to mental health crises do not help people who are living with mental illness and do not contribute to public safety.

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. The Council must work with the community to restore—and expand—access to mental health care for New Yorkers in need.

Recommendations

Many of the people we represent have tried for years to access mental health treatment, but were pushed out of hospitals or housing and met with a lack of appropriate resources in the community. At the best of times services are limited but in the midst of a global 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, psychiatric visits or other care they require. They are discharged from psychiatric hospitalization with a referral to first-come-first-serve walk in mental health care and a list of congregate shelters. They 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, they are often met with police, are arrested, and incarcerated.

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[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] 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.
[4] https://www.propublica.org/article/it-wasnt-the-first-time-the-nypd-killed-someone-in-crisis-for-kawaski-trawick-it-only-took-112-seconds
[5] 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

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Investment in the mental health of New Yorkers must include community lead 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:

I. 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.[6] 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, nor does it prevent the criminalization of mental illness. Police are not mental health experts or medical professionals, nor should they 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.

II. Increase access to culturally competent, trauma informed providers

Cultural competency is a major barrier to services for many New Yorkers with mental health needs. Receiving mental health care has cultural barriers and stigma for many of our clients. For Black and brown New Yorkers, finding a therapist who shares their racial or ethnic identity is incredibly challenging. Mental health providers nationwide are predominantly white; only 4% of psychologists are Black and 5% are Latine/o/a/Hispanic, and similar disparities exist among psychiatrists and social workers.[7] It is nearly impossible to find Black and brown psychiatrists who are able to perform competency evaluations for the court.

New York must invest in educating, hiring, and retaining mental health providers of color and invest in free and low-cost mental health services that are designed for people who have experienced hardship, trauma, or incarceration. Providers should be equipped to meet the needs of people who are newly being introduced to mental health care and to create a familiar, nonthreatening therapeutic environment for those who may be hesitant to engage in treatment. Such programs must employ trained clinicians who are fluent in multiple languages and reflect the people that they serve. We must not place the burden on the patient to educate the clinician about the realities of racism, poverty, incarceration, or community violence.

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[6] 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

[7] Christina Caron, It's hard to search for a therapist of color. These websites want to change that, *New York Times,* July 2021, Available online at https://www.nytimes.com/2021/07/16/well/mind/find-black-latinx-asian-therapist.html.

III. 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 there was a safe place they could go to stay, access medications, and get 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.

In current practice, 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 have begun to move away from this practice by providing care in the community, outpatient referrals, and bringing people to crisis respite centers.[8]

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 they engage in care, as well as individuals who 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.

IV. 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, people who return to their communities frequently lack adequate healthcare infrastructure and 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 recidivism.[9]

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 are engaged in the criminal legal system. This includes expanding access to Assertive Community Treatment (ACT) and Forensic Assertive Community Treatment (FACT) teams, investing in community based mental health treatment programs in low-income communities, and frontline workers—including Health Home care navigators and NYC Well phone-based counselors—on available mental health care options for New Yorkers with severe mental illness.

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

[9] 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").

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V. Expand access to supportive and affordable housing

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. The Mayor has instructed NYPD to remove people experiencing homelessness from the subway, while simultaneously divesting from the Department of Homeless Services.[10] which will only exacerbate the vulnerability of homeless New Yorkers.

In the midst of the COVD-19 pandemic, some of the people we serve have been released from City jails or hospitals and placed in emergency hotels. This setting has proven to be life-changing for many of the people with SMI 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. 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.

VI. Courts should increase the use of supervised release, hospitalization, 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 high rate of COVID-19 transmission and the growing rates of suicide and self-harm. The City Council should urge the courts to stop the pipeline of New Yorkers into the jail, 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. Judges have the option to order hospitalization for at least 72-hours *sua sponte*, at the request of the defense attorney or at the request of the defendant. When clinically appropriate, the court should consider hospitalization pursuant to Mental Health and Hygiene Law § 9.43 and this Council should question judges who are routinely denying defense requests for hospitalization. For New Yorkers living with SMI, hospitalization should be an alternative to jail. Courts should regularly order, and district attorneys should regularly consent to, these alternatives to incarceration.

[10] https://citylimits.org/2022/02/18/mayors-budget-plan-cuts-615m-from-homeless-services-as-subway-crackdown-intensifies/

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VII. Pass a 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 court parts 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 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.[11] 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

BDS urges the City Council to work with the Mayor to begin to move funding away from surveillance and criminalization and toward community investment and community response. Investing in housing, education, employment, mental and physical healthcare, and communities is critical to improve the mental health of people across the City. We ask this Council to work with community-based organizations, people with mental illness and their families, and defenders to fill the gaps in crisis mental health care and move away from police-based responses.

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.

[11] 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.