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Presented before

The New York City Council Committee on Criminal Justice

Oversight Hearing on Organizational Strategy of the Department of Probation

October 26, 2026

My name is Yung-Mi Lee and I am the Director of Law and Appeals in 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. Thank you to the Committee on Criminal Justice and Chair Brooks-Powers for the opportunity to testify about the Department of Probation.

For 30 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. After 29 years of serving Brooklyn, we expanded our criminal defense services to Queens. We represent over 40,000 people each year who are accused of a crime, facing the removal of their children, or facing deportation. Our staff consists of 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 the educational needs of our clients or their children, housing and benefits advocacy, as well as immigration advice and representation.

Our criminal defense practices represent people charged with crimes in Brooklyn and Queens. We also have specialized attorneys, social workers, and youth advocates who provide representation and other services to young people aged 12-21 in criminal court, supreme court, and family court. Our interdisciplinary Adolescent Team also works to address the collateral issues that impact youth with system involvement, collaborating across BDS's practices to provide comprehensive support to the youth we represent in court as well as support and

guidance to their families as they help their children navigate these complex and frightening legal systems.

The Role of the Department of Probation in Youth and Adult Court Cases

The New York City Department of Probation (DOP) occupies a major role in the adult criminal legal system as well as the family court system, as it shapes individual case outcomes, oversees programs, and provides services for young people accused of crimes. The Department has an important role to play with significant potential to shift the city's approach from system-involvement toward community-based support.

Criminal Court Cases

Ensure Access to Counsel During Pre-Sentence Investigation

The Department of Probation plays a major role in criminal cases and can ultimately shape whether a person gets a jail or prison term. DOP is responsible for all pre-sentence investigation (PSI) reports. When a person faces a jail, prison or probation sentence after a guilty plea or a trial verdict, the court orders DOP to prepare a PSI report. To prepare the report, DOP interviews the person and, in some cases, a family member. During the interview, DOP looks for acceptance of responsibility by asking how the crime was committed (after the probation officer has already reviewed the indictment or the complaint) and will often contact any victims. They conduct background checks, summarizing the person's criminal history, family connections, education and employment history, and place(s) of residence. The report also includes a summary of the person's medical history, including mental health and substance use treatment. In the final, written report to the court, DOP summarizes all of the findings, makes a sentencing recommendation and any other recommendations such as counselling for a substance use disorder.

Sentencing courts review these PSI reports and can use them to depart from a promised sentence. Often, after a guilty plea, the court orders a PSI report and adjourns the case for sentence. The court will usually give three warnings: The first, "No new arrests," second "Cooperate with probation," and third, "Return to court on the sentencing date." During the interview, when a probation officer asks for an explanation of the guilty plea offense, a discussion may follow. If the probation officer feels that the person is not accepting responsibility, the report contains such a statement. When sentencing judges read this portion of the report, they often find that the person has not "cooperated with probation" and thereby threaten to or actually depart from the promised sentence. When a court departs from the promised sentence, the person may face state prison time instead of probation or face a lengthier prison sentence instead of the minimum time.

After someone is sentenced, the PSI report prepared by DOP continues to follow their case. The parole board will review the PSI report when making determinations about parole eligibility. If there are errors in the PSI, a person may be denied parole, or the parole board may impose additional and unnecessary conditions upon the person's release.

If the crime involves a sex offense under Article 130 of the Penal Law, the PSI report is also used to increase (or decrease) a person's risk level. In one case, the probation officer completing the PSI report indicated that a person we represent was living with a substance use disorder after he disclosed that he had smoked marijuana more than 10 years ago. The District Attorney, however, used the PSI report to complete the sex offender risk categorization, and the inclusion of a substance use disorder resulted in a score as higher-level sex offender, requiring more stringent reporting requirements.

Traditionally, DOP had not allowed attorneys to accompany and stay with their clients for these probation interviews. However, after his trial and conviction in 2020, Harvey Weinstein's private defense attorneys were permitted to accompany him to his PSI interview. After the public outcry about New York City's two-tiered system, former Mayor Adams announced that all attorneys could attend these PSI interviews but only if the court signed an order permitting attorneys to attend. Courts should never deny an attorney's request to protect the rights of their client, DOP should adopt a policy that an attorney be allowed to accompany their clients to a PSI interview without a court order.

In the past, the Department always recommended incarceration, regardless of the negotiated plea and regardless of any mitigating circumstances. Currently, it seems that individual probation officers recommend incarceration despite the promised sentence of non-incarceration. BDS requests the Department to instruct probation officers to make recommendations consistent with the promised plea and make individualized recommendations based on a person's need for treatment and/or ability to obtain employment or training. In short, recommendations must be based on the individual circumstances of each person.

Violations of Probation

The Department of Probation is responsible for the supervision of people on probation in the community, and can set requirements–including timely check-ins, curfews, requirements to engage in programs, or obtain employment–for people to follow. In many cases, people we represent have been declared delinquent for alleged violations that do not necessarily require such a severe response. We have also seen the Department request excessive sentences upon the finding of a violation of the conditions. Oftentimes, people are referred to programs that are not individualized to a person's needs. In other cases, people are not necessarily able to obtain employment due to childcare or family needs, mental health needs or other physical disabilities. Housing instability also results in an inability to report to probation check ins on a regular basis. Prior to filing an official Violation of Probation, the Department should look into the circumstances that may have led to the alleged violation and to find ways to bring the person back into compliance.

Certificate of Relief from Disabilities

In New York, a Certificate of Relief from Disabilities (CRD) is a document which removes certain legal bars imposed by a criminal conviction and restores a person's rights that were taken

away at the time of their criminal conviction. CRDs are authorized under NY Corr. Law §§ 701-703 and promote a person's successful reintegration and reentry into society even after a conviction. They are important because they can prevent evictions and preserve employment, remove statutory bars to professional licenses imposed by criminal convictions, provide a rebuttable "presumption of rehabilitation" for employment applications, and they appear on a person's rap sheet beside relevant convictions which helps clarify eligibility and reduce bias by employers, licensing bodies, and other decisionmakers.

The PSI report prepared by a probation officer before sentencing should include information about a person's eligibility for a CRD and a recommendation on whether to grant such relief at a sentencing hearing. Each administration has taken different approaches to whether PSI's contain recommendations for CRDs. In the prior administration, DOP did not require an additional investigation and attach recommendations for such certificates. It is important that PSI reports include CRD eligibility and recommendations to inform the judge of the possible relief and create a record of the person's rehabilitation status which can be important if the certificate is sought in the future. We urge the Department to bring back the practice and to ensure that every PSI report includes a CRD.

Early Termination of Probation

In 2024, New York State passed the Clean Slate Act, which provides automatic sealing of eligible New York misdemeanor and felony convictions, hiding them from certain civil background checks. Misdemeanors will be sealed 3 years after sentencing or release from incarceration, whichever is later, and for felonies, the wait period is 8 years after sentencing or incarceration. These convictions become invisible to most private employers, landlords, and the public in standard background checks, removing lifelong barriers that have made reentry to employment and housing so difficult for people with system-involvement.

A person is not eligible for Clean Slate relief while on probation. Long probation periods prolong involvement in the criminal legal system and can be a barrier to stability and rehabilitation. Longer probation periods create greater opportunity for minor noncompliance and prevents people from moving freely to visit family, finding stable housing and employment. We urge the Department to find opportunities for early termination of probation based on demonstrated progress rather than treating the maximum sentence as the default period of supervision.

Role of the Department of Probation in Youth Cases

The Department plays an outsize role in the family court system and the youth parts in criminal court, as DOP oversees programs and services for young people accused of crimes. In youth cases in family court, DOP has the ability to recommend programs, adjustments (where a case is resolved without formal charges being filed), or oversee alternatives to detention and programming for young people. During the last administration, we witnessed an increased unwillingness by DOP to offer adjustments or programs in many cases, coupled with harsh enforcement of status offenses, such as missing school. We are grateful that, under the Mamdani

Administration, many of the suggestions we raised before this committee in July 2025 have been implemented,[1] including the restoration of Court Liaison Officer roles and increasing capacity for alternative to detention (ATD) programming.

Conclusion

BDS is grateful to the Committee on Criminal Justice for holding today's hearing on the organizational strategy of the Department of Probation and for your time and consideration of our comments. We look forward to further discussing these and other issues which impact the people we serve. If you have any questions, please feel free to reach out to me at ylee@bds.org.

[1] Our testimony is available online here: https://bds.org/latest/testimony-the-department-of-probations-organizational-strategy-july