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Presented before

New York City Council

Committee on Criminal Justice

Oversight Hearing on Alternatives to Detention and Incarceration in NYC

November 30, 2023

My name is Jackie Gosdigian, and I am a Supervising Policy Counsel at Brooklyn Defender Services. Brooklyn Defender Services (BDS) is a public defense office, representing approximately 22,000 people each year who are accused of a crime, facing the removal of their children, or facing deportation. We thank the Committee on Criminal Justice and Chair Rivera for the opportunity to address the Council about alternatives to incarceration (ATI) and alternatives to detention (ATD).

For over 25 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. Our staff of specialized attorneys, social workers, investigators, paralegals and administrative staff are experts in their fields. BDS is fortunate to have the support of the City Council to supplement the services we provide as a public defender office in Brooklyn. Through specialized units of the office, we provide extensive wrap-around services that meet the needs of people with legal system involvement, 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.

BDS commends the Council for taking the time to discuss and prioritize ATIs and ATDs which not only make New York safer than incarceration but are critically important to supporting the people we serve, their families, and our communities.

DEFEND • ADVOCATE • CHANGE

Historically, New York has unilaterally and systemically relied on incarceration to combat crime. In 1973, New York passed the “Rockefeller Drug Laws.” These unprecedentedly harsh laws relentlessly funnel Black, brown, and poor New Yorkers into cages. Politicians in the ‘80s and ‘90s notably championed so-called “tough on crime” and “law and order” policies that touted extreme policing and lengthy prison sentences. Mass media fueled this narrative, instilling a fear of Black, brown, and poor people, labeling them violent criminals. After passage of the federal 1994 crime bill, New York received more than \$50 million for jail and prison construction from the federal government. This legislation expanded in 1998, resulting in longer sentences, increased mandatory minimums, increased life sentences without the possibility of parole, and other heightened carceral penalties.

Today, New York State has over 30,000 people languishing in state prisons.¹ 75% are Black or brown. New York’s commitment to mass incarceration helps fuel America’s shameful standing as the largest cager of human life in the world, with more than two million people detained in prisons, jails, and immigrant detention facilities throughout the country.² Mass incarceration does not make our communities safer. In fact, years of research have shown that crime rates, public safety, and community health are more likely to be *negatively* affected by incarceration than they are to be improved.³

People who are jailed have much higher rates of social, economic, and poor health outcomes than the general public. These problems should not—and *cannot*—be addressed through incarceration in prisons or jails. The safest communities are the communities with the most resources. Investing in prisons and jails is a failed policy that has not created safety, but rather further degraded under-resourced communities. When people who are accused or convicted of a crime are incarcerated, they are removed from their community, family, job, school, and other critical support systems. ATD and ATI programs help people address the issues that led to their involvement with the criminal legal system while also allowing them to remain in the community, build critical skills, access medical care, mental health treatment, and substance use treatment, and pursue job training and opportunity. Instead of isolation and incarceration—which comprises a person’s physical safety and emotional health, weakens relationship, and diminishes

¹ Prison Policy Initiative New York Profile. Available online at: <https://www.prisonpolicy.org/profiles/NY.html>

² <https://www.communitiesnotcagesny.org/timeline>

³ Vera Institute of Justice, Reducing Jail and PRison Population. Available online at: <https://www.vera.org/ending-mass-incarceration/reducing-incarceration/reducing-jail-and-prison-population>

economic prospects⁴, ATIs and ATDs can help people meet their professional, educational, and health goals, which may help mediate future interactions with the police.⁵

BDS is fortunate to have strong relationships with several ATD and ATI programs that provide many of the people we serve with holistic services. However, to truly realize the promise of ATIs and ATDs, more investment is required. For these programs to be as impactful as possible, free programming must be available before individuals even come into contact with the criminal legal system. Programming accepted as a part of a plea deal as an alternative to incarceration must be available without cost. Programming must set individuals up to succeed, understanding that for those who would benefit the most from programming, progress not perfection should be the goal. Finally, programming must be available not just for low-level offenses, but also for violent felonies and gun-related offenses if we are truly committed to making our communities safer.

Further, the Council must commit to supporting legislation that works in tandem with ATIs and ATDs. The Council should back legislation that ends mandatory minimums, which diminish judicial discretion and operate as statutory barriers for those who need programming. The Council should support the Youth Justice and Opportunities Act which would expand opportunities for programs and other alternatives to incarceration for young New Yorkers to help them get the resources they need to succeed while avoiding a criminal record. Finally, the state legislature should pass Treatment Not Jails which would amend Criminal Procedure Law Article 216 of the judicial diversion law expands eligibility for treatment for court-involved individuals and shifts the presumption from incarceration to community support. We thank the council for the support it has already shown for the Treatment Not Jails Act.

Make Programming Available Before Criminal Contact

Many of the people we serve come in contact with the criminal legal system due to underlying issues including housing instability, substance use disorders, mental health crises, and poverty. Programming and resources that help alleviate these conditions are inherently alternatives to

⁴ Meredith Booker, The wealth of incarcerated versus non-incarcerated men over a lifetime, visualized, April 2016. Available online at: <https://www.prisonpolicy.org/blog/2016/04/26/wealth/>

⁵ATI and reentry programs help the City and State correctional systems save more than \$100 million every year. The two-year recidivism rate of graduates from ATI/Reentry Coalition programs is less than 20%, far lower than the 42% recidivism rate of those released from incarceration.
<https://www.lac.org/news/the-ati-reentry-coalition-calls-for-increased-funds-to-support-life-changing-programs-for-the-thousands-of-people-across-nyc-involved-in-the-cj-system>

incarceration, as they prevent at-risk individuals from coming into contact with the system in the first place. The city should redirect funding that goes toward prosecuting and incarcerating New Yorkers and instead fund services and programming that can serve our communities, providing people with resources that are desperately needed to keep people housed, healthy, and out of the criminal legal system.

Many people we serve are only able to gain access to community-based programs after their contact with the criminal legal system. The people we serve are often desperate to take advantage of any resources that we can connect them with, such as social welfare benefits, supportive housing, substance use and mental health treatment, and resume building and job training. Being able to do so before participation is mandated is paramount to building a safer New York. It should not take being charged with a crime to get people connected to resources that they are eager to make the most of and desperately need.

Invest in Individually Tailored and Evidence-Based Programs

More than 70 percent of people in U.S. jails and prisons have at least one diagnosed mental illness or substance use disorder or both, and up to a third of incarcerated people have a serious mental illness. In our city jails, at least 50 percent of people in custody have a diagnosed mental illness and over 19 percent have a serious mental illness.⁶ And, nearly 60 percent of people in jail in New York State have a substance use disorder.⁷ People living with mental illness or substance use disorders are much better served through programming than incarceration. Just this week, members of the State Inter-Agency Task Force on Overdose Prevention called for an expansion of diversion programs for those arrested with substance use disorders.⁸ However, it is imperative that these programs recognize progress is not always linear and look at the reasons why participants may falter as they try to work through these challenges. Program participants are more likely to succeed if the response to making a mistake is not always the threat of incarceration. Instead, counselors can suggest a higher level of care or a different approach to

⁶ New York City Comptroller, DASHBOARD UPDATE: NYC Comptroller Releases New Monthly Data on Department of Correction Operations, (January 19, 2023), Available at <https://comptroller.nyc.gov/newsroom/dashboard-update-nyc-comptroller-releases-new-monthly-data-on-department-of-correction-operations-5/>

⁷ Lauren Jones, Sandra van den Heuvel, and Amanda Lawson, The Cost of INcarceration in New York State: How Counties Outside New York City Can Reduce Jail Spending and Invest in Communities, January 2021. Available online at: <https://www.vera.org/downloads/publications/the-cost-of-incarceration-in-new-york-state.pdf>

⁸ Joshua Solomon, Improvements to diversion programs needed after bail changes, November 2023. Available online at: <https://www.timesunion.com/state/article/improvements-diversion-programs-needed-officials-18505063.php>

services. Examples of this can be medicated assisted treatment for those living with substance use disorders; or obtaining a vocational certificate or a GED to expand employment options for those struggling to keep a job.

It is critical that programs understand that the people who will benefit most from their services are also often people who struggle to perfectly conform to rigorous requirements. For instance, programming offered as alternatives to incarceration for people living with substance use disorders often require clients to test negative for all substances or they fail out of the program. Even for those most motivated to fight their addiction and become sober, addiction is an ongoing battle where the expectation of immediate perfection sets them up for failure. While some people are able to complete these programs with flying colors and reap all the benefits, others who are in the throes of addiction often “fail” the rigorous requirements of the programming and are left without the support or resources they need. Instead, they end up facing jail and prison time for failure to complete.

The same goes for the people we represent who are seeking ATIs for mental health treatment. Many of the people we represent have compounding factors of homelessness and severe mental health diagnoses. This makes it hard for them to have perfect attendance and flawless communication with program staff. It is critical that programs that purport to help people address their mental health understand the limitations that these diagnoses present to accessing care, and work with individuals to help them succeed rather than failing them for an inability to meet arbitrary requirements.

Create More ATIs and ATDs for Youth and People Charged with Violent Felonies

The benefits of ATIs and ATDs are not limited to people charged with non-violent offenses. In fact, this Council has previously recognized the importance of community-based responses and crisis management as crucial components of violence prevention. Unfortunately, options for ATIs or ATDs for our clients charged with violent felonies or alleged gun possession, there is a dearth of programming available.

Traditionally there have only been two available alternatives to incarceration programs for young people charged with gun possession: Youth and Congregations in Partnership (YCP) and Project Redirect. Both are run by the Brooklyn DA’s office, require the consent of the DA for admission, and are only available for young people. There is no clear criteria used to determine eligibility for these programs and the process for acceptance is unilateral and highly secretive. If a young person is fortunate enough to be found eligible and is successful, these programs usually allow for young people to have their cases dismissed and sealed upon completion. However, if they are



unsuccessful, they generally face prison time and a permanent felony record. Very recently, Fortune Society, which runs a highly successful ATI program, has been authorized by the Brooklyn DA's office as an ATI for gun possession cases, but only in extremely limited circumstances.

Of the two DA run programs in Brooklyn, YCP is the preferable option for the people we represent because it is more specifically tailored to meet the needs of the participant, focusing on school attendance or finding work. However, in our experience, adolescents who are alleged to be "associated" with a gang are never offered this program, and instead are pushed to Project Redirect.

Project Redirect is a deeply problematic and secretive program that is extremely difficult, if not impossible, to complete. Much of what we know about it is reported by those we represent who have participated. As defense attorneys, we are generally prohibited from accompanying our clients in discussions about the program with prosecutors, with the occasional exception of a preliminary briefing. The program lasts between eighteen months and two years and requires participants to abide by a deeply regimented schedule of school, work, and meetings with the DA's office, with deviations for tasks like purchasing milk for the family at a local bodega permitted only with prior approval, often via text messaging. They cannot have contact with others identified as fellow gang members, which may include family and any or all local community members. They are not permitted to use any social media, which is the way many communicate with friends and family, both locally and abroad. Participants are required to debrief, or provide information about their friends and community members. They must wear ankle monitors and their every movement is tracked by GPS. They receive home visits from District Attorney Investigators and must make regular visits to the DA's office. Altogether, they are forced to walk around with giant targets on their backs, both as "snitches" to the community and as gang members to the local police officers. This dynamic makes them isolated and vulnerable to violence. Rather than addressing the social marginalization that pushes people into gang membership and possibly problematic behavior, it aggravates internal conflicts within communities. In our experience, very few of the youth we represent are able to complete this program, which results in a mandatory minimum sentence in upstate prisons.

We call on the City Council to meaningfully invest in alternatives to incarceration and detention for individuals charged with violent felony offenses. Programming that clients can access to get resources they need to help break the cycle of violence and programs whose requirements set clients up to succeed rather than fail and then face lengthy prison sentences. For example, Esperanza, an organization offering services and ATI programming designed specifically for youth, just recently lost its funding.

In order to meaningfully address violence, the city must continue to invest in evidence-based programming and expand programming to include people of all ages. But, these alternatives will not be successful without buy-in from district attorneys, because, as discussed below, harsh mandatory minimum sentences make non-jail options useless without DA consent.

Urge the State to End Mandatory Minimums

Even with available alternatives to incarceration, judges across the City and the State of New York are bound by mandatory sentencing guidelines set forth in the Penal Code. We must end mandatory minimum sentencing and we ask the council to support and pass a resolution urging the enactment of the End Mandatory Minimums Act (S. 6471/Myrie/A.2036A Meeks) In addition to mandatory incarceration, having a criminal record has lifelong insurmountable consequences for a person. Mass incarceration does not deliver justice, safety, or healing. It tears at the fabric of families and communities who lose loved ones, breadwinners, and caretakers to New York State prisons.

Lengthy mandatory minimums strip judges of their discretion when determining sentencing and serve as prosecutorial leverage in coercing plea deals. Two-strike laws further lengthen the sentence of an individual with a prior conviction, and three-strike laws condemn people to life in prison. The Eliminate Mandatory Minimums Act legislation would eliminate mandatory minimum sentences, allowing judges to consider the individual factors and mitigating circumstances in a case. In doing so, this legislation will finally undo the harm of the Rockefeller Drug Law era and provide for alternatives to incarceration that will address the root causes of criminal system involvement, breaking the cycle of arrest and incarceration.

Urge the State to Pass the Youth Justice and Opportunities Act

Young people in the communities we serve are particularly vulnerable to police interaction, especially when they are still continuing to grow and mature into their mid twenties and grappling with peer pressure and decision-making skills. Nationally and in New York, young people aged 18 to 25 make up only 10% of the population, but over 20% of all arrests. Nearly three quarters of those arrests in New York are of youth of color. A recent Sentencing Project report found that across the country, Black youth are five times more likely to be incarcerated than their white peers.⁹ Because this disproportionality is so stark among emerging adults, reforms focused on this group are especially urgent. We ask the council to support and pass a

⁹Joshua Rovner, Racial Disparities in Youth Incarceration Persist, February 2021. Available online at: <https://www.sentencingproject.org/fact-sheet/racial-disparities-in-youth-incarceration-persist/>



resolution urging the enactment of the Youth Justice and Opportunities Act (YJ&O) (Myrie S3426/O'Donnell A4238). The Youth Justice & Opportunities Act would expand opportunities for programs and other alternatives to incarceration and immediate record sealing for young people up to age 25. By passing YJ&O, New York has the chance to lead the nation by protecting the futures of young people up to age 25, enhancing community well-being, and providing emerging adults the opportunity to move forward in their lives without the barrier of a criminal conviction. The Act would also reduce State and local spending on youth incarceration—money that should be invested in communities to alleviate poverty and homelessness, ensure quality education, and fund other needed resources. In turn, this bill would help stabilize communities, promote community health, and increase public safety for all.

Urge the State to Pass Treatment Not Jails

Mass incarceration is fueled by New York's failure to provide adequate services to address mental health and substance use needs. New York's current treatment court model has many restrictions on who is able to participate in a diversion program, based on their charges, diagnoses, or personal history. The Treatment Not Jail Act (TNJ) (A. 1263 Forrest/S. 1976 Ramos) will substantially expand access to judicial diversion and create tangible steps toward ending the criminalization of mental health and cognitive impairments in New York. TNJ will create parity in the court system for vulnerable populations who need support and opportunity, and promote public safety by opening avenues of appropriate, individualized treatment where currently the default is incarceration.

TNJ will promote collaboration between participants and treatment providers, offering participants the best chance of achieving their treatment goals. The number of people living with or having experienced mental health issues is at an all-time high, and jails and prisons have become the de facto mental health facilities across New York State. Treatment Not Jail seeks to put an end to this untenable condition and to redirect people out of jails and the criminal legal system and into evidence-based treatment programs that can offer the medical care and support they need. We thank the Council for passing Reso 156-2022 in support of TNJ. We ask the Council to continue to work with your colleagues in Albany to ensure this critical legislation is passed into law.

Conclusion

Brooklyn Defenders

It is clear, based upon decades of research, that a pro-incarceration model is not only unsuccessful in preventing violence, it destroys communities by causing irreparable harm to families and future generations. As an alternative, BDS welcomes the opportunity to work with the city to create opportunities for people who have been arrested to participate in programming. We thank the Committee on Criminal Justice for continuing to recognize the importance of alternatives to incarceration and detention. We urge the city to go further. To commit to funding free programs that set our clients up for success. To commit to expanding the availability of ATIs and ATDs for individuals charged with violent felonies or gun offenses. To vocally support ending mandatory minimums and passing The Youth Justice and Opportunities Act and Treatment not Jails. These three pieces of legislation would help stabilize communities, promote public health, and increase safety for all. Lastly, while post-arrest programs can be a successful method to provide services for our community members, we ask the Council to continue to address the problems in our communities that create the risk of criminal legal system involvement in the first place, such as lack of stable housing, access to gainful employment and access to substance use and mental health care.

We thank you for the opportunity to submit testimony on this critically important topic. If you have any questions, please feel free to contact me at jgosdigian@bds.org.