Brooklyn Defenders

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TESTIMONY OF:

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Presented before

The New York City Council Committees on Public Safety, Mental Health, Disabilities and Addiction, Fire and Emergency Management, and Hospitals

Oversight Hearing on Behavioral Health Emergency Assistance Response Division (B-HEARD) and Responses to Mental Health Crises.

September 23, 2024

My name is Colleen King and I am a Supervising Attorney with the Mental Health Unit at Brooklyn Defender Services (BDS). I have represented people in the Brooklyn Mental Health Court over a decade. I am also a member of the New York State Judicial Task Force on Mental Illness. On behalf of BDS, I would like to thank the City Councils, and Chairs Salaam, Lee, Ariola, and Narcisse, for holding today's important hearing on Behavioral Health Emergency Assistance Response Division (B-HEARD) and other emergency responses to people experiencing acute mental health crises.

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 23,000 cases 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.

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B-HEARD and non-police responses to mental health emergencies

We are saddened to appear before you once again in response to more New Yorkers having been tragically killed while in crisis and asking for help.[1] For years, BDS has advocated for the complete removal of the NYPD from all mental health responses, including emergencies, and for the expansion of mobile crisis teams staffed by trained professionals. While the city has made some attempts to reform its approach to serious mental illness (SMI) through piecemeal legislation and pilot programs, these efforts remain insufficient. Despite the growing recognition of the problem, the NYPD and the criminal legal system continue to be relied upon as the default responders in mental health crises. This reliance not only fails to address the root causes of these emergencies but also puts lives at risk. If we are serious about tackling the mental health crisis in our city, we must move beyond fragmented solutions and invest in comprehensive, sustainable care that prioritizes the well-being of all New Yorkers.

The NYPD will tell you that they respond to 200,000 mental health calls a year, and that deadly incidents are rare, but for the families of New Yorkers killed by the police, a single incident is irreversible and devastating. Force is disproportionately used in incidents involving people who have been identified as "emotionally disturbed."[2] Even one preventable death is one too many. These tragedies are not mere statistics—they are profound failures to protect vulnerable individuals. We must view and respond to mental health crises for what they are: medical emergencies that require trained healthcare professionals. Just as any other health-related crisis, like a heart attack, would be met with an ambulance and appropriate medical care, people in mental distress deserve the same level of specialized, compassionate intervention. Allowing the NYPD to continue responding to these calls does not address the real danger that police pose to people experiencing mental health crises. Police are not mental health experts or medical professionals, and they should not be tasked with filling this role.

Even when police receive specialized training to interact with individuals experiencing mental health crises, the presence of an armed officer can escalate tension and trigger fear or distress for those with mental illness or behavioral health conditions. As public defenders, we have seen how these encounters frequently result in harm instead of help. Far too often, individuals in crisis are arrested and incarcerated, leading to further psychological deterioration, rather than being taken to a hospital or care facility for treatment. Worse yet, we know that in New York City, individuals with serious mental illness face a disproportionately high risk of excessive force.[3]

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[1] David Brand, *Horrifying NYPD Footage Shows Speedy Escalation of Ozone Park Police Shooting That Left Teen Dead*, Queens Daily Eagle (May 3, 2024), https://queenseagle.com/all/2024/5/3/horrifying-nypd-footage-shows-speedy-escalation-of-ozone-park-police-shooting-that-left-teen-dead.

[2] Ayobami Laniyonu & Phillip Atiba Goff, Measuring Disparities in Police Use of Force and Injury Among Persons with Serious Mental Illness. BMC Psychiatry. 21, 500 (2021). https://doi.org/10.1186/s12888-021-03510-w

[3] Hyun-Jin Jun, Jordan E. DeVylder & Lisa Fedina, Police Violence Among Adults Diagnosed with Mental Disorders, 45 Health & Soc. Work 81 (2020).

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And the risk of police violence when dealing with individuals with mental illness affects *all* New Yorkers- as our city has recently seen, inappropriate and escalatory police responses to individuals experiencing mental illness are not simply unfair and unjust for the person in crisis- this gap in crisis response puts the individual, the police, and all New Yorkers at risk of lethal police responses[4].

BDS supports the implementation and expansion of the B-HEARD, and we encourage the Council to work with the mayor's office to ensure this program is fully staffed and funded to meet community needs:

- Clinicians, EMTs, and peers should be available in all boroughs and all neighborhoods to respond to calls in a mental health emergency.
- B-HEARD responders must be fairly compensated to attract and retain high-quality staff, ensuring that New Yorkers in every borough have access to the care they need.
- EMS dispatchers must also be trained to appropriately prioritize this response, defaulting to B-HEARD for mental health emergencies. Mental health emergencies account for nearly 10% of all 911 calls in New York, and yet B-HEARD, though improving in response, has only responded to about a quarter of those calls.[5]
- B-HEARD must expand its operating hours to become a 24-hour emergency response service.

BDS supports Int 1019-2024, which would require the Office of Community Mental Health (OCMH), in coordination and consultation with other relevant agencies, to report to the mayor and Speaker of the Council and online regarding each 911 call that is identified as involving a mental health emergency, on a quarterly basis. We are deeply concerned with the lack of transparency about emergency response and instances in which police may be involved in mental health calls. We support legislation to ensure that data related to mental health emergency responses- whether by NYPD, EMS, or B-HEARD- is recorded and publicized to monitor whether individuals accepted medical treatment at the scene, voluntary transport to a hospital, mental health and crisis counseling at the scene, or follow-up services offered by the Department of Health and Mental Hygiene or Department of Homeless Services, by community-based healthcare or social service providers, or through a hospital-based program. Additionally, the NYPD should be required to report if, during the response to a mental health crisis, an individual

[4] NYPD Leadership Ties Brooklyn Subway Shooting to Mental Health Crisis, NY1 (Sept. 23, 2024), https://ny1.com/nyc/all-boroughs/news/2024/09/23/nypd-leadership-ties-brooklyn-subway-shooting-to-mental-health-crisis.

[5] Lewis, Caroline. NYC program for non-police 911 response still handles a fraction of eligible mental health calls, Gothamist (Jan. 31, 2024), NYC program for non-police 911 response still handles a fraction of eligible mental health calls - Gothamist.

was subjected to involuntary removal, experienced a use of force incident, was issued a summons, or was arrested.

Every New Yorker deserves safe, compassionate, and expert care in moments of crisis, not a police response that risks escalation.

Non-emergent mental health responses

NYPD is widely involved in city services that should be conducted by civilian and mental health professionals. We have seen wellness checks end in unnecessary arrests, criminalizing individuals in crisis instead of providing them with the care and support they need. When officers respond to wellness check requests, individuals are often scared and confused at the sight of law enforcement at their door. As a result, the person may panic, respond erratically, or attempt to flee, which then leads to serious charges like assault or resisting arrest.

Our office recently represented Ms. S, who was arrested during a wellness check, based on an unsubstantiated, anonymous call. Ms. S had no idea why the police were at her door and refused them entry. Without a warrant, armed NYPD officers broke down her door. This interaction resulted in our client being forcibly removed from her home, separated her from her child, and resulted in a family court case and criminal charges that she fought for six months. Both cases have since been dismissed and she has been reunited with her daughter. However the injustice she faced for months in both court systems is the result of inadequate training and a pattern of aggressive responses by NYPD to those in crisis or even just those alleged to be in crisis.

What should have been a moment for compassionate intervention turns into a criminal case, with someone in need of urgent care instead facing life-altering felony charges. This is the kind of outcome we see far too often—a tragic failure to prioritize care over punishment.

Increase access to care for people with serious mental illness

Many of the people we represent have tried for years to access mental health treatment, but struggle to find providers who accept their insurance, speak their language, or have the skills needed to treat complex conditions. These clients are often discharged from hospitals without proper follow-up care, are pushed out of housing which further exacerbates mental illness, and lack appropriate resources in their communities. 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. Individuals are routinely discharged from psychiatric hospitalization with nothing more than a referral to first-come-first-serve walk-in mental health care and a list of congregate shelters, or are outright denied services for requiring a “higher level of care” or having a co-occurring substance use disorder. Left without viable treatment options, they are funneled into the criminal legal system–policed, arrested, and incarcerated when they should be receiving health care.

New York City has invested over one billion dollars[6] in mental health education, outreach, and resources–but low-income New Yorkers still struggle to access care. New York State and federal legislation require insurance providers to offer comparable coverage for mental illness as they do for physical illnesses.[7] Yet many low-income people struggle to find high quality providers who accept Medicaid or Marketplace insurances, and are unable to cover copays for private insurance provided through an employer. We ask the Council to explore the gaps in services for people living with SMI, especially Black and Brown, low-income, and non-native English speaking New Yorkers. We urge the Council to prioritize a transformative shift in funding from incarceration, surveillance, and punitive measures to comprehensive mental health care, as this investment will not only address the urgent needs of our most vulnerable populations but will ultimately create a safer, healthier, and more just city for all New Yorkers. Without meaningful investment in mental health services and emergency response systems, we risk perpetuating a harmful cycle that criminalizes people living with serious mental illness rather than providing them the support they deserve, which in turn would make all New Yorkers safer.

Continue to work with your in Albany in support of the Treatment Not Jails Act (S2881, A6603)

Over the past few years, the New York State Legislature has championed and won historic legislative change in the criminal legal system. BDS fully supports Res. 156-2022 (Rivera), which calls on the legislature to pass and the governor to sign the Treatment Not Jail Act (S2881B - Ramos/A8524A - Forrest).

As previously stated, New York's current treatment court model has many restrictions on who is able to participate in a diversion program, based on their changes, diagnoses, or personal history. The Treatment Not Jail Act (TNJ) 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:

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[6] See for example, Amanda Eisenberg, With opaque budget and elusive metrics, $850M ThriveNYC program attempts a reset, *Politico*, 2019, Available at 2https://www.politico.com/states/new-york/city-hall/story/2019/02/27/with-opaque-budget-and-elusive-metrics-850m-thrivenyc-program-attempts-a-reset-873945

[7] https://omh.ny.gov/omhweb/bho/parity.html

- Create equitable access to judicial diversion by making the current judicial diversion law inclusive of people with mental health challenges and neurological, intellectual, and other disabilities.
- Allow New Yorkers to access treatment regardless of where they live. Currently, some counties will not allow people to participate in treatment court unless they are a county resident. TNJ will enable people to engage in treatment court within their county of residence, regardless of where the offense with which they are charged took place.
- Provide due process protection by ensuring that judicial diversion participants are not jailed without due process by requiring there be some substantiation of violations of judicial diversion conditions.
- End automatic exclusions based on level of charge. Currently, some people are excluded from participating in judicial diversion because of the section of the Penal Law with which they are charged regardless of their personal circumstances and background. TNJ will expand access to judicial diversion to people accused of any criminal offense. Research shows that diversion programs promote public safety, and that the nature of the charge does not impact treatment outcomes. TNJ will provide judges with the discretion to give people appearing before them individual consideration.
- Increase likelihood of success by embracing a clinical rather than punitive approach. TNJ will allow individuals to participate in treatment court without requiring them to plead guilty to access treatment. Judges will be trained in the best practices for mental health treatment within the judicial system. These practices will be grounded in providing support for participants and guided by treatment providers' individualized recommendations rather than over relying on punitive sanctions. TNJ will promote collaboration between participants and treatment providers, offering participants the best chance of achieving their treatment goals.

The number of people identifying as 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.

Conclusion

It is critical that the city provides timely, meaningful, and compassionate responses to people experiencing mental health crises. 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 public benefits and supportive housing, refer them to mental health and substance use treatment, and locate beds in respite centers and safe havens. We are committed to providing these critical services to the people who come through our doors

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but wish our clients had more opportunities to access these important and life saving support services *before* they have legal system involvement. We urge the City Council to continue to work to ensure New Yorkers have access to meaningful mental health services and support systems before a crisis and, critically, to ensure that arrest, criminal investigation, or court involvement are not the main pathways to treatment.

BDS is grateful to the Committees on Public Safety, Mental Health, Disabilities and Addiction, Fire and Emergency Management, and Hospitals for holding this important hearing. We thank the Council for its continued support of people living with serious mental illness and acknowledge the critical role the Council plays in safeguarding this community and all New Yorkers. Thank you for your time and consideration of my comments. If you have any questions, please feel free to reach out to Colleen King, Supervising Attorney, at cking@bds.org, or Jackie Gosdigian, Supervising Policy Counsel, at jgosdigian@bds.org.