



TESTIMONY OF:

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Oversight Hearing on Department of Correction Programming

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My name is Kelsey De Avila and I am the Project Director of Jail Services at Brooklyn Defender Services. BDS provides comprehensive public defense services to nearly 30,000 people each year, thousands of whom are detained or incarcerated in the City jail system either while fighting their cases or upon conviction of a misdemeanor and a sentence of a year or less. Thank you for the opportunity to address the Council and share with you all testimony based on the experiences of our clients whose voices are underrepresented at today's hearing.

BDS supports high quality, effective and targeted programming for people in our City jails because programs 1) help ensure that people have skills that can transfer when they return to our communities; 2) assist in criminal and family court proceedings; 3) and reduce idleness, resulting in a corresponding decrease in violence. Unfortunately, we hear from our clients far too often how these critically important programs are insufficient. We hear repeatedly that programs are not readily available or are extremely limited; the few that are available are woefully inadequate. When asked about programming, our clients respond with the regular refrain that they are provided a "worksheet" with no follow up and little meaning. During a recent visit, our client informed us they spent the morning in programs learning new jokes. We are confident he did not sign up for a comedy class. These stories are unsurprising but continuously disconcerting.

People want programming. Our clients seek to better themselves and prepare for the future. Nonetheless, when these "programs" are really "busy work"—rather than a critical component to building meaningful skills—programming in our jails is not fulfilling its necessary goal of serving our incarcerated population.

Beyond the value of the programming itself, judges often consider work that incarcerated people do towards self-improvement. People who are able to demonstrate—through certificates or otherwise—that they have completed some sort of course while incarcerated are often viewed

more favorably by the court. This leads to increased potential for bail or bond and more favorable dispositions.

Programming not only is a tool to better oneself, but it is a tool that has and will reduce idleness, a leading factor of violence in our City jails. Unfortunately, rather than bolstering programming to combat these underlying causes of violence, DOC has done just the opposite. DOC restricts programming as a punitive measure, limiting access for some of the people who would likely benefit most. The severe limitation on productive activities in the restrictive housing units is especially problematic, as isolation and abuse only amplify the cycle of violence that programming—and all of us—seek to end. Programming should not be viewed as a hollow activity, but a priority and a positive pathway to reducing violence in our City jails.

BDS is willing to partner with the Council to help identify existing program models and outside community organizations that are well trained to provide meaningful programs for people in our City jails.

Improving Communication with the Defense Bar

It is not uncommon for defenders to seek information on the availability of programs within the Department, as they should when working through all possible advocacy avenues when representing a person. The reality, unfortunately, is DOC lacks an established and transparent system of programming. Our staff has attempted to determine which programs are available at which facilities. In doing this research, including speaking to staff at various programs, we discovered that the placement of programs into certain facilities is, for the most part, arbitrary. Further limiting, while a program may be in a particular facility, it is only often only available to clients that are housed within specific units in that facility. The schedule and availability of these programs are constantly changing, making it difficult for our clients to maintain access to the program they may need or want to participate in.

When advocating for programs, it is crucial that defenders, attorneys and social workers alike, have access to a schedule of available programs that is regularly updated. It needs to clearly identify eligibility requirements, if any, and how a person can sign up and attend. No such list exists. The lack of transparency and available information from DOC Program staff is abysmal, and one that can be easily rectified. Our office is willing to work with the Department on how best to share information so people in our jails and their advocates are provided with concrete and accurate information.

DOC Protocols are a Hindrance to Services

In 2015, then Commissioner of DOC, Joseph Ponte and Mayor Bill de Blasio announced their 14-Point Plan to reduce violence. A key component of the program involved designing “effective inmate¹ education opportunities and services that will result in a comprehensive idleness reduction program that envisions an expansion of non-school classes and other activities such as fatherhood initiatives or workforce development, so that all inmates will have the option of

¹ We should refrain from using dehumanizing language such as “inmate”, “convict”, “felon”, “ex-con” and instead use person first language such as “person”, “people” and the person’s name.

attending a minimum of five hours of classes or programming daily, from one hour now.”² We appreciate the Department’s efforts to expand availability of programming throughout a single day, but also their commitment to doing so for “all inmates.” Unfortunately, this stated goal is far from the current experience of many of our clients. People regularly report not having equal access to programs based on their housing location; based on their classification; or based on their age. Our clients face the following issues when actively trying to participate in programming while in DOC custody.

DOC Security Classification

All too often, individuals incarcerated in City jails are denied the opportunity to access particular programs or treatment because of high security classifications, housing placements, or disciplinary consequences. These programs, which serve as powerful evidence that a person is productive, engaged and wants to participate in their own defense and well-being, are all-too-often unavailable to our clients because of alleged security concerns. Programs that could help alleviate violence and danger in the City jails far too often takes a backseat to DOC’s purported security mission. Correctional staff regularly serve as an impediment, rather than a conduit, to program access.

One glaring example is drug treatment programs, which include a critical flaw. Broad groups of people are denied access to important programs that support people with substance use disorders because they are classified as high security by DOC or as a result of unsubstantiated gang allegations, based on no standard of evidence and with no meaningful opportunity to appeal. However, even if a person is classified as gang involved or high classification, they should be afforded the opportunity to better themselves through programming. In often times, these are the first interactions of any meaningful programmatic interventions. For instance, the substance use treatment program “A Road Not Taken (ARNT)” provides a supportive environment for people struggling with addiction who are housed among peers and participate in extensive programming. Yet individuals identified by DOC as high classification are ineligible to participate.

In a recent case, one BDS criminal defense attorney successfully advocated that her client, who had a history of substance use, would serve reduced jail time if he participated in the ARNT program. Despite agreement of the client’s parole officer and the District Attorney, the attorney learned from Correctional Health Services that the client was denied entry into the program because of his high classification, the result of a decade-old incarceration where DOC identified him as gang affiliated and provided no opportunity to appeal. Although the client is not in a gang and was fully committed to participating in the program and turning his life around, he was not able to move forward with the agreement because of the classification.

Participation in these programs impacts our clients in numerous ways: their ability to fight criminal cases in court, helping treat disorders, allowing them to participate more effectively in their own defense, and demonstrating to the court their commitment to change. DOC and

² *Mayor de Blasio, Commissioner Ponte Announce 14-Point Rikers Anti- Violence Agenda*, March 12, 2015, available at: <https://www1.nyc.gov/office-of-the-mayor/news/166-15/mayor-de-blasio-commissioner-ponte-14-point-rikers-anti-violence-agenda#/0>.

Correctional Health Services should make programming available to all who may benefit medically, regardless of classification or sentence. Situating access to treatment and medical decision-making as the exclusive domain of healthcare providers, not DOC, is essential.

Punitive Measures for Young Adults

Back in 2015, after the Mayor announced the elimination of solitary confinement for adolescents and young adults,³ the Department, in partnership with numerous advocates and program providers created the Adolescent and Young Adult Advisory Board (AYAAB) whose main goal was to create the Young Adult Plan addressing the programmatic needs and effective strategies to reduce violence within this age group. These efforts were coordinated primarily around GMDC on Rikers Island. The facility was based heavily on supportive and vocational programs, so much so that it was nicknamed the Programming Hub. Unfortunately the Department soon sought, and won, a variance from the Board of Correction to allow young adults to be housed in a restrictive and overly punitive unit called Enhanced Supervision Housing (ESH). This unit was never intended to include anyone under the age of 22. ESH standards require DOC to provide “programming aimed at facilitating rehabilitation, addressing the root causes of violence, and minimizing idleness” in ESH housing units. Within this housing unit, young adults are allowed up to five hours of programming daily, but are mechanically restrained—including on both legs—throughout. Young people are forced to make an impossible choice: forgoing their physical freedom to participate in a program while literally strapped down, or forgoing their mental engagement by skipping the program but being free to move their limbs. For those that choose physical freedom, they face a dead end: In order for a young person to progress to a less restrictive unit and potentially general population, they are required to participate in programming

BDS, countless other advocates, and impacted individuals have voiced our concerns with the Department’s practices in these units time and again: these units are overly punitive in design and character; isolation of this type is particularly dangerous for young people whose minds are still developing; the practice of restraining young people in these units to desks during their out-of-cell time is especially inappropriate in the case of people who have not been convicted of any crime; isolating young adults in ESH and Secure is not an effective means to reducing violence; the list goes on.

Addressing behavior is essential to the safety of a facility, but strategies DOC employs are ineffective and danger: humiliate a young person who only wants to participate in programming, a factor that is necessary to progress out, is not the solution. By disregarding the conditions of these facilities, we are actively working towards ignoring the reality of these units and the harmful impact they potentially have on individuals incarcerated in our City jails.

Facility Wide Lockdowns Result in Group Punishment

In the past month alone, our office has been made aware of numerous facility-wide lockdowns. When this occurs, access to services, treatment and programming is severely limited and in some

³ Michael Winerip and Micheal Schwartz, *Rikers to Ban Isolation for Inmates 21 and Younger*, January 13, 2015, available at: <https://www.nytimes.com/2015/01/14/nyregion/new-york-city-to-end-solitary-confinement-for-inmates-21-and-under-at-rikers.html>.

cases, simply denied. The Department quickly resorts to facility-wide lockdowns despite having the ability to isolate the lockdown to a specific area rather than punishing those who have no involvement in the alleged incident.

As a security response that impacts a large number of people and services, lockdowns also contribute to perceptions of unfair and excessive punishment, frustrations, and tensions in the facilities. We commend the NYC Board of Correction and City Council Member Daniel Dromm in their efforts to monitor and report the Department's excessive use of lockdowns. We need to continue to hold the Department accountable when they use a tool unnecessarily that will hinder group access to programming and mandated services.

Int. No. 261

Brooklyn Defender Services does not support Int. No. 261 in its current form. Our office firmly believes in the importance of data and City departmental transparency. Unfortunately, as drafted, Intro. 261 does not achieve these goals and instead poses a potential risk for our clients' safety. We appreciate the Council's efforts to learn more about the lived experiences of current detainees in our City jails. Nonetheless, sharing information with an agency that has repeatedly failed to keep people safe and keep information confidential endangers our clients. The Department should not be responsible for distributing, receiving nor analyzing surveys from those in its custody where people are expected to address "*DOC staff treatment.*" Retaliation or the threat of retaliation are a true part of the lived experience of many of our clients, and a real threat anytime a person reports an incident in the jails, even more so if they are reporting to the entity that is responsible for the retaliation in the first instance. We believe there are safer and more secure ways to find and report on an incarcerated person's experience that do not require DOC's involvement or facilitation. Our office is willing to work with the Council and strategize how best we can highlight and learn from the daily experiences of the thousands of people incarcerated in our City jails.

We also believe any survey or data collection that requires people to disclose experiences should result in substantive changes. Too often we ask and exploit the experiences of incarcerated people without making necessary systematic changes.

Int. No. 1184

BDS supports Int. No. 1184 and we believe everyone should have equal and consistent access to books, especially those who are held in our solitary confinement units. We ask the Council to work closely with the New York Public Library on implementation and how best to support people gaining access to books in our City jails.

Conclusion

Programs are essential for self-advancement, criminal proceedings and reducing violence in our City jails. Unfortunately, programs are not readily available. Without equal opportunity, without equal access and without hindrance from the Department of Correction, they often go unutilized. Without access to the programming offered elsewhere such as drug and alcohol counseling,

group mental health meetings, re-entry focused programs such as I-CAN, or anger management, individuals⁴ are often underserved compared to those in general population.

The Council has the authority to visit any DOC facility of their choosing, access that a majority of our society will never witness. We encourage the Council to visit, speak with people currently detained and sentenced to our City jails and learn from those closest to the problem to find our solutions. Thank you for your time and consideration of our comments. We look forward to further discussing these and other issues that impact our clients.

If we can provide further assistance or answer any questions, please feel free to reach out to Saye Joseph at sjoseph@bds.org.

⁴ There are various housing units within the DOC other than general population that have limited access to programming. These housing units includes, but not limited to, Mental Observation, Transgender Housing Unit, Pregnancy/New Mothers Nursery and Protective Custody.