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Testimony of

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Before the

Committees on General Welfare and Criminal Justice

Int. 1190-2018, T2019-5170, T2019-5171, & T2019-5172

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My name is Thalia Karny. I have been a public defender in New York City for twenty years. I am currently a Senior Trial Attorney at New York County Defender Services (NYCDS). NYCDS is a public defender office that represents people in approximately 15,000 cases in Manhattan's criminal courts every year.

Thank you for inviting NYCDS to testify about the four bills on today's calendar and about our experience representing people at the intersection of homelessness and criminal legal system involvement. In my two decades practicing law I can unequivocally state that a great percentage of my caseload is comprised of people that are suffering from homelessness. In fact, many of my clients that aren't homeless are usually on the verge of homelessness and live in temporary housing. Recently, when we looked at the geographic makeup of our clientele at NYCDS, we found that we have more clients residing on Wards Island than in any other neighborhood in Manhattan. Our Legal Director was in arraignments last week where he picked up eight new cases. Six of the accused people in those eight cases listed their address as a homeless shelter.

Suffice to say that we are seeing thousands of homeless people cycled through our criminal legal system every year. Our current punishment paradigm is failing vulnerable people and their communities.

Homelessness and the Criminal Legal System

Being homeless, in and of itself, opens a person up to countless ways in which he or she can be arrested and end up in the criminal justice system. People experiencing homelessness are 11 times more likely to face incarceration when compared to the general population, and formerly incarcerated people are almost 10 times more likely to be homeless than the general public.¹ People who are homeless are much more likely to pick up charges of criminal trespass, criminal possession of a weapon, petit larceny, disorderly conduct, and many other violations of the penal law, in their efforts to simply survive on the streets. And unless a homeless person charged with a crime is offered a non-incarceratory plea at arraignment, chances are bail will be set because homeless people usually don't qualify for a recommendation for release without bail. Thus, people in this situation usually plead guilty to get out of jail.

Bumped up charges are the perfect example of how our current system is set up to keep people in jail and prison. If an accused person has an arrest for possession of a knife, for instance, and that person has a prior conviction, then the DA can charge and indict the person of a felony, which the Manhattan District Attorney's Office usually does. We call this a "bumped up" charge when misdemeanor conduct is elevated to a felony charge. This creates a revolving door in and out of jail for the homeless for crimes that are usually considered crimes of poverty.

Client Story

Just recently, the *Daily News* featured one of our clients in just this type of situation.² Our client was existing within the revolving door of incarceration and homelessness and his issues were compounded by the fact that he suffered from severe mental illness that led to a severe drug addiction. He was charged with burglary because he trespassed when he committed a petit larceny in Bloomingdales (he took a pack of socks without paying for them). The New York County DA's office indicted this case of petit larceny as a burglary because our client had, close to two years earlier, signed a trespass notice in Bloomingdales warning that if he entered the store, he'd be trespassing. Unable to afford bail set on him at arraignment for the felony charge, and because the DA indicted him on the bump up, our client sat in jail for close to a year as we fought to get him accepted to mental health court and to get a bed in a program.

This is just one of countless examples in which homelessness is criminalized in this city. And our client was lucky. His crime didn't fall within the prohibitive categories that most often preclude our clients from mental health court under the guise of "violent" or risky behavior. That is, if a client has any violence in his or her past, or if the charged crime falls within a category of "violent" crime, we are frequently told that mental health court just isn't an option.

¹ Bailey Gray, Doug Smith & Allison Franklin, *Return to Nowhere: The Revolving Door between Incarceration and Homelessness* (Texas Criminal Justice Coalition, 2019), available at <https://www.texascjc.org/system/files/publications/Return%20to%20Nowhere%20The%20Revolving%20Door%20Between%20Incarceration%20and%20Homelessness.pdf>.

² Chelsia Rose Marcius, "Homeless, mentally ill man almost spent years in jail taking 4 pairs of socks from NYC department store," *Daily News*, Sept. 9, 2019, available at <https://www.nydailynews.com/new-york/ny-man-shoplifted-bloomingdale-s-felony-charge-20190909-txmctcpf2zfnxhnumts2q36nu-story.html>.

Jail is Not the Solution

My client is similar to that of thousands of New Yorkers struggling to access mental health treatment across the state. A 2018 study by the Manhattan Institute found that only a small fraction of total seriously mentally ill adults in the state and city are able to access care and support from public mental health care providers.³ There are simply not enough free services for all who need them. Instead of providing people with the services they want and need in the community, too often, we turn to the legal system to punish them.

According to Correctional Health Services, approximately 1,100 incarcerated people – 16 percent of the entire jail population – have been diagnosed with a serious mental illness.⁴ A February 2018 news report documented that city jails actually house more clients with mental illness than all city hospitals combined.⁵ Our clients with mental health issues cycle through the system repeatedly, stay in jail longer than other clients, and face a greater risk of victimization and re-traumatization while incarcerated.⁶

We believe that the way to solve the revolving door of incarceration/homelessness/incarceration is to provide services to the population in their communities before they come into the criminal justice system. That is, provide mental health services to those in need. Mental health evaluations and treatment, drug treatment centers. Ample beds in treatment programs for people suffering from the most serious mental illnesses so they have easy access to their necessary medications. This is how we limit the number of homeless on the streets. The solution is not to incarcerate the sickest in our society. The solution is to treat them and support them.

For all of these reasons we support the bills on today's agenda.

1) Int. 1190-2019 - A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of social services and the department of homeless services to provide drug treatment services

NYCDS supports Councilmember Levin's bill to require HASA facilities to provide drug treatment services to their residents. We believe that it is critical that we meet people where they are and make it as easy as possible for people in crisis to access the health care that they need. There is no language in the bill requiring residents to access treatment, and we hope that remains the case. The research is clear that mandated drug treatment does not result in better outcomes for

³ Stephen Eide, *Systems Under Strain: Deinstitutionalization in New York State and City*, (Manhattan Institute, Nov. 2018), available at <https://www.manhattan-institute.org/deinstitutionalization-mental-illness-new-york-state-city>.

⁴ Reuven Blau & Rosa Goldensohn, *City seeks to move mentally ill inmates to hospitals*, NEW YORK MAGAZINE, March 21, 2019, available at <http://nymag.com/intelligencer/2019/03/nyc-seeks-to-move-mentally-ill-inmates-to-hospitals.html>.

⁵ Mary Murphy, *Rikers and city jails have more mental patients than all hospitals in NYC: doctor*, PIX11, Feb. 24, 2018, available at <https://pix11.com/2018/02/24/rikers-and-city-jails-have-more-mental-patients-than-all-hospitals-in-nys-doctor-says/>.

⁶ See, e.g., National Alliance on Mental Illness, "Jailing People with Mental Illness," available at <https://www.nami.org/Learn-More/Public-Policy/Jailing-People-with-Mental-Illness>.

people struggling with drug addiction, and in many cases, it can cause harm.⁷ By providing people with access to voluntary treatment in their home, we believe that the city will reach more people in need.

2) T2019-5170 - A Local Law to amend the administrative code of the city of New York, in relation to amending the bill of rights for incarcerated individuals and ensuring minimum standards of design in newly constructed jails

T2019-5170 would change the language in the existing “inmate” bill of rights with the words “incarcerated individuals.” The bill also mandates minimum standards of design in newly constructed jails and would require Department of Correction staff to refer to people in custody only by their names, to use their preferred pronouns, and prohibit addressing people in dehumanizing terms such as “body.”

NYCDS supports efforts by the Council to change the way we speak about people with criminal legal system involvement, and particular any efforts to change the way that system actors within the criminal legal system speak about people. The Osborne Association has put together a great resource on the importance of humanizing language.⁸ It would be great for this bill to be coupled with opportunities for education, not just for DOC staff, but for all system actors, to learn more about how to use humanizing language.

3) T2019-5171 - A Local Law to require the board of correction to report on the impact on incarcerated individuals of closing jails on Rikers Island, and to amend the administrative code of the city of New York, in relation to requiring the mayor’s office of criminal justice to report on progress in closing jails on Rikers Island

NYCDS also supports T2019-5171, which would require increased reporting by the Board of Correction and the Mayor’s Office of Criminal Justice about efforts to close Rikers Island. We support efforts to mandate that city agencies share more data with the public to allow greater accountability and understanding of their ongoing efforts.

4) T2019-5172 - A Local Law in relation to the establishment of a commission to make recommendations on reinvestment in communities impacted by Rikers Island

We support T2019-5172 and offer NYCDS as a resource to the future commission and the work that they will do to foster city reinvestment in communities impacted by Rikers Island.

Thank you again for your time and consideration of these important issues.

If you have any questions about my testimony, please contact me, Thalia Karny, at tkarny@nycds.org. For further questions about NYCDS’ positions on public policy, contact Andrea Nieves, NYCDS Senior Policy Attorney, at anieves@nycds.org.

⁷ See, e.g., Werb et al, *The Effectiveness of Compulsory Drug Treatment: A Systematic Review*, 28 Int. J. Drug Policy (2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4752879/>.

⁸ Osborne Association, *Resources for Humanizing Language*, available at <http://www.osborneny.org/resources/resources-for-humanizing-language/>.