



Testimony of

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Before the

Committee on Criminal Justice and Committee on Justice System
Oversight Hearing – COVID-19 in City Jails and Juvenile Detention Facilities

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Intros. 2020-6175, 2020-6183, & 2020-6184

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My name is Christopher Boyle and I am the Director of Data Research and Policy at New York County Defender Services (NYCDS). We are a public defense office that represents New Yorkers in thousands of cases in Manhattan’s Criminal Court and Supreme Court every year. I have been a New York City public defender for more than twenty years. Thank you to Chairs Powers and Lancman for holding this hearing on the spread of COVID-19 in city jails.

New York City is failing miserably at keeping incarcerated people safe during the pandemic. Our adult jails and juvenile detention facilities are unsafe, and the novel coronavirus continues to spread unabated. This not only harms our clients in ways that violate their health, safety and constitutional rights, but it also threatens the health and safety of all of the people who work in this facility, as well as their families and communities. The City Council must take urgent action to curb the spread of the disease. Two of the bills on today’s agenda are a step in the right direction, but they do not go far enough. We recommend amendments to ensure that they effectively help the city to achieve our goals in safely decreasing our city jail populations to a level that will allow people who cannot be safely released to social distance.

I. Background on COVID-19 in city jails

In NYC Department of Correction (DOC) facilities, novel coronavirus is spreading at an even higher rate than in the general population. As of May 14, 2020, more than 20,000 people are believed to have died of COVID-19 in New York City.¹ The number of city residents who have died from COVID-19 is more than six times higher than the number of people killed on 9/11 in New York City.

New York City jails have now 362 confirmed cases among the current incarcerated person population.² Three incarcerated people have died while in custody.³ At least one other person died shortly after release. The Legal Aid Society projects that, out of a population of 3,906 incarcerated people, this would mean an infection prevalence rate of 9.27 percent, as compared to a 2.28 percent infection prevalence rate for the average non-incarcerated city resident.⁴

But we all know that these numbers, as reported on the Board of Correction (BOC) website and updated daily, are far short of the actual number of infections in our city jails. This is because DOC does not test everyone regularly and there is a constant influx of corrections officers, newly detained people, and others on a daily basis.⁵

How do we know that the BOC infection numbers are low? We need only look to other jails and prisons that have performed wide scale testing, where as many as 70 percent of incarcerated people have tested positive for the coronavirus. At Marion Correctional Institute in Ohio, 73 percent of inmates (1,828 people total) have tested positive for the virus.⁶ 600 inmates at the Arkansas Department of Corrections' Cummins Unit have tested positive. In the first barrack that Cummins Unit tested, "43 out of 46 people were found to be infected."⁷ At Neuse Correctional Institution in Goldsboro, North Carolina, "more than 450 of the 770 inmates have tested positive. State officials are now testing every inmate there, and more results are pending."⁸ We all know that testing is key to stopping or halting the spread of the virus in our communities. But on this measure, DOC has failed. It is no surprise that our clients are falling sick.

¹ New York City Health, *COVID-19: Data*, available at <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>.

² NYC Board of Correction and COVID-19 (Update April 27, 2020), available at <https://www1.nyc.gov/site/boc/covid-19.page>

³ *Id.*

⁴ Legal Aid NYC, *COVID-19 Infection Tracking in NYC Jails* (as of April 27, 2020), available at <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/>. (The Legal Aid Society's website appears to report the jail population at Rikers rather than citywide, so the statistics here have been adjusted to conform with the Board of Correction's citywide data.)

⁵ Graph 6 of our internal data shows the recent uptick in new NYCDS cases where bail was set at arraignments. See page 8 of this testimony.

⁶ Patrick Cooley and Jim Woods, "More than 1,800 inmates at Marion Correctional test positive for coronavirus," *The Columbus Dispatch*, April 19, 2020, available at <https://www.marionstar.com/story/news/local/2020/04/19/1-800-inmates-marion-correctional-positive-coronavirus/5163285002/>.

⁷ Meghan Roos, "One Arkansas prison makes up almost a third of state's coronavirus cases," *Newsweek*, April 20, 2020, available at <https://www.newsweek.com/one-arkansas-prison-makes-almost-third-states-coronavirus-cases-1499045>.

⁸ Ames Alexander, "'It's ground zero.' How fear gripped an NC prison as COVID-19 infected hundreds," *Charlotte Observer*, April 18, 2020, available at <https://www.charlotteobserver.com/news/coronavirus/article242109076.html>.

II. How the coronavirus pandemic is affecting our incarcerated clients

A. Clients with COVID-19

Since the outbreak of the pandemic, 12 NYCDS clients have reported a positive test for the coronavirus. 17 other clients have reported to us that they had symptoms consistent with the coronavirus, or that they were moved to quarantined units for people who are presumed positive, but were, to our knowledge, never tested. At least three clients were hospitalized over the past two months for COVID-19-like symptoms.

B. Other Effects of the Pandemic

The pandemic is negatively affecting the mental health, physical health and well-being of all of our clients who are incarcerated, whether or not they have tested positive or exhibited symptoms of the disease. NYCDS submitted a joint letter with the other NYC defender offices on May 8, 2020 that goes into detail about the many harms that our clients experience, including an inability to properly socially distance, limited accessibility of medical and mental health treatment, a reduced commitment to consistent substance abuse treatment, lack of access to personal protective equipment and inadequate sanitation, an increased reliance on punitive segregation and many other issues. The letter is available on the BOC website.⁹

C. NYCDS Survey of Incarcerated Clients

We have recently undertaken a comprehensive data collection project to show the realities of conditions in jails pertaining to the coronavirus pandemic. Our attorneys and social workers are in the process of interviewing our incarcerated clients over phone or video conferencing. The brief “yes/no” and “how frequently” questions are used to obtain real-time reporting on such subjects as cleanliness, hygiene, social distancing, and access to medical care in our New York City jails.

Here are our preliminary findings:

- As of May 18th, we have collected 16 responses to our survey, and only 12.5% of our clients report that DOC staff wear masks at all times.
- Of our clients who have been provided masks, 50% state that their masks are visibly dirty, and 75% of individuals have been reusing the same mask for at least a week - and for multiple weeks, in several instances.
- Only 3 of 16 clients state that they are able to observe social distancing protocols when they leave their cells and are in the company of others. One hundred percent of clients responded “no” when asked if they feel safe in terms of avoiding transmission of the coronavirus.

These preliminary responses directly contradict many DOC policies and demonstrate that pandemic-related measures taken in DOC jails are insufficient. We will release a more detailed report once data collection has been completed, but these initial findings are still striking, and help

⁹ Letter to the NYC Board of Correction re: NYC Jail Conditions During the COVID-19 Pandemic, May 8, 2020, available at https://www1.nyc.gov/assets/boc/downloads/pdf/nyc_defender_letter_5_8_2020.pdf.

us to understand why the coronavirus continues to spread at rates higher than the rest of the population.

D. DOC & CHS Staff

DOC and Correctional Health Services employees who work in our city jails are also falling sick at record levels. 1,319 DOC employees and 183 Correctional Health Services employees have tested positive for the virus as of May 14th.¹⁰ At least eight DOC employees have died of COVID-19.¹¹ *The Wall Street Journal* called the Rikers Island Jail Complex “among the most-infected workplaces in the U.S.”¹²

Rikers Island is not safe for anyone - not for our clients who are incarcerated there, not for the corrections officers, and not for the medical professionals who staff the medical facilities. Yet despite all of this evidence that DOC has failed to keep people safe, people continue to circulate in and out of our jails, as our internal data below will show.

III. NYCDS Data Related to COVID-19

A. People incarcerated at the time the pandemic began

On March 22, 2020, we represented 203 adults incarcerated in DOC jails. This was the universe of people who our team has been working urgently to secure release of since the pandemic began two months ago. Graphs 1 and 2 on the next page illustrate the breakdown of those 203 NYCDS clients who were incarcerated when the pandemic began, analyzed by charge type and reason for incarceration.

Slightly more than half were incarcerated on violent felony allegations, while 19 percent were in on misdemeanors and 28 percent were in on non-violent felonies. You will also see that approximately a third of our clients were incarcerated because of a parole hold, 8 percent were serving a misdemeanor sentence and 61 percent were awaiting trial.

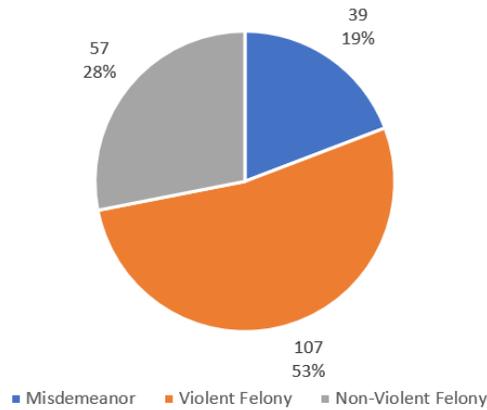
¹⁰ NYC Board of Correction and COVID-19 (Update April 27, 2020), available at <https://www1.nyc.gov/site/boc/covid-19.page>

¹¹ Mary Murphy, 8th NYC correction officer dead from COVID-19, *Pix 11*, April 20, 2020, available at <https://www.pix11.com/news/coronavirus/faces-of-the-pandemic/8th-nyc-correction-officer-dead-from-covid-19>.

¹² Deanna Paul & Ben Chapman, “Rikers Island Jail Guards Are Dying in One of the Worst Coronavirus Outbreaks,” *Wall Street Journal*, April 22, 2020, available at <https://www.wsj.com/articles/rikers-island-jail-guards-are-dying-in-one-of-the-worst-coronavirus-outbreaks-11587547801>.

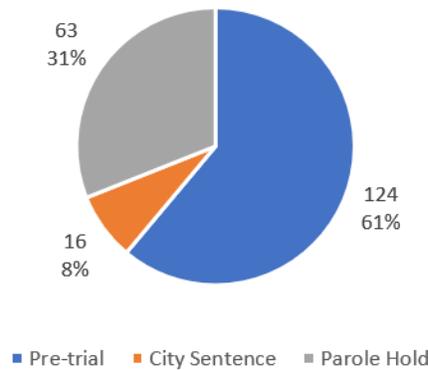
GRAPH 1 - Charge Class of Jail Population as of March 22, 2020

Charge Class of Jail Population as of March 22nd, 2020



GRAPH 2 - Reason for Incarceration for Jail Population as of March 22, 2020

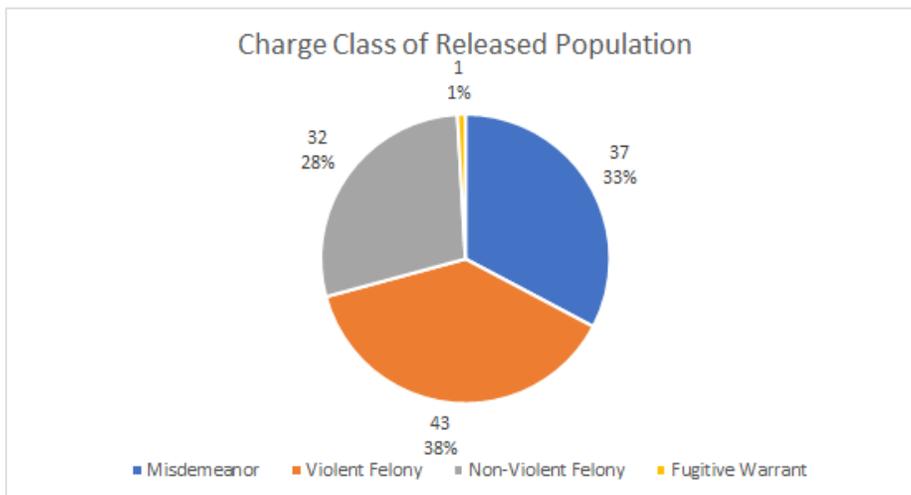
Reason for Incarceration for Jail Population as of March 22nd, 2020



B. People released since the pandemic began

Since March 22, 98 of our adult clients have been released from city jails because of the advocacy efforts of our defenders. These 98 people represent 48% of our incarcerated clients as of March 22nd, 2020. You may note that we originally had 39 people in on misdemeanors - we secured the release of 33 of them. Yet we have had much less success with people accused of violent felonies. Of clients in that category, approximately only 31 percent were released due to COVID-19.

GRAPH 3 - Charge Class of Released Population



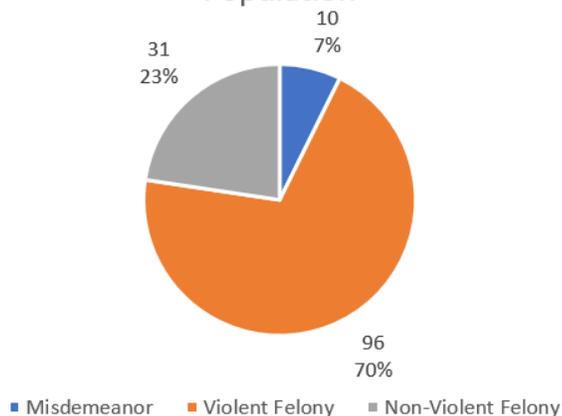
NYCDS has effectively utilized various legal strategies to secure our clients' release. We have filed dozens of bail applications to request lower bail amounts that families can afford to pay. When the bail applications fail, we file writs of habeas corpus to challenge the legality of incarceration. In addition, a few people were released at the direction of the city (if they were serving a misdemeanor sentence) or the governor (if they were detained on a parole hold).

C. People who remain incarcerated as of May 14, 2020

We currently represent 137 people in custody. This number includes 47 people who have been arrested and incarcerated after March 22 (15 of whom have since been released). As you can see from the graphs below, the vast majority of people who are detained pre-trial are incarcerated on allegations of violent felony charges. We are now seeing more people arrested and more judges setting bail at arraignments as compared to the months of March and April. This has severe implications for the ability of our city to control the spread of the coronavirus in our city jails.

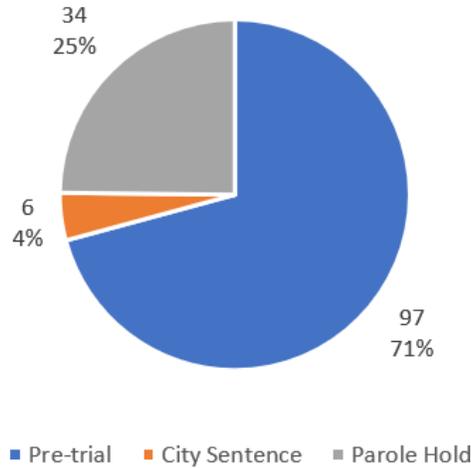
GRAPH 4 - Charge Class of Current Jail Population

Charge Class of Current Jail Population

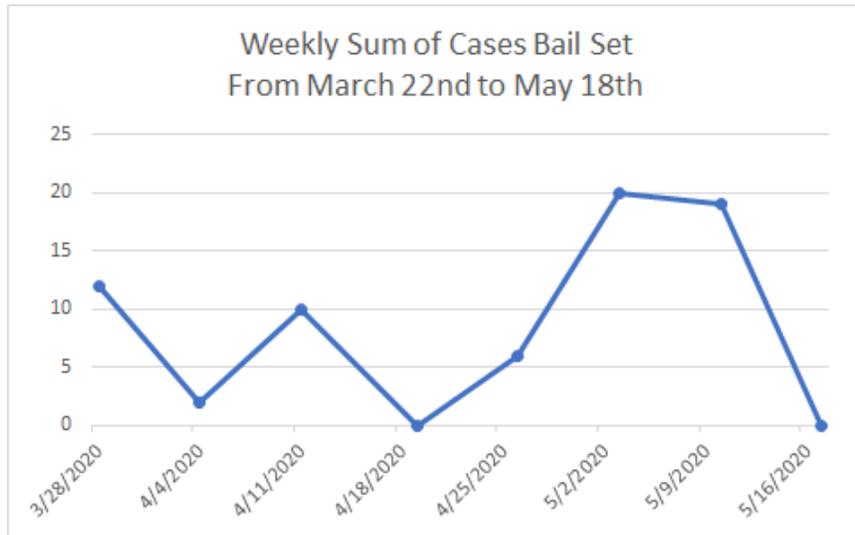


GRAPH 5 - Reason for Current Incarceration

Reason for Current Incarceration



GRAPH 6 - Weekly Sum of Cases (Bail Set), March 22-May 18, 2020



IV. Youth in Juvenile Detention

We are deeply concerned about our youth clients in juvenile detention. It is our opinion that ACS has done a poor job of keeping our young clients safe, and conditions continue to deteriorate as the virus spreads. As of last month, we know that more than two dozen people at Crossroads tested positive for the coronavirus. We urge the City Council to take urgent action to protect incarcerated youth.

We currently represent four youth in city custody. It is our understanding that the month of April the city was only trying to house youth who have tested positive for the coronavirus in Horizon Juvenile Center in the Bronx, and teenagers who have not tested positive are, for the most part, being sent to Crossroads Juvenile Center in Brooklyn.¹³ They are dedicating the first floor of Horizons as the “sick” floor. However, we recently learned that they are now returning youth who are not sick to Horizons. We learned of one young person who tested positive for coronavirus, was sent to Horizon, and then was sent back to Crossroads a week later.

Our youth clients report to us truly dire and unsafe circumstances. They have insufficient access to critical supplies including face masks, socks, and underwear. They report that there is no hand soap in the bathrooms. The food they are provided is sometimes inedible, and youth report being served undercooked chicken or food with hair in it. Youth report seeing rodents in both the dormitories and the kitchens. Even the thermometer used to check the kids’ temperatures appears to be faulty: we hear that it only reports two different temperatures, 97.1 and 97.3.

Our clients no longer have in-person visits with their families, because of the pandemic, and are limited to only three skype calls with loved ones every week. As on Rikers, there are no programs at all to keep the young people occupied. They were only given recreation time for the first time in months last week.

Social distancing is not happening. While they sleep in individual cells, they eat all together in the dayroom. They were only distributed single-use masks for the first-time last week and have not received new clean ones since. Even employees at the facility were not provided masks until April 10th.¹⁴ We have heard reports that staff are coming into contact with Covid-infected people, and then coming in close proximity to the youth before getting tested.

While DOC falls short in their reporting on COVID conditions, ACS has been even less transparent. They do not report on their website the number of youth or staff who have been tested for coronavirus, how many have tested positive, and how many have required medical interventions. We do not know if daily testing is occurring or what measures to protect our young clients are being taken, if any.

It is becoming increasingly clear that children, including teenagers like our clients, are susceptible to the coronavirus and can suffer severe consequences. The New York State Department of Health is currently investigating 119 reported cases and 3 deaths in New York of children - predominantly school-aged - experiencing symptoms similar to Kawasaki disease and toxic shock-like syndrome, possibly due to COVID-19.¹⁵ Current conditions at Horizons and Crossroads are unacceptable and City Council must intervene to keep incarcerated youth safe.

¹³ Shant Shahrigian, “A ‘dangerous decision’: NYC is putting all juvenile delinquents with coronavirus symptoms under one roof,” *Daily News*, April 3, 2020, available at <https://www.nydailynews.com/coronavirus/ny-coronavirus-new-york-city-juvenile-detention-centers-20200403-ocalk5dctjad3ngolxwlgqhs6a-story.html>.

¹⁴ Michael Gartland, “Worker and kids in Brooklyn juvenile detention center test positive for coronavirus at alarming rate,” *Daily News*, April 19, 2020, available at <https://www.nydailynews.com/coronavirus/ny-coronavirus-acs-outbreak-test-positive-20200419-a4ow2weqhjbplawqzypnd57w2y-story.html>.

¹⁵ New York State Department of Health, *Childhood Inflammatory Disease Related to COVID-19*, <https://coronavirus.health.ny.gov/childhood-inflammatory-disease-related-covid-19>.

V. Proposed Legislation

A. *T2020-6175 - A Local Law to amend the New York city charter, in relation to adding a new section creating a local conditional release commission.*

NYCDS supports the passage of T2020-6175, with reservations. If the Council decides to pass this bill, you should do so with the explicit intent of decarceration. As the coronavirus pandemic has shown, our city can safely decrease the number of people who are incarcerated. We must learn from the experience of the commission's past to ensure that the possibility for early release is available to all New Yorkers, not just those who are wealthy or well-connected.

In 1989, New York State lawmakers created local conditional release commissions to relieve overcrowding in local jails. Under the law, people serving sentences of 90 days to a year could apply for early release after serving 60 days. According to the New York Times, in the early years of the New York City commission, thousands of people were released from city jails. "But over time, as crime declined jail populations slumped and the political environment shifted, the panel of mayoral appointees began to release fewer and fewer inmates, a tiny fraction of the thousands of cases it reviewed each year."¹⁶ In the early 2000s, the commission only released 15 people over the course of five years, one of whom was a former state senator and another who was a former New York Jets player.

We need to learn from the previous iteration of this commission and work to ensure that the possibility for release is extended equally to all. We also advise the Council to ensure that members of the commission should not just be law enforcement. The governing state correction law allows for the five appointees to have a wide variety of professional experience, including backgrounds in law, social work, social science, psychology or psychiatry.¹⁷ The 21st commissioners should be reflective of the diversity of experiences across our city, including people who are directly impacted by incarceration and public defenders. With these caveats, we support passage of this bill.

B. *T2020-6183 - A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of correction and correctional health services to issue reports during public health emergencies.*

NYCDS supports passage of T2020-6183 with amendments. There is no doubt that DOC and CHS must improve their reporting on the current pandemic. But we recommend additional amendments.

For example, the text of T2020-6183 would require DOC and/or CHS to report daily numbers of newly diagnosed infections, hospitalizations, and deaths, disaggregated into various categories. DOC and/or CHS would also be required to report the number of newly diagnosed cases from "the preceding day, week, and month." This seemingly would not force DOC/CHS to give day-by-day

¹⁶ Benjamin Weiser and Kevin Flynn, "A Back Door Out of Rikers, Suddenly Famous," *N.Y. Times*, Oct. 17, 2004, available at <https://www.nytimes.com/2004/10/17/nyregion/a-back-door-out-of-rikers-suddenly-famous.html>.

¹⁷ Correction Law Section 271, available at <https://www.nysenate.gov/legislation/laws/COR/271>.

data from the past, which we really need in order to know where we stand on the overall curve. From CHS's testimony at the May 12 Board of Correction hearing, we know that CHS apparently already has most, if not all, of this data in day-by-day form, so requiring them to report the data that way would impose little or no additional cost.

In addition, T2020-6183 fails to require DOC and/or CHS to report the proportion of *current* incarcerated people who have been tested, nor the proportion of tests coming back positive on a day-by-day basis. T2020-6183 would mandate reporting of merely the total number of tests *ever* administered, essentially broken down in terms of inmates vs. staff. This leaves a big gap in our knowledge concerning how much of the current inmate population at any given time has actually been tested, which we sorely need to know because this would serve as a good measure of how comprehensive/"aggressive" the jail testing regime truly is.

We also recommend a similar reporting mandate re: masks and other PPE. The Council should mandate provision of supplies to inmates at a certain level throughout the duration of the pandemic, based on the recommendation of public health experts. If DOC fails to meet that level, they should be required to report that you have a shortage.

We also urge the Council to consider mandating either (1) regular universal testing of inmates, or (2) if DOC/CHS believes their testing supply is inadequate to support regular universal testing, they have to say so in their weekly reports.

Finally, we believe that these reporting requirements should be extended to ACS to ensure that we have similar information about incarcerated youth. We are currently unable to find any information about ACS's approach to protecting youth from COVID-19 in their detention facilities.

C. T2020-6184 - A Local Law to amend the administrative code of the city of New York, in relation to the maximum fee allowed when transferring money to a person in the custody of the department of correction

NYCDS opposes T2020-6184 because we believe there should be no fees to either loved ones or their incarcerated family members for putting money into a person's commissary account. The City Council proudly passed legislation in 2018 to eliminate fees for phone calls. We strongly oppose the imposition of fines or fees on our indigent clients or their family members, while incarcerated or during any point in the criminal legal system process. The city should end its contract with JPAY and figure out our own system to allow families to make free payments to their loved ones in city jails. There is no need for the city to continue to contract with JPAY, a company that is well-known to exploit families who are desperate to communicate and support their incarcerated loved ones.¹⁸

¹⁸ See, e.g., Victoria Law, "Captive Audience: How Companies Make Millions Charging Prisoners to Send An Email," *Wired*, Aug. 3, 2018, <https://www.wired.com/story/jpay-securus-prison-email-charging-millions/>.

VI. Conclusion

The coronavirus is spreading throughout our city jails and back into our communities. New York City must take action to require meaningful reporting from adult jails and juvenile detention facilities that will allow public health officials to make a plan to allow social distancing in our city jails and halt the spread of disease. We also must work together to free as many people as possible.

If you have any questions about my testimony, please contact me at cboyle@nycds.org.