



Testimony of

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Before the  
Committee on Criminal Justice

Oversight Hearing on Self-Harm and Suicide Prevention in City Jails

Intros 30-2022 & 181-2022

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We are Natalie Fiorenzo and Rachel Sznajderman, Corrections Specialists at New York County Defender Services (NYCDS). NYCDS is a public defense office that represents New Yorkers in thousands of cases in Manhattan’s Criminal Court and Supreme Court every year. Since 1997 NYCDS has represented more than 300,000 clients in their criminal cases and developed decades of expertise on the workings of the criminal legal system. Our Corrections Specialists Team provides critical support to our incarcerated clients and we are an important link between our clients, their trial teams and their family members. We advocate directly with DOC for transfer requests, medical referrals, and release from incarceration. We meet with clients and perform wellness checks, including when there are reports of self-harm or suicidal ideations. And we monitor and report on conditions on Rikers Island by collecting data and client stories, drafting reports, and testifying before this body and the Board of Correction. As such, we have a front seat to the realities of self-harm and suicide attempts by our clients due to the horrors of incarceration in city jails.

Thank you to Chair Rivera for holding this hearing to allow us to provide the City Council with feedback on the Department of Correction’s dismissal record of preventing self harm and suicide in city jails. We are grateful for the opportunity to elevate our clients’ experiences and propose steps that the Council can take to improve the bills before this committee on today’s agenda.

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## 1. Background

NYCDS currently represents roughly three-hundred people detained at Rikers Island. Of those, 47% are deemed as having “Brad H Status,” meaning they were diagnosed with some form of mental illness prior to being incarcerated at Rikers.<sup>1</sup> However, this statistic does not begin to capture the extent of the mental health crisis that has been unfolding on Rikers Island for months. Though not all of our clients have been identified by Rikers as having mental illness, every single person currently languishing on Rikers is being stripped of their humanity and forced to witness or be subject to unending violence. They are all suffering from the trauma of their detention. Thus, it should come as no surprise that self-harm and suicide attempts are at an all time high in the jails.<sup>2</sup>

The most common statement that we hear from our incarcerated clients is that “DOC is violating our rights”. Every basic service that a person should be afforded while incarcerated is tied up in dysfunction. The written rules, protections, directives, and statutes that you all see on paper are not actually being followed. Troublingly, DOC is deliberately disregarding the HALT solitary confinement statute, passed last year that went into effect statewide on April 1, 2022.<sup>3</sup> DOC claims that they are in full compliance with the law, but it does not seem that way based on the experiences of our clients. HALT limits lock-in time to no more than 17 hours, but we have clients still experiencing 24-hour lock-ins. *These lock-in violations affect not only our clients in solitary settings, but our clients in general population, as well.* Specifically, RNDC (the facility that houses our youngest clients), has frequent days-long lock-ins where clients are not allowed out of their cells at all. For our clients that do get at least some time out of their cell, they either don’t get rec at all or go sporadically. Only once have we heard a client say they were getting rec regularly. We have clients that haven’t seen the sun in 6 months besides being taken to court.

Lack of out-of-cell time is not the only minimum standards violation our clients face. There are also glaring failures in terms of getting meals, access to showers, heat, commissary, mail, law library, access to counsel and family visits. Being locked in a confined space all day, not knowing when your next meal or shower will come, not interacting with other humans in any meaningful way is enough to test anyone’s psyche, especially if on top of that you are living in constant fear of violence.<sup>4</sup>

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<sup>1</sup> See Urban Justice Center: Mental Health Project, *Brad H. v City of New York*, available at <https://mhp.urbanjustice.org/2019/11/25/brad-h-v-city-of-new-york/>.

<sup>2</sup> George Joseph and Reuven Blau, “Self-Harm Is Exploding In New York City Jails, Internal Numbers Show,” *Gothamist*, Sept. 6, 2021, available at <https://gothamist.com/news/self-harm-exploding-new-york-city-jails-internal-numbers-show-rikers>.

<sup>3</sup> See Bill Text of NY S.2836 (signed into law on March 31, 2021), available at <https://www.nysenate.gov/legislation/bills/2021/s2836>.

<sup>4</sup> See, e.g., Jan Ransom, A Look Inside Rikers: ‘Fight Night’ and Gang Rule, Captured on Video, *NY Times*, Jan. 12, 2022, available at <https://www.nytimes.com/2022/01/12/nyregion/rikers-jail-videos.html>.

These inhumane conditions of confinement, mixed with the fact that available DOC staff refuse to man posts in housing areas, lead to frequent violent attacks. Our clients describe being in constant fear of violence from attacks from other detainees, and also ESU searches. When ESU does a random “search,” a team of 40 or so heavily armed guards barge into our clients’ housing areas and steal or destroy our clients clothes, personal effects, and commissary food. This can happen at any time and it happens frequently. Amidst this culture of violence as currency and surprise attacks, our clients are on edge to say the least. It is clear in client meetings that they are traumatized, whether that means they are even too terrified to speak on it, or so traumatized that they think it’s normal.

## **2. Client Narratives**

Self-harm and suicide are persistent concerns for us as Corrections Specialists working directly with NYCDS clients incarcerated on Rikers. Time and again we hear from our clients that they cannot make it one more day, that we might not hear from them again, that they need help and no one is helping them. Such was the case for J, a client with a history of depression and suicide attempts. J was not only receptive and open to treatment, he begged for it. And though his facility was aware of his situation, he was repeatedly cut off from his medication, and bounced around to different housing areas. J’s incarceration followed a recurring pattern: he was first housed in the Mental Observation Unit (MOU). Once he was deemed well enough, he was transferred to General Population, where the delivery of his medication was uncertain, and he had significantly limited access to mental health staff. And then he would call me, fearful that he might hurt himself, pleading to be placed on suicide watch, so that one day he could be reunited with his 3-year-old son. And the cycle continued on and on. This is common practice for our clients with diagnosed mental illnesses. The MOU is one of the only places where they are able to obtain the treatment necessary to remain stable during their stay on Rikers. Yet, they are routinely moved out, leading to the deterioration of their mental health.

Though this story helps paint a picture of the experience of mentally ill people in Rikers, it does not shed light on the countless individuals have developed suicidal ideation and tendencies precisely *because* of their incarceration in Rikers. M had a stable job and living situation before going to Rikers. But since his incarceration, he feels like he’s lost everything, that he has nothing left to live for. That by the time he gets out, he’ll have to start all over again, living in a shelter, trying to find a place willing to hire someone with a criminal record. So when I meet with him, he tells me that it will probably be the last time, that he’s not sure if he’ll see me again. M told me that he’s not a violent person, has never been much of a fighter, so being surrounded by violence, witnessing unprovoked slashes and stabbings, seeing fellow detainees being forced to fight, he is in constant distress. He does not sleep. He feels that he can’t let his guard down one second, fearing what might happen. It is no wonder he is unsure that he will survive to see his day in court.

Recently, one of our clients raised issues of the inhumanity and dysfunctionality that he was facing through a writ of habeas corpus that was brought to the court. The court recognized that “there's a crisis of "patently unsafe conditions" at Rikers, due to what the *Nunez Monitor*<sup>5</sup> describes as "the most complicated and dysfunctional system" it has worked with. Identifying and remedying these problems is, according to the Monitor, "complex and time-consuming." During his last hearing after the judge denied his petition, our client made it clear to the court that self-harm has become one of the only methods of communication for many incarcerated people that is given attention. The extremity of self-harm is not chosen by clients to speak, but rather the Department of Corrections has turned a blind eye to so many other expressions of our clients.

Our client shared with the court when pleading while having his hands in forced and chain mitts that the judge allow him, an 85-year-old man awaiting trial, to be released from DOC custody to await his next court date in housing provided by Exodus. “The last time I was here, they had me in a cell where I couldn't use the toilet or nothing,” he told the judge. “I'm trying to get these things (mitts) off so I can use the bathroom. I wind up going to the bathroom on myself and nobody is doing nothing to ensure that I be taken care of. I wind up being on the bus all day last night.” To which the court simply responded, “That shouldn't happen anymore.” Eventually, our client had to leave the court record with the acknowledgement, “It shouldn't happen, but it's happening and nobody's doing nothing. In order to get something done, I have to hurt myself.”<sup>6</sup>

Moreover, even when using every single vehicle for recourse against the dysfunction at Rikers Island, people are being driven to self-harm as both a means and ends of coping with the treacherous conditions that they face. These circumstances are not an exception, but the norm.

### 3. Legislation

- a. **Int. 30 - A Local Law** to amend the administrative code of the city of New York, in relation to requiring the department of correction to create and implement policies to address medical needs during and after lock-ins.

As has been reported widely in the press, in recent months thousands of incarcerated people have been denied access to medical treatment by DOC. There were more than 1,000 instances in December 2021 alone in which an incarcerated person did not make a scheduled medical appointment.<sup>7</sup> DOC still claims that our clients refuse these visits, while our clients adamantly insist this is not the case. The Council initially passed legislation in 2019 to address the issue of failure to produce people to their medical appointments after concerted efforts by advocates to

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<sup>5</sup> See, *Nunez Monitor Reports*, <https://www1.nyc.gov/site/doc/media/nunez-reports.page>.

<sup>6</sup> Petitioner v. Department of Corrections case: SMZ-70339/2022, March 23, 2022.

<sup>7</sup> Jonah E. Bromwich, Medical Care at Rikers Is Delayed for Thousands, Records Show, NY Times, Feb. 1, 2022, available at <https://www.nytimes.com/2022/02/01/nyregion/rikers-island-medical-care.html>.

raise attention to this issue. Yet the problem persists. This draft of Intro 30 is a good step in the right direction but could benefit from the following amendments.

The existing law requiring reporting of non-production for medical appointments should be further strengthened. Specifically, on page 1, line 12, we recommend deleting the words “if given.” The new language would read “If the reason for non-production is a refusal or walkout, the department [will] shall also record the reason for refusal or walkout [, if given]. If no reason is actually given by an incarcerated person for refusal to be transported to a medical visit, DOC should still be required to record it with whatever detail is available, e.g. *Incarcerated person was in their cell but refused to come out after 2 requests*. By allowing the department not to put anything at all so long as they say no answer was given, we are allowing them to not comply with the spirit of this reporting statute. If a person is legitimately refusing to attend an appointment, DOC should still be required to report all information about the refusal.

Similarly, we recommend deleting the phrase “wherever practicable” from page 2, line 7. This language, like the “if given” language on page 1, creates an excuse for DOC to not comply with the spirit of the law. In our experience, if DOC has an out, they will take it. Here, the language should read “Such plan shall ensure that department staff continue to escort patients to medical appointments during a lock-in [whenever practicable].” If DOC only has to comply with the plan “whenever practicable,” then they will always say it was not practicable. If an entire housing unit is on lockdown for a week because of a COVID breakout, DOC will say “no visits, not practicable.” If no staff is available because DOC chooses not to ensure that all housing units have proper coverage, they will say “not practicable.” The “whenever practicable” loophole will ensure that nothing changes for our clients.

We urge the Council to adopt these proposed amendments and pass an amended Intro 30 this year.

- b. **Int. 181 - A Local Law** to amend the administrative code of the city of New York, in relation to requiring the department of correction to publish all of its rules, policies and directives.

NYCDS strongly supports Intro 181, but urges the sponsors to consider amending the bill to include language that would set a time frame for DOC to post departmental rules, policies and directives to no later than 7 days after they are promulgated. We worry that without a time frame that DOC will fail to post new rules or directives for weeks or months at a time. But if they were required to post within 7 days, we could go back to them on day 8 and ask that the rules be posted. Other than this suggestion, we believe this bill is long overdue and urge the Council to pass it expeditiously.

#### **4. New York City Council Should Pass a Resolution in Support of the Treatment Not Jail Act (S.2881B-Ramos/A.8524A-Forrest).**

The surge in self-harm incidents at Rikers reflects the urgent need to expand access to community-based treatment for those who are caught in the criminal legal system due to underlying mental health issues. We therefore call on the City Council to support state legislation to expand pre-trial diversion for people with mental health challenges and other disabilities. Pre-trial diversion allows those charged with crimes to resolve their criminal cases by successfully completing community-based treatment, rather than letting them languish and decompensate in our jails and prison.

Roughly half of all those detained in our city jails are recommended to receive mental health services,<sup>8</sup> and the numbers are going up. In 2020, an average of 17% were diagnosed with a “serious mental illness,” up from 10% four years earlier.<sup>9</sup> New York state incarcerates more people with serious mental illnesses in its jails and prisons than it treats in its hospitals.<sup>10</sup> There are more people with serious mental illness living in Rikers Island than in *any* psychiatric hospital in the United States.<sup>11</sup>

Of course, even under ideal circumstances, jail is hardly an appropriate environment to administer psychiatric and mental health services, but in the current humanitarian crisis, most are unlikely to receive any treatment at all.<sup>12</sup> And as we have extensively documented in Section 2 of our testimony, whether or not mental healthcare is provided, incarceration in and of itself is proven to exacerbate underlying issues and leave those exposed to it - even for short periods - even more destabilized and traumatized.

Meanwhile, studies consistently show that people who successfully complete mental health or drug diversion courts have a significantly lower rate of recidivism.<sup>13</sup> In addition, diversion is materially

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<sup>8</sup> Greater Justice NY, “People in Jail in New York City: Daily Snapshot,” Vera Institute, <https://greaterjusticeny.vera.org/nycjail/> (last accessed April 28, 2022).

<sup>9</sup> New York City Comptroller. (March 2021). FY 2022 Agency Watch List: Department of Correction. Available at: [https://comptroller.nyc.gov/wp-content/uploads/documents/Watch\\_List\\_DOC\\_FY2022.pdf](https://comptroller.nyc.gov/wp-content/uploads/documents/Watch_List_DOC_FY2022.pdf)

<sup>10</sup> Treatment Advocacy Center, “New York,” available at <https://www.treatmentadvocacycenter.org/browse-by-state/new-york>

<sup>11</sup> *Id.*

<sup>12</sup> Jonah E. Bromwich, The New York Times, *Medical Care at Rikers Is Delayed for Thousands, Records Show* (Feb. 1, 2022), available at <https://www.nytimes.com/2022/02/01/nyregion/rikers-island-medical-care.html>.

<sup>13</sup> Michael Mueller-Smith & Kevin T. Schnepel, *Diversion in the Criminal Justice System*, 8 THE REV. OF ECON. STUD. 2, 883–936 (2021), <https://doi.org/10.1093/restud/rdaa030> (finding that diversion cuts reoffending rates in half and grows quarterly employment rates by nearly 50% over 10 years); Amanda Agan, Jennifer Doleac & Anna Harvey, *Misdemeanor Prosecution* (Nat’l Bureau of Econ. Res., Working Paper No. 28600, 2021), [https://www.nber.org/system/files/working\\_papers/w28600/w28600.pdf](https://www.nber.org/system/files/working_papers/w28600/w28600.pdf) (finding non-prosecution of a nonviolent

more cost-efficient than incarceration. While every \$1 invested in treatment courts yields \$2.21 in savings,<sup>14</sup> New York City expends \$556,539 per person, per year on incarceration.

The Treatment Not Jail Act (S.2881B-Ramos/A.8524A-Forrest) addresses this massive, systemic failure by dramatically expanding access to and improving upon the pre-trial diversion courts that already exist throughout New York. First, the Treatment Not Jail Act will amend the provisions in the Criminal Procedure Law that authorize drug diversion courts to allow admission for people with mental health diagnoses, intellectual disabilities and other disorders which have led to their involvement in the criminal legal system. The decision to admit these individuals will fall to judges, not prosecutors, who will be empowered to order diversion - regardless of the underlying charge - where the court determines that the person's underlying mental health or substance use issue has contributed to their criminal legal system involvement, such underlying issue can be effectively treated, and it is in the best interest of the public to offer the individual community-based treatment. If successful in completing the treatment plan, the judge will be empowered to dismiss or reduce the person's criminal charges. In addition to expanding access to these courts, the Treatment Not Jail Act improves upon the treatment court model by incorporating many evidence-based best practices that have already been successfully implemented in ad hoc diversion courts throughout the state.

The horrifying rates of self-harm incidents and suicides within New York City jails demand that we fundamentally upend our city's default reliance on jails and prisons to serve as our primary mental healthcare providers. The Treatment Not Jail Act provides a safe and structured path to achieving this, and to effectively offer community-based mental health treatment for those who need it. We call on the City Council to support this state legislation.

If you have any questions about our testimony, you can reach us both directly at [correctionsspecialists@nycds.org](mailto:correctionsspecialists@nycds.org).

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misdemeanor offense leads to large reductions in the likelihood of a new criminal complaint over the next two years); David Huizinga & Kimberly L. Henry, The Effect of Arrest and Justice System Sanctions on Subsequent Behavior: Findings from Longitudinal and Other Studies, in, THE LONG VIEW ON CRIME: A SYNTHESIS OF LONGITUDINAL RESEARCH 244 (Akiva M. Liberman, ed., 2008); John Laub & Robert Sampson, Life-Course and Developmental Criminology: Looking Back, Moving Forward, J. OF DEV. AND LIFE-COURSE CRIMINOLOGY (2020); Shelli B. Rossman, Janeen Buck Willison, Kamala Mallik-Kane, KiDeuk Kim, Sara Debus Sherrill, P. Mitchell Downey, Criminal Justice Interventions for Offenders with Mental Illness: Evaluation of Mental Health Courts in Bronx and Brooklyn, New York, Nat'l Inst. of Justice (April 2012), <https://www.ojp.gov/pdffiles1/nij/grants/238264.pdf>.

<sup>14</sup> New York State Unified Court System, The Future of Drug Courts in New York State: A Strategic Plan (2017), [https://www.nycourts.gov/legacyPDFS/courts/problem\\_solving/drugcourts/The-Future-of-Drug-Courts-in-NY-State-A-Strategic-Plan.pdf](https://www.nycourts.gov/legacyPDFS/courts/problem_solving/drugcourts/The-Future-of-Drug-Courts-in-NY-State-A-Strategic-Plan.pdf).