



Testimony of

Sergio De La Pava

Legal Director

New York County Defender Services

Before the

New York City Council

Committee on Criminal Justice

Oversight Hearing on Rikers Island Interagency Taskforce

June 28, 2022

My name is Sergio De La Pava and I am the Legal Director 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. Since 1997 we have represented more than 300,000 clients in their criminal cases and developed decades of expertise on the workings of the criminal legal system. We currently represent 259 people incarcerated in DOC jails across the city.

I want to thank the Committee and Chair Rivera for holding this hearing today and giving us an opportunity to comment on the bills on today’s agenda and the worsening situation on Rikers Island. We believe that the Interagency Rikers Task Force is fundamentally flawed because it does not involve the key stakeholders involved in sending people into DOC’s custody: prosecutors, judges and the defense bar.¹ If court stakeholders were involved in the Task Force, it could begin

¹ The Task force will involve representatives from the Mayor’s Office, “NYC Department of Correction (DOC), the Mayor’s Office of Criminal Justice, the New York City Law Department, the New York City Office of Labor Relations, the New York City Office of Management and Budget, the Mayor’s Office of Contract Services, the New York City Department of Citywide Administrative Services, and the New York City Department of Design and Construction.” Press Release: Mayor Adams Announces Interagency Task Force to Bring Full Resources and Expertise of City Government to Remedy Rikers Island Crisis, May 12, 2022, available at

to take concrete steps to decarcerate Rikers, which is the only immediate solution to ending the violence there. Nor are community representatives a part of the conversation; directly impacted people, including current and formerly incarcerated people and their family members, along with legal reform advocates, are critical voices to the conversation about how best to solve the crisis on Rikers. Without community input and buy-in to any plan, it is likely to fail. We fear that once again, a task force meant to show New Yorkers that their government is hard at work finding solutions to tough problems will serve as a cover for the perpetuation of the status quo. Given the current situation on Rikers, that is unacceptable.

I. The Situation on Rikers Island

Our clients are suffering the horrors and indignities of Rikers Island and other DOC facilities every day. This month so far, we have averaged 259 clients incarcerated on Rikers on any given day. This is well above the average 117 clients we had incarcerated in Feb 2020, prior to the pandemic and after bail reform went into effect.

Our clients report persistent horrific conditions across all facilities. They face violence from gangs and guards alike. They have limited, if any, access to rec time or programming. They are frequently in lockdown for days at a time. Guards are commonly absent from the floors, leaving incarcerated people to fend for themselves. People report difficulties accessing commissary, law library, and other resources. And people are regularly denied access to crucial medications and medical visits because of persistent staffing issues. DOC's own data shows that the agency failed to facilitate 39,728 medical appointments for incarcerated New Yorkers from Jan. 1 to April 30, 2022, with 11,789 missed appointments in April alone.

The situation on Rikers is deadly. Just last week three people died in DOC custody: on Rikers Island, in the hospital and in a courthouse holding cell. Our city jails have killed 9 people this year and 25 people since 2021. Tragically, federal Judge Laura T. Swain refrained from stripping control of Rikers Island from local officials, instead ordering the city to revise its plan for addressing violence and disorder. Since the judge's decision earlier this month, three people have died.

We also have deep concerns about the department's ability to facilitate timely disciplinary hearings that are set to go into effect on July 1 pursuant to new solitary confinement rules in the city jails known as the Risk Management Accountability System (RMAS). To this date, we have received little information about how RMAS will take place, and the little we have received indicates a lack of preparedness. We have been told that DOC estimates that thousands of RMAS disciplinary hearings will take place at city jails every year, but defenders remain in the dark about critical details about how we will provide the legal counsel mandated by law to people accused of Grade I or Grade II disciplinary infractions while incarcerated. We will continue to update the Council once the RMAS hearings begin and we know more and we urge this committee to consider a hearing on this issue in the fall.

<https://www1.nyc.gov/office-of-the-mayor/news/296-22/mayor-adams-interagency-task-force-bring-full-resources-expertise-city>.

II. Rikers Island Interagency Taskforce

As noted in the introduction, we have deep concerns about the ability of the Interagency Task Force to improve conditions on Rikers. Critically, many constituencies are absent from this conversation about solutions, including court stakeholders like judges, prosecutors and the defense bar, and the broader community. Without buy-in from the public or the courts, the status quo is likely to continue.

NYCDS strongly believes that the city has shown again and again that they are incapable of keeping people incarcerated city jails safe. The most recent three deaths are the perfect example of this. Despite repeated reports from DOC Commissioner Molina that he has things under in control, it is clear that he does not. It is time for the federal government to step in and take control of our jails.

III. Proposed Legislation

a. Reso No. 156 – In Support of the Treatment Not Jail Act, S.2881 / A.6603

NYCDS strongly supports the Treatment Not Jail Act, a state bill that would expand diversion opportunities for those charged with crimes who have mental health and cognitive challenges, and thus create a structured off-ramp from incarceration and criminalization for these individuals.

NYCDS has been a proud member of the TNJ coalition since its inception and we believe firmly that the only way that New York City can meet its goal of closing Rikers Island in 2027 is by dramatically reducing its reliance on pre-trial incarceration. As prosecutors and judges seem unwilling to take actions to dramatically reduce the Rikers population on their own, we must create other off-ramps to incarceration. The TNJ Act provides exactly that. By ensuring that people who are awaiting resolution of their cases pre-trial can receive mental health and substance use disorder treatment in community-based settings, we not only reduce the number of people incarcerated pre-trial, but we also lower costs, halt the revolving door of recidivism, and make our communities safer. TNJ is a win-win for people concerned about the human rights of people suffering from mental health challenges as well as for people concerned about improving public safety and keeping down costs.

Right now, our system is broken. Jails and prisons have become the de facto residential treatment centers for tens of thousands of people living with mental illness. Thirty years ago, state mental hospitals across the country institutionalized more than half a million people every year. That number dropped to fewer than 35,000 people by 2014.² There is widespread consensus that closing abusive and dangerous facilities was long overdue, but we didn't invest in community-based treatment to replace that failed system. Instead, jails and prisons stepped into their place. New York State incarcerates more people with serious mental illnesses in its jails and prisons

² Don Daniels & David Ritter, "How health care policy and laws have impacted mental health delivery," *Southwestern Law Journal*, p. 242 (April 2021), available at <https://www.researchgate.net/publication/350889986>.

than it treats in its hospitals.³ There are more people with serious mental illness living in Rikers Island than in *any* psychiatric hospital in the United States.⁴

And the mental health crisis is worsening because of the pandemic. Fifty two percent of the people in NYC Department of Corrections custody received mental health services, an increase from 44% in 2016. In 2020, an average of 17% were diagnosed with a “serious mental illness,” up from 10% four years earlier.⁵

Additionally, our jails remain at an extraordinary level of chaos and disorder. The situation at Rikers Island has been aptly described as a humanitarian crisis. In addition to the high rates of force and violence, the level of staff absenteeism has caused dangerous disruptions to the basic services to people in custody from the moment they arrive at a reception facility.⁶ Indeed, thousands of individuals detained at Rikers are routinely denied requested medical care, including mental health services.⁷

As public defenders, we have witnessed the deep, irreversible harm caused to indigent clients and their families when our system has failed them. Far too many human beings in dire need of treatment have not been afforded access to anything but incarceratory dispositions, resulting in further damage to their mental health, interruption of their social connections and any community-based treatment they may have been receiving. Frequently, they emerge from their imprisonment worse off than when they entered it, leading to re-arrest for more serious charges.

The reality is that a prevailing and growing body of research analyzing the impact of incarceration proves that imprisoning people makes them more likely to reoffend, due to the horrendously traumatizing and terribly destabilizing effects of incarceration.⁸ Incarcerated people are left to

³ Treatment Advocacy Center, “New York,” available at <https://www.treatmentadvocacycenter.org/browse-by-state/new-york>

⁴ *Id.*

⁵ 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

⁶ To be clear, this is not an issue of head count or inadequate budget. There are more than enough staff on payroll to safely and competently run our jails. Indeed, New York City’s jail system is by far the most expensive in the country. *See*, NYC Comptroller, NYC Department of Correction FYs 2011-21 Operating Expenditures, Jail Population, Cost Per Incarcerated Person, Staffing Ratios, Performance Measure Outcomes, And Overtime (December 2021) (reporting that NYC spends \$556,539 per year or \$1,525 per day to incarcerate one individual); Vera Institute, A Look Inside the New York City Correction Budget (May 2021) (“No other local jail system costs as much as New York City’s ... Every other jail system invests less than \$500 million in its jails—a fraction of New York City’s \$2,276,133,447”). Rather, the staff absenteeism is a direct result of well-documented corruption and gross mismanagement. Eleventh Report of the Nunez Independent Monitor (May 11, 2021), available at https://www1.nyc.gov/assets/doc/downloads/pdf/11th_Monitor_Report.pdf.

⁷ 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>.

⁸ Cullen, F. T., Jonson, C. L., & Nagin, D. S. (2011). Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science. *The Prison Journal*, 91(3_suppl), 48S-65S. <https://doi.org/10.1177/0032885511415224>; Stemon, D. (2017, July). “The Prison Paradox: More Incarceration Will Not Make Us Safer.” Vera Institute. Retrieved January 2022, from https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf; Emily Leslie & Nolan Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments* 60 J. OF L. AND ECON. 3, 529-557 (2017), www.econweb.umd.edu/~pope/pretrial_paper.pdf;

languish and psychiatrically decompensate. They are cut off from their families and communities, left without sufficient mental health treatment, and exposed every day to sometimes random and vicious violence and rampant drug use. When they do emerge from incarceration, most often without stable housing or mental health services in place, they are then asked to procure housing, employment, insurance, and benefits, all while burdened by the stigma and collateral consequences of their criminal conviction. This creates a perfect storm for increased substance use, untreated mental health conditions, and recidivism. This tragic revolving door is a failure of our society, harming these individuals, and ultimately, jeopardizing public safety.

Given all of these facts in favor of treating sick people in their communities, rather than in jail or prison, it is no surprise that we have seen widespread support for the legislation. The bill currently has 16 senators co-sponsoring the bill and 36 co-sponsors in the Assembly.

We are deeply grateful to Chair Rivera for introducing this resolution and hope that the Council will pass it expeditiously.

b. Int. 284 - Require social workers in correctional facilities

NYCDS supports increased numbers of social workers with access to people incarcerated in city jails, but this legislation is short on details that are critical to ensuring its success. While the bill just does not feel feasible right now, it could be passed with an implementation date of 2027, in conjunction with the closure of Rikers Island. As we create new systems and programming for smaller numbers of incarcerated people who will certainly be people with more significant needs, social workers can play an important role in mitigating some of the harm of incarceration and connecting people with services to ensure a successful re-entry.

We have many questions about how such a bill would be implemented. For example, where will we find these social workers who are willing to work in detention facilities? Will they be provided sufficient pay to warrant the harsh working conditions there? Would these MSW or LCSWs be DOC employees? Health and Hospitals employees? Contractors from non-profit providers who already provide programming in the jails? How many hours will jail social workers have to spend working with incarcerated people? What kinds of services or support would they provide?

In the short term, if the city wants to increase the number of social workers who serve incarcerated people, you could increase funding for social workers at public defender offices. For example, we currently have one full-time re-entry social worker who supports our clients returning from Rikers Island back to their communities. But he cannot support all of our clients in city custody. If we had three full-time social workers, we would be much better equipped to support all of our currently incarcerated 259 clients. If MOCJ increased funding for defenders for social workers serving incarcerated people, we could be up and running before the end of the calendar year. Providing that money to DOC feels like a more cumbersome and less effective

Will Dobbie et al., The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges (Nat'l. Bureau of Econ. Research, Working Paper No. N22511, 2018), www.nber.org/papers/w22511.pdf.

way of achieving the goal of connecting incarcerated people with services in their communities and facilitating a successful re-entry.

c. Int. 349 - Dyslexia screening/treatment in city jails

While NYCDS supports the sentiment of this bill, we do not think it is realistic given the current humanitarian crisis. In a perfect world we would of course like to see our clients assessed and connected with services for a wide range of health concerns. Yet right now, our intake facilities are in such crisis that DOC cannot provide people with working toilets or safe food options.⁹

Instead, we would propose that any dyslexia screening happen once people are connected with educational services in city jails, as they would when engaging with school on the outside.

d. Int. 356 - Establishing a program for child visitors of department of correction facilities

NYCDS strongly supports this legislation but recommends additional amendments.

First, visiting Hours should be offered during evening and/or weekend visiting hours so that children do not need to miss school to visit.

Contact should be permitted between children and their parents in the specially designated visiting area for child visitors throughout the duration of the visit and not be confined to the beginning or end of the visit.

All new or substantially remodeled city jails should provide children's books and toys in waiting areas.

We also recommend making the visitor processing child-sensitive, and that the department track and report on wait times so that visitors arrive at their visiting room within one hour from being processed in Central Visits.

Finally, the Council should consider reaching out to the Osborne Association as they are experts on best practices for family visitation.

e. Int. 357 - Require DOC to use an electronic case management system to track investigations of sexual abuse

NYCDS strongly supports this legislation. However, we would urge the Council not to stop here. All of DOC records should be electronic. Including logbooks, attendance records, visiting records – everything. No more fax machines should be necessary. DOC needs to come into the

⁹ See, e.g., Gabrielle Fonrouge, “Squalid, crowded conditions return to Rikers Island intake center,” *NY Post*, June 14, 2022, available at <https://nypost.com/2022/06/14/squalid-crowded-conditions-return-to-rikers-island-intake-center/>.

21st century and update everything. By the time Rikers Island closes in 2027, the city should ensure that all recordkeeping is virtual to ensure enhanced transparency and disclosure.

f. Int. 385 - Requiring DOC to report programming and fiscal information

NYCDS supports this legislation. At a minimum, DOC should be required to report, on an annual basis, information pertaining to discharge planning efforts, post-release job placements, the mental health needs and services of incarcerated individuals, programming for incarcerated individuals, and budget and spending. The City Council and its residents must have a better sense of how DOC is supporting people in terms of programming and discharge planning.

However, we believe strongly that the Council must do more to ensure that there exists a robust social service support network outside of our city jails to allow people to be successful as they attempt to recover from the horrors of incarceration on Rikers Island. Our city jails are deeply unsafe places that are not at all conducive to effective discharge planning, mental health treatment, or even well-intentioned programming. We need more of these options fully funded in the community.

g. Int. 456 - Capping maximum fee allowed when transferring money to a person in DOC custody to no more than \$5

While NYCDS sees this bill as an improvement over the status quo, we strongly urge the Council to consider removing all fees for money transfers. These fees place an enormous burden on families supporting incarcerated loved ones, the majority of whom come from the poorest communities in our city. NYCDS is a proud member of the Fines and Fees Justice Coalition and we urge to eliminate these fees altogether.

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