



Testimony of

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Before the

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Committee on Public Safety

Oversight Hearing on Mayor's Blueprint to End Gun Violence

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My name is Stan Germán and I am the Executive Director of 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.

Thank you to Chair Hanks for holding this hearing to allow us to provide the City Council with feedback on Mayor Adam's Blueprint to End Gun Violence. We will also submit joint testimony with the other New York City public defenders that encompasses our collective oral testimony. This written submission addresses NYCDS' specific concerns with the Mayor's Blueprint and his Subway Safety Plan, released after the announcement of this hearing.

## **I. Introduction**

I have been a defense attorney representing people accused of crimes for 27 years. In that time, I have witnessed the cyclical rise and fall of reported crimes. In 2014, homicides in New York City

dropped to the lowest they had been since 1963, when the NYPD first began collecting such statistics.<sup>1</sup> Crime rates began to drop even further in the years leading up to 2020, and the City’s goal of finally closing Rikers Island appeared tenable. In 2020, we witnessed historic collaboration between defenders, prosecutors and city agencies to release people from DOC custody during the height of the pandemic. For the first time, the number of people incarcerated on Rikers Island dropped to the lowest they had been since World War II. And, contrary to baseless tabloid headlines and disingenuous law enforcement talking points, these mass releases did not make our communities less safe. According to the Mayor’s Office of Criminal Justice, people released from Rikers due to the pandemic had fewer re-arrests for gun charges or murder than the population released during the normal course of business.<sup>2</sup>

Beginning in the summer of 2020, we saw an uptick in some violent crimes from the historic lows achieved pre-pandemic. The number of homicides in the city in 2021 (488), for example, while up from a historic low of 292 in 2017, are well below the 673 murders that took place here in 2000.<sup>3</sup> Crime is up, but it is still far below where it was even ten years ago.<sup>4</sup>

Furthermore, recent increases in crime are not isolated to New York City: violent crime is up in major cities across the country, from Louisville to Miami, from Austin to Minneapolis.<sup>5</sup> It is not hard to understand why. The stressors of the pandemic (loss of jobs, the death of loved ones, closure of schools and other community spaces, and increased housing insecurity) have led to unrest and discontent across the country, because the pandemic exposed the already significant limitations of the social safety net. Now is the time to make historic investments in our safety net to make our communities safer and stronger.

I provide this historical context because I believe it is critical that the Council act in response to any perceived increase in crime in a way that centers data and research. For people like me who have worked in the criminal legal system for a long time, we know that the current trend, while troubling compared to recent years, is still an enormous improvement of where we were twenty or thirty years ago. Looking back on those times, at the War on Drugs and the labeling of Black boys as “super predators,” we can say with confidence that tough on crime policies of the 1990s and

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<sup>1</sup> J. David Goodman & Al Baker, “Murders in New York Drop to a Record Low, but Officers Aren’t Celebrating,” *N.Y. Times*, Dec. 31, 2014, available at <https://www.nytimes.com/2015/01/01/nyregion/new-york-city-murders-fall-but-the-police-arent-celebrating.html>.

<sup>2</sup> Courtney Gross, “Exclusive: 13 Percent of Early Rikers Releases Re-Arrested,” *NY1*, July 8, 2020, available at <https://www.ny1.com/nyc/all-boroughs/public-safety/2020/07/08/thirteen-percent-of-early-rikers-releases-re-arrested->.

<sup>3</sup> NYPD, “Citywide Seven Major Felony Offenses 2000-2021,” *Historical New York City Crime Data*, available at [https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis\\_and\\_planning/historical-crime-data/seven-major-felony-offenses-2000-2021.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/historical-crime-data/seven-major-felony-offenses-2000-2021.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> Priya Krishnakumar, Emma Tucker, Ryan Young and Pamela Kirkland, “Fueled by gun violence, cities across the US are breaking all-time homicide records this year,” *CNN*, available at <https://www.cnn.com/2021/12/12/us/homicides-major-cities-increase-end-of-year-2021/index.html>.

2000s did not make us safer. They did not make our communities healthier or more resilient. By all accounts, those racist policies were a failure that politicians who led during those times are now held to account for.

Mayor Adam's Blueprint to End Gun Violence seeks to expand criminalization and policing without much regard to data and research about what we know works. With my testimony today I hope to untangle some of the misleading aspects of the Blueprint to ensure that any response we take to ending gun violence will actually help us to achieve those aims and not solely expand upon the failed policies of the past.

### **I. "Broken Windows Policing" via Task Force**

Among the number of dubious law enforcement initiatives that he proposes in his Blueprint, the Mayor suggests convening a "Quality of Life Task Force," ostensibly to revive the broken windows policies that dominated, and ultimately failed, our city in decades past (Blueprint p. 8). This proposal is wasteful, asinine, and in fact, quite anachronistic. Indeed, to quote former Manhattan District Attorney, Cyrus Vance, Jr., less than eighteen months ago, "[o]ver the past decade, New York City authored a remarkable public safety success story that saved thousands of lives, transformed the safety of communities across the five boroughs, and overturned false narratives about the efficacy of broken windows policing."<sup>6</sup> Echoing the volumes of studies and research in recent decades that have dismantled the false narratives upon which these "Quality of Life" law enforcement policies were previously premised,<sup>7</sup> Mr. Vance asserted that "[t]here is scant, if any, evidence that broken windows policing, arresting and prosecuting minor offenders in order to prevent major crimes, reduces violent crime. In fact, a 2016 city Department of Investigation report, which reviewed six years of arrest data, showed broken windows policing yielded no reduction in violent crime. Nor does empirical evidence support the idea that actual low-level 'disorder' in a community creates a sense of lawlessness that emboldens criminal actors."<sup>8</sup>

And yet, inexplicably, the Mayor proposes reinstating this widely disreputed theory of law enforcement. City Council must reject any effort to revive any simulacrum of the racist and

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<sup>6</sup> Cyrus Vance, Jr., Don't bring back broken windows: Manhattan DA Cy Vance argues against ratcheting back up prosecutions for smaller offenses, *New York Daily News* (Aug. 24, 2020), available at <https://www.nydailynews.com/opinion/ny-oped-dont-bring-back-broken-windows-20200824-zblyi4rr7nfjlmosswwbeeb4de-story.html>.

<sup>7</sup> See, e.g. Childress, Sarah (28 June 2016). "[The Problem with Broken Windows Policing](#)". *Public Broadcasting Service (PBS)*. PBS Frontline. Retrieved 24 July 2017; Harcourt, Bernard E.; Ludwig, Jens (2006). "[Broken Windows: New Evidence from New York City and a Five-City Social Experiment](#)". *The University of Chicago Law Review*. **73** (1): 271–320; Sullivan, Christopher M.; O'Keefe, Zachary P. (2017-09-25). "Evidence that curtailing proactive policing can reduce major crime". *Nature Human Behaviour*. **1** (10): 730–737.

<sup>8</sup> *Id.*

ineffective “broken windows” policing practices, which even our city’s prosecutors have now disavowed.

## **II. The Mayor’s Proposal for City Judicial Appointments Raises Concerns**

Mayor Adams states that “a demonstrated commitment to keeping violent criminals who use guns off New York City streets” will be a priority in any of his judicial appointments (Blueprint p. 9). This is concerning. Rather than seeking candidates who have a demonstrated commitment to being neutral arbiters of the law, free from bias, and committed to evaluating the facts and legal standards fairly in each and every unique case before them, he explicitly seeks candidates who have a demonstrated bias against those charged with gun crimes. It is imperative that our judges approach the facts and legal issues in every individual case fairly and impartially, regardless of the type of crime being charged.

## **III. The Mayor’s Bail Rollback Proposal**

In 2019, the state legislature passed bail reform, which eliminated cash bail for most misdemeanor and non-violent felony charges. It also requires judges to consider a person’s ability to pay in cases where bail is set. Before its passage, thousands of New Yorkers languished in jail without being convicted of a crime simply because they could not afford to pay bail. Overall, bail reform lessened the role of cash bail in New York’s criminal legal system and led to significantly fewer people behind bars.

Mayor Adams’ proposal includes yet another denunciation of bail reform (Blueprint p. 10), the most popular scapegoat for any perceived criminal-punishment ill facing our city. Despite an ongoing humanitarian crisis at Rikers Island that shows no signs of abating, the mayor is advocating for an increase in pretrial detention through the addition to our bail laws of the long-disfavored element of dangerousness. This stems from the same manipulative fearmongering that has clawed at bail reform efforts every step of the way. Most importantly, it will not increase public safety.

Mayor Adams calls for a so-called dangerousness assessment to be included in the bail law. An attorney in our office, Rebecca Phipps, recently published an op-ed in the Daily News on exactly this topic.<sup>9</sup> She notes only two possibilities that would allow judges to make a dangerousness determination:

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<sup>9</sup> Rebecca Phipps, “The very real danger of using ‘dangerousness,’” N.Y. Daily News, Feb. 24, 2022, available at <https://www.nydailynews.com/opinion/ny-oped-danger-of-dangerousness-20220224-pnisobooyrallafv177vaqd6lu-story.html>.

In the first, a judge weighs information presented to them and decides who in their eyes is dangerous. In the other, an algorithm or so-called risk assessment tool is used. Both methods have been shown to be rife with racism, bias and inaccuracies.<sup>10</sup> And both inevitably lead to the same result: a human being is incarcerated in the absence of any criminal conviction.

Risk assessment tools have been in vogue recently, purportedly as an answer to the inherent influence of implicit bias in judges' subjective decision-making. These algorithms, proponents claim, take subjective bias out of the equation. But algorithms, by stressing factors like prior criminal history and employment, merely regurgitate and perpetuate the shameful history of bias and racism already built into our laws, our policing, our prosecution and our society. As a result, these tools not only fail to achieve objectivity and fairness, they cement racial inequality into our courtrooms by giving past racist practices the veneer of scientific legitimacy.<sup>11</sup>

New York's bail laws have rightly always been about ensuring an individual's return to court. A system truly devoted to the presumption of innocence cannot deprive individuals of their liberty based on mere allegations, or worse, predictions of future criminality. To assess someone as dangerous, and then incarcerate them as a result, is the equivalent of convicting them of a future hypothetical crime.

Curiously, Mayor Adams also demands that judges' bail decisions "must be public, and their reasons must be stated on the record." This is already the law.<sup>12</sup> Mayor Adams also calls for publicly accessible data. This, too, is the law. Because of bail reform, for the first time ever, the courts are required to report bail statistics. With this data, we have already seen that bail reform, is in fact, working.<sup>13</sup>

#### **IV. Raise the Age Rollbacks**

Mayor Adams damagingly mischaracterizes Raise the Age, legislation that is nearly five years old at this point (Blueprint p. 11). Mayor Adams charges that the existing law should be amended for gun arrests. Yet all sixteen- and seventeen-year-olds charged with gun felonies in New York are, without exception, already charged in our Supreme Court's Criminal Term. It is there that a

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<sup>10</sup> Carrie Johnson, "Flaws plague a tool meant to help low-risk federal prisoners win early release," *NPR*, Jan. 26, 2022, available at <https://www.npr.org/2022/01/26/1075509175/flaws-plague-a-tool-meant-to-help-low-risk-federal-prisoners-win-early-release>.

<sup>11</sup> Sean Hill, "Bail Reform and the (False) Racial Promise of Algorithmic Risk Assessment," *UCLA Law Review* (2021), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3683790](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3683790).

<sup>12</sup> See C.P.L. § 530.20(1)(b) – "The court shall explain its choice of release, release with conditions, bail or remand on the record or in writing."

<sup>13</sup> Michael Rempel & Joanna Weill, *One Year Later: Bail Reform in New York City*, Center for Court Innovation (2021), available at <https://www.courtinnovation.org/publications/bail-NYS-one-year>.

supreme court judge, with ample input from the prosecutor, makes a legal and factual determination as to whether the case should remain on that docket or be transferred to and prosecuted in family court.<sup>14</sup> And, of course, hinging such a critical decision on whether someone with the understanding of an adolescent waives a bedrock constitutional right guaranteed to them by the Fifth Amendment would be egregious.

New York was the second to last state in the country to pass legislation raising the age of criminal responsibility, acknowledging that children are distinct from adults and not as culpable for their actions.<sup>15</sup> The law was passed in recognition that young people should not be saddled with the same repercussions as their adult counterparts before their brains are fully developed. More troubling was the fact that youth charged as adults were almost exclusively Black and brown. Meanwhile, white teenagers were diverted from our courts altogether, even though we know that young people all ages and races make mistakes and break the law. New York may have been one of the last states in the nation to recognize that kids are kids: we cannot be the first to roll the law back.

## **V. The Mayor's Discovery Rollback Proposal**

The 2019 reforms to New York's discovery laws were a long overdue and hardly novel move to bring New York's discovery practices in line with basic notions of fairness exhibited in discovery practices in most other states. Prior to these reforms, New York's draconian law allowed prosecutors to withhold discovery until the last minute, "blindfolding" the defense, coercing guilty pleas from people who did not know the evidence against them, and ambushing those who chose to exercise their right to a trial with voluminous last-minute disclosures. The reforms of 2019 simply stated: no more. Now prosecutors have to turn over discovery to the defense in a timely manner, and cannot be considered "ready for trial" until they have done so.

And yet the Mayor suggests that in one particular class of cases – gun cases – prosecutors should be allowed to disregard the law and cut corners (Blueprint p. 11). His proposal flouts any sense of fairness and will fail to create any discernible benefit to public safety or ending gun violence.

First, the Mayor's proposal to allow a different set of rules for one category of crimes degrades our system of justice. Our system requires due process and constitutional safeguards for all people, charged with any crime. We do not pick and choose which categories of people deserve these protections, and we do not pick and choose which categories of crimes deserve these protections.

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<sup>14</sup> N.Y.S. Criminal Procedure Law § 722.23.

<sup>15</sup> Campaign for Youth Justice, "New York and North Carolina are the Last States to Raise the Age at Which Children can be Funneled Through their Adult Jails and Prisons," July 21, 2017, available at <http://www.campaignforyouthjustice.org/campaigns/item/new-york-and-north-carolina-are-the-last-states-to-raise-the-age-of-which-children-can-be-funneled-through-their-adult-jails-and-prisons>.

Mayor Adams himself recognized that the 2019 discovery reforms were a step forward in making New York “fairer and more equitable,” yet in the same breath he suggests that we can pick and choose when to apply those very standards of fairness and equity.

Second, the Mayor’s proposal will not yield any added efficiency in prosecuting gun cases. He first suggests that prosecutors should be allowed to stop the speedy trial clock before they have completed turning over discovery in gun cases. Yet, rightly, he concedes that all evidence would have to be turned over before a trial could start. Far from expediting cases, this proposal would actually prolong cases, giving prosecutors a mechanism by which they could subvert their speedy trial obligations and “press pause” on a case for as long as they would like while they continue to gather discovery.

He next suggests that cases where the discovery is “overly burdensome” have resulted in backlogs, and that in such cases prosecutors should be relieved of their burden for the sake of expediency. This is a false claim, however. Discovery disclosures are in no way the cause of the backlog in our courts; rather, the backlog is the understandable result of reduced court capacity during two years of a global pandemic. Prosecutors, who have been working under the new world of automatic discovery for two years now, should know how to gather and disclose discovery in a timely manner, and, when it is particularly voluminous, CPL 245.10 gives them a simple mechanism to request more time to fulfill their obligations.

Inexplicably, Mayor Adams nonetheless suggests that in gun cases, if the discovery is particularly voluminous, prosecutors should only be responsible for turning over the evidence that they deem to be important. That is a demeaning infringement of the right to counsel guaranteed to the accused, because the only person who should be deciding what evidence is important to an individual’s defense is the zealous advocate tasked with defending them. Even more confounding, the Mayor asserts that his suggestion is especially apt in cases where a civilian witness is involved. Failing to explain why such situations in particular would create overly burdensome discovery, the Mayor suggests that corners be cut in these instances. Yet, as any defense attorney would attest to, such discovery regarding a civilian witness’s statements or actions is of the utmost importance. The fact that this is where the Mayor thinks it would be appropriate to cut corners is troubling, and lays bare a true intent behind these discovery proposals to simply stack the cards against those charged with gun crimes.

## **VI. Increasing State Penalties for Drug Trafficking**

To crack down on the influx of illegally trafficked weapons in New York, the Mayor proposes raising the state penalties for gun traffickers (Blueprint p. 12). More specifically, Mayor Adams suggests that our penal code is “far too generous to traffickers,” because one must be accused of

selling 10 or more guns in order to be prosecuted by a Class B felony. The Mayor believes that by threshold to 3 guns, future firearms traffickers will be effectively deterred.

This proposal ignores New York State’s class and sentencing structure for gun trafficking, in which anyone alleged to have engaged in the sale of guns is exposed to enormous state prison sentences, regardless of the number of guns involved in the sale, and also seems to be unaware of the outsized role of federal prosecution in these cases.

To be clear, New York Penal Law criminalizes the sale of firearms in four separate offenses<sup>16</sup>, the lowest of which, Criminal Sale of a Firearm in the Third Degree, proscribes the unauthorized sale of even one firearm<sup>17</sup>. This offense is classified as a Class D Violent Felony<sup>18</sup>, and is punishable by *seven years* in state prison.<sup>19</sup>

Even if a drug trafficker were not deterred by such a lengthy state prison sentence, they would also face serious federal charges for firearm trafficking, which, as the Mayor himself acknowledges, carry even harsher sentences. (Blueprint pp. 13). Indeed, in nearly all cases in which the sale of guns is alleged, New York state law enforcement defers to federal agents to pursue prosecution. Thus, the numbers of gun sale prosecutions in our state courts – across all classes of offenses – are incredibly low. Of the thousands of cases to which we were assigned in 2020 and 2021, NYCDS represented one individual charged with the sale of a firearm each year. In fact, the number of prosecutions appears to have declined in recent years, as the number of all gun trafficking cases we handled in 2018 was a whopping three.

## **VII. We Agree: It’s Time to Re-Open the Courts**

The Mayor says he strongly encourages “our defense lawyers, public defenders, legal aids, and ADAs to be back into our courtrooms” (Blueprint pp. 13-14). Public defenders never left the courtroom. On the contrary, it has been us continually advocating for the most robust possible system under the circumstances. On this point NYCDS agrees that every effort must now be made to return to pre-pandemic procedures and levels of functioning. The science supports this, the sanctity of our constitution is at stake, and the well-being of our clients demands it.

## **VIII. The Mayor’s Subway Safety Plan**

I would be remiss if I did not comment on the Mayor’s Subway Safety Plan, released last month. The Mayor proposes tackling homelessness and serious mental illness by deploying more police

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<sup>16</sup> See P.L. 265.11, 265.12, 265.13, and 265.14.

<sup>17</sup> P.L. 265.13.

<sup>18</sup> Id; P.L. 70.02(1)(c).

<sup>19</sup> P.L. 70.02(2).



officers, among others, into our subways and removing street encampments.<sup>20</sup> We have already seen how this new plan is leading to homeless people being roused violently and aggressively by police in subway stations and encampments across the city.<sup>21</sup>

There is a growing national consensus that police should not have a role in mental health response. People in emotional distress account for 25%-50% of all individuals killed by police across the country. There is no amount of training that affords the NYPD a responsible role in mental health response. Nevertheless, the NYPD's budget and role have grown to respond to mental health crisis calls, sometimes with deadly consequences. By removing the NYPD from its dangerous role in mental health response, the city can redirect \$12.4 million to communities by cutting \$6.1 million from the NYPD fiscal year 2022 expense budget and \$6.3 million from the NYPD's centrally-allocated budget. These critical financial resources can be redirected to New Yorkers who experience an emotional or psychiatric crisis and need an actual response rooted in public health and social work principles that actually connect them to the services that they need and deserve. Moreover, it is no secret that low-income neighborhoods of color are both targets of ruthless over-policing and are mental health service deserts. Redirecting responsibility and millions of dollars of dead-end resources that cause more harm than good is what will keep people out of the courtroom- not archaic and punitive policing and criminalization.

Instead, the city should invest more heavily in non-police responses to mental health crises, such as the B-HEARD pilot program launched in 2021. The teams include emergency medical technicians/paramedics from the Fire Department's Medical Services and social workers from NYC Health + Hospitals. Under the pilot, teams operate seven days a week, 16 hours a day in East and Central Harlem. In the first month of the pilot program, 911 operators routed approximately 107 calls. In 95% of the cases, people received assistance. This in comparison to 82% for the traditional NYPD/EMS response. Consequently, fewer B-HEARD clients have been transported to hospitals compared to traditional 911 response teams. This is integral to keeping vulnerable New Yorkers from the hospital to court to Rikers pipeline.

The B-HEARD program is modeled after the successful CAHOOTS (Crisis Assistance Helping Out On The Streets) program in Eugene, Oregon and the STAR (Support Team Assistance Response) program in Denver, Colorado. CAHOOTS operates with teams of two: a crisis intervention worker who is skilled in counseling and de-escalation techniques, and a medic who is either an EMT or a nurse. The program—which now responds to more than 65 calls per day, 24

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<sup>20</sup> Chau Lam, "City's subway safety policy collides with reality as enforcement begins," *Gothamist*, March 4, 2022, available at <https://gothamist.com/news/citys-subway-safety-policy-collides-with-reality-as-enforcement-begins>.

<sup>21</sup> See, e.g., Jaclyn Jeffrey-Wilensky, "Adams says he's kicking homeless New Yorkers out of their encampments. Where will they go?," *Gothamist*, March 26, 2022, available at <https://gothamist.com/news/mayor-adams-removing-homeless-encampments>.

hours per day in two separate cities—has more than quadrupled in size during the past decade due to societal needs and the increasing popularity of the program.<sup>22</sup> The STAR team, operating since June 2020, began with a single van and a two-person team. More than 2700 calls later, STAR is expanding with a new \$1.4 million contract. The program sends unarmed health experts instead of police officers to certain emergency calls. Two-thirds of the people helped last year were experiencing homelessness. Nearly three-quarters of those people had diagnoses of bipolar disorder, schizophrenia, schizoaffective disorder, anxiety or major depression.<sup>23</sup>

If we want to be serious about addressing the city’s mental health and homeless crises, we must invest in mental health treatment, health care and housing. We need more supportive housing units. We need social workers at arraignments who can connect people in crisis with services and treatment. We need to stop relying on police and jails to solve social problems. This solution has failed time and time again. Instead, it is time for New York City to move forward. We must seriously invest in the resources that make our communities safer and stronger and not those that further marginalize the most vulnerable New Yorkers.

If you have any questions about my testimony, please contact me at [sgerman@nycds.org](mailto:sgerman@nycds.org).

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<sup>22</sup> Ben Adam Climer & Brenton Gicker, “CAHOOTS: A Model for Prehospital Mental Health Crisis Intervention,” *Psychiatric Times*, Jan. 29, 2021, available at <https://www.psychiatrictimes.com/view/cahoots-model-prehospital-mental-health-crisis-intervention>.

<sup>23</sup> Elise Schmelzer, “Thousands of calls later, Denver’s acclaimed program that provides an alternative to police response is expanding,” *Denver Post*, Feb. 20, 2022, available at <https://www.denverpost.com/2022/02/20/denver-star-program-expansion/>.