



# NEW YORK COUNTY DEFENDER SERVICES

Testimony of

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&

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Before the

New York City Council

Committee on Criminal Justice  
Committee on Oversight and Investigations

Joint Oversight Hearing: DOC's Transportation of Detained Individuals to Court

May 30, 2023

We are Joshua White, Trial Attorney, and Celia Joyce, Senior Data Analyst. We work at New York County Defender Services, a public defense office that represents New Yorkers in thousands of cases in Manhattan's Criminal and Supreme Courts every year. Thank you to Councilmembers Rivera and Brewer for holding this joint oversight hearing about the New York City Department of Correction's abysmal record of transporting incarcerated people to court. This is an issue that we see frequently in our practice in Manhattan, which has detrimental consequences for the people we represent. We are grateful for the opportunity to share our experience and expertise with the committees today.

**New York County Defender Services**

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## **I. Introduction**

New York County Defender Services is, first and foremost, a public defense office committed to providing the highest-quality representation to people accused of crimes in Manhattan courts since 1997. An important component of our work is tracking and assessing major issues affecting our clients. NYCDS is now a national leader in data collection and analysis in public defense. In July 2021, the Data Research Unit spearheaded our transition to fully digital operations and a highly customized case management system, which allows us to track hundreds of data points across the lifespan of each case. The Data Research Unit uses internal and publicly available data to inform our practice and influence policy reform.

Today we will share anecdotal evidence of client and staff experiences and data from a survey conducted by the NYCDS Data Research Unit regarding DOC court transportation issues. Together these will demonstrate that DOC persistently fails to fulfill one of its primary duties – ensuring that people are present at their court appearances.

## **II. Transportation Issues in NYC are at a Crisis-Level**

DOC's failure to bring our incarcerated clients to court is not new, but the situation is the worst it has been in more than twenty years, according to DOC's own data. One in four incarcerated people were not brought to court on time at the end of last year.<sup>1</sup>

This data is consistent with what we have heard from our staff and extends beyond issues of court production. Video teleconferences with attorneys and NYCDS staff, psychiatric appointments, and doctors appointments are all routinely missed by clients due to DOC's failure to transport them.

In February of this year, Joshua reported to *Gothamist* about one of his cases. Joshua's client languished unnecessarily on Rikers because he was not brought to court for four hearings to have his bail reduced or removed. Each time, Joshua received no explanation, and the judge refused to reconsider bail without his client present. When Joshua's client was finally transported to court and had his hearing, bail was removed and he was freed.

Another recent example illuminates the logistical chaos that ensues when a person is not transported to their court appearances. In April, an incarcerated NYCDS client was slated to be accepted into Manhattan Drug Court, released from custody and admitted into a residential treatment program located an hour outside of New York City. Because the individual's release from custody and escort to the program was scheduled to occur at the person's court appearance,

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<sup>1</sup> Matt Katz, "1 in 4 people jailed in NYC are not being brought to court on time," *Gothamist*, Feb. 20, 2023, available at <https://gothamist.com/news/1-in-4-people-jailed-in-nyc-are-not-being-brought-to-court-on-time>.

the defense counsel and court staff coordinated with the treatment program to ensure that a program escort would be in attendance. Unfortunately, the Department of Correction failed to bring our client to this important court appearance. The court then rescheduled the appearance for later in the week, and defense counsel, court staff and the treatment provider once again coordinated to ensure an escort would be available to provide transportation to the upstate program. At this second court appearance, once again, the Department of Correction failed to bring the individual to court. The court again rescheduled the court appearance for the following week, but by this point, the program could no longer hold the person's spot (AKA "bed") at the facility. The defense counsel, program and court were forced to scramble to find a new treatment placement. Fortunately, at the last minute, another bed in the same facility became available, and the person was able to enter the treatment facility at the next appearance, when the Department of Correction, on the third try, finally succeeded in bringing the person to court.

Delays are even more common. As Joshua shared in the article, even when our clients are woken up before daybreak and taken to one of the borough courthouses, they don't always make it to their hearings or trials. Often, we learn that our clients are brought to the wrong court building and are told that it is too logistically complicated to arrange their transport to the correct courthouse. Sometimes, even when our clients are in the correct court building, it still can take several hours for them to be brought to the appropriate courtroom.<sup>2</sup>

When a client is not brought to court on their court date, a common refrain from DOC is that "the client refused production." This is belied by our experience. On at least one occasion, the court was informed that a client "refused production," only for them to appear in the courtroom 30 minutes later. This calls into question the credibility of DOC's claims of clients refusing to be transported. Our clients' own accounting further undermines DOC's credibility. Many times, clients report that they did not in fact refuse transport to court. When clients do "refuse," follow-up conversations with them often reveal that the "refusal" was really due to inaccurate communication from DOC staff. To illustrate: clients will report that DOC staff will come to get them and tell them they are bringing them to court, when, for example, the client knows they actually have a medical appointment that day. Under such miscommunications, the clients will "refuse" production, not wanting to miss the event for which they are actually scheduled.

The following are additional stories shared by attorneys and social workers in our office (lightly edited for clarity):

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<sup>2</sup> *Id.*

### Court Transportation

- “My client was supposed to be transported to Part 92 to be released to a drug program. The client was housed at GRVC on Rikers and has been requesting MH counseling and medication. He was not produced on two successive court dates in April 2023.”
- “An issue I see is that a client would be transported to 100 Centre, but not produced at 111 Centre St. That happened for one of my clients on at least three occasions.”
- “Clients have been produced but not brought to the courtroom. Courts often assume clients must have refused when not produced, even when there's no proof or indication of such.”

### Video Conferences

- “DOC produced a person with a different spelling of the same last name for a scheduled video conference: the wrong person! Then they had me wait almost an hour to get the right client. I needed to schedule a whole new video conference.”
- “I have had a client since January who I have requested five separate video conferences with in a span of four months. Each one has either been canceled due to an alarm or because DOC could not escort the client to the booth.”

These stories are only one part of the narrative. The data helps to show the broader scope of this issue.

### **III. The Survey**

Over the past two weeks, NYCDS surveyed attorneys, social workers, and corrections specialists on their experiences with DOC’s transportation of incarcerated clients. The results of our survey support the aforementioned anecdotes and are aligned with the Mayor’s Management Report<sup>3</sup>, which details DOC’s under-performance in transporting individuals in custody to court. Our survey shows that DOC transportation of incarcerated clients to court remains a significant problem and highlights the inability and negligence of DOC in fulfilling our clients right to be present at and fully informed for their court appearances.

On average, NYCDS represents between 260-300 clients who are in DOC custody.<sup>4</sup> The majority of our attorney respondents reported having between one and three court appearances with

<sup>3</sup> NYC Dept. of Correction, *Preliminary Mayor’s Management Report* (2023), available at <https://www.nyc.gov/assets/operations/downloads/pdf/pmmr2023/doc.pdf>.

<sup>4</sup> On May 17, 2023, for example, we represented 265 incarcerated clients.

incarcerated clients each week. We estimate that NYCDS relies on DOC to transport as many as 174 of our clients to court any given week. 55% of our attorney respondents stated that, on at least one occasion in the past two months, a client missed their court date because they were not on the DOC production list. The prevalence of this problem emphasizes the archaic and error-prone nature of the paper-based system DOC uses to transport our clients to their court appearances.

Even more troublesome is the DOC practice of falsifying client refusals to be transported to court. 66% of our attorney respondents report that, in the past two months, at least one of their clients has disputed an alleged refusal to be transported for a court appearance. DOC will often claim a client refused transportation without providing copies of the required documentation, or will provide refusal paperwork stating that our client “refused to sign” without including any additional information. We estimate that clients dispute over 60% of the court transportation refusals reported by DOC.

These transportation issues also interfere with the ability of our incarcerated clients’ to meet with their defense teams via video teleconference. Our staff estimate that as of May 2023, clients in DOC custody miss over 20% of their scheduled video conferences. 60% of staff respondents stated that, on at least one occasion in the past two months, DOC staff were unavailable to escort the client to a video conference. 49% indicated that, in the past two months, at least one of their clients has disputed an alleged refusal to be transported to a video conference. We estimate that clients dispute over 66% of the video conference refusals reported by DOC. When a client is moved to a new jail facility, and there is an alarm, alleged refusal, or insufficient jail escorts, it often takes our staff up to a month to successfully videoconference them.

Not only does the inability of DOC to implement a functional transport system impede court proceedings, it fundamentally endangers the well-being of our clients. It is known that incarceration can have lasting effects on one’s physical and mental health<sup>5,6</sup>, making it critical that incarcerated individuals promptly receive necessary medical and mental health attention. 42% of surveyed staff report issues with DOC transportation of incarcerated clients to medical appointments, 40% of respondents report issues with the transportation of clients to mental health appointments, and 32% report issues with transportation to psychological evaluations.

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<sup>5</sup> Alicia Piper & David Berle, *The association between trauma experienced during incarceration and PTSD outcomes: A systematic review and meta-analysis*, 30 THE JOURNAL OF FORENSIC PSYCHIATRY & PSYCHOLOGY 854–875 (2019).

<sup>6</sup> Michael Massoglia & Brianna Remster, *Linkages between incarceration and health*, 134 PUBLIC HEALTH REPORTS (2019).

#### **IV. What this Means for Our Clients**

DOC's inability to consistently and reliably transport people who are incarcerated to their court dates has an impact on our clients far beyond the inconvenience it causes. This failure results in infringements on our client's constitutional rights, their prolonged detention in the human rights disaster that is Rikers Island, and potentially permanent harm to their physical and mental health.

Every time that DOC fails to transport a client for court, a video conference, or any other important event, the ultimate trajectory of their case, and therefore their detention, is prolonged. For example, when a potential plea deal is held in abeyance until a psychological evaluation can be conducted, and DOC fails to bring the client to the evaluation three times, that client's potential plea deal and release is delayed for weeks, if not months. When a client has been accepted into a program as an alternative to incarceration, but DOC fails to bring the client on the date scheduled for their release, that results in the client remaining in Rikers and serving more jail time than all of the parties have agreed upon. When DOC fails to bring an individual to their doctor's appointments or mental health treatment sessions, whether because they are ill, injured, in pain, or in mental or emotional distress, that individual is not able to meaningfully participate in their own defense, potentially prolonging their case even more.

When DOC covers their failures to transport individuals to court with a false claim of “refusal,” there is a direct impact on our clients beyond case delay. Courts will hold an alleged “refusal” against our clients, seeing it as an instance of obstinance or evasiveness. This is incredibly harmful: when, for example, a court is making a decision about bail or about sentencing, such information will certainly influence a judge’s decision-making process. The fact that DOC is so quick to mislabel any failure on their end as a refusal on the client’s end actually has serious consequences for our clients in their court cases.

Moreover, these failures result in actual infringements on our clients' constitutional rights, such as the right to counsel. Many lawyers and clients rely on DOC to facilitate the most meaningful forms of communication: video conferences and face-to-face meetings on court dates. Yet, when these forms of communication are stymied by DOC's inconsistent and unreliable ability to actually transport individuals to the video booth or the courthouse, our clients' right to counsel is severely infringed.

All of this is unconscionable and a stain on our criminal legal system. The Council must act to make certain that DOC fulfills their duty to bring people to court and other mandated appointments to ensure a swift resolution of their criminal case and to guarantee protection of their constitutional rights.

## V. Legislation

NYCDS strongly supports ***T2023-3624*** - *A Local Law to amend the administrative code of the city of New York, in relation to recording alleged refusals to attend court appearances, the appointment of a court production liaison, and reporting on court appearance transportation.* The bill is currently sponsored by Chairs Rivera and Brewer. We urge the other members of this committee to co-sponsor this legislation.

We estimate that NYCDS clients dispute over 60% of the court transportation refusals reported by DOC. DOC will often claim a client refused transportation without providing copies of the required documentation, or will provide refusal paperwork stating that our client “refused to sign” without including any additional information. DOC must be required to record a comprehensive discussion with the detainee as to precisely where they are going to be transported and if and why they are refusing transportation. This recording should include precise details of what proceeding the detained person is allegedly being transported to.

We especially appreciate language in the bill that requires DOC to turn over the video file of the alleged refusal to the individual’s defense attorney within 7 business days of a written request. It is crucial that defenders have prompt access to the video so that we can litigate alleged refusals expeditiously.

Finally, we would like to see in the law some language to ensure that the entire “refusal” conversation is recorded, not just a “no” at the end. Our concern, based on our experience, is that if DOC is given any deference to determine the length of the recording, rather than being required to record the entire interaction, then they will use that discretion to report facts in ways that harm our clients or are not accurate.

## VI. Conclusion

State law is clear - the only reason that judges may set bail is to ensure a person’s return to court. The great hypocrisy of our criminal legal system is that DOC is so bad at bringing people to court that only 72.2% of those detained in city jails from September through December last year were brought to court on time. They must be made to do better.

Questions about our testimony? Please email [policy@nycds.org](mailto:policy@nycds.org).



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NYCDS Survey on DOC's Transportation of  
Detained Individuals to Court Appearances and Video Conferences

May 30, 2023

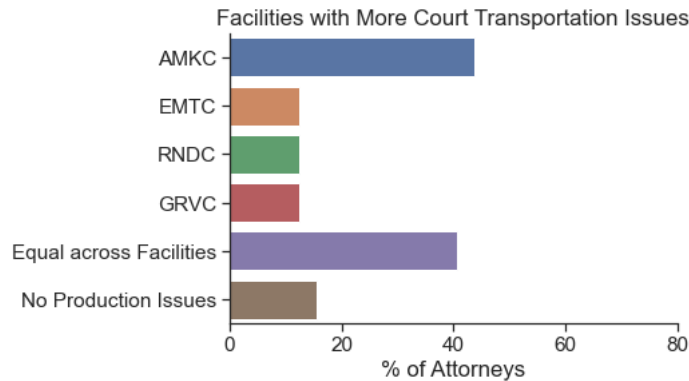
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**Do specific jail facilities have more court transportation issues than others?**

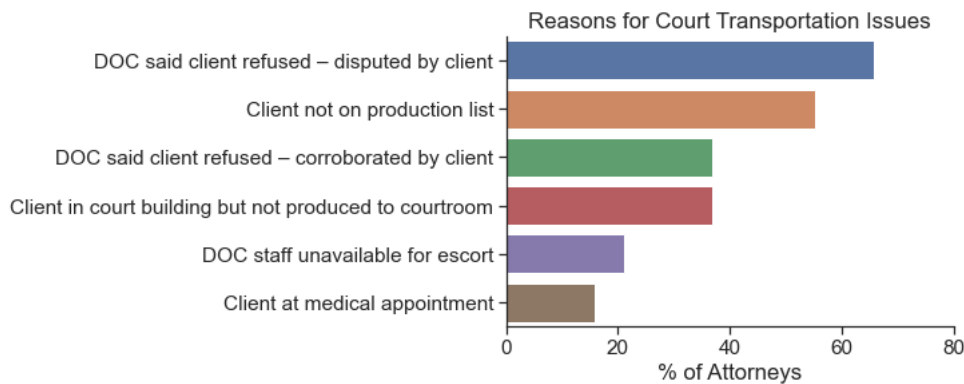
When asked which jail facilities consistently had more court transportation issues, 44% of attorneys said AMKC.



**Why are clients not successfully transported to court appearances?**

66% of attorneys report that, on at least one occasion in the past two months, a client claimed that DOC falsified their refusal for transportation to a court appearance. Attorneys estimate that clients dispute over 60% of the court transportation refusals cited by DOC.

55% of attorneys report that, on at least one occasion in the past two months, they were informed that a client was not transported to a court appearance because the client was not on the DOC production list.

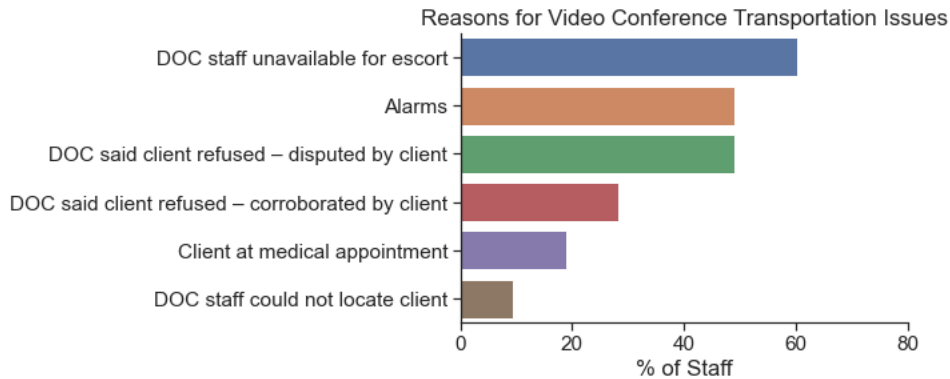




**Why are clients not transported to scheduled video conferences?**

60% of respondents report that, on a least one occasion in the past two months, DOC staff were unavailable to escort the client to a video conference.

49% of respondents report that, on at least one occasion in the past two months, a client has claimed that DOC falsified their refusal for transportation to a video conference. Respondents estimate that clients dispute 67% of video conference refusals cited by DOC.



**Section 3: DOC Transportation of Incarcerated NYCDS clients to Health Appointments**

*Responses represent attorneys, social workers, and correction specialists*

**Are incarcerated clients successfully transported to medical and mental health appointments?**

42% of NYCDS staff report issues with the transportation of incarcerated clients to medical appointments.

40% of NYCDS staff report issues with the transportation of incarcerated clients to mental health appointments.

