

**New York City Council  
Committee on Criminal Justice**

**Re: Oversight- The Conditions in Our City's Jails  
September 15, 2021**

**Written Testimony of The Bronx Defenders**

**By Julia Solomons, Orayne Williams, Tahanee Dunn, and Martha Grieco**

**I. Introduction**

Chair Powers and Committee Members, my name is Julia Solomons and I am a Senior Policy Social Worker at The Bronx Defenders.<sup>1</sup> I first want to thank you for your dedication to this important issue. The state of our City's jails right now is nothing less than a crisis. The City must act before more lives are lost.

The Board of Correction (BOC), the Commissioner of the Department of Correction (DOC), Correctional Health Services (CHS), many major media outlets, and advocates have all publicly stated, in no uncertain terms, that conditions on Rikers Island constitute a humanitarian crisis. People in custody are dying, with 10 deaths already reported this year. Every new admission into custody is an additional life at risk of great harm and death. Rates of self-harm have increased dramatically,<sup>2</sup> COVID cases are rising again,<sup>3</sup> and the staffing crisis in the facilities has led to inhumane levels of neglect and abuse. The *Nunez* monitor's most recent letter to Southern District Judge Laura Swain very clearly attributes continuing deterioration of the jails' conditions

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<sup>1</sup> The Bronx Defenders is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement.

Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called *holistic defense* that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

<sup>2</sup> <https://gothamist.com/news/self-harm-exploding-new-york-city-jails-internal-numbers-show-rikers>

<sup>3</sup> <https://hhinternet.blob.core.windows.net/uploads/2021/09/CHS-COVID-19-data-snapshot-20210902.pdf>

to years of mismanagement, poor supervision, and failing to hold staff accountable on the part of DOC leadership,<sup>4</sup> and is now fueled by hundreds of correctional staff going AWOL.

In the FY 2021-2022 budget, the City chose to allot more funding to DOC to hire 400 additional officers, but it has become abundantly clear that investing in an abusive, mismanaged, and corrupt system does absolutely nothing to protect the lives of those incarcerated in the facilities, or the lives of those working there. Continuing to further bloat the DOC budget and add staff to a system where absenteeism has been an ongoing problem for decades will only exacerbate the egregious conditions in our city jails. We strongly encourage the City to invest in resources that uplift the communities most impacted by the current crisis on Rikers Island, and shift focus from punishment and neglect to care and support.

We share with you some of the most gut-wrenching examples of the tortuous conditions our clients have experienced recently in the jail facilities to illustrate that this is no longer about fixing a broken system: it is time for transformation and real, lasting change. We ask the City Council to truly listen to these stories and consider offering new solutions, such as:

- **Pass legislation that truly ends solitary confinement and restrictive housing in all jail facilities, focusing instead on programming and rehabilitation;**
- **Directly call on District Attorneys and Criminal Court judges to decarcerate, and facilitate DOC and CHS involvement in this process; and**
- **Invest in emergency and transitional housing and other resources that support decarceration efforts.**

Our city jails have been crumbling, literally and figuratively, for decades. Over the past 18 months, the global pandemic has sped up that deterioration to a point where having bail set in a criminal case is very possibly a death sentence, and yet the jail population continues to increase. The City must intervene immediately and correct the failures of the carceral and criminal legal systems.

**I. Pass legislation that truly ends solitary confinement and restrictive housing in all jail facilities, focusing instead on programming and rehabilitation**

This past June, after over a year of public hearings and deliberation, the Board of Correction published their final restrictive housing rule. The rule, while making progress in certain areas such as access to counsel in disciplinary proceedings, fell far short of transformative change for people in custody. It simply recreated solitary confinement under a different name, denying people in custody even the basic rights afforded to them by the HALT Solitary Confinement Act passed by the State Legislature this spring. The rule creates new restrictive units, called RMAS, that DOC has already begun operating unofficially and that have already caused great harm to many of our clients. Coupled with the pandemic and the staffing absenteeism crisis, levels of

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<sup>4</sup> <http://tillidgroup.com/wp-content/uploads/2021/08/2021-08-24-Letter-to-Court-re-Conditions-FINAL.pdf>

neglect and violence have escalated to alarming levels. People are being denied their very basic needs such as food, access to the outside, and access to their legal team, and denial of those necessities is worse the more restrictive the setting a person is in.

Our young client “M” has been housed in some form of restrictive housing for the large majority of his incarceration, including “unofficial” restrictive housing units at the Northern Infirmary Command (NIC). These “unofficial” units isolate people in cages indefinitely with no congregate programming or human contact other than the ability to speak to other people in custody through a fence. His legal team explains that while he has struggled throughout, they have “never heard him afraid like this.” Not only has he been denied food and showers for days at a time, not been brought to court for several appearances and not produced for video conferences with his attorneys, but his life has been put intentionally at risk by correctional officers. He described how the officers abuse the systems of isolation and punishment that currently exist to exacerbate violence and threats to the safety of everyone. They have most recently created unsanctioned units called CMUs, where they intentionally mix people with different security classifications and affiliations, in direct conflict with safety protocols that DOC has established and claims to follow. Many of our clients have explained that this unsanctioned practice by the officers allows them to fuel violence among the people in custody as a way of protecting themselves, and that this practice is especially common within restrictive units.

M observed six stabbings within one week in one secure unit, and described his environment as “blood everywhere.” Officers have taunted and pushed him to engage in violence with other people in custody in exchange for their favor and positive regard. This young person is a perfect example of someone who the Correctional Officers Benevolent Association (COBA) would paint as violent and dangerous, but in actuality he is just a child—a child subject to torturous conditions, denial of his basic needs, and acute and ongoing isolation with no access to his family or community, basic education, or any type of supportive programming.

Council Member Dromm has introduced Int No 2173, which aims to mandate true out of cell time and access to meaningful programming for everyone in custody. It is an important bill, but in order to accomplish its goals, it requires amending before being passed. **City Council must amend and pass Int No 2173 to** ensure all people in city jails, including in alternatives to solitary, are afforded the existing minimum standard of 14 hours daily out of cell, and that **out-of-cell time and programming actually take place outside a cell, with other people in a group setting** and shared space conducive to meaningful human interactions. Amending and passing this bill is long overdue, fully in the Council’s control and must happen now. While the passage of Int No 2173 wouldn’t fully alleviate M’s suffering, it would signify a shift towards viewing him as an adolescent who needs meaningful engagement with peers and mentors, access to education and intellectual stimulation, and to be treated with dignity and basic respect in order to become the person he has every right and all the potential to become.

## **II. Directly call on District Attorneys and Criminal Court Judges to decarcerate, and facilitate DOC and CHS involvement in this process**

Despite the media coverage of the crisis at Rikers, BOC statements calling for decarceration, and the tireless pleas of advocates begging District Attorneys and judges to allow their clients to remain at liberty, approximately 300 new people are being sent to Rikers island every week<sup>5</sup>. District attorneys continue to ask for bail amounts that our clients cannot pay, and judges continue to deny the reality of the conditions in the jails. One judge in the Bronx asked if the person they were arraigning was vaccinated for COVID-19, reasoning that if they were vaccinated they would be safe in jail and if they were not, then any risk to their safety was their own responsibility. Though the Commissioner has said that he plans to speak with judges and District Attorneys to further efforts to “depopulate” the jails, the disconnect between the reality of those living the horrors of Rikers and those with the power to keep people out or release them from jail remains, impacting the lives of thousands of people.

The conditions at the Otis Bantum Correctional Center (OBCC), particularly in the intake unit, are a clear example of the urgent necessity to decarcerate for the sake of the safety of those in custody. Countless clients of The Bronx Defenders have shared horror stories about their experiences there—people spending so long without any medical attention that their withdrawal from substances becomes life-threatening and they are reliant on other people in custody to keep them alive; 25 people crammed together in a tiny cell; sleeping on the floor for weeks; and witnessing the suicide of 25 year old who had his entire life ahead of him.

The words of these clients and their advocates, however, has not been enough to move judges. Bail applications based on horrendous conditions continue to be largely unsuccessful. One client was beaten so severely while in intake at OBCC that his eye was swollen shut, and because he never received any medical attention, he was brought to his court appearance a few days later still wearing the same shirt covered in crusted, dried blood. **The best the judge could offer was the opportunity for his advocate to document the injuries with photos before he was sent back to the exact same conditions.** Another client’s entire cell was pepper sprayed. He received no medical attention and no food, and was sent back after his court date, only to be moved to another unit within the facility where there has been no correctional officer for several weeks. Several people on his unit tested positive for COVID-19 but without any officer to manage movement. The dorm remains mixed with positive and negative individuals with no way to protect themselves.

It is the City’s responsibility to do what is necessary to keep people safe, which, as stated very clearly by the BOC,<sup>6</sup> is to reduce the jail population immediately. The City Council, in partnership with the Mayor’s Office, must do more to facilitate the direct communication between DOC, CHS, and court actors necessary to decarcerate the jails. When defenders made bail applications and submitted writs to ask for clients’ release at the beginning of the pandemic, DOC submitted affidavits claiming that the conditions were being managed and that people in custody were safe. At this juncture, when that is now indisputably no longer the case, DOC and CHS must be directed by the Mayor, unless and until legislation is passed that creates a legal

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<sup>5</sup> <https://greaterjusticenyc.org/nycjail/>

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<https://www1.nyc.gov/assets/boc/downloads/pdf/News/board-statement-on-recent-suicides-in-the-new-york-city-jails-20210901.pdf>

mandate, to do everything they can to communicate that clearly and transparently, directly to court actors. **The DOC Commissioner must be directed by the Mayor to brief the five New York City District Attorneys, as well as Chief Administrative Judges, on the conditions at each individual facility, providing updated information on a regular basis and urging increased scrutiny of bail request and bail setting practices and other judicial and prosecutorial actions that lead to an increased jail population. Additionally, CHS must be required to provide detailed letters to the court regarding any mental or medical health risks for each individual in custody, alongside any documentation of requests for medical attention.**

Without the pointed communication and involvement of DOC and CHS, judicial and prosecutorial practices contributing to the rising jail population will not change, and that communication will not happen unless they are required by the City to do so.

### **III. Invest in emergency and transitional housing and other resources that support decarceration efforts**

While addressing the conditions for those who remain inside is critical, investment in community resources that support people upon release is equally important, and has been proven to contribute not only to getting people released from jail, but also keeping them from ending up back inside the facility walls.

Our clients' reports have made one thing abundantly clear about the state of our city jails right now—basic needs, not only for everyday survival but also medical and mental health, are not being met. While this is inhumane and unacceptable across the board, for our most vulnerable clients, it is actually causing lifelong and permanent damage. If they were to be released, and subsequently able to have their needs met in the community, it could mean a very different outcome for their lives, and in some cases that outcome hinges upon what resources are available to them in the community.

One Bronx Defenders' client went into custody already navigating severe medical needs including bullet wounds after having been shot by the police. Despite being housed in the Northern Infirmity Command, he went weeks upon intake without medical attention to his wounds or other medical needs, even with repeated requests from his advocates. Bail applications made to the court for his release were unsuccessful, and he continued to languish without care until very recently the nerve damage from the bullet wounds became so severe that he risked losing his entire arm unless a finger was amputated. **He lost this finger and is being told he may lose another one in the near future, simply because the jail was unable to respond to his medical needs.**

This client is only one of many who have been denied care, many waiting weeks and months to receive medications that are critical to their stability, both physical and mental. While historically the jail system has always been unable to meet the needs of our most vulnerable clients with complex needs, at this juncture they are unable to provide even the most basic levels of support

to address the most immediate needs. **The care systems within the facilities are beyond repair, and the most important thing the City can do right now is to invest in community resources that facilitate people’s release.**

One concrete example of this type of investment, proven to be successful, is the creation of the Exodus-run hotels overseen by the Mayor’s Office of Criminal Justice (MOCJ). This initiative has not only reduced the jail population by supporting defenders’ release efforts, but has also provided our clients with critical support upon release to which they would never have had access in a shelter. This resource has offered judges and prosecutors the assurance they need to grant release for some of our most vulnerable clients, especially clients with more complex mental health or substance use needs who may be otherwise barred from traditional residential programming, either based on level of need or charge exclusions. Exodus has provided wraparound support, addressing not only the most immediate need of housing, but also providing critical case management support in connecting clients to the medical, mental health, and vocational supports that they need to maintain stability in the community. The overwhelming prevalence of homelessness, poverty, and unemployment among formerly incarcerated people is the strongest predictor for people cycling back through the criminal legal system. The support that Exodus Transitional Community provides our clients is a breath of fresh air for many — providing resources and support to achieve critical personal goals, which, in turn, positively impacts the outcomes of legal cases, as well as community health and safety.

As of now, however, the six operational hotels are consistently at capacity, and the contract is set to expire in December. If these transitional supports are taken away, it will likely lead to more individuals remaining incarcerated for the duration of their case simply because they do not have a safe and stable place to live or the community support that is needed to coordinate the specialized care they need for their individual substance use services, mental health care, or reentry plans.

MOCJ has championed the idea of “smaller, safer, fairer” city jails, and the City has committed to reducing the jail population to 3,300 by 2026, and yet, currently, there is nothing small, safe, or fair about the state of our city jails. **Investing in community resources that have proven to increase releases is a concrete way to reduce the jail population, and to do so safely, in a way that offers people what they need to be successful in the community.**

#### **IV. Conclusion**

The time for long-term mitigation measures such as training for correctional officers or the establishment of working groups to address culture change within the jails has passed. This crisis is too acute, too many lives have already been lost, and an immediate and transformative

response from the City is already overdue. Justice-involved New Yorkers deserve far better than this; they deserve basic safety and care, to be treated with dignity and respect, and they deserve the City's true investment in their wellness and stability. City Council must act to pass legislation that immediately ends restrictive housing, create actionable steps towards decarceration, and make true investments in community resources that facilitate decarceration and a supportive reentry.

Thank you for your time and attention to these important issues.