

**New York State Assembly
Standing Committee on Correction**

**Re: Conditions at the Rikers Island Correctional Facility and Other Facilities of the New
York City Department of Correction
October 1, 2021**

**Written Testimony of The Bronx Defenders
By Ann Mathews, Managing Director of the Criminal Defense Practice**

I. Introduction

Chair Weprin and Committee Members, my name is Ann Mathews and I am the Managing Director of the Criminal Defense Practice at The Bronx Defenders.¹ I first want to thank you for your attention to this important issue. What is happening in the New York City jails is nothing short of a humanitarian catastrophe and a moral stain on New York. The courts, District Attorneys, and elected officials at every level of government must act before more lives are lost.

Just two weeks ago, Assembly Members and other elected officials bore witness to the horrific and unconscionable conditions at Rikers Island: people crammed together in “standing room only” cells; shower stalls used as housing areas; garbage, bugs, and feces strewn across the floor; plastic bags used as toilets; people begging for help. That is Rikers Island. It is unconscionable. It is inexcusable. It cannot be tolerated.

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

¹ 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.

stated, in no uncertain terms, that conditions on Rikers Island constitute a humanitarian crisis. Dr. Ross MacDonald, Chief Medical Officer for Correctional Health Services (CHS) was so disturbed and alarmed by the rapidly deteriorating conditions that he wrote to the New York City Council begging the City to request state and federal assistance immediately to address a situation that the City clearly does not have under control. He wrote, “Unfortunately, in 2021 we have witnessed a collapse in basic jail operations, such that today I do not believe the City is capable of safely managing the custody of those it is charged with incarcerating in its jails, nor maintaining the safety of those who work there.”² People in custody are dying, with 12 deaths already reported this year. Every new admission into custody is a potential death sentence: rates of self-harm have increased dramatically;³ COVID cases are rising again;⁴ and the staff absenteeism crisis in the facilities has led to escalating and truly alarming levels of neglect, violence, and abuse. People are being denied basic needs such as food, access to the outside, and access to their legal team. The *Nunez* monitor’s most recent letter to Southern District Judge Laura Swain attributes continuing deterioration of the jails’ conditions to years of mismanagement, poor supervision, and failing to hold staff accountable on the part of DOC leadership,⁵ and is now fueled by hundreds of correctional staff going AWOL.

The City and State must use every tool at their disposal to decarcerate city jails immediately and invest in resources that uplift the communities most impacted by the current crisis on Rikers Island, shifting the focus from punishment and neglect to care and support. Current conditions in city jails put people in constant and imminent risk of harm and fatally undermine basic tenets of due process. We specifically urge the Legislature to:

- **Call on District Attorneys and the Courts to do everything in their power to decarcerate city jails immediately; and**
- **Advance decarceratory legislation and invest in resources that strengthen communities most impacted by this crisis.**

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 can be a death sentence. Yet, the jail population continues to increase. We must move past talk of “fixing a broken system”; it is time for real transformation and lasting change.

I. Current conditions in city jails put people in constant and imminent risk of harm and fatally undermine basic tenets of due process

²<https://www.ny1.com/nyc/all-boroughs/politics/2021/09/11/rikers-island-chief-jails-medical-officer-says-nyc-cannot-safely-manage-it>

³ <https://gothamist.com/news/self-harm-exploding-new-york-city-jails-internal-numbers-show-rikers>

⁴ <https://hhinternet.blob.core.windows.net/uploads/2021/09/CHS-COVID-19-data-snapshot-20210902.pdf>

⁵ <http://tillidgroup.com/wp-content/uploads/2021/08/2021-08-24-Letter-to-Court-re-Conditions-FINAL.pdf>

The current conditions at Rikers Island have a direct and immediate impact on our clients. These conditions include not only abhorrent living conditions, but also exposure to COVID-19 risks, violence, and lack of meaningful access to medical care and other vital services. The conditions at the Otis Bantum Correctional Center (OBCC), particularly in the intake unit, make clear the urgent necessity to decarcerate for the sake of the safety of those in custody. Numerous BxD clients have shared horror stories about their experiences there: spending so long without any medical attention that their substance withdrawal becomes life-threatening and being forced to rely on other people in custody to stay alive; 25 people crammed together in a tiny cell; sleeping on the floor for weeks; and witnessing the suicide of a 25-yearold young man who had his entire life ahead of him.

Another young client, “M,” has been housed in some form of restrictive housing for the 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.” He has 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, and correctional officers have intentionally put his life at risk. He described how correctional officers abuse the systems of isolation and punishment that currently exist to exacerbate violence and safety threats for everyone. DOC recently created unsanctioned units called CMUs, where people with different security classifications and affiliations are intentionally mixed, in direct conflict with established safety protocols that DOC 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.

It is in this context that 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 person 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.

Yet another BxD client went into custody with severe medical needs, including bullet wounds he received after having been shot by the police. Despite being housed in the NIC, he went weeks without medical attention, even after repeated requests from his advocates. Bail applications made to the court for his release were unsuccessful, and he continued to languish without care until 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 has been told he may lose another 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, waiting weeks and months to receive medications that are critical to their stability, both physical and mental.

The current conditions at Rikers Island also wholly undermine any meaningful notion of due process. Our clients are denied meaningful access to counsel: DOC routinely fails to bring clients to both in-person and virtual court appearances and regularly fails to bring clients to counsel visits.

Attorneys consistently wait for hours on end at Rikers Island, only to be told that DOC will be unable to bring a client to a counsel visit. The inability of the defense team to meet regularly with clients not only deprives clients of their right to counsel but also threatens to bring the system to a halt. The system simply cannot possibly function when our clients cannot meet with counsel and when they are not even brought to court to participate in their defense. Each delay, each missed court appearance adds to the crisis, creating a cruel bottleneck that prevents case dispositions, increases the number of people detained on Rikers Island, and prolongs detention in deplorable and life-threatening conditions. It is untenable. It is unconstitutional. It is inhumane.

II. Call on District Attorneys and the Courts to do everything in their power to decarcerate city jails immediately

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 250 to 300 new people are being sent to Rikers island every week.⁶ 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. 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 has had deadly consequences.

The words of our clients and their advocates, however, have 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. 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 judge merely offered his advocate the opportunity to document the injuries with a camera 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.

There is no doubt that what is happening at Rikers Island is unconscionable. There is no doubt that what is happening at Rikers Island constitutes a grave threat to those confined there. This moment demands immediate action. The solution is plain: prosecutors and judges must stop ignoring the commands of the 2019 bail reform and requesting and setting unaffordable bail. Judges and prosecutors hold the keys to ending this humanitarian crisis. We implore the Legislature to do everything possible to urge those with the power to decarcerate—prosecutors and judges—to use that power and to use it now. There is no time to wait.

⁶ <https://greaterjusticenyc.org/nycjail/>

III. Advance decarceratory legislation and invest in resources that strength communities most impacted by this crisis

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 permanent, lifelong damage. 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.

The State must dedicate more resources to reentry housing and support services, and remove barriers to release and services for our most vulnerable clients, such as people with more complex mental health or substance use needs, those facing certain criminal charges, or non-citizens. Immediate, barrier-free housing and wraparound support services to connect people to the medical, mental health, and vocational supports they need are imperative to facilitating decarceration and safe reentry. 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.

One concrete proven example of this type of investment is the reentry hotels run by Exodus Transitional Community (Exodus) and 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. It has offered judges and prosecutors the assurance they need to grant release for some of our most vulnerable clients, and the support that Exodus provides our clients is a breath of fresh air for many — providing concrete resources such as food and cell phone access, as well as support to achieve critical personal goals. This wraparound support positively impacts the outcomes of legal cases, and more importantly improves overall community health and safety. This model demonstrates that dedicating resources to the stabilization and support of justice-involved individuals upon release from jail and prison statewide is both an immediate decarceration tool and a long-term investment in communities most impacted by mass incarceration.

We also call on the Legislature to pass the Treatment Not Jail Act (S. 2881/A. 6603), sponsored by Assembly Member Hevesi and Senator Ramos, which would divert the most vulnerable New Yorkers from the city jails and expand access to critical mental health and substance use treatment. Part of the Justice Roadmap—a legislative platform that seeks to address the criminalization of immigrants and Black and brown communities—Treatment Not Jail not only shifts the presumption away from punishment and torture by incarceration to community support, but also seeks to correct racial inequities that have plagued the criminal legal system since its inception. Jails and prisons have become our state's default response to those struggling with substance use and mental health challenges, as well as neurological, intellectual, and other disabilities. Treatment Not Jail would ensure that New Yorkers with disabilities and other health related challenges are provided an opportunity to obtain the treatment they need.

While the jail system has always been unable to meet the needs of our most vulnerable clients

with complex needs, at this juncture it is 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 and State can do right now is to invest in community resources and legislation that facilitates diversion and release from city jails. We urge the Assembly to take immediate action. These investments in your most vulnerable constituents not only reduce the jail population, but do so safely, in a way that offers people what they need to be successful in the community.**⁷

IV. Conclusion

The time for 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 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 true investment in their wellness and stability. We urge the State to do all within its power to effectuate actionable steps towards decarceration and true investments in community resources that facilitate decarceration and a supportive reentry.

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

⁷ In the FY 2021-2022 budget, the City chose instead 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.