



Testimony of

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Before the

Board of Correction Hearing

May 12, 2020

My name is Brad Maurer. I am a trial attorney in the DNA & Forensics Unit at New York County Defender Services. I wish to comment today on the urgent need for COVID-19 data transparency in the New York City jails.

The city's jails have been mired in a massive health crisis for several weeks now. Let us assume for a moment that everyone making decisions about the city jails truly wants to do the best they can to protect the incarcerated people and the health and corrections workers. And let us further assume those decision-makers fully understand that if we allow the virus to spread in the jails, those infections will make their way into our communities, leading to even more unnecessary illness and death.

Jails are not built for social distancing. They are not built to prevent or even reduce the spread of infectious disease. All the stakeholders in New York City's criminal justice system agreed at the outset of this pandemic that reducing the jail population would be critically important to any mitigation efforts. It is the only way to protect those incarcerated or working in the jails, and it's the only way to stop our jails from bringing more infections—and more deaths—into our communities.

But *how much* do we need to reduce the jail population to truly stem the tide of infections? How can we tell if what is being done is actually enough?

From the presentations at this very May 12 Board meeting, one might be tempted to believe that everything is under control now—the jail population is at a 74-year low, after all. But that fact

alone tells us absolutely nothing about whether we are doing enough to contain the spread of the virus in our jails.

In trying to answer this difficult question, every public health agency, every municipality, every country is focusing on the same kinds of data. Some of these data include:

1. *How many new cases are being diagnosed each day?*
2. *How many people are getting sick enough to need ventilators or ICU beds?*
3. *What proportion of tests are coming back positive? Are we testing all the people we should? And how accurate is our test?*
4. *How many people are dying because of the virus?*

The Board of Correction has compiled its daily updates from the data that are apparently available to it. While this is better than nothing, the plain truth is that we are not getting the data we need from DOC and CHS to evaluate any of the most crucial data milestones:

1. ***Regarding daily new cases, DOC has decided to report the “number of currently incarcerated patients with confirmed COVID-19” – regardless of when they were diagnosed.***

This number is not particularly useful. What we need to know is whether more or fewer people are testing positive over time. We know that DOC and/or CHS are capable of reporting that useful data, because they are reporting daily new cases with respect to CHS and DOC workers. And most troubling of all, from CHS’s presentation at this very May 12 Board meeting we know that CHS is actively collecting daily new case data with respect to prisoners—indeed, they are even breaking this data down between holdover prisoners versus new admissions.

Why isn’t this data being reported? This kind of information is crucial for stakeholders in the criminal justice system. Lawmakers, executive officials, defense attorneys seeking release for their clients, prosecutors deciding whether to ask for bail, and judges making bail determinations should all be aware that CHS’s observations seem to confirm what advocates have long argued: each new prisoner brought into our jails adds significant risk of infection to those already imprisoned or working in those jails.

2. ***Regarding hospitalizations, DOC has decided to report the total number of incarcerated persons currently housed at Bellevue Hospital—but they’re obscuring how many incarcerated patients are hospitalized specifically because of the virus.***

Meanwhile, COVID-specific hospitalization data is readily available for New York City at large.

3. ***Regarding testing, DOC has refused to report anything regarding positive vs. negative tests.***

Other jurisdictions' jail systems are readily reporting this information. Some jurisdictions have also tested every prisoner in the jail, with results so staggering they demand action.

Meanwhile, here in New York City we are essentially covering our eyes to avoid having to confront the true scope of the crisis in our jails. As with prisoner daily case data, we now know from CHS's presentation at this very Board meeting that testing data is being collected. Indeed, the Board has apparently sought this information for its public updates. Why isn't it being reported?

There is also essentially zero public information regarding the accuracy rates of the test being administered in our jails, the availability of tests for prisoners and jail staff, or the criteria governing who is being tested. If the jails have such an "aggressive" testing regime, as was stated in the May 12 presentations, why aren't we testing asymptomatic prisoners? At any given time over the past several weeks, there have been hundreds, even thousands of prisoners deemed "likely exposed but asymptomatic." Why aren't we testing them? If the issue is one of testing capacity, that reality should be acknowledged, and the testing results we are getting should be explicitly accompanied by caveats regarding limited testing and unknown accuracy rates.

4. Finally, regarding deaths: we know three people have died while incarcerated due to COVID-19.

What we don't know is how many countless others contracted the virus in jail and then died from it after being released. While compiling data on this question is notoriously difficult, DOC at least should be acknowledging that its death toll very like undercounts the true tally of COVID-19 deaths stemming directly from infections in the jail.

The critical work being undertaken in our jails, by Correctional Health Services in particular, is unfathomably enormous. If the data paint a grim picture of the progress in containing the virus there, such is surely in spite of the heroic efforts of those making enormous sacrifices to care for patients and protect workers and the public. But the public must be told the full truth of what is happening in our jails, and decision-makers must have access to all the most crucial information. As restrictions on activity are lifted, further waves of infection are sure to follow. The most comprehensive and up-to-date public health data from our jails should be readily available to decision-makers and the public at all times.

We therefore call on the Department of Corrections and Correctional Health Services to take all necessary steps to compile and report, on a daily basis, all the fundamentally crucial data that would actually allow the public to determine if what's being done in the jails is working. This should include the data DOC and CHS have already collected but have declined to share. Otherwise, we will be forced to conclude that those making the decisions either cannot or will not do what is necessary to protect us during this unprecedented crisis. If they *cannot* do it, the reasons for that should be understood and acknowledged, and that sobering truth should guide our policy decisions about our jails. If they *will not* do it, then we will know that those in charge are prioritizing hiding information over the health, and indeed the lives, of incarcerated persons, health workers, correctional staff, and the public at large.

If you have any questions, you can reach me at bmaurer@nycds.org.