



September 11, 2020

Cynthia Brann, Commissioner
New York City Department of Correction
75-20 Astoria Blvd.
East Elmhurst, NY 11370

Dr. Patsy Yang, Senior Vice President
Correctional Health Services
NYC Health and Hospitals
125 Worth St.
New York, NY 10013

Jennifer Jones Austin, Chair
Margaret Egan, Executive Director
Members of the Board of Correction
New York City Board of Correction
1 Centre Street, Rm. 2213
New York, NY 10007
SENT VIA EMAIL

Re: DOC and CHS COVID-19 Pandemic Procedures

Dear Commissioner Brann, Senior Vice President Yang, Chair Jones Austin, Executive Director Egan, and Members of the Board:

We are now in the sixth month of the COVID-19 pandemic. Thankfully, New York City (the City) and its jails have seen a reduction in the rate of infection over the past couple of months, making this an ideal time to evaluate the steps that the City and its agencies took to protect its incarcerated population as the gravity of the situation first became evident and what should be done to prevent or at least reduce a second wave of cases.

As public defenders and advocates for incarcerated people, we write to ask you to clarify how CHS and the DOC have revised or supplemented the policies and procedures implemented at the outset of the pandemic to account for changing facts and scientific information acquired over the

course of the last six months about the ways that the virus is transmitted and the measures that are most effective in reducing that transmission, especially in institutional settings. We also seek information about how the Board of Correction (“BOC”) intends to monitor the agencies’ implementation of these policies going forward. To date, the lack of clear information from DOC and CHS, including policies and procedures for testing people in custody and staff, and how incarcerated individuals will be able to quarantined and housed safely as facilities close and the population grows, has given us grave concerns that there have not been adequate preparations for a second wave of cases.

Advocates for the incarcerated, as well as their loved ones and communities, must have sufficient information to evaluate the health and safety risks posed to people in custody. To enable us to do so, we request the following information be made public:

1. Have any additional written procedures or protocols been issued by DOC and/or CHS concerning virus prevention and management since first issuing the DOC COVID-19 Action Plan¹?
2. Specifically, please provide current DOC and CHS policies related to COVID-19 and:
 - a. In-person legal visits and legal videoconference calls;
 - b. In-person family visits and videoconference calls;
 - c. Distribution of, requirements to wear, and monitoring for compliance with Personal Protective Equipment (PPE), including by members of staff;
 - d. Sanitation of spaces where incarcerated people, their advocates or DOC staff are present, including what cleaning supplies are available to persons in custody to clean their living spaces, and the schedule and method for cleaning common areas such as dayrooms and bathrooms;
 - e. Intake policies, including whether all individuals are tested for COVID-19 upon intake, what education /counseling is provided about COVID-19 to individuals upon intake, how testing refusals are documented and the policies and procedures for housing individuals after intake, including those who have refused testing;
 - f. Quarantine policies;
 - g. Actions taken to ensure proper social distancing (for example, assessments of maximum density permitting social distancing in housing units), including how these have been amended or changed in light of the closing of EMTC and recent increases in the jail population;

¹ Available at <https://www1.nyc.gov/site/doc/media/coronavirusap.page>, last visited on September 10, 2020.

- h. Coronavirus testing policies (for both incarcerated people and staff), including both diagnostic and antibody testing, and including persons who are already in custody;
 - i. Access to health care and mental health care;
 - j. Access to programming and education;
 - k. Access to other critical services such as mail, law library and notaries;
 - l. Solitary confinement or other forms of segregated or isolated confinement;
 - m. Any other COVID-19 policies.
3. Does the Board intend to promulgate additional standards, or amend existing standards, to regulate conditions of confinement and correctional health and mental health care for future pandemics or other health emergencies²?
4. What is the Board doing to ensure that DOC and CHS are following their own policies and procedures as the pandemic continues? What mechanisms for enforcement are in place if they do not comply?

Our offices have sought information on many of these policies over the course of the pandemic through FOIL, public calls for transparency, and direct requests to the agencies. The responses we have received have been insufficient to ensure the health and safety of our clients and, in some instances, our FOIL requests have gone unanswered.³ There is no evidence that DOC and CHS have promulgated policies covering all of the necessary aspects of risk prevention and reduction, that there is robust enforcement of the policies that are in place, or that policies have been re-evaluated and revised to comport with new and emerging information about disease transmission and prevention.

The Department, CHS, and the Board need only to look to the Centers for Disease Control for guidance. In July 2020, the CDC issued *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*.⁴ DOC, CHS, and BOC should strive to ensure that any and all NYC COVID jail policies comply with the CDC guidance.

² The Minimum Standards on Health Care already include §3-11 requiring a Disaster Plan in the case of natural or man-made disasters, but does not govern health emergencies such as pandemics.

³ See, e.g., NYCDs Freedom of Information Law Request, dated August 13, 2020; The Legal Aid Society Freedom of Information Law Request to DOC, dated April 23, 2020 (both attached at end of this letter).

⁴ Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

Congregate settings like jails and prisons remain some of the most vulnerable settings because they allow disease to spread rapidly, not just within the jails but also back into the community. As you are all aware, the coronavirus took a tremendous toll on the NYC population, including those in the criminal legal system. Tragic loss of life and serious illness with long-term effects impacted every stakeholder population, from incarcerated people to judges to DOC staff. We are all still grieving these losses.

As cases continue to spike unmitigated across the country, it is only a matter of time before the virus returns in full force to New York. This past spring, we were struck by the stark contrast between the public statements made by DOC and CHS with regard to their policies and protocols and the experiences directly relayed to us by our incarcerated clients. With nothing in writing to utilize in both individual and larger scale policy advocacy, defenders remain at a huge informational disadvantage as we advocate for the safety of our clients, and as we seek to protect our staff while they resume court appearances and counsel visits.

Policies and procedures are only effective if they are written, promulgated, communicated and enforced. Assurances from DOC spokespeople that precautions were in place were not sufficient in March and April and have only grown less so over the past six months. We must have exhaustive, written policies in place that are available and effectively communicated to DOC and CHS staff, incarcerated people, defense counsel, and the public. When those policies change, DOC and CHS must be forthright with the public about communicating those changes. And finally, enforcement of compliance with safety protocols must be robust.

We look forward to hearing from you in response to this request.

Sincerely,

The Bronx Defenders
Brooklyn Defender Services
The Legal Aid Society
Neighborhood Defender Services of Harlem
New York County Defender Services
Queens Defenders

CC: Susan Sommer, Mayor's Office of Criminal Justice
Council Member Keith Powers, Chair of the City Council Criminal Justice Committee
Council Member Rory Lancman, Chair of the City Council Justice System Committee