

**Testimony before the NYC City Council
Committee on Criminal Justice**

Preliminary Budget Hearing

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Thank you for the opportunity to speak with you today. My name is Kristin Hogan, and I am a Program Coordinator for Parole Mitigation in Osborne's Court Advocacy Services. The program I lead was established with discretionary funding from the Council to create an alternative to re-incarceration, to address the high numbers of technical parole violators on Rikers Island. We worked remotely, by phone and video, through the pandemic, and were successful in our goal of reducing the length of stay of parole violators on Rikers Island, avoiding unnecessary returns to state prison, and linking people on parole to needed community-based services. My program, discussed below, is one of many innovative Osborne programs supported by the Council and for which we have asked for continuing funding for FY 23.

For nearly nine decades, the Osborne Association – founded by a former prison warden and led for 40 years by a former Commissioner of the NYC Department of Correction under Mayor Fiorello LaGuardia – has been committed to transforming prisons and jails for the people who live in them, work in them, and visit them. Today we offer a wide range of diversion and reentry programs at sites in the Bronx, Brooklyn, Harlem, Buffalo, and Newburgh, as well as services at more than thirty New York State prisons and New York City jails including Rikers Island. We now serve more than 12,000 New Yorkers a year, and this June, we expect to open a 135-bed community reentry center in the former Fulton Correctional Facility, which we have developed over several years to address the pressing needs of people returning home without stable housing. This month we are opening a 52 unit supportive housing program in Brownsville for older people returning from incarceration.

As a member of the ATI/Reentry Coalition, we have been fortunate to have received discretionary Council funding for several years that has enabled us to support our Court Advocacy Services, as well as programs focused on elders in jail and reentry, video visiting that enables families to stay connected to loved ones in upstate prisons as well as Rikers Island, and a range of employment services citywide. We appreciate the Council's support in the past and look forward to working with new Council members alongside longtime colleagues.

We had anticipated that with the passage of Less is More, the need for my program focusing on people detained on violation warrants would be less than more. The opposite seems to be occurring. While the number of people returned to jail solely for minor technical violations has been reduced, there are still a significant number taking up bed space because of a pending criminal charge, often a minor charge, that creates a logjam leading to a long period of incarceration. In addition, those detained on parole warrants, even without criminal charges, are staying longer than the new law contemplated because in many cases, it seems DOC has been unable to transport people to the recognizance hearings in courts that are intended to be held within 24 hours.

Although our program has generated successes in more than 90% of cases, we experience significant difficulty in supporting the prompt resolution of cases because of the challenges of scheduling timely video-conferencing needed to move the cases forward - and even when we schedule a video-conference, there are often canceled at the last minute. This is not due to our being unfamiliar with working on Rikers Island. Osborne has deployed staff on Rikers Island in housing areas and visiting areas five days per week for many years. We know that even under ordinary circumstances, Rikers Island is not a good place to live, work, or visit. While we have seen progress in the struggle with Covid, we are still struggling with a system that detains people presumed innocent in conditions that defy international human rights standards and that do not meet the minimum standards of the NYC Board of Correction, the NYS Commission of Corrections, or those set by any court that has seriously considered the question. We are especially concerned with the number of our clients who are unable to access timely medical care or mental health services.

It is particularly ironic that this is happening in New York City, where our elected officials actually agreed to Close Rikers because they knew it was inhumane to hold people in conditions that have only worsened since that decision was made. The irony is even greater when you consider that the union representing correction officers has opposed the movement to Close Rikers Island while complaining about conditions that would be largely alleviated in new facilities, and claiming that the solution is to hire even more officers, when hundreds remain on the payroll but are not showing up, putting everyone who works and lives on Rikers at enormous risk – as if already having the highest staff ratio of any locked facility in the country, if not the world, is not enough.

Unlike the officers who are absent, leaving their brothers and sisters to work doubles and leaving housing areas understaffed, OUR staff wanted very much to return to provide the services and programs that we know keep people safer and inspire success. Although our staff was unable to work in the jails for several months due to Covid, we continued to communicate with DOC officials, staff, and incarcerated people and their families. We have operated a Reentry hotline, and our staff made efforts, with the support of DOC program staff, to provide as many services as possible through various methods of correspondence.

The crisis that has exploded into public view over the last few months has been building for years, and while it is easy to criticize current management, these conditions – including officers not showing up for months at a time – have been fomenting for a long time. No new commissioner could expect to turn this ship around in a few weeks, but the NYC Department of Correction will be hard-pressed to establish a safe environment with the size of the jail

population and the incredibly long length of stay combined with a workforce that seems unable to reliably get incarcerated people to medical appointments, mental health services, videoconferencing or court appearances.

A Jail Population Explainer: jail populations are a function of just two numbers: ***Numbers of Admissions*** and ***Length of Stay***. Reducing one or both of these factors is what you have to do to reduce the population. Notice that neither of those factors is typically within the control of the jailers. In general terms, numbers of admissions are dependent on who police arrest and what they assert in their charging documents; who prosecutors charge and what level of bail they ask; and who judges detain and on what basis. Length of stay is a function of judges, DAs, and defense counsel, and how long it takes to complete a detainee's case. Or in the case of parole violation warrants, how long from arrest to final hearing. Theoretically, the jail has no control over how long a case languishes.

But this formula, which works in nearly every jurisdiction in America, has broken down in NYC, because the jailers who are supposed to keep people safe in between court visits, and get people to court safely and on time, have not been able to do so. The recent parole reforms that are part of Less is More require recognizance hearings in outside courts, adding to the staff time needed to transport and manage the population. It isn't going well. Investment in ATI and discharge planning programs, as well as pretrial release and diversion programs, can reduce length of stay and also lead to long-term success.

Proposed Solutions

1) Reduce the number of people sent to Rikers/Decarcerate

This solution relies on the collaborative efforts of those outside of DOC. Police, prosecutors, defense attorneys, and Judges as well as parole officers should explore all alternatives to detention and diversion possible, and for those detained, advance court dates. For those being held on parole violations with a new arrest, the bail law provides multiple options to release people safely -- and should require that the decision take into account the costs and risks of the currently unsafe, life-threatening, and overwhelmed nature of detention in DOC custody. It is simply not safe to house the current number of detainees with complex legal, medical, and mental health needs. Unfortunately, the Public Safety plans of the governor and mayor that rely on tried and failed enforcement methods and lies about bail reform seek to cover the lack of investment in real solutions to gun violence, mental health crises, and homelessness that would actually make a difference.

Greater decarceration efforts are possible. The decision-making that led to a census of 3,800 people detained on Rikers during the height of the pandemic one year ago should be reinvigorated. Many factors have contributed to the growing population, including the slowdown and adjournment of court cases and unreasonable bail. An obvious step is to **return to Article 6-A** that authorizes DOC to allow sentenced individuals to serve the remainder of their time at home. But since most people on Rikers Island are pretrial, decarceration depends on DOC prioritizing its resources to make sure defendants are made available to attend court hearings to avoid case delays as the pre-trial average length of stay has skyrocketed. In addition, the Council should consider a law that would allow the Commissioner of the Department of Correction to determine where detention can take place, including house arrest with an electronic bracelet.

2) Conduct a detailed staffing analysis.

There are plenty of correction officers on the payroll, and it is sad that the City feels cornered into hiring new officers when improving the deployment of current officers, combined with improving living and working conditions, would be more effective. The truth is that no one should have to work or be detained under the current conditions. Osborne does not profess to know all the civil service requirements or the details of the collective bargaining agreement with the corrections union, but we receive frequent reports that certain officers are relegated to non-custodial areas and are forbidden to work outside their designated units even when there are notable and dangerous shortages. Osborne has been witness to the sight of many officers gathered at one location, while other units have virtually no one on duty. Recognizing there are union issues to be addressed, jobs that would be better suited to non-Corrections staff or require a different skill-set should be performed by non-uniformed staff. Social workers could do intake assessments and civilians can handle bail windows and numerous other jobs. If the union disagrees, they should ensure that all COs without medical proof of illness are showing up to perform their jobs. The recent report of a death of a man (held on a new arrest and a parole violation) choking on an orange suggests that there was an A officer in the Bubble, who did not exit to help or call for help, but also suggests that there was no B officer in the unit who should have intervened immediately. If officers have returned in recent weeks through efforts of the new leadership, where exactly are they stationed?

Even without the officers who aren't showing up (and efforts of the new Commissioner to bring back more officers seem to be slowly working), Rikers Island has the highest ratio of COs anywhere and is the most expensive workforce in the country. The reality is that the deployment of COs and lack of sufficient coverage is a failure of jail operations, not a lack of officers, and is complicated by a Union that is dead set on making the case that more dues-paying officers are needed.

3) Tend to the well-being and mental/ emotional health of staff.

We are concerned about the well-being of Officers just as we are concerned about the well-being of those incarcerated, our staff, and visitors. Everyone on Rikers needs to be safe and to return home to their loved ones, whether at the end of an 8-hour shift or after 8 weeks or 8 months (already an excessive length of stay for pretrial detention). The current “staffing shortage” or lack of adequate staff management and an oversized corrections staff perpetuates and worsens itself: Prior to Covid, concerns about Officer well-being led to the creation of the DOC Staff Wellness Center and a recognition that PTSD levels were high among retired COs. Even as Covid wanes, the stress has only increased and the need to provide confidential and universal support is critical. Seeking out mental health services is highly stigmatized in paramilitary agencies so a universal approach is needed: every Officer should see a mental health professional (however often it is decided) as a check-in and in recognition that the job is stressful. The onus should not be on Officers to seek out this support. This universal approach could also prevent or flag concerns about any staff who may be or become overly aggressive or hostile; it could reduce the number of DOC staff currently in categories that preclude them from interacting with those incarcerated (also a cause of the staffing shortage on housing units, for escorts, visits, and more). And staff who want to speak up about abuses or unlawful behavior need whistleblower protection; they have much to say, but it is not safe for them to do so.

4) Support meaningful programming and visiting.

To bolster their claims about the need to hire more officers, the union must paint all those in custody as dangerous predators, a ploy that enthralls the tabloids and fires up officials who want to blame the state legislature for criminal justice reforms that they see as the source of violence because they are unwilling to invest in real solutions. The tabloids seem to enjoy painting those incarcerated on Rikers as violent and sub-human. It is true that gun violence has increased during the pandemic – along with many other breakdowns in our public health system – but it is also true that people subjected to nauseating and dangerous conditions will react, get into arguments, and fight back. On-site programming and visiting that ameliorate conditions have also suffered because of inadequate staffing. While many service providers are back in facilities, it is not safe to run programs without adequate officer coverage. Meaningful programming is a critical tool that can reduce violence and idle time, promote transformation, and assist with successful reentry. Programming must be a priority with proper space provided and steady Officers assigned in order for effective services to be delivered. This cannot happen until DOC has adequate coverage by COs across posts and locations. We know our presence makes a difference, and the dedicated officers and DOC program staff we work with have let us know that, but we could do more and we believe the new Commissioner would welcome more.

5) Do What it Takes to Close Rikers.

We recognize that current DOC leadership, inheriting abominable conditions for those who live and work on Rikers, is making efforts to act. While all policies should lead to closing Rikers, if we aren't closing Rikers immediately, then conditions and space do have to be considered now. Many organizations and advocates have called for removing women permanently off Rikers Island into another space. We agree. The temporary move of women from RMSC to Bedford Hills did not go well, though it was no doubt well-meaning. There are currently just under 280 women, including 40 trans women. NYC should request that NYS turn over closed state prisons in Manhattan that previously held women. We believe the state would do this if asked, and although neither Bayview nor Lincoln would be immediately habitable, the cost of renovating them is far less than the various stalled Borough jails projects. Bayview, in particular, has the bones needed: it had rooms, medical facilities, and a convenient location. Even if the cost was more than the \$23 million Osborne spent re-purposing the Fulton Correctional Facility in the Bronx that will soon open with 135 beds in a community reentry center, it would be less costly over time to fix these closed facilities than to hire and train hundreds of unnecessary correction officers.

We are confident that those testifying today will have had plenty to say about intake, medical care, mental health care, and the issues that drive admissions and length of stay. Solutions to these challenges will take all of us: CHS, advocates, defenders, and COs should all be involved in developing a new process to ensure that no one remains in intake more than 24 hours, that no one is placed in cells or dorms that fail to meet minimum standards without variances, that solitary confinement is replaced with humane approaches to manage behavior. We need safe working conditions for us and COs.

You have way too many people – in the press, in public employee unions determined to keep a large membership, in public officials trying to score political points – all trying to point to bail reform, Raise the Age, Less is More and other efforts to restore humanity to an inhumane criminal legal system – as the cause of an increase in subway crime and gun violence. Given that Less is More has just begun, and bail reform is on life support because elected officials in state government have never stopped trying to drown the baby in the bathtub, it would be hard to lay crime spikes at the door of these reforms. But that has not stopped the media, some law enforcement agencies, and some of your colleagues from making these claims. This is really intended to provide cover for not investing in communities and young people to counter the devastating impact of Covid, of inequality, racism, poverty, and a lack of housing. But the research is on our side.

Osborne has long been working at the intersection of policy and practice. All of our work is grounded in an understanding of people's capacity to change, and in the importance of relationships, across generations, and we build our programs and services to ensure individuals and their families have the right and the opportunity to heal from and repair harm, restore their lives, and thrive. We believe public safety includes investing in and strengthening communities, expanding alternatives to jail and prison, and implementing pre-trial reforms and measures to expedite court processes.

We live here too. We understand the anxiety people feel about increasing violence. But what causes violence that undervalues human life is a system that undervalues human life. We have recently established a pilot diversion program with the Bronx District Attorney aimed at addressing the scourge of gun violence, for which we are seeking Council support, and hope that the Council will continue to support our Safeguarding Children program that trains and supports NYPD to implement child-sensitive protocols when a parent is arrested, as passed by the Council previously, complementing the range of services for children whose parents are in the criminal legal system.

Achieving public safety requires creative, data-informed approaches to reducing the number of people detained in the city's jails, and closing Rikers Island (a commitment the City has made with the support of the Council) where people are currently spending unprecedented amounts of time, with dire consequences to their health, families, and long-term wellbeing. We call on you to stand strong in affirming current bail and pre-trial reforms and Raise the Age, and oppose the Governor's 10 point plan, a reactive, damaging approach that will bring us backwards into the era of mass incarceration from which we were finally emerging.

We join you and acknowledge your ongoing commitment to robust efforts to provide people who come home from jail and prison with housing, a connection to healthcare, and access to the kind of opportunities we all need to survive and live our best lives. Thank you for your time and consideration.

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