

Testimony to NYC City Council Committee on Criminal Justice

Public Hearing

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Thank you, Chair Rivera, and members of the Criminal Justice Committee for holding today's hearing and for the opportunity to provide testimony today. My name is Emily Appel and I am a program coordinator with Court Advocacy Services, providing defense-based advocacy for indigent clients at Osborne Association. Osborne is one of the largest and oldest criminal justice service organizations in the state. We serve participants from arrest to reentry and have offices in Harlem, Brooklyn, Buffalo, Newburgh, White Plains, and Troy, with our headquarters in the Bronx. We are in the courts, on Rikers, in State prisons, and in communities. We have been providing Court Advocacy Services in New York City for 30 years. I want to note that MOCJ was the initial funder of these services and we thank them for their history of innovative and effective funding to advance safety and justice.

In my 3 years at Osborne, I have been an advocate for individuals accused of law-breaking, often for serious offenses. As part of our Court Advocacy Services team, I get to know the individuals behind the charges; I talk with their families and friends; I learn about their childhoods to be able to understand, and create an individualized plan to address, the root causes of their involvement with the criminal legal system. This approach promotes public safety, while saving public dollars spent on pre-trial detention and prison sentences. Incarceration and detention do not address root causes of crime. Corrections systems are not resourced to provide the treatment many New Yorkers need and they should not be asked to do so when community-based providers are available. Three CAS clients have died while in pre-trial detention since I started: William Johnstone, Erick Tavira, and Isaabdul Karim. Their needs could have been met safely in the community.

Our work is effective in terms of saving dollars and lives:

- Our services reduce jail and prison sentences by 1,300 years annually, saving taxpayers millions of dollars
- 80% of our Court Advocacy Services clients avoid jail detention by meeting their court requirements;
- In 2020:
 - 267 people stayed home rather than being in jail or prison due to our advocacy and comprehensive community-based service plans;
 - 222 individuals avoided court and cleared their record due to our advocacy and service planning.

We thank the Council for investing in ATD and ATIs. Osborne is a member of the ATI and Reentry Coalition and we are grateful for the longstanding support of the Council. A unique and critical aspect of the Coalition members is our collaborative, client-focused approach: we often refer to each other's programs to best meet the needs of our clients and prevent re-offending or recidivism. While NYC faces challenging fiscal times, we urge an increased upstream, cost-effective investment in ATIs, giving budget and population relief to strained City and State

Corrections systems. Solutions to these complex challenges lie in community-based alternatives combined with an investment in supportive affordable housing.

Increasing our investment in ATDs and ATIs is also an urgent matter of racial justice: 94% of people in NYC jails are Black and brown; close to 90% are being held pre-trial. Their detention has ripple effects (increasing stressors and challenges) for thousands of children, families, and communities of color. Additionally, almost 100% of our clients have first been victims of violence and/or endured childhood traumas. This harm was rarely named or treated, and so the saying “hurt people, hurt people” continues to play out. But it doesn’t have to: ATIs break this cycle of harm; they promote healing and safety.

To underscore the importance and effectiveness of alternatives to detention and incarceration, as well as illustrate the harms caused by pre-trial detention and incarceration on Rikers, I’d like to tell you about a few of our clients:

Pre-trial release successes

Mr. S. had struggled with the legal system since his first arrest in his early twenties. He had never been offered services to address his mental health or the behaviors that were leading him to arrest. When he came to Osborne, he was in his 60s and ready to exit this system permanently. He had previously cycled through it on the same charges, with minimal intervention. He had been attacked in jail and was being held in protective custody solitary, further adding to the trauma he had already experienced and potentially increasing his risk of recidivism. We discussed his history, assessed his needs, and made a plan for him to be released safely to the community to receive treatment targeted at the root of his issues for the first time. We successfully advocated for his release under monitoring from Osborne in early 2022. He participated in outpatient treatment and was in the community for close to 1.5 years before his trial. This was his longest time in the community without being arrested. He found an apartment and moved out of shelter. He got a job and supported himself in the community. He was able to seek physical therapy for a pre-existing medical condition, which went untreated while he was previously incarcerated. He made significant progress in twice-weekly therapy, which he had never received before and which is not available in jail. The DA agreed to an ATI with continued treatment based on his success in that program. He was sentenced to 18 months of community programming under supervision in August 2023, and is still successfully participating in treatment and living safely in the community.

Ms. C. When her case was referred to CAS, Ms. C was being detained on a cash bail which she could not afford. CAS noted Ms. C had a complex trauma history, untreated mental health issues, compounded grief, and unsafe housing. Ms. C described an unstable childhood during which she struggled with intense untreated anxiety, housing instability, physical health issues, and complex trauma. Ms. C lost her father and numerous loved ones to gun violence and was left with an

insurmountable amount of grief. Due to these immense losses Ms. C developed anxiety and PTSD. In the community she was prescribed medication, but never received holistic mental health care to address her trauma. Ms. C also suffered from a medical condition which led to frequent hospitalizations. CAS referred Ms. C to be considered for a women's housing program in an attempt to separate her from her neighborhood, which she feared returning to. Ms. C was accepted at HourChildren, HousingPlus, and WPA for services. Through these programs, Ms. C would have had access to talk therapy, psychiatric services, holistic re-entry support, peer mentoring, and most importantly, housing. This treatment plan was submitted in January, 2023. On April 24, 2023, the judge granted our bail application and Ms. C was finally released to the community under monitoring by CAS. She walked out with her advocate and was escorted to her housing program. Ms. C is still residing at her program, participating diligently with her mental health treatment and case management, and has gotten a job. Her case is still ongoing in court, but she has the chance to prove to the judge that she is capable of change and ready to move forward and address her mental health in a cost effective way and with services that are not available in jail, before being sentenced.

Pre-Trial release - missed opportunities

Mr. R. is 30 years old, a father to two young children, and was born and raised in the Bronx. Before this arrest, he was living in a shelter and attempting to get back on his feet after a severe back injury (which occurred after the original crime he was charged with) and a long period of instability. In August, 2023, Mr. R was arrested for a probation violation related to missed program appointments and was remanded without bail. While being detained on Rikers Island, Mr. R.'s physical health severely declined. At the time of his arrest, Mr. R. was still able to walk, although it was difficult and painful. Currently, he is confined to a wheelchair as the lack of support in maintaining his mobility and no access to a supportive bed have seriously aggravated his conditions. Mr. R. told us that he did not receive the needed MRIs of his back or needed medication. He stated he continues to be in constant, severe pain. Mr. R missed several video conferences with Osborne because he was in excruciating pain and unable to physically make it to the booth. "This place is literally killing me, I would take a hundred years of house arrest rather than be in this place." His wife stated that Mr. R.'s detention has caused significant emotional stress on their family. She reported that their 16-month-old son with special needs has stopped trying to talk, and their five-year-old daughter has had emotional breakdowns in class. Mr. R. was ultimately released 11/20/23 after 3 months.

Detention Extends the Timeline of the Case

On the legal side of things, detention greatly delays the case and our work in particular. If someone is in the community, we usually can finish our work in 6-8 weeks and the case can move along. If they are incarcerated, our own timeline is extended by several weeks because it takes a week to schedule each video conference, and they are so often canceled. If someone is in the community, they can be much more involved with their case. The attorneys often don't have

the time to schedule video conferences for updates and can't call their incarcerated clients back, so they often give updates on the case at court, right before going in front of the judge. If someone is detained pre-trial, they face hugely increased pressure to plead guilty just to get out of detention, even if they are innocent or could have won at trial. They can't participate as actively in their own defense because they have significantly reduced access to their attorney or legal team.

According to DOC's own data [dashboard](#), there are currently 498 individuals on Rikers awaiting trial for more than 2 years (at a cost of \$556,000 per year this comes to \$553,776,000 spent over two years) and an additional 837 people awaiting trial for between 1 and 2 years (at a total additional conservative cost of \$465,372,000). **For this amount of money - over \$1 BILLION, ATI providers could serve 100,000 people, promoting public safety and positive outcomes for individuals, families, and communities.**

Detention does Not Guarantee Appearance in Court

Being detained doesn't guarantee that someone will be present at their court date. So many people detained at Rikers missed their court dates in 2022, it made the news.¹ I have been in court when the wrong person with the same name is brought in, or when the participant is in the building but cannot be produced to the courtroom because of a broken elevator in corrections, so the attorney waives an appearance and the hearing happens in their absence. The process of production is very outdated and a minimum of 24-48 hours notice is currently required to produce a client to court. Often, our bail advocacy is fairly last minute since it revolves around a bed opening up at a program somewhere. There's always a possibility that the request gets put in too late, and then everyone is at court ready to go except the client who is still at Rikers. When that happens, there is no remedy. They cannot bring the person over on the same day, so we have to reschedule it and we often lose the bed. If the only purpose of pre-trial detention is to ensure return for court, that is not necessarily happening. We can help DOC by reducing the population and easing the court production demands on them.

Detention of those with Mental Health Diagnoses

Pre-trial detention is also especially difficult for clients with mental health diagnoses. The NYC Comptroller reports that one in five people detained have serious mental health illness, while half have some kind of mental health diagnosis.² Unless someone is in an Mental Observation (MO) unit, reserved for folks with Serious Mental Illness designations (which does not include the trauma of incarceration or depression related to arrest), their only access to therapy is one session of talk therapy a month and some medication management. This does not meet a standard of care, despite the best efforts of dedicated CHS clinicians. They also change clinicians each time

¹ <https://gothamist.com/news/1-in-4-people-jailed-in-nyc-are-not-being-brought-to-court-on-time>

² Preliminary Mayor's Management Report, 2023:

<https://www.nyc.gov/assets/operations/downloads/pdf/pmmr2023/doc.pdf>

they transfer to a new facility, which further disrupts their care. If someone is treated in the community, it is likely to be more effective and more cost-effective. We can help DOC and CHS by lessening the population of people in need of mental health treatment.

We watch people - people who are sons, daughters, fathers, mothers, brothers, sisters, grandfathers, aunts - deteriorate behind bars. I've had people come into each successive video conference with new or worsening injuries. I've seen individuals go from being able to participate in their own defense to decompensating to the point of being found unfit for trial. A lot of people see pre-trial detention as necessary for our collective safety...but in most cases it is not. The harm it inflicts - at a cost of half a million dollars per person per year - is tremendous and radiates outward, into our families and communities. The rising population puts undue stress on DOC's staff and budget. Investing a fraction of this money into ATDs and ATIs literally saves lives and contributes towards a safer, fairer, more equitable, stronger City. We know public safety requires all of us: defense, prosecutors, courts, providers, corrections, government agencies and elected officials. We thank MOCJ and the City Council for your longstanding commitment to and investment in community-based solutions.

Thank you.