



Mental Health Project

Testimony of Jennifer J. Parish

Director of Criminal Justice Advocacy
Urban Justice Center Mental Health Project
(646) 602-5644
jparish@urbanjustice.org

Presented to the New York State Joint Budget Committee on Mental Hygiene February 16, 2023

We welcome the Governor's proposed investments in mental health. But more is required to ensure that those most in need have access to these additional resources. Far too many people with mental health challenges are incarcerated in New York jails and prisons. The state should designate specific resources for people involved in the criminal legal system so that we can reduce incarceration and make communities safer and healthier.

We urge the legislature to do the following:

- Fund Forensic Assertive Community Treatment and Nathaniel Assertive Community Treatment teams;
- Increase funding for residential options for people involved in the criminal legal system; and
- Pass the Treatment Not Jail Act ([S.1976A/A.1263](#)) in the budget.

For more than almost 25 years, the Urban Justice Center Mental Health Project has advocated for people with mental health concerns involved in the criminal legal system. We are deeply familiar with the difficulties people with mental health concerns who are involved in the criminal legal system have in accessing essential mental health services. We represent the *Brad H. Class*, all incarcerated individuals who receive mental health treatment while in New York City jails. Currently the *Brad H. Class* comprises about half of the city jail population.

Over the last two decades, the NYC jail population has decreased dramatically. However, the percentage of people receiving mental health treatment has not decreased at the same rate. For instance, in 2010 when the average daily jail population was slightly more than 13,000, people identified as needing mental health treatment constituted 29% of the jail population; currently the jail population is around 5,900, less than half of the population in 2010, yet about 50% are assessed as needing mental health treatment. Moreover, since the onset of the pandemic, the number of

people diagnosed with a Serious Mental Illness (SMI)¹ incarcerated in city jails has increased by 30%. This group now constitutes 18% of the NYC jail population.

The harms of incarceration are particularly pronounced for this population as the provision of mental health treatment behind bars is inconsistent at best and almost nonexistent at times. Although constitutionally required, mental health treatment in jail and prison is generally limited to medication and brief clinical encounters. Moreover, the jail environment is chaotic and often dangerous, and people with mental health challenges are frequently victimized in these settings and subjected to solitary confinement. Suicide is the leading cause of death in jails. These conditions exacerbate mental health symptoms and further traumatize those who most likely already have a significant trauma history. In addition, many people with mental health challenges are released from incarceration without benefits, treatment, and housing, often even more destabilized than when they entered jail. Even in New York City where discharge planning services are mandated by the *Brad H.* settlement agreement, people with mental health concerns continue to be released to the community without appropriate services in place. Since the onset of the pandemic, we have seen a dramatic decline in the quality of discharge planning provided to those entitled to it.

This harm is even more pronounced for black, indigenous, and people of color (BIPOC), particularly Black people. Black people are disproportionately impacted by the criminal legal system. Black people are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, they are more likely to experience lengthy prison sentences. Black people are incarcerated at strikingly higher rates than white people in jails and prisons across the country. These racial disparities reflect a system that treats Black people more harshly than white people at every stage of the criminal legal process. Racial disparities also cause people of color to have poorer social determinants of health, including housing, health, income, education, etc. Coupled together, disproportionate impact by the criminal legal system and poorer social determinants of health, it is not surprising then that Black people comprise 38% of the incarcerated population despite representing only 12% of U.S residents.

Moreover, incarceration does not create public safety.² In fact, it makes people more likely to have future involvement in the criminal legal system. Providing housing, treatment, and social supports is the best way to promote public safety.

People with mental health treatment needs are the responsibility of both the state and city whether they are in jail or community. However, many people who are eligible for a higher level of mental health care and supportive housing are not able to access those services while incarcerated and are often not connected with them upon release. Some people could be released from jail to an

¹ In the city jails, Serious Mental Illness (SMI) is a diagnosis-based categorization consisting of the following disorders: schizophrenia spectrum and other psychotic disorders, bipolar and related disorders, depressive disorders, and post-traumatic stress disorder. Diagnoses resulting from a substance use or medical condition are excluded. Individuals who do not meet the preceding diagnostic criteria but experience severe functional impairment or clinical distress are also designated as having a SMI.

² See *A New Paradigm for Sentencing in the United States*, Vera Institute of Justice, February 2023, available at <https://www.vera.org/downloads/publications/Vera-Sentencing-Report-2023.pdf>.

alternative to incarceration if these services were accessible to them and if the process for connecting with them were more integrated with the criminal legal system process.

We urge the legislature to fund treatment and housing designated for this population and expand access and improve the functioning of judicial diversion by passing the Treatment Not Jail Act ([S.1976/A.1263](#)).

Assertive Community Treatment Teams

The Governor's proposed budget includes funding for 42 new Assertive Community Treatment (ACT) teams. These additional resources are certainly needed. In New York City alone, the waiting list for ACT is reportedly about 800 people.³

In NYC jails, Health + Hospitals Correctional Health Services (CHS) is responsible for providing health care, including discharge planning services, to incarcerated people. CHS staff assist some incarcerated people with serious mental illness who need a higher level of care in applying for these services through the Single Point of Access (SPOA) program coordinated by NYC Department of Health and Mental Hygiene (DOHMH). Although DOHMH approves applications of incarcerated individuals who are eligible for ACT, FACT, or Intensive Mobile Treatment services, DOHMH will not assign them to one of these teams unless they have a known release date because of the waiting list for these services. Without being connected to this level of intensive support before release, many people do not receive these services in the community.

Most people in jail are awaiting trial and their release depends upon the resolution of the charges against them. Direct access to these higher levels of care, plus coordination between correctional health and the court system, could result in many more people being released from incarceration to the level of mental health services they need.

To ensure that ACT teams are responsive to the needs of people involved in the criminal legal system, New York City provides additional funding for some teams to provide a higher level of care for people involved in the criminal legal system called forensic ACT (FACT).⁴ These teams include additional staff (substance use specialist, peer specialist, housing specialist, and criminal justice specialist) who can provide the type of support that this population needs. New York City requires at least five additional FACT teams. The Office of Mental Health (OMH) should fund FACT teams across the state.

In addition, the state should fund some ACT teams as an alternative to incarceration program for people with serious mental health treatment needs charged with a felony and at risk of being sentenced to serve a state prison sentence. New York City funds such teams, known as Nathaniel

³ See "New Yorkers face long wait for mental health programs," *Crain's New York Business*, November 30, 2002, available at <https://www.crainsnewyork.com/health-care/more-1000-new-yorkers-await-spot-serious-mental-illness-programs>.

⁴ For more information about FACT, see *Forensic Assertive Community Treatment (FACT): A Service Delivery Model for Individuals With Serious Mental Illness Involved With the Criminal Justice System*, SAMSHA, June 2019, available at <https://store.samhsa.gov/sites/default/files/d7/priv/pep19-fact-br.pdf>.

ACT teams, for this purpose.⁵ Nathaniel ACT teams have the additional staffing needed for FACT as well as an additional criminal justice specialist and two intake clinicians. As an ATI program, Nathaniel ACT requires this additional staffing to assess people while they are incarcerated and to provide updates to the court during the term of the treatment mandate. The state should take responsibility for funding these teams not only because these are people with serious mental health needs who can be served in the community with appropriate supports, but also because avoiding imprisonment for these individuals reduces the cost of incarceration and treatment for the NYS Department of Corrections and Community Supervision (DOCCS) and OMH. CASES, the nonprofit organization that developed this model, estimates that at least two additional Nathaniel ACT teams are needed for New York City. This resource is likely needed in other parts of the state as well.

To support people with criminal legal system involvement who need a higher level of care, the legislature should provide additional funding to establish some forensic ACT (FACT) teams and some ACT teams specifically designated to function as alternative to incarceration programs.

Housing and Residential Programs

The Governor's budget also includes funding for a range of new residential beds. However, none of them are designated for people involved in the criminal legal system. Without a designated pathway for such housing, this population will be shut out of this housing continuum just as they are most forms of supportive housing.

Currently only 1% of supportive housing applications completed for people incarcerated in the NYC jails result in placements in supportive housing, compared to 9% of applications completed in the community. Moreover, being incarcerated causes people who have been homeless prior to incarceration to lose their priority status for many types of supportive housing. Supportive housing not only contributes to stability for a person released from incarceration, but some people could have their criminal charges resolved through an alternative to incarceration if the court system had ready access to supportive housing.

The range of residential options available to people released to the community from a state psychiatric hospital should be available to people with similar needs involved in the criminal legal system – from transitional community residences that provide treatment onsite to permanent congregate and scattered-site supportive housing. The state must fund housing that can be accessed by correctional health and the court system for those who can participate in an alternative to incarceration.

Treatment Not Jail Act

The Treatment Not Jail Act amends the Criminal Procedure Law that created drug courts in every county in New York to allow for individuals who have mental health challenges to apply for judicial diversion. Currently most are excluded because either they do not have a co-occurring

⁵ For more information about Nathaniel ACT, see <https://www.cases.org/nathaniel-act/>.

substance use disorder, or if they do, their substance use disorder is not their primary diagnosis, or even if it is, they are not charged with a specific crime that is among those set forth in the statute.

In New York City currently, a select few individuals have their cases resolved through one of the city's ad hoc mental health courts, but they often wait in jail for months or even a year or more before being released into the community to participate in treatment. These long delays are largely attributed to the fact that prosecutors are the sole gatekeepers of any non-statutorily-authorized treatment courts, which includes ad hoc mental health courts. To even be considered for eligibility, many prosecutors require the defense to procure voluminous medical records, attend multiple in-person meetings, called "proffers," and plead guilty to the most serious charges.

The Treatment Not Jail Act would dramatically reduce incarceration for those with underlying mental health concerns because eligibility for diversion would specifically include mental illness, developmental disorders, and neurocognitive disabilities. In addition, eligibility would be determined by the judge, not the prosecutor's sole discretion. Finally, admission would not require an individual to plead guilty to participate in diversion. This pre-plea model is utilized in New York's opioid courts where urgent access to treatment is similarly paramount.

Individuals who are approved for diversion would be spared the psychological and physical harm and disconnection from essential benefits and services that incarceration can cause. Discharge planning is necessary to ameliorate the effects of incarceration and to give people concrete steps to take on their own once they have been released. However, it would be far better for people with mental health treatment needs not to be incarcerated in the first place. Currently many people with mental health challenges are sentenced to serve prison time far from their home and community and are released without any meaningful opportunity for voluntary, effective treatment. The Treatment Not Jail Act would enable people to receive shortly after arrest treatment that would provide the clinicians, legal supports, oversight, and community connections that come with an open case in treatment court.

Conclusion

New York can improve public health and public safety by providing for people with mental health challenges involved in the criminal legal system. Some of these individuals have the greatest need for mental health treatment and supportive housing but have the least access to it. We must include this population as the state works to improve mental health care across New York.