

BLUEPRINT FOR CRIMINAL JUSTICE REFORM

for New York City

a proposal by
The ATI/Reentry Coalition

May 2016

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EXECUTIVE SUMMARY

THE ATI & REENTRY COALITION PRESENTS this “Blueprint for Criminal Justice Reform in New York City,” a comprehensive plan for improving how New York City’s criminal justice system diverts individuals from incarceration as early and often as possible, and assists those who have been incarcerated or under community supervision to succeed in reentering their communities. This Blueprint is rooted in the Coalition members’ vast experience providing a wide range of diversion and reentry services, as well as intensive consultation with city officials, the City Council, directly affected individuals and families, and other service providers and advocates.

New York City has taken major steps to improve its criminal justice system, and these efforts have put our City at the forefront of criminal justice reform in the United States. They include the Action Plan created by the Task Force on Behavioral Health and the Criminal Justice system, which offers a thorough framework for addressing the challenges raised by the increasing percentage of individuals with behavioral health issues cycling repeatedly through the criminal justice system; the passage of the Fair Chance Act; and the proposals by the City Council to reduce incarceration, decriminalize certain low-level offenses in the City’s Administrative code, reduce unnecessary interactions with the criminal justice system and implement numerous other reforms.

Through this Blueprint, the Coalition seeks to build upon the strong efforts of the Mayor, the Speaker and the City Council to build a more equitable criminal justice system. In the first section of the Blueprint, we express our support for initiatives already underway or proposed by the Mayor and/or the Speaker and the City Council. In the second section, we recommend a number of additional reforms the Mayor and/or City Council should undertake in the following areas:

- *Opportunities for diversion and lower barriers to reentry;*
- *Jail-based pre-release/transitional services*
- *Employment*
- *Housing*

In the third and final section, we recommend how the City, working with the Office of Court Administration and/or the District Attorneys’ Offices, can further expand diversion and reentry opportunities.

Because many needed criminal justice reforms can only be accomplished by changes to New York State law, in Appendix A we list a number of State legislative and other reforms that we call upon the Mayor and the City Council to support. Our goal is to present a coherent vision and comprehensive plan on how to improve New York City’s criminal justice system and thereby increase public safety, reduce criminal justice costs, and strengthen affected communities.

RECOMMENDATIONS FOR CRIMINAL JUSTICE SYSTEM REFORM IN NEW YORK CITY

Reforms Already Underway or Proposed by the Mayor and/or Speaker

1. Implementing the recommendations in the Mental Health Roadmap, including expanding community-based behavioral health services
2. Establishing the New York City Diversion and Reentry Council to find ways to improve public safety and reduce unnecessary incarceration
3. Implementing the recommendations of the Task Force on Behavioral Health and the Criminal Justice System
4. Establishing an independent Criminal Justice Commission
5. Implementing NYPD training for interacting with individuals with mental health issues and partnering with mental health professionals
6. Establishing Public Health Diversion Centers
7. Passing the Fair Chance Act (aka Ban the Box)
8. Implementing universal screening for physical and behavioral health problems before arraignment
9. Developing a city-wide bail fund
10. Issuing a summons, rather than arrest, for minor offenses
11. Expanded supervised release
12. Launching the Young Women's Initiative
13. Creating a multi-agency plan by the Council
14. Expanding adult programming at Rikers
15. Establishing a video visitation program at Rikers

16. Accelerating the commitment to develop thousands of units of supportive housing
17. Recommitting to and expanding the Section 8 voucher program
18. Creating an expanded, permanent rental subsidy program

Recommendations for Additional Reforms to Increase Diversion and Lower Barriers to Reentry

Diversion and Community Corrections

1. Bring Alternative to Incarceration (ATI) services to scale
2. Explore feasibility of Expanding ATI and Alternative to Detention (ATD) services sufficiently to enable substantial downsizing or closing of Rikers Island
3. Implement defender-based advocacy in NYC courts
4. Enroll people at all stages of the criminal justice system onto Medicaid and health insurance and connect them to health services
5. Develop a pathway from detention facilities to community-based healthcare providers
6. Improve linkage of criminal justice agencies, community based criminal justice service providers, health homes and other health providers, and managed care companies
7. Where risk assessments are needed, used instruments that are evidence-based, gender-validated and specifically tailored to local needs and services
8. Recommend Certificates of Relief from Disabilities at the time of sentencing

Reentry

1. Bring all reentry services to scale
2. Pre-release/Transitional services
 - a. Enroll as many individuals as possible onto any benefits for which they are eligible, especially Medicaid
 - b. Provide vocational/employment training opportunities for incarcerated individuals
 - c. Evaluate needs, including health, educational and psychological of anyone detained on Rikers for 30 days or more
 - d. Expand discharge planning services to ensure that individuals can access all needed services
 - e. Maximize opportunities for incarcerated individuals and their relatives and support networks on the outside to stay connected
 - f. Connect individuals to the municipal ID card, as well as other identification documents that can help them acquire a State-issued ID
 - g. Provide assistance to pay fines, fees, surcharges, etc.
3. Employment services
 - a. Bring to scale employment training and job placement services for individuals with criminal justice histories
 - b. Reform City agency practices to facilitate the employment of people with criminal records
 - c. Create incentives for employers to hire individuals with histories of involvement in the criminal justice system
 - d. Ensure the City's workforce plan accounts for and empowers individuals with criminal records
4. Housing services
 - a. Increase access to housing support for people in or leaving the criminal justice system by investing in case management, referral and advocacy services to help them find housing
 - b. Change the City's definition of chronic homelessness so that those who are recently incarcerated are eligible for services and supports
 - c. Advance Mayor de Blasio's plan to create 15,000 new units of supportive housing and make some of this housing be available to those who have been involved with the criminal justice system
 - d. Encourage the New York City Public Housing Authority (NYCHA) to take additional steps to reunite families
 - e. Require landlords receiving tax breaks or other subsidies from the City to have clear standards, processes and protections in deciding whether or not to provide housing to individuals with criminal records
 - f. Require that providers of housing and all real estate-related transactions comply with recently released guidelines from the Department of Housing and Urban Development regarding application of Fair Housing Act standards to the use of criminal records
 - g. Increase opportunities for individuals with criminal records to obtain permanent housing
 - h. Adopt the recommendations made by the Reentry Housing Workgroup, the New York City Housing Authority's (NYCHA) Permanent Exclusion Working Group and the Three-Quarter House Reform Coalition

Diversion and Reentry Recommendations Requiring Collaboration with OCA and/or District Attorney's Offices

Collaboration with OCA

1. Improve practices for maintenance and access to Office of Court Administration (OCA) Records by:
 - a. Allowing individuals and the agencies that assist them to easily obtain copies of their OCA record
 - b. Creating easy processes for correcting OCA errors and simplifying/minimizing the information that appears on reports

- c. Clarifying who has access to the OCA report and how they obtain it
 - d. Simplifying certificates of disposition to reflect only conviction charges and ensure all sealed dispositions are clearly labeled
2. Streamlining and clarifying the process for the issuance of Certificates of Relief, including:
- a. Clarifying courts' processes for receiving applications, including the ability to submit applications remotely
 - b. Ensuring that courts make decisions about certificate applications in a timely manner
 - c. Clarifying the process for those who are not issued a Certificate, including ensuring they obtain a copy of any report created by or on behalf of the judge considering their application (as entitled by statute) and information about when they are eligible to reapply
 - d. Encouraging courts to provide guidance about how to make their applications as strong as possible, including allowing applicants to receive assistance from advocates
 - e. Encouraging judges to always grant certificates unless the applicant is not eligible or the granting would undermine public safety

Collaboration with the City's five district attorneys' offices

1. End the prosecution of low-level marijuana offenses
2. Reduce the collateral consequences that can result from diversion programs through the following steps:
 - a. Do not condition participation on waiver of sealing
 - b. Allow people who complete a program to have their conviction conditionally sealed
 - c. Allow sealing of charges which are dismissed
 - d. Allow sealing of charges for Shock incarceration programming and
 - e. Allow individuals facing immigration consequences to be diverted without taking a guilty plea

Collaboration with both district attorneys and OCA

1. Reform the warrant system
2. Broaden access to diversion for individuals whose arrests are related to addiction or mental illness:
 - a. Screen all individuals for diversion eligibility
 - b. Train judges to identify appropriate individuals
 - c. Stop regularly requiring residential treatment for diversion and instead base decisions on the assessments of addiction experts who refer to all clinically appropriate modalities
 - d. Allow diversion for those charged with both diversion-eligible and other offenses
 - e. Create more court and community programs to divert individuals with mental illness
3. Develop strategy to address those cycling, or at risk of cycling, through the system
4. Develop strategies to avoid individuals from being incarcerated by DOC for short periods of time
5. Allow the use of Medication Assisted Treatment (MAT) to treat addictions as part of diversion programs
6. Reduce the use of ACDs and agree to sealing of violations at conviction
7. Refine the process for RAP sheet corrections, including:
 - a. Have NYPD correct non-sealed "voided arrests" and help correct multiple arrest issues
 - b. Work with District Attorneys to correct errors from their records
 - c. Work with OCA to create a simpler process for correcting court errors
 - d. Work with the Department of Probation (DOP) and the Department of Correction (DOC) to correct errors in probation and corrections information
 - e. Support legislation to correct RAP sheets proposed at State level – (See Appendix A for a list of other State reforms the Mayor and City Council should support)

INTRODUCTION

WHY A BLUEPRINT NOW?

The ATI/Reentry Coalition presents this Blueprint during a time of heightened focus on the failed policies of mass incarceration including the perpetual punishment of collateral consequences, making this an ideal time for criminal justice reform in New York City. While crime in New York City has dramatically decreased by over 70% since 1990, and the jail population has decreased by over 50% from its high in 1992, there is still much more that needs to be done. Ninety percent of the convictions since 1990 have been for misdemeanors and nonviolent felonies, leaving almost 1 million individuals in New York City with a criminal conviction history for low-level offenses. Too many New Yorkers are still caught up in the criminal justice system, too many are still being incarcerated, and too little is being done to prepare the individuals being released, or their families and the communities into which they are being released, for the demands of successful reentry.

It is important to recognize that New York City's elected and appointed leaders have already taken major steps to create a more equitable and efficient criminal justice system, and we applaud those efforts and those who have proposed them. These important initiatives, already underway or proposed, put New York City at the forefront of criminal justice reform in the United States. They are also critical building blocks for moving forward, generating momentum, and creating a foundation for additional positive change.

Through this Blueprint for Criminal Justice Reform in New York City, we seek to build upon the City's strong record of progressive policies by recommending additional reforms which we believe will continue to bring the City closer to achieving the Coalition's vision for a more equitable criminal justice system for all. Adopting the suggested recommendations for next steps in expanding diversion from incarceration and

facilitating successful reentry will not only result in a fairer system, but one that supports and improves the health of individuals, families and communities, and enhances public safety by reducing recidivism.

The New York City Alternative-to-Incarceration/Reentry Coalition

The New York City Alternative-to-Incarceration (ATI)/Reentry Coalition is an integral part of the strategy that has enabled the City to reduce crime and jail/prison populations. The Coalition's programs invest in people and their families, ultimately strengthening whole communities in some of the City's most disadvantaged neighborhoods. The Coalition's members include BronxConnect (Urban Youth Alliance, Inc.), CASES, the Center for Community Alternatives (CCA), the Center for Employment Opportunities (CEO), EAC Network-NYC TASC & Mental Health Programs, the Fortune Society, the Greenburger Center for Social and Criminal Justice, the Legal Action Center, the Osborne Association, and the Women's Prison Association (WPA).

This Blueprint represents the collaborative commitment of these community-based criminal justice agencies, which have worked together for more than twenty years, to advocate for the best possible criminal justice system.

How the Blueprint was Created

In creating this "Blueprint" the ATI/Reentry Coalition incorporated the views and experiences of a variety of stakeholders in the criminal justice system. The Coalition received, and is grateful for, input from New York City Council members, staff of the Mayor's Office of Criminal Justice, community based organizations and representatives from law enforcement.

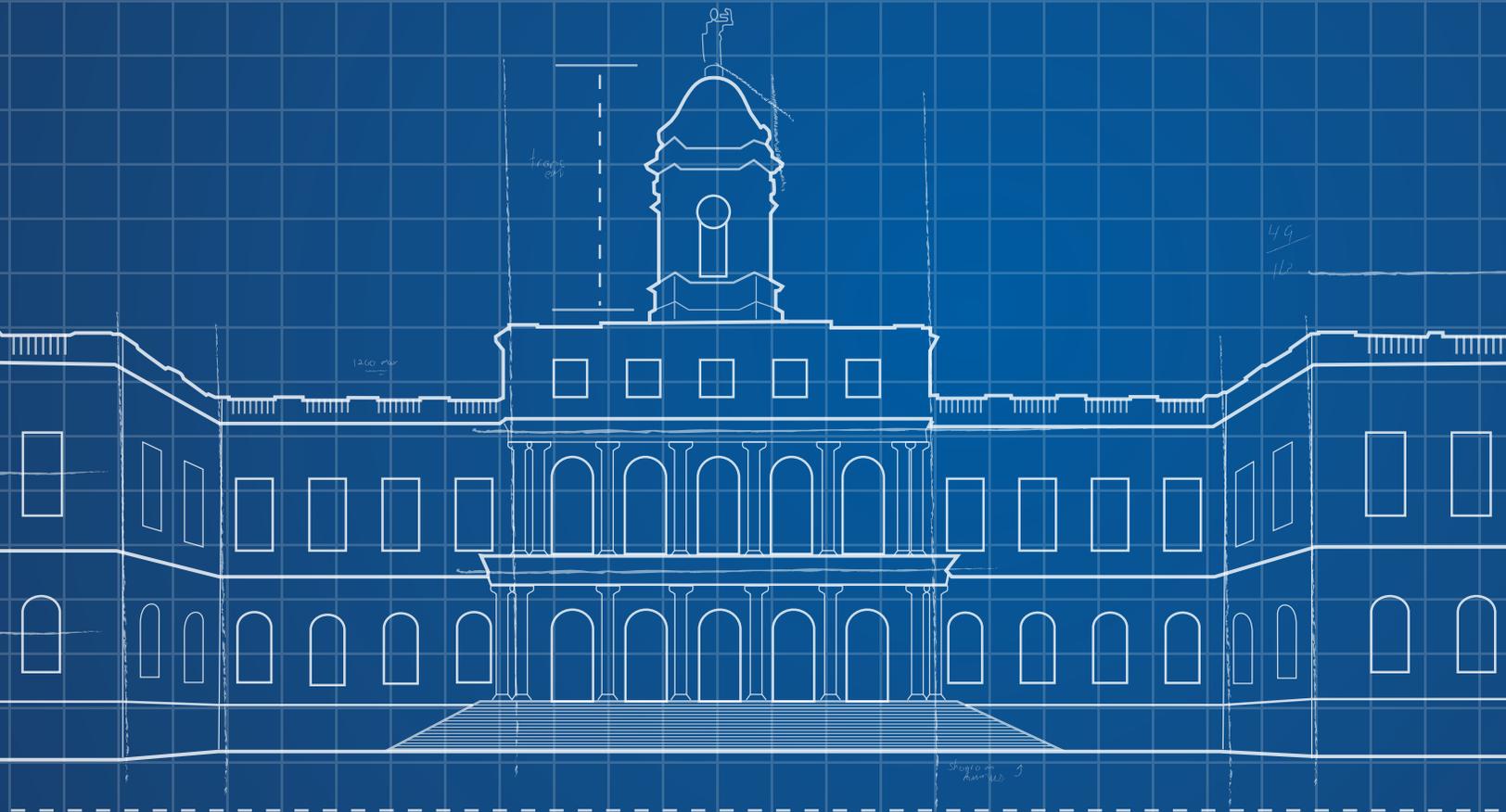
OUR VISION

The New York City Alternatives to Incarceration (ATI) & Reentry Coalition envisions a criminal justice system that is more effective both in protecting public safety and in promoting justice and fairness. We also believe in a system that ensures that all individuals with criminal justice contact are given the support they need to succeed in the community and become law-abiding and full members of society.

Achieving such a vision requires much greater focus on equal treatment of all regardless of race, gender or socio-economic status. It is also dependent upon building a system that works to improve health outcomes without unnecessarily punishing individuals because of their addiction or mental illness, and hence only incarcerating those who cannot safely be housed in the community. Nor should individuals be forced to face unnecessary and counterproductive barriers to their full participation in the community.

PART ONE

Important Reforms Proposed or
Already Underway Initiated by the
Mayor and/or Speaker that the
Coalition Supports



SINCE BEING ELECTED IN 2013, Mayor de Blasio and First Lady Chirlane McCray have made significant efforts, through the convening of taskforces and development of systemic plans, to prevent individuals from becoming involved in the criminal justice, including addressing addiction and mental health needs that all too often result in criminal justice involvement.

Council Speaker Melissa Mark-Viverito has also been a strong leader on these issues, having created taskforces and proposed reforms to address the needs that result in criminal justice involvement and to help reduce the number of individuals involved in that system.

The Coalition supports the following initiatives already underway or proposed, recommends their continuation and, where applicable, expansion, and offers additional suggestions for how the City could seek to address the problems confronting this population, including:

1. Implementing the Recommendations in the Mental Health Roadmap, including expanding community-based mental health and substance use disorder services to provide more options for the criminal justice-involved population and to reduce the need for police involvement and prosecution;

2. Establishing the New York City Diversion and Reentry Council which brings together all the parties involved in the criminal justice system, from pre-arrest to post-incarceration, to work together to find ways to improve public safety and reduce unnecessary incarceration;

3. Implementing the Recommendations of the Task Force on Behavioral Health and the Criminal Justice System, which brought together key parties involved in the different stages of the criminal justice system to develop an Action Plan which offers a thorough framework for addressing the challenges raised by the increasing percentage of individuals with behavioral health issues cycling repeatedly through the criminal justice system.

4. Establishing an independent Criminal Justice Commission, led by Chief Judge Lippman, to create a blueprint for how to reduce pre-trial incarceration rates and explore a community-based justice model for New York City; accelerate and expand on reforms related to diversion, alternatives to incarceration, supervised release, the bail system and the Constitutional right to a speedy trial; move young people and those with serious mental health problems off Rikers in the short term; increase the number of community courts; and expand the use of borough-based jail facilities. These changes would contribute to the Speaker's goal of closing Rikers Island;

5. Implementing NYPD training for interacting with individuals with mental health issues and partnering with mental health professionals to prevent crime and bring individuals to needed healthcare and linkage to services rather than arresting them whenever appropriate, as recommended in the Task Force on Behavioral Health and the Criminal Justice System Action Plan;

“*Mass incarceration undermines the economic future of so many young men of color, in particular. I think we have to look at income inequality in a broad context, also criminal justice reform. In New York City, right now, we are intensely reducing the flow of particularly men of color into our correctional system with bail reform, summons reform—a host of things—mental health services, and I think this is part of what we have to do nationally to stop that pipeline to prison and then help those returning to become really a part of the economy.*”

– **Mayor de Blasio** discussing mass incarceration during an interview with *NewsOne Now*

“Even after short periods of confinement, many people have difficulty finding housing, developing job skills, obtaining steady employment, accessing treatment programs, or obtaining other necessary services that enable them to become productive members of society.”

– **Speaker Mark-Viverito** in her 2016 State of New York press release

6. Establishing Public Health Diversion Centers so that the police can bring individuals who might otherwise be arrested for low-level offenses to a drop-in center for community-based services, as recommended in the Task Force on Behavioral Health and the Criminal Justice System Action Plan;

7. Passing the Fair Chance Act (aka Ban the Box) which will facilitate the employment of qualified individuals by delaying inquiries about criminal history;

8. Implementing universal screening for physical and behavioral health problems before arraignment to identify good candidates for diversion to needed care, as recommended in the Task Force on Behavioral Health and the Criminal Justice System Action Plan;

9. Developing a City-wide bail fund, created by the City Council, so people are not held in jail for low level offenses because they cannot afford bail;

10. Issuing a summons, rather than an arrest, for minor offenses, so that fewer individuals are saddled with criminal histories that can plague them for the rest of their lives;

11. Expanding supervised release to keep many more people out of jail pending trial, as recommended in the Task Force on Behavioral Health and the Criminal Justice System Action Plan.

12. Launching the Young Women’s Initiative to address issues facing young women and girls directly impacted by the criminal justice system (and other systems) and help young women fully participate in society, including through increased educational, job training, vocational and employment opportunities; increased access to housing; and improved health access, especially around addiction and mental health. Women are an often overlooked segment of the criminal justice population;

13. Creating a multi-agency plan by the Council to provide social services to certain high-crime areas to address underlying factors, such as unemployment, inadequate education or substance use, problems that often correlate with criminal justice involvement;

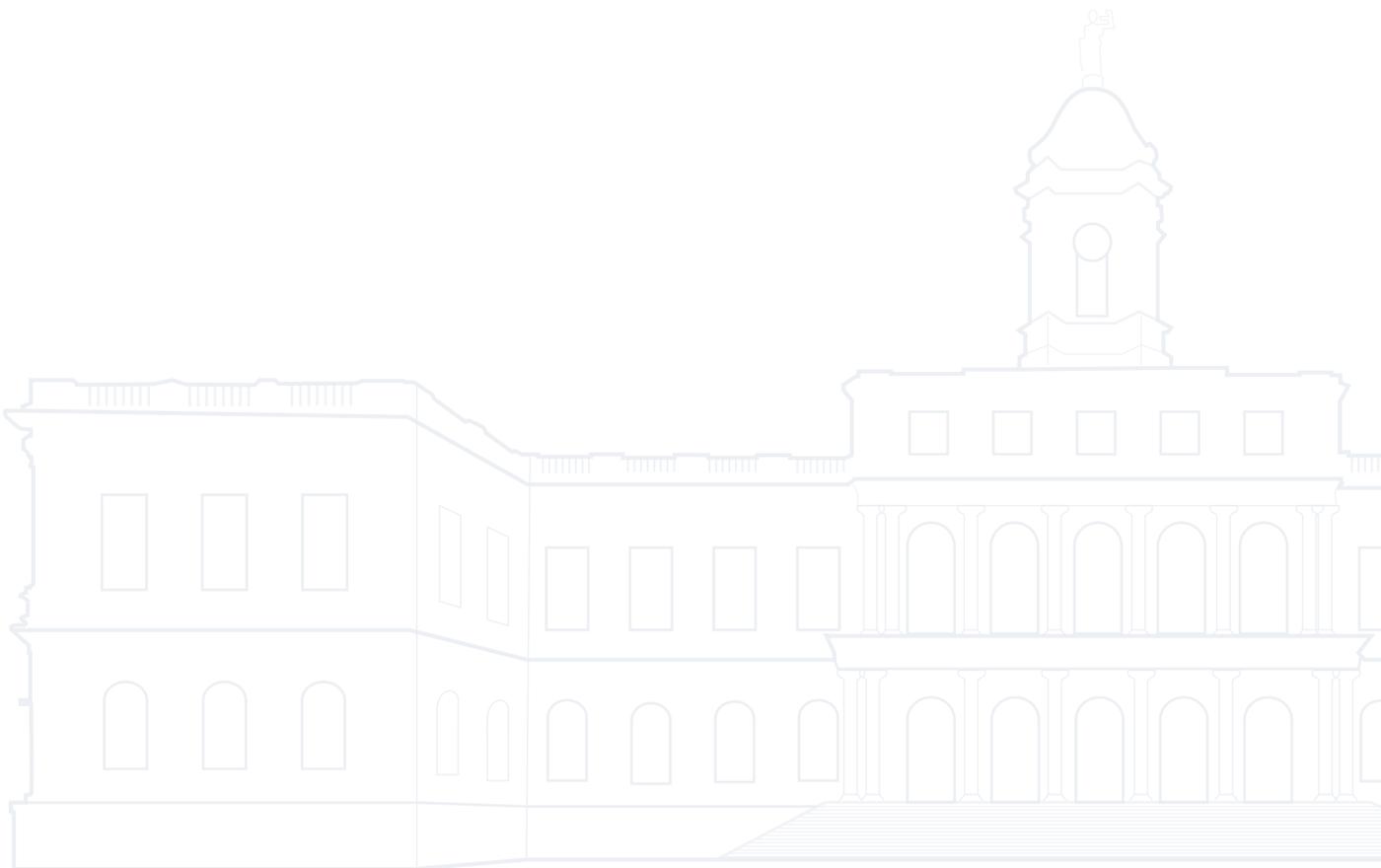
14. Expanding adult programming at Rikers to reduce violence by reducing “idleness” and developing individuals’ skills to prepare them for release;

15. Establishing a video visitation program at Rikers to expand opportunities for friends and family members to communicate with their loved ones through the use of videoconference facilities located in their communities;

16. Accelerating the commitment to develop thousands of units of supportive housing to end chronic homelessness among individuals and families with mental health and substance use challenges, which affect the vast majority of individuals involved in the criminal justice system;

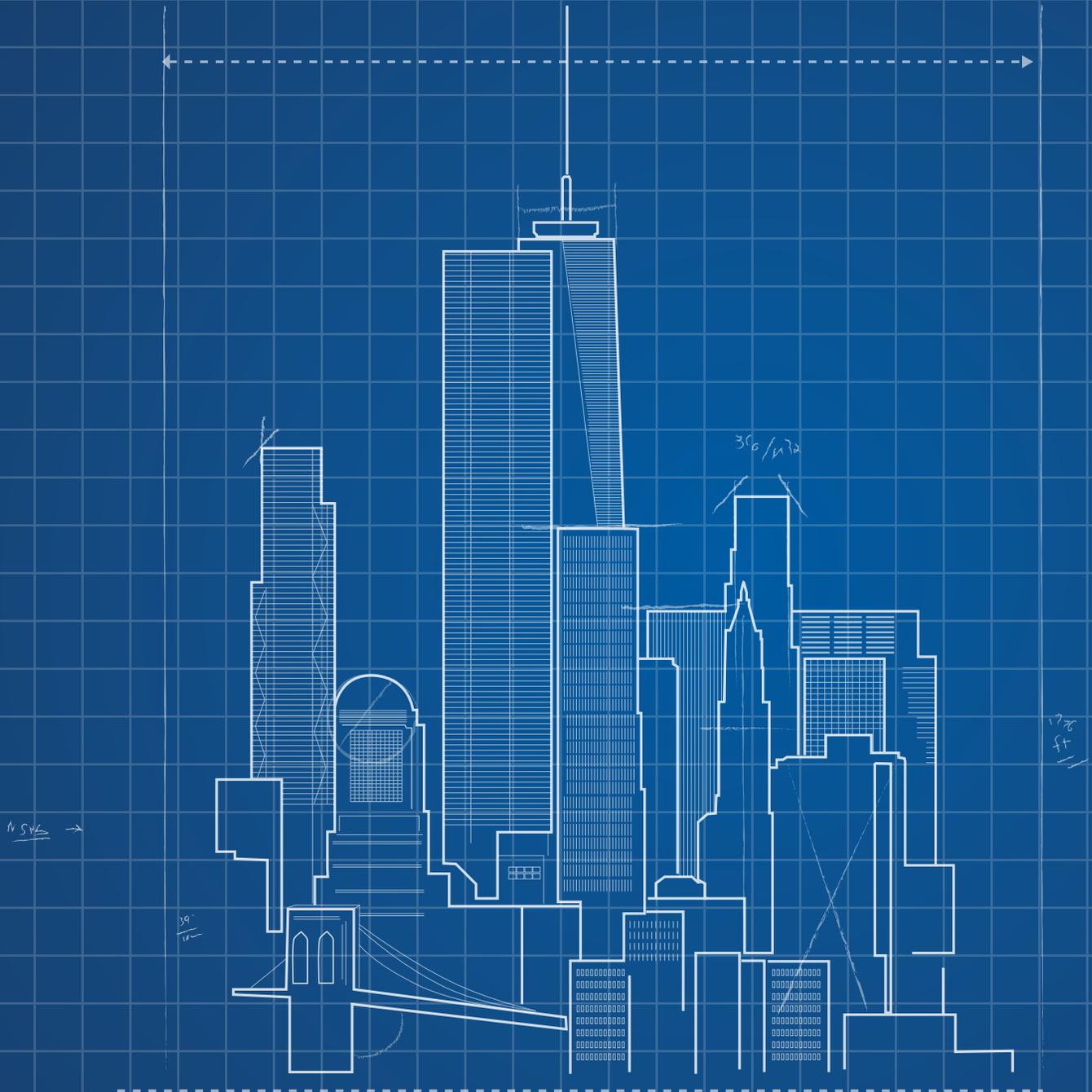
17. Recommitting to and expanding the Section 8 voucher program allowing individuals involved in the criminal justice system (and others) to obtain housing following reentry into the community;

18. Creating an expanded, permanent rental subsidy program. Because so many individuals involved in the criminal justice system end up in shelters or three-quarter houses, such a program could help support reentry.



PART TWO

Recommendations for Additional Reforms to Increase Opportunities for Diversion and Lower Barriers to Reentry



Our recommendations in this section are divided into two sections: **diversion** and **reentry**. Some of our recommendations can be implemented by the Mayor's Office on its own, while others may require legislation or funding from the City Council.

DIVERSION AND COMMUNITY CORRECTIONS

New York City should implement the full continuum of diversion programming for as many people as possible, at the earliest possible stage. Punishments should fit the impact of the crime on individuals and on society, and incarceration should only be used as a last resort when necessary to assure public safety.

Even a brief incarceration has a significant negative impact on an individual, resulting in possible job and other economic losses; loss of housing—either because of loss of income or otherwise; disruption to family; disruption of health insurance (after 30 days); decline in health, especially for those with existing behavioral health conditions; and missed school days, which has been shown to increase the chances of students dropping out; as well as the trauma of being held at Rikers Island. These consequences disproportionately affect African American and Latino individuals and communities. (The collateral consequences that ensue when arrest leads to prosecution and conviction are discussed in the Reentry section of the Blueprint on page 17.)

Research has shown that community-corrections programs are more effective than incarceration in reducing recidivism, and far less costly than prison, jail, juvenile placement, or juvenile detention. These community-corrections programs include pre-arrest diversion, alternatives to incarceration (ATI), pre-trial services, defender-based advocacy, client specific planning, community service sentencing, probation, and legal and employment assistance. The two-year recidivism rate of program graduates from programs in the ATI/Reentry Coalition is less than 20%, far lower than the 42% recidivism rate of those released from incarceration¹, demonstrating that community corrections programs, including ATI, effectively enable New York City to reduce crime, break the cycle of incarceration, save tax dollars and strengthen communities.

Community corrections, when properly utilized also avoid the disruption and harm that incarceration causes to the lives of those who are incarcerated, their families and communities. Where incarceration can be safely avoided, the system should focus on optimizing individual and public health outcomes, resulting in decreased incarceration and reduced costs to the City and the State.

In addition to being more effective than incarceration in reducing recidivism, ATI, community-based treatment programs and probation allow people to continue working, parenting, and playing a role in strengthening the fabric of their families and neighborhoods. These interventions also help create a society that does not penalize people for their mental illness or addiction, except where absolutely necessary to ensure public safety.

While New York has massively reduced the number of people behind bars, it continues to incarcerate many thousands of people who could safely receive intermediate community-based sanctions, which, when targeted appropriately, are more effective than prison in reducing recidivism and, as an added benefit, are less costly.

One of the greatest opportunities for expanding effective diversion and community corrections is to address the health needs of the large numbers of people involved in the criminal justice system who have chronic illnesses. As has been frequently reported, the vast majority—over 64%—of those involved in the criminal justice system have either a mental illness, an addiction, or both². It is estimated that 5% of those incarcerated on Rikers have HIV³. It is much more effective in terms of both cost and success in reducing recidivism and improving health to address their needs proactively through community health services rather than through incarceration or even, when appropriate, prosecution.

¹ Figures are from the 2014 final report of the Governor's Commission on Youth, Public Safety and Justice, and the 2014 Mayor's Management Report.

² KiDeuk, K., Becker-Cohen, M., & Serakos, M. (2015). *The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System*. Urban Institute: Crime and Justice

³ Jordan AO., Cohen LR., Harriman G., Teixeira PA., Cruzado-Quinones J., Venters H. (2013) *Transitional care coordination in New York City jails: facilitating linkages to care for people with HIV returning home from Rikers Island*

There is a particular lack of programs and services for those with serious mental illness, or those charged with violent felonies or facing multi-year sentences, even though many such individuals can and have been safely diverted, usually with better public safety outcomes than incarceration. Such programs divert and supervise appropriate individuals and provide treatment, education and employment training in the community.

New York City and New York State have long been at the forefront in the United States in pioneering and expanding ATI and reentry services. By continuing and expanding this critically important work, New York will continue to lead the nation in ending mass incarceration and its damaging and racially discriminatory consequences for hundreds of thousands of New Yorkers.

Recommendations

In addition to supporting the proposals and continuation and replication of successful initiatives already underway (see pages 9–11), we make the following recommendations:

1. Bring ATI services to scale

While New York City has the strongest network of effective programs providing alternatives to incarceration in the nation, many eligible people who need these services lack access. The full range of successful ATI programming should be brought to scale throughout New York City to continue reducing the still much-too-large numbers of people who are being incarcerated. Certain populations are particularly underserved by ATI services, including: women; young people; LGBTQI; people with mental illness; addicted individuals convicted of property crimes; and individuals charged with violent offenses (a population that ATI programs have successfully diverted for many years in small numbers). Each of these populations has distinct needs and behavioral health issues that can be successfully addressed in the community. The Coalition supports increased investment to expand and replicate proven programs, including those that meet the needs of underserved populations, with the goal of diverting as many people as possible into community-based

programs using metrics proven to reduce recidivism and lower costs. The Coalition also supports increased investment to pilot new programs to serve all chronically underserved populations.

2. Explore feasibility of expanding ATI and Alternative to Detention (ATD) services sufficiently to enable substantial downsizing or closing of Rikers Island

The Coalition recommends an initial focus on expanding ATI and ATD services targeted at specific populations, such as women, people with serious mental illness and young people. Doing so could help reduce the number of individuals incarcerated in New York City Department of Correction (DOC) facilities. This could be a first step in helping the City to close the facilities on Rikers Island in which these populations are incarcerated.

3. Implement defender-based advocacy in NYC courts

Defender-based advocacy (DBA) is a critical component of a robust ATI system. DBA is a system for equipping defense counsels, courts, and other public officers with the tools needed to develop individualized plans that promote alternatives to incarceration for individuals facing prosecution. These plans are tailored to the background of each individual so that the justice system can more effectively address the underlying needs and challenges of these individuals. Wide utilization of DBA will generate less costly outcomes based on better information, decrease the number of motions to vacate prior convictions (440 motions), and foster a fairer system overall.

4. Enroll people at all stages of the criminal justice system in Medicaid and health insurance and connect them to health services

Connecting people in every phase of the criminal justice system to care provides opportunities for reducing institutionalization in both the criminal justice system through reduced incarceration and recidivism, and health care through the reduced use of emergency rooms and detox facilities. Enrolling them in whatever coverage they are eligible for has the major advantage of utilizing enhanced federal funding from the Affordable Care Act's Medicaid expansion (up to 90% rather than the 50% share for traditional Medicaid) and subsidized insurance to pay for much of the care. Navigators

should be placed in strategic locations where they can encourage and assist those going through the criminal justice system and their families to enroll in Medicaid or an insurance plan. The outcome will be that more New Yorkers can obtain the services they need in the community even as New York City and State realize significant financial savings.

To further this goal, the Coalition also supports full integration and data sharing among H+H, DOC, DCJS, and other entities—while maintaining the legally-required confidentiality of medical information—so that people can be automatically enrolled or re-enrolled in insurance upon release and linked to care, and the positive outcomes and cost-savings in both the criminal justice and health care systems can be identified and measured.

5. Develop a pathway from detention facilities to community-based healthcare providers

The City should give community-based treatment providers greater access to individuals in detention to assess their eligibility for services so that more timely treatment alternatives can be arranged and implemented. Expanding ATI programs to address individualized needs can help improve behavioral health outcomes for the target populations. Furthermore, addicted individuals would particularly benefit from expanding ATI because of the current underutilization of services. While reforms to the Rockefeller Drug Laws in 2009 have resulted in increased diversion and reduced recidivism and racial disparities in the criminal justice system, only 20% of individuals eligible for diversion under the reforms actually enrolled in treatment. This is especially true of those charged with property crimes⁴.

6. Improve linkage of criminal justice agencies, community based criminal justice service providers, health homes and other health providers, and managed care companies

Community-based ATI and reentry programs understand and effectively work with the criminal justice population, and hence are well positioned to deliver services that can be funded by Medicaid. However, many of these programs have little or no experience

working with managed care organizations, and some have not dealt with Medicaid at all. They need to build those relationships; market their ability to provide services and reduce costs; develop contracting, billing, information technology and corporate compliance capability, and train their staff to perform all those tasks if they are to work in this new environment. They also require infrastructure investments, similar to the investments that have been made by traditional health providers.

At the same time, much of the health care system has little or no familiarity with the criminal justice system. They do not understand or know how to meet the demands of criminal justice-involved individuals or the agencies that supervise them. Many healthcare providers are intimidated by this population or hold stigmatizing attitudes against them that could discourage this population from participating in health care services. Managed care companies and health care providers are often not familiar with the community-based organizations providing criminal justice services that benefit this population. The City should help to bring these different players together in order to achieve the best health and criminal justice outcomes for this population and at much lower cost.

7. Where risk assessments are needed, the instrument used must be evidence-based, gender-validated and specifically tailored to local needs and services

Risk and needs assessments can be important tools in the goal-setting and intervention necessary to improve behavioral outcomes and reduce recidivism among justice-involved individuals. Assessment tools should reflect the particular factors influencing criminal activity by gender. Criminogenic needs for women include mental health history, depression and psychosis symptoms, child abuse, adult victimization, relationship dysfunction, parental stress, and housing safety. Gender-specific assessment tools for women explore these areas and also identify important areas of strength that can promote a woman's success, including self-efficacy, family support, parental involvement and educational assets, and are critical tools that should be further developed.

⁴Vera Institute of Justice, "End of An Era? The Impact of Drug Law Reform in New York City," January 2015.

8. Recommend Certificates of Relief from Disabilities at the time of sentencing

The Department of Probation (DOP) currently recommends Certificates of Relief from Disabilities at time of sentencing for eligible individuals sentenced to probation. Certificates of Relief can help individuals regain rights and benefits lost as a result of a conviction, including employment and housing, both of which are key elements in reducing recidivism. Individuals who are not incarcerated in a state correctional facility (and who have fewer than two felony convictions) are eligible to obtain a Certificate for either a misdemeanor or a felony at the time sentence is pronounced or at any time thereafter. Although the final decision is made by a judge, many courts depend on the recommendation of DOP in deciding whether or not to issue a Certificate.

DOP should continue recommending that judges issue a Certificate at the time of sentencing for those sentenced to probation. DOP should also explore

submitting applications for other individuals not sentenced to probation who are eligible for a Certificate at sentencing unless there are circumstances particular to the case that warrant otherwise. These early applications will both assist the reentry of the individual and greatly reduce the burden placed on individuals, courts and Probation when applications for Certificates are submitted long after the conviction by removing the need for a lengthy investigation process, made more difficult by the time elapsed since the conviction.



REENTRY

Much attention has recently been paid to reentry, and for good reason. With over 50,000 individuals incarcerated or under supervision in New York City at any one time⁵, how successfully—or unsuccessfully—they make the transition back into their communities has an enormous impact on nearly every aspect of life in our City.

Risk of recidivism is a primary concern upon reentry. According to a study by the federal Bureau of Justice Statistics, 30% of people released from prison were rearrested in the first six months, 44% within the first year, and 67.5% within three years of release from prison. Statistics in New York are much better—of the 24,605 individuals released from State prison in 2010, only 9% were incarcerated for committing a new felony in the ensuing three years. However, 32% were reincarcerated for violating parole. On the local level, there are significant numbers of individuals cycling in and out of the custody of DOC. Many of these individuals are also significant users of other resources and systems, including emergency rooms, detox facilities, shelters and other services. Providing proper assistance can reduce the risk of recidivism.

Recommendations

Reentry planning and services should begin during incarceration and continue through and after the initial post-incarceration period to improve opportunities for accessing employment, housing, healthcare and other necessities of life. Assisting people reentering their neighborhoods from incarceration or under community supervision can help them attain stability and greatly increase their chances of leading productive and crime-free lives. In addition to supporting the new proposals and the continuation and replication of successful initiatives already underway (see pages 9–11), we make the following recommendations:

1. Bring all reentry services to scale

Just as with ATI, while New York City has the strongest network of effective programs supporting reentry in the nation, many eligible people who need these services lack access. The full range of successful reentry programming should be brought to scale throughout New York City to help many more of the hundreds of thousands of New Yorkers—disproportionately young men and women of color—who are striving to successfully reenter their communities. As described below, the Coalition urges the City to especially target needs around pre-release/transitional services, health insurance and care, employment and housing.

2. Jail-Based Pre-release/Transitional Services Recommendations

To the extent possible considering the short length of stay of most individuals incarcerated in DOC facilities—and the possibility that others may be sent to State facilities—local incarceration should focus on maximizing the success of the individual's return to the community. Where possible, the release and reentry of people with arrest and conviction records should be accompanied by necessary services and other supports, including:

- a. **Enroll as many individuals as possible onto any benefits for which they are eligible, especially Medicaid**

New York City is already supporting significant efforts to link individuals incarcerated in City jails to benefits. The City has recently expanded the number of individuals it seeks to enroll onto Medicaid in order to improve linkage to care in the community, thereby reducing both recidivism and negative health consequences and saving money. The City should continue and seek additional opportunities to maximize enrollment of anyone incarcerated in a City facility.

⁵ There are approximately 10,000 incarcerated in local jails in New York City on any day, with another 21,600 under state community supervision and approximately 22,000 on probation. Approximately 24,600 additional individuals are incarcerated in state facilities from New York City.

b. Provide vocational/employment training opportunities for incarcerated individuals

Over the last decade, DOC has added significant educational, vocational and employment readiness programming on Rikers Island, a strategy which has been proven effective and should be expanded. A three-state study on education and recidivism conducted by the Correctional Education Association in 2001 found that re-arrest rates were reduced by 9% and re-incarceration rates were reduced by 10% for inmates who received educational services when incarcerated⁶. In order to maximize the benefits that such programming can provide in reductions in recidivism and violence, the DOC should expand both access to these services and the scope of programming offered. This includes enhancing the current vocational opportunities in City jails, providing introductory vocational training on Rikers that is connected to programs in the community, and linking individuals to employment services in the community before release.

c. Evaluate needs, including health, educational and psychological of anyone detained on Rikers for 30 days or more

Individuals' needs vary widely, and the services afforded them should be tailored to their specific needs. Providing individualized needs assessments of those detained on Rikers will provide a foundation for both serving them while incarcerated and matching them with services upon reentry. These evaluations can flag potential health concerns to prevent physical or mental health crises on Rikers by fostering early intervention, as well as helping to link individuals to appropriate health, educational, vocational and other services that can facilitate their reentry. Incarcerated individuals should be fully engaged in their own discharge plans to maximize their participation in the recommended services and activities.

d. Expand discharge planning services to ensure that individuals can access all needed services

New York City already provides significant transitional services for those incarcerated on Rikers Island. These services include the Individualized Correction Achievement Network (I-CAN), which provides transitional planning and aftercare services for individuals incarcerated on Rikers Island in order to ensure access to services immediately upon release. New York also provides essential linkages to health care services for those with serious mental illness, addiction and HIV/AIDS. New York should build on these structures to ensure that as many people as possible are able to access the services they need upon release.

One area in which there is a particular need for discharge planning services is in ensuring access to housing upon release. In order to achieve this goal, New York should provide support to incarcerated individuals in applying for and accessing transitional and supportive housing services. Doing so would maximize the impact and effectiveness of the City's housing strategies. New York should also develop transitional housing resources, so that individuals can access housing immediately upon release.

e. Maximize opportunities for incarcerated individuals and their relatives and support networks on the outside to stay connected

Research has shown that maintaining close family contact while a person is incarcerated results in a more successful re-entry and lower recidivism. More than 100,000 children in New York State have an incarcerated parent. Council Speaker Mark-Viverito correctly called for the City to enact a video visitation program for individuals incarcerated on Rikers Island, so that existing community connections may be maintained and serve as a pathway for reentry. However, video visitation cannot replace physical contact. Family access to incarcerated relatives should therefore be maximized.

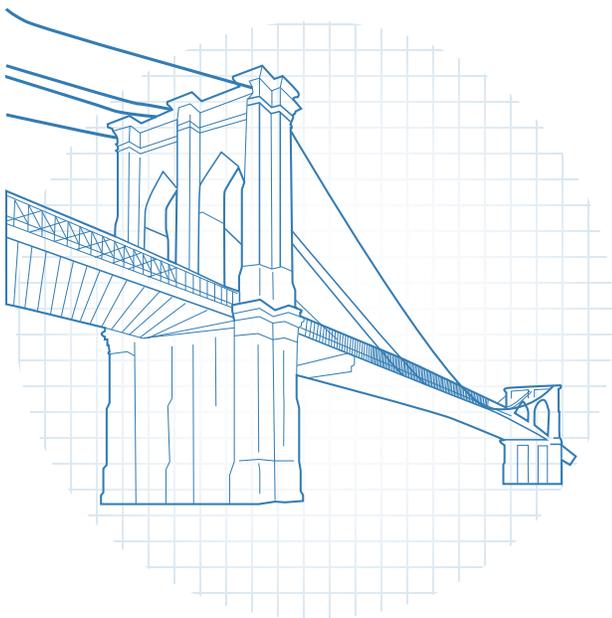
⁶ Steurer, S.J., Smith, L.G. (2003). *Education Reduces Crime, Three-State Recidivism Study*. Correctional Education Association (CEA) and Management & Training Corporation Institute (MTCI)

f. **Connect individuals to the municipal ID card, as well as other identification documents that can help them acquire a State-issued ID**

Having access to identification documents is essential to accessing employment, housing, education and other key elements of a reintegrated lifestyle. Without an ID, individuals cannot even access many commercial buildings to apply for jobs. New York City should assist incarcerated individuals in obtaining municipal ID cards, as well as other IDs such as Social Security cards and birth certificates which provide access to additional benefits for which the municipal ID is insufficient.

g. **Provide assistance to pay fines, fees, surcharges, etc.**

Upon discharge, justice-involved individuals are often saddled with debt to the courts and other systems. By helping the indigent cover these charges through a rotating fund, low-interest loans or other mechanisms, New York City can ensure that limited resources are spent on necessities for successful reentry, such as food, housing, childcare, and job preparation.



3. Employment Recommendations

In her 2016 State of the City address, New York City Council Speaker Melissa Mark-Viverito detailed one of the City's most critical priorities: reducing recidivism. Key to successful reentry that averts recidivism is facilitating employment.

a. **Bring to scale employment training and job placement services for individuals with criminal justice histories**

While New York City has a number of excellent programs providing reentry services, the number of individuals served by these programs is still significantly smaller than the need. Certain populations are particularly underserved by current programming and should be targeted through this plan, including:

- *Women* – Few programs target their service needs;
- *Young people* – This shortage will be even more acute if and when New York State raises the age of criminal responsibility;
- *LGBTQI* – Services must be specifically tailored to the needs of this population and be culturally competent;
- *Elderly* – Between 2007 and 2014, the proportion of the prison population over the age of 50 increased by 61%. Caring for the aging can be very expensive; serving them in the community would be more cost-effective without compromising public safety;
- *Mentally ill* – There is limited programming that targets the service needs of those with both criminal records and mental illness, even though helping to successfully reintegrate people with mental illness into the community, instead of incarcerating them, improves public safety and reduces costs;

In addition, more criminal record and collateral consequence counseling should be provided to individuals with prior criminal justice involvement. Very few providers counsel people on how to obtain and correct criminal record information and overcome barriers to employment, housing and education. These services help individuals sustain their reintegration into society and avoid rearrest and reincarceration. Non-citizens are particularly at risk and in need of services.

b. Reform City agency practices to facilitate the employment of people with criminal records by:

- Limiting the kinds of court and other documents related to criminal justice histories that agencies can request to those required to understand the date and nature of the crime (agencies should only generally require the court disposition and only for cases that resulted in a criminal conviction);
- Requiring agencies to have all relevant information about an applicant that would be necessary to do a full evaluation of the factors required by Article 23-A of the Corrections Law (in particular evidence of rehabilitation);
- Requiring the use of standardized questions on applications that conform to New York State’s Human Rights Law (Executive Law §296(16)) and the Fair Chance Act (where applicable);
- Training all City employees responsible for reviewing prospective or current city employees or people applying for occupational licenses on how to understand criminal record information and the requirements of State and City law, including the Fair Chance Act;
- Requiring that denial notices fully explain the reason for the denial, as required under both Article 23-A and the Fair Chance Act;
- Requiring regular collection and reporting of data regarding the employment and licensure of individuals with criminal records by city agencies in order to determine whether the agencies are complying with City and State non-discrimination laws; and
- Prohibiting consideration of pending charges that have been adjourned in contemplation of dismissal (“ACD”), and restoring suspended licenses when charges result in an ACD except for law enforcement positions or gun licenses, as only a very small percentage of ACDs do not result in dismissal.

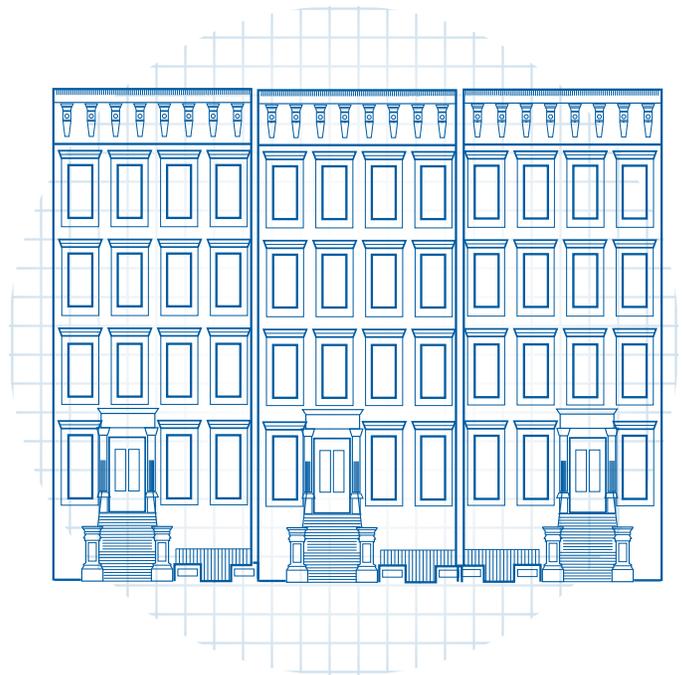
c. Create incentives for employers to hire individuals with histories of involvement in the criminal justice system, such as:

- Offering subsidies for providing individuals with transitional employment;

- Offering tax incentives for employing criminal justice involved individuals; and
- Including people with criminal histories as a service priority in all City human services RFPs and contracts.

d. Ensure the City’s workforce plan accounts for and empowers individuals with criminal records

Consistent with the federal Workforce Opportunity and Innovation Act and its prioritization of workforce board participation and services for individuals with barriers to employment, the City should ensure that its Workforce Investment Board has members with experience meeting the needs of workers with criminal records or who are themselves individuals with criminal records, and that its workforce plan includes an analysis of the employment barriers for people with criminal records and plans to meet their workforce needs.



4. Housing Recommendations

Safe and affordable housing is a critical component of successful reintegration of people leaving the criminal justice system. Yet, for many of the thousands of individuals leaving jail, being released from incarceration simply means trading a jail cell for a park bench or a cot in a homeless shelter. In fact, according to numerous analyses by the NYC Department of Homeless Services (DHS), between 20 and 23 percent of homeless individuals have been incarcerated at some point in the two years prior to entering the shelter system⁷. Yet many recently incarcerated individuals are not eligible for many programs for the homeless.

Needs for housing exist on a continuum. Some individuals may only need transitional housing, as they build a legitimate income stream or rebuild the relationships necessary to reunite with their families. Others will need supportive housing that provides coordinated social services such as family counseling, case management, medical services, drug and alcohol treatment, anger management, vocational training, and assistance with obtaining vital documents such as Social Security cards and birth certificates. Such supportive housing is a proven, cost-effective vehicle for stopping the revolving door of homelessness, incarceration and crisis service use.

City Council Speaker Melissa Mark-Viverito articulated the priority of ending the homelessness crisis during her 2016 State of the City address. Removing barriers to housing access among justice-involved individuals is a critical factor in bringing this goal to fruition. Because many individuals returning home struggle with addiction and mental illness, lack financial resources and face obstacles to gaining admission into public housing because of federal housing laws and NYCHA's policies regarding the admission of people with criminal records, securing housing often proves to be unattainable, especially immediately after release. As a result, an array of emergency, transitional and supportive housing should be a vital component of any effort to assist New York's formerly incarcerated population.

To achieve this goal, New York City should:

- a. **Increase access to housing support for people in or leaving the criminal justice system by investing in case management, referral and advocacy services to help them find housing**
- b. **Change its definition of chronic homelessness so that those who are recently incarcerated are eligible for services and supports**
- c. **The Coalition strongly supports Mayor de Blasio's plan to create 15,000 new units of supportive housing and urges that some of this housing be available to those who have been involved with the criminal justice system, including:**
 - A phased-permanent facility in which individuals released from prison are offered short term, emergency housing followed by longer term transitional housing coupled with supportive services; and
 - Permanent supportive housing for those individuals with the most severe needs.

Such transitional and supportive housing is extremely cost-effective when compared to the two most likely alternatives—the shelter system or incarceration. The cost of sheltering a homeless family in the New York City Shelter system is \$36,000 per year, while the cost of shelter for a homeless individual is \$25,000 per year. Prisons and jails are even more expensive. It costs approximately \$60,000⁸ a year to incarcerate a person in a New York State prison, and approximately \$168,000⁹ a year to keep a person in a New York City jail. Providing a supportive housing apartment with services costs approximately \$25,000 per year. However, a thorough evaluation of a supportive housing model serving this population, the Frequent Users Service Enhancement (FUSE) Initiative, created by the Corporation for Supportive Housing, found that participation in supportive housing generated \$15,000 in public savings. Furthermore, relative to a comparison group, FUSE participants had half the number of psychiatric inpatient days, 40% fewer jail days and 38% fewer shelter days¹⁰.

⁷ Burt et al. 1999; Eberle et al. 2001; Kushel et al. 2005; Schlay & Rossi 1992

⁸ <http://www.vera.org/files/price-of-prisons-new-york-fact-sheet.pdf>

⁹ <http://ibo.nyc.ny.us/cgi-park2/?p=516>

¹⁰ http://www.csh.org/wp-content/uploads/2013/11/FUSE_Eval_2page_Results_Final.pdf or http://www.csh.org/wp-content/uploads/2014/01/FUSE-Eval-Report-Final_Linked.pdf

d. Encourage the New York City Public Housing Authority (NYCHA) should take additional steps to reunite families

NYCHA already allows admission to many eligible individuals with criminal records and recently has taken steps to reduce barriers and create a pilot targeting this population. However, NYCHA's permanent exclusion policy prevents individuals from ever being readmitted into NYCHA housing, even if it has been decades since their criminal justice involvement and they would otherwise be admitted under NYCHA's regular admissions policies. Changing this policy would create an easy source of new housing without developing additional units by allowing individuals to rejoin their relatives who live in NYCHA (if their relatives are willing). NYCHA should therefore change its policies around permanent exclusion. NYCHA should also increase the number of low-level convictions that do not result in a waiting period for individuals initially applying for admission.

e. Require landlords receiving tax breaks or other subsidies from the City to have clear standards, processes and protections in deciding whether or not to provide housing to individuals with criminal records

Landlords providing affordable housing are supported by public tax dollars and other subsidies. As a result, they should be required to support the public policy goals of the City by assisting with the reentry of those who have been involved in the criminal justice system, thereby decreasing the amount of public funds spent on incarceration and the criminal justice system as a whole. A potential model can be found in the recent regulations promulgated by New York State Housing Regulations (9 NYCRR 1627-7.2, Affirmative Fair Housing Guidelines, etc.), as well as the U.S. Department of Housing and Urban Development's regulations for owners of Section 8 Project-Based Assistance programs (24 C.F.R. § 5). New York City should similarly require all landlords supported by City tax dollars or other public support to adopt (and should enforce) standards requiring them not to discriminate against individuals solely because they have a criminal record unless they have a clear public safety justification for doing so.

f. Require that providers of housing and all real estate-related transactions comply with recently released guidelines from the Department of Housing and Urban Development regarding application of Fair Housing Act standards to the use of criminal records¹¹ by requiring:

- All City operated and funded housing to comply with the HUD guidance, including auditing such housing providers to ensure that they have appropriate policies in place;
- All housing providers and brokers with whom the City contracts to comply with this HUD guidance;
- Having the City Human Rights Commission enforce criminal record-related denials of housing as violations of the NYC Human Rights Law's race discrimination provisions.

g. Increase opportunities for individuals with criminal records to obtain permanent housing by:

- *Barring landlords and other housing providers from asking about sealed arrest and conviction information* – The City should add housing to the Human Rights Law which already bars such questions in employment;
- *Barring landlords and other housing providers from asking about conviction information until later in the housing process* – The City should use the model offered by the Fair Chance Act, as well as by laws passed in San Francisco, Newark and other jurisdictions, requiring housing providers to wait until later in the process when they have additional information about the applicant before asking about conviction history; and
- *Creating standards for how landlords and other housing providers consider criminal record information* – New York State's Correction Law Article 23-A bars denial of employment or licensing solely because of a conviction history that is not job-related and/or does not constitute a safety threat. New York City should enact similar protections for housing, so that individuals are not denied housing solely because of an irrelevant criminal record, no matter how long ago or how minor the arrest or conviction.

¹¹ http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASStandCR.pdf

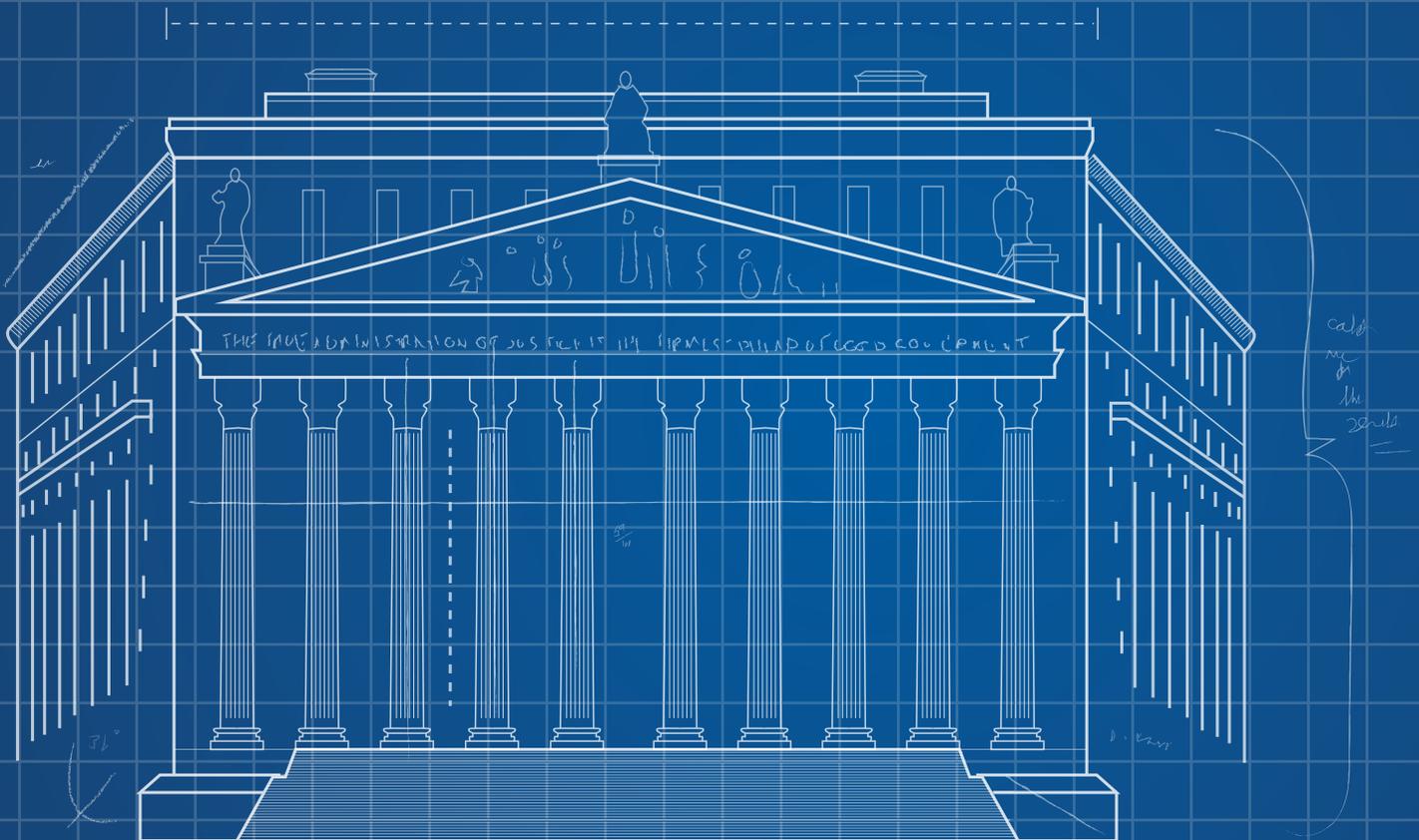
h. Adopt reforms proposed by other coalitions

- *Reentry Housing Workgroup* – The Coalition strongly supports the recommendations developed by the workgroup assembled by the Corporation for Supportive Housing to discuss the housing needs of people reentering the community from jail or prison. The workgroup included a number of community-based organizations and government representatives (including numerous Coalition members). The recommendations discuss how to increase access to supportive housing, public housing, affordable housing, and private housing and can be found here: <http://www.csh.org/2014/07/csh-leads-collaborative-process-in-developing-a-reentry-housing-platform-in-nyc/>. (Additional information about admitting this population into supportive housing can be found here: - http://www.csh.org/wp-content/uploads/2016/04/NYC_SHTaskForce_JusticeRecommendations_4.26.16.pdf)
- *New York City Housing Authority's (NYCHA) Permanent Exclusion Working Group* – A number of Coalition also participate in the NYCHA Permanent Exclusions Working Group, a group of legal and community-based organizations and tenant advocates who are working together to develop recommendations for improving NYCHA's policies and practices around termination of tenancy and permanent exclusion of tenants. The Working Group has developed recommendations and shared them with NYCHA. The goals of these recommendations are to increase fairness, improve NYCHA's procedures around termination, permanent exclusion and lifting of a permanent exclusion, improve community safety, and keep families united. The Coalition urges NYCHA and the administration to adopt the Group's recommendations.
- *Three-Quarter House Reform Coalition* – A number of Coalition members also participate in the Three-Quarter House Reform Coalition (TQHRC), a coalition of community-based organizations and legal service providers, seeking to improve conditions in three-quarter houses. Three-quarter houses are privately operated, for-profit residences that rent beds to single adults. Many hold themselves out as “programs” but do not provide any of the in-house services they promise. Many are also unsafe and unsanitary and have high levels of building code complaints. TQHRC has developed a number of recommendations around steps that the City and the State can take to improve conditions in three-quarter houses. Some of these proposals were recently introduced by the City Council. We call on the City to enact this legislation and the other recommendations that are within its control.



PART THREE

The City Should Work with the Office of Court Administration and District Attorneys' Offices to Improve Criminal Justice Fairness



The following recommendations related to diversion and reentry require New York City to collaborate with the courts and the District Attorneys' offices. Collaborative efforts such as the Task Force on Behavioral Health and the Criminal Justice System can serve as models for how these entities can collaborate to develop solutions for New York's criminal justice system.

COLLABORATION WITH OCA

1. Improve practices for how Office of Court Administration (OCA) Records are maintained and accessed - OCA's records¹² are an important source of information for many commercial background check companies. As a result, these records need to be as accurate as possible and individuals must have needed information about what appears on the OCA record and how to correct errors. The City should work with OCA to create improved practices for how records are maintained and accessed, including:

a. Allowing individuals and the agencies that assist them to easily obtain copies of their OCA record

Background checks cost \$65 and are based on name and date of birth matches, resulting in a number of errors. Yet, unlike the NYS Division of Criminal Justice Services (DCJS), OCA has no policy or process for allowing individuals to obtain copies of their own OCA record (except by paying \$65). Nor is there a process for advocates and others to obtain copies of their clients' records. The City should work with OCA to enable individuals and the agencies that assist them limited access to their records in order to ensure accuracy and so that the individual can obtain advice on how to respond to employment questions about their records;

b. Creating easy processes for correcting OCA errors and simplifying/minimizing the information that appears on reports

Despite the importance of criminal history record search (CHRS) records, there is no centralized process for correcting errors. Furthermore, many

employers and others have little understanding of the criminal justice system and of the difference between the initial counts an individual is charged with and the charges for which they are convicted. An employer or other entity reading a CHRS report (or a background check based upon such records) may therefore use all the original charges to deny an individual a job or other benefit, even though the individual may have been convicted of a much more minor offense. The City should work with OCA to create a simplified process for correcting errors and provide information explaining how to read these reports;

c. Clarifying who has access to the OCA report and how they obtain it

Despite the importance of these records, OCA does not provide any information about who has access to them, including whether OCA allows background check companies to request records in bulk. The City should work with OCA to obtain greater transparency about the process and how information is accessed; and

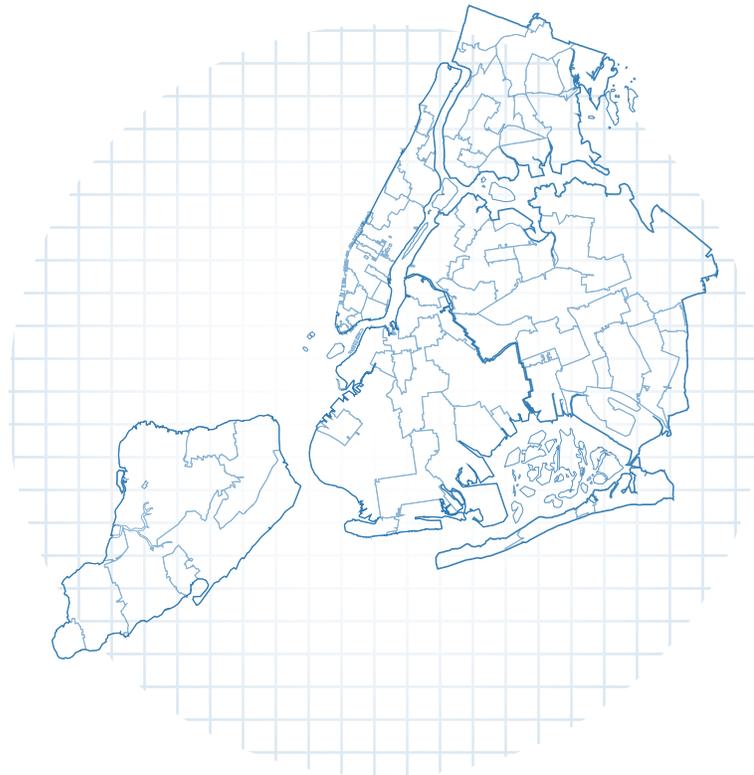
d. Simplifying certificates of disposition to reflect only conviction charges and ensure all sealed dispositions are clearly labeled

The City should work with OCA to ensure that dispositions only contain conviction information. The City should also work with OCA to create a centralized process for obtaining dispositions and make sure that individuals who cannot afford dispositions, and the agencies who work with them, are able to easily acquire access to needed information.

¹² <https://www.nycourts.gov/apps/chrs/>

2. Streamlining and clarifying the process for the issuance of Certificates of Relief. Certificates can help individuals get jobs, occupational licenses, housing, and other benefits in spite of their criminal record. The City should work with OCA to encourage all courts to adopt a more unified process, using best practices from around the state. This would help reduce confusion caused by local courts setting up their own procedures. Among the areas where we feel there should be clearer and more uniform guidelines are:

- a. **Clarifying courts' processes for receiving applications, including the ability to submit applications remotely;**
- b. **Ensuring that courts make decisions about certificate applications in a timely manner;**
- c. **Clarifying the process for those who are not issued a Certificate, including ensuring they obtain a copy of any report created by or on behalf of the judge considering their application (as entitled by statute) and information about when they are eligible to reapply;**
- d. **Encouraging courts to provide guidance to applicants about how to make their applications as strong as possible, including allowing applicants to receive assistance from advocates;**
- e. **Encouraging judges to always grant certificates unless the applicant is not eligible or the granting would undermine public safety.**



COLLABORATION WITH THE CITY'S FIVE DISTRICT ATTORNEYS' OFFICES

1. End the prosecution of low-level marijuana offenses. The ATI/Reentry Coalition applauds the NYPD for reducing the number of individuals arrested for the lowest level marijuana offenses. We also applaud the Kings County District Attorney for deciding not to prosecute most individuals arrested for such offenses. Until New York State enacts legislation to decriminalize this offense, we call on (the City to work with) the City's District Attorneys, many of whom have expressed support for this legislation, to no longer prosecute such cases.

2. Reduce the collateral consequences that can result from diversion programs. There are a number of additional steps District Attorneys' Offices and courts should take to decrease collateral consequences that can result from participation in diversion. Reducing these consequences would remove barriers to successful reentry, thereby decreasing the likelihood of recidivism, by mitigating employment and immigration consequences that may otherwise stem from a conviction, including:

a. Do not condition participation on waiver of sealing

DAs should not condition the health benefits of treatment and diversion on never being able to seal the conviction, even years after individuals complete the program and then manage to remain crime-free. Such a policy results in permanent punishment and does not benefit either the individual or society because it reduces opportunities to move forward by becoming employed and self-sufficient;

b. Allow people who complete a program to have their conviction conditionally sealed

Under the New York State Human Rights Law (Executive Law § 296(16)), employers are not allowed to ask about or consider sealed cases. Allowing sealing therefore increases the likelihood of employment, thereby reducing likelihood of recidivism. As a result, DAs should allow participants in diversion programs to have their cases conditionally sealed;

c. Allow sealing of diversion charges which are dismissed

64% of New York City diversion program graduates have their charges dismissed. However, many DAs refuse to allow such cases to be sealed, arguing that CPL § 160.50 sealing does not apply because the dismissal of charges was not in the individual's favor. Nor can the cases be sealed under CPL § 160.58 because they did not result in conviction. As a result, employers can ask about and consider these cases. The Coalition calls on District Attorneys to allow these cases to be sealed to reduce collateral consequences in employment (and other spheres);

d. Allow sealing of charges for Shock incarceration programming

Many District Attorney's offices refuse to consent to sealing of convictions for individuals ordered into the Department of Corrections and Community Supervision's (DOCCS) Shock incarceration program. Courts may order that certain individuals be incarcerated in a Shock facility, implying that Shock meets the requirement for CPL § 160.58 sealing that the treatment be "judicially sanctioned." District Attorneys' offices should not try to limit the benefits of sealing to individuals simply because the treatment program took place within a DOCCS facility; and

e. Allow individuals facing immigration consequences to be diverted without taking a guilty plea

Article 216 of the Criminal Procedure Law generally requires that individuals wishing to be diverted plead guilty before diversion. However, the Legislature did allow individuals to be diverted without a guilty plea when "the people and the court consent to the entry of such an order without a plea of guilty" (CPL § 216.05 (4)(a)). This subsection was included specifically to reduce potential collateral consequences resulting from a conviction. Such consequences are particularly harsh for non-citizens, even if the plea is later withdrawn. The Coalition therefore calls on DAs and courts to allow individuals to participate in diversion programs without a guilty plea when the consequences of the plea are so out of balance with the crime charged.

COLLABORATION WITH BOTH DISTRICT ATTORNEYS AND OCA

1. Reform the warrant system. In her 2016 State of the City speech, Speaker Mark-Viverito spoke about the 1.5 million summons warrants that remain active in New York City. She called on the Council to work with its partners to create a system to clear old warrants. Both the Kings County and New York County District Attorneys' offices have held events over the last year to help individuals with open warrants for low-level pending charges clear their warrant and resolve the case. As Speaker Mark-Viverito suggested, the City should work with OCA and all five district attorneys' offices to make it easier to clear old warrants. The City should also provide outreach education services to the community to let them know how they can benefit from the changes and advocate for themselves.

2. Broaden access to diversion for individuals whose arrests are related to addiction or mental illness. While the 2009 reforms to the Rockefeller Drug laws resulted in increased diversion and reductions in recidivism and racial disparity, only 20% of individuals eligible for diversion under the reforms actually enrolled in treatment¹³. In order to increase participation, the City should work with District Attorneys' offices and OCA to:

a. Screen all individuals for diversion eligibility

Data from DCJS indicates that screenings of individuals charged with eligible property crimes remains low and that the system has not adapted to immediately consider diversion for those charged with all eligible crimes;

b. Train judges to identify appropriate individuals

Most judges have not been trained to identify appropriate individuals. As a result, individuals are often diverted only if their attorney or an advocate from a diversion program convinces the judge to divert them. New York City's new health screening process should significantly increase identification of appropriate individuals. However, judges must also be trained to look for signs that individuals could benefit from a diversion program and about the

benefits of diversion, in terms of recidivism and cost reduction. Training should also cover research around risk of violence and how programs can successfully address this risk so that judges can better understand actual risk and feel more comfortable diverting those perceived to pose a risk;

c. Stop regularly requiring residential treatment for diversion, and instead base decisions on the assessments of addiction experts

Anecdotal evidence suggests that many individuals opt out of diversion programs because judges and DAs insist on highly restrictive residential treatment, viewing it as replicating some of the punitive and restrictive aspects of incarceration. These decisions are often made without concern for best health outcomes. Because residential treatment extends criminal justice system control, some individuals choose incarceration instead. Treatment decisions should be made by addiction experts who refer to all clinically appropriate modalities;

d. Allow diversion for those charged with both diversion-eligible and other offenses

Anecdotal evidence indicates that district attorneys are often unwilling to allow diversion when individuals are charged with both diversion-eligible offenses and other charges not specifically included in the 2009 reforms that are not disqualifying. Furthermore, data from DCJS indicates that DAs in New York City are more likely to object to allowing individuals to participate in drug court than DAs in other parts of the state¹⁴;

e. Create more court and community programs to divert individuals with mental illness.

While the criminal justice system has developed significant protocols and programming to identify and divert those whose criminal justice involvement is related to addiction, there are far fewer procedures and less programming targeting those with mental illness. This may well be one of the factors respon-

¹³ Jim Parsons, Qing Wei, Christian Henrichson, Ernest Drucker, Jennifer Trone, Vera Institute of Justice (2015), "End of An Era? The Impact of Drug Law Reform in New York City,"

¹⁴ 14% in NYC, compared to 9% in other large counties and 2% in small counties.

sible for the increasing percentage of individuals on Rikers Island with mental illness. While courts have mental health parts and there are diversion programs serving this population, the capacity remains far too small to respond to the need.

3. Develop strategy to address those cycling, or at risk of cycling, through the system. The City should work with OCA and the DA's offices to explore ways to keep individuals with low level misdemeanor arrests, many of whom end up on Rikers Island, from repeatedly cycling through the criminal justice system. Almost all these individuals have a mental illness, an addiction or both. By figuring out the most effective way to address these individuals' needs, there will be a reduction in unnecessary incarceration, police and court resources will be saved, and medical and homelessness costs will be reduced. No jurisdiction in the country has developed a successful model for addressing the population, giving New York the opportunity to create strategies for the rest of the country.

4. Develop strategies to avoid individuals from being incarcerated by DOC for short periods of time. 24,415 individuals were discharged from DOC facilities after an incarceration of less than 7 days in FY2015. This number represents nearly a third of all discharges during the 2015 fiscal year. These short stays are costly but have little or no benefit, as they have no positive impact on community safety or crime prevention. However, these incarcerations are incredibly disruptive, potentially affecting family life, employment, housing, and child care. Harm is also caused by the experience of spending even a short amount of time in custody. While some of these short stays might be prevented by addressing behavioral health needs, many will not. The City should therefore work with the DAs and courts to reduce this practice and free up valuable resources.

5. Allow the use of Medication Assisted Treatment (MAT) to treat addictions as part of diversion programs. Decades of research have established that MAT is an extremely effective—in some instances the most effective—form of treatment for opiate addiction¹⁵. Yet many prosecutors and courts require defendants to stop participating in MAT against the

advice of their physicians, or bar them from beginning such treatment. Such practices run counter to evidence-based practices and are dangerous – studies show that coerced cessation of MAT significantly increases the risk of relapse, overdose and even death. (It also runs counter to recently announced federal policy¹⁶ and State law¹⁷)

One of the Coalition's members, the Legal Action Center, together with the Office of Court Administration (OCA) and the Center for Court Innovation, has developed recommended practices for MAT in drug courts by profiling courts with good practices¹⁸. The Coalition urges the City to work with OCA and DAs to ensure they have policies and practices that maximize health and public safety outcomes. We also recommend that the City ensure that all City agencies have MAT policies and practices based on research, rather than on bias and prejudice.

6. Reduce the use of ACDs and agree to sealing of violations at conviction. New York's criminal justice system has often responded to low-level arrests through adjournments in contemplation of dismissal (ACDs) or violation convictions. Lengthening the amount of time individuals are under control of the criminal justice system makes it more difficult for these individuals to succeed in the community, thereby reducing public safety. New York should work with courts and district attorneys' offices to increase immediate dismissal of charges where appropriate and to seal cases when an ACD is issued or an individual is convicted of a violation, thereby allowing these individuals to receive the employment protections offered by City and State human rights laws which bar employers from asking about or considering sealed cases.

7. Refine the Process for RAP sheet corrections. Multiple studies have shown that the criminal records of millions of NYC residents are riddled with errors. According to a 2013 report by the Legal Action Center, approximately 30% of New York State RAP sheets contain at least one mistake¹⁹. Such errors create barriers to New Yorkers trying to find jobs, obtain professional licenses, rent apartments, get higher education, enter

¹⁵ For more background on MAT, please see this fact sheet from the National Institute on Drug Abuse: https://www.drugabuse.gov/sites/default/files/tib_mat_opioid.pdf

¹⁶ http://www.huffingtonpost.com/2015/02/05/drug-courts-suboxone_n_6625864.html

¹⁷ <http://open.nysenate.gov/legislation/bills/2015/s4239b>

¹⁸ <http://lac.org/resources/substance-use-resources/medication-assisted-treatment-resources/medication-assisted-treatment-in-drug-courts-recommended-strategies/>

¹⁹ <http://lac.org/resources/criminal-justice-resources/rap-sheet-resources-get-correct-seal-criminal-records/the-problem-of-rap-sheet-errors/>

public housing, or obtain other benefits. While the City cannot correct all mistakes on records, it can work with courts and DA's offices, as well as city agencies, to develop policies and procedures to assist individuals to correct errors that originated in the City, including:

a. Have NYPD correct non-sealed “voided arrests” and help correct multiple arrest issues

One of the most challenging types of errors to correct originates with the NYPD, either because the NYPD fails to properly “void” an arrest, the NYPD enters a number of arrests separately to indicate that the individual is being arrested for a string of incidents (as recommended in the NYPD’s patrol manual), or when there are mistakes with the fingerprinting or mugshot process. The NYPD should either create a process to assist individuals to obtain information needed to correct their record or a process for accepting notices from the public about potential errors that the agency could then correct on its own with the State;

b. Working with District Attorneys to correct errors from their records

Sometimes when a DA declines to prosecute an arrest, the information fails to reach DCJS. Correcting such errors can be difficult, especially if they occurred many years ago, as DAs Offices do not always maintain these records for long periods of time. The City should work with the five DAs Offices to create a centralized system for correcting such errors;

c. Work with OCA to create a simpler process for correcting court errors

The City recently worked with OCA to create the Justice Reboot initiative to improve court processes. The City should also work with OCA to create an easy, centralized process to obtain correct information so that individuals can easily request information or a correction for errors that originated at the court level;

d. Getting the Department of Probation (DOP) and the Department of Correction (DOC) to correct errors in probation and corrections information

Another type of error that can be difficult to correct is when the only information about a specific case is the individual’s incarceration, probation or parole record. Currently, there are no mechanisms for correcting such errors. The City should work with DOP and DOC to create internal processes for locating information about old probation or incarceration records and providing that information either to the individual or to DCJS to enable correction of the error;

e. Support legislation to correct RAP sheets proposed at State level – (See appendix A)

CONCLUSION

Over the last 25 years, New York City has created a national model for how a city can use diversion from incarceration and support services for those returning to the community to massively reduce both crime and incarceration. As a result, New York has both seen a massive drop in incarceration and has turned itself into the safest large city in the country. Mayor de Blasio and the City Council have built on that legacy to make New York City an even safer and a fairer city. They have done this both by expanding opportunities for people, especially those with behavioral health conditions, to be diverted from incarceration throughout the criminal justice process from pre-arrest to post-conviction and by finding additional ways to support those returning to the community be successful once they are released.

Yet, despite all this progress, there remain additional steps that the City should take to ensure that only those who cannot safely be housed in the community are incarcerated and that individuals not be punished because of their addiction or mental illness. To achieve these goals, the City must maximize mental health and substance use disorder interventions, both in the community and throughout the criminal justice process from arrest to release. Some of this can be accomplished by bringing current initiatives to scale, while others will require developing new interventions. New York is perfectly poised to take such steps, having recognized the success of these efforts over the last several decades. Furthermore, the City has a Mayor and a Speaker and City Council committed to increasing fairness and supporting individuals, families and community. In order to achieve the City's public safety and fairness goals, we advise that it adopt the recommendations contained in this Blueprint.

APPENDIX A

STATE REFORMS THE MAYOR AND CITY COUNCIL SHOULD SUPPORT

The Coalition supports a number of State legislative reforms. We call on the Mayor and City Council to support the following Executive/Legislative reforms:

Raise the age of criminal responsibility in New York. We applaud the Speaker and Council for supporting this legislation, including the enactment of all the reforms proposed by the Governor's Commission on Youth, Public Safety and Justice;

Expand drug law reform to new offenses. The 2009 reforms to the Rockefeller Drug Laws have been successful in increasing the number of individuals diverted into treatment from incarceration. The State should expand the law to maximize the number of individuals able to benefit from diversion;

Create parallel reforms for those with mental illness. Those with mental illness comprise an increasing proportion of those involved in the criminal justice system. Yet, there is no legislative mechanism to identify and divert those with mental illness from the incarceration system. The State should create a process, similar to that created by drug law reform, to divert those with mental illnesses;

End the prosecution of low-level marijuana offenses. The ATI/Reentry Coalition applauds the NYPD and the Kings County District Attorney's efforts to reduce the number of individuals arrested and convicted for the lowest level marijuana offenses, arrests that disproportionately impact young men of color. We applaud the Council for its support for State legislation decriminalizing the possession of marijuana in public view;

Support the End of the Epidemic Task Force proposal to decriminalize syringe possession. Syringe exchanges are among the most effective interventions for preventing HIV and Hepatitis C among injection drug users. They are also very cost-effective. Yet, even though syringe exchange has been legal in New York since 1992, participants are still arrested for possessing syringes. The End the Epidemic Blueprint called for decriminalization of syringe possession. The City Council should call on the State to enact these reforms and on the NYPD to stop arresting individuals for possession of syringes.

Refine the process for RAP sheet corrections. According to a 2013 report by the Legal Action Center, approximately 30% of New York State RAP sheets contain at least one mistake. Such errors create barriers to New Yorkers trying to find jobs, obtain professional licenses, rent apartments, get higher education and public housing, and obtain other benefits. No individual should be barred from moving on with their life because the government made a mistake. The Council should support legislation to correct RAP sheet errors.

End the use of condoms as evidence. Condoms are also an important and cost-effective tool for preventing the spread of disease. While we applaud the State's recent enactment of legislation to end the use of condoms as evidence in low-level prostitution cases, condoms should never be used as evidence of a crime, even in human trafficking cases. The use of condoms as evidence incentivizes traffickers to deny victims of trafficking access to condoms. Trafficking victims who have been denied condoms are at risk of disease, pregnancy, and forced abortions. The Council should call on New York State to end the use of condoms as evidence in all cases.

Continue to work with the State on its proposed 1115 Demonstration Waiver. New York State is the first state in the nation to seek approval from the federal government to provide medical services with Medicaid coverage to individuals in the last 30 days of their incarceration. The vast majority of incarcerated people have substance use and/or mental health issues which must be addressed if they are to successfully reenter their communities upon release. Establishing a demonstration program to obtain Medicaid coverage for the transition from incarceration to community-based care upon release is a far-sighted idea that will achieve multiple benefits simultaneously: improved health and fewer deaths, reduced recidivism and incarceration, and reduced health and criminal justice costs for the state and localities. New York City should continue to work with the State to obtain this waiver.



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