



**L E G A L
S E R V I C E S**

INCORPORATED

TESTIMONY

**“Oversight: Behavioral Health and the Criminal Justice System:
Examining New York City’s Action Plan”**

PRESENTED BEFORE:

**THE NEW YORK CITY COUNCIL’S
COMMITTEE ON FIRE AND CRIMINAL JUSTICE SERVICES, COMMITTEE
ON PUBLIC SAFETY, COMMITTEE ON COURTS AND LEGAL SERVICES,
AND COMMITTEE ON MENTAL HEALTH, DEVELOPMENTAL
DISABILITY, ALCOHOLISM, DRUG ABUSE, AND DISABILITY SERVICES**

PRESENTED BY:

**DINAH LUCK
SENIOR STAFF ATTORNEY
MFY LEGAL SERVICES, INC.**

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I. Introduction

MFY Legal Services, Inc. (“MFY”) envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for over 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 10,000 poor and working poor New Yorkers each year benefitting over 20,000 people.

The Mental Health Law Project at MFY seeks to prevent homelessness, stabilize income, support employment, and promote recovery for adults living with mental illness in the five boroughs of New York City. Since 1983, the Mental Health Law Project has received support from the NYC Department of Health & Mental Hygiene, and our attorneys work in partnership with inpatient and outpatient behavioral health providers throughout the city. The Mental Health Law Project serves more than 1,800 people with mental illness each year.

This testimony is being submitted to comment upon the Action Plan developed by the Mayor’s Task Force on Behavioral Health and the Criminal Justice System. We applaud the Mayor for developing the Task Force, and we strongly support the Task Force’s focus on ensuring that people with behavioral health needs 1) do not enter the criminal justice system, 2) are treated outside of a jail setting if they do enter the system, 3) if in jail, receive therapeutic rather than punitive treatment, and 4) are connected to effective services upon release.

Because both our experience and the evidence has shown that stable, affordable housing is crucial to positive outcomes for people with behavioral health needs, we will focus our comments on the impact on housing on two of the “points of contact” described in the Action Plan.

II. From Arrest to Disposition

1. Decreasing the amount of time individuals with behavioral health needs are detained increases their ability to maintain affordable housing

MFY supports the Action Plan’s goal to reduce crime and unnecessary incarceration. Our experience is confirmed by the evidence, which illustrates that people with mental illness often experience an exacerbation of their symptoms when arrested and incarcerated.¹ A reduction in arrest and incarceration will result in a decrease in mental health-related symptoms.

Avoiding or reducing the time people with mental illness spend incarcerated will also help preserve housing. Just like other New Yorkers, people with mental illness live in a variety of housing, including rent-regulated apartments, NYCHA apartments, 2- and 3- family homes, and Mitchell Lama and other cooperatives. In order to maintain their housing, people with mental illness, like all other New Yorkers, must make monthly rent, maintenance, and/or mortgage

¹ Mayor’s Task Force on Behavioral Health and the Criminal Justice System, *Action Plan*, 2014, fn xvii, p. 19.

payments. It goes without saying that when an individual is incarcerated – particularly someone living alone or on the margins – he is not able to pay rent or comply with any obligations of tenancy. In the City today, landlords will pounce on any interruption of rental payment to bring an eviction proceeding and generally prevail if the tenant is unable to go to Housing Court to defend himself.

For those individuals with behavioral health needs who are employed, avoiding incarceration prevents a reduction in wages or a loss of a job. Subsequently, those individuals, who through new supervised release and non-monetary bail reforms are not detained, now will be able to continue to pay their rent and maintain their housing.

For individuals with behavioral health needs who do not work, or whose employment is supplemented by public benefits, avoiding or reducing the amount of time spent incarcerated will also minimize disruptions to crucial benefits, including Medicaid, food stamps, federal disability benefits (Supplemental Security Income (SSI) and Social Security Disability), and public assistance (cash benefits and the shelter allowance). Ensuring uninterrupted access to benefits will preserve housing by maintaining the safety net supports on which many people with mental illness rely for financial and housing stability.

2. Individuals who are homeless or lack stable, permanent housing may not be able to access pre-trial supervised release programs.

MFY supports the use of risk assessment tools to decrease unnecessary pre-trial incarceration, but we recommend that the committees consider whether people with mental illness who are homeless or living in unstable, transient housing situations will be able to access pre-trial supervised release. People with mental illness who are homeless or in unstable housing are more likely to come in contact with the criminal justice system, and this vulnerable population may not benefit from the pre-trial reforms recommended in the Action Plan.

Specifically, the Action Plan indicates that a verifiable address and ties to community are factors that are considered when determining if someone will be eligible for a supervised release program.² The Action Plan also proposes implementing a supervised release program that is similar to the one the City has used successfully to reduce juvenile detention. Supervised release requires face-to-face and telephone contacts and the connection to substance abuse and mental health treatment.³ People with mental illness who do not have stable housing are likely to be either found ineligible for supervised release or struggle to comply with the regular contacts and treatment requirements.

The Action Plan must ensure that people with mental illness who are homeless have meaningful access to pre-trial supervised release programs.

² Mayor's Task Force on Behavioral Health and the Criminal Justice System, *Action Plan*, 2014, fn xii.

³ *Id.* at 10.

III. Back in the Community

1. The City has a severe lack of housing available for people with behavioral health needs

People with disabilities are more than twice as likely to live in poverty than people without disabilities. In New York, the poverty rate for people with disabilities is 28.6%.⁴ Many New Yorkers with disabilities rely on public assistance or Supplemental Security Income (SSI) for financial support. Public assistance provides only a \$215 monthly allowance for shelter, an amount that has not increased since 1990 and is grossly inadequate.⁵ SSI beneficiaries receive \$820 monthly, which includes an \$87 supplement paid by New York State.⁶ A 2012 report found that an SSI recipient in the New York City area would have to pay 152% of her income for the average efficiency apartment.⁷ People with disabilities are employed at lower rates than other New Yorkers, but even full time work at minimum wage only pays approximately \$1,400 monthly. With rents increasing faster than wages, many people with disabilities, even those who are employed, simply cannot afford New York City rents.⁸

2. The City must increase the amount of housing available to people with mental illness and other behavioral health needs

While the Action Plan mentions housing in the “Back in the Community” section, the lack of affordable housing for people with mental illness in New York City is a pervasive problem that affects all stages of a person’s interaction with the criminal justice system. Studies of the Housing First model, in which people are provided with housing without barriers or restrictions such as requiring active engagement in substance abuse or mental health treatment, have shown that the model provides benefits that far exceed simply a place to live. People with mental illness who are in Housing First programs have reduced medical and psychiatric costs, reduced shelter stays, and reduced interactions with the criminal justice system.⁹ People with mental illness who are in permanent housing are also less likely to be evicted because they can work or maintain their benefits.

The lack of safe, affordable options for very low income single adults has led to an underground cottage industry of unlicensed housing in New York City, a phenomenon documented by a

⁴ Press Release, Gov. Andrew M. Cuomo, *Governor Cuomo Signs Executive Order Establishing Commission to Create Employment First Policy for New York* (September 17, 2014) available at <http://www.governor.ny.gov/news/governor-cuomo-signs-executive-order-establishing-commission-create-employment-first-policy-new>.

⁵ *Jiggetts v. Grinker*, 75 N.Y.2d 411, 416 (1990).

⁶ New York State Office of Temporary and Disability Assistance, *SSI and SSP Benefit Levels Chart effective January 1, 2015* (October 30, 2014) available at <http://otda.ny.gov/policy/directives/2014/INF/14-INF-12-Attachment-1.pdf>.

⁷ Technical Assistance Collaborative Inc., *Priced Out in 2012: The Housing Crisis for People with Disabilities* (May 2013), p. 30.

⁸ Mayor Bill de Blasio, *Housing New York: A Five-Borough, Ten-Year Plan*.

⁹ Julian Somers et al., *Housing First Reduces Re-Offending Among Formerly Homeless Adults with Mental Disorders: A Randomized Controlled Trial*, PLOS ONE (September 2013); United States Interagency Council on Homelessness, *Frequent Users Systems Engagement (FUSE)*, available at http://usich.gov/usich_resources/solutions/explore/frequent_users_systems_engagement_fuse.

recent study by the Prisoner Reentry Institute at John Jay College of Criminal Justice.¹⁰ These so-called “three quarter houses” are usually small buildings that hold themselves out as transitional residences that will assist individuals coming out of prisons and jail and substance abuse programs as they work to rebuild their lives.¹¹ The houses are one of the few options available for thousands of single adults who rely on the \$215 HRA shelter allowance to pay for their housing. The houses tend to be drastically overcrowded, with multiple housing code violations.¹² The houses are rife with harassment and abuse, including illegal lockouts and mandated substance abuse treatment programs even for residents who do not need treatment.¹³ There appears to be a financial relationship between the houses and the outpatient treatment programs, which bill Medicaid. A tenant who fails to attend a program or who successfully completes it is unlawfully evicted with no notice and no court process, enabling the house to bring in a new Medicaid-eligible tenant.¹⁴ This revolving door creates instability and disruption in the lives of individuals attempting to rebuild their lives following incarceration, substance abuse treatment and homelessness.

¹⁰ Prisoner Reentry Institute, John Jay College of Criminal Justice, *Three Quarter Houses: The View from the Inside* (hereinafter “PRI Report”) 5-6 (October 2013), available at <http://johnjayresearch.org/pri/files/2013/10/PRI-TQH-Report.pdf>. For background on policies that fed the growth of three quarter houses, see Coalition for the Homeless, *Warehousing the Homeless: The Rising Use of Illegal Boarding Houses to Shelter Homeless New Yorkers* (hereinafter “Warehousing the Homeless”) 5-7 (January 2008), available at http://coalhome.3cdn.net/ddc8dd543ded03ff12_lpm6bh1cr.pdf.

¹¹ Id. Seventy-two percent of the respondents in the PRI Report were formerly incarcerated, 51% had previously been in residential substance abuse treatment, and 19% percent were currently on parole. For accounts of the dominant role of three quarter houses in housing individuals being released from incarceration, see also Coalition for Women Prisoners, *A Place to Call My Own: Women and the Search for Housing after Incarceration, Introduction* (2013), available at <http://www.correctionalassociation.org/wp-content/uploads/2013/10/CA-AP2CMO-FINAL-print-ready-August-8-2013.pdf>; Lisa Riordan Seville and Graham Kates, *A Home of Their Own, THE CRIME REPORT* (hereinafter “A Home of Their Own”), available at: <http://www.thecrimereport.org/news/inside-criminal-justice/2013-07-a-home-of-their-own> (noting that New York State Department of Corrections and Community Supervision (DOCCS) records showed that 425 parolees were being housed in sober houses operated by one particular entity); Patrick Arden, *Deep Concerns About ‘Three-Quarter’ Housing*, CITY LIMITS, March 7, 2012 (hereinafter “Deep Concerns”) available at <http://bkbureau.org/2012/03/07/deep-concerns-about-three-quarter-housing/> (quoting a DOCCS spokesperson’s statement that the agency approves three quarter house placements before release).

¹² PRI Report *supra* note 1 at 6-7, citing an analysis by the Furman Center for Real Estate and Urban Policy, finding that of 317 known three quarter house addresses, 88% had a building code complaint between 2005 and 2012 that resulted in at least one violation or stop-work order by the New York City Department of Buildings.

¹³ Jake Bernstein, *Inside a New York Drug Clinic, Allegations of Kickbacks and Shoddy Care*, ProPublica (September 9, 2013) (detailing complaints by former staff at an outpatient program of payments to a three quarter house operator); PRI report *supra* note 1 at 25-26; *Davidson v. House of Hope*, 19600/12, N.Y.L.J. 1202579307267 (Kings Cty. Civ. Ct. 2012); *Gregory v. Crespo*, 801290/2012, N.Y.L.J. 120254557895 (Civ. Ct., Bx. Cty. 2012).

¹⁴ Jake Bernstein, *Inside a New York Drug Clinic, Allegations of Kickbacks and Shoddy Care*, ProPublica (September 9, 2013) (detailing complaints by former staff at an outpatient program of payments to a three quarter house operator); PRI report *supra* note 1 at 25-26; *Davidson v. House of Hope*, 19600/12, N.Y.L.J. 1202579307267 (Kings Cty. Civ. Ct. 2012); *Gregory v. Crespo*, 801290/2012, N.Y.L.J. 120254557895 (Civ. Ct., Bx. Cty. 2012).

IV. Recommendations

The Action Plan created by the Mayor's Task Force on Behavioral Health and the Criminal Justice System marks progress for New York City. MFY makes the following recommendations to improve the Action Plan.

- Analyze the risk assessments used to evaluate eligibility for pre-trial release to ensure that individuals who are homeless or lack stable, permanent housing are able to access supervised release programs.
- Create a specialized rent subsidy through the Human Resources Administration for people with mental illness, similar to the FEPS and HASA subsidies. The current \$215 shelter allowance for single adults cannot pay for safe, permanent housing anywhere in New York City and contributes to the instability of this population.
- Lobby the state for an across-the-board increase in the Public Assistance shelter allowance. The public assistance shelter allowance must be raised. For a single adult, public assistance pays only \$215 per month, making it impossible for recipients to find safe, legal housing. While housing costs increase annually, the shelter allowance has not increased in 26 years.
- Lobby the state to increase the state supplement to SSI to increase the monthly income of people with mental illness who rely on SSI as their sole or primary source of financial stability.
- Lobby the state for increased commitments to build supportive housing as part of the NY/NY 4 agreement.
- Make supportive housing more accessible. In order to access supportive housing, individuals must meet the definition of "chronically homeless," which requires the individual to spend a full year on the street or in shelter or have four documented episodes of homelessness in the past three years. This required showing of "chronic homelessness" doesn't include time spent in City or State facilities or unstable housing such as three quarter houses, and thus, doesn't capture high need individuals who have been cycling between homelessness and incarceration or unstable housing for years.
- Lift the ban on new SRO construction. Single room occupancy ("SRO") housing provides fundamental housing of last resort for very low-income adults. The current law prevents the legalization of rooming house arrangements and the construction of new units, contributing to the dearth of housing for single adults in New York City. As a result, New York City has been unable to replenish the more than 150,000 SRO units lost since 1950.

V. Conclusion

MFY Legal Services strongly supports the Action Plan and the Mayor and the City Council's commitment to addressing the crisis facing people with mental illness and other behavioral health needs who interact with the criminal justice system. Housing is not only closely intertwined with criminal justice issues, it is the central foundation on which stability and recovery are built. Therefore, MFY encourages the Mayor and the Council to increase the housing options available for people with mental illness and other behavioral health needs. The benefits to this vulnerable population and to the City will be significant.