

THE LEGAL AID SOCIETY

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April 6, 2021

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*****FOR IMMEDIATE RELEASE*****

Legal Aid Calls on Albany to Transition to Video Hearings for all Parole Matters or Face Litigation

Current Telephonic System Deprives LAS Clients of Due Process Rights

(NEW YORK, NY) – The Legal Aid Society, in a recently issued [demand letter](#), called on the New York State Department of Corrections and Community Supervision (DOCCS) and the New York State Board of Parole to immediately transition to video hearings for all parole matters or face imminent litigation.

The current telephonic model implemented and managed by DOCCS falls woefully short for these critical parole appearances - preliminary hearings, arraignments and contested final hearings - where clients face months or possible years of incarceration. A hearing with no video component presents a serious, ongoing and long-term abridgment of Legal Aid clients' due process rights. During these proceedings, hearing officers and administrative law judges make constitutionally deficient factual determinations based on evidence that parole clients cannot see, at hearings in which they cannot meaningfully participate.

Background

DOCCS established this phone system out of necessity last year. It was meant to serve as a temporary stop gap in the middle of a global health crisis. It was never meant to be a permanent alternative to in-person hearings.

Now, a year later, DOCCS has failed to implement a meaningful video platform for most accused parole violators on Rikers Island. There have been numerous inexcusable delays and broken promises as to when Legal Aid clients would finally have access to video technology. Seven months into the pandemic - from October 13, 2020 to November 4, 2020 - DOCCS finally conducted a select number of parole revocation hearings by Skype, but those hearings ended abruptly once DOC and the Office of Court Administration ("OCA") switched their video platform from Skype to Microsoft Teams on November 9, 2021.

Now that Teams has finally been implemented as a temporary measure until in-person hearings can safely resume, the roll out has been entirely inadequate. Since its implementation on March 1, 2021, DOCCS has held only 2-5% of parole violation hearings on video; an average of 2 video hearings a day in a schedule of 30-40 cases. The few hearings that are calendared to take place by video, appear to be scheduled arbitrarily, thereby depriving all accused persons of the reasonable expectation that their hearings will be conducted in a manner that comports with their constitutional and statutory rights.

The letter states:

For the reasons stated, telephonic hearings are problematic and inhumane. Our clients are completely invisible, sitting alone in unclean jail phone booths during their hearings. They cannot see the judges and the hearing officers who decide their fate, the parole revocation specialists and parole officers who prosecute them, or the witnesses who testify against them. Furthermore, our clients are deprived of the right to view the body language and demeanor of testifying witnesses, view evidence entered against them, and are unable to see or speak privately with their attorney in a confidential setting. In order to provide our clients, the fair hearings to which they are entitled, DOCCS and the Parole Board must hold all preliminary hearings, arraignments and contested hearings on the Teams video platform until such time as it is safe to return to court.

“Due process demands that our clients receive a fair hearing at every stage of the parole revocation process. Such a hearing provides these New Yorkers with an opportunity to be heard and to confront and cross-examine witnesses,” said **Lorraine C. McEvilley, Director of the Parole Revocation Defense Unit at The Legal Aid Society**. “While video proceedings are imperfect and do not provide the same level of due process as in-person hearings, it is an unconscionable stretch to assert that telephonic hearings provide any due process at all. We call on DOCCS and the Parole Board to fully transition to video hearings on all parole matters. Otherwise we have no choice but to file litigation.”

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The Legal Aid Society exists for one simple yet powerful reason: to ensure that New Yorkers are not denied their right to equal justice because of poverty. For over 140 years, we have protected, defended, and advocated for those who have struggled in silence for far too long. Every day, in every borough, The Legal Aid Society changes the lives of our clients and helps improve our communities. www.legalaidnyc.org