



The City of New York
Department of Investigation

JOCELYN E. STRAUBER
COMMISSIONER

180 MAIDEN LANE
NEW YORK, NY 10038
212-825-5900

Testimony of DOI Commissioner Jocelyn E. Strauber Concerning Int. 423

Dear Speaker Adams, Chair Nurse, Council Member Rivera, and members of the Committee on Criminal Justice:

Thank you for the opportunity to provide testimony in Int. 423, sponsored by Council Member Rivera, in relation to procedures following the death of an individual in custody of the department of correction and a report on compassionate release.

The New York City Department of Investigation (“DOI”) is the City’s independent inspector general with broad jurisdiction and oversight over more than 45 mayoral agencies and an array of other City agencies, entities, boards, commissions and authorities. This includes the Department of Correction (“DOC”), the Board of Correction (“BOC”), Health + Hospitals (“H+H”), and the Correctional Health Service (“CHS”). In our capacity as Inspector General of New York City, we investigate every death in custody that occurs at DOC and we partner closely with the New York State Attorney General’s Office (“AG”) which is mandated by State law to investigate these deaths. The AG is empowered to bring criminal charges, and in cases where it declines to do so, the relevant District Attorney is authorized to do so. The United States Attorney’s Office for the Southern District of New York (“SDNY”) may also pursue federal criminal charges. Regardless of the prosecuting entity, DOI works closely with the prosecutor to investigate and to prosecute cases involving deaths in custody and has considerable expertise in these types of cases. I write to express DOI’s concerns about the sections of Int. 423 that would mandate new investigatory procedures.

DOI appreciates the Council’s efforts to expedite investigations of deaths in DOC custody and to make the investigative process more transparent. Persons in custody depend on DOC for their physical and mental well-being and each death in custody is a tragedy for the decedent’s loved ones and the City. However, Int. 423 would require a new process that, at best, is redundant of the investigative process that DOI and the AG (and, where applicable, SDNY or relevant District

Attorneys' offices) already follow. At worst, Int. 423's mandated process could interfere with and complicate a parallel criminal investigation of these matters.

New York State Executive Law section 70-b established the AG's Office of Special Investigation ("OSI") which is mandated to investigate and, if warranted, prosecute any alleged criminal offense by an on-duty police officer or peace officer employed by a corrections agency, such as DOC, related to the death of a person in custody. The law gives the AG investigative authority and criminal jurisdiction from the time the death occurs through the culmination of any criminal proceeding or until the AG determines that criminal charges are not warranted. The AG's investigation includes, "(a) gathering and analyzing evidence; (b) conducting witness interviews; (c) reviewing and commissioning any necessary investigative and scientific reports; and (d) reviewing audio and video-recordings." The law also empowers the AG to subpoena witnesses and records.

Pursuant to Chapter 34 of the New York City Charter and Mayoral Executive Order 16 of 1978, DOI also has the authority to investigate deaths in custody. DOI is empowered to interview DOC staff, other persons in custody, or witnesses to a death in custody; to obtain any video, document, or record at DOC needed for its investigation; and to issue court-ordered subpoenas for relevant medical records in H+H's or CHS' possession.

Under current practice, immediately upon the death of a person in DOC custody, DOC notifies DOI and the AG. DOI's Squad 1, which oversees DOC, maintains a 24/7 duty team which is available to respond to any incident at a DOC facility, including incidents of death in custody. The AG and DOC's Special Investigations Unit ("SIU") also respond to these incidents. Jointly, the three entities secure the scene and identify, preserve, and obtain any evidence required for the investigation. DOI then conducts a thorough, independent investigation of the incident, and is available to partner with the AG during the course of its investigation. Where DOI's investigation uncovers any allegation of criminal misconduct against a DOC or CHS employee, it immediately notifies the AG and the appropriate local or federal prosecutor, depending on jurisdiction. If there is a prosecution, DOI collaborates with the prosecutor's office during any additional investigation and throughout the prosecution.

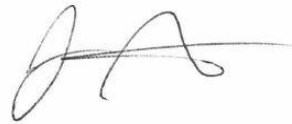
Int. 423 would mandate that a parallel investigation take place by BOC. BOC lacks the authority to bring criminal charges and has fewer resources and less experience than DOI or the AG with respect to deaths in custody investigations. Mandating an additional investigation by BOC would be a poor use of their limited resources in light of the existing DOI/AG investigative process that follows each death in custody.

Moreover, a BOC investigation and mandated public report would interfere with DOI's and the AG's investigations and potentially compromise any criminal case that might be charged. The BOC investigation would almost certainly lead to the creation of multiple statements by individual witnesses, thereby generating additional discovery and potentially inconsistent accounts that could be used to impeach those witnesses in a criminal trial. The proposed legislation also would require publicizing the names of any DOC employees involved in the death in custody as well as any disciplinary action taken against them, which could incentivize DOC to pursue disciplinary action rather than awaiting the conclusion of DOI's and the AG's investigations

concerning potential criminality. A disciplinary proceeding might involve sworn witness statements that, like a BOC investigation, would generate additional discovery and potentially inconsistent accounts, complicating and potentially reducing the likelihood of a successful criminal prosecution.

Accordingly, DOI does not support the legislation as currently drafted with respect to these issues. Should Int. 423 move forward through the legislative process, we welcome the opportunity to work with the Council to amend the bill to ensure that the concerns outlined above can be addressed.

Thank you,

A handwritten signature in black ink, appearing to read 'J. Strauber', with a long horizontal flourish extending to the right.

Jocelyn E. Strauber
Commissioner