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**Testimony of the New York Civil Liberties Union
before
THE NEW YORK STATE SENATE
and
THE NEW YORK STATE ASSEMBLY
regarding
The Disproportionate Impact of COVID-19 on Minority Communities
Monday, May 18, 2020**

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony regarding the disproportionate impact of COVID-19 on minority communities in New York, and solutions to mitigate that impact. The NYCLU, the New York State affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices throughout the state and over 180,000 members and supporters. The NYCLU defends and promotes the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including the right of every New Yorker to enjoy life, liberty, and equal protection under law.

Racial disparities apparent in the tragic impacts of the coronavirus pandemic are not novel or isolated or uniquely occurring phenomena. They are concrete evidence of the racism in our systems and institutions – and they stand for the hard truth that rampant systemic racism is a killer.

While there are remedial actions government officials can take immediately, many of the longer-term systemic changes that must be undertaken to protect New Yorkers of color are already pending legislative action, some just waiting for a vote. Civil rights are human rights; civil rights preserve human lives and livelihoods. And in the glaring light of this pandemic, we see more clearly that many New Yorkers are unable to access or exercise the rights and liberties that translate into the ability to live a full life – a divergence that all too often erupts along racial lines.

Lawmakers are specifically entrusted with the duty to turn the best and highest interests of their constituents into reality. Dire events like a pandemic require

boldness and vision. And now more than ever, swift and unflinching action is needed to move the people’s agenda in Albany, secure the rights of all New Yorkers, and ensure that none of our communities are left so exposed to devastation in the future.

This public health crisis has exposed the detrimental effects of systemic racism upon the socioeconomic and environmental conditions that largely determine health status.

Of the coronavirus, Governor Cuomo has now famously said “this virus doesn’t discriminate”¹ – but our systems and institutions persistently do, despite the best intent of many actors, and the cost is becoming clear.

As early as January 2020, the looming pandemic was predicted to hit “at-risk” communities most severely. Contrary to what some may believe, communities of color aren’t at greater risk because of personal choices or preferences.² Instead, we and many others assert, communities of color have been put and left at risk, consistently, through institutional decision-making about public policy choices and preferences.

It is increasingly understood that health outcomes at the individual and community levels are deeply impacted by the interaction of factors in one’s social environment (including income, education level, family and social support, and experience of discrimination,) and one’s physical environment (including place of residence, crowding conditions, air and water quality, and transportation systems). In turn, these factors tend to determine a person or community’s physical and mental health, and “taken together...are mostly responsible for health inequities,” including access to and quality of care.³ Simply put, this means that socioeconomic factors, environmental factors, and their interaction with access to care are far more determinative of health outcomes than individual behaviors.

We accept that the collective experience of a pandemic causes a myriad of traumas related to exposure to the virus, social isolation, loss of loved ones, loss of work and education, community devastation, and more. We accept that we have yet to appreciate the long-term impacts of this crisis. However, when it comes to the physical and psychological toll of racism,⁴ public policy narratives focus far more often on the perceived deficits of communities of color than they focus on undoing oppressive conditions.

¹ See, e.g., Governor Andrew Cuomo, Remarks (March 30, 2020), available at <https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-governor-cuomo-receives-briefing-upon-arrival-usns-comfort>.

² Ibram X. Kendri, *Stop Blaming Black People for Dying of the CoronaVirus*, Atlantic (April 14, 2020), available at <https://www.theatlantic.com/ideas/archive/2020/04/race-and-blame/609946/>.

³ Centers for Disease Control, *NCHHSTP Social Determinants of Health*, available at <https://www.cdc.gov/nchhstp/socialdeterminants/index.html> (last visited May 14, 2020).

⁴ See, e.g., Jenna Wortham, *Interview with Monica Williams: Racism’s Psychological Toll*, New York Times (June 24, 2015), available at <https://www.nytimes.com/2015/06/24/magazine/racisms-psychological-toll.html>.

In this testimony, the NYCLU offers a spotlight on one New York city to make the case for an expansive understanding of how we have come to here, and we offer policy recommendations to rectify the wrongs that have left our communities of color susceptible to this kind of devastation.

The City of Syracuse provides a powerful case study in the relationship between race, social and environmental factors that can be improved or aggravated through government action or inaction, and COVID-19's impact.

The impact of COVID in Syracuse has revealed what many already understood, often from experience, to be true: when there is a crisis of any sort in America, Black and brown communities are likely to be the most devastated and impacted. Predictably, the notion of personal responsibility and behavioral consequence is often asserted to justify how and why communities of color are most impacted by COVID. Of course, wearing masks and washing hands and complying with social distancing standards are all essential to reducing the spread of the virus; yet, what we find when we map and visualize the outbreak data is that pre-existing social conditions play a significant role in explaining how and why these communities are so affected.

Recently, the NYCLU's Central New York chapter director attended a partnership meeting with the Deputy Mayor of Syracuse, the Onondaga County Executive, and his leadership team regarding the steps the county planned to take to re-open. At that meeting, attendees referred frequently to a map that showed which parts of Syracuse were hardest hit by COVID; these areas of the city were familiar to some as areas that have historically been hit hard before.

In Syracuse, many of the neighborhoods most affected by COVID were once redlined.⁵ By now, many of us have read the histories and learned how redlining cemented existing inequalities and even further disenfranchised communities of color in Syracuse and elsewhere in our state. Along with a growing understanding of the way that the coronavirus seems to be taking an exponential toll in communities of color, this geographical overlap prompted the NYCLU's Racial Justice working group and our data analysts to examine other measures of socioeconomic and environmental

⁵ "Redlining" describes the formal practice of denying communities access to mortgage loans and credit on the basis of race. As the Urban Displacement Project details:

Redlining was a process in which the Home Owners' Loan Corporation (HOLC), a federal agency, gave neighborhoods ratings to guide investment. This policy is so named for the red or "hazardous" neighborhoods that were deemed riskiest. These neighborhoods were predominantly home to communities of color, and this is no accident; the "hazardous" rating was in large part based on racial demographics. In other words, redlining was an explicitly discriminatory policy. Redlining made it hard for residents to get loans for homeownership or maintenance, and led to cycles of disinvestment.

Urban Displacement Project, *The Legacy of Redlining: Resources*, available at <https://www.urbandisplacement.org/redlining> (last visited May 17, 2020).

health around the city. Perhaps unsurprisingly, many other long-term inequities can be shown to exist within the same communities that are struggling most with COVID.

Across New York as well as in Syracuse, the neighborhoods hardest hit by COVID are not only likely to be the neighborhoods with the lowest proportion of white residents. They are also the neighborhoods where massive environmental remediation is most likely needed; a review of EPA Lead and Respiratory Hazard Indexes in Syracuse found the communities most impacted by COVID suffering the most from ongoing environmental hazards. Across our state, the communities most impacted by COVID are also those where food deserts most likely persist, such that access to proper nutrition is unsteady; a review of USDA Food Deserts in Syracuse confirmed the same overlap. The same areas are likely to be those where employment levels and the income levels of those who are employed lag behind; where housing quality and access to transportation are substandard; and where schools are underfunded, and residents often lack educational opportunities.⁶

Much is yet to be learned about COVID, but scientists and public health officials have consistently connected pre-existing conditions such as diabetes, high blood pressure and respiratory illness to serious complications and mortality risks in COVID patients. Naturally, those who lack access to nutritious and healthy foods, those who endure the stress of living among high levels of concentrated poverty, those who reside among hazardous pollutants, and particularly those with multiple overlapping social determinants of health below community averages, are most likely to have underlying and comorbid medical conditions. And frequently, communities of color rank below average for the sorts of socioeconomic, environmental, and “quality of life factors” that play a key role in these disproportionately poor health outcomes.

The disparate impacts of the coronavirus are painfully revealing. Despite the tragedy, we now have an important opportunity to bear witness to the impacts of COVID not as an isolated phenomenon, but instead as one of many, many symptoms of the ways in which our systems and institutions are failing New Yorkers of color. Rather than ask why this concentrated impact in communities of color is occurring, now is the time to orient ourselves toward a new set of standards and norms in which leaving New Yorkers of color behind is no longer acceptable.

⁶ See Addendum. The maps in the addendum display the COVID-19 case rate of zip codes in Syracuse (represented by circle size) alongside various demographic and health statistics (represented by coloring). Race: Of the ZIP codes in Syracuse that are majority white, all but one has the lowest range of COVID-19 cases per 1,000 people. In the ZIP codes that are majority non-white, only one, which is 49% white, has the lowest range of COVID-19 cases per 1,000 people. Respiratory hazard index: The two ZIP codes with the highest rates of COVID-19 are both largely comprised of census blocks that rank in the EPA respiratory hazard index at the 60th percentile or above. Food deserts: A significant portion of each zip code where positive COVID-19 cases exceed 26 per 10,000 are classified as a food desert by the USDA. The ZIP codes with relatively smaller food deserts have smaller case rates. Redlining: Of the four ZIP codes with the highest COVID-19 case rates, significant portions of three were characterized as “Definitely declining” or “Hazardous” in the 1937 HOLC “redlining” maps.

Every setback and every series of challenges poses a learning opportunity – if we are willing to capitalize. We must use this moment to reimagine our society in new and bold ways. We must take into account the legacies of racial inequities and bias that have continued and sustained disproportionate impacts from an age of overt racism through until today. It requires critical thinking, and studious attention to the effects of policies such as redlining, segregation, mass discrimination in education and categories of employment most populated by workers of color, and perhaps most obviously, over-policing and over-criminalization of Black and brown New Yorkers.

These social policies and their devastating impacts are among the elements that build both the immediate and long-term case for reparations, in particular to Black and Native Americans. It is incumbent upon us now as reputed change-makers, as advocates and elected officials with the interests of the people at heart, to see fully, without flinching. We must join together and rise to the occasion to remedy the harms brought upon communities of color before the next crisis is upon us – be it a pandemic, a political war waged on a particular community’s way of life, a miscarriage of justice and human rights values, or another form of tragedy that decimates communities, artificially suppresses quality of life, or transparently steals human lives.

To that end, the NYCLU provides the following recommendations in support of a comprehensive approach to securing the civil rights and liberties of Black, Latinx, Asian, Native, and other New Yorkers of color. This must be undertaken without delay, and with all available effort toward repairing past harms and paving the way for true equality, so that all New Yorkers can truly enjoy the same civil protections, the same opportunities, and the same chance at lives lived fully and well.

Racial injustice is endemic in New York’s public education system, and its heavy impacts on youth of color are highly visible.

Children of color, and especially Black children, are disproportionately burdened by the worst aspects of our education system, while the promises of opportunity are consistently held out of reach. Pandemic or no, the solutions are the same: end practices that harm kids of color without excuse, invest in students’ futures, and ensure every school is a school where children of color thrive. COVID-19 may have laid bare the inequities that have been simmering in our state, turning them to literal life-or-death issues, but it is the choices we’ve made and the things we’ve ignored for generations that made it possible.

With the right resources and policies in place, public schools can be our society’s best incubators of democratic ideals. They can be drivers of racial justice, economic justice, pluralism, civic engagement, and collective action. But we have to believe in and invest in them to perform that role.

1. Funding the education of young New Yorkers must be a priority, and when we fail, students of color are invariably left behind.

Perhaps second only to healthcare, the disruptions to public education due to COVID-19 have been, and threaten to be, seismic. Catastrophic budget forecasts

promise to make this situation worse. But even before COVID-19—indeed, at the height of New York’s financial prosperity—our state failed to provide equitable education funding to kids in need. The way we have chosen to spend education dollars has sent the clear message that students of color are less valued.

Many schools across our state are perennially strapped for cash, but districts that educate the greatest proportion of students from poor households are hit the hardest. These districts serve the children with the most intense needs, including homeless kids and recent immigrants, and generally have less funding from local sources (property tax revenues and individual parent fundraising).

On average, New York State spends enough to guarantee every child a sound basic education—in fact, we spend more than any other state in the country—but we have never distributed those dollars equitably. Every year, instead of actually funding the Foundation Aid formula, New York legislators substituted a temporary formula that left schools underfunded and Black and brown students feeling the impact. The state calls its temporary funding formula *Foundation Aid*, but it is an inequitable and inadequate substitute for the real thing. Using calculations from the true Foundation Aid formula, our public schools should have received \$4 billion more than they have.

According to the Citizens Budget Commission, the amount needed to fully fund even the highest-needs districts in the state is only \$80 million. Shockingly, that amount, compared to the size of New York’s budget, is so small it could be funded even in an economic crisis such as we are experiencing now.⁷ We can still choose to fund high-needs schools so they have a sliver of a chance of making up for what has been lost this year.

To begin to create a racially just education system, any additional funding cuts cannot be “across the board.” If they are necessary, and we believe every other source of savings should be tried first, education cuts must be targeted where they will be felt the least: in particular, school districts with the ability to raise local revenue and districts with fewer high-needs students. Education cuts can’t be stacked on top of the horrific challenges facing many young people of color across the state.

2. The School-to-Prison Pipeline funnels students of color onto a path beset by challenges rather than opportunities for learning and success.

In the 21st century, New York, like most other states, has been on a path of increasing the presence and authority of police in schools – as part of the growth of the U.S. carceral system – while simultaneously divesting from healthy school climate approaches. This prioritization is driven by the misguided and racist belief that some students must be treated as criminals for other students to be safe. In New York City schools, there are now more school safety officers than guidance counselors, social workers, and school nurses combined. In the Rochester City School District, where

⁷ David J. Friedfel, *No, New York State Shouldn’t Add Billions in New Education Funding...*, New York Daily News (March 11, 2019), available at <https://www.nydailynews.com/opinion/ny-oped-state-education-aid-20190311-story.html>.

hundreds of teachers' jobs are on the chopping block, pains are taken to preserve positions for a staff of *both* school resource officers and private security guards. This prioritization of police, together with long and repeated out-of-school suspensions, can push kids out of school and into the criminal legal system. The phenomenon is known as the school-to-prison pipeline.

We thank the legislature for acting last session to adopt a measure that at least limited the role of police in schools. However, the remainder of the Judge Judith S. Kaye Solutions Not Suspensions Act is still on the legislative agenda. The bill (S.767/A.1981) would shorten the maximum length of suspensions and ensure that students who are suspended cannot be denied access to schoolwork and credit. New York is an outlier among states in allowing students to be suspended for up to an entire school year. Importantly, the bill would also end the practice of suspending students in Kindergarten through 3rd grade—children for whom suspension is a cruel and useless act.

During the 2016-17 school year, New York districts suspended a student at least once every minute.⁸ These punishments are applied overwhelmingly to Black and Latinx students – research shows that white students are punished less frequently and less severely than students of color for exhibiting the same behaviors.⁹ In both Buffalo and Syracuse, Black students make up about half of the student body, but 60 percent of suspensions.¹⁰

This is not an issue limited to urban school districts. On the contrary, discipline disparities are as bad or even worse in some suburban districts. In Great Neck, Black students represent less than 2 percent of enrollment and more than 14 percent of suspensions; Latinx students, less than 9 percent of enrollment and almost quarter of suspensions. In Greece, Black students represent less than 15 percent of enrollment and more than 31 percent of suspensions.¹¹

Finally, in 2018, the state approved expenditures from the Smart Schools Bond Act for at least two school districts to purchase facial recognition surveillance technology. This technology has been demonstrated, beyond doubt, to incorrectly identify Black people and especially Black women and children at unacceptable rates. In other words, the software is more likely to determine that an innocent Black student is a banned individual, subjecting her to scrutiny, humiliation, and trauma, and possibly missed school. School districts and the SSBA review board had access to that information and still purchased the systems, apparently determining that racially

⁸ The New York Equity Coalition, *Stolen Time: New York State's Suspension Crisis* (December 2018), available at <https://equityinedny.edtrust.org/stolen-time/>.

⁹ Shoshana N. Jarvis & Jason A. Okonofua, *School Deferred: When Bias Affects School Leaders* (Oct. 2019), available at <https://journals.sagepub.com/doi/abs/10.1177/1948550619875150>.

¹⁰ U.S. Dep't of Education, Office of Civil Rights, *Civil Rights Data Collection, school year 2015-2016*, available at <https://ocrdata.ed.gov/DataAnalysisTools/DataSetBuilder?Report=6>.

¹¹ *Id.*

discriminatory misidentification was an appropriate risk to take in order to experiment with cutting-edge security systems.

While these systems are obviously lying fallow during pandemic-related closures, there is an opportunity for a policy solution. The legislature must enact a moratorium on biometric surveillance in schools; the legislation to do so (A.6787/S.5140) easily passed the Assembly last session but did not come to a vote in the Senate.

Most tragically, in hindsight, the SSBA money that was spent could have been used to purchase learning technology, including the laptops and tablets that are now the most vital of school supplies. While it's easy to say we couldn't have known what was coming, we did know enough even then to make a better decision. We knew face surveillance technology was racist, and we knew that kids in poor communities, especially kids of color, don't have the same access to technology as their white peers.¹² We knew that our kids needed better education, and we spent money on surveilling them instead. We can and must do better.

The interaction of racial and gender disparities is on particularly tragic display in poor maternal health outcomes among New Yorkers of color.

The NYCLU calls on policy makers to carefully examine the intersection of racial and gender disparities highlighted by the COVID-19 pandemic. At that intersection we see broken child care and child welfare systems, an essential workforce made up largely of women of color, heightened incidences of intimate partner violence across the board, a sharpened proximity to poverty, and a health care system that has failed Black and brown women. Our partners at direct service organizations and gender equity non-profits in New York are leading much of the effort to reimagine these institutions. We stand in support of their expertise and many of their policy recommendations, and call upon the state for significant new investment in these areas.

Today, we point to and lift up one piece of this work: the effort to reduce maternal mortality rates and eliminate stark racial and economic disparities. New York ranks 23rd in the nation when it comes to maternal death rates.¹³ And Black

¹² Access to high speed internet has for years been necessary to meaningfully participate in many aspects of our society; but as COVID-19 has recently forced more and more of society's basic functions online, reliable high speed internet has become even more of an imperative for access to everything from education, to work, to telehealth, to the courts, and to visitation between parents and children in foster care, as well as for children whose parents have divorced or separated. Yet, too many New Yorkers, particularly those who live upstate or in majority Black and brown communities, lack access to reliable, high speed internet. See New York State Residential Broadband Availability, N.Y.S. Broadband Office, <https://map.nysbroadband.ny.gov/html5viewer/?viewer=broadband> (last visited May 14, 2020).

¹³ *Health of Women and Children: Maternal Mortality in New York in 2019*, United Health Foundation, available at https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/ALL (select "National Maternal Mortality" tab for state rankings) (last visited May 17, 2020).

women are over three times more likely than white women to die of causes related to pregnancy or childbirth.¹⁴ Pregnant people must have access to quality health care, yet Medicaid coverage in New York lapses sixty days after a pregnancy ends even though the risks of maternal mortality and morbidity persist long after that expiration.

S.7147-A (Rivera)/A.9156 (Gottfried) works to reduce maternal mortality and morbidity by expanding Medicaid coverage for one year post-pregnancy. The New York Civil Liberties Union strongly supports this measure and calls upon our state policy makers to pass it swiftly as one concrete step toward reducing health inequities.

Workers of color and immigrants are shouldering the heaviest burdens in the face of the pandemic, and are left out of many relief enactments.

The effects of the COVID-19 pandemic have fallen disproportionately on the shoulders of workers of color, including a disproportionate number of immigrant New Yorkers. Many of these workers are, ironically, the very same who have been deemed essential to our current way of life. These New Yorkers work in large warehouses fulfilling orders, at grocery store check-out counters, on farms, for restaurant and food delivery services, in essential transportation, and who care for children, the sick and the elderly. Many labor long hours for meager wages and pay taxes, yet some of these will receive no public assistance should they become sick or unemployed, including immigrants out of status, gig workers, and other misclassified employees.

These valuable workers are disproportionately people of color. A recent study from the NYC Bureau of Policy Research reveals that the vast majority of NYC workers who are on the COVID-19 frontlines are persons of color. 75% of grocery, convenience and drug store workers, 73% of public transit workers, 78%, of trucking warehouse and postal service workers, 73% of healthcare workers, 78% of childcare, homeless, food and family services workers, and 82% of building cleaning service workers are Black, Asian or Latinx persons.¹⁵

Immigrants are also overrepresented on the front lines of the COVID-19 response, and among those hardest hit by business closures and layoffs. Nationwide, the Migration Policy Institute estimates that immigrants make up 6 million of the workers in front-line industries such as health services, essential retail, and transportation; and another 6 million in industries such as food service, non-essential retail, and building services that have been hardest hit by layoffs and furloughs.¹⁶

¹⁴ *Pregnancy Mortality Surveillance System*, Centers for Disease Control and Prevention, *available at* <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pmss.html> (last visited May 17, 2020). The CDC reports an average of 13.0 deaths per 100,000 live births for white non-Hispanic women, versus 42.4 for Black women and 30.4 for American Indian/Alaskan Native non-Hispanic women.

¹⁵ NYC Bureau of Policy Research, *New York City's Frontline Workers* (March 2020), *available at* https://comptroller.nyc.gov/wp-content/uploads/documents/Frontline_Workers_032020.pdf.

¹⁶ Julia Gelatt, Migration Policy Institute, *Immigrant Workers: Vital to the COVID-19 Response, Disproportionately Vulnerable* (March 2020), *available at* <https://www.migrationpolicy.org/research/immigrant-workers-us-covid-19-response>.

That includes roughly 1.7 million foreign-born health care professionals providing care for coronavirus patients.¹⁷

Among farmworkers, many of whom are immigrants or guest workers, cramped living and working conditions have led to multiple coronavirus outbreaks at farms across the country – and advocates warn that those testing positive don't reflect the full extent of the virus's reach.¹⁸

These realities will be acutely felt in New York, which is home to more than 4.4 million foreign-born residents.¹⁹ Immigrant New Yorkers are working overtime to help keep our communities safe, and are among the most impacted when sacrifices need to be made.

Emergency COVID relief packages enacted on the federal and state levels have provided some measure of relief – but significant gaps still exist. Without access to enforceable health and safety protections at work, paid sick and family leave including coverage for childcare, unemployment benefits and protections against employer retaliation, the devastating effects of the pandemic will only worsen.

In response to this crisis, we have an historic opportunity to provide real solutions for low-wage and exploited workers that will live on beyond the current emergency and transform our state into one in which true equality, dignity and respect is provided for all workers.

Accordingly, to protect workers of color and immigrant workers, we call on the NYS legislature to enact:

1. Enforceable standards that protect workers against infection and the spread of COVID-19, including regulation of employer-provided housing for farmworkers;
2. Hazard pay for essential workers;
3. Paid sick leave for workers left out of the state and federal expanded paid sick leave laws like gig workers and other misclassified employees;²⁰
4. Paid family leave for all workers that includes leave necessitated by COVID-related school and daycare closures;
5. A temporary wage replacement program for workers excluded from unemployment insurance;

¹⁷ David J. Bier, *Immigrants Aid America During COVID-19 Crisis*, Cato at Liberty (March 23, 2020), available at <https://www.cato.org/blog/immigrants-aid-america-during-covid-19-crisis>.

¹⁸ Gosia Wozniacka, *Why Farmworkers Are Especially at Risk for COVID-19*, Eater (May 14, 2020), available at <https://www.eater.com/2020/5/14/21257505/farmworkers-covid-19-coronavirus-cases-risks>.

¹⁹ Migration Policy Institute, *State Immigration Data Profiles: New York*, available at <https://www.migrationpolicy.org/data/state-profiles/state/demographics/NY> (last visited May 17, 2020).

²⁰ Sydney Pereira, *New York is Expanding Paid Sick Leave for Workers Under Quarantine for COVID-19* (March 18, 2020), available at <https://gothamist.com/news/new-york-expanding-paid-sick-leave-workers-under-quarantine-covid-19>.

6. Enhanced protections for whistleblowers who expose wrongdoing; and
7. A robust public education and awareness campaign to inform workers of their rights.

Beyond the realm of state and federal labor benefits and assistance, immigrants have been left vulnerable by specific exclusions from other federal legislation enacted to provide relief for those struggling. Initial federal relief packages excluded the many immigrants who pay taxes using an Individual Taxpayer Identification Number (ITIN) rather than a Social Security number (SSN) from critical financial assistance in the form of tax rebates – as well as their spouses.²¹

And tens of millions of people – including DACA and TPS recipients, as well as many green card holders and domestic violence survivors – have been left out of coronavirus testing and treatment because it was only covered by non-emergency Medicaid, for which many immigrants do not qualify. While the U.S. House of Representatives is working on new legislation that might address some of these issues, its details and fate in the U.S. Senate remain highly uncertain.

Where the federal government has fallen short, the state must step in to ensure that immigrant New Yorkers are protected. The state can act on its own to provide everyone – including immigrants, regardless of their immigration status – with access to financial assistance that can serve as a lifeline to families that have lost income due to the coronavirus. It is also a public health necessity that the legislature make sure everyone can continue to access free testing and treatment services without any exclusions based on a person's immigration status, enshrining and expanding on Department of Health policy. The legislature should also act to provide all necessary authorizations for both state agencies and localities to provide benefits and services to immigrants who do not have proof of lawful status, so that cities and counties can effectively serve their communities.

Policing, surveillance, and criminalization of communities of color are not the answers to a public health crisis.

The pandemic has created a challenging dynamic for all New Yorkers, with new restrictions being placed on what would otherwise be mundane aspects of daily life. Because of the way in which the coronavirus spreads, many of these restrictions relate to social distancing, including limits on gatherings and requirements for people to wear face coverings while in public. From the outset, Governor Cuomo has called on local law enforcement agencies to enforce these restrictions.²² On April 6, the Governor

²¹ Jenny Jarvie, *The U.S. Citizens Won't Get Coronavirus Stimulus Checks – Because Their Spouses Are Immigrants*, Los Angeles Times (April 20, 2020), available at <https://www.latimes.com/world-nation/story/2020-04-20/u-s-citizens-coronavirus-stimulus-checks-spouses-immigrants>.

²² Nathaniel Weixel, *Cuomo Says NYPD Needs to Enforce Social Distancing Rules*, The Hill (Apr. 1, 2020), available at <https://thehill.com/homenews/state-watch/490623-cuomo-says-nypd-needs-to-enforce-social-distancing-rules>.

increased the criminal penalty amount for not adhering to social distancing requirements,²³ and he has continued to tout the importance of an aggressive police response to ensure compliance with social distancing and face covering directives.²⁴

The fundamental problem with this approach is that police officers are not the public officials best suited to respond to COVID-19 related restrictions for two key reasons: police departments are not – nor should they endeavor to be – public health agencies; and the communities most impacted by the coronavirus are often the same communities that have long histories of experience with discriminatory and abusive policing, such that police officers cannot be considered credible or effective public health messengers.

Reliance on police officers to enforce these measures is in no small part a result of localities throughout the state overinvesting in police departments at the expense of other agencies that are better suited to deliver public health and social services. Looking forward, this speaks to the need for state and local officials to rethink how to craft budgets that move us away from relying on more police officers and more criminalization as the default responses to every challenge we face.

The public is being asked to put a tremendous amount of trust in law enforcement to respond appropriately during the pandemic. But owing to years of legislative inaction on basic police transparency measures, New Yorkers lack baseline information on police practices that would be a necessary precursor to establishing that trust. The state legislature has the opportunity to remedy this by passing key measures to empower New Yorkers to better assess the impact of policing in their communities.

- 1. Pass the Police-STAT Act and ensure that policymakers and oversight officials have good data on police encounters.**

Although police departments have been tasked with enforcing social distancing mandates, they have not been required to record and report data on what this enforcement looks like. This is part of a larger problem with the state’s approach to collecting data on police enforcement of low-level offenses: namely, that there is no approach. New York does not collect sufficiently detailed data on policing practices, and in particular, the policing of violations and low-level offenses that are at the core of “broken windows” policing, the aggressive enforcement of low-level, so-called “quality of life” offenses. This makes it impossible to know with certainty the full extent to which certain communities are disproportionately experiencing the impact of these tickets and arrests.

²³ Bernadette Hogan & Aaron Feis, *Andrew Cuomo Raises Fine for Not Social Distancing to \$1,000*, N.Y. Post (Apr. 6, 2020), *available at* <https://nypost.com/2020/04/06/andrew-cuomo-raises-fine-for-not-social-distancing-to-1000/>.

²⁴ Ian Fisher, *Cuomo Says Police to Enforce Social Distancing; Deaths Rise*, Bloomberg (May 2, 2020), *available at* <https://www.bloomberg.com/news/articles/2020-05-02/new-york-s-daily-deaths-rise-to-299-cuomo-calls-it-bad-news>.

While some localities around the state collect and report this information, many others operate with incomplete information – and in some egregious cases, no information at all. In the context of social distancing enforcement, we have already seen the predictable outcome of relying on a police force to enforce public health measures in places like New York City, where at least some data has been made available. The Department’s long history of aggressive enforcement in communities of color is well known, and it is a pattern that has carried over into its enforcement of public health directives, with more than 80 percent of those ticketed for social distancing-related enforcement being Black or Latinx.²⁵

The extent to which these disparities are being replicated across the state is not fully known, but this is exactly the kind of information the public and policymakers need to gauge whether our response to the public health crisis may be further worsening the racial disparities in our criminal legal system.

The Police Statistics and Transparency (Police STAT) Act (S.1830-B/A.5472-A) will close the existing gaps in data on police enforcement activity by mandating statewide, uniform data collection and reporting requirements. This legislation will require courts to compile and publish empirical data regarding all violation and misdemeanor enforcement, including the specific charges, outcomes, and demographic information on the person charged. This data is the baseline needed to evaluate police practices and to make informed policy decision that advance fair and equitable policing.

This common-sense measure has already passed the Assembly in four consecutive years. Had the Senate responded similarly, we would already have the information we need to judge the impact of police enforcement of social distancing measures in communities throughout the state. We cannot delay any longer. The legislature must pass the Police STAT Act so that New Yorkers will finally get the complete picture on the impact of police practices, including practices ostensibly meant to enforce public health measures, on their communities.

2. Repeal Civil Rights Law 50-a to shine a light on police misconduct.

Another consequence of the increased reliance on police officers to enforce our public health response to COVID-19 is that localities are giving even more power to the very officials subject to the least amount least amount of transparency and oversight. Unlike other public employees, police officers are entitled to near total state secrecy when it comes to official records related to their misconduct. Civil Rights Law Section 50-a makes police disciplinary records exempt from public disclosure, even

²⁵ Erin Durkin, *Black and Latino New Yorkers Get Vast Majority of Social Distancing Summonses*, Politico (May 8, 2020), available at <https://www.politico.com/states/new-york/albany/story/2020/05/08/black-and-latino-new-yorkers-get-vast-majority-of-social-distancing-summonses-1283223>.

when those records relate to egregious misconduct involving abuse of authority and excessive force.

On the national level, this provision makes New York an outlier. Only one other state has a law that specifically makes these records secret, while the majority of states allow for public release of police disciplinary records in some or all cases.²⁶ Because of 50-a, the public is forced to rely on whistleblowers and leaks to the media in order to learn anything about how police departments respond when officers engage in abusive conduct. The successful push by police departments throughout the state to expand 50-a's reach and to keep this information secret undermines any efforts to build trust and confidence in the communities they are sworn to protect and serve. Worse, it sends a message to the communities who experience police abuse that officers are not accountable to them.

Police officers are already unique in the powers they can exercise over New Yorkers, including the legal authority to use deadly force as part of their jobs. It has long been a point of shame that New York law prevents the public from knowing whether departments take abuse of this incredible authority seriously. And when we are now expanding this authority and placing even more responsibility on police officers to enforce public health directives, this level of secrecy is unconscionable.

We have already seen deeply disturbing examples of what abuse of authority looks like in the context of social distancing enforcement and its impact on people of color. The images of NYPD officers handing out masks to white sunbathers in a crowded West Village park juxtaposed with video of officers without masks violently arresting three people of color in the East Village for allegedly violating social distancing is striking.²⁷ What's more, it has been reported that the officer who carried out that violent arrest has a long history of alleged misconduct and has been the frequent subject of civil litigation.²⁸ Because of 50-a, we know nothing about whether these past allegations were investigated by the NYPD, and we will be entitled to no information in the future about how the Department responds to this particular incident.

To the extent that any police officer abuses their already expansive authority during this crisis, departments must commit to holding them accountable through meaningful disciplinary investigations and consequences. But the public will never learn the outcomes of those processes without legislative action to remove the barrier imposed by 50-a. It is time for New York to finally end police secrecy and to pass

²⁶ Robert Lewis, Noah Veltman, and Xander Landen, *Is Police Misconduct a Secret in Your State?*, WNYC (Oct. 15, 2015), available at <https://www.wnyc.org/story/police-misconductrecords/>.

²⁷ Poppy Noor, *A Tale of Two Cities: How New York Police Enforce Social Distancing By the Color of Your Skin*, *The Guardian* (May 4, 2020), available at <https://www.theguardian.com/world/2020/may/04/coronavirus-new-york-police-enforce-social-distancing>.

²⁸ Jake Offenhartz, *NYPD Officer Seen Beating Man in Social Distancing Arrest has a History of Alleged Brutality*, *Gothamist* (May 4, 2020), available at <https://gothamist.com/news/nypd-officer-seen-beating-man-social-distancing-arrest-has-history-alleged-brutality>.

legislation (A.2513/S.3695) to repeal section 50-a, so that we can set a new standard for transparent and accountable policing.

3. Pass the MRTA and Reinvest in Communities Suffering from the War on Drugs.

For decades, marijuana arrests have had a devastating and disproportionate impact on communities of color. Across the state, more than 80 percent of people arrested for marijuana possession are Black or Latinx. New York State decriminalized possession of small amounts of marijuana in 1977 and expanded those measures in 2019, but that has not stopped the continued ticketing and arrests of primarily Black and Latinx people for possession of a substance that most New Yorkers agree should be legal.

Even in the midst of a pandemic, New Yorkers continue to be arrested on marijuana charges. A few days after the first COVID-19 cases were confirmed in the state, nearly a dozen officers violently arrested a young Black man, following allegations that he had been smoking marijuana in a Brooklyn park.²⁹ Earlier this month, the NYPD Transit Bureau boasted of its continued commitment to broken windows policing tactics, touting an arrest for turnstile jumping and marijuana possession and mocking the person who had been subject to that arrest.³⁰ And in a violent arrest related to alleged violations of social distancing guidelines, NYPD officers reportedly escalated the encounter upon allegedly observing marijuana in plain view.³¹

While police continue to criminalize Black and Latinx New Yorkers for possessing marijuana, the medical marijuana industry in New York has been deemed an “essential service” and continues to operate.³² This designation is undeniably the correct one, but the outcome in which both corporations that dispense marijuana and police officers who arrest people for possessing marijuana can be deemed essential services lays bare the inequities in the state’s approach to marijuana. And when every

²⁹ Jake Offenhartz, *Video Shows NYPD Officers Violently Arresting Young Black Man for Allegedly Smoking Marijuana in Park*, Gothamist (Mar. 5, 2020), available at <https://gothamist.com/news/video-shows-nypd-officers-violently-arresting-young-black-man-allegedly-smoking-marijuana-park>.

³⁰ NYPD Transit (@NYPDTransit), Twitter (May 2, 2020), available at <https://twitter.com/nypdtransit/status/1256594296230330369?s=21> (“Some people may disagree - but transporting ziplock bags of marijuana & a digital scale in your backpack does not make you an essential traveler in the eyes of the Transit police. Hopping a turnstile while doing so didn’t help either. Nice grab by our District 1 team!”).

³¹ Poppy Noor, *A Tale of Two Cities: How New York Police Enforce Social Distancing By the Color of Your Skin*, The Guardian (May 4, 2020), available at <https://www.theguardian.com/world/2020/may/04/coronavirus-new-york-police-enforce-social-distancing>.

³² Dave Goldiner, *Marijuana Outlets Win “Essential” Status to Stay Open in Coronavirus Crisis*, N.Y. Daily News (Mar. 19, 2020), available at <https://www.nydailynews.com/coronavirus/ny-coronavirus-marijuana-cannabis-20200319-yd7iuhp4snghjnah5m3dduxipu-story.html>.

arrest or encounter with an officer is a potential opportunity for the virus to further spread, continued criminalization is directly at odds with public health needs.

The state legislature must act to finally put an end to marijuana criminalization by passing the Marijuana Regulation and Taxation Act (MRTA) (A.1617/S.1527). The MRTA will right a decades-long injustice by legalizing marijuana for adult, recreational use, creating a well-regulated and diverse industry, and reinvesting resources in the communities that have been most impacted by the racist war on drugs. The MRTA's community reinvestment provisions are particularly important as we look toward recovering from the effects of the coronavirus. Low-income Black and Latinx communities have experienced the highest rates of infection and death from COVID-19.³³ These same communities have also been impacted by the most by abusive and discriminatory policing, including aggressive enforcement of marijuana offenses. As New York plans for our recovery from the pandemic, the MRTA's approach to reinvesting revenue and rebuilding community infrastructure will target state resources in the areas with the greatest need.

Over the past two years, New York has come closer than ever to finally closing the book on unjust marijuana policy. The MRTA has never been more essential for ending ongoing harms and increasing investments in the communities that have suffered the worst now of both overcriminalization and the public health crisis.

The coronavirus pandemic in New York has laid bare the racially-disparate failings of a correctional system in crisis – and has called into question the relative merits of incarceration in a new way.

In recent weeks, the NYCLU and community advocates, public health experts, correctional officials and correctional health care providers around the state have called for immediate and ongoing reduction of the number of people held in custody, as well as improved conditions for the tens of thousands of New Yorkers who cannot be released. It is beyond argument that New Yorkers of color have borne the brunt of over-criminalization and mass incarceration in New York; recent reports indicate that more than 80% of those who have died in state custody since the beginning of the coronavirus outbreak have been people of color.³⁴

Responding to these calls, the Governor has begun to release limited groups of individuals from DOCCS custody, and some localities are releasing certain categories of people as well – but this emergency response is not enough. This year, legislators must ensure that the prison and jail populations in New York are permanently

³³ Sanya Mansoor, *Data Suggests Many New York City Neighborhoods Hardest Hit by COVID-19 are also Low-Income Areas*, Time (Apr. 5, 2020), available at <https://time.com/5815820/data-new-york-low-income-neighborhoods-coronavirus/>.

³⁴ Noah Goldberg, *New York Prisons See Sharp Spike in Deaths Since CoronaVirus Outbreak, Blacks Hit Hardest Behind Bars*, N.Y. Daily News (May 14, 2020), available at <https://www.nydailynews.com/coronavirus/ny-coronavirus-prison-deaths-blacks-disproportionate-20200514-xjk4v5wovrhrfpil5gevbgyui-story.html>.

reduced and never return to pre-COVID levels. And moving forward, measures should be taken to ensure that New Yorkers of color are no longer disproportionately represented in the correctional population.

One important way to accomplish this is to reform our parole system. In New York, Black and Latinx people are significantly more likely than white people to be released only on condition of parole supervision, to be jailed pending a violation hearing, and to be incarcerated in state prisons for a technical parole violation.³⁵ But lawmakers can ensure that people who have committed themselves to the path of rehabilitation and have served most of their sentence consistently receive fair consideration for release to parole, and that people under parole supervision are not re-incarcerated for technical offenses that aren't even crimes.

And for those who must remain inside, lawmakers must ensure that conditions of confinement are humane and sustainable, including setting humane standards for the treatment and housing of transgender, gender non-conforming, and non-binary people, and banning the use of long-term solitary confinement in accordance with international human rights standards.

1. New York should grant parole based on who a person is when they come before the parole board — including evidence of rehabilitation.

Our state's prison population has decreased over the last decade, but the average minimum sentence has climbed to 10 years. A third of New York's prison population could serve terms of at least 15 years, and 9,000 people face life in prison if they are not paroled.³⁶

In order to reduce the incarcerated population, we must not only address mass incarceration at the front end, before people are put in prison; we must also enact reforms that will benefit New Yorkers on the back end, after they have served some of their sentence and are eligible for parole. The New York Parole Board has the authority to release people before the end of their sentences if they demonstrate rehabilitation. But the number of people granted parole by the board has decreased in recent years.³⁷ And rates of release to parole are significantly lower for New Yorkers of color.³⁸

³⁵ Kendra Bradner and Vincent Schiraldi, *Racial Iniquities in New York Parole Supervision*, Justice Lab (March 2020), available at <https://justicelab.columbia.edu/sites/default/files/content/NY%20Parole%20Racial%20Inequities.pdf>, at 5-8. Statewide, Black and Latinx people are supervised at 6.8 and 2.5 times the rate of white people respectively.

³⁶ *Report of the New York State Bar Association Task Force on the Parole System*, New York Bar Association (November 2019), available at <https://nysba.org/app/uploads/2019/12/NYSBA-Task-Force-on-the-Parole-System-Final-Report.pdf>. Hereinafter “NYSBA Parole Report.”

³⁷ *Id.*

³⁸ An analysis by The New York Times of thousands of parole decisions from the past several years found that fewer than one in six Black or Hispanic men was released at his first hearing, compared with

The Fair and Timely Parole bill (S.497A/A.4346) would ensure that parole decisions are based on evidence that they have been rehabilitated and a person's current risk to public safety – and not on elements of an offense that factored into length of sentence in the first place. The bill could make up to 12,000 New Yorkers who are currently serving time and have demonstrated a commitment to rehabilitation eligible for parole consideration.

Decision-making in our penal systems should never be centered on vengeance – and now more than ever, it is time to honor the humanity and efforts at restoration of those we have incarcerated. State law must make clear that parole should always be granted based on who a person is when they come before the parole board, not on the crimes they once committed.

2. Lawmakers should pass the Elder Parole Bill so that older people in prison have a chance at freedom.

Decades of draconian prison sentences meted out as part of the so-called wars on drugs and crime have grown the population of elderly people in prison. Few are brought before the parole board to be considered for release, despite the fact that it is proven most won't reoffend.³⁹

Instead, these New Yorkers remain behind bars, with limited access to medical care while their health deteriorates. Research shows that prison actually speeds up a person's aging: A person in prison who is 55 years old has a health profile that is more like someone who is 65, or even older.⁴⁰ As COVID runs rampant in our state's prisons, officials have begun to heed calls to release as many as possible from among this population due to clearly heightened health risks from coronavirus. Too many will not benefit from this review, even though they pose little to no public safety risk on release. But lawmakers can take action now to ensure that they do not have to continue to languish or spend the last years of their lives in custody.

Giving older people a chance to come home to their families after years in prison can give them time to acclimate to society and be with the people they love. It will also help reduce the high cost to taxpayers of keeping so many people in prison.⁴¹ The Elder Parole Bill (S.2144/A.9040) will ensure that every person 55 and older who has served 15 consecutive years or more has a chance to be considered for release by the

one in four white men. Michael Winerip, Michael Schwartz, and Robert Gebeloff, *For Blacks Facing Parole in New York State, Signs of a Broken System*, New York Times (December 4, 2016), available at <https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html>. See also Kathryn D. Morgan, *Race Issues in Probation and Parole* (Nov. 2018), available at https://doi.org/10.1007/978-1-4614-5690-2_32.

³⁹ *At America's Expense: The Mass Incarceration of the Elderly*, American Civil Liberties Union (June 2012), available at https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf.

⁴⁰ Maurice Chammah, "Do You Age Faster in Prison?" The Marshall Project (August 24, 2015), available at: <https://www.themarshallproject.org/2015/08/24/do-you-age-faster-in-prison>.

⁴¹ NYSBA Parole Report, *supra* n.35, at 4.

parole board. It will also create a pathway to allow older people in prison an opportunity to demonstrate that they are ready for re-entry.

3. New York should pass the Less is More Act to make sure people who have not committed new crimes are not locked up.

Under New York law, people on parole can be re-incarcerated for technical violations like ignoring a curfew or missing an appointment with a parole officer. Nearly 40 percent of the people sent to state prison in New York in 2018 were incarcerated for technical parole violations, not for committing crimes.⁴² And they are automatically locked up, regardless of the alleged infraction, while awaiting a hearing that will determine whether they are imprisoned or returned to parole supervision.

There are around 40,000 people living under parole supervision in New York who are required to comply with certain rules or conditions after their release from prison.⁴³ They can be sent to jail or prison if a court finds that there is a better chance than not that a person violated their parole. Unsurprisingly, parole revocations are one of the major drivers of incarceration in county jails and prisons across the state.

People who are released from jail or prison have the opportunity to get back to their community and to their families. We should be doing everything we can to help them contribute to society, instead of finding ways to put them back behind bars for technical violations.

The Less is More Act (S.1343C/A.5493B) would prevent most people accused of technical parole violations from being put behind bars – both while their alleged parole violation is adjudicated and if it is determined that they broke a technical rule. It would also ensure speedier adjudications and credit people on parole for compliance to shorten the period of supervision. And notably, if it had already been law, it is most likely that neither Michael Tyson⁴⁴ nor Raymond Rivera⁴⁵ would have contracted the coronavirus at Rikers and died in custody.

⁴² Independent Commission on New York City Criminal Justice and Incarceration Reform, *Stopping Parole's Revolving Door* (June 2019), available at <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5d091deb8e2d2c0001558b09/1560878571898/Stopping+Parole%27s+Revolving+Door+%28June+2019%29.pdf>.

⁴³ Alexi Jones, *How Many People are in New York's Criminal Justice System?*, Prison Policy Institute (December 2018), available at https://www.prisonpolicy.org/graphs/correctional_control2018/NY_correctional_control_2018.html (listing 43,000 individuals under parole supervision according to year-end 2018 data).

⁴⁴ Chelsia Rose Marcus, *NYC Rikers Island inmate who died of coronavirus was being held on technical parole violation*, New York Daily News (Apr. 6, 2020), available at <https://www.nydailynews.com/coronavirus/ny-coronavirus-inmate-dies-parole-violation-rikers-island-20200406-lya5sgyykrd7xav3tyuboyijzi-story.html>.

⁴⁵ Jan Ransom, *Jailed on a Minor Parole Violation, He Caught the Virus and Died*, New York Times (Apr. 9, 2020), available at <https://www.nytimes.com/2020/04/09/nyregion/rikers-coronavirus-deaths-parolees.html>.

4. New York should prevent gender identity-based discrimination and mistreatment in jails and correctional facilities.

Going to jail is a traumatizing experience for anyone. But for transgender, gender non-conforming, and non-binary New Yorkers, especially people of color, it is especially likely to result in harassment and violence.⁴⁶ Unfortunately, one in six people who identify as transgender report having experienced incarceration in their lives – and this is true of nearly half of Black transgender women.⁴⁷

During processing and while in custody, people whose gender expression does not match their sex assigned at birth are frequently misgendered by correctional officers, either carelessly or intentionally.⁴⁸ Routine interactions can lead to degrading interrogations about a person's gender and humiliating genital examinations. And despite federal PREA standards, some people can be placed in a facility that does not match their gender identity or otherwise puts their safety at risk.⁴⁹ Improper housing regularly leads to violence, and when trans, gender non-conforming, and non-binary people are attacked by others in jail, they are often put in solitary confinement. These victims of violence are sometimes forced to spend the duration of their incarceration in the torturous conditions of extreme isolation, ostensibly for their own safety.

Black and Latinx transgender, gender non-conforming, and nonbinary New Yorkers often survive at the intersection of many socioeconomic burdens, including experiences of poverty; food, shelter and employment insecurity; race-based discrimination; and immigration status issues. Worse, they are notoriously over-policed and over-criminalized. The NYCLU and others have called for compassionate release of gender-expansive New Yorkers where possible, as thin correctional staffing and other current factors leave them susceptible to increased violence and diminished access to medical care. Going forward, New York must pass legislation that ensures local and state correctional facilities adopt best practices to prevent further harm in the form of discrimination, harassment, and dangerous housing conditions.

⁴⁶ Sari L. Reisner, Zinzi Bailey, and Jae Sevelius, *Racial/Ethnic Disparities in History of Incarceration, Experiences of Victimization, and Associated Health Indicators Among Transgender Women in the U.S.* (May 23, 2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5441521/>.

⁴⁷ Coalition Letter to the U.S. Commission on Civil Rights, *Challenges Unique to Incarcerated LGBT People for Consideration in USCCR's Work on Women in Prison Seeking Justice Behind Bars* (March 25, 2019), available at

<https://ccrjustice.org/sites/default/files/attach/2019/04/Final%20Letter%20re%20Concerns%20re%20LGBT%20women%20to%20USCCR%2C%20Women%20in%20Prison%20web.pdf> at 2-3, citing Mara Keisling et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality & National Gay and Lesbian Task Force 163 (2011).

⁴⁸ When the Sylvia Rivera Law Project conducted a participatory research project on transgender and non-binary people incarcerated in New York State in 2017, 95% of respondents stated that correctional staff used derogatory names to refer to them. *Id.* (Coalition Letter to the U.S. Commission on Civil Rights) at 3.

⁴⁹ PREA, or the Prison Rape Elimination Act, 42 U.S.C. ch. 147 § 15601 et seq., is a federal law intended to reduce and prevent the sexual assault of prisoners.

5. New York should pass the Humane Alternatives to Long-Term Solitary Confinement (HALT) Act to end the torture of prolonged segregated confinement.

Prolonged solitary confinement creates severe mental and physical trauma that can cause irreparable harm. The United Nations considers long-term solitary confinement (more than 15 consecutive days) to be torture.⁵⁰ The effects can be deadly.

Yet thousands of people are subjected to prolonged solitary confinement in New York. State laws permit 23-hour confinement in jails and prisons, sometimes for minor misbehavior, for months or even years at a time. Corrections officers have broad discretion over who they subject to this form of confinement. Assembly and Senate leadership struck an agreement with Governor Cuomo near the end of the last legislative session to reform solitary practices through gradual regulatory changes. But these new state regulations are far from adequate to end the use of solitary confinement as torture; they fail to capture all types of harmful isolation practices, and they exclude New York's jails entirely from their coverage.

To end the most harmful uses of isolation and solitary confinement currently in practice throughout New York, lawmakers should pass the Humane Alternatives to Long-Term Solitary Confinement (HALT) Act (S.1623/A.2500). The HALT Act would limit all uses of isolation in excess of 15 consecutive days, or 20 days total in any 60-day period. It would also ban the use of solitary confinement for those most vulnerable to the psychological and physical harms of isolation, including people 21 years or younger, those 55 years or older, people with certain physical, mental, or medical disabilities, and anyone pregnant or in the first eight weeks of post-partum recovery. HALT will also create and regulate alternatives to isolation, with an emphasis on programming and recreation, rehabilitation services, staff training, and public oversight and reporting.

The HALT Act will help prevent some of the most harmful aspects of solitary confinement while putting strict limits on when it can be used. These humane and effective reforms would take the long overdue step of prioritizing the true rehabilitation of incarcerated people over torture and isolation.

⁵⁰ Juan Mendez, "Solitary Confinement Should be Banned in Most Cases UN Expert Says," *UN News*, 18, Oct. 2011, *available at*: <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>.