

**2019 – 2020 Legislative Memorandum**

**Subject: Relates to the confidentiality of contact tracing information  
S.8450-B (Rivera) / A.10500-B (Gottfried)**

**Position: SUPPORT**

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Contact tracers are considered an essential part of re-opening the State after New York on Pause. Under Governor Cuomo’s plan, regions must have thirty contact tracers per 100,000 residents in order to begin re-opening.<sup>1</sup> The hope is that contact tracers will stem the spread of COVID-19 by identifying and contacting individuals who have been exposed to the virus and giving them the information and resources they need to get tested and to self-quarantine.

However, effective contact tracing requires participants to share a wealth of intimate detail with contact tracers: information about location, health status, and associations. If individuals have any reason to believe that sharing these details of their lives will expose them or their loved ones to criminalization or deportation, they simply will not participate. Ultimately, contact tracing can only serve its purpose if those diagnosed with COVID-19 are willing to share their contacts, and in turn, if their contacts are willing to act on the information that contact tracers provide. Both sides of this transaction require community trust.

S.8450-B (Rivera)/A.10500-B (Gottfried) lays the foundation for this trust. It ensures that contact tracing information will be kept confidential, will only be used for contact tracing purposes, and will be deleted once its purpose has been served. Importantly, the bill permits the use of aggregate, de-identified information to track the spread of the virus and identify disparities among New York communities. And, most crucially, it provides that law enforcement and immigration enforcement cannot serve as contact tracers or access contact tracing information and that an individual’s contact tracing information cannot be used against them in a court or administrative proceeding.

S.8450-B/A.10500-B will help make contact tracing safer for participants and more effective for all New Yorkers, and the NYCLU urges its immediate passage.

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<sup>1</sup> See *Regional Monitoring Dashboard*, NEW YORK FORWARD, <https://forward.ny.gov/regional-monitoring-dashboard> (last visited May 26, 2020).

Enacting robust protections for contact tracing information is not just vital from a public health and personal privacy perspective; it is also crucial from a civil rights and racial justice perspective. By now, it is beyond argument that Black and brown New Yorkers are disproportionately likely to suffer from COVID-19.<sup>2</sup> This is due in large part to a toxic interaction of socioeconomic factors (including income, access to education, family and social support, and experience of discrimination), physical environment (including place of residence, crowding conditions, air and water quality, and transportation systems), and inferior health care.<sup>3</sup> These communities also bear the brunt of over-policing generally<sup>4</sup> – and specifically to enforce social distancing related to coronavirus.<sup>5</sup>

Unfortunately, police have too often earned the mistrust of communities of color, and rampant police misconduct toward protesters following George Floyd’s murder has underscored the reasons for this mistrust. Indeed, the recent experience in Minnesota provides a cautionary tale: since police there announced that they have started “contact tracing” protesters, health care workers have found that individuals are more likely to distrust contact tracers and less likely to participate in contact tracing.<sup>6</sup> S.8450-B/A.10500-B thoughtfully limits who can be involved in contact tracing and how contact tracing information can be used, so that New Yorkers of all backgrounds and experiences can feel confident in their participation.

We all share the fervent desire to safely re-open our state, and there is broad consensus that contact tracing is an essential component. In this case, public health, privacy, and civil rights and racial justice goals are completely aligned. In order to ensure that contact tracing is effective, New York lawmakers must protect individuals’ privacy and pass S.8450-B/A.10500-B immediately.

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<sup>2</sup> *Fatalities*, NYS DEP’T OF HEALTH, <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> (last visited May 26, 2020); see also *The Color of Coronavirus: COVID-19 Deaths By Race And Ethnicity in the U.S.*, AMP RESEARCH LAB, May 20, 2020, <https://www.apmresearchlab.org/covid/deaths-by-race>; John Eligon, Audra D.S. Burch, Dionne Searcey, & Richard A. Oppel Jr., *Black Americans Face Alarming Rates of Coronavirus Infection in Some States*, N.Y. TIMES, Apr. 14, 2020, <https://www.nytimes.com/2020/04/07/us/coronavirus-race.html>.

<sup>3</sup> Centers for Disease Control, NCHHSTP Social Determinants of Health, <https://www.cdc.gov/nchhstp/socialdeterminants/index.html> (last visited May 14, 2020); see also Ibram X. Kendri, *Stop Blaming Black People for Dying of the CoronaVirus*, ATLANTIC (April 14, 2020), <https://www.theatlantic.com/ideas/archive/2020/04/race-and-blame/609946/>.

<sup>4</sup> E.g. *Stop-And-Frisk in the De Blasio Era (2019)*, NYCLU, Mar. 14, 2019, <https://www.nyclu.org/en/publications/stop-and-frisk-de-blasio-era-2019>; *New York Should Legalize Marijuana the Right Way*, NYCLU, Apr. 25, 2019, [https://www.nyclu.org/sites/default/files/field\\_documents/20190425\\_marijuana\\_onepager\\_final.pdf](https://www.nyclu.org/sites/default/files/field_documents/20190425_marijuana_onepager_final.pdf).

<sup>5</sup> Josiah Bates, *Police Data Reveals Stark Racial Discrepancies in Social Distancing Enforcement Across New York City*, TIME, May 8, 2020, <https://time.com/5834414/nypd-social-distancing-arrest-data/>.

<sup>6</sup> Alfred Ng, *Contact tracers concerned police tracking protesters will hurt COVID-19 aid*, CNET, June 1, 2020, <https://www.cnet.com/news/contact-tracers-concerned-police-tracking-protesters-will-hurt-covid-19-aid/>.