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August 19, 2014

Governor Andrew M. Cuomo
The Executive Chamber
State Capitol
Albany, New York 12224

Re: Veto recommendation regarding S4928/A7333, legislation that would place prosecutorial jurisdiction for all crimes arising at Rikers Island facilities with Queens County.¹

Dear Governor Cuomo:

It is now well documented that there is a culture of systemic violence and abuse directed at adolescent inmates held at Rikers Island facilities.² It is also well established that this culture is maintained through enforced silence regarding criminal assaults perpetrated by correctional officers at Rikers, and by the absence of meaningful oversight and accountability within the jail.³

The nature and scope of this crisis demand comprehensive and systemic reform. Such reform will *not* be facilitated by establishing Queens County as the exclusive venue for criminal matters arising at Rikers facilities. Legislation has been sent to you that would have this effect. The bill, drafted and promoted by the Correction Officers Benevolent Association, would make it more difficult to establish accountability and the rule of law at Rikers.⁴

We urge you to veto S4928/A7333.

The difficulty in prosecuting correction officers at Rikers is directly related to the extraordinary power they wield in the management and control of the facility. That power extends to the control of evidence, witnesses, and access to the most basic information by investigators and prosecutors. Any serious effort to address the obstacles to prosecuting criminal acts by corrections officers at

¹ S4928-B (Golden) /A7333-B (Lentol), text and Sponsor's Memo available at <http://open.nysenate.gov/legislation/bill/S4928B-2013>.

² Michael Schwartz and Michael Winerip, *No Charges for Rikers Officers in 2012 Beatings of 2 Inmates* (N.Y. Times, Aug. 5, 2014), available at <http://www.nytimes.com/2014/08/06/nyregion/no-charges-over-inmates-beaten-at-rikers-island.html> (citing U.S. Att'y for S.D.N.Y., *S.D.N.Y. Rikers Report* (Aug. 5, 2014), available at <http://www.justice.gov/usao/nys/pressreleases/August14/RikersReportPR/SDNY%20Rikers%20Report.pdf>).

³ *Id.*

⁴ Correction Officers Benevolent Association, *Legislation Introduced by the COBA* (2013), available at <https://www.cobanyc.org/coba-legislation>.

Rikers must address the conduct and policies that have created and maintained those obstacles. Removing the prosecution of such cases to Queens will do nothing to address the crisis at Rikers.

Indeed, Norman Seabrook, President of the Correction Officers' Benevolent Association, has made no secret that the legislation is intended to protect correction officers working at Rikers from rigorous criminal prosecution. He has described as "unfair" the Bronx District Attorney's aggressive investigation and prosecution of criminal charges brought against Rikers Island correction officers.⁵ And he expects that under the proposed legislation correction officers will "be treated a little bit differently" – that is, correction officers charged with assaulting inmates will be given "the benefit of the doubt."⁶

This legislation represents a radical departure from the status quo that violates both fundamental legal principle and the New York State Constitution. In addition, the bill contravenes the laws of New York City and New York State without sufficient justification and for motives which are entirely suspect; it is likely to result in bureaucratic difficulties and unjust outcomes.

Rikers Island has been a part of the borough of Bronx since the Greater New York City Charter of 1897.⁷ Bronx County was established as coterminous with the borough in 1914,⁸ and each county in New York has general territorial jurisdiction over crimes committed within it.⁹ As such, the Bronx District Attorney has had prosecutorial jurisdiction over crimes arising from Rikers since the establishment of Bronx County a century ago.¹⁰

Statutory exceptions to this territorial jurisdiction permit prosecution elsewhere, most typically in cases of cross-county criminal dealings.¹¹ However, as noted in letters of oppositions from the City

⁵ Carl Campanile, *Bronx DA May Lose Power to Prosecute Rikers Crimes* (N.Y. Post, July 24, 2014), available at <http://nypost.com/2014/07/24/bronx-da-may-lose-power-to-prosecute-rikers-prisoners/> ("I only ask that we be treated fairly . . . but the Bronx DA's Office is not going to prosecute . . . They're not going to give that level of interest in the inmate assaulting an officer as they do an officer allegedly assaulting an inmate. It's not going to happen. That's totally unfair," Seabrook said.)

⁶ *Id.* ("We believe we will be treated a little bit differently in Queens, in Richard Brown's county. Johnson doesn't give the correction officers the benefit of the doubt," said Correction Officers' Benevolent Association President Norman Seabrook.) Note that, along with Bronx District Attorney Robert Johnson, Queens District Attorney Richard Brown has written in opposition to the legislation.

⁷ Greater NYC Charter of 1897 § 2, available at <https://ia600300.us.archive.org/17/items/greaternewyorkch00newyrich/greaternewyorkch00newyrich.pdf>. (Boundary maintained through subsequently-amended Charters, at § 2; codified at N.Y.C. Admin. Code § 2-202.)

⁸ N.Y. Sess. Laws of 1912, Ch. 548, "An act to erect the County of Bronx from the territory now comprised within the limits of the borough of Bronx..." (eff. Jan. 1, 1914).

⁹ N.Y. C.P.L. § 20.40(1). The fundamental common-law principle of territorial jurisdiction indicates that a county has jurisdictional sovereignty over events occurring within it, and likewise, that "[a] defendant has the right at common law and under the New York State Constitution to be tried in the county where the crime was committed unless the Legislature has provided otherwise." *People v. Ribowsky*, 77 N.Y.2d 284, 291 (1991) (citing *People v. Moore*, 46 N.Y.2d 1, 6 (1978); *People v. Goldswor*, 39 N.Y.2d 656, 659–661 (1976); N.Y. Const., Art. I, § 2).

¹⁰ Along with other officials of the newly incorporated Bronx County, the Bronx DA took office on January 2, 1914. See N.Y. Times, *Bronx County In Motion. New Officials All Find Work to Do on Their First Day* (Jan. 3, 1914), available at http://query.nytimes.com/mem/archive-free/pdf?_r=2&res=9C05E7DA1F3BE633A25750C0A9679C946596D6CF.

¹¹ N.Y.C.P.L. § 20.40.

of New York and the Queens and Bronx District Attorneys, this would be the first and only instance of the legislature abridging a county's lawful jurisdiction to prosecute offenses committed within its own boundaries.

In fact, S4928/A7333 would not merely strip jurisdiction from the Bronx District Attorney in Rikers cases; the bill's language would also require the Queens County District Attorney to prosecute each and every case involving acts by inmates at Rikers Island, including such matters currently investigated by special permission or statutory allowance. For example, a recent case brought by the City's Special Narcotics Prosecutor against correction officers charged with smuggling drugs into Rikers would be restricted to prosecution by the Queens County District Attorney – or the case may be declined for prosecution, solely at the discretion of the Queens D.A.¹² Likewise, Queens prosecutors would have exclusive jurisdiction in matters that would ordinarily involve concurrent jurisdiction, for example a phone call made by a Rikers' inmate in violation of a protective order issued outside of Queens on behalf of an individual who lives in Brooklyn or Manhattan. The Queens District Attorney would retain jurisdiction regardless of where the order issued, or where the phone call was received. This exclusive jurisdiction would extend to all such offenses, including cases that would ordinarily allow for prosecution in a jurisdiction other than Queens County.¹³

Those accused of committing crimes on Rikers Island – corrections officers as well as inmates – are generally entitled to be tried not only in a Bronx court, but before a Bronx jury.¹⁴ This rule, which is embodied in the New York State Constitution, reflects the “inviolable” common-law right to trial in a local venue and by a jury of the ‘vicinage,’ commonly interpreted to mean the county where a crime is alleged to have been committed.¹⁵ The principle underlying this rule is based upon the understanding that right to trial in the locality of a crime, before members of the affected community, is a fundamental safeguard against government and prosecutorial abuse. Clearly, it is difficult to envision how a law that would radically curtail the venue and vicinage rights of incarcerated defendants in order to gain supposed prosecutorial favor for a handful of government employees might survive such a test.

What's more, the legislature's elimination of the Bronx County District Attorney's jurisdiction over crimes at Rikers may well breach the New York State Constitution's grant of responsibility and autonomy to publicly elected officers. The State Constitution provides that each county is to elect a District Attorney, who is charged to faithfully prosecute crimes that take place in that county.¹⁶ The proposed change interferes both with fulfillment of this responsibility, and with electoral

¹² S4928/A7333 § 1. See Office of the Special Narcotics Prosecutor for the City of New York, *Three current and former Rikers Island Correction Officers indicted for trafficking in narcotics, bribery and smuggling contraband in jail* (July 29, 2014), available at <http://www.nyc.gov/html/snp/downloads/pdf/Rikers.pdf>.

¹³ See N.Y.C.P.L. § 20.40 (enumerated statutory allowances of permissive extra-territorial jurisdiction where elements or effects of crime lie in multiple jurisdictions).

¹⁴ See *People v. Zimmerman*, 9 N.Y.3d 421, 427 (2007); *Ribowsky*, 77 N.Y.2d at 291.

¹⁵ N.Y. Const., Art. I, § 2; *Ribowsky*, 77 N.Y.2d at 291; *Goldswor*, 39 N.Y.2d at 660 (citing 4 Blackstone's Commentaries 344; W.W. Blume, *The Place of Trial of Criminal Cases: Constitutional Vicinage and Venue*, 43 Mich. L. Rev. 59, 60; *Matter of Murphy v. Supreme Ct.*, 294 N.Y. 440, 455).

¹⁶ N.Y. Const., Art. XIII, § 13.

accountability for its performance. In addition, this legislation disregards the intent of the State Constitution's restraints on legislative interference with the localized powers of public officials.¹⁷


Finally, the arguments made in support of this legislation on grounds of administrative efficiency are nonsense. The bill's sponsors state that the proposed law will produce "cost savings and management efficiencies" due to elimination of "the need to drive inmates to the Bronx for prosecution."¹⁸ One need only consult a map to determine that, in fact, the Queens Criminal Court and the Bronx Criminal Court are equidistant from Rikers Island by vehicle. What's more, inmates are transported daily from Rikers Island to the Bronx courts for appearances in matters unrelated to incidents that occur at Rikers facilities. For this reason, there are few if any additional costs related to the transport of inmates to Bronx courts regarding alleged criminal conduct at Rikers. However, the proposed law is not cost neutral: it would create significant financial and administrative burdens for Queens County, which would become the exclusive venue for criminal matters arising at Rikers.

The unintended consequences of proposed laws bear close consideration, particularly where justifications offered in the public interest are weak or uncertain. S4928/A7333 would lead to foreseeable outcomes that are both absurd and potentially unjust. This legislation would eliminate the permissive, and often specialized, jurisdiction of prosecutors over matters that are best handled – and typically handled – in venues other than a crime's locus delicti. The bill would create administrative confusion and attendant delay in criminal prosecutions citywide. And the proposed law would create other less obvious, but significant, impediments to the administration of justice, such as making travel for court appearances more burdensome for crime victims and witnesses.

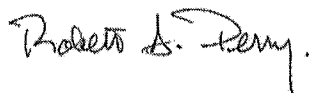
S4928/A7333 is an ill-advised special-interest bill that slipped through the legislative process on false premises. It is firmly opposed by every public stakeholder with an important interest in the matter. It threatens fundamental constitutional guarantees, and it purports to relieve state officials of the responsibilities of office simply for performing as the New York State Constitution demands.

For these reasons, we strongly urge you to veto S4928/A7333 without delay.

Sincerely,



Donna Lieberman
Executive Director



Robert Perry
Legislative Director

¹⁷ N.Y. Const., Art. XIII, § 13(c); Art. IX.

¹⁸ S4928/A7333, Sponsor's Memo, *Justification*.