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March 20, 2020

**Via Email**

Honorable Andrew M. Cuomo  
Governor of the State of New York  
NYS Capitol Building  
Albany, N.Y. 12224

**RE: Urgent Action Needed to Protect People in New York’s Jails and Prisons  
from the COVID-19 Pandemic**

Dear Governor Cuomo:

The New York Civil Liberties Union thanks you for your thoughtful, forward-looking leadership in this time of crisis. We recognize the enormity of the challenge you and our state are facing. We write today to ask you to act immediately to protect the lives of the incarcerated people in our state. Specifically, we request that you take urgent steps to reduce the incarcerated population; stem the influx of new admissions into jails and prisons; implement evidence-based and humane measures to protect the health and wellbeing of people in jails and prisons; and require jails and prisons to be transparent about the measures they are taking and, when necessary, publicly report the number of incarcerated people and correctional staff who test positive for COVID-19.

On March 9, when there were 142 [confirmed](#) cases of COVID-19 in New York state, we wrote to the public agencies overseeing New York’s jails and prisons asking that they publicly release their prevention and mitigation plans to prevent an outbreak of COVID-19 in their facilities. In the two weeks since, visitation restrictions were announced but no other plans have been released, and the number of confirmed COVID-19 cases in the state has [risen](#) to over 7,000—this includes people incarcerated in at least two jails, a prison official, and multiple jail staff, one of whom tragically died. We fear that many more will die in New York’s jails and prisons unless you take bold action now.

With their inherent space and resource constraints, prisons and jails are breeding grounds for communicable diseases. People in confinement have no control over their own movement, are confined in close quarters, and, as a result, are particularly vulnerable to the COVID-19 outbreak. All available public health guidance states that social distancing is the primary tool to combat the spread of COVID-19. But by their nature, prisons and jails—like schools or large crowds—are less conducive to social distancing. In the absence of immediate and decisive action, incarceration will turn into a death sentence for many New Yorkers.

Dr. Homer Venters, an epidemiologist and the former chief medical officer on Rikers Island, [says](#) one of the most important questions for public officials during this crisis is “How can

we have fewer people in these places—in jails and prisons?” Ross MacDonald, the current chief medical officer on Rikers, agrees; two days ago, he ominously [warned](#) government officials that “a storm is coming” to Rikers and pleaded with them to “[p]lease let as many out as you possibly can.” Reducing the number of people in jails and prisons, especially those most vulnerable, is essential according to Dr. Venters because it is “very, very difficult” to detect who has the virus and to treat people who do have it in jails and prisons. “To the extent that we don’t do a good job in jails and prisons,” [warns](#) Dr. Venters “we will certainly prolong the life of this outbreak.”

To date, the Department of Corrections and Community Supervision (DOCCS) has banned all social visits and restricted legal visits to non-contact only. But those restrictions were not enough to stop COVID-19 from entering the prison system. News outlets reported on March 17 that a DOCCS employee at Sing Sing C.F. has tested positive for COVID-19, and that additional testing of other DOCCS employees is underway. The State Commission of Correction (SCOC) has advised jails to screen visitors to assess whether they may have contracted or been exposed to COVID-19. That screening also appears to not have been enough because on March 16 someone incarcerated in Nassau County’s jail tested positive for COVID-19, and on March 18 a correction officer and someone incarcerated in Rikers Island tested positive. These examples show that, even if visits are restricted, coronavirus inevitably will spread among the incarcerated population and corrections staff in jails and prison.

We need bold action from you now. We call on you to take the following actions to minimize the harm inflicted on people involved in the criminal legal system—and by extension, the harm inflicted on broader communities:

**1. Reduce the Incarcerated Population.**

**(a) Release as many people as possible who are incarcerated in our jails.<sup>1</sup>**

New York’s jails can follow the leads of Cook County, Los Angeles County, Sacramento County, Alameda County, and the counties of Tampa, Cleveland, Charlotte, and San Antonio, which have already begun to release people from their jails to minimize the risk of a potential coronavirus outbreak. Just today, Montana’s Chief Judge [issued](#) a directive asking judges to release, without bond, as many people as they are able. This week, the New York City Board of Correction, the independent oversight Board of New York City jails, [called](#) for the immediate release of people from the city’s jails. Unfortunately, the SCOC, the state’s oversight agency for all of New York’s jails, has been silent on the need to reduce the jail population. Under your emergency power, you have the ability to implement the Board’s recommendations for jails across the state. We ask that you use those powers to release people, prioritizing, in order:

- i. Release people who have underlying health conditions, including lung disease, heart disease, diabetes, cancer, or a weakened immune system; and people who are pregnant.**

People who have underlying health conditions, including lung disease, heart disease, diabetes, cancer or a weakened immune system, are more vulnerable to developing serious

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<sup>1</sup> For those individuals in jails who have been sentenced and are awaiting transfer to a DOCCS facility, paragraph 1.A does not apply. Instead, see paragraph 1.B below.

complications from COVID-19 and requiring intensive medical care, according to public health officials. The Center for Disease Control and Prevention (CDC) [identifies](#) people who are pregnant as at higher risk for severe illness. You should immediately release these high-risk groups from New York's jails.

**ii. Release people who are over 50 years of age.**

The New York City [Department of Health](#) reports that people over 50 years of age, along with those with underlying health conditions, are at most risk for severe illness from COVID-19. You should follow the lead of the New York City Board of Correction, which has called for the release of people over 50, and require all county jails, not just those in NYC, to release this high-risk group. In the correctional setting, those aged 50 or over are [considered](#) "elderly," by the National Institute of Corrections and doctors, who [cite](#) how those incarcerated patients have advanced signs of aging and present medically more like those aged 60 or 70 in the community. That is why doctors who work in New York City jails, including [Dr. Zachary Rosner](#) and [Dr. Rachael Bedard](#), have made public pleas to government officials to release their elderly patients as they face a high risk of mortality. As this group [poses the least public safety risk to our communities](#), you should order their immediate release.

**iii. Release people detained for administrative reasons (including failure to appear and parole violations).**

People in jails in New York for non-criminal, administrative reasons, like technical parole violations or a missed court appearance, should not be in jail to begin with. Across the state approximately [1,600 people are detained](#) in county jails on technical violations alone. You should direct jails officials to release anyone detained in jail for administrative reasons.

**iv. Release people in jail pre-trial and people serving jail sentences, consistent with public safety.**

You should instruct the Office of Court Administration, jail administrators, District Attorneys, and the defense bar to work together to identify and release all those who are pre-trial or serving a sentence who can safely be released back to the community. People detained in jail pre-trial are innocent until proven guilty of their charges. And most individuals serving a jail sentence are serving time for a misdemeanor criminal offense, the least serious category of crimes, and are serving a sentence of less than 30 days. News reports [show](#) that New York City officials are working with the legal community to release those held pre-trial and city sentenced; with your leadership, you can ensure that other counties throughout the state undergo similar efforts.

**(b) Release vulnerable people, people incarcerated for technical parole violations in our prisons, and those already scheduled to be released soon.**

You should grant immediate commutations to all those identified by the CDC as particularly vulnerable to COVID-19 (e.g., the elderly, those with underlying conditions, and pregnant women) whose sentence would end in the next two years, anyone whose sentence would end in the next year, and anyone incarcerated due to a technical parole violation. You should direct DOCCS to expedite the release of people already found suitable for release on parole, expedite all review processes for people eligible for parole, and expedite its use of medical parole.

**(c) Ensure appropriate discharge planning for those released from jails and prisons.**

Jail administrators, DOCCS, and health officials should provide COVID-19 screening and discharge planning for those released and take extra measures to coordinate with municipal authorities to ensure that those released have access to medical care, health insurance/Medicaid, housing or shelter, and other necessary re-entry services. Based on guidance from the *Brad H* settlement, incarcerated people currently taking psychiatric medications should be provided with a supply and prescription upon release, and those who qualify for Medicaid should receive temporary financial assistance to pay for medication and treatment upon release. All should have referrals for mental health treatment and services, and especially those classified as having serious mental illnesses should receive additional services, including assistance applying for public assistance, case management, and follow-up calls. And everyone released should have housing or temporary shelter in place upon their discharge.

**2. Sharply Limit New Admissions Into Jails And Prisons.**

During this pandemic, incarceration into cramped and often un-hygienic facilities should be the last resort. You should direct authorities to sharply limit new admissions to jails and prisons such that new admissions only occur where necessary for public safety. You should call on all District Attorneys to follow the lead of Brooklyn DA Eric Gonzalez and decline to prosecute low-level offenses.

You should also:

- Call on courts to postpone collecting payment for fines and fees so that people are not required to come into court to make payment and are not at risk of incarceration due to non-payment.
- Suspend requirements for mandatory office visits of people on parole and probation and mandatory court appearances for the duration of the pandemic so that no one is penalized for non-compliance.

**3. Take Steps to Lessen the Risk to Those Who Remain Incarcerated.**

**(a) Require body temperature screening of all jail and prison staff.**

All prison and jail staff should have their body temperature screened before entering a correctional facility, and, in an abundance of caution, those with above normal temperatures should be sent home temporarily. As [Ohio](#) and [other countries](#) have done, body temperature scanning may be one of the more effective ways to detect early symptoms of COVID-19.

**(b) Provide high-quality medical care for anyone who remains incarcerated.**

You should ensure that all jails and prisons take adequate preventive measures like providing enough hygiene products, including soap and alcohol-based hand sanitizer, and disinfecting commonly used areas daily. Given medical resource limitations, prisons and jails should have contingency plans in place to immediately transfer people who develop severe complications from COVID-19 to outside facilities for care when necessary.

**4. Make Public All Plans Regarding the Management Of COVID-19 Among Incarcerated People.**

Transparency—which engenders public trust and confidence—has proven critical to combatting COVID-19 around the world. Given the widespread fears regarding the spread of COVID-19, DOCCS and all county jails should publish their plans to prevent and mitigate the spread of COVID-19 so that the families and friends of the people incarcerated can feel secure that corrections staff are prepared to keep their loved ones safe and healthy. The San Francisco Sheriff's Department [published](#) its COVID-19 Response & Action Plan, detailing their plans to minimize the risk of exposure in the San Francisco jails. Given the high stakes, the state must also collect data about positive COVID-19 cases in prisons and jails and regularly report this data to the public.

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We urge you to take these proactive steps to protect the most vulnerable and prevent or mitigate an outbreak COVID-19 in jails and prisons. Taking these proactive steps will save thousands of lives.

Sincerely,



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