

**2021 – 2022 Legislative Memorandum**

**Subject: The Medication-Assisted Treatment (MAT) in Prisons and Jails Act  
A.533 (Rosenthal) / S.1795 (Bailey)**

**Position: SUPPORT**

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The devastating effects of the opioid epidemic seen throughout the United States and New York have been especially acute among the incarcerated population, due to both the prevalence of opioid use disorder (OUD) among incarcerated people and the unique dangers of OUD during incarceration and upon release. Fortunately, MAT (medication for addiction treatment, or medication assisted treatment) has been identified as an exceptionally effective—and in fact a necessary—treatment for OUD. Through the combination of FDA-approved prescription medications and behavioral therapies, MAT curbs the deadly effects of the opioid epidemic among incarcerated and formerly incarcerated individuals in both the short- and long-term.

Even though the American Medical Association, U.S. Department of Health and Human Services, New York State Department of Health, and National Commission on Correctional Health Care, among others, have endorsed MAT as the standard of care for OUD, most New York jails and prisons continue to deny access, which has deadly consequences. The MAT in Jails and Prisons Act, A.533/S.1795, would require New York prisons and jails to provide lifesaving MAT to people who are incarcerated. The legislation marks an opportunity to save countless lives, particularly as the coronavirus pandemic worsens morbidity and mortality associated with OUD. **The NYCLU strongly supports this legislation and urges its immediate signing into law.**

Epidemic levels of OUD and opioid overdose deaths have devastated communities throughout the United States and New York for decades. Since 1999, about 600,000 people in the United States have died from opioid-involved overdoses.<sup>1</sup> Between January 2020 and January 2021 alone, at least 70,500 people in the United States died

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<sup>1</sup> NAT'L CTR. FOR INJ. PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, *Understanding the Epidemic* (2021), <https://www.cdc.gov/drugoverdose/epidemic/index.html>; NAT'L CTR. FOR HEALTH STATS., CTRS. FOR DISEASE CONTROL & PREVENTION, *Provisional Drug Overdose Death Counts* (2021), <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>; U.S. DEPT. HEALTH & HUM. SERVS., *What is the U.S. Opioid Epidemic?* (2021), <https://www.hhs.gov/opioids/about-the-epidemic/index.html>.

from opioid overdoses, including at least 2,500 New Yorkers.<sup>2</sup> Every day, nine New Yorkers die of an opioid overdose.<sup>3</sup> The opioid crisis was declared a public health emergency in 2017<sup>4</sup> and has only worsened during the coronavirus pandemic.<sup>5</sup>

In this era of mass incarceration, jails and prisons are on the frontlines of the opioid public health crisis. The majority of incarcerated people have substance use disorders (SUD),<sup>6</sup> and about a quarter have OUD.<sup>7</sup> For example, 200,000 people who are incarcerated each year—between 24 to 36 percent of the incarcerated population—have a heroin-use disorder.<sup>8</sup>

Regardless of their awareness of the dire consequences of opioid use, people with OUD cannot simply “will” or “reason” their way out of continued opioid use. Instead, continued use is the predictable outcome of chemical, structural, and functional changes to the brain that permanently rewire the brain for addiction.<sup>9</sup> As stressed in the Surgeon General’s 2016 report on the opioid epidemic, OUD is a chronic brain disease characterized by “clinically significant impairments in health, social function, and voluntary control over substance use.”<sup>10</sup>

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<sup>2</sup> NAT’L CTR. FOR HEALTH STATS., CTRS. FOR DISEASE CONTROL & PREVENTION, *Provisional Drug Overdose Death Counts* (2021), <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.

<sup>3</sup> Lauren Jones, VERA INST. JUST., *New York State Must Take Action to Reduce Opioid Overuse Deaths* (2019), <https://www.vera.org/blog/new-york-state-must-take-action-to-reduce-opioid-overuse-deaths>.

<sup>4</sup> U.S. DEPT. HEALTH & HUM. SERVS., *Declaration that a Public Health Emergency Exists* (2017), <https://www.hhs.gov/sites/default/files/opioid%20PHE%20Declaration-no-sig.pdf>.

<sup>5</sup> Abby Goodnough, N.Y. TIMES, *Overdose Deaths Have Surged During the Pandemic, C.D.C. Data Shows* (2021), <https://www.nytimes.com/2021/04/14/health/overdose-deaths-fentanyl-opioidscoronaviurs-pandemic.html>.

<sup>6</sup> NAT’L CTR. ON ADDICTION & SUBSTANCE ABUSE, COLUM. UNIV., *Behind Bars II: Substance Abuse and America’s Prison Population* (2010) 3, <https://files.eric.ed.gov/fulltext/ED509000.pdf> (explaining that almost two-thirds of incarcerated individuals meet medical criteria for SUD and that incarcerated individuals are seven times more likely than the general population to have SUD); Jennifer Bronson et al., BUREAU JUST. STATS., U.S. DEPT. JUST., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009* (2020), <https://bjs.ojp.gov/content/pub/pdf/dudaspi0709.pdf>.

<sup>7</sup> Christine Vestal, PEW CHARITABLE TRS., *New Momentum for Addiction Treatment Behind Bars* (2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/04/04/new-momentum-for-addiction-treatment-behind-bars>.

<sup>8</sup> SUBSTANCE ABUSE & MENTAL HEALTH SVCS. ADMIN., *Use of Medication-Assisted Treatment for Opioid Use Disorder in Criminal Justice Settings* 3 (2019), <https://store.samhsa.gov/sites/default/files/d7/priv/pep19-matusecjs.pdf>.

<sup>9</sup> OFF. U.S. SURGEON GEN., U.S. DEPT. HEALTH & HUM. SERVS., *Facing Addiction in America: The Surgeon General’s Report on Alcohol, Drugs, and Health* 12 (2016), [https://addiction.surgeongeneral.gov/sites/default/files/OC\\_SpotlightOnOpioids.pdf](https://addiction.surgeongeneral.gov/sites/default/files/OC_SpotlightOnOpioids.pdf); NAT’L ACADS. SCIS., ENG’G, & MED., *MEDICATIONS FOR OPIOID USE DISORDER SAVE LIVES* (2019).

<sup>10</sup> OFF. U.S. SURGEON GEN., *supra* note 9.

Fortunately, MAT has been identified as an exceptionally effective treatment for OUD. Medical and professional associations,<sup>11</sup> correctional officials,<sup>12</sup> and the federal government<sup>13</sup> recognize MAT as the standard of care<sup>14</sup> for people with OUD, including in carceral settings. New York State government health agencies, including the Department of Health, Office of Mental Health, and Office of Addiction Services and Supports, have similarly embraced the importance of MAT.<sup>15</sup>

Despite the well-established efficacy of MAT in preventing overdose and facilitating long-term recovery,<sup>16</sup> the outmoded notion that MAT “replaces one addiction with another” continues to serve as a systemic barrier to incarcerated people’s access.<sup>17</sup> This misconception wrongly equates the professional administration of safe, essential medicine with the use of illicit drugs.<sup>18</sup> Unlike illicit drugs, the FDA-approved medications used in MAT—methadone, buprenorphine, and extended-release naltrexone—reduce drug cravings and prevent relapse and overdose without causing a

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<sup>11</sup> See, e.g., Andis Robeznieks, AM. MED. ASSOC., *Changes Overdue on How Substance-use Disorders Are Covered, Treated* (2019), <https://www.ama-assn.org/delivering-care/opioids/changes-overdue-how-substance-use-disorders-are-covered-treated>; AM. SOC. ADDICTION MED., *The National Practice Guideline for the Use of Medications in the Treatment of Addiction Involving Opioid Use* (2015), <https://www.asam.org/docs/default-source/practice-support/guidelines-and-consensus-docs/asamnational-practice-guideline-supplement.pdf?sfvrsn=24>; SUBSTANCE ABUSE & MENTAL HEALTH SVCS. ADMIN., *Medications for Opioid Use Disorder for Healthcare and Addiction Professionals, Policymakers, Patients, and Families, A Treatment Improvement Protocol TIP 63* (2020), [https://store.samhsa.gov/sites/default/files/SAMHSA\\_Digital\\_Download/PEP20-02-01-006\\_508.pdf](https://store.samhsa.gov/sites/default/files/SAMHSA_Digital_Download/PEP20-02-01-006_508.pdf).

<sup>12</sup> See, e.g., NAT’L SHERIFFS’ ASSOC. & NAT’L COMM’N ON CORR. HEALTH CARE, *Jail-Based Medication-Assisted Treatment: Promising Practices, Guideline, and Resources for the Field* (2018), <https://www.ncchc.org/filebin/Resources/Jail-Based-MATPPG-web.pdf>.

<sup>13</sup> See, e.g., U.S. DEPT. JUST., *Investigation of the Cumberland County Jail* (January 14, 2021), <https://www.justice.gov/opa/press-release/file/1354646/download>; OFF. U.S. SURGEON GEN., *supra* note 9.; OFF. NAT’L DRUG CONTROL POL’Y, *The Biden-Harris Administration’s Statement of Drug Policy Priorities for Year One* (2021), <https://www.whitehouse.gov/wp-content/uploads/2021/03/BidenHarris-Statement-of-Drug-Policy-PrioritiesApril-1.pdf>; Chris Christie, *The President’s Commission on Combating Drug Addiction and the Opioid Crisis Final Report* (November 2017), [https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/images/Final\\_Report\\_Draft\\_11-15-2017.pdf](https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-15-2017.pdf).

<sup>14</sup> See, e.g., Barbara DiPietro, Julia Zur, & Jennifer Tolbert, KAISER FAM. FOUND., *Addressing the Opioid Crisis: Medication-Assisted Treatment at Health Care for the Homeless Programs* (2019), <https://www.kff.org/medicaid/issue-brief/addressing-the-opioid-crisis-medication-assisted-treatment-at-health-care-for-the-homeless-programs/>; Carmen E. Albizu-García et al., *Assessing Need for Medication-Assisted Treatment for Opiate-Dependent Prison Inmates*, 33 SUBSTANCE ABUSE 60 (2012), <https://www.tandfonline.com/doi/abs/10.1080/08897077.2011.620462>.

<sup>15</sup> N.Y. OFF. MENTAL HEALTH, *Opioid Use, Prevention, and Treatment of Opioid Use Disorder in Patients with Mental Illnesses* (2018), [https://omh.ny.gov/omhweb/bho/docs/opioid\\_use\\_mental\\_illness.pdf](https://omh.ny.gov/omhweb/bho/docs/opioid_use_mental_illness.pdf); N.Y. OFF. ADDICTION SVCS. & SUPPORTS, *Medication-Assisted Treatment* (2021), <https://oasas.ny.gov/providers/medication-assisted-treatment>; N.Y. DEPT. HEALTH, *Implementing Transmucosal Buprenorphine for Treatment of Opioid Use Disorder Best Practices* (2019), [www.health.ny.gov/diseases/aids/consumers/prevention/buprenorphine/docs/bupe\\_best\\_practices\\_2019.pdf](http://www.health.ny.gov/diseases/aids/consumers/prevention/buprenorphine/docs/bupe_best_practices_2019.pdf).

<sup>16</sup> S.E. Streisel, *Intent to Refer: Exploring Bias Toward Specific Medication Assisted Treatments by Community Corrections Employees*, 53 SUBSTANCE ABUSE & MISUSE 2421, 2422 (2018), <https://www.tandfonline.com/doi/abs/10.1080/10826084.2018.1482346?journalCode=isum20>; Gavin Bart, *Maintenance Medication for Opiate Addiction: The Foundation of Recovery*, 31 J. ADDICTIVE DISEASES 207, 207 (2012), <https://www.tandfonline.com/doi/full/10.1080/10550887.2012.694598>.

<sup>17</sup> John Keilman, CHI. TRIB., *Giving Addicted Inmates Opioid Meds Behind Bars Can Reduce Overdose Deaths. Why Don’t More Jails Use Them?* (2018), <https://www.chicagotribune.com/news/ct-metjail-inmates-opioid-addiction-20180703-story.html>.

<sup>18</sup> Streisel, *supra* note 16.

“high.”<sup>19</sup> Misconceptions and stigma should not get in the way of decades of research showing that access to MAT in prisons and jails decreases criminal activity,<sup>20</sup> recidivism,<sup>21</sup> injection drug use, illicit opioid use, transmission of infectious diseases,<sup>22</sup> and morbidity and mortality<sup>23</sup> relative to rates among people with OUD who receive no treatment or treatment modalities that rely on psychosocial interventions alone.<sup>24</sup>

Access to MAT is especially critical in carceral settings. When MAT is not available, incarcerated people with OUD face forcible withdrawal, continued illicit opioid use,<sup>25</sup> and even suicide.<sup>26</sup> Forcible withdrawal, which often results in excruciating withdrawal symptoms,<sup>27</sup> heightens risk of self-harm and suicide<sup>28</sup> and dramatically increases one’s

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<sup>19</sup> LEG. ACTION CTR., *Medication-Assisted Treatment for Opioid Addiction: Myths & Facts 2* (2016), <https://www.thenationalcouncil.org/wp-content/uploads/2020/01/Myth-Fact-for-MAT.pdf?dof=375ateTbd56>; NAT’L INST. ON DRUG ABUSE, *Medications to Treat Opioid Use Disorder Research Report 3-4* (2018), <https://www.drugabuse.gov/download/21349/medications-to-treat-opioid-use-disorder-research-report.pdf?v=99088f7584dac93ddcfa98648065bfbe>.

<sup>20</sup> Anne Bukten et al., *Engagement with Opioid Maintenance Treatment and Reductions in Crime: A Longitudinal National Cohort Study*, 107 ADDICTION 393 (2012), <https://onlinelibrary.wiley.com/doi/10.1111/j.1360-0443.2011.03637.x>; Robert P. Schwartz et al., *Interim Methadone Treatment Compared to Standard Methadone Treatment: 4-month Findings*, 41 J. SUBSTANCE ABUSE & TREATMENT 21 (2011), [https://www.journalofsubstanceabusetreatment.com/article/S0740-5472\(11\)00015-8/fulltext](https://www.journalofsubstanceabusetreatment.com/article/S0740-5472(11)00015-8/fulltext).

<sup>21</sup> Elizabeth A. Evans et al., *Criminal Justice Outcomes Over 5 Years After Randomization to Buprenorphine-Naloxone or Methadone Treatment for Opioid Use Disorder*, 114 ADDICTION 1396 (2019), <https://onlinelibrary.wiley.com/doi/10.1111/add.14620>; Shanna Farrell-MacDonald et al., *Impact of Methadone Maintenance Treatment on Women Offenders’ Post-Release Recidivism*, 20 EUR. ADDICTION RSCH. 192 (2014), <https://www.karger.com/Article/Abstract/357942>; Verner S. Westerberg et al., *Community-Based Methadone Maintenance in a Large Detention Center is Associated with Decreases in Inmate Recidivism*, 70 J. SUBSTANCE ABUSE TREATMENT 1 (2016), [https://www.journalofsubstanceabusetreatment.com/article/S0740-5472\(15\)30064-7/fulltext](https://www.journalofsubstanceabusetreatment.com/article/S0740-5472(15)30064-7/fulltext).

<sup>22</sup> Bart, *supra* note 16, at 207; George E. Woody et al., *HIV Risk Reduction with Buprenorphine-naloxone or Methadone: Findings from a Randomized Trial*, 66 J. ACQUIRED IMMUNE DEFICIENCY SYNDROMES 288 (2014), [https://journals.lww.com/jaids/Fulltext/2014/07010/HIV\\_Risk\\_Reduction\\_With\\_Buprenorphine\\_Naloxone\\_or.7.aspx](https://journals.lww.com/jaids/Fulltext/2014/07010/HIV_Risk_Reduction_With_Buprenorphine_Naloxone_or.7.aspx); Richard P. Mattick et al., *Buprenorphine Maintenance Versus Placebo or Methadone Maintenance for Opioid Dependence*, COCHRANE DATABASE SYSTEMATIC REVIEWS. (2014), <https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD002207.pub4/full>; Einat Peles et al., *Low Risk for Hepatitis C Seroconversion in Methadone Maintenance Treatment*, 5 J. ADDICTION MED. 214 (2011), [https://journals.lww.com/journaladdictionmedicine/Abstract/2011/09000/Low\\_Risk\\_for\\_Hepatitis\\_C\\_Seroco\\_nversion\\_in.8.aspx](https://journals.lww.com/journaladdictionmedicine/Abstract/2011/09000/Low_Risk_for_Hepatitis_C_Seroco_nversion_in.8.aspx).

<sup>23</sup> NAT’L INST. ON DRUG ABUSE, *supra* note 19.

<sup>24</sup> Bart, *supra* note 16, at 209-17; Sarah E. Wakeman et al., *Comparative Effectiveness of Different Treatment Pathways for Opioid Use Disorder*, 3 JAMA NETWORK OPEN 1 (2020), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2760032>; Utsha G. Khatri et al., *Medicaid Expansion Increased Medications for Opioid Use Disorder Among Adults Referred by Criminal Justice Agencies*, 40 HEALTH AFFS. 562, 562 (2021), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.01251>.

<sup>25</sup> SUBSTANCE ABUSE & MENTAL HEALTH SVCS. ADMIN., *supra* note 8, at 3.

<sup>26</sup> U.S. DEPT. JUST., *Investigation of the Cumberland County*, *supra* note 13.

<sup>27</sup> LEG. ACTION CTR. & HARV. MED. SCH. et al., *Evidence Based Strategies for Abatement of Harms from the Opioid Epidemic* (2020) 10-12, <https://www.lac.org/assets/files/TheOpioidEbatement-v3.pdf>.

<sup>28</sup> U.S. DEPT. JUST., *Investigation of the Cumberland County*, *supra* note 13; U.S. DEPT. JUST., *Notice Regarding Investigation of the Cumberland County Jail* (2021), <https://www.justice.gov/crt/case-document/file/1354506/download>; Sarah Larney et al., *Opioid Substitution Therapy as a Strategy to Reduce Deaths in Prison: Retrospective Cohort Study*, 4 ADDICTION 1 (2014), <https://bmjopen.bmj.com/content/bmjopen/4/4/e004666.full.pdf>.

likelihood of death, particularly during the first weeks of incarceration.<sup>29</sup> In contrast, incarcerated people with OUD who receive MAT are 87 percent less likely to die of unnatural death during their first month of incarceration as compared to individuals who did not have access to MAT.<sup>30</sup> Unnatural deaths include drug-induced deaths;<sup>31</sup> individuals experiencing withdrawal often continue illicit opioid use while incarcerated, whereas MAT reduces illicit opioid and injection drug use.<sup>32</sup> The dire consequences of lack of access to MAT in carceral settings particularly harms people of color, who are disproportionately incarcerated for drug use and drug-related offenses despite similar rates of drug use as white individuals.<sup>33</sup>

Even if individuals survive unmedicated opioid withdrawal while incarcerated, long-term they continue to face worse outcomes than individuals who received MAT. The risk of overdose upon release from jail or prison is enormous when incarcerated people with OUD are not treated with MAT. In the first two weeks after release, formerly incarcerated people are 129 times more likely to die of a drug overdose than the general population.<sup>34</sup> Lack of access to MAT is a major cause of this high mortality rate: formerly incarcerated people have a lower tolerance for opioids after forcible withdrawal, putting them at a heightened risk of overdose when they return to use of a dose for which they had formerly built up a tolerance that they have now lost.<sup>35</sup> Providing MAT during incarceration makes formerly incarcerated people 85 percent less likely to die due to drug overdose and 75 percent less likely to die of any cause in the first month after release.<sup>36</sup> Lack of access to MAT also deprives individuals of what extensive literature and systematic reviews show is the best opportunity for individuals with OUD to achieve recovery.<sup>37</sup>

Denying access to MAT for people who are incarcerated is also a violation of constitutional protections. In a September 2021 ruling, a federal judge permanently

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<sup>29</sup> Larney et al., *supra* note 28, at 5; Shane Darke et al., *Yes, People Can Die From Opiate Withdrawal*, 113 *BMJ OPEN* 1999 (2017), <https://onlinelibrary.wiley.com/doi/10.1111/add.13512>.

<sup>30</sup> Larney et al., *supra* note 28, at 5.

<sup>31</sup> SUBSTANCE ABUSE & MENTAL HEALTH SVCS. ADMIN., *supra* note 8, at 3.

<sup>32</sup> *Supra* note 22.

<sup>33</sup> NAT'L ASSOC. ADVANCEMENT COLORED PEOPLE, *Criminal Justice Fact Sheet*, <https://naacp.org/resources/criminal-justice-fact-sheet>; Julie Netherland & Helena B. Hansen, *The War on Drugs That Wasn't: Wasted Whiteness, "Dirty Doctors," and Race in Media Coverage of Prescription Opioid Misuse*, 40 *CULTURE, MED., & PSYCHIATRY* 404 (2018), <https://link.springer.com/article/10.1007%2Fs11013-016-9496-5>; Keturah James & Ayana Jordan, *The Opioid Crisis in Black Communities*, 46 *J.L. MED. & ETHICS* 404 (2018), <https://www.cambridge.org/core/journals/journal-of-law-medicine-and-ethics/article/abs/opioid-crisis-in-black-communities/8827EC7AF6155CE486CA6BDF08B3CDC0>.

<sup>34</sup> Ingrid A. Binswanger et al., *Release from Prison—A High Risk of Death for Former Inmates*, 356 *N. ENG. J. MED.* 157 (2007), <https://www.nejm.org/doi/full/10.1056/NEJMsa064115>. A recent study confirmed this high rate of drug overdose deaths, finding that formerly incarcerated people are 56 times more likely to die of an overdose than the general population. MASS. DEPT. PUB. HEALTH, *Data Brief: An Assessment of Opioid-Related Deaths in Massachusetts 2013-2014* (2016), <https://www.mass.gov/doc/data-brief-chapter-55-opioid-overdose-study-september-2016/download>.

<sup>35</sup> John Strang et al., *Loss of Tolerance and Overdose Mortality after Inpatient Opiate Detoxification: Follow Up Study*, 326 *BMJ* 959 (2003), <https://www.bmj.com/content/326/7396/959>.

<sup>36</sup> John Marsden et al., *Does Exposure to Opioid Substitution Treatment in Prison Reduce the Risk of Death After Release? A National Prospective Observational Study in England*, 112 *ADDICTION* 1408 (2017), <https://onlinelibrary.wiley.com/doi/10.1111/add.13779>.

<sup>37</sup> Bart, *supra* note 16, at 207.

enjoined the Jefferson County Jail from stripping the plaintiff in an NYCLU lawsuit of access to life-sustaining MAT.<sup>38</sup> While this ruling – finding that a blanket ban on access to MAT would likely violate both the Constitution and the Americans with Disabilities Act – was the first of its kind in the Second Circuit, it is part of a growing body of cases throughout the country that recognize that denying access to MAT is cruel, discriminatory, and unlawful.

By requiring that all state correctional facilities and county jails provide individuals with access to MAT, the MAT in Prisons and Jails Act will mitigate each devastating outcome associated with OUD. Access to MAT in jails and prisons will prevent painful and potentially fatal experiences of withdrawal; reduce recidivism; enable people with OUD to achieve long-term recovery; and save countless lives. **For these reasons, the NYCLU urges the Governor to sign A.533/S.1795 into law.**

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<sup>38</sup> *P.G. v. Jefferson Co.*, No. 5:21-CV-388 (N.D.N.Y. 2021) (order granting preliminary injunction), available at [https://www.nyclu.org/sites/default/files/field\\_documents/47.pdf](https://www.nyclu.org/sites/default/files/field_documents/47.pdf).