

April 28, 2020

Governor Andrew M. Cuomo
New York State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

New York State must stop warehousing people with serious mental health concerns in prisons and jails. As COVID-19 spreads through these facilities, people with mental health disabilities must be included in the State's efforts to release vulnerable people and reduce the total jail and prison populations. As of April 27, 2020, 310 people in the custody of NYS Department of Corrections and Community Supervision (DOCCS) have tested positive.¹ DOCCS own reporting shows that testing has been extremely limited; accounts from incarcerated people indicate that infection numbers are significantly undercounted. In addition, the virus has already killed seven incarcerated individuals, including four people at Sing Sing Correctional Facility, a facility that operates multiple programs for people with serious mental health concerns. We are gravely concerned that COVID-19 has spread in the Sing Sing Intermediate Care Program (ICP): the mental health of many ICP participants has deteriorated, making it even more difficult for them to prevent contracting the virus, and none of the participants have been provided with preventive supplies.²

We are appalled that in implementing your directive to release people incarcerated on technical parole violations, the NYS Department of Corrections and Community Supervision (DOCCS) initially categorically excluded people with serious mental health concerns.³ We are relieved to learn that DOCCS's blatant discrimination against people with mental health disabilities has been addressed. To assure the public that this policy change was actually implemented, DOCCS should report the number of people who were initially disqualified based on their mental health disability and the number of people who were released as a result of DOCCS's subsequent review.

Mental health disabilities place these individuals at high risk of serious complications from COVID-19, and is a reason for their release. Indeed, an extensive body of empirical research has established that serious mental health concerns, and attendant chronic stress, anxiety, or depression, compromise the immune system's ability to defend the body against viral infections.⁴ Research suggests that anxiety and related disorders may make people vulnerable to various medical conditions, including respiratory illnesses.⁵

¹ DOCCS COVID-19 Report, Daily Report, April 27, 2020, available at <https://doccs.ny.gov/doccs-covid-19-report>.

² Geringer-Sameth E, "10 Dead, Hundreds Infected as State Psychiatric Facilities Become Another Crisis Point in Coronavirus Outbreak," *Gotham Gazette*, April 17, 2020, available at <https://www.gothamgazette.com/state/9321-ten-dead-hundreds-infected-new-york-state-psychiatric-facilities-crisis-coronavirus-outbreak>.

³ Declaration of Anthony J. Annucci in Opposition to Plaintiffs' Motion for a Preliminary Injunction, *Bergamaschi v. Cuomo*, 1:20-2817-CM, April 10, 2020.

⁴ See "Stress Weakens the Immune System," American Psychological Association, available at <https://www.apa.org/research/action/immune>.

⁵ Sartorius N, Holt RIG, Maj M (eds): Comorbidity of Mental and Physical Disorders. Key Issues Ment Health. Basel, Karger, 2015, vol 179, pp 81–87 (DOI: 10.1159/000365538), available at <https://www.karger.com/Article/Pdf/365538>.

Depression may also affect the immune system and contribute to prolonged infection.⁶ In addition, people with serious mental health conditions have higher rates of chronic medical conditions, such as hypertension, diabetes, and cardiovascular disease, which increase their vulnerability to COVID-19.⁷

For far too long, prisons and jails have been the dumping ground for people with mental health needs. New York has failed to provide robust, person-centered support for thousands of New Yorkers with the greatest needs. DOCCS's original position that having a serious mental health concern should disqualify a person from release is deeply disturbing but not surprising given that New York State:

- Continues to keep people with mental health concerns in solitary confinement;⁸
- Maintains a punitive, abusive environment in DOCCS's residential mental health units despite the fact that they were created to be therapeutic alternatives to solitary confinement;⁹
- Has a prison suicide rate that is 88% higher than the average rate of suicide in prisons across the country; and
- Keeps people with mental health needs in prison beyond their release dates because there is no available housing in the community.¹⁰

As the current crisis demonstrates, people with serious mental health needs have been left out of New York's move toward decarceration. Over the last decade, the prison population has decreased significantly while the percentage of people on the mental health caseload continues to grow. In New York City, the jail population has dropped by 29% during this crisis,¹¹ but people with mental health needs are not being released at the same rate – instead increasing from 43%¹² to 51%¹³ of the population. People with serious

⁶ Kiecolt-Glaser JK, Glaser R. Depression and immune function: central pathways to morbidity and mortality. *J Psychosom Res.* 2002;53(4):873–876 (DOI:10.1016/s0022-3999(02)00309-4), available at <https://pubmed.ncbi.nlm.nih.gov/12377296/>.

⁷ Scharf D, Breslau J, Schmidt Hackbarth N, Kusuke D, Staplefoote BL, Pincus HA. An Examination of New York State's Integrated Primary and Mental Health Care Services for Adults with Serious Mental Illness. Santa Monica, CA: RAND Corporation, 2014, xi, available at https://www.rand.org/content/dam/rand/pubs/research_reports/RR600/RR670/RAND_RR670.pdf.

⁸ *Trapped Inside: The Past, Present, and Future of Solitary Confinement in New York*, NYCLU, October 2019, 23, available at <https://www.nyclu.org/en/publications/trapped-inside-past-present-and-future-solitary-confinement-new-york>.

⁹ Testimony for NYS Mental Hygiene Budget Hearing, Mental Health Alternatives to Solitary Confinement, February 13, 2018, available at https://www.nysenate.gov/sites/default/files/article/attachment/mental_health_alternatives_to_solitary_confinement.pdf.

¹⁰ Complaint, *M.G. v. Cuomo*, 1:19-cv-00639, January 23, 2019, available at <https://myemail.constantcontact.com/THE-LEGAL-AID-SOCIETY---DRNY-FILE-CLASS-ACTION-LAWSUIT-AGAINST-NYS.html?soid=1128997988588&aid=CgyUdlyAoFQ>.

¹¹ “New York City Jail Population Reduction in The Time of COVID-19: April 23,” NYC Mayor's Office of Criminal Justice, April 24, 2020, available at https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/04/COVID-factsheet_APRIL-23-2020.pdf.

¹² NYC Health + Hospitals Correctional Health Services Presentation on Mental Health Housing and Treatment for Individuals with Serious Mental Illness in NYC Jails, NYC Board of Correction Meeting, March 12, 2019, available at <https://www1.nyc.gov/site/boc/meetings/mar-12-2019.page>.

¹³ NYC Board of Correction Daily COVID-10 Update, April 27, 2020, available at https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_4_27_2020.pdf,

mental health concerns often become and remain incarcerated because of the scarcity of adequate community housing and supports. Without readily available resources in the community, judges, parole commissioners, and DOCCS choose to keep people with serious mental health needs behind bars.

We call on you to require that the people with mental health needs whom DOCCS releases during this pandemic be provided with housing and other supports to make this transition successfully. During this crisis, New York City is providing hotel rooms and reentry services for people released from NYC jails. You must ensure that similar arrangements to provide for the needs of people with mental health concerns are developed across the state. Further, the state should set an example for local jails by affording the potentially life-saving protection of early release to people with mental health needs.

Ending the discriminatory treatment of people with mental health concerns and ensuring their safe release from prison during this pandemic are critical first steps, but moving forward, you must address the public health crisis of imprisoning people with serious mental health needs in environments that exacerbate their illnesses. This will require:

- Enacting the Humane Alternatives to Long-Term (HALT) Solitary Confinement Act (S1623/A2500) as an essential part of protecting the health of this population;
- Diverting from incarceration and releasing from prison as many people with serious mental health needs as possible; and
- Investing in appropriate community-based housing and other supports and ensuring that they are available to people with the most significant mental health challenges.

People with serious mental health concerns can and do recover, but they need stability, safety, and support – all of which are absent from prisons and jails. For those who need support upon reentry, New York can and should provide resources that promote recovery, such as care coordination and peer support, and assist people in reintegrating into the community. Now is the time to align public safety and public health and provide for the needs of people with serious mental health challenges so that they can be integrated into our community not exiled from it.

Sincerely,

A Challenge to Change (C2C)

A Little Piece of Light

American Friends Service Committee Prison Watch

Amnesty International Brooklyn Local Group 27

Barriers Know More Poverty Prevention Foundation

Breaking the chains of your mind

Brooklyn Defender Services

Capital Area Against Mass Incarceration

Cardozo Criminal Defense Clinic

CCITNYC (Correct Crisis Intervention Today in New York City: Fighting to Reform New York City's Response to Mental Health Crises)

Center for Appellate Litigation

Center for Community Alternatives

Chief Defender Association of New York

City Voices

Close Rosie's

Columbia Center for Contemporary Critical Thought

Community Missions of Niagara Frontier, Inc.

Community Service Society of New York
Fountain House
GOSO
Granny Peace Brigade
#HALTsolitary Campaign
Hour Children
JLUSA
John Brown Lives!
John R. Wagner, Attorney At Law
Justice and Unity for the Southern Tier (JUST)
Legal Action Center
Legal Aid Bureau of Buffalo
Mental Health Advocacy and Resilience
Mental Health Alternatives to Solitary
Confinement
Mental Health Association in New York State,
Inc.
MindFreedom International
National Alliance on Mental Illness of New York
City (NAMI NYC)
NAMI Huntington
NAMI Queens/Nassau
NAMI-Schenectady
National Religious Campaign Against Torture
New Hour for Women & Children LI
New York Association of Psychiatric
Rehabilitation Services
New York City Jericho Movement
New York County Defender Services
New York Lawyers for the Public Interest

New York State Prisoner Justice Network
NYC Jails Action Coalition
NYC Metro Raging Grannies
Parole Preparation Project
Policing and Social Justice Project
Presbyterian Church
Presbytery of New York City
Re/Creation
Release Aging People in Prison/RAPP
Rise and Resist
Rockland Coalition to End the New Jim Crow
Second Chance Reentry, Inc.
Showing Up for Racial Justice NYC
Sistah4lyfe
Social Justice Action of St. Boniface
T'ruah: The Rabbinic Call for Human Rights
The Bronx Defenders
The Katal Center for Health, Equity, and Justice
United Community Centers
United Voices of Cortland
Uptown Progressive Action
Urban Justice Center
VOCAL-NY
Visionary V
WNY Peace Center
Women & Justice Project
Women's Community Justice Association
Women's Prison Association
Worth Rises