

April 29, 2020

Dear Governor Cuomo; Mayor de Blasio; Commissioner Annucci; and Assistant District Attorney Vance, Gonzalez, Clark, Katz, and McMahon;

We are a portion of the members who serve on a task force directed to review the NYC Department of Correction's (DOC) policies related to transgender, gender non-conforming, non-binary, and intersex (TGNCNBI) people in custody. While not all Task Force members are represented on this letter,<sup>i</sup> we aim to find common ground with other entities represented on the Task Force, including the Department of Correction (DOC), Correctional Health Services (CHS), and the Board of Correction (BOC), in order to make recommendations to improve policy and practice for TGNCNBI people.

**We write to request the immediate release of all vulnerable populations from jail and prison custody.** Joining us in this request are our collaborative partners and government officials not assigned to the Task Force who nevertheless support this request. In making this determination, we draw upon our collective knowledge of the particular vulnerabilities of TGNCNBI people to ask that you consider the unique risks they face. We have copied the DOC, CHS, and the BOC to help facilitate this request and help ensure the safest possible conditions in custody for this population prior to release.

As you know, New York has become the epicenter of the COVID-19 pandemic, with those in our custody – both jail and prison - facing particularly deadly risks from the virus. Former Chief Medical Officer for the NYC jail system Homer Venters, has spoken to the dangerousness of jails and prisons during a pandemic, noting that “social distancing” and “self-quarantine” and “flattening the curve”. . . [is] impossible in jails and prisons, or [is] made worse by the way jails and prisons are operated. . . [e]verything about incarceration is going to make that curve go more steeply up.”<sup>ii</sup> To date, we have already seen the virus spread at Rikers Island, with the death of three people in custody and ten DOC staff, and with COVID-19 cases confirmed for 378 people in custody, 158 CHS staff, and 964 DOC staff. The most recent death of an incarcerated person on Rikers was announced the day that a writ calling for their release was to be argued. We have heard that at least one of these cases of a positive infection occurred in the Special Consideration Housing Unit (SCHU) at the Rose M. Singer Center, where many TGNCNBI individuals, in particular transgender women, are housed. Now more than ever speed is of the essence in ensuring safety for all New Yorkers.

The BOC has called for the release of all people in DOC custody with underlying health conditions, including lung disease, heart disease, diabetes, cancer, or a weakened immune system. According to CHS Associate Director Dr. Ruth Hai in a letter created specifically to advocate for the release of this population in court, people who are LGBTQ+ face increased risk of falling into the last category of having a weakened immune system due to higher rates of HIV, additional chronic conditions and liver disease from hepatitis B and C, substance use, and poorly controlled pre-existing medical conditions resulting from lack of access. Lack of access to health care systems has had overall devastating effects on all people. For TGNCNBI people in particular, discrimination in accessing health care and insurance, and the historical lack of

coverage for medically necessary care that has been previously authorized by law has had long-term impacts on the community's overall health. Discrimination in employment, education, housing, and many other areas means that TGNCNBI people face exacerbated corresponding healthcare concerns.

Likewise, as recognized by CHS Associate Director Dr. Hai, the increased anxiety and tension surrounding the pandemic only increases the already high risk of abuse TGNCNBI persons face ordinarily. It is important to remember that recorded medical conditions and age are not the only factors placing someone at risk during this time. Other factors such as vulnerability to physical and sexual abuse, access to outside support and phone calls, and likelihood of being placed in restricted housing (whether protective, disciplinary, or as a result of staffing concerns) often hinders the ability of TGNCNBI people to access mental and medical healthcare.

Accordingly, we ask that you consider the heightened vulnerabilities – medical, social, and structural - faced by TGNCNBI individuals while in custody during this crisis. In addition to the underlying conditions a disproportionate number of such individuals manage, there is the very real concern that the facilities will not be able to deliver TGNCNBI-appropriate healthcare for even routine issues.

**We write to request the immediate release of all vulnerable populations from jail and prison custody** with a focus on those who are medically and socially vulnerable, and offer the following as guidelines:

**People in State Custody:** The number of individuals affected by COVID-19 in the NYS prison system is increasing exponentially. Since the launch of the NYS DOCCS COVID-19 response website on April 10, 2020 we now know of seven deaths of incarcerated individuals and nearly 300 diagnosed infections.<sup>iii</sup> The Governor has several opportunities to release people from state custody in a manner that is consistent with public health. We ask that the Governor take the following actions:

- Review all medically vulnerable populations in state custody with an eye for release; such release can consist of parole supervision, temporary release, clemency, a pardon or commutation, or any other mechanism. The need to release medically vulnerable populations cannot be overstated. In fact, defense providers on the Task Force have had contact with various people in custody, including two transgender women, who despite having life-threatening medical vulnerabilities, have been held at Rikers by DOCCS for non-violent charges. The Governor can and must act quickly to save their lives.
- Grant early release to all those who are, at a minimum, within one year of consideration for release from incarceration OR at a minimum within one year of completion of the maximum amount of time for their sentence; like the city-sentenced populations, these individuals will be returning to the community shortly.
- Ensure that DOCCS lifts all parole warrants on technical and non-bail qualifying offenses, ceases violations of similar offenses, and releases and temporarily suspends the warrants of all medically vulnerable populations. There are approximately 252 people who are detained due to technical parole violations, and 620 people detained in Rikers Island due to an open case or violation of parole warrant. While we appreciate that the

Governor has released over 200 of these individuals, more must be done in NYC and statewide.

**People Detained in City Custody:** As of April 23, 3,139 people were detained pretrial,<sup>iv</sup> about 73% of those individuals were detained simply because they could not afford to pay bail, and about 34% were charged with non-violent felonies or misdemeanors. CHS has provided letters recommending the release of numerous people detained pretrial for medical reasons. However, judges and District Attorneys have ignored many of those requests, despite the need to prioritize public health responses. Moreover, while those who have access to income can easily pay bail and fight their cases from the outside, those who are poor are forced to languish in jails. This is particularly troublesome when TGNCNBI people already face disproportionate levels of poverty.<sup>v</sup> Such inequity was seen in the tragic death of Layleen Polanco Xtravaganza, who was detained due to inability to pay cash bail that had been set for misdemeanor charges. The inequity of cash bail is always of grave concern, but during a pandemic this difference could mean life or death, particularly for vulnerable populations. Therefore, we ask the District Attorneys to take the following actions.

- Review the detention of all of those incarcerated pretrial with the presumption of consenting to release, and with an emphasis on immediate release for those who are medically vulnerable.
- Work with service providers, many of whom are represented on the Task Force or have signed onto this letter as supporters, to find alternatives to detention and incarceration that address harm and to provide reentry services that can assist in release.
- Consent to the release of all individuals recommended by CHS for medical reasons.

**People in DOC Custody:** We urge the Department to release all individuals serving city-sentences; to publicly report important COVID-related information including staffing, restricted housing unit numbers, and to ensure compliance with critical Board of Correction standards regarding medical care including mental health care.

- While we appreciate the initial step to release 70% of the city-sentenced population, **we urge the Department to release all persons serving city-sentences, particularly those who are medically vulnerable.** We remind the Department that most individuals serving city-sentences have provided mitigating information to the DAs and judges and that service-providers listed on this letter are willing to collaborate to provide reentry support where appropriate. Furthermore, those serving city-sentences will be released in the near future following the pandemic regardless of DOC action; there is no need to present such risk when release is imminent.
- **Publicly report** to people in custody and the **public** new protocols regarding sick call, access to medical treatment, and COVID related housing and staffing changes, including for example staffing of units that require specialty or additional training, numbers of people in units where out-of-cell time is restricted, and other important data.
- Ensure that **telemedicine and video-conferencing for victim advocacy** is available to compensate for any gaps in BOC in-person health standards, and consider recruiting outside medical staff to lessen CHS's burden.
- Ensure that PREA standards regarding medical and mental health care are upheld for all survivors throughout this time.

Sincerely,

**Task Force Members:**

Kandra Clark, on behalf of Exodus Transitional Community

Kelsey De Avila, on behalf of Brooklyn Defender Services

Bryan J. Ellicott, on behalf of Princess Janae Place, Inc.

Mik Kinkead, on behalf of the Legal Aid Society

Dori Lewis, on behalf of the Legal Aid Society

Deborah Lolai, on behalf of The Bronx Defenders

Kimberly Mckenzie, on behalf of Sylvia Rivera Law Project

Chase Strangio

**Elected Officials:**



New York City Public Advocate, Jumanne D. Williams



Council Member Keith Powers



Council Member Daniel Dromm



Council Member Brad Lander



Council Member Margaret Chin



Council Member Vanessa Gibson



Council Member Ritchie Torres



Council Member Diana Ayala

**Partner Organizations Signing Onto This Letter:**

A Little Piece of Light Foundation

Ali Forney Center

Assoc. of Legal Aid Attorneys, UAW Local 2325

Audre Lorde Project

Brooklyn Defender Services

Center for Community Alternatives

Center for Constitutional Rights

Close Rosie's

Communities Untied for Police Reform

Correctional Association of New York

Decrim NY

Drug Policy Alliance

Emergency Release Fund

FIERCE!

Housing Plus

Jews For Racial and Economic Justice

Jim Owles Liberal Democratic Club

Just Leadership USA

Justice for Women COVID-19 Task Force

Lambda Independent Democrats of Brooklyn

Lambda Legal

Neighborhood Defender Service of Harlem

New Alternatives for LGBT Homeless Youth

New Pride Agenda

Parole Preparation Project  
Princess Janae Place  
Queens Defenders  
Release Aging People in Prison Campaign  
Sylvia Rivera Law Project  
The Bronx Defenders  
The Legal Aid Society  
The LGBT Bar Association of Greater New York  
Transgender Law Center  
VOCAL-NY  
Women’s Community Justice Association  
Women’s Prison Association

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<sup>i</sup> The Task Force is made up of advocacy organizations and directly impacted individuals who have signed onto this letter. It also consists of several city governmental entities who are not included on this letter, including ENDGBV, DOC, CHS, BOC, CCHR, the Unity Project, and the New York City Council.

<sup>ii</sup> Jennifer Gonnerman, How Prisons and Jails Can Respond to the Corona Virus, *The New Yorker*, *The New Yorker*, March 14, 2020, available at <https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus>

<sup>iii</sup> <https://doccs.ny.gov/doccs-covid-19-report> 2020 update states that 994 staff members, 296 incarcerated people, and 42 people on parole have been infected. One staff member, five incarcerated people, and four people on parole have all died as a result of COVID-19 as of April 27, 2020. NYS DOCS launched their website on April 10, 2020.

<sup>iv</sup> Mayor’s Office of Criminal Justice, New York City Jail Population Reduction in the Time of COVID-19, available at [https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/04/COVID-factsheet\\_APRIL-23-2020.pdf](https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/04/COVID-factsheet_APRIL-23-2020.pdf)

<sup>v</sup> New Report Outlines Widespread Discrimination Against Trans New Yorkers, Anti-Violence Project, December 12, 2018, available at <https://avp.org/new-report-outlines-widespread-employment-discrimination-against-tgnc-new-yorkers/>