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

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


\(^12\) 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/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.