



April 2, 2020

Contact:

Redmond Haskins
The Legal Aid Society
(929) 441-2384
rhaskins@legal-aid.org

*****FOR IMMEDIATE RELEASE*****

***Legal Aid Calls on Gov. Cuomo and DOCCS to Immediately Release
Four Incarcerated People At High-Risk of COVID-19 Infection and
Review Thousands of Other Vulnerable Incarcerated People For
Release***

(NEW YORK, NY) – The Legal Aid Society, in a recently issued [demand letter](#), called on New York State Governor Andrew Cuomo and the New York State Department of Corrections and Community Supervision (DOCCS) to immediately release four incarcerated people due to their unique vulnerability to COVID-19 infection, and to review thousands of other incarcerated people for immediate release.

The four incarcerated people encapsulate the severity of the situation imprisoned people face as the COVID-19 pathogen continues to spread. They include a 55 year-old man currently incarcerated at Five Points Correctional Facility with Chronic Obstructive Pulmonary Disease (COPD), Sarcoidosis, and asthma; an 83 year-old man at Watertown Correctional Facility who has suffered from bladder cancer at least twice in his lifetime; a 40-year old man at Green Haven Correctional Facility, who is diabetic, was diagnosed with heart failure and hypertension, underwent a triple bypass surgery, and later contracted a lung infection due to complications from the surgery; and a 60 year-old woman serving a two-year sentence at Taconic Correctional

Facility, who suffers from a rectovaginal fistula, a condition that developed after she underwent chemotherapy and radiation treatment for her rectal cancer.

Moreover, Legal Aid demands that DOCCS immediately review all people in its custody over the age of 50 with serious medical conditions (*e.g.* heart disease, diabetes, lung disease, cancer, weakened immune system) for release. In the letter, Legal Aid shares several mechanisms at the Department's disposal to expeditiously release people from its custody (listed below).

The letter states:

As you know, institutional settings, including state prisons operated by DOCCS, are predisposed to the rapid spread of contagions such as COVID-19. Since the initial spread of COVID-19, we have been in communication with some of our most vulnerable clients and their family members. Our clients are distressed by what they perceive to be the Department's lack of care for their wellbeing during the pandemic. They report insufficient access to medical attention and an inadequate supply of hygiene and cleaning products. Some of our clients report that the Department has failed to reliably institute social distancing measures, and where such measures have been attempted, they are woefully insufficient. Our clients' family members have also expressed deep concern for their loved ones -- concern that has been exacerbated by their inability to reliably communicate with them.

“Failure to release incarcerated New Yorkers who are at a high-risk of COVID-19 infection will result in the unnecessary spread of the virus — inevitably costing some people their lives — and jeopardize the overall effort to reduce infections and contain the outbreak,” said **Tina Luongo, Attorney-in-Charge of the Criminal Defense Practice at The Legal Aid Society**. “At a time when this crisis’ apex is imminent and the infection rates in jails and prisons continue to skyrocket, it is unconscionable that DOCCS refuses to release these individuals.”

Mechanisms the Department Can Use to Release People Immediately:

The Department has several mechanisms at its disposal to release immediately people who are susceptible to COVID-19 transmission. We are identifying just a few of them here.

New York Executive Law § 259-r(10): At his discretion, Assistant Commissioner Annucci can grant medical parole to people who suffer from certain "terminal conditions, diseases, or syndromes" where those conditions "create a reasonable probability that [the person] is physically or cognitively incapable of presenting any danger to society." This provision covers people who are not serving a conviction for first degree murder or an attempt or conspiracy to commit murder, people who have served at least one half of the period of an indeterminate

sentence, and people who have served at least one half the term of a determinate sentence for second degree murder, first degree manslaughter, or any Penal Law Article 130 offense or attempt at such an offense. Therefore, this provision covers all of the people named in this letter and hundreds of our clients. Acting Commissioner Annucci should liberally invoke this provision to release hundreds of incarcerated New Yorkers.

New York Correction Law §§ 851, 855: The Department has the authority to grant temporary release to people who suffer from similar conditions pursuant to several provisions of the Correction Law and their implementing agency regulations. New York Correction Law § 851(4) provides the Department the ability to grant furloughs for up to seven days for incarcerated people to "seek employment, maintain family ties, solve family problems, seek post-release housing, attend an educational or vocational course, *or for any matter necessary to the furtherance of such purposes.*" While furloughs are limited to people who are within two years of parole or conditional release and limited to certain convictions, New York Correction Law § 851(6) allows the Commissioner to grant leaves of absence to any incarcerated person for any period of time. This includes for surgery or medical treatment that is absolutely necessary and not available in the Department. These provisions are subject to the conditions of 7 NYCRR Part 1900, but are still applicable to all of the people named in this letter and potentially thousands of people statewide.

Commutations/Clemency/Emergency Powers: Finally, as we suggested in our March 18, 2020 letter, the Department can work with Governor Cuomo to grant commutations and clemencies. Article 4 of the New York State Constitution grants Governor Cuomo wide- ranging clemency power, and allows him to issue executive orders commuting sentences and invoking his emergency powers. New York Executive Law § 15 lays out Governor Cuomo's authority to commute sentences. New York Executive Law Article 2-B delineates the Governor's authority to suspend the enforcement of state laws in an emergency. California Governor Gavin Newsom has invoked similar provisions to grant clemency to 26 Californians susceptible to COVID-19. Other nations have taken similar steps in their federal prison systems. In addition, the Governor has the authority to suspend the requirements of these laws under any provision he deems necessary. He could remove the limitations set out in some of these mechanism for early release to make it clear, for example, that someone would not ordinarily fit the definition of medical parole would now be a candidate. This approach was taken by the Governor of Colorado in removing some of the statutory obligations for good time release and we urge the Governor to take similar steps here. We encourage the Department to work with the Governor's Office to take similar steps here in the State of New York.

###

The Legal Aid Society exists for one simple yet powerful reason: to ensure that New Yorkers are not denied their right to equal justice because of poverty. For over 140 years, we have protected, defended, and advocated for those who have struggled in silence for far too long. Every day, in every borough, The Legal Aid Society changes the lives of our clients and helps improve our communities. <https://www.legalaidnyc.org>