



April 7, 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 Over 100 Incarcerated New Yorkers - Many of Whom Have Upcoming Release Dates - Especially Vulnerable to COVID-19

(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 over 100 incarcerated Legal Aid clients who are near their release dates and/or uniquely vulnerable to COVID-19 infection. Legal Aid also called on the State to use the same criteria for an internal review to identify all incarcerated people who fall in these categories and should be released immediately. Just this past week, an incarcerated New Yorker at Sing Sing Correctional Facility [died](#) after testing positive for COVID-19.

The 105 incarcerated people in this demand letter illustrate the severity of the situation imprisoned people face as the COVID-19 pathogen continues to spread. All of these individuals either are suffering from serious medical conditions, are at least age of 50, or have an upcoming release date.

These people suffer from serious and often debilitating conditions including HIV/AIDS, Asthma, Crohn's Disease, Hypertension, Lupus, Heart Disease, Advanced Type-2 Diabetes, Chronic Obstructive Pulmonary Disease ("COPD") and Lung Disease. Some have release dates within a matter of days; most within months.

Demonstrating the rapid pace at which the virus spreads within carceral settings, in New York City, as of April 6, 2020, 286 [incarcerated New Yorkers had tested positive](#) for COVID-19. The infection rate at New York City's jails is 6.5 percent and 7.8 percent higher than New York City, 9.7 percent higher than New York State, and 59 percent higher than the rest of the county, as per Legal Aid's [daily analyses](#) tracking infection rates.

Other jurisdictions have started to release people from prisons en masse to avoid an uncontrollable COVID-19 outbreak. Last week, the United Kingdom [announced](#) that 4,000 individuals will soon be released early from prison.

“These clients are either months away from being released, extremely medically vulnerable, or both. If New York fails to act immediately, they could very well become infected and succumb to the disease,” said **Tina Luongo, Attorney-in-Charge of the Criminal Defense Practice at The Legal Aid Society**. “We strongly urge Governor Andrew Cuomo to exercise his emergency executive powers to release these incarcerated people at once. Failure to do so recklessly heightens the risk that the disease will spread exponentially and create a full blown humanitarian crisis in our prisons and our communities that we have never before encountered. The window of opportunity is shrinking and Albany must act now.”

The letter states:

Governor Cuomo should follow suit and act soon—the crisis is worsening every day. There are over 43,000 people in State custody, yet as of March 30, 2020, according to our reports, only 57 had been tested for COVID-19. Our clients tell us that many large facilities, including Sing Sing Correctional Facility and Attica Correctional Facility, have run out of certain hygiene and cleaning supplies. At these same facilities, incarcerated people continue to congregate by the hundreds in recreation yards and mess halls. We hear reports of vigorous games of basketball and groups gathered in law libraries. These reports are shocking to us and to the many New Yorkers concerned about the continued spread of the pathogen. These facts belie the claims of Governor Cuomo and DOCCS administrators that they are serious about "slowing the spread" and "flattening the curve."

DOCCS' inability to provide for social distancing and other important measures, and the increasing infection rate in facilities from Alden to Stormville, further emphasize our point. To stop the spread, DOCCS must release people without further delay. As we have all learned from March 2020, with each passing day, the risk climbs dangerously.

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. Legal Aid has identified several:

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>