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

Defenders, LGBTQ+ Advocates, Elected Officials And Others Request The Immediate Release Of TGNCNBI New Yorkers and Other Vulnerable Populations From Jail And Prison Custody

(NEW YORK, NY) - Public defender organizations, LGBTQ+ advocates, elected officials, and others, in a recent [letter](#) to New York State Governor Andrew Cuomo, the New York State Department of Corrections and Community Supervision (DOCCS) and New York City's five District Attorneys, request the immediate release of transgender, gender non-conforming, non-binary, and intersex (TGNCNBI) people and all other vulnerable populations from jail and prison custody. The letter's signatories include members who serve on a Task Force directed to review the New York City Department of Correction (DOC) policies related to TGNCNBI people in custody.

The letter explains the unique risks for TGNCNBI people in custody:

The New York City Board of Correction (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...

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 have 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 hinder 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.

Nevertheless, vulnerable TGNCNBI individuals remain confined by DOCCS in the City jails. Examples of vulnerable individuals include:

- Ivy Anderson, an HIV-positive transgender woman incarcerated because of a parole violation whose health needs are being ignored by DOC. She has an open wound in her leg, which developed gangrene because it is so infected. The infection in her leg is causing her regular fevers, and she has been having seizures multiple times per day.
- Gene Baker, a 68-year-old transgender woman who is HIV-positive and has a chronic kidney infection. She has already received a prison sentence of 3.5-7 years for a non-violent charge, but DOCCS is not transporting any individuals upstate, so she has been stuck at Rikers Island, where the COVID-19 infection rate is among the highest in the world.

One of Legal Aid Society's representatives on the Task Force, Mik Kinkead, teaches a weekly class on Rikers Island. He reports that Ms. Baker has served as the "house mother" of her unit for months - ensuring that everyone is fed and assisting new individuals in adjusting. In these classes Ms. Baker often speaks about her 85-year-old mother who is currently living on her own in the Bronx. Ms. Baker was her mother's primary caretaker prior to her incarceration.

- Lexy Avila, a transgender woman with asthma has already completed her minimum prison sentence on a non-violent charge. She would be eligible for parole if she were in prison upstate, but because she can't be transferred, she is trapped at Rikers Island serving a longer sentence than is even necessary in the first place. During her time in the facility, Ms. Avila has worked in the intake center welcoming and orienting new people, especially other transgender and gender non-conforming people, to the facility. Ms. Avila has participated in extensive work with organizations focusing on survivors of violence and has developed

strong re-entry supports.

These same risks confront TGNCNBI people held in State DOCCS custody. The Legal Aid Society has worked extensively with people in State prison whose medical conditions, ages, and overall vulnerability put them at substantial risk of contracting COVID-19 and facing serious complications and even death should that occur. They must be released immediately. Some examples include:

- A HIV-positive transgender woman over the age of 60 who is HIV+ and has severe asthma . She is in DOCCS custody on a non-violent offense, is eligible for parole in a matter of months, and has a strong re-entry plan in place. Despite her high risk for serious illness if she contracts COVID-19, she remains incarcerated;
- A transgender woman over the age of 60 charged with a non-violent offense living with diabetes, a heart condition, and asthma who must leave her cell to receive medicine twice every day. She reports that she cannot socially distance while waiting for medication and that the constant movement of the medical area causes her grave concerns. All she has been given for self-protection is one handkerchief. With her co-existing illnesses, age, and constant exposure to others she is at high risk for contracting COVID-19;
- A young transgender man, currently in DOCCS custody on a drug conviction, who lives with a lung condition that puts him at risk for any respiratory infections such as COVID-19. This young man also lives in a dormitory style setting where social distancing is challenging if not impossible. He will be eligible for release for parole in a matter of months;
- A young transgender woman held in a men's prison with a history of surviving sexual violence while incarcerated who would have her parole appearance in May *if* the Parole Board were conducting parole appearances. Since that is likely not going to happen, she may be forced to spend additional time inside - at great risk to her safety - for purely administrative reasons.

The letter also urges Governor Cuomo and the New York State Department of Corrections and Community Supervision (DOCCS) to immediately 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. Defense providers on the taskforce 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 305 people who are detained due to technical parole violations, and 650 people detained in Rikers Island due to an open case or violation of parole warrant, including at least one medically transgender woman who is represented by defense providers on the taskforce.

The letter further urges New York City's 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 taskforce 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.

Lastly, the letter urges DOC to implement the following for New Yorkers in City custody:

- Release all persons serving city-sentences, particularly those who are medically vulnerable.
- 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.

"Transgender people continue to be moved from facility to facility because the Department of Correction often houses them incorrectly and then needs to move them to another housing area," said **Deborah Lolai, Supervising Attorney of the LGBTQ Defense Practice at The Bronx Defenders.** "This means that transgender people are going to be exposed to many more people and units than their cisgender counterparts, increasing their risk of contracting COVID-19. We need the state to recognize the urgency of the situation and to release vulnerable transgender people before its too late."

TGNCNBI individuals in jails and prisons should be released from custody, and swiftly. They are at extraordinary risk of violence, isolation, and suffer greatly from the decreased access to medical and mental health care and other necessary resources. The truth is that the prisons and jails cannot keep vulnerable people safe right now. No one detained or incarcerated has been sentenced to die," said **Mik Kinkead, Staff Attorney with the Rikers Island Civil Re-Entry Project, Civil Practice, at The Legal Aid Society.**

"Because of discrimination in accessing healthcare and health insurance, TGNCNBI people are at greater risk if they are exposed to COVID-19. This risk is even more grave in New York's prisons and jails where safety is never guaranteed and medical care is sporadic. The government has the power to stem the crisis of COVID-19 spreading throughout our jails and prisons by releasing vulnerable people and any delay puts all New Yorkers at risk. Before it is too late, TGNCNBI people must be released," said **Kelsey De Avila, Jail Services Project Director at Brooklyn Defender Services.**