



NEW YORK
CITY BAR

May 19, 2020

Via E-Mail & Facsimile

The Honorable Bill de Blasio
Mayor of New York City
City Hall
New York, NY 10007

Re: New York City Must Lead to Protect People in Our Jails

Dear Mayor de Blasio:

On behalf of the New York City Bar Association (“City Bar”), we write to urge you to exercise your authority over the New York City Department of Correction (“DOC”) to further enhance health and safety protections for incarcerated people in order to mitigate the spread of COVID-19 and to ensure humane conditions for this vulnerable population of New Yorkers during this unprecedented crisis.¹

New York City’s jails present unique health dangers and are particularly vulnerable to the spread of COVID-19.² As of May 18, 2020, over 1,500 DOC and Correctional Health Services staff have tested positive for COVID-19 as have 365 currently incarcerated people.³ Absent additional interventions, the virus will continue spreading through jails, risking the lives of our

¹ The undersigned committees include among their membership lawyers appearing in state and federal criminal and civil courts; lawyers in government service, academia, and human and civil rights organizations; and judges, alternative dispute practitioners, attorneys in large firms, small firms, and solo practice. The City Bar has issued similar recommendations to Governor Cuomo regarding State prisons in a May 15, 2020 letter. *See* <https://s3.amazonaws.com/documents.nycbar.org/files/2020710-PrisonReformCOVID19Cuomo.pdf> (all websites last visited May 19, 2020).

² See Lauren-Brooke Eisen, “How Coronavirus Could Affect U.S. Jails and Prisons,” Brennan Center for Justice, March 13, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/how-coronavirus-could-affect-us-jails-and-prisons>; “Averting an Imminent Catastrophe: Recommendations to US Local, State and Federal Officials to Covid-19 in Jails and Prisons,” (“Averting an Imminent Catastrophe”), Human Rights Watch, April 29, 2020, https://www.hrw.org/sites/default/files/supporting_resources/c19_detention_finalreport_43020.pdf.

³ NYC Board of Correction, “Daily Covid-19 Update Monday, May 18, 2020,” https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_5_18_2020.pdf. The Board of Correction has only released the daily total of those currently incarcerated who have tested positive and not the cumulative total, which would include those who have been released, transferred or died while in custody. *See* The Legal Aid Society, “COVID-19 Infection Tracking in NYC Jails,” May 18, 2020, <https://www.legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails>. We urge the City to release complete data.

neighbors—both those who are incarcerated and correctional staff—at an alarming rate.⁴ Furthermore, the spread of COVID-19 within correctional facilities represents a threat to all residents of the City as the virus can easily spread outside the walls of the jail as staff return home each day.⁵ Nationwide, seven of the ten largest-known sources of infection have been traced to jails and prisons.⁶ The conditions of the City’s jails represent a threat not only to those incarcerated, but also to the communities that surround them.

As data analysis of infection rates conducted by The Legal Aid Society has shown, “New York City jails have become the epicenter of COVID-19.” Nearly ten percent of those currently incarcerated at Rikers Island have tested positive for COVID-19, a rate over four times higher than the general City population.⁷

We thank you for your efforts to keep residents of New York City safe. While we commend the transparency standards set by your Office of Criminal Justice and recognize that more than 1,500 incarcerated people have already been released, we believe more should be done. We urge you and DOC to continue partnering with district attorneys, the New York State Department of Corrections and Community Supervision and other stakeholders to release more incarcerated people as outlined in our April 15 statement,⁸ including those who are older than 50, and those with underlying health conditions that put them at highest risk from COVID-19.

For those who will not be released, while we acknowledge the important first steps DOC has taken, as outlined in its COVID-19 Action Plan, to mitigate the spread of the virus within the City’s jails, these steps are insufficient to adequately protect these vulnerable New Yorkers.⁹ We ask that you continue to provide leadership and remain committed to conditions of confinement for incarcerated New Yorkers that are not only safe but also humane by taking the additional important steps detailed below.

⁴See Rosa Goldensohn, “COVID-Sick at Rikers on \$1 Bail-and a Parole Violation,” *The City*, April 27, 2020, <https://thecity.nyc/2020/04/rikers-island-early-release-sought-amid-coronavirus-soread.html>.

⁵ See Katie Park et al., “Tracking the Spread of Coronavirus in Prisons,” *The Marshall Project*, April 24, 2020, <https://www.themarshallproject.org/2020/04/24/tracking-the-spread-of-coronavirus-in-prisons> (noting that “correctional officers and other workers . . . have the potential to carry the virus both into facilities and back into their communities”).

⁶ See “Coronavirus in the U.S.: Latest Map and Case Count,” *New York Times*, last updated May 19, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#clusters>.

⁷ The Legal Aid Society, “Covid-19 Infection Tracking in NYC Jails,” last updated May 18, 2020, <https://www.legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails>.

⁸ New York City Bar Association, “City Bar Statement Urging Swifter Action to Reduce Prison and Jail Populations in Light of Coronavirus Pandemic,” April 15, 2020, https://s3.amazonaws.com/documents.nycbar.org/files/Prison_Jail_Reductions_COVID_FINAL.pdf.

⁹ See, Lawrence Bartley et al., “COVID-19: a Survival Guide for Incarcerated People,” *The Marshall Project*, May 5, 2020, <https://www.themarshallproject.org/2020/05/05/covid-19-a-survival-guide-for-incarcerated-people>.

Additional Health and Safety Precautions

The Centers for Disease Control and Prevention (“CDC”) has recently issued Interim Guidelines (“CDC Guidelines”) on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities.¹⁰ Although we encourage DOC to incorporate all of the applicable CDC Guidelines into its response to the spread of COVID-19, in the interest of brevity, we are highlighting only some key aspects of the Guidelines in this letter. Specifically, we encourage DOC to ensure that sufficient stocks of hygiene supplies, cleaning supplies, personal protective equipment (“PPE”), and medical supplies are on hand and available.¹¹ Hygiene practices and supplies include:

- standard medical supplies for daily clinic needs;
- tissues;
- liquid soap when possible;
- hand drying supplies, including hand drying machines or disposable paper towels and no-touch trash receptacles for disposal;
- alcohol-based hand sanitizer containing at least 60% alcohol (where permissible);
- regular access to showers;
- making anti-viral wipes (as approved by the CDC) available wherever phones are located;
- providing anti-viral wipes daily to each incarcerated individual with a tablet device;
- cleaning supplies, including EPA-registered disinfectants effective against the virus that causes COVID-19; and
- facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls.

Additionally, based on specific issues incarcerated people have raised with their lawyers and families in recent weeks, we encourage the DOC to:

- ensure daily access to showers with hot water;
- provide disposable gloves and masks to any incarcerated people required to continue to perform work assignments, or transferred on a bus or vehicle to another facility or for medical care; and

¹⁰ Centers for Disease Control and Prevention, “Interim Guidelines on Management of Coronavirus Disease 2019 in Correctional and Detention Facilities,” March 23, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

¹¹ See Michael Barbaro et al. “Getting Off Rikers Island,” *The Daily*, April 23, 2020, last visited April 30, 2020, <https://www.nytimes.com/2020/04/23/podcasts/the-daily/jails-inmates-coronavirus.html?action=click&module=audio-series-bar&pgtype=Article®ion=header&showTranscript=1>.

- mandate that facilities continue to accept and distribute outside packages sent to incarcerated people.

We fully support DOC's new procedure to provide hand soap and cleaning supplies free of charge for the incarcerated population to use. We recommend that you direct DOC to also suspend all commissary charges related to other personal hygiene products for the duration of the pandemic. Arizona, Minnesota, and Pennsylvania have already done so.¹² Further, we recommend that you mandate that the DOC eliminate restrictions on accepting packages so that incarcerated people can receive packages that contain soap, personal hygiene products, masks, and gloves for the duration of the pandemic.¹³

Finally, we strongly urge you to ensure robust testing inside all congregate care settings in New York City, including jails. So far, we estimate that less than ten percent of the population at Rikers has been tested for COVID-19 despite a mounting death toll.¹⁴ In order to stop the spread of the virus behind bars, it is critical that there be widespread testing of incarcerated people and staff akin to the new testing protocols in place for nursing homes in the State. According to the New York State Department of Health, New Yorkers should be tested if "they have had close (*i.e.*, within six feet) or proximate contact with a person known to be positive with COVID-19."¹⁵ At minimum, this protocol should be in place for all City jails.

Provide More Information

To support our ongoing efforts to monitor the conditions of confinement, we request more detailed information about the current health and safety conditions in the City's jails, including a benchmarking to the standards set forth in DOC's COVID-19 Action Plan. In addition, we support The Legal Aid Society's request to receive additional information regarding testing for COVID-19 in the City's jails¹⁶ and we also request a complete accounting of DOC's and related parties efforts to release people.

Access to Free Communication Tools and Maintenance of Certain Activities

As you know, this is a very uncertain time and, even for those of us with ready access to accurate information, trying to understand the state of the pandemic is incredibly stressful. For those in New York City's jails, it is even more alienating and stressful as they grapple with a lack

¹² See "Reducing Jail and Prison Populations During the Covid-19 Pandemic," Brennan Center for Justice, March 27, 2020, last modified April 30, 2020, <https://www.brennancenter.org/our-work/research-reports/reducing-jail-and-prison-populations-during-covid-19-pandemic>.

¹³ DOC, "Mailing Packages to Inmates," <https://www1.nyc.gov/site/doc/inmate-info/deliver-permissible-items.page>, (noting that toiletries are not accepted by mail and "must be purchased by the inmates in the commissary").

¹⁴ See The Legal Aid Society, "Analysis of COVID-19 Infection Rate in NYC Jails," May 6, 2020, https://legalaidnyc.org/wp-content/uploads/2020/05/5_6_Analysis-of-COVID-19-Infection-Rate-in-NYC-Jails.pdf,

¹⁵ See New York State Department of Health, April 2020, <https://coronavirus.health.ny.gov/covid-19-testing>.

¹⁶ See The Legal Aid Society, "Letter on Lack of Transparency of C-19 Cases in New York City Jails," March 29, 2020, <https://legalaidnyc.org/wp-content/uploads/2020/04/Legal-Aid-COVID19-Letter-to-DOC-re-Data-FINAL.pdf>.

of information and an inability to see or even speak with their families, legal counsel and loved ones. In a recent New York Magazine article, a person incarcerated at Rikers described the current situation as “*The Walking Dead* in here...[w]e’re all trying to survive right now.”¹⁷ The New York Times’ The Daily Podcast—Getting Off Rikers Island—describes the very real and incredibly unsettling situation of sharing an overcrowded cell with people who are testing positive for the virus: “They are killing us...[w]hat are we supposed to do?”¹⁸

To address these issues, we fully support the humane conditions of confinement included in the Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody.¹⁹ In addition, to alleviate some of this stress and uncertainty, we encourage DOC to implement certain standard information protocols, to allow incarcerated people more free channels of communication with their lawyers, families, and loved ones, and to institute practices that ensure incarcerated people’s constitutional rights are respected and mental health and safety prioritized.

We recommend that DOC implement the following communication protocols:

- continue roll-out of the new televisit initiative but, in order to compensate for the restrictions on in-person family and legal visitation resulting from the crisis, expand access to televisiting beyond the in-person visitation schedule;
- provide free access to email and regular mail;
- provide free access to audio books and other reading materials as quarantined incarcerated people are being held indefinitely in cells; and
- avoid unnecessary interruptions or revocation of mail, email and phone privileges.

Finally, with appropriate social distancing measures, we recommend the following protocols, in order to ensure that incarcerated people’s constitutional rights continue to be respected, the environment is both safe and humane, and to decrease the possibility of violence from lengthy periods of isolation:

- prioritize keeping commissaries up and running, with limited staff and cleaning protocols, so that inmates may continue to purchase items including personal hygiene items and clothing;
- prioritize keeping religious services available;

¹⁷ See Zach Cheney-Rice, “‘We’re Going to All Start Dropping:’ Rikers Inmates on Life as Prisoners of COVID-19,” *New York Magazine*, April 1, 2020, <https://nymag.com/intelligencer/2020/04/rikers-inmates-on-life-as-prisoners-of-the-coronavirus.html>.

¹⁸ Getting Off Rikers Island, *supra* note 11.

¹⁹ See “Joint Statement from Elected Prosecutors on COVID-19 and Addressing Rights and Needs of Those in Custody,” March 2020, https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf?utm_source=The+Marshall+Project+Newsletter&utm_campaign=f1bf35014e-EMAIL_CAMPAIGN_2020_03_17_12_07&utm_medium=email&utm_term=0_5e02cdad9d-f1bf35014e-144150717.

- prioritize allowing daily, or at least regular, access to the yard or outdoors in place to provide for physical exercise and access to fresh air; and
- allow continued access to the law library.

Thank you, Mayor de Blasio, for your tireless efforts to protect all residents of New York City and for continuing to demonstrate leadership by taking these steps to both protect and provide humane treatment for the vulnerable men, women, and youth currently housed in the city's jails.

Respectfully,

Gregory D. Morril, Chair
Corrections & Community Reentry Committee
gregmorril@gmail.com

Sarah J. Berger, Chair
Criminal Justice Operations Committee
sarahberger315@gmail.com

Sean Hecker, Chair
Mass Incarceration Task Force
shecker@kaplanhecker.com

Brian Adam Jacobs, Chair
Criminal Advocacy Committee
bjacobs@maglaw.com

Terri Stella Rosenblatt, Chair
Criminal Courts Committee
trosenblatt@legal-aid.org

Cc:

Cynthia Brann, Commissioner, New York City Department of Correction
Dr. Mitchell Katz, President and CEO, NYC Health and Hospitals Corporation
Jennifer Jones Austin, Esq., Chair, NYC Board of Correction
Margaret Egan, Executive Director, NYC Board of Correction