



Testimony

Hearing on the Impacts of COVID-19 on Prisons and Jails

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for

New York Senate Standing Committee on Crime Victims, Crime
and Corrections and Senate Standing Committee on Health

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Thank you Senator Luis Sepulveda and Senator Gustavo Rivera for holding this vital public hearing regarding the impact of COVID-19 on jails and prisons in New York. While we have flattened the curve in New York and are far along in phased reopening, too little has been done to address the impact of the pandemic on people detained in prisons and jails in the state. This is an urgent issue as the world continues to grapple with this pandemic, because prisons and jails are notorious incubators of contagions due to close quarters and unsanitary conditions, and because incarcerated people and their families have been largely forgotten in the state's response to COVID-19. As of today, *The New York Times* reports that jails and prisons make up the top-ten COVID-19 cluster sites in the country.ⁱ Incarcerated people and correctional staff both are at heightened risk for COVID-19 – this jeopardizes community members outside of jails and prisons as well. This is one reason public health experts have called for decarceration to protect incarcerated people and communities outside of jail and prisons from COVID-19.ⁱⁱ

I am the Lead Organizer at the Katal Center for Health, Equity, and Justice, and our members and our staff have been impacted by COVID-19, including some of our members who have loved ones incarcerated in NYS correctional facilities. The stories we hear from these incarcerated people are that the virus spreading and people are getting sick. But the Department of Corrections and Community Supervision says there's no real problem, and testing is limited. As of September 2nd only 15.1% of the total prison population have been tested for COVID-19, which is significantly less than the general population where 29% of New York residents have been tested.ⁱⁱⁱ How can DOCCS prepare a proper public health and safety plans for people incarcerated in state prisons without widespread and regular testing? I'll answer that for you—they can't.

The pandemic revealed that our state lacks a coherent plan to address such health crises overall, and especially in jails and prisons. Early in the pandemic in New York, before deaths in NYC began to mount, Katal and other community groups called on Governor Cuomo to immediately release people from prisons in order to prevent widespread suffering and death inside of state correctional facilities. This included calls to release elderly people over the age of 55, those with disabilities and people with compromised immune systems, people at the end of their sentences who were going to soon be released anyways, and people incarcerated in a New York State prison or a local jail for a technical parole violation.

There are more than 5,000 people incarcerated statewide for technical violations of parole -- like missing an appointment with a parole officer, being late for curfew, or testing positive for alcohol. This group makes up about 10% of the entire state prison population. Nearly 1/3 of the new admissions to New York state prisons in 2018 were due to people re-incarcerated for parole violations.^{iv} Alarming, New York reincarcerates more people for non-criminal technical violations of parole than every other state in the country except Illinois.^v And new data by the *Bureau of Justice Statistics* shows that New York sends more people who are on parole back to prison for drug treatment *than all other states combined*. Thus, in New York, the parole system itself has become a major contributor to mass incarceration.

The vast majority of those re-incarcerated for technical violations of parole are Black and Latinx.^{vi} This racial disparity is stark: Black people are incarcerated for technical violations in New York State prisons at 5 times the rate of whites. At the local level, it's even worse: for instance, Black people are detained in New York City jails for technical parole violations at more than 12 times the rate of whites.^{vii}

In March, as the COVID-19 crisis intensified, community groups, including us at Katal, pressured Governor Cuomo to take action to release people from prisons and jails as a public health measure,

including releasing people incarcerated people for technical violations of parole. At Katal we started our #FreeThemNowNY campaign to demand Cuomo take immediate action. In response to this pressure from community groups around the state, Governor Cuomo announced plans to release up to 1,100 individuals held in local jails for technical violations of parole.^{viii}

This was a good step, of course, but as usual, the Administration moved too slowly, and even then, only due to pressure from community groups. The first two individuals detained at Rikers to die of COVID-19 were detained solely for technical violations of parole.^{ix} And the Administration didn't even follow through on their public commitment - they didn't actually release the full 1,100 people. Keep in mind, with more than 5,000 people detained in NY on technical violations alone – not crimes – the Cuomo administration could have moved to aggressively decarcerate in the face of a pandemic.

But they did not. And since that March announcement, the Cuomo Administration has continued to incarcerate people for technical violations of parole – in fact, DOCCS has been *increasing* the number of people sent to county jails for technical violations of parole. A report from the Columbia Justice Lab in late May showed that two months after Gov. Cuomo's announcement, more than 160 new people accused of technical parole violations were sent to the Rikers jails by DOCCS, and those numbers are continuing to rise.^x By mid-July, new admissions data from the Vera Institute indicated that more than 300 new individuals have been incarcerated for technical violations of parole since March, effectively erasing Governor Cuomo's emergency COVID-19 response initiative for that jail.

Yet Governor Cuomo has failed to take comprehensive action to protect the lives of people incarcerated in jails and prisons. New York continues to incarcerate people in the midst of the pandemic, completely contradicting the recommendations of public health officials. It is clear that the Legislature must step in and provide leadership – and pass laws to require the Executive Branch to take meaningful action to save lives of people incarcerated in prisons and jails in the face of a pandemic.

First, the Legislature should pass a slate of currently pending bills, which will advance justice and improve safety and health in our state. This includes the #LessIsMoreNY Act (S.1343C/A.5493B), the Elder Parole bill (S.2144/A.4319A), Fair and Timely Parole (S.497A/A.4346A), the #HaltSolitary bill (S.1623/A.2500), and Repeal the Walking While Trans Ban (S.2253/A.654). The #LessIsMoreNY Act will significantly reduce the state prison population, ensure more effective reentry for people coming home on parole, and prevent DOCCS from using incarceration as their primary tool for alleged non-criminal technical violations of parole. This bill makes sense on a regular day, and in the midst of a pandemic, it's ever more important.

Second, we urge the Legislature to pass legislation requiring the state to take action when a public health emergency like COVID-19 is declared. This is especially important because COVID-19 is likely to be a major health crisis for a long time, and public health officials say that the emergence of new pandemics are only a matter of time. To save lives and keep people safe in the face of a pandemic, New York needs a comprehensive COVID-19 care plan for people incarcerated in jails and prisons. Such a plan must:

- Develop and implement an aggressive plan for emergency release of people from jails and prisons in New York. This must include, but not limited to, plans to release anyone incarcerated in a New York State prison or a local jail for a technical parole violation, immediately release elderly people over the age of 55, immediately release medically fragile or people with compromised immune systems, and immediately release people at the end of their sentences.

- Include testing and monitoring for every incarcerated individual and DOCCS staff member in each facility that accounts for delayed symptomology and asymptomatic carriers.
- Provide PPE, soap, and hand sanitizer for people detained in New York jails and prisons to assist reducing the spread of the virus.
- Ease the housing restrictions that incarcerated people face upon their release, ensuring that they can identify safe and stable housing. In addition, the state should coordinate non-congregate housing arrangements using existing space throughout the state.
- Require DOCCS to make their plans for prevention and management of COVID-19 (and any future pandemics) in each correctional facility publicly available with oversight by an independent body of health experts.

The Cuomo Administration is not taking action to save lives, and our members, families, and communities are suffering as a result. We urge you to take immediate action to save lives. Pass these bills – including #LessIsMoreNY. Create and pass a comprehensive COVID-19 care plan. Go visit prisons and jails in the state to see for yourself what is going on. It's time for urgent action. Thank you Sen. Sepulveda, Sen. Rivera, and all the members of both committees for holding these hearings.

ⁱ Coronavirus in the US: Latest Map and Case Count: The New York Times (accessed Sept 21, 2020), available at:

<https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

ⁱⁱ Brie Williams and Leann Bertsch, A Public Health Doctor and Head of Correction Agree: We Must Immediately Release People From Jails and Prisons: The Appeal (Mar. 2020), available at: <https://theappeal.org/a-public-health-doctor-and-headof-corrections-agree-we-must-immediately-release-people-from-jails-and-prisons/> and Giovanni S.P. Malloy, Lisa Puglisi, Margaret L. Brandeau, Tyler D Harvey, and Emily A. Wang, The effectiveness of interventions to reduce COVID-19 transmission in a large urban jail: medRxiv (June 2020), available at: <https://www.medrxiv.org/content/10.1101/2020.06.16.20133280v1>

ⁱⁱⁱ Robert Harding, NY prisons lag behind other states in COVID-19 testing, advocates say: Auburn Pub (Jul. 2020), available at: https://auburnpub.com/news/local/govt-and-politics/ny-prisons-lag-behind-other-states-in-covid-19-testing-advocates-say/article_20dc38d6-ae8c-5605-aa6c-20e5f4594bbf.html

^{iv} NYS Corrections and Community Supervision, Admissions and Releases Calendar Year 2018, available at

<https://doccs.ny.gov/system/files/documents/2019/09/Admission%20Releases%20Report%20Calendar%20Year%202018.pdf>

^v United States Department of Justice, Bureau of Justice Statistics, Probation and Parole in the United States, 2017-2018 (Aug. 2020), available at https://www.bjs.gov/content/pub/pdf/ppus1718.pdf?utm_content=ppus1718&utm_medium=email&utm_source=govdelivery

^{vi} Vincent Schiraldi and Kendra Bradner, Racial Inequities in New York Parole Supervision (March 2020), available at <https://justicelab.columbia.edu/news/racial-inequities-new-york-parole-supervision>

^{vii} *Ibid.*

^{viii} Brendan Lyons, NY to release 1,100 parole violators as coronavirus spreads, Times Union (March 2020), available at: <https://www.timesunion.com/news/article/Deaths-surge-again-in-New-York-from-coronavirus-15160973.php>

^{ix} Jan Ransom, Jailed on a Minor Parole Violation, He Caught the Virus and Died, NYTimes (April 2020), available at <https://www.nytimes.com/2020/04/09/nyregion/rikers-coronavirus-deaths-parolees.html>

^x Vincent Schiraldi, Two months later: Outcome of the March 27th order to release people jailed for technical violations during the pandemic, Columbia University Justice Lab (May 2020), available at <https://justicelab.columbia.edu/sites/default/files/content/NY%20Two%20Months%20Later%205.27.20%20final.pdfv>