



Testimony of Alexander Horwitz

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New York Senate Committee on COVID-19's Impact on Prisons and Jails

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I'd like to thank Committee Chairs Sepulveda and Rivera, Ranking Members Akshar and Gallivan, and the members of the Senate Committees on Crime Victims, Crime, & Corrections and Health for allowing me to provide testimony today. My name is Alexander Horwitz and I am the executive director of New Yorkers United for Justice (NYUJ). NYUJ is a coalition of 14 local and national organizations deeply invested in criminal justice reform in New York. We are bipartisan, interfaith, and work collectively and through consensus to deliver common sense reforms that reduce incarceration, make the system fairer, and support public safety. We are grateful to this committee for holding today's important hearing to address the impact that this global crisis is having on incarcerated New Yorkers.

When New York was the global epicenter of the COVID-19 pandemic, New Yorkers heard time and time again about the critical importance of testing. State leaders worked tirelessly to create a testing infrastructure that is now a global leader in capacity and efficiency. In almost every area of civic life, mass testing has been the rule – and the key to slowing COVID's terrible progress through our state. There is one exception and, predictably and tragically, it leaves behind a group of citizens who, even before COVID, were in desperate need of quality, compassionate health care: incarcerated New Yorkers.

We are now more than six months into this crisis and New York's Department of Corrections and Community Service (DOCCS) has neither released a cogent plan for COVID testing and control in its facilities, nor has it responded to the many expert voices, including our own, calling for mass and routine testing. To date, New York has only tested one-third of its prison population.

Based on the agency's own data, DOCCS' testing strategy is chaotic at best. More accurate characterizations would be (1) inexplicable given New York's testing capacity and the role testing has played in tamping down the virus; (2) far behind other states with less testing ability and capacity; (3) out of step with local and national pandemic guidance; and (4) a serious threat to New York's public health and ongoing recovery from the pandemic.

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New Yorkers United for Justice has been monitoring testing in New York prisons since April and have been alarmed at the haphazard and inconsistent way in which DOCCS has approached this critical piece of pandemic management. In August, [Gov. Cuomo announced that New York had broken a COVID testing record by testing more than 100,000 people in a single day](#). And yet there have been six separate weeks since May, according to DOCCS' own data, in which fewer than forty COVID tests were conducted among New York's prison population of 37,000 people.

In fact, New York has only conducted what could be considered large scale testing three times in the last six months, once in July - four months into this pandemic - when they conducted tests of all incarcerated individuals over the age of fifty-five; once again in August when we believe they tested a group of asymptomatic individuals; and last week, in the run up to this hearing, when DOCCS reported having conducted 3,580 tests between September 15th and September 21st.

The lack of commitment to regular, large-scale testing in corrections places New York far behind other states like Florida, Texas, Wisconsin, Pennsylvania, Ohio, Michigan, Missouri, and our closest regional partner New Jersey -- that is currently testing its entire prison population for the third time. Why is New Jersey repeating system-wide testing? Because as we all now know, tests older than two weeks are essentially meaningless. That makes the pace of testing in DOCCS facilities even more deeply concerning.

To further complicate and call into question the state of testing in New York prisons, the reported results seem to defy the basic logic of COVID-19 transmission. Positive cases among DOCCS staff outnumber positive cases among incarcerated individuals by nearly two to one, despite the fact that there are about [two incarcerated individuals per DOCCS staff member](#). Given what we know about the transmission of COVID-19, the density of prison facilities, [as well as reported inconsistent use of PPE by DOCCS staff](#), it follows that incarcerated individuals should test positive at a higher rate than corrections staff. And in almost every other state we have analyzed, that is exactly the case. In fact, New York is just one of two states in NYUJ's weekly analysis with total positive tests higher among correctional staff than incarcerated individuals.

New York's testing in prisons also runs counter to the state's overall evidence-based approach to COVID control. The Center for Disease Control (CDC) conducted a review of correctional testing and determined that mass-testing provides a ["more accurate assessment of disease prevalence than does symptom-based testing and generates data that can potentially help control transmission."](#) New York's relatively

low number of positives may be creating a false sense of security, as the CDC's study found that mass testing led to a median 12.1 fold increase in positive cases. Furthermore, the CDC found that 40 to 45% of positive cases in correctional facilities were either asymptomatic or presymptomatic. Finally, the CDC estimates that symptom-based testing, which has been DOCCS' approach for much of this pandemic, could even miss symptomatic individuals who avoid tests out of fear of medical isolation. This is no longer a hypothetical: the Correctional Association of New York [recently released a preliminary report on testing at Fishkill Correctional Facility](#) in which several individuals state that they believed they had contracted the virus but avoided testing so as to not be sent to medical isolation in solitary confinement.

The Department of Corrections and Community Service's top priority must be the health and safety of those in its custodial care and the staff under its employment. If that moral argument is insufficient to motivate mass testing and better medical care in prison settings, however, the public health dangers presented by a reluctance to do so should. This is because we know that prison walls do not and cannot contain the spread of COVID:

In April, mass testing by Ohio's Department of Rehabilitation and Corrections revealed a severe COVID outbreak in its Marion County Correctional Facility. Testing revealed that 80% of the population was positive for COVID-19. Further testing and tracing revealed that [at least 66 cases of COVID in the Marion County community could be traced back to the prison](#). The number of further infections from those 66 cases is unknown. Such an outbreak could be devastating to communities throughout New York State, especially those that surround the state's 52 prison facilities.

Furthermore, [a joint research project](#) by the American Civil Liberties Union, The University of Pennsylvania, Washington State University, and the University of Tennessee estimated that COVID-19 death projections could rise by 100,000 if the virus is not appropriately addressed in our nation's correctional facilities. Without a public plan in place and without consistent, mass, repeated testing, it is unlikely that DOCCS would be able to adequately identify and respond to an outbreak before both the incarcerated populations and surrounding communities were seriously endangered.

NYUJ applauds the state government and its leaders for their swift, steadfast, and science-based approach to controlling COVID-19 throughout the state and for providing compassionate care to those impacted by it. We come before this committee to urge that the same approaches and care that have brought COVID transmission below 1% statewide for more than a month be available to incarcerated New Yorkers and the people who work around them. And we are renewing our call for the immediate

release of a comprehensive COVID-19 testing, management, and mitigation plan from the Department of Corrections and Community Supervision. In the early days of this pandemic, our coalition ratified and released a series of principles that we believe New York should adopt to mitigate and manage the effects of COVID on our justice system. I have attached those principles, along with our COVID-19 nationwide analysis, to my written testimony for your review.

Thank you for allowing me to speak at today's hearing and for the legislature's ongoing leadership on matters of health, safety, and fairness in our criminal justice system.