



May 8, 2020

Governor Andrew Cuomo Acting Commissioner Anthony J. Annucci
New York Department of Corrections and Community Supervision

Dear Governor Cuomo and Commissioner Annucci:

Before the coronavirus was introduced into New York prisons, hundreds of public health experts recommended targeted release of incarcerated people as an essential tool to mitigate inevitable illnesses and deaths in prisons. States around the country have successfully incorporated that expert advice into their larger COVID-19 response. We believe any response to COVID-19 that does not include release of vulnerable people from prison is shortsighted and incomplete, and we renew our call for safe decarceration as more incarcerated people and corrections professionals are infected with COVID-19 by the day.

With or without release, however, the state is obligated to keep the people in its care safe. We appreciate what the New York Department of Corrections and Community Supervision (DOCCS) has done so far in that regard. Keeping incarcerated people and corrections professionals safe requires, at a minimum, testing that accurately reflects the spread of the virus inside prisons and transparency about who is infected and where outbreaks are occurring.

DOCCS data suggest that testing rates in New York's prisons are too low and need to be increased. As of May 7, a mere 1.4 percent of the prison population has been tested for COVID-19.¹ The overall state testing rate is nearly four times higher.² Testing data for staff is currently unavailable, but more than 1,100 staff have confirmed cases of COVID-19.³ Per the World Health Organization (WHO), a "positive rate" (i.e., positive tests as a percentage of overall tests) above 10 percent implies a significant number of infected but untested people. Based on the limited data available, DOCCS's positive rate for incarcerated people is at least 66 percent. A positive rate more than six times WHO's recommended maximum means DOCCS is not testing sufficiently to capture the extent of the spread of the virus inside prisons. This puts the lives and health of incarcerated people, corrections professionals, and prison vendors at unnecessary risk, and hinders efforts to perform contact tracing and quarantine those who could infect others throughout the communities in which they live and work. New York is lagging far behind states such as Ohio, Arkansas, Tennessee, and Michigan in testing its prison population. As the epicenter of this global pandemic, New York should be leading the nation on in-prison testing. We encourage you to do whatever is necessary

¹ NY DOCCS, COVID-19 Report by Housing Facility, Apr. 30, 2020, <https://doccs.ny.gov/system/files/documents/2020/05/doccs-covid-19-confirmed-incarcerated-population-by-facility-april-30-2020.pdf> (showing 581 people tested); NY DOCCS, DOCCS Fact Sheet, Apr. 1, 2020, at 5 https://doccs.ny.gov/system/files/documents/2020/04/doccs-fact-sheet-april-2020_0.pdf (showing an incarcerated population of 42784).

² NY Dep't of Health, COVID-19 Tracker, <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Map?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> (showing 1,089,916 people tested). Using a state population of 19.5 million, this is approximately 5.4 percent of the state's population.

³ NY DOCCS, Daily COVID-19 Update, May 1, 2020, <https://doccs.ny.gov/doccs-covid-19-report> (showing 1,074 staff with confirmed COVID-19 infections).

to ensure that the positive rate for DOCCS staff and incarcerated people is reduced to 10 percent or lower, in accordance with WHO standards.

We appreciate DOCCS's collection and reporting of relevant testing and infection data for incarcerated people and urge DOCCS to increase its transparency by publishing staff testing rates and results at each facility on its website. Many other states and the federal government are reporting data on the number, location, and results of staff tests for their prison systems, without violating privacy laws. Such reporting helps stifle rumors and informs the public, families of staff and incarcerated people, and lawmakers of where resources are needed. This data is also essential to ensure that staffing levels remain sufficient to keep people in and outside of prisons safe.

We understand that New York has limited testing capacity and is working to expand testing. We ask that DOCCS have priority access to obtain tests, test as many incarcerated people and staff as it can and be transparent with that data. The state simply cannot respond effectively to this pandemic without knowing who has been infected inside its prisons.

Sincerely,

Brennan Center for Justice at NYU Law
Coalition for Public Safety
#cut50
FAMM
Hispanic Federation
Jewish Coalition for Criminal Justice Reform
NAACP
NAACP New York State Conference
National Association of Criminal Defense Lawyers
New York State Association of Criminal Defense Lawyers
New York Urban League
REFORM Alliance