

# **STOPPING THE ACCELERATING COVID-19 JAIL CRISIS**

## **THREE URGENT RECOMMENDATIONS FOR NEW YORK CITY**

April 2020

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## ***Stopping the Accelerating COVID-19 Jail Crisis: Three Urgent Recommendations for NYC***

Over 1,000 staff and incarcerated people in New York City jails have tested positive for COVID-19. Nine staff and three incarcerated people have died from the virus already. The rate of infection among incarcerated people is at least six times the rate of New York City as a whole, which itself is recognized as the worldwide epicenter of COVID-19 infection.<sup>1</sup>

To stem this crisis and relieve the burden on medical providers and staff, people who can be safely released should no longer be held in jail, particularly those at the highest risk from COVID-19. Thanks to action from institutional actors across the justice system, the number of people in jail in New York City has dropped by more than 1,400 people over the past month. We appreciate these efforts, which have made a real difference.

However, state authorities, the courts, district attorneys, and the City can and should do more to save lives by releasing hundreds more people (particularly those at highest risk from COVID), stopping new jail incarceration except in the most severe cases, and providing enhanced protective measures to protect correctional staff and incarcerated people.

### ***We call upon:***

- (1) the NY State Department of Corrections and Community Supervision (DOCCS) to immediately lift warrants for people accused of parole violations, thereby releasing people charged with rule violations to community supervision and allowing criminal court judges to make release and bail determinations for people on parole charged with new crimes, and to stop jailing people for new alleged parole violations, absent extreme circumstances.
- (2) District Attorneys, the Office of Court Administration, the Mayor's Office of Criminal Justice, and the NYC Department of Correction (DOC) to speed up the review and supervised release of the hundreds of people who remain jailed pretrial or on non-parole warrants and are at heightened risk from COVID-19 due to age or medical condition, and limit jail on new criminal charges to only the most severe cases.
- (3) the DOC to comply with Center for Disease Control (CDC) Guidelines, fully inform staff and incarcerated people about the virus and risk mitigation procedures, and immediately provide protective equipment, soap, and disinfectant to all staff and incarcerated people.

### **Background**

#### **COVID-19 is a dire threat to health and safety at Rikers and other NYC jails**

Jails are notorious incubators of viral contagion due to close quarters of confinement, limited access to handwashing and sanitary products, and insufficient access to healthcare. Even with

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tireless efforts by the Correctional Health Service (CHS) at Rikers, COVID-19 continues to spread. Tragically, nine DOC employees and three incarcerated people—two of whom were jailed only based on accusations of non-criminal, technical parole violations—have already died from COVID-19.

Hundreds of people in NYC jails have underlying health conditions or are over 55 years old, and are thus at particular risk from COVID-19. Medical professionals from CHS, the NYC Board of Correction, corrections officers and their union, district attorneys, public defenders, and national parole and probation officials have all issued powerful calls about the dangers of infection in City jails.<sup>2</sup> These calls have been echoed by others in the medical community, including in the New England Journal of Medicine.<sup>3</sup>

As infections in City jails continue to grow and more staff call in sick, conditions threaten to deteriorate, causing worse health outcomes for incarcerated people and staff and worsening safety and order in the jails.

## **The City has capacity to provide supervision and support to released people**

Institutional players throughout the criminal justice system already have helped arrange the release of more than 1,400 people, resulting in a significant decrease in the number of people jailed in New York City. The de Blasio administration has created a supervised release program for several hundred people sentenced to short periods of jail time, leading to a steep decline in the number of people serving City jail sentences. The Legal Aid Society and other defenders have won court cases that have freed over 200 people at heightened risk. DOCCS has lifted parole warrants on roughly 260 people, though well below the 400 warrants that were originally announced for release. The district attorneys have approved other medically vulnerable individuals for release.<sup>4</sup>

New York City has an extensive network of nonprofit service providers who provide supervision, support, housing, and reentry services to people who are accused of criminal offenses or who are returning to their communities from jail and prison.<sup>5</sup>

The City has pledged that anyone released due to the threat of COVID-19 who requires or is mandated to supervision and support programs by state authorities or the courts will have access to these programs through the City's network of service providers, including medical care and isolated housing as needed. Several hundred people have been assigned to these programs and services already.

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## The NYC jail population

As of April 16, 4,035 people were incarcerated in NYC jails, the majority of whom were held on Rikers Island. 90% were people of color. 284 are 55 years old or older and 512 are 50 or over.

- Technical parole violators: 308 people were held for allegations that they violated non-criminal conditions of parole, of whom 28 were 55 years old or older.
- Pretrial detention on a parole warrant: 658 people with new criminal charges were held on a parole warrant, of whom 62 were 55 years old or older. Half were incarcerated on charges that are not authorized for pretrial detention under current state law, absent a parole warrant.
- Pretrial detention (no parole warrant): 2,774 people were held in pretrial detention, of whom 169 were 55 years old or older.
- City sentences: 138 people were held on a city sentence of less than one year, of whom 10 were 55 years old or older. This group has decreased significantly in the past month through the City's release program.
- Warrants and other holds: 157 people were held on administrative warrants or were awaiting transfer to a state prison facility, although these transfers have been suspended by State DOCCS. 15 were 55 years old or older.<sup>6</sup>

## Recommendations

To ensure the health and safety of everyone in City jails, we call for the following steps:

### **1. The State Department of Corrections and Community Supervision (DOCCS) Should Immediately Lift All Parole Warrants**

Almost a quarter (24%) of the people in New York City jails are held on parole warrants issued by State DOCCS, which is the only agency that has the authority to release these people.

On March 27, DOCCS announced that it would release up to 400 people from City jails, but lifted parole warrants on only approximately 260 people. DOCCS excluded many people from release under this process, including those diagnosed with serious mental illness. Since March 27, DOCCS has incarcerated more than 30 new people at Rikers due to allegations of technical parole violations.

As a result, 308 people are currently incarcerated in City jails only because they are accused of non-criminal "technical" violations of parole conditions like missing curfew or appointments with a parole officer. Of the over 650 additional incarcerated people on parole who have new criminal cases, half are accused of lower-level offenses for which they could not normally legally be jailed pretrial, but are ineligible for release because DOCCS has issued a parole warrant.

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DOCCS should cease incarcerating people for new alleged parole violations and immediately lift all parole warrants for people accused of technical violations or criminal offenses, including for people with serious mental illness. People accused of technical violations and normally detention-ineligible lower-level offenses can be released under supervision pending their court or administrative hearing dates. For people on parole accused of detention-eligible offenses, judges should be permitted to make the standard bail decisions applicable to criminal cases.

## **2. Speed Up the Release of Pretrial Detainees at High Risk from COVID**

Hundreds of people at high risk from COVID-19 due to their age and/or underlying medical conditions are incarcerated in City jails while awaiting trial or because of various non-parole warrants. All key parties, including District Attorneys, the Office of Court Administration, and the Mayor's Office, should speed up review and supervised release of these people. We recommend presumptive release for the more than 100 people at heightened risk who have been identified by CHS.

People who are released pretrial should receive community-based support, services, and housing if necessary, similar to sentenced people in the City's current release program.

## **3. Fully Implement CDC Guidelines for Correctional Facilities, Provide Soap and Cleaning Supplies, and Ensure All Staff and Incarcerated People Are Fully Informed**

The Department of Correction should fully follow CDC guidelines for correctional best practices for safety and health.<sup>7</sup> In particular, the DOC should provide: (1) personal protective equipment for all staff and incarcerated people; (2) ready and immediate access to soap and cleaning supplies, for free, and allow people to clean common spaces and personal living areas; and (3) adequate access to medical screening and testing. The DOC should also use the decline in incarcerated people to promote social distancing within units. In addition, the Department must provide every member of staff and every incarcerated person with full information about the virus and health procedures, in a manner and language each person can understand.

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## **Endnotes**

<sup>1</sup> New York City Board of Correction, *April 16, 2020 Daily COVID-19 Update* (2020), [https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public\\_Reports/Board%20of%20Correction%20Daily%20Public%20Report\\_4\\_16\\_2020\\_TO%20PUBLISH.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_4_16_2020_TO%20PUBLISH.pdf); The Legal Aid Society, *COVID-19 Infection Tracking in NYC Jails* (2020), <https://legalaidsnyc.org/covid-19-infection-tracking-in-nyc-jails>.

<sup>2</sup> Chelsia Rose Marcus, *Coronavirus prompts Board of Correction to call for release of inmates from NYC jails*, NEW YORK DAILY NEWS (2020), <https://www.nydailynews.com/coronavirus/ny->

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<sup>3</sup> Matthew J. Akiyama, Anne C. Spaulding & Josiah D. Rich, *Flattening the Curve for Incarcerated Populations — Covid-19 in Jails and Prisons*, NEW ENGLAND JOURNAL OF MEDICINE (2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2005687>.

<sup>4</sup> Jane Wester, *Legal Aid Wins Release of 51 More Persons Held at Rikers Island on Alleged Parole Violations*, NEW YORK LAW JOURNAL (2020), <https://www.law.com/newyorklawjournal/2020/04/13/legal-aid-wins-release-of-51-more-persons-held-at-rikers-island-on-alleged-parole-violations>.

<sup>5</sup> See, e.g., Center for Alternative Sentencing and Employment Services, *"An Extraordinary Situation": CASES Facilitates Rapid, Safe Reentry from Rikers during COVID-19* (2020), <https://www.cases.org/2020/04/06/an-extraordinary-situation-cases-facilitates-rapid-safe-reentry-from-rikers-during-covid-19/>; Human Rights Watch, *New York: Prison Resources* (2017), <https://www.hrw.org/news/2016/07/13/new-york-prison-resources>.

<sup>6</sup> Vera Institute of Justice, *NYC JailViz 2.0 Application: Tracking New York City Jail Population Trends*, <http://52.71.132.68/NYC-Jail>.

<sup>7</sup> Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#prevention>.