

April 15, 2020

Dear Governor Cuomo,

We commend you on your leadership during this very challenging time. We write to you as the service providers and advocates who are members of the NYC CARE Task Force, created by passage of Intro 1616A by the New York City Council and signed into law in January 2018. The Compassion and Assistance for Returning Elders (CARE) Task Force is the first citywide, interagency task force in the country created to focus on and address the needs of older people returning from incarceration. We share your goal that New York State be an “age-friendly” state; our goal is to examine what this means for older people coming home from jails and prisons to New York City. We call on you with urgency and grave concern that while you have effectively and tirelessly led our state’s efforts to battle COVID-19, the lives of those at great risk of infection and death inside the State’s prisons deserve your attention and expedient action as well. New York on PAUSE has saved countless lives, but prisons have no way to go on PAUSE; release is the only possible PAUSE. **We implore you to release older incarcerated individuals, starting with those over 55 and/or who have underlying health conditions.**

As we were about to send you this letter, we learned that you have approved the release of 175 people age 55 and older who are within 90 days of their release and have non-violent convictions. This is wonderful news and we thank you, but this is not enough, and this welcome decision leaves out far too many people whose crimes were committed years or decades ago and who pose no risk to public safety. In your morning briefing on April 9, 2020 we heard you movingly say, “The way I sleep at night is that I believe that we didn't lose anyone that we could have saved...that is the only solace when I look at these numbers, and look at this pain that's been created. That has to be true, and that has to continue, and that is a function of what each and everyone of us does.” There are thousands of older and vulnerable people in prison you can save by taking immediate action.

Unfortunately, we are losing people and will continue to lose people who could have been saved if we do not address our prisons and those who live in them and work in them. To date, state officials report that 150 incarcerated individuals and 618 correctional staff in NY’s prisons have tested positive; at least 3 people (2 incarcerated and one staff) have died. These numbers are increasing alarmingly fast. Every day counts in this pandemic, as you know so well.

According to DOCCS, there are currently 9,555 people age 50 and older in NY State prisons; 2,754 of these people are age 60 and older; 2,955 are between 55 and 59; and 342 of these are women age 50 and older (with 185 women age 55 and older).¹ Many have underlying health conditions, have served decades, and some are within one year of release; some have already been granted parole but have to wait weeks or months -- the difference between life and death right now -- for their release date. They cannot practice social distance nor take the precautions now required of those of us in the community (wearing masks and gloves, washing and sanitizing constantly, and staying 6 feet away from others). Not only are they at grave risk of becoming sick and dying from COVID-19, older people in prison pose little to no public

¹ Age Data for those in DOCCS Custody by Facility as of December 2019 (FOIL request by the Osborne Association)..

safety risk upon release, and have the lowest recidivism rate of any age group (only 4.2% of people age 65 and older return to prison on a new commitment).²

On April 2, 2020 more than 150 public health and medical experts wrote you a letter stating: “As COVID-19 continues to spread throughout New York State, it will also continue to spread throughout the state prison system. This will have devastating consequences for incarcerated New Yorkers, their families, prison staff, and entire communities throughout the state.” An article published that same day in the *New England Journal of Medicine* by three expert doctors in epidemiology and infectious disease states:

The better the mitigation job done by legal, public health, and correctional health partnerships, the lighter the burden correctional facilities and their surrounding communities will bear...Therefore, we believe that we need to prepare now, by “decarcerating,” or releasing, as many people as possible, focusing on those who are least likely to commit additional crimes, but also on the elderly and infirm;....³

You have viable mechanisms to release people at your disposal that only you can activate, including: executive clemency; broadening the parameters for emergency medical and parole release; and advancing release dates for those who are scheduled for release within the next year in this current crisis. These and other release mechanisms have been detailed in the numerous letters sent to you in the past weeks, and we echo the urgent call that you use them (a list of recommended actions for release is attached with our letter).⁴

We understand that you may be concerned about releasing individuals who do not have a solid discharge plan and post-release support, and we acknowledge that coming home as an older person during COVID-19 presents unique challenges. While we would argue that even a shelter is healthier than a prison cell or dorm, the New York City has been moving older people (and others) into hotels rather than shelters, a model that should be expanded, and we and other providers can assist with staffing and resources. We want you to know that the community of those who offer aging and reentry services stands ready to meet these challenges and support older people, and we are actively working to expand housing options. Towards this end, **we ask that you direct DOCCS to provide releasees without viable housing a letter stating that the individual is “undomiciled.”** Since HUD does not consider incarceration of more than 90 days as “chronic homelessness,” such a letter is necessary for individuals to directly access temporary, supportive, and permanent housing.

Among the critical supportive services we can offer for older individuals returning to NYC are:

- **The NYC Department for the Aging** offers an array of services currently focusing on delivering meals and providing concrete and emotional supports for NYC’s seniors. As a leading member of

² DOCCS Recidivism Research (December 2016), *2012 Inmate Releases: Three Year Post-Release Follow Up*. https://doccs.ny.gov/system/files/documents/2019/09/2012_releases_3yr_out.pdf

³ Akiyama, M.J., MD; Spaulding, A.C., MD; Rich, J.D., MD (April 2, 2020), Flattening the Curve for Incarcerated Populations- COVID-19 in Jails and Prisons. *New England Journal of Medicine*. <https://www.nejm.org/doi/full/10.1056/NEJMp2005687?query=TOC>

⁴ Letters to the Governor urging releases from State prison have been sent by the reentry provider members of the Governor’s Reentry Council (3/20/2020); by philanthropic leaders (3/26/2020); by public health experts (4/2/2020); by defender associations (4/3/2020); and by faith leaders (4/6/2020) to name a few.

the CARE Task Force, DFTA welcomes the opportunity to serve seniors coming home from incarceration.

- **The Osborne Association** offers numerous reentry services including the Elder Reentry Initiative which provides discharge planning and reentry support services to those age 50 and older returning to NYC. We provide individualized referrals, benefits assistance, reentry dignity kits (phone, metrocard, clothing, toiletries), outreach to family, emotional support, as well as remote intake and substance use treatment.
- **The Fortune Society** provides a wide array of direct services to address reentry challenges including accessing education, employment, emergency, transitional and supportive housing, substance abuse and mental health treatment, access to healthcare, HIV/AIDS case management, creative arts, food and nutrition and family services.
- **Hour Children** provides comprehensive reentry support services to formerly incarcerated women through transitional and supportive housing, mental health services (case management and counseling), education and job training services, a food pantry, and thrift stores for affordable clothing and housewares.

No one is more familiar with the toll this crisis is taking on our state than you are: we cannot afford more sickness and death. As you said, saving everyone we can is a function of what each of us does, every day. We call on you to do what is right and expeditiously pull the levers of release at your disposal and take us up on our offer to support older and vulnerable people whose release will actually enhance rather than jeopardize public safety.

Sincerely,

Providers and Advocate Members of the NYC CARE Task Force:

Hour Children

Fortune Society

Osborne Association

New Yorkers United for Justice

Release Aging People in Prison Campaign

Cc: Rossana Rosado, Secretary of State
Jeremy Shockett, Deputy Secretary of Public Safety
Joseph Popcun, NYS Reentry Council Executive Director
Acting Commissioner Anthony Annucci, NYS DOCCS
Tina Stanford, Chairperson, NYS Parole Board

Recommendations for Immediate Action to Release Older People and those with Underlying Health Conditions

1. Immediate review and approval of pending clemency petitions.
2. Release of those who have less than one year remaining before their conditional release dates.
3. Release of those who were granted parole and whose release is pending.
4. Release of individuals over the age of 55.
5. Release of individuals who have significant underlying health conditions that exacerbate the risks of COVID-19, including lung disease, asthma, heart conditions, diabetes, cancer or a weakened immune system.
6. Release those incarcerated in state facilities for technical parole violations.

Parole Board

- Provide all “open dates” with the words “Or Earlier” so that people who have been approved for parole release do not have to wait until their open date.
- Change requirement to have reached “service of minimum” to “have reached within 6 months of service to minimum during health crises or other extraordinary emergencies.”
- Digitize parole records to allow for Boards to continue to review cases including initial appearances, without commissioner travel.
- Advance parole consideration (those over 55 with low-risk COMPAS scores scheduled for a reappearance or initial hearing in the next 4 months could be considered immediately, with presumption of release).
- Permit parole grants without an in-person or video appearance, based on administrative review of files for those whose last board resulted in a “hit” of less than 2 years, who had a 2 person board and a split decision, or a 3 person board with a dissent and who was age 55 or above with a low risk COMPAS score.
- Expedite release of people with residences/ homes to return to (expedite parole process of approving home address).
- Release people who are granted parole with approved release plans within 4 days rather than the current 30- 45 day window.

Medical Parole

Expand existing medical parole criteria (including no exclusions based on conviction) and expedite the process (including expanding medical parole decisions that can be made by the DOCCS Commissioner). Prioritize swift release for anyone who has tested positive for COVID-19 and has any of the underlying conditions identified by the CDC as placing individuals at high risk for severe illness.

Work Release

Allow everyone approved for work release with an approved residence to be placed on a 7-0 schedule so that they are not returning to a DOCCS facility, and expand eligibility criteria for temporary release.