

## **The Missing Chapter: Governor Cuomo's Failure to Protect Incarcerated New Yorkers from COVID-19**

COVID-19 has impacted and harmed all New Yorkers, including the roughly 40,000 people incarcerated in New York State prisons. While I've spent the last seven months preaching about the importance of wearing PPE, social distancing, being smart and responsible, and taking care of each other, I have wholly abdicated my responsibilities as the overseer of 52 state prisons that make up the Department of Corrections and Community Supervision (DOCCS).

Since the outbreak of the virus, criminal justice advocacy organizations have received thousands of letters from people currently incarcerated in New York State prisons who are living through the horrors of this deadly pandemic. They wrote begging for help in securing their release, asked for basic necessities like soap, bleach, hand sanitizer, and underwear, and detailed their daily fears of contracting a lethal virus in a place with few resources and substandard medical care. Most remain desperate for help today.

At the state of the pandemic, advocates immediately began urging for all incarcerated people in New York State prisons to be supplied with adequate personal protective equipment, including access to hand sanitizer and protective masks that my administration didn't permit incarcerated people to use until weeks and months after the virus began to spread. Advocates across the country, elected officials at all levels of government, philanthropists, district attorneys, and even celebrities also called on me to grant emergency clemencies to people currently incarcerated in New York State prisons, especially those who are particularly vulnerable to the virus. They sent my office many hundreds of individual requests for clemency and medical parole releases on behalf of some of the state's oldest and sickest people. Advocates received and forwarded to my office dozens of separate appeals from groups of public health experts, US Congressional representatives, community, medical, and legal organizations, criminal justice professionals, law enforcement, and faith community leaders urging him to release vulnerable incarcerated people. They worked with hundreds of community members across the state with loved ones in prison to ensure that people are able to stay in contact with their family members in ways that align with public health and safety. These pleas have been ignored by my administration.

To date, I have only granted three total clemencies to incarcerated New Yorkers amidst COVID-19, and DOCCS, my state agency, has not publicly stated whether or not they've granted medical parole release to even one, single person. Knowing that I would never write about my reckless response to COVID-19 behind bars in my new, national-stardom seeking book, criminal justice advocates have taken it upon themselves to complete my book for me with facts and first-hand accounts.\*

\* These are not the actual words of Governor Andrew M. Cuomo.

**“The Missing Chapter: Governor Cuomo’s Failure to Protect Incarcerated New Yorkers from COVID-19”** draws on and synthesizes the expertise, experiences, and advocacy of many currently incarcerated people criminal justice advocacy organizations have been in direct contact with since March 2020. Detailed in this passage are the vast areas in which my administration and DOCCS have failed New Yorkers impacted by COVID-19 behind bars. My response to the deadly virus, specifically for people in New York State prisons, has been negligent, dishonest, torturous and deadly.

**Hopelessness and Desperation:** Over the last seven months, people in prison have experienced extreme and profound levels of fear, hopelessness, and despair. Even many incarcerated people who have spent decades in prison and lived through epidemics associated with HIV/AIDs, Hepatitis C, SARS, and other serious viruses voiced unprecedented concern. Advocates frequently received correspondence from people about how their time in prison felt like it was quickly turning into a death sentence as a result of the COVID-19.

- **T.V.<sup>1</sup>, Auburn Correctional Facility, 9 years in prison:** “I am in fear for my life in the midst of this coronavirus pandemic ... My fear is that the pangs of this pandemic will creep into the night air, from a single touch, here at Auburn, and attack me while I am sleeping and take my life. All this while being behind these steel bars, and laying on this metal cot, without ever laying my eyes upon my wife and children to say goodbye ... **The administration here at said facility does not provide adequate medical care or proper medical emergency** to accommodate for us in times of need, and will instead wait until the bodies start to pile up, and then tell us to 'sign up for sick-call' ... As of right [now] other brothers and sisters and I who suffer from **asthma are sitting ducks waiting for the inevitable to happen** ... We who do not have release dates in a year, or are not 60 years of age are sentenced to death without that sentence being handed down from a magistrate.”
- **A.H., Eastern Correctional Facility, 16 years in prison:** “The influence of COVID-19 was changing the normal functions of life behind the walls into confusion, and complex problems that needed solutions. While rules were being established, and enforced, staff members (Superintendent as well) were not paying attention to the traumatic effects that COVID-19 mixed with these abnormal prison rules were having on the prison population. For example, everybody was truly concerned about their safety. Prisoners were losing loved ones; visits and Family Reunification Program were canceled, and **officers began to really abuse prisoners.** Within one week, guys began to lash out with violence against the harassment / abuse, and the facility was locked down. Staff came around serving food with no mask on their faces, and that

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<sup>1</sup> To protect the identities of incarcerated people, we use initials throughout this document instead of full names?

triggered another negative response...excuse my bad language, but shit is fucked up in here...Not having contact with our family members (fathers kissing daughters, hugging mothers, teaching sons, etc.) is a new form of torture, and takes away my humanness as a person.”

**COVID-19 Sickness and Death:** To date, DOCCS reports that COVID-19 has infected 820 incarcerated people and killed 17. Reports from the Daily News and currently incarcerated people indicate that Black and Latinx People and older people have been disproportionately impacted by the virus. In the first few months of the pandemic, the Daily News reported that most incarcerated people who died from COVID-19 behind bars were Black people.

- **C.B., Green Haven Correctional Facility, 24 years in prison,** “I am 63 years old and I have HIV, Cirrhosis of the Liver, and heart problems. April 2020 I lost my mother to COVID-19, and I’ve never been rocked by anything that could be compared to losing my mother. She is the one I wanted to go home to. Shortly after losing my mom, I fell ill to the same best, and this rocked me as well. I struggled for a month until I was able to shake the virus. I was in so much pain that I cracked and broke every tooth on the upper left hand side of my mouth. Only by the grace of God I recovered. So I am very appreciative for all you do and attempt to do to liberate the aging population. I can only pray that God will advance your petitions. In closing I was also close to Mr. [Benjamin] Smalls and we were working at the commissary, where six civilians and 2 incarcerated men were infected. The two men were Mr. Smalls and I. Prior to us getting infected Mr. Smalls used to always tell me, ‘CB you and I cannot afford to get sick, because it is going to be a struggle if we do.’ Low and behold we both got sick around the same time. Mr. Smalls used to always tell me that he was going to get me out of jail. I miss him dearly.”
- **G.A., Fishkill Correctional Facility, 18 years in prison:** “One person was removed from the housing unit for suspicion of having the virus. No one else was interviewed about symptoms. The unit was put under quarantine a week later, and another person began to show symptoms: fever and shortness of breath. None of this person’s roommates were interviewed about symptoms. A day later a **third person was experiencing a fever and headaches, but was ignored for five days, even as he continued to experience fever, shivers, and a heavy cough. Days later, the unit was inexplicably taken out of quarantine,** despite numerous people exhibiting cold-like symptoms, and person #3 was sent to the hospital, where he died. A fourth person had no appetite and discoloration in his skin, but was not offered any care or treatment until he experienced a seizure. He also died. More people continued to experience symptoms, and were neglected until their symptoms became extreme, at which point they were removed, sometimes by guards who had tested positive for the virus and returned without quarantining themselves for the proper amount of time. None of their roommates were ever

interviewed about symptoms, despite also displaying symptoms, and the unit received word that someone has died in another housing unit.”

- **W.W., Fishkill Correctional Facility, 24 years in prison:** “Only if you have a fever will you get any attention; **symptoms like coughing, sneezing, etc are ignored.** Those people that are not ignored, and sick, are sent to the box, double bunked for quarantine. The few that was sent to the hospital too late don't make it, especially senior citizens. One of my friends died because of lack of concern. He had the symptoms, but no fever at the time, so they sent him back to the dorm; when he became very ill, some officers escorted him to medical. Three to four days later, he passed on.”

**Unconscionable Lack of Safe Prison Releases:** Since the outbreak of COVID-19, advocates across the country, elected officials, philanthropists, district attorneys, and even celebrities called on Governor Cuomo to grant wide-sweeping clemencies to people in New York State prisons, especially those who are older and/or have compromised immune systems. Since March 2020, Governor Cuomo has granted a shameful three total clemencies and the Department of Corrections and Community Supervision (DOCCS) created a narrow and exclusionary release mechanism for older people within 90 days of their release who were convicted only of non-violent crimes. They also released a handful of select pregnant women convicted of non-violent crimes, who were already within 6 mos. of their release date. DOCCS does not make publicly available the total number of people released through this COVID-specific mechanism, and has never publicly explained why the release criteria was so narrow and runs against all criminal justice research that proves older people, specifically convicted of violent crimes like murder, homicide, and robbery, pose the least risk to public safety across all categories of age and crime.

Additionally, the State Parole Board’s release rates have been lower during some months of the pandemic than they have been in years. In August 2020, the Parole Board released people serving parole-eligible life sentences at a rate of only 25%, compared to 50% at the start of the pandemic. The Board has consistently released white people at higher rates than Black people during the pandemic, including by a margin of 16% in August 2020: the Board released 32% of Black people and 48% of white people who appeared before them.<sup>2</sup>

- **H.M., Adirondack Correctional Facility, 17 years in prison:** “There’s some guys in here that, really, I don’t understand why the State hasn’t released these guys. What possible threat could this poor, frail, dried up human being pose to society? Let him go, man.”

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<sup>2</sup> Data provided by the Vera Institute of Justice, August, 2020

- **J.L., Sullivan Correctional Facility, 16 years in prison:** “The New York RAPP Campaign, which stands for Release Aging People in Prison, has been working with state legislators on a bill that would allow prisoners ages 55 and older who have served at least 15 years to appear automatically before a parole board. Even with a deadly virus in the air and a Democratic state government, there has been no action on this bill.”

**Creating a Prison Nursing Home at Adirondack Correctional Facility:** In May 2020, the Cuomo administration cleared out Adirondack Correctional Facility, which previously housed a handful of incarcerated people below the age of 18, to make room for a prison nursing home exclusively for older and sick incarcerated people. Since June 2020, DOCCS transferred more than 100 incarcerated people aged 60 and older with serious chronic health conditions to the prison near the Canadian Border. The large majority of people transferred are Black and Latinx from downstate New York. People transferred to the facility report that they were not tested before or immediately upon their arrival at the facility. After weeks of advocacy, the Cuomo administration finally tested everyone at the facility, and at least three people tested positive. People at Adirondack consider the facility to be a ticking time bomb.

- **C.L., Adirondack Correctional Facility, 43 years in prison:** “...If we’re not gonna get the proper medical attention, I’m gonna die of something else. It’s like they sent us to just fade away and die.”
- **D.B., Adirondack Correctional Facility, 28 years in prison:** “It seems that this administration here is playing chess with us. Every time 20 new arrivals come in. They move us around from building to building. We're not young. And to keep doing this is uncalled for. When all they have to do is put the new arrivals in another building. They know how many prisoners will be here. So why keep moving us around like we're animals. It's hard on us to move our belongings and mattresses around every week. It's cruel and unusual punishment when all of us have no tickets or misbehavior reports of any kind. Something needs to be done about all this constant movement.”
- **F.R., Adirondack Correctional Facility, 18 years in prison:** “Inherently this is not a good situation. Tensions initially were high and there are still suspicions among us as to the real motives behind our being sent here. As I said, in the beginning we felt like the pioneers, now we suspect we are the guinea pigs and we are hoping that we do not become the forgotten sacrificial lambs.”

**Overcrowding and Unsafe Housing:** Incarcerated people are reporting that prison dormitories are over capacity, and people are forced to sleep in bunk beds only three feet away from each other. People with COVID-19 symptoms are being housed in blocks and dorms with others who

do not yet have any symptoms:

- **A.P., Clinton Correctional Facility, 16 years in prison:** “They are putting more of us together now than they were before COVID19. They’re bunching us up in the hallways and all this is on camera. It’s not that they can’t social distance us. They don’t want to.”
- **R.J., Eastern Correctional Facility, 30 years in prison:** “Here in Eastern Corr. Fac. when inmates become sick ... when it comes to isolating these inmates the facility is negligent ... I'm in the east wing. They moved an inmate that was in isolation status right next door to me ... For the most part the facility is reckless in those areas ... I'm African American and the inmate they put next door to me was (in isolation) also African American, the most likely group to be killed from this disease.”

**Unsanitary Conditions & Lack of PPE:** When Governor Cuomo announced to the nation in March 2020 that New York State would produce its own state-issued hand sanitizer, he did not mention that incarcerated people would be making it for pennies on the hour, and that they would not be permitted to use it themselves. After weeks of advocacy and public scrutiny, DOCCS finally allowed incarcerated people to use the hand sanitizer. However, people in many facilities report that they have no access to it and that staff use most of their supply.

For the first month of the pandemic, incarcerated people were not permitted to wear masks. On April 9, 2020, DOCCS issued a memo that allowed incarcerated people to wear masks made out of state-issued handkerchiefs—too small to cover the average person’s face—and allowed incarcerated people in quarantined housing units to wear surgical masks.

On May 6, 2020, *Mother Jones*, published a story on incarcerated New Yorkers being forced to make protective cloth masks for pennies per hour. Within 48 hours of the publication of the *Mother Jones* story, DOCCS announced that incarcerated people would finally be given at least two cloth masks each. Since then, incarcerated people across DOCCS have grieved that they have not received any new, clean protective masks. While prison staff have received ample amounts of PPE, incarcerated people widely report that correctional officers rarely wear masks, except when they’re in the infirmary or in the presence of a captain or lieutenant:

- **R.S., Ulster Correctional Facility, 22 years in prison,** “On a daily basis, since the shut down of society, I have been asking myself if I will survive. In this facility there are both inmates and staff affected by this virus. The inmate care is at best less than what any good veterinarian would prescribe for a family pet. There is a dorm for those who have tested positive, however they are permitted to attend other facility functions with those who have not been adversely

affected. We are now permitted to wear surgical type masks ... However convincing staff to wear them is another fight.”

- **T.C., Cossackie Correctional Facility, 1 year in prison:** “If I contracted COVID-19 I most likely would die in here. We are not protected in here and there is no social distancing ... The workers in the mess hall quit wearing masks and about 90% of COs don't wear masks either exposing the vulnerable population and population with existing health conditions that are severe.”
- **R.R., Fishkill Correctional Facility, 31 years in prison:** “At Fishkill, there is an imminent danger faced by me and other inmates, some of whom have already died. Fishkill's lackluster efforts to keep the illness from spreading by allowing prison staff that tested positive for COVID-19 to return to work without mandated 'face masks' proves its inexplicable failures amounts to deliberate indifference.”

**Quarantine Conditions and Solitary Confinement:** Many facilities are quarantining entire cell blocks and living areas if anyone exhibited COVID-19 or flu-like symptoms. Other facilities transfer people with COVID-related symptoms to solitary confinement, where they are placed for multiple weeks at a time and left with limited to no medical treatment, none of their property, and limited access to phone and electronic contact with their loved ones. In some instances, DOCCS transfers people using cramped vans from smaller facilities with less hospital capacity to larger facilities, where they are immediately placed in solitary confinement. Quarantined areas often include people without flu-like symptoms, jeopardizing the health of people who are not sick. Quarantined areas are often completely unavoidable for incarcerated people who either live next to or have to walk directly by the quarantined areas.

- **M.C., Wallkill Correctional Facility, 14 years in prison:** “I contracted the disease, and not only was I illegally placed in solitary confinement, upon returning to the population, I was never retested.”
- **O.W., Fishkill Correctional Facility, 23 years in prison:** “They quarantined me for 2 weeks with none of my personal property. Not even my shower shoes. At first instead of giving us showers, they were giving us buckets of hot water to wash up in.”
- **S.B., Green Haven Correctional Facility, 17 years in prison:** “This is solitary confinement and it is filthy. It is infested with big roaches and it NEVER gets sanitized. We need outside help.”

**Improper Medical Care:** In the wake of COVID-19, many facilities have stopped providing

non-COVID-related medical care altogether. Because of staffing shortages, “sick call” has been cancelled in many facilities and people have stopped receiving their regular medications. Many who still have access to medication are scared to leave their cells to retrieve it. This continues now.

- **D.B., on behalf of his currently incarcerated brother, KB, Coxsackie Correctional Facility, 14 years in prison:** “My brother has been incarcerated for 17 years...His illnesses [include] asthma arthritis in both knees and tendinitis in both elbows degenerative disc disease. He is also suffering with schizophrenia and bipolar and depression. They are not giving him all his medicine...”
- **E.M., Adirondack Correctional Facility, 25 years in prison,** “This facility is now...populated with senior citizens 60 years old and older, most of which have serious underlying medical problems. You do not even have a doctor.”
- **R.S., Otisville Correctional Facility, 4 years in prison:** “Many of us have had symptoms and have gone to the medical facility here, only to be told that because we don't have a fever, we are fine. We are then sent back to our dorms (which house 49 men, 1 officer) without being tested. I have yet to regain my sense of smell. Yes, I believe that I have had the Coronavirus ... Officers were sick and still allowed to come into the facility. We were made to work around them and most of us that got sick worked in areas predominantly inhabited by DOC[CS] staff. They took those sick individuals and isolated them in a dorm where they were given no treatment ... After 7-8 days these men were returned to their living areas, without masks and we were all put at risk. They have recently quarantined an entire dorm and we have no information as to why or if any one has tested positive. They have also begun to force officers who have tested positive back to work if they do not have a fever ... At this point my sentence has been enhanced to a potential death sentence. If I am to fall victim to this disease I at least want to be with the people I love ... I believe that I've had the Coronavirus but have no way to tell and the prediction of another wave scares me. They have shown there is no plan of action for incarcerated people.”

**Commissary:** Throughout the pandemic, incarcerated people have reported understocked commissaries that often run out of basic cleaning supplies like soap. They also report being charged higher prices for basic necessities:

- **F.R., Adirondack Correctional Facility, 18 years in prison:** “When older individuals were transferred to Adirondack Correctional Facility, they found the commissary was undersupplied and lacked basic necessities upon their arrival.”

- **R.T., Bare Hill Correctional Facility, 19 years in prison:** “Many incarcerated individuals have reported staple food items are out of stock or in short supply at commissaries throughout the time of COVID-19. This is especially dangerous considering that older or immuno-compromised individuals would have no other option than to eat in the mess halls where social distancing is more difficult and eating meals presents a high risk to their health.”
- **S.S., Attica Correctional Facility, 19 years in prison:** “They are out of a lot of food items [in the commissary] which forces us to have to go to the mess hall to eat. This in itself is very dangerous for us older inmates.”

**Prison Visiting and Contact with Family and Friends:** In May 2020, DOCCS published a COVID-19 re-opening plan that included a plan to re-open social visits to family members and friends of incarcerated people. The plan was originally very restrictive, limiting visits to two hours, mandating people register for visits in advance, and didn’t allow for any physical contact between loved ones.

After months of advocacy, DOCCS modified the visiting plan by easing some of the restrictions. However, incarcerated people and their family members have reported significant problems with the plan, including limits to the number of children who can visit, and serious restrictions to the amount of touching people can engage in during the visit. One person in prison was punished with solitary confinement after giving his loved one a short kiss at the beginning of their visit. DOCCS banned his loved one from visiting ever again.

- **P.C., Green Haven Correctional Facility: 13 years in prison:** “DOCCS is using the coronavirus pandemic as a guise to implement stringent visiting room procedures which they were already trying to enact. Their ultimate goal is to take away contact visits altogether in order to replace it with video visits contracted to J-Pay. However, these new initiatives put an undue burden on families trying to support their incarcerated loved ones.”
- **J.K., Sing Sing Correctional Facility, 8 years in prison:** “To prevent a son from hugging his mother, a husband from holding his wife's hands, and a father from holding his baby, is just cruel and inhumane.”

**Lack of Information and Transparency:** Incarcerated people report that everyone has been on edge since the outbreak of the virus because they’re given limited information on how protect themselves from the virus, when positive cases occur in the facility, when PPE will be distributed and redistributed, and what exact protocols DOCCS and the Governor’s office are implementing systemwide. This lack of information and transparency causes many incarcerated people and their families undue stress, fear, and anxiety. Family members were also unable to get

regular updates about the health and safety of their loved ones in prison, even if the person was sick or known to be positive for the virus.

- **J.R., Green Haven Correctional Facility:** “People are disappearing out of cells and not coming back, but DOCCS staff isn’t telling anyone why and in general seem to be keeping information close to the chest. There are still gatherings of incarcerated people in the hallways, waiting for food, waiting for medicine, and in the yard. They are still eating 2 feet away from each other in the chow hall. People who wear T-shirts over their faces as makeshift masks get yelled at and are threatened with discipline. [People are told they] still need to do a program before [they] can be released, but no programming is happening.”
- **Person at Otisville Correctional Facility:** “It's difficult to get accurate numbers because the administration does not let us know what's actually going on, all information comes from civilians and COs who don't mind sharing what they know. It appears to be about 7-10 staff and inmates so far infected. I don't know the status of the dorm that has been quarantined.”

## CONCLUSION

It is shocking that only 17 people died in New York State correctional facilities over the course of this pandemic given I have been utterly incompetent in my handling of the virus. I created the conditions for mass suffering, psychological torture and deep distrust. If I don’t take serious action to decarcerate New York State prisons to protect the incarcerated population, prison staff, and outside communities from COVID-19, New York guarantees that more people will contract and die from this deadly virus. If nothing changes, we’ll continue to keep people in prison for no reason other than punishment and vengeance, and spend millions more dollars in the wake of a fiscal crisis not seen since the great depression. Taking meaningful and expanded action to release people will prevent more death and despair behind bars, and make New York a true leader in the struggle to end mass incarceration, systemic racism, and COVID-19.