

The Honorable Governor Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

CC: Acting Commissioner Anthony J. Annucci
Department of Corrections and Community Supervision
314 W 40th Street
New York, NY 10018

5/19/21

Dear Governor Cuomo,

We, members of the COVID-19 Justice Coalition (CJC)—whose mission is to be vigilant in advocacy for the justice-involved population, through a COVID lens—write, along with our many allies, regarding the current vaccination process that is taking place in New York State’s jails and prisons. While we are relieved that the Department of Corrections and Community Supervision (DOCCS) is finally providing the COVID-19 vaccine to all incarcerated New Yorkers, we remain concerned about (1) the problems with medical staff administering the vaccine and the insufficiency of vaccine education; and (2) the lack of transparency throughout the process.

The public health need for widespread vaccine acceptance in prisons is clear, and public health professionals, advocacy groups, and impacted individuals and their families have been advocating for this since the early days of vaccine access. Due to the nature of congregate living facilities, researchers have called jails and prisons “epicenters of COVID-19 transmission” that “present an ideal setting for infections to spread.”¹ These same researchers noted that “community rates of infection will not decrease if jails are not a central focus of public health strategies to mitigate the spread of the epidemic.”² In other words, without widespread vaccine acceptance and COVID-19 education in jails and prisons, nothing even close to “herd immunity” will occur in the United States.

DOCCS has reported that as of May 13th, 10,208 members of its population had accepted at least one dose of the vaccine, which is approximately 25% of the total population.³ In surveying the total population,⁴ DOCCS has stated that about 45% of individuals are saying that they will accept the vaccine when it is offered, although it has been noted that more of the younger and healthier population is saying that it will not.⁵ Meanwhile, the rates of vaccine acceptance have been far higher in a number of other states, such as Colorado (76.5%), Arizona (76.37%), Maryland (72.4%), Alaska (72.9%), California (71.9%),

¹ Lisa B. Puglisi et al., *Estimation of COVID-19 basic reproduction ratio in a large urban jail in the United States*, 53 ANNALS OF EPIDEMIOLOGY 103-05 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7480336/>.

² *Id.*

³ Email from Thomas Mailey, Department of Corrections and Community Supervision to Rebecca Engel, the Fortune Society “Re DOCCS Covid: Vaccination Data (May 13, 2021)

⁴ *Id.*

⁵ Email from Karen Murtaugh, Prisoner Legal Services, to Rebecca Engel, The Fortune Society, “Re: compliance within DOCCS” (Apr. 25, 2021).

others.⁶ In fact, in 10 states, prisons have vaccinated their incarcerated populations at a rate higher than the general populations, with numbers that are far closer what is needed for congregate settings such as prisons.⁷

New York, meanwhile, is lagging behind. Earlier this year, the Marshall Project, a nonpartisan, nonprofit news organization, asked incarcerated people across the country how they feel about getting vaccinated.⁸ While most people they interviewed said they were willing to get vaccinated, they also expressed a deep distrust of prison medical staff and wariness about any care provided by medical staff.

As a result, more than half the respondents said they don't believe the prison is acting in their best interest by making the vaccine available to incarcerated people. Nearly one-third of respondents said the vaccine is just another attempt to experiment on incarcerated people without their knowledge.⁹ Vaccine acceptance rates were lowest among younger people and Black people.¹⁰ The pause on the use of the Johnson & Johnson vaccine, which DOCCS was using, likely did not help matters, even though it did recently end. DOCCS has high hurdles to overcome in its goal of ensuring widespread vaccination.

Experience and research have shown that incarcerated people distrust the correctional health system and the care it provides. They have seen or have themselves experienced, substandard medical care and had their medical concerns ignored.¹¹ They have seen confidentiality breached, and misinformation spread. There have also been high rates of vaccine refusal by correctional staff, who may be spreading their own fears to incarcerated individuals.¹² In New York State, it is clear that the current education and vaccine efforts have not been enough.

Recommendation #1: New York State should require DOCCS to increase its use of trusted, outside groups to perform vaccine education, in addition to the vaccination itself.

One way to address mistrust in the correctional health care system is to have the COVID-19 vaccines, as well as education about them, be administered by an outside organization, rather than DOCCS and its medical personnel. While a few nonprofits have been able to distribute helpful flyers, DOCCS leadership has primarily been handling vaccine "education" by giving CDC printouts to members of the Inmate Liaison Committee (ILC) and the Inmate Grievance Resolution Committee (IGRC), and asking them

⁶ The COVID Prison Project, *Reported Vaccination Rates By State: May 14, 2021*, <https://covidprisonproject.com/blog/> (last accessed May 17, 2021).

⁷ *Id.*

⁸ Nicole Lewis, *We Asked People Behind Bars How They Feel About Getting Vaccinated*, THE MARSHALL PROJECT, Mar. 1, 2021, <https://www.themarshallproject.org/2021/03/01/we-asked-people-behind-bars-how-they-feel-about-getting-vaccinated#>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See e.g., Beth Schwartzapel, *How Bad is Prison Health Care? Depends Who's Watching*, THE MARSHALL PROJECT, <https://www.themarshallproject.org/2018/02/25/how-bad-is-prison-health-care-depends-on-who-s-watching> (May 17, 2021); Sojourner Ahébee, *40% of incarcerated people have chronic conditions — how good is the health care they get behind bars?*, WHYY THE PULSE (Apr. 9, 2021).

¹² See e.g., Brandon Lewis, *Many Western NY Corrections Officers Hesitant to Receive COVID-19 Vaccine*, SPECTRUM NEWS BUFFALO (Mar. 19, 2021), <https://spectrumlocalnews.com/nys/buffalo/news/2021/03/19/corrections-officers-hesitant-to-receive-covid-19-vaccine>.

to relay the message to others. More recently, DOCCS reported that it had also produced a video with incarcerated individuals, as well as one prepared by the New York State Office of Mental Health.¹³

While we appreciate the use of incarcerated leadership and faces, this is insufficient education to overcome the prevalence of medical mistrust. When the Correctional Association of New York (CANY) visited Fishkill Correctional Facility last July, they reported that “many of the incarcerated people CANY representatives spoke to seemed unaware of how COVID-19 tests are administered, proper mask usage, and even the signs and symptoms of COVID-19.”¹⁴ Unfortunately, we are still receiving these same reports today. We know that some incarcerated individuals are still uncertain about what COVID-19 even is, much less what the vaccines do and do not do.

In addition to multiple forms of written information, there should be the chance for actual discussion and information sessions, both one-on-one and in groups, arranged in a manner that is consistent with social distancing. Thoughtful messaging from a non-governmental entity that doesn’t just use faces, but actually takes into account cultural and personal circumstances, is far more likely to encourage incarcerated people to make a fully informed decision. The education could also be provided by an organization such as the widely-known Prisoners for Aids Counseling and Education (PACE) program, which has successfully used peer educators and counselors to provide HIV and AIDS education to the incarcerated population throughout New York State for many years.

In addition, the State should provide information to the family members of incarcerated individuals about the enormous benefits and very small risks associated with the vaccines, as well as how to talk to their family members about the need to vaccinate oneself, particularly in a congregate setting. For many incarcerated people, their family is their most trusted source of information. New York must get its acceptance rates to truly rise if it wants to protect the incarcerated population in our state.

Recommendation 2: New York State must require transparency in DOCCS vaccination reporting.

DOCCS also needs to make its current vaccination rates publicly available. In a recent report by the UCLA Law School about COVID-19 data transparency, *COVID-19 Behind Bars Data Project*, DOCCS received an F.¹⁵ While DOCCS reports the number of COVID diagnoses and number of deaths on its website, it does not publish the number of incarcerated people who have received the vaccine or have been offered the vaccine but refused. We need to see this information broken down by facility, age, and race/ethnicity of the individual, in order to track potential inequities. DOCCS has disclosed the overall rate of vaccines accepted to individual advocates and members of the press, but not to the public as a whole. DOCCS must be required to post this vaccination data on their website at least weekly. Being transparent is an important part of building public trust in both the vaccine process and DOCCS’ overall plans.

¹³ Email from Thomas Maiey, *supra* note 3.

¹⁴CORR. ASS’N N.Y., MORE HARM THAN GOOD: MONITORING VISIT TO FISHKILL CORRECTIONAL FACILITY 4 (Sept. 2020), https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5f9735fcca70f05a7e005051/1603745296024/CANY_FishkillReportDesign-F.pdf.

¹⁵ Erika Tyagi, Poornima Rajeshwar & Liz DeWolf, *Update: Data Reporting & Quality Scorecard, Round 2: New York Scorecard*, UCLA LAW COVID-19 BEHIND BARS DATA PROJECT (Apr. 19, 2021), <https://uclacovidbehindbars.org/states/new-york#scorecard> (noting that the State does not report on COVID tests administered or number of vaccinations given, for either incarcerated people or staff).

It is critically important to the health of incarcerated people, and for the health of our communities, for the State to act without delay to improve vaccine confidence and acceptance among this group of disproportionately affected New Yorkers.¹⁶ Thank you for your time and attention to this matter.

Respectfully,

The Covid Justice Coalition
The Fortune Society
Advancing Health Equity
Latino Commission on AIDS
Center for Community Alternatives
New York Doctors Coalition
Defy Ventures
Housing Works
ACT UP NY
Church of the Heavenly Rest
Network Support Services, Inc.
John Jay College Institute for Justice and Opportunity
Treatment Action Group
Youth Represent
New York Civil Liberties Union
All Saints' Episcopal Church, Park Slope
Center for Court Innovation
A Little Piece of Light
Incarcerated Nation Network
Police Reform Organizing Project
National Action Network
NYC Chapter Second Chance Committee
RevCore Recovery Center
Campaign for Alternatives to Isolated Confinement
Alliance of Families for Justice
Faith @ Work Christian Church
Mobilization for Justice
Treatment Action Group
Release Aging People in Prison
New York Jewish Agenda
Parole Preparation Project
Mott Haven Reformed Church/Children's Haven: A Place of Healing & Hope, Inc.
Amnesty International USA
Center for Appellate Litigation

¹⁶ Marc F. Stern et al., *Willingness to Receive a COVID-19 Vaccination Among Incarcerated or Detained Persons in Correctional and Detention Facilities — Four States, September–December 2020*, 70 MORBIDITY & MORTALITY WKLY. REP. 473, 476 (Apr. 2, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7013a3.htm?s_cid=mm7013a3_w.

Public Issues Committee, LI Council of Churches
RiseBoro Community Partnership
Health Justice
GOSO - Getting Out & Staying Out
Supportive Housing Network of New York
Center for Employment Opportunities
ReEntry Columbia
Transformative-In Prison Workgroup New York
Katal Center for Equity, Health, and Justice
Woman 2 Woman
Healing Communities Network
The Riverside Church Prison Ministry
Center for Law and Justice
Congregation Beit Simchat Torah
Woman 2 Woman

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