

MEMO IN SUPPORT

Contact Tracing Confidentiality A10500-B (Gottfried)/S8450-B (Rivera)

July 2020

The undersigned group of civil rights, health care, and privacy advocates, public defenders, and health care providers urges the New York State Senate and Assembly to pass A10500-B (Gottfried)/S8450-B (Rivera) immediately. The bill explicitly prohibits law enforcement and immigration enforcement agencies and personnel from serving as contact tracers and ensures that contact tracing information stays truly confidential by making it immune from legal process and inadmissible in judicial and administrative actions and proceedings. For contact tracing to work, the public must have complete faith that their personal information will remain private and confidential and that it will not be misused or shared inappropriately. This legislation is critical to the widespread adoption of a contact tracing system and to protect public health. It is also vital to prevent the further negative disparate impact of the global pandemic on communities of color.

Contact tracing is a key public health strategy. All health organizations, including the Centers for Disease Control and Prevention, agree that contact tracing is a critical tool to combat the spread of COVID-19. It is considered a necessary condition for re-opening New York. Indeed, Governor Cuomo has required that New York's regions must each have thirty contact tracers per 100,000 residents in order to begin re-opening. The hope is that contact tracers will stem the spread of COVID-19 by identifying and contacting individuals who have been exposed to the virus and giving them the information and resources they need to get tested and to self-quarantine.

In order to be effective, contact tracing requires widespread participation. The health benefits of contact tracing increase as more people participate, and if participation falls below a certain threshold, contact tracing will not be effective. Optimally, everyone will participate. Community trust is key to effective contact tracing. If individuals fear that participating in contact tracing will expose them or their loved ones to ICE enforcement or criminalization, they will simply choose not to participate.

Contact tracing asks us to provide public health officials with the most intimate details about our lives. Participation means that a person must share their location information, associations, and health information. **If there is any risk that this information can be used by law enforcement or ICE, many New Yorkers will refuse to cooperate with contact tracers.** Without an ironclad privacy guarantee, New York will undermine one of our most important tools in combating COVID-19.

Allowing law enforcement to access - and weaponize - contact tracing data will disproportionately impact communities of color. Black and brown communities are disproportionately likely to suffer from COVID-19 because of a toxic cocktail of socioeconomic factors, physical environment, and barriers to quality health care. These communities also bear the brunt of over-policing generally, and specifically in the enforcement of COVID-19-related social distancing specifically.

The events following the death of George Floyd have laid bare the distrust and fear of law enforcement that is felt so acutely within communities of color. Prior to these events, the coronavirus pandemic was devastating the very same communities with higher infection and death rates, widespread job loss, and lack of sufficient health care. The police immediately weaponized the health crisis against communities of color by abusive and sometimes brutal enforcement of social distancing rules primarily against communities of color. Contact tracing confidentiality legislation is critically important. Communities of color must be certain that participation in this necessary health program will not be weaponized against them.

We have already seen the fear of law enforcement involvement in contact tracing have significant negative effects on public health efforts in Minnesota. There, the police have claimed that they are contact-tracing protesters,¹ and, as expected, there has been reduced participation in contact tracing. Health officials in Minnesota have spoken out about the misuse of data and how it is negatively impacting their ability to do their work. We cannot allow those mistakes to be repeated in New York.

When it comes to contact tracing, the privacy, civil rights, and public health goals are completely aligned. **The public health goal of contact tracing - to stem the spread of COVID-19 - will not be achieved if people do not trust that their information will be protected.** This trust can only be achieved by prohibiting law enforcement and immigration enforcement from accessing contact tracing data and serving as contact tracers. For these reasons, we urge the Senate and Assembly to pass A10500-B/S8450-B immediately.

Sincerely,

Access Now
ACT UP NY
Albany Damien Center
Amida Care
Apicha Community Health Center
Bannon Consulting Services
Bend the Arc: Jewish Action Long Island

¹ See <https://www.cnet.com/news/contact-tracers-concerned-police-tracking-protesters-will-hurt-covid-19-aid/>.

Brooklyn Community Bail Fund
Brooklyn Defender Services
The Bronx Defenders
Brooklyn Community Bail Fund
Callen-Lorde Community Health Center
Center for Appellate Litigation
Center for Community Alternatives
The Center for HIV Law and Policy
Center on Privacy & Technology at Georgetown Law
Chief Defenders Association of New York
Children's Defense Fund-NY
Citizen Action of New York
CNY HIV Care Network
Commission on the Public's Health System
Community Access
Correctional Association of New York
COVID-19 Working Group New York
Demand Progress
Drug Policy Alliance
Evergreen Health
Exponents
Finger Lakes Community Health
Gender Equality New York
God's Love We Deliver, Inc.
Harlem United
Harm Reduction Coalition
Health People
Hispanic Health Network
Housing Works, Inc.
Innocence Project
In Our Own Voices, Inc.
Immigrant Defense Project
JMacForFamilies
Katal Center for Health, Equity, and Justice
Kids For College
Latino Commission on AIDS
LatinoJustice PRLDEF
Legal Action Center
The Legal Aid Society of NYC
The Legal Aid Society of Westchester County

Make the Road New York
MediaJustice
Movement for Family Power
National Working Positive Coalition
Neighborhood Defender Service of Harlem
New York City Anti-Violence Project
New York Civil Liberties Union (NYCLU)
New York County Defender Services
New York Immigration Coalition
New York State Association of Criminal Defense Lawyers
New York State Nurses Association
Onondaga County Bar Assn. Assigned Counsel Program
Planned Parenthood Empire State Acts
Positive Women's Network-USA
Private Citizen
Release Aging People in Prison/RAPP Campaign
Restore The Fourth
Robert F. Kennedy Human Rights
Rural and Migrant Ministry
The Southern Tier AIDS Program
S.T.O.P. - the Surveillance Technology Oversight Project
Treatment Action Group
Trillium Health
Wayne Action for Racial Equality
Westchester for Change
Worth Rises
Youth Represent