

MEMO IN SUPPORT

Contact Tracing Confidentiality A.10500-A (Gottfried)/S.8450-A (Rivera)

June 10, 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 include A.10500-A (Gottfried)/S.8450-A (Rivera) in the package of legislation to be considered during the week of June 8, 2020 and to pass the bill immediately. The bill explicitly prohibits law enforcement and immigration enforcement agencies and personnel from serving as contact tracers and ensures that contract 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 healthcare. These communities also bear the brunt of over-policing generally, and the enforcement of 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 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 include A.10500-A/S.8450-A in the package of legislation to be considered during the week of June 8, 2020 and to pass the bill immediately.**

Signed,

Access Now
ACT UP NY
Bannon Consulting Services

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

Bend the Arc: Jewish Action Long Island
Brooklyn Defender Services
The Bronx Defenders
Brooklyn Community Bail Fund
Callen-Lorde Community Health Center
Center for Community Alternatives
The Center for HIV Law and Policy
Children's Defense Fund-NY
Citizen Action of New York
Commission on the Public's Health System
Community Access
COVID-19 Working Group New York
The Fremont Center
Gender Equality New York
Health People
Housing Works, Inc.
Innocence Project
Katal Center for Health, Equity, and Justice
The Legal Aid Society of NYC
MediaJustice
Neighborhood Defender Service of Harlem
New York Civil Liberties Union (NYCLU)
New York County Defender Services
New York State Association of Criminal Defense Lawyers
Positive Women's Network-USA
Robert F. Kennedy Human Rights
S.T.O.P. - the Surveillance Technology Oversight Project
Treatment Action Group
Westchester for Change