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December 13, 2022

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

RE: Letter in Support of S.2144 (Sepulveda) / A.2441 (Aubry)

Dear Governor Hochul:

The Chief Defenders Association of New York (CDANY) urges you to sign [S.2144/A.2441](#), which has passed both houses of the legislature. The bill would modernize the definition of mental illness in the NYS Correction Law.

CDANY is a membership organization of appointed Public Defenders, Conflict Defenders, Executive Directors of non-profit public defense offices, and Administrators of Assigned Counsel Panels throughout New York State. Our organizations collectively provide the mandated service of indigent representation to close to 400,000 people annually in New York's criminal, family, and appellate courts. We are the voice of the defender organizations that are the fulcrum upon which the integrity of the criminal legal and family court systems rest.

CURRENT LAW

Section 137 of the Correction Law relies on an outdated definition of "serious mental illness" that was agreed upon by lawyers as part of a civil settlement in [Disability Advocates, Inc. v. NYS Office of Mental Health](#) (2007).

This definition does not comport with the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM 5) that was not published until 2013.

Chief Defenders Association of New York

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PROPOSED AMENDMENTS

S.2144/A.2441 would replace the outdated definition of “serious mental illness” in the Correction Law, instead tying it to the definition of the term in Mental Hygiene Law § 1.03(52) which flexibly relies on the “most recent version” of the DSM.

The Mental Hygiene Law defines a person with serious mental illness as “individuals who meet criteria established by the commissioner of mental health, which shall include persons who are in psychiatric crisis, or persons who have a designated diagnosis of mental illness under the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and whose severity and duration of mental illness results in substantial functional disability. Persons with serious mental illness shall include children and adolescents with serious emotional disturbances.” § 1.03(52).

JUSTIFICATION

Incarcerated people should not be subject to a more limited and outdated definition of the term “serious mental illness” than other New Yorkers. This bill is an overdue improvement that will unify the definition of serious mental illness in both the Correction Law and the Mental Hygiene Law in line with recent changes in scientific understanding of mental illness.

By tying the definition to the most recent version of the DSM, the bill ensures that the definition evolves with the science. Unlike the definition in the Correction Law that was crafted during the negotiations in a settlement agreement by lawyers, the definition in the Mental Hygiene Law relies on the professional opinions of clinicians.

This bill will ultimately protect more New Yorkers suffering from mental illness from the trauma of solitary confinement. Correction Law §137 governs the HALT Solitary Confinement law restricting who can be placed in solitary confinement in New York’s jails and prisons. The intent of the HALT law was to protect New Yorkers who are most vulnerable to the trauma of solitary confinement, especially people living with serious mental health concerns who face the highest risk of self-harm and suicide while subject to solitary confinement. For the legislative intent of HALT to be realized, the definition of serious mental illness must comport with the most recent science.

For these reasons, we urge the Governor to sign S.2144/A.2441 into law. If you have any questions about our position, please contact CDANY Legislative Co-Chairs Lorette Mulry (lmulry@sclas.org) or Andrea Nieves (anieves@nycds.org).