



Disability Rights
WASHINGTON

March 27, 2020

The Honorable Jay Inslee
Office of the Governor
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Dear Governor Inslee:

We write to thank you for your leadership in taking swift and aggressive action to slow the spread of the COVID-19 virus in Washington State. Your executive Orders to protect our communities, particularly those who are most vulnerable to infection from the virus, will undoubtedly save lives. We also write to urge you to take similarly bold action to protect those Washingtonians who are living in our state's prisons and jails and who are therefore at heightened risk of COVID-19 infection. We understand that these discussions are already underway in your office and it is our hope that you will consider issuing the enclosed draft executive order to rapidly address the rising risks in our correctional facilities.

As you know, there is a consensus among public health officials that the SARS-CoV-2 pandemic and the transmission of COVID-19 pose an enormous and potentially catastrophic risk to people and staff in correctional facilities.¹ In recent days, Governors in at least six other states have taken action to start releasing incarcerated people who are most at risk.² Dozens of local

¹ See <https://news.un.org/en/story/2020/03/1060252> (United Nations UN High Commissioner for Human Rights Michelle Bachelet urging Governments "not to forget those behind bars" and calling for release for those most vulnerable to COVID-19); Dr. Brie Williams, Director of AMEND, "COVID-19 in Correctional Settings: Immediate Population Reduction Recommendations" (March 24, 2020); <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap> (citing Tyler Winkelman, a researcher on prison health policy, calling for release to limit COVID 19 danger); <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html> (Dr. Amanda Klonsky, educator and activist, calling for releases).

² See, e.g., <https://www.mainepublic.org/post/maine-doc-will-consider-some-prisoners-release-prevent-spread-coronavirus> (Maine); <https://www.sltrib.com/news/2020/03/26/utah-prison-officials/> (Utah); <https://www.thedickinsonpress.com/news/crime-and-courts/5009882-North-Dakota-paroles-56-prisoners-early-amid-pandemic-including-3-convicted-of-sexual-assault> (North Dakota); <https://www.timesrepublican.com/news/todays-news/2020/03/iowas-prisons-will-accelerate-release-of-approved-inmates-to-mitigate-covid-19/> (Iowa); <https://www.vnews.com/Vermont-NH-prisons-working-to-reduce-population-to-prevent-virus-spread-33512589> (Vermont).



jurisdictions, both within Washington and across the country, have taken steps to decrease the number of people being held in jails, through diversion and pre-trial release.³ Just yesterday, the United States Bureau of Prisons announced it was assessing vulnerable incarcerated people for potential release.⁴ Similar actions are needed here in Washington.

A decisive, swift, and coordinated statewide response by all stakeholders in the criminal legal system is needed to save lives and protect incarcerated people, staff, and the public at large from the threats posed by COVID-19. Without action by your office, this will not happen.⁵

There is strong public support for dramatically reducing jail and prison populations to slow the spread of the coronavirus. Sixty-six percent of likely voters, including 59% of those who are “very conservative,” said that elected officials should be considering measures to reduce populations in prisons and jails as a response to coronavirus.⁶

One of the biggest impediments to an effective response is the fact that our state’s criminal legal system and courts are decentralized and made up of dozens of agencies and thousands of individual decision makers. Allowing each of these stakeholders – from police and prosecutors to judges, Sheriffs, and supervision agents – to implement responses to this public health crisis in an inconsistent or case-by-case fashion will inevitably lead to inequity across jurisdictions, delay, confusion, misallocation of resources, and – most importantly - preventable deaths.

Infections and deaths will likely disproportionately impact people of color who are overrepresented in Washington’s jails and prisons. People of color are also disproportionately represented among vulnerable populations with diabetes, heart disease, respiratory disease, and other conditions with COVID comorbidity.⁷

³ See, e.g., <https://www.usatoday.com/story/news/politics/2020/03/26/jails-free-hundreds-prisoners-stop-coronavirus/5077204002/> (listing numerous local jurisdictions, including Ohio and California jails, who have decreased their population in response to COVID-19); https://tncourts.gov/sites/default/files/docs/order_-_2020-03-25t120936.486.pdf (reducing jail population in Tennessee); https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf (New Jersey jails).

⁴ <https://abcnews.go.com/Politics/ag-william-barr-pushes-expansion-home-confinement-reduce/story?id=69816504>.

⁵ Even in the face of positive tests from prison staff and numerous quarantined units across the state, the Department of Corrections has made no effort to decrease its population in order to respond to this crisis, despite being at 100% capacity. See <https://www.doc.wa.gov/docs/publications/reports/100-QA001.pdf>. In fact, as a result of some local jails refusing to hold people under DOC’s jurisdiction, the prison population is now increasing as people found to have violated conditions of supervision in the community are being transferred to the prison instead of being held in local jails, thereby increasing both the prison population *and* the likelihood of introducing the virus from the community.

⁶ <https://www.dataforprogress.org/memos/fighting-coronavirus-with-decarceration>.

⁷ Approximately 40% of the nation’s incarcerated population suffers from at least one chronic medical condition, with those rates rising among incarcerated people of color. See https://www.vera.org/downloads/Publications/on-life-support-public-health-in-the-age-of-mass-incarceration/legacy_downloads/on-life-support-public-health-mass-incarceration-report.pdf.



You are in the unique position to mandate a coordinated response that brings multiple system actors together by offering clarity, consistency, and vision with a plan rooted in the guidance of public health experts and informed by the racial disparities rampant across our criminal legal and healthcare systems. We believe that you have the power to take broad action under RCW 43.06.220(2) to issue the directives outlined below, as well as waive any statutory limitations that may impede those directives. There are three steps you could take right now to forcefully address the SARS-CoV-2 pandemic and limit the spread of COVID-19 among some of our most vulnerable communities:

- 1. Release vulnerable people in state correctional facilities.** Use your clemency powers, including your power to call an emergency clemency session and to issue such orders, to begin a process of immediate release for all people who belong to populations identified by the CDC as particularly at-risk – older people, people with underlying health conditions or who are otherwise immune-compromised, and pregnant women – whose sentences would end in the next two years, anyway. Direct the DOC to work with DSHS and community service providers to link people to needed community based services including housing, medical care, and supports.
- 2. Reduce overall population in state correctional facilities.** Using those same powers, begin a process of immediate release for anyone whose sentence would end in the next year and those serving life without parole who were not included in SB 5288 (removing Robbery 2 from the list of three strike offenses). Direct the Department of Corrections to utilize existing policy to release people to Graduated Reentry, Extraordinary Medical Placement, or Temporary Furlough, as applicable. Direct that the accrual rate for earned time be reinstated to 33% for all people, regardless of offense, in order to incentivize good behavior and release those who are at low risk of recidivating.⁸ Carceral facilities make social distancing impossible and are not built or prepared to fulfill the medical need associated with COVID-19; taking these steps will decrease the population so that the Department can respond more effectively against the virus.
- 3. Reduce vulnerable and overall populations in local correctional facilities.** Direct local stakeholders, including community corrections and police, prosecutors, and judges overseeing criminal matters to take all possible steps to reduce the intake of people into state and local custodial settings, immigrant detention facilities, or other carceral environments. This includes stopping community custody violations for all but the most serious offenses, ending arrests for low-level offenses and issuing citations in lieu of arrest for other offenses, temporarily suspending the use of cash bail to hold people pretrial, limiting pretrial detention entirely except in those very rare cases where it is

⁸ This recommendation was identified by the Concerned Lifers Organization at the Monroe Correctional Complex.



the least restrictive means to ensure community safety, and setting conditions of release that allow people the freedom to seek medical help or care for loved ones who have COVID-19.

Respectfully, the time for action is now. This pandemic is here and has already made its way into our state's prisons and jails. In light of your swift action in relation to protecting our communities from this virus, we are hopeful you will take similar action to protect our incarcerated population and issue the draft Executive Order that is attached to this letter to immediately address this crisis head-on.

Sincerely,

s/ Michele Storms
Executive Director
ACLU of Washington

s/ Heather McKimmie
Director of AVID Program
Disability Rights Washington

s/ Jaime Hawk
Legal Strategy Director, Smart Justice
ACLU of Washington

s/ Rachael Seevers
AVID Program Attorney
Disability Rights Washington

s/ Ethan Frenchman
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Enc. [Executive Order](#): Controlling COVID-19 Transmission and Mortality by Reducing Certain Populations in State and Local Correctional Facilities