

OPEN LETTER TO OUR NATION'S GOVERNORS

July 17, 2020

Being confined in a prison or jail should not be a death sentence. Yet, in the context of COVID-19 that is exactly what it has become for far too many. Over the past few months, the threat COVID-19 poses to those incarcerated, as well as the corrections and medical staff who work in prisons, and the broader communities they live in, has become gravely apparent. The close quarters of jails and prisons, with crowded, unhygienic conditions and inadequate access to sanitation and hygiene procedures, have generated [catastrophic and widespread outbreaks](#) of the novel coronavirus in facilities across the country. In fact, [nine of the ten](#) biggest hot spots in the United States are now jails or prisons. And some facilities are seeing outbreaks that have spread across the [vast majority](#) of the population – as well as into the surrounding community.

As elected prosecutors, we are on the frontlines of the criminal justice system's battle with the novel coronavirus. We [acted swiftly](#) to reduce the unnecessary detention of people in local jails and mitigate the severity of devastating outbreaks on those housed there, those who work there, and our larger communities. Many of us immediately sought to stem the flow of cases into the justice system – Baltimore City, MD State's Attorney Marilyn Mosby stopped prosecuting drug possession, prostitution, and trespassing, among other offenses. Kings County (Brooklyn), NY District Attorney Eric Gonzalez [pledged to stop prosecuting low-level offenses](#) that don't jeopardize public safety. Others quickly endeavored to reduce the population of densely-housed facilities. San Francisco, CA District Attorney Chesa Boudin [implemented a variety of responses](#), including immediately recommending release of those with 60 days or less left on their sentence in certain kinds of cases, reviewing cases of all detained people over age 65 for possible sentence modifications, and only filing new cases where immediate intervention is required. As a result, the jail population [declined](#) nearly 25% during the month of March, and [40%](#) from January through March. Ramsey County (St. Paul), MN County Attorney John Choi worked with local stakeholders to obtain court orders [enabling the release](#) of all those considered medically vulnerable or serving certain low-level offenses from jail, resulting in a 52% reduction in the local jail population in two weeks. And these leaders are not alone. Across the country, elected prosecutors and local officials are successfully working together to reduce jail populations. According to the Prison Policy Initiative, as of mid-May, these efforts resulted in jails that had [substantially reduced their populations](#) since the onset of the pandemic, with a typical decrease of more than 30 percent. These efforts have had lifesaving results: an [ACLU projection](#) estimated that by reducing statewide jail population by 31% as of April, Colorado potentially reduced its projected deaths by 25% – thereby saving approximately 1,100 lives.

But the story is [not the same for prisons](#). While steps taken at the local level have helped drive down jail populations and reduce the public health risk they pose to communities, state prison populations have largely remained stagnant despite the spread of COVID-19 behind bars. A recent analysis concluded that prisons across the country have only reduced their population by [5%](#). Of the [84,000 coronavirus infections and 703 deaths](#) among people incarcerated and

working in federal, state and local correctional facilities in the United States, *over half* of those cases are in state prisons. And *over* and *over* again, rural areas have become national coronavirus hotspots as infections explode within state prisons and then spread into the community.

Even more concerning is evidence suggesting that [testing is far too limited to capture the full extent of the virus's spread in prisons](#). As is true with the broader population, testing within prisons remains inconsistent and often scarce. Significantly, those states that have conducted mass testing in prisons have seen infection rates soar. In North Carolina, for example, prison officials tested all incarcerated people and staff in the state's Neuse Correctional Institution and found that [at least 65 percent](#) of those incarcerated were infected. In San Quentin Prison in California, over 1400 incarcerated people, or one third of the population of the prison, have tested positive. Reported rates of COVID-19 in state facilities that conducted mass testing were as high as [80 percent](#).

As states and localities explore ways to safely reopen, Governors and state correctional leaders must *act now* to prevent our prisons from exploding as reservoirs and accelerants of mass infection and further shattering efforts to flatten the curve. While the risk of infection is growing daily, state leaders can still adopt measures *now* to meaningfully mitigate outbreaks. All Governors are constitutionally endowed with the authority to immediately release people from prison through a variety of mechanisms, including grants, pardons and reprieves. We urge Governors to exercise their power as is constitutionally appropriate and for them to work with state correctional heads to collectively implement the following measures:

1. Order the Immediate Release of Elderly and Medically Vulnerable Individuals and Those Near the End of Their Sentence. Orders should be issued to provide for the immediate release of **elderly individuals** – at a minimum those over 60 years of age – as well as those who have **six months or less** on their sentence, and those who are immunocompromised or who are [otherwise medically vulnerable](#) to severe illness from COVID-19, assuming they do not pose a serious risk to the physical safety of the community. In addition, Governors should implement steps to:

- **Accelerate release** for all those already found suitable for parole,
- **Expedite hearings** on individuals eligible for parole,
- **Expedite** and address **pending commutation applications**, and
- **Suspend revocations for technical violations** of probation or parole.

2. Provide Safe and Hygienic Reentry and Transitional Housing for those being released from prison by housing released individuals in available hotels and safe vacant buildings. Governors should also put in place additional **reentry supports**, including the following:

- **Expand funding and resources for housing and re-entry** service providers and **remove barriers** to housing, including restrictions on public housing,
- If there is a risk that a person has been exposed to COVID-19, **fund a 14-day quarantine at a hotel or in safe housing** with appropriate facilities,
- Ensure that upon release formerly incarcerated individuals are **provided at no cost adequate supplies and vital social services** necessary for a safe transition, and
- Support the move of probation and parole check-ins to **telephone and/or video communication**.

3. Ensure the Physical and Mental Health of Correctional Staff and Incarcerated People During the COVID-19 Pandemic through the following:

- **Suspend co-pays** for medical visits,
- Ensure that the state Department of Corrections regularly provides incarcerated individuals and the public **with up-to-date information about the steps facilities will take to respond to an outbreak and symptoms**; such information should be provided in multiple languages,
- Direct state corrections officials to gather and distribute **free personal protection gear, free sanitation and hygiene products, and information regarding COVID-19** and the state of the pandemic inside the prison, across the country, and around the world, as well as up-to-date information on how to prevent transmission, to individuals who are incarcerated,
- Ensure **facilities maintain cleanliness and hygiene** in order to adequately protect the health and well-being of those who are housed there, and
- Arrange for **no-cost, frequent communication with family members** and loved ones throughout the crisis.

While we understand the extreme pressure COVID-19 is placing on all elected leaders, we urge our nation's Governors to follow our lead and immediately reduce prison populations, as outlined above, while also protecting those who are in no position to protect themselves. We stand ready to assist in whatever way we can and appreciate consideration of these proposals that are integral to saving lives – both behind bars and in our broader communities.

Sincerely,

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