



Friday 27 March 2020

Governor of Ohio Mike DeWine
Director Amy Acton, Ohio Department of Health
Director Annette Chambers-Smith, Ohio Department of Rehabilitation and Corrections
Director Ryan Gies, Ohio Department of Youth Services

cc: Legislative members of the Correctional Institutions Inspection Committee

Re: Reducing Incarcerated Populations Immediately

Dear Governor and Directors,

We are writing to strongly urge you to immediately order the reduction of state and local incarcerated populations with all deliberate speed due to the extreme, foreseeable risk COVID-19 poses to incarcerated youth and adults, to the staff in those institutions, and to all Ohioans. Under Ohio law, there are several legal methods, identified below, that you can use to quickly release certain members of these populations. We are ready to work with your administration in whatever way is helpful to safely reduce incarceration numbers as much as possible, making sure that any orders are focused on releasing those with a lower risk of recidivism and those with a higher risk of infection. We also urge you to work with state agencies, local governments, and nonprofits to provide adequate supports to those who are released.

Your bold leadership thus far and what is still needed

We have been grateful for your daily press briefings and the several bold orders since March 14th, from both Governor DeWine and Director Acton, to do whatever it takes to reduce the spread of COVID-19 and prevent overwhelming Ohio's health systems. In less than two weeks, we have seen you close businesses and prohibit gatherings that would in any way bring together large groups of Ohioans.

We are also grateful for Chief Justice O'Connor's recent encouragement to local judges to minimize their reliance on incarceration. We also have noted everything DRC and DYS have done to minimize the spread of the virus while preserving humane conditions for incarcerated people, including suspending medical co-pays, allowing for limited free phone and video calls, limiting the number of outsiders coming in and out of the facilities, and monitoring incarcerated people and staff for symptoms. And, most recently, we applaud the decision of [DRC](#) and [DYS](#) to heed our call for transparency regarding the incidence of COVID-19 in their institutions.

Yet, there has been no **state-level order to directly reduce jail, prison, or youth-detention populations. This is perhaps the most critical step** needed to reduce the likelihood that their internal health systems will be overwhelmed and allow for more housing flexibility to quarantine infected people as needed. This glaring inaction is particularly worrying because of the health evidence you are no doubt already aware of: **incarceration settings are ideal for rapidly amplifying infectious disease and then spreading it to the surrounding community.** First, people in prisons, jails, and youth detention already start from, on average, worse health statuses. Second, they are in conditions which make it virtually impossible to practice social distancing. And, third, the healthcare available in DRC, DYS, jails, and local youth detention is often severely limited. These are the perfect conditions for COVID-19 to spread like wildfire. And if it does, it will certainly put an excess burden on health systems in the outside community and increase the spread of the virus to the outside community.

We note that some local judges, probation departments, sheriffs, police, and bar associations, and have taken **rapid, assertive steps to decrease their local jail populations.** For example, as of this past Tuesday, the Cuyahoga County jail was down to 1,199 incarcerated people, *the lowest level in the facility's history*, and well below that jail's capacity of 1,765.¹ That was down from about 2,000 only a month before, **a decrease of 40%**. As of this past Tuesday 24 March, the Hamilton County jail was down to 943 and moving lower.² That is down from a recent all-time high of 1,600, **a decrease of 41%**, yet still above that jail's capacity of 848.³ Without any system for consistent, regular, statewide reporting on jail populations, we have no idea whether these headline examples are representative of Ohio's other 86 counties or whether dangerous overcrowding persists in Ohio jails. Nonetheless, these two examples show that **safe, large-scale decreases in incarceration are practically and politically possible.**

Tools for rapid, responsible, effective action

Below are several legal tools available to you to safely reduce DRC, DYS, and local jail populations as quickly as is necessary for the current crisis. They are not mutually exclusive, but vary in their effectiveness to achieve the public-health goals we all share.

Director Acton issuing another emergency order (R.C. 3701.13). This is the most preferable tool for two reasons: it can apply to all relevant incarceration institutions at once (DRC, DYS, community corrections, halfway houses, local jails, local juvenile detention, and the like); and it can be most flexibly tailored to maximize the incarcerated people who can be safely released. The relevant consideration should be the incarcerated person's lower risk for recidivism or their high risk for contracting COVID-19 (because of age and pre-existing health conditions). It is important *not* to make arbitrary exclusions based on people's underlying offenses because that would

¹ Allard, Sam, "Cuyahoga County Jail Population at Lowest Level in History...", *Cleveland Scene*, 20 Mar. 2020, <https://bit.ly/2vRAAd7h>; see also, "Counties Reduce Jail Populations During Outbreak," *Gongwer*, 26 Mar. 2020.

² "Jail population under 1K, on a 'downward trend' to prevent spread of coronavirus, sheriff says," *WXIX Fox19 (Cincinnati)*, 24 Mar. 2020, <https://bit.ly/2UkzEfd>.

³ Rogers, Alexis, "Hamilton County sheriff addresses jail overcrowding," *WLWT NBC5 (Cincinnati)*, 1 Nov. 2019, <https://bit.ly/3bpDBFx>.

ignore what both criminology and epidemiology tell us are the people who can and must be safely released.

Governor DeWine declaring an overcrowding emergency in state prisons ([R.C. 2967.18](#)). This would only apply to DRC institutions and requires several procedural steps to follow, including consultation with the bicameral Correctional Institution Inspection Committee. It does not allow the emergency order to release some people based on the type of offense they committed, even if it was many decades ago, rather than according to their low recidivism risk or high infection risk. Nonetheless, using this tool would relieve some pressure on DRC's institutions, allowing them to more safely quarantine incarcerated people who test positive or are strongly suspected of having the disease.

Governor DeWine ordering the Ohio Parole Board to revisit recent parole-release denials and speeding up pending considerations. Again, this would apply only to DRC prisons. The parole board has often been overtaxed with high caseloads and little staff support to process the many cases in front of them. Many parole-release denials cite only the "seriousness of the offense" as the reason for denial, with little to no consideration of the parole applicants' record of rehabilitation. If there was any time to end this counter-productive practice, it is now. The parole board may need extra resources and personnel to identify and process the appropriate body of cases.

Director Chambers-Smith submitting as many "80% release" requests as possible to sentencing courts ([R.C. 2967.19](#)). Again, this is only applicable to the state prison population. It may require extra staffing for DRC to identify and process those eligible for this release.

Governor DeWine accelerating and increasing the use of his commutation powers ([R.C. 2967.04](#)). Working with the Ohio Parole Board, the governor could work to identify and speed up the consideration of deserving commutation applicants.

Other tools. Release of medically incapacitated people ([R.C. 2967.05](#)) seems ill-suited to the present crisis because it would require someone to already have COVID-19 and be on the brink of death before they could be released — far too late to prevent the virus's spread in prison. We also hope judges, defense attorneys, and prosecutors will take Chief Justice O'Connor's encouragement to heart and maximize the use of judicial release ([R.C. 2929.20](#)). But that will diffuse responsibility for reducing incarceration to myriad local actors — something Governor DeWine and Director Acton have not done in any other public context thus far.

Support upon release

Once you take the necessary steps to safely release as many incarcerated youth and adults as possible, it is critical to make some provision for them to live on the outside. Thankfully, Ohio has been a national leader in investing in local reentry offices and coalitions — networks of public, nonprofit, and faith-based entities serving people released from some form of incarceration. These networks must be activated and resourced like never before to maximize public safety and public health when you release a large cohort of currently incarcerated people using the tools identified above. Wherever possible, we urge you to make

currently available financial and health benefits (through the Department of Job and Family Services) as quickly and easily available as possible for those released.

We also note that several of the mechanisms identified above require released people to be automatically put on probation, parole, or some similar form of supervision. This will likely require more resources and staffing for supervision offices to do their jobs effectively. We strongly encourage you to direct those offices to follow the best available evidence in setting supervision conditions that are focused on helping the released person succeed in the community, and not overburdening them with arbitrary, counter-productive restrictions. Given the highly fractured and overlapping nature of probation and parole in Ohio, this would be an important time to create greater statewide consistency in the administration of correctional supervision.

Let's continue to protect Ohio, together.

Thank you again for the numerous steps you have already taken to protect the health of incarcerated Ohioans – for their own sake and for the sake of the entire community. There is no time to lose in taking the next necessary step: responsibly and safely reducing incarcerated populations, and supporting those who are released. We stand ready to assist you in any way we can to make this possible. Lives are on the line.

Sincerely,

Jocelyn Rosnick, Policy Director
Gary Daniels, Lobbyist
ACLU of Ohio Foundation

Prentiss Haney, Executive Director
Ohio Organizing Collaborative

Hannah Halbert, Executive Director
Piet van Lier, Researcher
Policy Matters Ohio

Erika Anthony, Executive Director
Stephen JohnsonGrove, Strategy Director
Ohio Transformation Fund