



March 19, 2020

SENT VIA EMAIL

Governor Kate Brown
900 Court Street, Suite 254
Salem, OR 97301

RE: Preparation and Precautions for COVID-19 in Oregon's Criminal Justice System

Thank you for taking necessary steps to protect the public from the COVID-19 pandemic. We, a broad coalition of community-based organizations, legal services providers and concerned stakeholders with expertise in the criminal justice system, urge you to take similar steps to protect people working in and in the custody of state correctional facilities, juvenile facilities and local jails. COVID-19 outbreaks in Oregon prisons and jails have the potential to spread like wildfire and the effects could be especially devastating – even turning a prison sentence into a death sentence for some.

While every aspect of the criminal legal system must be considered – from policing, prosecution and pretrial hearings, sentencing, and confinement, to release from custody – the most effective approach to protect Oregonians in this large system is to prioritize your focus in two areas: 1) preventing entry and diverting individuals from custody in correctional facilities and jails; and 2) releasing as many currently incarcerated people as possible back into the community with proper supports to remain healthy, especially members of vulnerable groups. These releases should be done with consideration for public safety and coordinated with local and state public health agencies, community corrections, reentry and social service providers, and housing programs to ensure that individuals leaving custody are well supported to remain healthy.

Approximately 14,000 Oregonians are currently incarcerated in our state prisons, and thousands more are held in and churning through our jails. The environments in these facilities are highly conducive to a widespread outbreak of COVID-19. People in custody live in close

proximity to each other with no options to stay away from others who are sick. Many are housed in large dormitories with shared bathrooms, living quarters and communal areas. People in prisons and jails are often denied or do not have easy access to adequate soap and cleaning supplies, making infection control nearly impossible. This environment is high risk for prison and jail staff as well as those who are incarcerated.

The age and high-risk health status of incarcerated people increases the likelihood that COVID-19 in these facilities will be severe and particularly deadly. A 2012 study by the ACLU found that Oregon had the ninth largest population of elderly prisoners in the United States, despite being only the 27th largest state by population. This is the very demographic that doctors say is particularly at risk from COVID-19, along with people with certain pre-existing health conditions. Research shows people in prison and jails are generally sicker than people outside, with higher rates of conditions such as asthma, diabetes, and heart problems. The Oregon Department of Corrections has identified at least 1,400 adults in their custody who are over 60 years old, are immunocompromised, or have comorbid medical conditions. We can assume that the jail populations, which have a much higher churn rate than prisons, have similarly high rates of people in their custody at any given time who are at highest risk if exposed to diseases like COVID-19.

The custodial environments, the characteristics of those incarcerated, and the highly infectious and lethal nature of COVID-19 are a formula for a quick and drastic strain on the state's medical system and grave impacts on Oregon communities – affecting the health and lives of many incarcerated people, officers and staff, and their loved ones.

All of us, and especially those in positions of leadership in the legal and prison systems, have a duty to address this issue directly and expeditiously to protect our communities and prevent harm.

We are calling on you, Governor Brown, to take swift action to protect those working and living in our correctional facilities and jails and to slow the spread of COVID-19. In our call-to-action, we request the creation of a COVID-19 Public Safety Task Force and to issue an executive order focused on COVID-19 and Oregon's criminal justice system.

COVID-19 PUBLIC SAFETY TASK FORCE

We request that you create an executive task force composed of the undersigned coalition members, senior staff from your office, and other experts, including directly impacted people (i.e., someone who is formerly incarcerated) or stakeholders, as is necessary. This task force will meet weekly (telephonically or by video) with two priorities:

1) Work with agencies, public officials, and community members to implement recommendations articulated by this coalition (see letters to Ossa, Chief Justice Walters, ODOC, and ODAA). The task force will be briefed regularly by the agency leaders and public officials in the criminal justice system about their policies, practices, and plans from arrest through reentry regarding COVID-19; monitor the effectiveness of these protocols; and advise you as needed to encourage coordinated and effective efforts to protect the health of Oregon communities.

2) Compel and oversee expedited processes for the safe release of people incarcerated in state prisons and jails. Oregon's Constitution and statutes include mechanisms that allow the governor, the Department of Corrections, and the Board of Parole to release individuals into the community under supervision who no longer pose a public safety risk.

Examples, in brief, of mechanisms that can be acted on immediately include:

- **Commutation.** The governor's clemency powers flow from Article V, Section 14 of the Oregon Constitution and grant plenary power to reduce the legislatively created and judicially imposed consequences of criminal convictions. The Oregon Constitution explicitly identifies three types of clemency actions the governor may take: pardons, reprieves, and commutations. A commutation replaces the original sentence with a lesser one. For example, the governor can commute the sentences of those incarcerated to supervision in the community. Acts of clemency are not tied to findings of factual or legal innocence, nor do they imply innocence. Rather, they are discretionary acts a governor can take or not take at their sole discretion.
- **Expedite review of current commutation applications.** Your office can immediately address the commutation applications that are currently before you and grant the many worthy applications promptly.
- **Compassionate Release.** With the coordination of your office, the Department of Corrections, and the Board of Parole, can grant early release under ORS 144.126 (Advancing release date of prisoner with severe medical condition including terminal illness or who is elderly and permanently incapacitated) and ORS 144.122 (Advancing initial release date) of those incarcerated in prison who are especially susceptible to devastating consequences of being infected with COVID-19 because of their age and fragile medical conditions.
- **Board of Parole advancing release dates.** The Board of Parole can advance the release dates of those who have an exit interview or prison term hearing in 2020 and 2021 and use expeditious processes available, such as the file-pass procedure.

More on Commutation Considerations:

There should be a particular focus on the 1,400 prisoners whom ODOC has identified as being over 60 years old, immunocompromised, or having comorbid medical conditions. This population is vulnerable to becoming seriously ill, having serious complications, and requiring more medical care with COVID-19. Releasing this vulnerable group from prison and similar groups of individuals from jail will reduce the need to provide complex medical care or transfers to hospitals when the medical system is already strained and possibly prevent deaths.

There should also be a focus on people in jail and prisons who have release dates in 2020 and 2021 and assessing whether they can be released immediately. Their release will limit overcrowding and free up beds in facilities that will be needed to care for the sick.

Lastly, there should be an expedited screening and review process for those who would otherwise be good candidates for commutation. These individuals are those who have demonstrated rehabilitation and can be safely released back into the community.

ISSUE AN EXECUTIVE ORDER

We request that you issue an executive order that includes the following:

- Guidance to local and county officials directing them to significantly reduce their jail populations, both by limiting the number of people coming into them, as well as releasing as many people as possible back into the community. Decreasing the overall jail population will provide the flexibility that will be needed in these facilities to address the coming health crisis within their walls. There are numerous mechanisms under Oregon law for county officials (Sheriffs, Circuit Court Judges, and District Attorneys) to release individuals in local jails.
- A commitment to support and provide resources to county reentry and social services providers, treatment and housing programs, and community health clinics to ensure that individuals leaving custody receive an appropriate continuum of care and support. Funding should be disseminated in an equitable manner and should require recipients to provide services without discrimination based on race, color, religion, sex, gender identity, sexual orientation, or national origin.
- Urge a hold to all new state prison sentences if delaying the sentence would not pose an unreasonable risk of safety to a specific person or persons.
- Guidance to release all people held on probation and parole technical violations. And, put a halt on future custodial sanctions by Parole and Probation.
- A commitment to make transparent and accessible all agencies' policies for handling COVID-19 within each facility. Insist that ODOC adequately and openly address how they will care for people who are incarcerated and ensure that this information is provided to an incarcerated person in that person's primary language.
- A commitment to lift or subsidize the cost of all fees for calls from institutions to family members. As ODOC has temporarily halted visits to people who are incarcerated, it is critical that these individuals be able to communicate with their family members and loved ones. All phone calls made by those who are incarcerated to their family members and loved ones should be made free during such time as family visits are limited. Additionally, a commitment to lift restrictions for all legal calls so that individuals in custody can access legal services.
- Guidance to the ODOC, Oregon Youth Authority, and jails to refrain from cooperating with ICE so individuals are not released into ICE custody, are not held on behalf of ICE nor anyone's release is delayed as a result of an ICE request.

Governor, we know how seriously you take your duty to protect the lives of people living and working in Oregon's prisons and the surrounding communities. As you know, the health, well-being and indeed the lives of these people are in your hands. We urge you to take immediate and decisive action now to save lives. We will support you in taking bold, but necessary, action

now to protect the health of every Oregonian, especially our most vulnerable community members.

Sincerely,

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