



March 18, 2020

Governor Larry Hogan
100 State Circle
Annapolis, Maryland
21401-1925

RE: Executive Order to protect health and safety of Marylanders in our places of detention

Dear Governor Hogan,

We write to urge you to take immediate action to address the significant risk of COVID-19 associated with people in detention and employed in Maryland's prisons and jails. It is widely acknowledged among public health experts that people in prisons and jails are particularly vulnerable to the spread of the virus, and yet least able to protect themselves without state action.

To date, the State has provided little to no information about steps to protect the spread and impact of COVID-10 as to Marylanders incarcerated and employed in our prisons and jails, other than eliminating visits. Persons confined in prisons and jails are uniquely vulnerable to the coronavirus because of the inability to practice social distancing, lack of adequate sanitation, and the constant influx of new people from outside. **In courts around the State, your silence on the health and safety in people in jails and prisons is being cited by prosecutors to argue for the continued detention of pre-trial defendants, in contravention of clear public health standards.**

Just as is the case in the non-incarcerated community, every moment and every opportunity to avoid the spread of the virus, and to mitigate the risks it poses to the most vulnerable, is critical. Likewise, people who are at greater risk for contracting and becoming seriously ill from COVID-19 – older adults, individuals with serious chronic medical conditions, and those who are otherwise immune-compromised – are among those in Maryland prisons and jails. And the lack of adequate medical care in such facilities creates the perfect storm for harm when the virus enters them.

We offer specific proposals that are grounded in public health, common sense, and appropriate legal authorities. Many of these proposals have been adopted in jurisdictions around the country and/or have been proposed by Maryland residents and leaders in the past weeks. We urge you to issue an executive order that:

1. Unequivocally rejects baseless claims that people are safer in jails and prisons than in the community.

Public health officials have advocated for reducing detained and imprisoned populations for whom confined space, restriction of movement, and limited access to healthcare amplifies the introduction and spread of the virus.

2. Urges all law enforcement and correctional agencies, state's attorneys and members of the judiciary to take every step possible to avoid adding to the number of people incarcerated in any kind of detention and to expedite any steps to reduce the number of people, particularly those at risk of serious illness or death if they contract the virus; Examples of feasible steps include:

State's Attorneys: To avoid needless pretrial incarceration, and for individuals at high risk and those with lesser offenses, SAOs should dismiss charges, allow the person charged to be released, and refile them (if they choose) at a later date.

Law enforcement: Agencies with arresting authority should limit arrests and detentions and should forego arrests for minor offenses or issue citations in lieu of arrest so that people can return home, balancing the need for arrest with the overwhelming public safety concerns presented by coronavirus and limiting the risk of bringing someone who may have the virus into a station.

Courts: Courts can clarify that any hearing that can result in someone's release from prison/jail, such as successive bail reviews and modification of sentences, are "emergency" proceedings that require a hearing; and that judges should freely reopen matters as needed to permit release;

Community supervision & Corrections: Local and state correctional agencies (including those housing youth and immigrant detainees) can utilize their authority to expedite and maximize the number of people who can be immediately released outright or on supervision, with a heightened focus on those at greatest risk of harm.

3. Orders the Maryland Parole Commission to expedite and expand release opportunities for those whose sentence will soon expire, for those serving short sentences, and for those at greatest risk of serious illness.

The MPC should expedite and expand release opportunities for incarcerated people, expedite the release of people already found suitable for release on parole, expedite all review processes for people eligible for parole, and make aggressive use of its recently-expanded authority to grant administrative parole per Md. Code Ann., Corr. Servs. § 7-

301.1. In addition, the MPC should expedite and give great weight to requests for medical parole, including a presumption of release for anyone who falls within the vulnerability criteria identified by the CDC.

4. Authorizes Parole & Probation to limit required in-person contact and avoid incarceration for technical or minor violations.

Maryland's centralized system of parole and probation presents a significant advantage in your ability to quickly implement needed changes. We urge you to:

- a. Direct agents to cease in-person check-ins to accommodate the need for social distancing, and to allow check-ins to occur by voice or video call. Where those technologies are not accessible to a person under supervision, minimize or temporarily suspend check-in requirements.
- b. Suspend enforcement of any mobility-restricting supervision conditions that impede a person's ability to seek medical care or to support loved ones who may have COVID-19.
- c. Limit the number of people being incarcerated by suspending detainers and incarceration for technical (rule violations).

5. Utilizes your clemency authority to release geriatric and other particularly vulnerable prisoners who present little to no risk to public safety and those slated to be released within two years.

In addition to those who have already been recommended for release by the MPC, we urge you to use your broad clemency authority to facilitate the safe release to those identified by the CDC as particularly vulnerable and those who have two years or less remaining on their sentences.

6. Requires every place of detention, whether operated by the State or not, and including those housing federal detainees to:

- a. Develop a publicly-accessible COVID-19 response plan in consultation with local public health authorities that does not rely upon restrictive housing or lengthy facility-wide lockdowns as the primary control measure;
- b. Make provision for education about sanitizing and adequate supplies of soap, hand sanitizer, tissues and other hygiene and cleaning supplies, and ensure that all products are freely available to all people in the facility, even if this requires suspending prohibitions on alcohol to accommodate hand sanitizer distribution;
- c. Implement clear procedures to care for those who become ill, including, at minimum, screening and testing of people for COVID-19, based on the most up to date information available; increased access to medical care and waiving of all copays;

access to the medication and equipment necessary to treat those who contract the virus; and, the ability to immediately transfer sick patients to outside facilities for care when necessary;

- d. Assess detainees to identify and provide for additional precautions for those who are at greatest risk of serious illness upon contracting COVID-19;
- e. Describe how and where people in the prison system will be housed if they are exposed to the virus, are at high risk of serious illness if they become infected, or become sick with it. *This should not result in prolonged, widespread lock-downs.* Any lock-downs or interruptions in regular activities, such as programming, exercise or visits and phone calls with families or attorneys, should be based solely on the best science available and should be as limited as possible in scope and duration. Every effort should be made to maintain programming, including alternatives such as remote programming. Other forms of communication such as emails, voice calls, and video calls should be made free for all incarcerated people, and the right to legal communication must not be curtailed;
- f. Adequate staffing planning, including staffing by those who are in custody doing facility jobs, for how necessary functions and services will continue if large numbers of staff (including people in custody who staff such functions) are incapacitated by the virus.

7. Orders the Department of Public Safety and Correctional Services and the Department of Juvenile Services to take additional steps.

- a. Publicly identify specific steps taken to protect people in detention and staff;
- b. Provide a landing page with updates by facility along the lines of that created by the Maryland judiciary for the courts, that describes how the facility is maintaining communication, commissary, recreation and access to medical;
- c. Immediately cease collection of any fees associated with medical care otherwise authorized by Md. Code Ann., Corr. Servs. § 2-118;
- d. Identify additional mechanisms to facilitate depopulation, such as liberal use of home and family leave, furloughs, and the like.

These proposals are not exhaustive, but they represent a sampling of straightforward steps the State can take to mitigate the risk of COVID-19. Just as you have taken steps to ensure that Marylanders heed public health experts advice in the community, we hope you will take steps to avoid a public health crisis in our prisons and jails.

Sincerely,

Organizational Signatories

ACLU of Maryland
Aging People in Prison Human Rights Campaign
Out for Justice, Inc.
Maryland Office of the Public Defender
Maryland Prisoners' Rights Coalition

Individual Signatories:

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