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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

No. C-01-1351 JST

**SUPPLEMENTAL DECLARATION OF
PATRICK BOOTH IN SUPPORT OF
EMERGENCY MOTION**

SUPPLEMENTAL DECLARATION OF PATRICK BOOTH IN SUPPORT OF
EMERGENCY MOTION

1 I, Patrick Booth, declare as follows:

2 1. I am an attorney licensed to practice before the courts of the State of California. I
3 am also an attorney at the Prison Law Office, counsel of record in *Plata v. Newsom*. I have
4 personal knowledge of the facts set forth herein, and if called as a witness, I could competently
5 so testify.

6 2. On April 14, 2020, I reviewed the recent actions of state governments, courts,
7 and departments of corrections around the country to determine what steps jurisdictions had
8 taken to protect the health and safety of people in prisons and jails amid the COVID-19
9 pandemic. In particular, I surveyed actions that have been taken since March 25, 2020, when
10 Plaintiffs filed the Emergency Motion before the Three-Judge Court.

11 3. On March 26, 2020, United States Attorney General William Barr issued a memo
12 to the Director of the Bureau of Prisons (“BOP”) instructing the U.S. Department of Justice to
13 prioritize home confinement over confinement in BOP facilities. In his memorandum, Attorney
14 General Barr noted that “some at-risk inmates ... might be safer serving their sentences in home
15 confinement rather than in BOP facilities.”

16 4. Attached hereto as **Exhibit A** is a true and correct copy of Attorney General
17 Barr’s March 26, 2020 memo entitled, “Prioritization of Home Confinement As Appropriate in
18 Response to the COVID-19 Pandemic,” available at
19 https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf.

20 5. On March 25, 2020, the Governor of Colorado signed an executive order that
21 suspends the caps and criteria on earned time credit, allowing for the expedited release of people
22 in Colorado prisons. The executive order also grants the Colorado Department of Corrections
23 “the discretion to make awards of earned time credits as it deems necessary and appropriate to
24 safely facilitate the reduction of the population of incarcerated persons and parolees to prevent
25 an outbreak in prisons.”

6. Attached hereto as **Exhibit B** is a true and correct copy of Colorado Governor Jared Polis's Executive Order D 2020 016, dated March 25, 2020, available at: https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20016%20Suspending%20Certain%20Regulatory%20Statutes%20Concernin%20Criminal%20Justice_0.pdf.

7. On April 2, 2020, the Governor of Kentucky signed an executive order to commute the sentences of people in prison "identified as at higher risk for severe illness or death due to their medical conditions per guidelines issued by the Centers for Disease Control and Prevention." In issuing his order, the Governor recognized that "it is necessary to reduce the inmate population in the overcrowded state prison facilities in Kentucky." The Governor also plans to commute the sentences of individuals with release dates in the next six months.

8. Attached hereto as **Exhibit C** is a true and correct copy of Kentucky Governor Andy Beshear's Executive Order 2020-267, dated April 2, 2020, available at: https://governor.ky.gov/attachments/20200402_Executive-Order_2020-267_Conditional-Commutation-of-Sentence.pdf.

9. Attached hereto as **Exhibit D** is a true and correct copy of a webpage on the official website of the Commonwealth of Kentucky, entitled, "Kentucky's Response to COVID-19," last accessed April 13, 2020, available at: <https://governor.ky.gov/covid-19/>. The webpage lists Governor's Beshear's plans to commute the sentences of individuals with six months or less remaining on their sentences.

10. On April 2, 2020, the Wisconsin Department of Corrections announced that it will release people from prison who are being held because of nonviolent probation or parole violations, and it will also release people with less than a year remaining on their sentences.

11. Attached hereto as **Exhibit E** is a true and correct copy of the official Wisconsin Department of Corrections webpage entitled, "COVID-19 (CORONAVIRUS) Information

1 Home,” with a message from WI DOC Secretary Kevin A. Carr, last accessed April 13, 2020,
2 available at: [https://doc.wi.gov/Pages/COVID19\(Coronavirus\)/COVID19.aspx](https://doc.wi.gov/Pages/COVID19(Coronavirus)/COVID19.aspx).

3 12. On April 6, 2020, the Governor of Illinois signed an executive order that
4 significantly expanded the availability and length of medical furloughs. In the executive order,
5 the Governor stated that “the Illinois Department of Corrections (IDOC) currently has a
6 population of more than 36,000 male and female inmates in 28 facilities, the vast majority of
7 whom, because of their close proximity and contact with each other in housing units and dining
8 halls, are especially vulnerable to contracting and spreading COVID-19.”

9 13. A true and correct copy of the order was attached as Exhibit G to my previous
10 declaration in support of Plaintiffs’ Emergency Motion, and can be found at ECF 3266-3 at 176.

11 14. On April 10, 2020, the Governor of Pennsylvania issued an executive order to
12 expedite the release of people who are within nine months of their release dates, as well as
13 “vulnerable inmates” at heightened risk of COVID-19 because of underlying health conditions
14 who are within 12 months of their release dates. The Governor defined “vulnerable inmates” as
15 including people “at risk based upon age, anyone with autoimmune disorders, who is pregnant,
16 or who has serious chronic medical conditions like heart disease, diabetes, chronic respiratory
17 disease, bone marrow or organ transplantation, severe obesity, kidney disease, liver disease, and
18 cancer, or other medical condition that places them at higher risk for coronavirus, as defined by
19 the Centers for Disease Control and Prevention.”

20 15. Attached hereto as **Exhibit F** is a true and correct copy of Pennsylvania
21 Governor Tom Wolf’s Executive Order, dated April 10, 2020, available at:
22 [https://www.governor.pa.gov/wp-content/uploads/2020/04/20200410-GOV-DOC-relieve-](https://www.governor.pa.gov/wp-content/uploads/2020/04/20200410-GOV-DOC-relieve-release-order-COVID-19.pdf)
23 [release-order-COVID-19.pdf](https://www.governor.pa.gov/wp-content/uploads/2020/04/20200410-GOV-DOC-relieve-release-order-COVID-19.pdf).

24 16. On April 6, 2020, the California Judicial Council issued emergency rules to
25 address public health concerns during the COVID-19 pandemic. Of note, the Judicial Council
26

1 approved an emergency rule that sets bail statewide at \$0 for misdemeanors and lower-level
2 felonies in order to limit the jail populations in the state.

3 17. Attached hereto as **Exhibit G** is a true and correct copy of the California Judicial
4 Council's Emergency Rules, adopted April 6, 2020, available at:
5 [https://jcc.legistar.com/View.ashx?M=F&ID=8234474&GUID=79611543-6A40-465C-8B8B-](https://jcc.legistar.com/View.ashx?M=F&ID=8234474&GUID=79611543-6A40-465C-8B8B-D324F5CAE349)
6 [D324F5CAE349](https://jcc.legistar.com/View.ashx?M=F&ID=8234474&GUID=79611543-6A40-465C-8B8B-D324F5CAE349).

7 18. On April 12, 2020, the Washington state Governor announced his plans to reduce
8 the prison population by releasing certain "vulnerable populations," as well as individuals with
9 release dates in the coming months. The Governor acknowledged that the releases "will help
10 allow for increased physical distancing throughout the Department of Corrections' system."

11 19. Attached hereto as **Exhibit H** is a true and correct copy of a press release on the
12 official website of the Washington State Governor, entitled, "Inslee announces strategies for
13 reducing the number of individuals incarcerated to address COVID-19 in DOC system," dated
14 April 13, 2020, available at: [https://www.governor.wa.gov/news-media/inslee-announces-](https://www.governor.wa.gov/news-media/inslee-announces-strategies-reducing-number-individuals-incarcerated-address-covid-19-doc)
15 [strategies-reducing-number-individuals-incarcerated-address-covid-19-doc](https://www.governor.wa.gov/news-media/inslee-announces-strategies-reducing-number-individuals-incarcerated-address-covid-19-doc).

16 20. On April 13, 2020, California Attorney General Xavier Becerra sent a letter to
17 the United States Acting Secretary of the Department of Homeland Security ("DHS") urging the
18 Secretary to reduce the population at immigration detention facilities. Attorney General Becerra
19 noted that his Department "has encountered many individuals [in detention facilities] whose
20 medical conditions place them at a higher risk for developing serious illness from COVID-19."
21 Moreover, the Attorney General acknowledged that immigration facilities in California "do not
22 appear to have the healthcare resources required to treat infected detainees who become
23 seriously ill." Accordingly, the Attorney General continued, if the DHS Secretary "[f]ai[s] to
24 use [his] discretion to decrease the detainee population as much as possible and improve
25 sanitation and COVID-19 screening practices for those detainees that remain," he will "harm
26 civil immigration detainees" and "will overwhelm community hospitals to which those detainees

1 will necessarily be transferred for treatment.” Attorney General Becerra also stated in his letter
2 that most detainees in California “eat in dining halls built for 50 or more people, at communal
3 tables, where transmission of the COVID-19 virus—if present—is likely.” The Attorney
4 General warned that “[s]ignificant steps are needed to avoid COVID-19-related catastrophe in
5 our immigration detention facilities and their surrounding communities,” including
6 “[i]dentify[ing] and release[ing] detainees that pose no risk to public safety... prioritizing those
7 that are in fragile health,” as well as “[i]ncreas[ing] sanitation, availability of cleaning supplies
8 and sanitizer, alter schedules, meal delivery, and physical space in detention facilities.”
9 Attorney General Becerra concluded his letter strongly pleading that the Secretary boldly act
10 before people start dying: “I urge you to use your authority to address the countless unnecessary
11 deaths that will follow if immigration detention proceeds without change during this public
12 health crisis.”

13 21. Attached hereto as **Exhibit I** is a true and correct copy of a letter sent from
14 California Attorney General Xavier Becerra to Acting Secretary of the United States
15 Department of Homeland Secretary Chad Wolf, dated April 13, 2020, available at:
16 [https://oag.ca.gov/system/files/attachments/press-docs/4.13.20%20-](https://oag.ca.gov/system/files/attachments/press-docs/4.13.20%20-%20Letter%20to%20DHS%20Acting%20Secretary.pdf)
17 [%20Letter%20to%20DHS%20Acting%20Secretary.pdf](https://oag.ca.gov/system/files/attachments/press-docs/4.13.20%20-%20Letter%20to%20DHS%20Acting%20Secretary.pdf).

18 I declare under penalty of perjury under the laws of the United States of America that the
19 foregoing is true and correct.

20 This declaration is executed at Berkeley, California, this 14th day of April, 2020.

21
22 /s/ Patrick Booth


EXHIBIT A



Office of the Attorney General
Washington, D. C. 20530

March 26, 2020

MEMORANDUM FOR DIRECTOR OF BUREAU PRISONS

FROM: THE ATTORNEY GENERAL 

SUBJECT: Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic

Thank you for your tremendous service to our nation during the present crisis. The current situation is challenging for us all, but I have great confidence in the ability of the Bureau of Prisons (BOP) to perform its critical mission during these difficult times. We have some of the best-run prisons in the world and I am confident in our ability to keep inmates in our prisons as safe as possible from the pandemic currently sweeping across the globe. At the same time, there are some at-risk inmates who are non-violent and pose minimal likelihood of recidivism and who might be safer serving their sentences in home confinement rather than in BOP facilities. I am issuing this Memorandum to ensure that we utilize home confinement, where appropriate, to protect the health and safety of BOP personnel and the people in our custody.

I. TRANSFER OF INMATES TO HOME CONFINEMENT WHERE APPROPRIATE TO DECREASE THE RISKS TO THEIR HEALTH

One of BOP's tools to manage the prison population and keep inmates safe is the ability to grant certain eligible prisoners home confinement in certain circumstances. I am hereby directing you to prioritize the use of your various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic. Many inmates will be safer in BOP facilities where the population is controlled and there is ready access to doctors and medical care. But for some eligible inmates, home confinement might be more effective in protecting their health.

In assessing which inmates should be granted home confinement pursuant to this Memorandum, you are to consider the totality of circumstances for each individual inmate, the statutory requirements for home confinement, and the following non-exhaustive list of discretionary factors:

- The age and vulnerability of the inmate to COVID-19, in accordance with the Centers for Disease Control and Prevention (CDC) guidelines;

Memorandum from the Attorney General

Page 2

Subject: Department of Justice COVID-19 Hoarding and Price Gouging Task Force

- The security level of the facility currently holding the inmate, with priority given to inmates residing in low and minimum security facilities;
- The inmate's conduct in prison, with inmates who have engaged in violent or gang-related activity in prison or who have incurred a BOP violation within the last year not receiving priority treatment under this Memorandum;
- The inmate's score under PATTERN, with inmates who have anything above a minimum score not receiving priority treatment under this Memorandum;
- Whether the inmate has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety, including verification that the conditions under which the inmate would be confined upon release would present a lower risk of contracting COVID-19 than the inmate would face in his or her BOP facility;
- The inmate's crime of conviction, and assessment of the danger posed by the inmate to the community. Some offenses, such as sex offenses, will render an inmate ineligible for home detention. Other serious offenses should weigh more heavily against consideration for home detention.

In addition to considering these factors, before granting any inmate discretionary release, the BOP Medical Director, or someone he designates, will, based on CDC guidance, make an assessment of the inmate's risk factors for severe COVID-19 illness, risks of COVID-19 at the inmate's prison facility, as well as the risks of COVID-19 at the location in which the inmate seeks home confinement. We should not grant home confinement to inmates when doing so is likely to increase their risk of contracting COVID-19. You should grant home confinement only when BOP has determined—based on the totality of the circumstances for each individual inmate—that transfer to home confinement is likely not to increase the inmate's risk of contracting COVID-19.

II. PROTECTING THE PUBLIC

While we have an obligation to protect BOP personnel and the people in BOP custody, we also have an obligation to protect the public. That means we cannot take any risk of transferring inmates to home confinement that will contribute to the spread of COVID-19, or put the public at risk in other ways. I am therefore directing you to place any inmate to whom you grant home confinement in a mandatory 14-day quarantine period before that inmate is discharged from a BOP facility to home confinement. Inmates transferred to home confinement under this prioritized process should also be subject to location monitoring services and, where a court order is entered, be subject to supervised release.

We must do the best we can to minimize the risk of COVID-19 to those in our custody, while also minimizing the risk to the public. I thank you for your service to the country and assistance in implementing this Memorandum.

EXHIBIT B

JARED POLIS
GOVERNOR



136 STATE CAPITOL
DENVER, COLORADO 80203
TEL 303-866-2471
FAX 303-866-2003

D 2020 016

EXECUTIVE ORDER

Temporarily Suspending Certain Regulatory Statutes Concerning Criminal Justice

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701 *et seq.* (Act), I, Jared Polis, Governor of the State of Colorado, hereby issue this Executive Order temporarily suspending certain regulatory statutes concerning criminal justice due to the presence of coronavirus disease 2019 (COVID-19) in Colorado.

I. Background and Purpose

On March 5, 2020, the Colorado Department of Public Health and Environment's (CDPHE) public health laboratory confirmed the first presumptive positive COVID-19 test result in Colorado. Since then, the number of confirmed cases has continued to climb, and we have evidence of community spread throughout the State. I verbally declared a disaster emergency on March 10, 2020, and issued the corresponding Executive Order D 2020 003 on March 11, 2020.

My administration, along with other State, local, and federal authorities, has taken a wide array of actions to mitigate the effects of the pandemic, prevent further spread, and protect against overwhelming our health care resources.

We must take action to minimize the duration of this epidemic and of the disruption to our daily lives. The virus that causes COVID-19 is spread primarily by close contact between people and through respiratory droplets when an infected person coughs or sneezes. Public health experts recommend we practice "social distancing," or maintaining a physical distance of six (6) feet or more from other people, as a way to slow the spread of COVID-19.

The potential spread of COVID-19 in facilities and prisons poses a significant threat to prisoners and staff who work in facilities and prisons, as well as the communities to which incarcerated persons will return.

By this Executive Order I temporarily suspend certain regulatory statutes concerning criminal justice due to the presence of COVID-19 in Colorado.

II. Directives

- A. In compliance with Centers for Disease Control and Prevention's (CDC) Interim Guidance on Management of Correctional and Detention Facilities, I temporarily suspend the Colorado Department of Corrections' (DOC) duty to receive and take custody of prisoners pursuant to C.R.S. § 16-11-301 and -308. I direct DOC to identify the criteria that would justify the acceptance of such prisoners. Offenders shall remain in any pre-transfer facility until otherwise directed by the DOC.
- B. I temporarily suspend the caps and criteria on awards of earned time credits set forth in C.R.S. § 17-22.5-405. During this time, DOC shall have the discretion to make awards of earned time credits as it deems necessary and appropriate to safely facilitate the reduction of the population of incarcerated persons and parolees to prevent an outbreak in prisons.
- C. I temporarily suspend the criteria for release to Special Needs Parole set forth in C.R.S. § 17-22.5-403.5 and C.R.S. § 17-1-102 (7.5)(a). During this time, the Colorado Department of Corrections shall have the discretion to identify interim criteria for Special Needs Parole and refer persons who meet those criteria to the Parole Board.
- D. I temporarily suspend the portion of C.R.S. § 17-27.5-101(1)(a) that requires a prisoner to successfully complete a regimented inmate discipline program before DOC has the authority to establish and directly operate an intensive supervision program.
- E. I temporarily suspend the provisions of C.R.S. 17-1-104.3 (1)(b.5), addressing the custody level of offenders and duration of time for which the DOC may incarcerate persons at the Centennial Correctional Facility- South, operated by the DOC and located at the East Cañon Complex in Cañon City, Fremont County, so as to make the 650 beds at that facility available to the DOC to house persons of mixed classification for operational needs related to the COVID-19 outbreak.
- F. I temporarily suspend the requirements of C.R.S § 17-27-108(5) allowing for a transfer limit of up to ten percent of annual appropriations among or between line items for community corrections program services for the remainder of Fiscal Year 2019-20. The suspension will allow the Department of Public Safety (DPS) the ability to exceed ten percent of annual appropriations to provide financial assistance that promotes the economic stability of community corrections clients and the system, as well as the State.
- G. I direct DPS to identify funding allocated in the Fiscal Year 2019-2020 to be utilized for the purposes of suspending the \$17.00 a day subsistence payments required from community corrections clients, the purchase of client hygiene, food, and other necessities, rental assistance, staff retention, and program financial stability.
- H. Nothing in this Executive Order supersedes the rights provided to victims through C.R.S § 24-4.1-302.5, the Colorado Victim Rights Act.

Executive Order D 2020 016

March 25, 2020

Page 3 of 3

III. Duration

This Executive Order shall expire thirty (30) days from March 25, 2020, unless extended further by Executive Order.



GIVEN under my hand and the
Executive Seal of the State of
Colorado, this twenty-fifth day
of March, 2020

A handwritten signature in blue ink, reading "Jared Polis".

Jared Polis
Governor

EXHIBIT C



ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2020-267
April 2, 2020

CONDITIONAL COMMUTATION OF SENTENCE

Background

The novel coronavirus (COVID-19) is a respiratory disease causing illness that can range from very mild to severe, including illness resulting in death, and many cases of COVID-19 have been confirmed in the Commonwealth.

The Kentucky Constitution and Kentucky Revised Statutes, including, but not limited to, KRS Chapter 39A, empower me to exercise all powers necessary to promote and secure the safety and protection of the civilian population, including the power to command individuals to disperse from the scene of an emergency. Under those powers, I declared by Executive Order 2020-215 on March 6, 2020, that a State of Emergency exists in the Commonwealth.

In order to prevent the spread of COVID-19 and to promote and secure the safety and protection of individuals in state custody and state corrections staff, it is necessary to reduce the inmate population in the overcrowded state prison facilities in Kentucky. The Justice and Public Safety Cabinet presented written application and proposal for the early release and commutation of sentences of 186 inmates identified as at higher risk for severe illness or death due to their medical conditions per guidelines issued by the Centers for Disease Control and Prevention. These inmates are both particularly vulnerable to the effects of COVID-19 and have been identified by the Justice and Public Safety Cabinet as currently serving sentences for non-violent, non-sexual Class C or D felonies with fewer than five years left to serve.



ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2020-267
April 2, 2020

Order

I, Andy Beshear, Governor of the Commonwealth of Kentucky, by virtue of authority vested in me pursuant to Section 77 and related provisions in the Constitution of Kentucky, do hereby Order and Direct the following:

1. The sentences of the offenders identified on the list attached to this Order, which is hereby incorporated by reference, are Commuted Conditionally as follows:
 - a. Before release, the offender has not tested positive of COVID-19 and is not currently displaying or experiencing the symptoms associated with COVID-19;
 - b. Before release, the offender has a verifiable home address/residence to be released to;
 - c. After release, the offender must self-quarantine at this address/residence for a period of fourteen (14) days, and end that quarantine only if the offender remains asymptomatic; and
 - d. The offender must not commit any additional offenses during the offender's period of early release.
2. If the offender fails to meet the conditions set forth in paragraph 1.a. or 1.b. of this Order, the offender's commutation is temporarily revoked until such time as the offender can satisfy the conditions of 1.a. or 1.b. of this Order. If the offender fails to comply with the conditions set forth in paragraph 1.c. or 1.d. during the period of early release, the offender's commutation is revoked.
3. If any offender released under this Order is convicted and sentenced for a new felony offense, the number of days the offender was released in advance of his or her minimum expiration of sentence shall be restored by the Department of Corrections and shall be served prior to the service for the new conviction.
4. The Department of Corrections shall calculate these additional days, as provided in paragraph 3. above, at the time it receives official notification of the offender's new felony conviction and sentence.
5. The Justice and Public Safety Cabinet and any other affected agencies of state government shall immediately take all steps necessary to carry out the provisions of this Order.

Done at the Capitol, in the City of Frankfort,
this 2nd day of April, in the year of our Lord
Two Thousand and Twenty and in the year



ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2020-267
April 2, 2020

of the Commonwealth the Two Hundred
Twenty Eighth.

A handwritten signature in blue ink, appearing to read "Cy B", written over a horizontal line.

ANDY BESHEAR, Governor
Commonwealth of Kentucky

MICHAEL G. ADAMS
Secretary of State

EXHIBIT D

COVID-19 Alert - For the latest information on the novel coronavirus in Kentucky, please visit kycovid19.ky.gov (<https://kycovid19.ky.gov>)

Kentucky's Response to COVID-19

The following table shows the actions taken by Governor Beshear since the first case of novel coronavirus disease 2019 (COVID-19) was confirmed in Kentucky. *Actions are listed by date from newest to oldest.*

4/12/2020	Announced (https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prld=124) a partnership that will greatly expand the testing capability in Kentucky. The state's first drive-through testing site will be free of charge and open from 10 a.m. to 4 p.m. Monday, April 13, through Thursday, April 16, at the Franklin County Fairgrounds. Additional locations will be announced later this week, and the goal is to run 20,000 tests over five weeks.
4/10/2020	Convened (https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prld=122) a new task force aimed at addressing concerns in Kentucky's long-term care facilities, where residents and staffers are at elevated risk to coronavirus outbreaks. The new 10-member advisory board is comprised of professionals who represent a range of specialties and perspectives.
4/9/2020	In a move to prevent crowds from congregating, Gov. Beshear announced (https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prld=121) that Natural Bridge and Cumberland Falls state resort parks have been ordered to close.
	Expanded the number (https://governor.ky.gov/attachments/20200409_Executive-Order_2020-277_Workers-Compensation.pdf) of workers who can receive workers compensation if they are ordered to quarantine. The coverage now will be extended to military, active National Guard, child-care workers, grocery workers, corrections officers, domestic violence shelter workers, child advocacy workers, rape crisis center workers, postal workers and Department of Community Based Services workers.
4/8/2020	Announced a new executive order (https://governor.ky.gov/attachments/20200408_Executive-Order_2020-275_State-of-Emergency.pdf) limiting the number of people in stores that remain open. Only one adult per household should shop at one time.
4/5/2020	Announced (https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prld=117) the state has entered a new agreement with Gravity Diagnostics. The company will provide up to 2,000 tests a day.
4/4/2020	In an added measure, Gov. Beshear said Kentucky is adopting on a voluntary basis the new guidance (https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html) from the U.S. Centers for Disease Control and Prevention (CDC) recommending that people wear cloth masks in some situations. Gov. Beshear also stressed that wearing a cloth mask is a measure to be added to social distancing, not to replace it.
4/3/2020	A new hotline (1-833-GIVE PPE) and website (giveppe.ky.gov (https://giveppe.ky.gov/)) streamline the entire donation process. In addition, PPE donations now will be accepted at all 16 Kentucky State Police posts across the commonwealth and at Transportation Cabinet offices in Louisville and Lexington.
4/2/2020	Recommended (https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prld=113) that school districts statewide extend the suspension of in-person instruction until at least May 1.
	Commuted the sentences (/attachments/20200402_Executive-Order_2020-267_Conditional-Commutation-of-Sentence.pdf) of 186 inmates identified as being medically vulnerable to the coronavirus, and plans to commute the sentences of another 743 inmates in state custody who are due to complete their sentences within the next six months. All of those receiving commutations were being held for non-violent, non-sexual offenses.
	Announced (https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prld=113) that, beginning Friday, all Kentucky State Parks no longer will be open for overnight stays. The facilities will be open for use during daytime hours as long as visitors maintain proper social distancing. Kentucky State Parks will be open to the public between the hours of 7 a.m. and 7 p.m.

EXHIBIT E

tate of Wisconsin

Department of Corrections

COVID-19 (CORONAVIRUS) Information Home

[COVID-19 Home \(/Pages/COVID19\(Coronavirus\)/COVID19.aspx\)](/Pages/COVID19(Coronavirus)/COVID19.aspx)

[Persons in our Care](#)

[Testing Dashboard \(/Pages/COVID19\(Coronavirus\)/COVID19TestingDashboard.aspx\)](/Pages/COVID19(Coronavirus)/COVID19TestingDashboard.aspx)

[Employee Confirmed Cases](#)

[\(/Pages/COVID19\(Coronavirus\)/EmployeeConfirmedCases/COVID19EmployeeConfirmedCases.aspx\)](/Pages/COVID19(Coronavirus)/EmployeeConfirmedCases/COVID19EmployeeConfirmedCases.aspx)

[Announcements \(/Pages/COVID19\(Coronavirus\)/Announcements/COVID19Announcements.aspx\)](/Pages/COVID19(Coronavirus)/Announcements/COVID19Announcements.aspx)

[Memos \(/Pages/COVID19\(Coronavirus\)/Memos/COVID19Memos.aspx\)](/Pages/COVID19(Coronavirus)/Memos/COVID19Memos.aspx)

[FAQs \(/Pages/COVID19\(Coronavirus\)/FAQS/COVID19FAQs.aspx\)](/Pages/COVID19(Coronavirus)/FAQS/COVID19FAQs.aspx)

[Staff Resources \(/Pages/COVID19\(Coronavirus\)/COVID19StaffResources.aspx\)](/Pages/COVID19(Coronavirus)/COVID19StaffResources.aspx)

[Additional Resources](#)

[\(/Pages/COVID19\(Coronavirus\)/AdditionalResources/COVID19AdditionalResources.aspx\)](/Pages/COVID19(Coronavirus)/AdditionalResources/COVID19AdditionalResources.aspx)

[_\(/Pages/COVID19\(Coronavirus\)/COVID19.aspx\)](/Pages/COVID19(Coronavirus)/COVID19.aspx)

The Wisconsin Department of Corrections is responding with all available resources to mitigate the potential impact and spread of COVID-19 in our facilities. We take our responsibility to protect the health and safety of our staff, the public and those in our care very seriously and continue to work closely with the [Office of Governor Tony Evers \(https://evers.wi.gov/pages/home.aspx\)](https://evers.wi.gov/pages/home.aspx) and the [Wisconsin Department of Health Services \(https://www.dhs.wisconsin.gov/covid-19/index.htm\)](https://www.dhs.wisconsin.gov/covid-19/index.htm) to monitor developments related to this rapidly evolving situation. Please continue to visit this website often as new information, ongoing updates and helpful resources will be posted here as they become available.

For a breakdown of positive staff cases by location, see the **[Employee Confirmed Cases \(https://doc.wi.gov/Pages/COVID19\(Coronavirus\)/EmployeeConfirmedCases/COVID19EmployeeConfirmedCases.aspx\)](https://doc.wi.gov/Pages/COVID19(Coronavirus)/EmployeeConfirmedCases/COVID19EmployeeConfirmedCases.aspx)**.

For the latest testing and case information for persons in our care, see the **[Persons in our Care Testing \(https://doc.wi.gov/Pages/COVID19\(Coronavirus\)/COVID19.aspx\)](https://doc.wi.gov/Pages/COVID19(Coronavirus)/COVID19.aspx)**

Dashboard

([https://doc.wi.gov/Pages/COVID19\(Coronavirus\)/COVID19TestingDashboard.aspx](https://doc.wi.gov/Pages/COVID19(Coronavirus)/COVID19TestingDashboard.aspx)).

A Message From Secretary Kevin A. Carr

Thursday, April 2, 2020

I recognize that this is a difficult time for friends and family of loved ones in the Wisconsin Department of Corrections (DOC), and that members of the public have many questions about what our agency is doing to prepare for the unprecedented COVID-19 pandemic. I want to assure you the DOC is taking precautions to minimize risks and protect staff and those in our care as we continue to see more positive cases of COVID-19 (coronavirus) in the state.

As of April 1, 2020, there are 1,550 cases of COVID-19 in Wisconsin, and information around this outbreak is changing rapidly. Our agency is taking this situation very seriously, and we continue to seek appropriate and timely actions to mitigate the potential exposure to others and in order to keep those in our care safe. I understand the serious implications of the COVID-19, and DOC is following the Centers for Disease Control (CDC) guidelines for management of COVID-19 in correctional facilities. As a result, we have put in place several preventative measures to mitigate the risk:

- Implementing medical screening protocols for employees entering adult or juvenile correctional facilities
- Directing staff that do not feel well to stay home
- Enhancing sanitation and cleaning protocols in facilities, field offices and transportation vehicles
- Increasing quantities of cleaning supplies and hand soap for use by staff and persons in our care
- Frequent communication with staff and persons in our care to provide accurate and up-to-date public health information including basic health guidance and precautions to prevent the spread of the virus, such as encouraging frequent and thorough handwashing
- Following Department of Health Services (DHS) guidelines and encouraging persons in our care to alert Health Services staff immediately if they experience any symptoms related to COVID-19.
- Enhancing purchasing efforts for pandemic emergency supplies and personal protective equipment
- Implementing social distancing practices during dining, recreation and wherever else possible
- Utilizing technology in place of face to face interactions through the use of video applications whenever possible
- Several operational changes to include: the suspension of non-professional and non-essential visits, volunteers, contracted activities, most programming, work release for persons in our care in the private sector, inter-facility and non-essential internal transfer, admissions to state prisons and juvenile facilities, non-essential staff travel and training, and most face-to-face contact visits in Community Corrections
- Releasing supervision holds on 1,148 non-violent misdemeanants throughout the state
- Releasing others persons in custody that qualified for Certain Earned Release. These non-violent persons had less than one year to serve in prison and will be on community supervision
- 65 individuals participating in an Alternative for Revocation (ATR) at the Milwaukee Secure Detention Facility (MSDF) were identified and will be released on April 2, 2020

While our top priority continues to be the prevention of COVID-19, we have contingency plans in the event the virus does enter our secure facilities. Each site has pandemic plans to address COVID-19, including the protocols and isolation procedures if someone is exposed and/or becomes infected. In the event of a confirmed positive case in one of our secure facilities, contact investigations are being conducted to determine which individuals may have been exposed to the virus,

and subsequent isolation or quarantine may occur to manage these situations. Additionally, any site with a confirmed positive case of COVID-19 will suspend administrative rules to limit movement and reduce the risk of spreading the virus further.

We recognize that the precautionary steps we have put in place may also create a hardship to those in our care, and their

we recognize that the precautionary steps we have put in place may also create a hardship to those in our care, and their friends and family. DOC is reviewing these decisions on a daily basis, and continues to look for ways we can improve conditions for staff and those we care for during this time. Some of the efforts we have implemented so far to help during this difficult period are:

- Providing youth in our care with unlimited free phone calls
- Providing adults in our care with two (2) free fifteen-minute phone calls each week
- Waived \$7.50 medical co-pay to allow anyone exhibiting symptoms of illness to seek medical attention (this fee was already waived for youth)
- Increasing weekly and bi-weekly spending limits for canteen items
- Increasing communication to staff, and those in our care on all decisions being made

I want to publicly thank the employees within our Department who remain committed to our efforts to keep our staff and the individuals in our care safe during this temporary crisis. I am extremely proud of their ability to meet these new challenges, while maintaining essential operations. We will work to keep the public informed of changes in our operations as they develop. The best source of information will continue to be this public website ([**doc.wi.gov/COVID19**](https://doc.wi.gov/COVID19) ([https://doc.wi.gov/Pages/COVID19\(Coronavirus\)/COVID19.aspx](https://doc.wi.gov/Pages/COVID19(Coronavirus)/COVID19.aspx))). I encourage individuals to check the page frequently for up to date information on our response to COVID-19. Additionally, DOC has been following guidance provided by DHS and CDC and more information can be found on [**DHS**](https://www.dhs.wisconsin.gov/covid-19/index.htm) (<https://www.dhs.wisconsin.gov/covid-19/index.htm>) and [**CDC**](https://www.cdc.gov/coronavirus/2019-ncov/index.html) (<https://www.cdc.gov/coronavirus/2019-ncov/index.html>) [CDC AA refVal=https://www.cdc.gov/coronavirus/index.html](https://www.cdc.gov/coronavirus/index.html)) websites.

Thank you for everyone's patience during this difficult time. Please stay safe and healthy, and know that we are devoted to keeping our staff and your loved ones safe during this time.

Sincerely,

Kevin A. Carr
Wisconsin Department of Corrections Secretary

For accurate and up-to-date information on the status of COVID-19, please refer to the [Wisconsin Department of Health Services](https://www.dhs.wisconsin.gov/disease/covid-19.htm) (<https://www.dhs.wisconsin.gov/disease/covid-19.htm>) (DHS) and the [Centers for Disease Control and Prevention](https://www.cdc.gov/coronavirus/2019-nCoV/index.html) (<https://www.cdc.gov/coronavirus/2019-nCoV/index.html>) (CDC).

Contact Information

3099 East Washington Ave.
Madison, WI 53704

Public Information Links

[Public Notices \(/Pages/AboutDOC/PublicNotices.aspx\)](/Pages/AboutDOC/PublicNotices.aspx).

[Public Records Requests \(/Pages/AboutDOC/PublicRecordsRequests.aspx\)](/Pages/AboutDOC/PublicRecordsRequests.aspx).

[Press Releases \(/Pages/AboutDOC/CommunicationsOffice.aspx\)](/Pages/AboutDOC/CommunicationsOffice.aspx).

Legislative Website (<https://legis.wisconsin.gov/>).

Other Resources Links

A-Z Topics (</Pages/AboutDOC/AZTopics.aspx>).

Careers (</Pages/Careers/default.aspx>).

Staff Resources (</Pages/AboutDOC/StaffResources.aspx>).

Legal Disclaimer (</Pages/AboutDOC/LegalDisclaimer.aspx>).

(<https://www.wisconsin.gov/>).

EXHIBIT F



COMMONWEALTH OF PENNSYLVANIA

OFFICE OF THE GOVERNOR

**ORDER OF THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA
REGARDING INDIVIDUALS INCARCERATED IN
STATE CORRECTIONAL INSTITUTIONS**

WHEREAS, the World Health Organization and the Centers for Disease Control and Prevention have declared the coronavirus disease 2019 ("COVID-19") a pandemic; and

WHEREAS, the President of the United States of America has declared the COVID-19 outbreak a national emergency and the U.S. Department of Health and Human Services ("HHS") Secretary has declared the COVID-19 outbreak a public health emergency; and

WHEREAS, pursuant to section 7301(a) of the Emergency Management Services Code, 35 Pa. C.S. § 7301(a), I am charged with the responsibility to address dangers facing the Commonwealth of Pennsylvania ("Commonwealth") that result from disasters; and

WHEREAS, in executing the extraordinary powers outlined above, I am further authorized, pursuant to section 7301(b) of the Emergency Management Services Code, 35 Pa. C.S. § 7301(b), during a disaster emergency to issue, amend, and rescind executive orders, proclamations, and regulations, and those directives shall have the force and effect of law; and

WHEREAS, on March 6, 2020, pursuant to section 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. § 7301(c), I proclaimed the existence of a disaster emergency throughout the Commonwealth as a result of COVID-19; and

WHEREAS, the Commonwealth has taken extraordinary but vital measures to prevent the spread of COVID-19, including ordering non-life sustaining businesses to close (pursuant to my Business Closure Order of March 19, 2020, and as amended thereafter) and ordering all Commonwealth individuals to stay at home (pursuant to my Stay at Home Order of April 1, 2020); and

WHEREAS, as of April 10, 2020, 19,979 persons have tested positive for COVID-19 in the Commonwealth in all 67 counties, and 416 persons are reported to have died from the virus; and

WHEREAS, the complexities associated with mitigating the spread of COVID-19 in general are even more heightened in the corrections environment, as evidenced by the advisement from the World Health Organization that prisons around the world can expect "huge mortality rates" from COVID-19 unless they take immediate action, and that the federal Centers for Disease Control and Prevention (CDC) has issued specific guidance for disease prevention and control in these and other congregate settings; and

WHEREAS, the Secretary for the Department of Health has advised that on balance, as a general public health matter, considering all of the information available regarding the virus, its spread, and concerns relating to congregate facilities, particularly prisons and jails, and the ability to respond to the pandemic, minimizing the number of individuals in correctional facilities reduces the risk of rapid transmission of COVID-19 between residents and staff in correctional facilities by better allowing for the institution of social distancing and other mitigation efforts; and

WHEREAS, the Secretary for the Department of Corrections has identified individuals who are currently incarcerated by the Department of Corrections, including those who are at greater risk from the effects of COVID-19, and who may be temporarily and safely released from the current sentence of state incarceration to supervised community placement; and

WHEREAS, in addition to general powers during a disaster emergency, I am specifically authorized, pursuant to section 7301(f)(5) and (7) of the Emergency Management Services Code, 35 Pa. C.S. § 7301(f)(5) and (7), to direct and compel the evacuation of all or part of the population from any stricken or threatened area within this Commonwealth if this action is necessary for the preservation of life or other disaster mitigation, response, or recovery and to control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein; and

WHEREAS, pursuant to Article IV, Section 9 of the Constitution of the Commonwealth of Pennsylvania, Pa. Const. Art. IV, § 9(a), I am specifically authorized to grant reprieves in all criminal cases except impeachment.

NOW THEREFORE, pursuant to the authority vested in me and the Executive branch by the laws of the Commonwealth of Pennsylvania, I do hereby ORDER and PROCLAIM as follows:

The Pennsylvania Department of Corrections shall establish a Reprieve of Sentence of Incarceration Program as the Department of Corrections deems necessary to transfer to Community Corrections Centers, Community Corrections Facilities, or home confinement vulnerable individuals who would otherwise be eligible for release within the next twelve (12) months; or any inmate within nine (9) months of their minimum eligibility release date. In either instance, the inmates must meet the defined criterion and the release must not pose a risk to public safety.

Vulnerable inmates shall include inmates at risk based upon age, anyone with autoimmune disorders, who is pregnant, or who has serious chronic medical conditions like heart disease, diabetes, chronic respiratory disease, bone marrow or organ transplantation, severe obesity, kidney disease, liver disease, and cancer, or other medical condition that places them at higher risk for coronavirus, as defined by the Centers for Disease Control and Prevention.

Regardless of the sentence imposed, the Reprieve of Sentence of Incarceration Program would not apply to:

(1) persons committed for or with an aggregate sentence containing a personal injury crime, or any criminal attempt, criminal solicitation, or criminal conspiracy to commit a personal injury crime as defined in section 103 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act;

(2) persons committed for or with an aggregate sentence containing a crime of violence, or any criminal attempt, criminal solicitation, or criminal conspiracy to commit a crime of violence as defined in 42 Pa.C.S. § 9714(g) (relating to sentences for second or subsequent offenses);

(3) persons committed for or with an aggregate sentence containing an offense under 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles) or a criminal attempt, criminal solicitation, or criminal conspiracy to commit the offense;

(4) persons committed for or with an aggregate sentence containing an enhancement for the use of a deadly weapon as defined under law or the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing or where the attorney for the Commonwealth has demonstrated that the defendant has been found guilty of or was convicted of an offense involving a deadly weapon or a criminal attempt, criminal solicitation, or criminal conspiracy to commit the offense or an equivalent offense under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico, or a foreign nation;

(5) persons committed for or with an aggregate sentence containing a violation of any of the following provisions or an equivalent offense under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico, or a foreign nation, including a criminal attempt, criminal solicitation or criminal conspiracy to commit the offense:

18 Pa.C.S. § 4302(a) (relating to incest).

18 Pa.C.S. § 5901 (relating to open lewdness).

18 Pa.C.S. Ch. 76 Subch. C (relating to Internet child pornography).

A criminal sentence pursuant to 42 Pa.C.S. § 9712.1 (relating to sentences for certain drug offenses committed with firearms).

An offense listed under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders).

An offense listed under 42 Pa.C.S. Ch. 97 Subch. I (relating to continued registration of sexual offenders).

(6) persons committed for or with an aggregate sentence containing an offense of drug trafficking as defined in section 4103 (relating to definitions) or a criminal attempt, criminal solicitation, or criminal conspiracy to commit drug trafficking as defined in section 4103;

(7) persons who are subject to a pending felony or misdemeanor arrest warrant or detainer;

(8) persons who are currently serving a sentence to State prison and have been denied parole on that sentence;

(9) persons convicted of any criminal offense committed while incarcerated;

(10) persons who pose an identifiable risk to public safety; or

(11) persons with a prior conviction within the past 10 years for any crime contained under paragraphs (1) - (5) above.

Notwithstanding any criterion set forth above, a person who has received a positive Board Action from the Parole Board and who remains incarcerated is eligible for the Reprieve of Sentence of Incarceration Program.

Further, the Department will confer with the Court, the Office of Attorney General, and District Attorney's Office in the county from which the inmate was sentenced prior to any inmate being recommended by the Department pursuant to this program.

Each inmate that the Department recommends through the Reprieve of Sentence of Incarceration Program will be submitted to me for consideration for issuance of a conditional reprieve. Each reprieve will be contingent upon compliance with all terms and conditions of community supervision imposed by the Department. The reprieves will temporarily suspend the sentences of incarceration of those persons who qualify and comply with supervision requirements for such length of time as may be necessary to respond to the Disaster Emergency proclaimed on March 6, 2020, or at such time as the Disaster Emergency is terminated.

This order is effective immediately and shall remain in effect for the duration of the disaster emergency.



GIVEN under my hand and the Seal of the Governor, at the city of Harrisburg, on this tenth day of April two thousand twenty, the year of the commonwealth the two hundred and forty-fourth.

Tom Wolf
TOM WOLF
Governor

EXHIBIT G

Emergency Rules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the California Rules of Court are adopted effective April 6, 2020, to read:

Emergency rule 1. Unlawful detainers

(a) Application

Notwithstanding any other law, including Code of Civil Procedure sections 1166, 1167, 1169, and 1170.5, this rule applies to all actions for unlawful detainer.

(b) Issuance of summons

A court may not issue a summons on a complaint for unlawful detainer unless the court finds, in its discretion and on the record, that the action is necessary to protect public health and safety.

(c) Entry of default

A court may not enter a default or a default judgment for restitution in an unlawful detainer action for failure of defendant to appear unless the court finds both of the following:

(1) The action is necessary to protect public health and safety; and

(2) The defendant has not appeared in the action within the time provided by law, including by any applicable executive order.

(d) Time for trial

If a defendant has appeared in the action, the court may not set a trial date earlier than 60 days after a request for trial is made unless the court finds that an earlier trial date is necessary to protect public health and safety. Any trial set in an unlawful detainer proceeding as of April 6, 2020 must be continued at least 60 days from the initial date of trial.

(e) Sunset of rule

This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

1 **Emergency rule 2. Judicial foreclosures—suspension of actions**

2
3 Notwithstanding any other law, this rule applies to any action for foreclosure on a
4 mortgage or deed of trust brought under chapter 1, title 10, of part 2 of the Code of Civil
5 Procedure, beginning at section 725a, including any action for a deficiency judgment, and
6 provides that, until 90 days after the Governor declares that the state of emergency
7 related to the COVID-19 pandemic is lifted, or until this rule is amended or repealed by
8 the Judicial Council:

- 9
10 (1) All such actions are stayed, and the court may take no action and issue no
11 decisions or judgments unless the court finds that action is required to further the
12 public health and safety.
13
14 (2) Any statute of limitations for filing such an action is tolled.
15
16 (3) The period for electing or exercising any rights under that chapter, including
17 exercising any right of redemption from a foreclosure sale or petitioning the court
18 in relation to such a right, is extended.
19
20

21 **Emergency rule 3. Use of technology for remote appearances**

22
23 **(a) Remote appearances**

24
25 Notwithstanding any other law, in order to protect the health and safety of the public,
26 including court users, both in custody and out of custody defendants, witnesses, court
27 personnel, judicial officers, and others, courts must conduct judicial proceedings and
28 court operations as follows:

- 29
30 (1) Courts may require that judicial proceedings and court operations be
31 conducted remotely.
32
33 (2) In criminal proceedings, courts must receive the consent of the defendant to
34 conduct the proceeding remotely and otherwise comply with emergency rule
35 5. Notwithstanding Penal Code sections 865 and 977 or any other law, the
36 court may conduct any criminal proceeding remotely. As used in this rule,
37 “consent of the defendant” means that the consent of the defendant is
38 required only for the waiver of the defendant’s appearance as provided in
39 emergency rule 5. For good cause shown, the court may require any witness
40 to personally appear in a particular proceeding.
41
42 (3) Conducting proceedings remotely includes, but is not limited to, the use of
43 video, audio, and telephonic means for remote appearances; the electronic

exchange and authentication of documentary evidence; e-filing and e-service; the use of remote interpreting; and the use of remote reporting and electronic recording to make the official record of an action or proceeding.

(b) Sunset of rule

This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

Emergency rule 4. Emergency Bail Schedule

(a) Purpose

Notwithstanding any other law, this rule establishes a statewide Emergency Bail Schedule, which is intended to promulgate uniformity in the handling of certain offenses during the state of emergency related to the COVID-19 pandemic.

(b) Mandatory application

No later than 5 p.m. on April 13, 2020, each superior court must apply the statewide Emergency Bail Schedule:

- (1) To every accused person arrested and in pretrial custody.
- (2) To every accused person held in pretrial custody.

(c) Setting of bail and exceptions

Under the statewide Emergency Bail Schedule, bail for all misdemeanor and felony offenses must be set at \$0, with the exception of only the offenses listed below:

- (1) A serious felony, as defined in Penal Code section 1192.7(c), or a violent felony, as defined in Penal Code section 667.5(c);
- (2) A felony violation of Penal Code section 69;
- (3) A violation of Penal Code section 166(c)(1);
- (4) A violation of Penal Code section 136.1 when punishment is imposed under section 136.1(c);

- (5) A violation of Penal Code section 262;
- (6) A violation of Penal Code sections 243(e)(1) or 273.5;
- (7) A violation of Penal Code section 273.6 if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party;
- (8) A violation of Penal Code section 422 where the offense is punished as a felony;
- (9) A violation of Penal Code section 646.9;
- (10) A violation of an offense listed in Penal Code section 290(c);
- (11) A violation of Vehicle Code sections 23152 or 23153;
- (12) A felony violation of Penal Code section 463; and
- (13) A violation of Penal Code section 29800.

(d) Ability to deny bail

Nothing in the Emergency Bail Schedule restricts the ability of the court to deny bail as authorized by article I, section 12, or 28(f)(3) of the California Constitution.

(e) Application of countywide bail schedule

- (1) The current countywide bail schedule of each superior court must remain in effect for all offenses listed in exceptions (1) through (13) of the Emergency Bail Schedule, including any count-specific conduct enhancements and any status enhancements.
- (2) Each superior court retains the authority to reduce the amount of bail listed in the court's current countywide bail schedule for offenses in exceptions (1) through (13), or for any offenses not in conflict with the Emergency Bail Schedule.

1 **(f) Bail for violations of post-conviction supervision**

- 2
- 3 (1) Under the statewide Emergency Bail Schedule, bail for all violations of
- 4 misdemeanor probation, whether the arrest is with or without a bench
- 5 warrant, must be set at \$0.
- 6
- 7 (2) Bail for all violations of felony probation, parole, post-release community
- 8 supervision, or mandatory supervision, must be set in accord with the
- 9 statewide Emergency Bail Schedule, or for the bail amount in the court's
- 10 countywide schedule of bail for charges of conviction listed in exceptions (1)
- 11 through (13), including any enhancements.
- 12

13 **(g) Sunset of rule**

14

15 This rule will remain in effect until 90 days after the Governor declares that the

16 state of emergency related to the COVID-19 pandemic is lifted, or until amended or

17 repealed by the Judicial Council.

18

19

20 **Emergency rule 5. Personal appearance waivers of defendants during health**

21 **emergency**

22

23 **(a) Application**

24

25 Notwithstanding any other law, including Penal Code sections 865 and 977, this

26 rule applies to all criminal proceedings except cases alleging murder with special

27 circumstances and cases in which the defendant is currently incarcerated in state

28 prison, as governed by Penal Code section 977.2.

29

30 **(b) Types of personal appearance waivers**

- 31
- 32 (1) With the consent of the defendant, the court must allow a defendant to waive
- 33 his or her personal appearance and to appear remotely, either through video
- 34 or telephonic appearance, when the technology is available.
- 35
- 36 (2) With the consent of the defendant, the court must allow a defendant to waive
- 37 his or her appearance and permit counsel to appear on his or her behalf. The
- 38 court must accept a defendant's waiver of appearance or personal appearance
- 39 when:
- 40
- 41 (A) Counsel for the defendant makes an on the record oral representation
- 42 that counsel has fully discussed the waiver and its implications with the

1 defendant and the defendant has authorized counsel to proceed as
2 counsel represents to the court;

3
4 (B) Electronic communication from the defendant as confirmed by
5 defendant's counsel; or

6
7 (C) Any other means that ensures the validity of the defendant's waiver.
8

9 **(c) Consent by the defendant**

10
11 (1) For purposes of arraignment and entry of a not guilty plea, consent means a
12 knowing, intelligent, and voluntary waiver of the right to appear personally in
13 court. Counsel for the defendant must state on the record at each applicable
14 hearing that counsel is proceeding with the defendant's consent.

15
16 (2) For purposes of waiving time for a preliminary hearing, consent also means a
17 knowing, intelligent, and voluntary waiver of the right to hold a preliminary
18 hearing within required time limits specified either in Penal Code section
19 859b or under emergency orders issued by the Chief Justice and Chair of the
20 Judicial Council.

21
22 (3) The court must accept defense counsel's representation that the defendant
23 understands and agrees with waiving any right to appear unless the court has
24 specific concerns in a particular matter about the validity of the waiver.

25
26 **(d) Appearance through counsel**

27
28 (1) When counsel appears on behalf of a defendant, courts must allow counsel to
29 do any of the following:

30
31 (A) Waive reading and advisement of rights for arraignment.

32
33 (B) Enter a plea of not guilty.

34
35 (C) Waive time for the preliminary hearing.

36
37 (2) For appearances by counsel, including where the defendant is either
38 appearing remotely or has waived his or her appearance and or counsel is
39 appearing by remote access, counsel must confirm to the court at each
40 hearing that the appearance by counsel is made with the consent of the
41 defendant.
42

1 **(e) Conduct of remote hearings**

- 2
- 3 (1) With the defendant's consent, a defendant may appear remotely for any
- 4 pretrial criminal proceeding.
- 5
- 6 (2) Where a defendant appears remotely, counsel may not be required to be
- 7 personally present with the defendant for any portion of the criminal
- 8 proceeding provided that the audio and/or video conferencing system or other
- 9 technology allows for private communication between the defendant and his
- 10 or her counsel. Any private communication is confidential and privileged
- 11 under Evidence Code section 952.
- 12

13 **(f) Sunset of rule**

14

15 This rule will remain in effect until 90 days after the Governor declares that the

16 state of emergency related to the COVID-19 pandemic is lifted, or until amended or

17 repealed by the Judicial Council.

18

19

20 **Emergency rule 6. Emergency orders: juvenile dependency proceedings**

21

22 **(a) Application**

23

24 This rule applies to all juvenile dependency proceedings filed or pending until the

25 state of emergency related to the COVID-19 pandemic is lifted.

26

27 **(b) Essential hearings and orders**

28

29 The following matters should be prioritized in accordance with existing statutory

30 time requirements.

31

- 32 (1) Protective custody warrants filed under Welfare and Institutions Code section
- 33 340.
- 34
- 35 (2) Detention hearings under Welfare and Institutions Code section 319. The
- 36 court is required to determine if it is contrary to the child's welfare to remain
- 37 with the parent, whether reasonable efforts were made to prevent removal,
- 38 and whether to vest the placing agency with temporary placement and care.
- 39
- 40 (3) Psychotropic medication applications.
- 41
- 42 (4) Emergency medical requests.
- 43

- 1 (5) A petition for reentry of a nonminor dependent.
- 2
- 3 (6) Welfare and Institutions Code section 388 petitions that require an immediate
- 4 response based on the health and safety of the child, which should be
- 5 reviewed for a prima facie showing of change of circumstances sufficient to
- 6 grant the petition or to set a hearing. The court may extend the final ruling on
- 7 the petition beyond 30 days.
- 8

9 **(c) Foster care hearings and continuances during the state of emergency**

- 10
- 11 (1) A court may hold any proceeding under this rule via remote technology
- 12 consistent with rule 5.531 and emergency rule 3.
- 13
- 14 (2) At the beginning of any hearing at which one or more participants appears
- 15 remotely, the court must admonish all the participants that the proceeding is
- 16 confidential and of the possible sanctions for violating confidentiality.
- 17
- 18 (3) The child welfare agency is responsible for notice of remote hearings unless
- 19 other arrangements have been made with counsel for parents and children.
- 20 Notice is required for all parties and may include notice by telephone or other
- 21 electronic means. The notice must also include instructions on how to
- 22 participate in the court hearing remotely.
- 23
- 24 (4) Court reports
- 25
- 26 (A) Attorneys for parents and children must accept service of the court
- 27 report electronically.
- 28
- 29 (B) The child welfare agency must ensure that the parent and the child
- 30 receive a copy of the court report on time.
- 31
- 32 (C) If a parent or child cannot receive the report electronically, the child
- 33 welfare agency must deliver a hard copy of the report to the parent and
- 34 the child on time.
- 35
- 36 (5) Nothing in this subdivision prohibits the court from making statutorily
- 37 required findings and orders, by minute order only and without a court
- 38 reporter, by accepting written stipulations from counsel when appearances
- 39 are waived if the stipulations are confirmed on the applicable Judicial
- 40 Council forms or equivalent local court forms.
- 41
- 42 (6) If a court hearing cannot occur either in the courthouse or remotely, the
- 43 hearing may be continued up to 60 days, except as otherwise specified.

(A) A dispositional hearing under Welfare and Institutions Code section 360 should not be continued more than 6 months after the detention hearing without review of the child's circumstances. In determining exceptional circumstances that justify holding the dispositional hearing more than 6 months after the child was taken into protective custody, the impact of the state of emergency related to the COVID-19 pandemic must be considered.

i. If the dispositional hearing is continued more than 6 months after the start date of protective custody, a review of the child must be held at the 6-month date. At the review, the court must determine the continued necessity for and appropriateness of the placement; the extent of compliance with the case plan or available services that have been offered; the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement; and the projected likely date by which the child may return home or placed permanently.

ii. The court may continue the matter for a full hearing on all dispositional findings and orders.

(B) A judicial determination of reasonable efforts must be made within 12 months of the date a child enters foster care to maintain a child's federal title IV-E availability. If a permanency hearing is continued beyond the 12-month date, the court must review the case to determine if the agency has made reasonable efforts to return the child home or arrange for the child to be placed permanently. This finding can be made without prejudice and may be reconsidered at a full hearing.

(7) During the state of emergency related to the COVID-19 pandemic, previously authorized visitation must continue, but the child welfare agency is to determine the manner of visitation to ensure that the needs of the family are met. If the child welfare agency changes the manner of visitation for a child and a parent or legal guardian in reunification, or for the child and a sibling(s), or a hearing is pending under Welfare and Institutions Code section 366.26, the child welfare agency must notify the attorneys for the children and parents within 5 court days of the change. All changes in manner of visitation during this time period must be made on a case by case basis, balance the public health directives and best interest of the child, and take into consideration whether in-person visitation may continue to be held safely. Family time is important for child and parent well-being, as well as for efforts toward reunification. Family time is especially important during

times of crisis. Visitation may only be suspended if a detriment finding is made in a particular case based on the facts unique to that case. A detriment finding must not be based solely on the existence of the impact of the state of emergency related to the COVID-19 pandemic or related public health directives.

(A) The attorney for the child or parent may ask the juvenile court to review the change in manner of visitation. The child or parent has the burden of showing that the change is not in the best interest of the child or is not based on current public health directives.

(B) A request for the court to review the change in visitation during this time period must be made within 14 court days of the change. In reviewing the change in visitation, the court should take into consideration the factors in (c)(7).

(d) Sunset of rule

This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

Advisory Committee Comment

When courts are unable to hold regular proceedings because of an emergency that has resulted in an order as authorized under Government Code section 68115, federal timelines do not stop. Circumstances may arise where reunification services to the parent, including visitation, may not occur or be provided. The court must consider the circumstances of the emergency when deciding whether to extend or terminate reunification services and whether services were reasonable given the state of the emergency. (Citations: 42 U.S.C. § 672(a)(1)–(2), (5); 45 CFR § 1355.20; 45 CFR § 1356.21 (b) – (d); 45 C.F.R. § 1356.71(d)(1)(iii); Child Welfare Policy Manual, 8.3A.9 Title IV-E, Foster Care Maintenance Payments Program, Reasonable efforts, Question 2 (www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=92)); Letter dated March 27, 2020, from Jerry Milner, Associate Commissioner, Children’s Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.)

1 **Emergency rule 7. Emergency orders: juvenile delinquency proceedings**

2
3 **(a) Application**

4
5 This rule applies to all proceedings in which a petition has been filed under Welfare
6 and Institutions Code section 602 in which a hearing would be statutorily required
7 during the state of emergency related to the COVID-19 pandemic.
8

9 **(b) Juvenile delinquency hearings and orders during the state of emergency**

10
11 (1) A hearing on a petition for a child who is in custody under Welfare and
12 Institutions Code section 632 or 636 must be held within the statutory
13 timeframes as modified by an order of the court authorized by Government
14 Code section 68115. The court must determine if it is contrary to the welfare
15 of the child to remain in the home, whether reasonable services to prevent
16 removal occurred, and whether to place temporary placement with the
17 probation agency if the court will be keeping the child detained and out of the
18 home.
19

20 (2) If a child is detained in custody and an in-person appearance is not feasible
21 due to the state of emergency, courts must make reasonable efforts to hold
22 any statutorily required hearing for that case via remote appearance within
23 the required statutory time frame and as modified by an order of the court
24 authorized under Government Code section 68115 for that proceeding. If a
25 remote proceeding is not a feasible option for such a case during the state of
26 emergency, the court may continue the case as provided in (d) for the
27 minimum period of time necessary to hold the proceedings.
28

29 (3) Without regard to the custodial status of the child, the following hearings
30 should be prioritized during the state of emergency related to the COVID-19
31 pandemic:
32

33 (A) Psychotropic medication applications.

34 (B) All emergency medical requests.

35 (C) A petition for reentry of a nonminor dependent.

36 (D) A hearing on any request for a warrant for a child.

37 (E) A probable cause determination for a child who has been detained but
38 has not had a detention hearing within the statutory time limits.
39
40
41
42
43

(4) Notwithstanding any other law, and except as described in (5), during the state of emergency related to the COVID-19 pandemic, the court may continue for good cause any hearing for a child not detained in custody who is subject to its juvenile delinquency jurisdiction until a date after the state of emergency has been lifted considering the priority for continued hearings in (d).

(5) For children placed in foster care under probation supervision, a judicial determination of reasonable efforts must be made within 12 months of the date the child enters foster care to maintain a child's federal title IV-E availability. If a permanency hearing is continued beyond the 12-month date, the court must nevertheless hold a review to determine if the agency has made reasonable efforts to return the child home or place the child permanently. This finding can be made without prejudice and may be reconsidered at a full hearing.

(c) Proceedings with remote appearances during the state of emergency.

(1) A court may hold any proceeding under this rule via remote technology consistent with rule 5.531 and emergency rule 3.

(2) At the beginning of any hearing conducted with one or more participants appearing remotely, the court must admonish all the participants that the proceeding is confidential and of the possible sanctions for violating confidentiality.

(3) The court is responsible for giving notice of remote hearings, except for notice to a victim, which is the responsibility of the prosecuting attorney or the probation department. Notice is required for all parties and may include notice by telephone or other electronic means. The notice must also include instructions on how to participate in the hearing remotely.

(4) During the state of emergency, the court has broad discretion to take evidence in the manner most compatible with the remote hearing process, including but not limited to taking testimony by written declaration. If counsel for a child or the prosecuting attorney objects to the court's evidentiary procedures, that is a basis for issuing a continuance under (d).

(d) Continuances of hearings during the state of emergency.

Notwithstanding any other law, the court may for good cause continue any hearing other than a detention hearing for a child who is detained in custody. In making this determination, the court must consider the custody status of the child, whether there

are evidentiary issues that are contested, and, if so, the ability for those issues to be fairly contested via a remote proceeding.

(e) Extension of time limits under Welfare and Institutions Code section 709

In any case in which a child has been found incompetent under Welfare and Institutions Code section 709 and that child is eligible for remediation services or has been found to require secure detention, any time limits imposed by section 709 for provision of services or for secure detention are tolled for the period of the state of emergency if the court finds that remediation services could not be provided because of the state of emergency.

(f) Sunset of rule

This rule will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.

Advisory Committee Comment

This emergency rule is being adopted in part to ensure that detention hearings for juveniles in delinquency court must be held in a timely manner to ensure that no child is detained who does not need to be detained to protect the child or the community. The statutory scheme for juveniles who come under the jurisdiction of the delinquency court is focused on the rehabilitation of the child and thus makes detention of a child the exceptional practice, rather than the rule. Juvenile courts are able to use their broad discretion under current law to release detained juveniles to protect the health of those juveniles and the health and safety of the others in detention during the current state of emergency related to the COVID-19 pandemic.

Emergency rule 8. Emergency orders: temporary restraining or protective orders

(a) Application

Notwithstanding any other law, this rule applies to any emergency protective order, temporary restraining order, or criminal protective order that was requested, issued, or set to expire during the state of emergency related to the COVID-19 pandemic. This includes requests and orders issued under Family Code sections 6250 or 6300, Code of Civil Procedure sections 527.6, 527.8, or 527.85, Penal Code sections 136.2, 18125 or 18150, or Welfare and Institutions Code sections 213.5, 304, 362.4, or 15657.03, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a

dissolution, legal separation, nullity, or parentage proceeding under Family Code section 6221.

(b) Duration of orders

(1) Any emergency protective order made under Family Code section 6250 that is issued or set to expire during the state of emergency, must remain in effect for up to 30 days from the date of issuance.

(2) Any temporary restraining order or gun violence emergency protective order, issued or set to expire during the state of emergency related to the COVID-19 pandemic, must be continued for a period of time that the court determines is sufficient to allow for a hearing on the long-term order to occur, for up to 90 days.

(3) Any criminal protective order, subject to this rule, set to expire during the state of emergency, must be automatically extended for a period of 90 days, or until the matter can be heard, whichever occurs first.

(4) Any restraining order or protective order after hearing that is set to expire during the state of emergency related to the COVID-19 pandemic must be automatically extended for up to 90 days from the date of expiration to enable a protected party to seek a renewal of the restraining order.

(c) Ex parte requests

(1) Courts must provide a means for the filing of ex parte requests for temporary restraining orders. Courts may do so by providing a physical location, drop box, or, if feasible, through electronic means.

(2) Any ex parte request may be filed using an electronic signature by a party or a party's attorney.

(d) Service of Orders

If a respondent appears at a hearing by video, audio, or telephonically, and the court grants an order, in whole or in part, no further service is required upon the respondent for enforcement of the order, provided that the court follows the requirements of Family Code section 6384.

1 **(e) Entry of orders into California Law Enforcement Telecommunications System**

2
3
4 Any orders issued by a court modifying the duration or expiration date of orders
5 subject to this rule, must be transmitted to the Department of Justice through the
6 California Law Enforcement Telecommunications System (CLETS), as provided in
7 Family Code section 6380, without regard to whether they are issued on Judicial
8 Council forms, or in another format during the state of emergency.
9

10
11 **Emergency rule 9. Toll the statutes of limitations for civil causes of action**

12
13 Notwithstanding any other law, the statutes of limitation for civil causes of action are
14 tolled from April 6, 2020, until 90 days after the Governor declares that the state of
15 emergency related to the COVID-19 pandemic is lifted.
16

17
18 **Emergency rule 10. Extensions of time in which to bring a civil action to trial**

19
20 **(a) Extension of five years in which to bring a civil action to trial**

21
22 Notwithstanding any other law, including Code of Civil Procedure section 583.310,
23 for all civil actions filed on or before April 6, 2020, the time in which to bring the
24 action to trial is extended by six months for a total time of five years and six
25 months.
26

27 **(b) Extension of three years in which to bring a new trial**

28
29 Notwithstanding any other law, including Code of Civil Procedure section 583.320,
30 for all civil actions filed on or before April 6, 2020, if a new trial is granted in the
31 action, the three years provided in section 583.320 in which the action must again
32 be brought to trial is extended by six months for a total time of three years and six
33 months. Nothing in this subdivision requires that an action must again be brought
34 to trial before expiration of the time prescribed in (a).
35

36
37 **Emergency rule 11. Depositions through remote electronic means**

38
39 **(a) Deponents appearing remotely**

40
41 Notwithstanding any other law, including Code of Civil Procedure section
42 2025.310(a) and (b), and rule 3.1010(c) and (d), a party or nonparty deponent, at

1 their election or the election of the deposing party, is not required to be present
2 with the deposition officer at the time of the deposition.

3
4 **(b) Sunset of rule**

5
6 This rule will remain in effect until 90 days after the Governor declares that the
7 state of emergency related to the COVID-19 pandemic is lifted, or until amended or
8 repealed by the Judicial Council.

EXHIBIT H

COVID-19

For the latest COVID-19 health guidance, statistics and resources, visit [Coronavirus.wa.gov](https://coronavirus.wa.gov).

Washington Governor - Jay Inslee

Inslee announces strategies for reducing the number of individuals incarcerated to address COVID-19 in DOC system

April 13, 2020

Story

As the COVID-19 outbreak continues in Washington, Gov. Jay Inslee announced today steps to protect the health of incarcerated individuals by focusing on the early release of vulnerable populations, including nonviolent individuals who are due to be released within the coming weeks and months.

"This will help allow for increased physical distancing throughout the Department of Corrections' system, reducing the population by up to 950 people to continue to reduce the risks to incarcerated individuals while balancing public safety concerns," Inslee said.

"Today, the Washington Department of Corrections takes its next steps in mitigating risk to the incarcerated population sentenced to our custody," Sec. Stephen Sinclair said. "Since the beginning of COVID-19 in our state, the department has worked aggressively to develop and implement protocols and directives to combat the pandemic. The next necessary steps will strategically provide for more physical distancing within the state's correctional facilities."

The Department of Corrections is developing and implementing responses to the COVID-19 pandemic that mitigate risk to its incarcerated population, including those who are most vulnerable to complications from COVID-19.

In March, several incarcerated individuals filed lawsuits against the DOC, which included requests for the release of almost 12,000 of the individuals currently incarcerated in the state prison system. On Friday, the Washington Supreme Court issued an order directing the governor and DOC to "immediately exercise their authority to take all necessary steps to protect the health and safety" of inmates in response to the COVID-19 outbreak.

Based on the court order, DOC will immediately begin to implement the strategies identified in the state's response to the court filed today. The plan will focus on individuals incarcerated for nonviolent and drug- or alcohol-related offenses, as well as people held on lower-level supervision violations.

Some incarcerated individuals will be released through commutation, others will be released into a modified graduated reentry program

Media Contact

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EXHIBIT I



State of California
Office of the Attorney General

XAVIER BECERRA
ATTORNEY GENERAL

April 13, 2020

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Washington, D.C. 20528

Dear Acting Secretary Wolf:

I write to urge you to take critical steps to minimize the transmission of COVID-19 in immigration detention facilities. To a significant extent, immigration detention is discretionary, and the Department of Homeland Security (DHS) currently has discretion to release thousands of individuals with little or no risk to public safety, particularly compared to the public health benefits that will flow from reducing the population of detained immigrants.

Based on the California Department of Justice's comprehensive reviews of six facilities and tours of all other detention facilities in California where immigrants are held pending their immigration proceedings, we know that many immigration detainees have no criminal histories and many are new arrivals seeking asylum. During these reviews, my Department has encountered many individuals whose medical conditions place them at a higher risk for developing serious illness from COVID-19. I am aware that the physical plants, custody and staffing patterns, and health care systems in immigration detention do not allow for social distancing practices and that additional practices such as improved sanitation, screening, and halting the admission of new detainees are needed to prevent transmission of the virus. Further, the facilities in question in California do not appear to have the healthcare resources required to treat infected detainees who become seriously ill. Failure to use your discretion to decrease the detainee population as much as possible and improve sanitation and COVID-19 screening practices for those detainees that remain will not only harm civil immigration detainees, but will overwhelm community hospitals to which those detainees will necessarily be transferred for treatment. COVID-19 infections have already been reported in one of the immigration detention facilities in California. Urgent action is required to prevent our country's immigration detention system from causing countless unnecessary deaths.

Alternatives to Detention Are Appropriate for Individuals Who Pose No Risk to Public Safety

Individuals in immigration detention are civilly detained pending their immigration proceedings. Their detention is unrelated to a criminal conviction, or—if criminal history is a factor in their proceedings—they have already served their sentences. The Immigration and Nationality Act provides you with discretion to release immigration detainees on bond or on their



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own recognizance, unless “mandatory detention” conditions apply. (8 U.S.C. § 1226.)¹ The thousands of immigration detainees that are in custody pending the resolution of their asylum claims or based on unauthorized status alone should be released so that they can shelter in place in their communities.

Based on my Department’s review of detention facilities in California, I am aware that large numbers of detainees are considered low security due to their lack of criminal history. For example, 619 detainees—91 percent of the population—at the Imperial Regional Detention Facility were classified as low security at the time of my Department’s review last year. At the Adelanto ICE Processing Center, 682 detainees were classified as low security and 49.79 percent of the detainee population was classified as low or medium-low security in early August 2019. Otay Mesa Detention Center, which reported COVID-19 infections among staff and at least ten detainees as of last week, had 693 low security detainees in December 2019—80 percent of the population. Releasing the thousands of individuals currently held in immigration detention despite being low security risks would allow detention facilities much greater flexibility for quarantining detainees that remain in custody, to the benefit of both detainee and community health. This is particularly critical for detainees who already receive treatment for chronic illnesses, as medical care within the detention facilities will soon become even less available due to potential significant diversion of healthcare staff and resources to treat COVID-19 patients throughout detention facilities, and such individuals are at greater risk of death from COVID-19.

I am aware that Immigration and Customs Enforcement has long used alternatives to detention, such as the Intensive Supervision Appearance Program and the Family Case Management Program, that effectively ensure participation in immigration proceedings without the need for costly detention. As the current health emergency turns the economic costs of immigration detention into a serious threat to our healthcare systems and our very lives, there could be no better time to make maximum use of supervised release options.

Immigration Detention Occurs in a Congregate Setting Where Transmission Is Possible

Immigration detainees live in crowded dorms with up to 99 other people (such as in the Mesa Verde ICE Processing Center), with no physical partitions. Reports from advocates

¹ Courts have recognized that even mandatory detention must be applied in accordance with constitutional due process limitations. In an unprecedented health crisis, where human life is at stake, release of individuals who pose little or no risk of danger to the community is warranted to protect both the detainees’ and the surrounding community’s interest in “life, liberty and the pursuit of happiness.” (U.S. Constitution, Amend. 5; *see Jennings v. Rodriguez* (2018) __ U.S. __, 138 S.Ct. 830, 853 [acknowledging availability of due process grounds for seeking bond hearing despite application of mandatory detention statute]; *Kabba v. Barr* (W.D.N.Y. 2019) 403 F.Supp.3d 180 [due process prohibited unreasonably prolonged detention under mandatory detention statute], *appeal filed* (2d. Cir 2020) No. 19-3418.)

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indicate that detainees have not been issued protective gear such as face masks for those who are coughing, that hand sanitizer is not available, and that even soap is in short supply. Detainees at most detention centers in California eat in dining halls built for 50 or more people, at communal tables, where transmission of the COVID-19 virus—if present—is likely. Even without a staggered schedule to lessen the number of people in dining halls at one time, my office has observed that detention facilities struggle to seat all detainees for all their meals in a manner that allows the full 20-minute meal time required by federal standards. With a decreased population, facilities could employ staggered dining schedules to reduce the number of detainees dining together. Detention facilities should also undertake increased cleaning and provision of cleaning supplies such as sanitizer and soap in detainee housing units for those who remain in custody.

Healthcare Systems in Detention Facilities Are Ill-Equipped to Handle an Epidemic

The California Department of Justice reported on overburdened healthcare systems at immigration detention facilities in our February 2019 report, *Immigration Detention in California*.² My Department has encountered detainees with serious medical conditions who regularly struggle to obtain adequate care at these detention facilities without the strain an infectious disease outbreak would place on the healthcare staff. None of the facilities we visited are equipped with sufficient options for meaningful testing and quarantine.³ One facility we reviewed had no written protocol for addressing infectious diseases, despite having had mumps and chicken pox outbreaks in the months before our visit. With only six separate medical isolation rooms for a population of 700, the facility dealt with disease outbreaks by cohorting an entire 64-person housing unit. A similar approach was undertaken by other facilities that my Department visited and that had similarly faced infectious disease outbreaks.

Outbreaks in Detention Facilities Will Increase the Burden on Local Community Hospitals and Cause Unnecessary Deaths

Immigration detention facilities regularly transfer detainees off-site for specialty care and when they require hospitalization. Because none of the facilities are equipped to provide intensive care, detainees that require medical intervention for COVID-19 will need to be treated at local hospitals, increasing the risk of infection to the public at large and overwhelming local health care providers.⁴ This in turn will result in community health resources being less

² This report is available at

<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>.

³ For example, the Adelanto ICE Processing Center has six negative-pressure isolation rooms for a population of up to 1,940 detainees; Imperial Regional Detention Facility has six for a population of about 700; Mesa Verde Detention Facility has two for a population of about 400; and Otay Mesa has six for a population of about 1,500.

⁴ Although early reports suggested that COVID-19 presented danger only for particularly vulnerable individuals, such as the elderly and people with health conditions, CDC data shows that 76% of individuals who have tested positive for COVID-19 are aged 18-64, and CDC

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available for community members. On March 19, 2020, the Governor of California issued a state-wide Stay-at-Home Order precisely to prevent the rapid transmission of COVID-19 from overwhelming local hospitals. Continuing to house immigration detainees who do not have a significant criminal history and are not pending criminal charges in their current settings seriously undermines this effort, one that Californians have undertaken at great economic and personal cost. In addition to reducing the detainee populations in its facilities, DHS should adopt strategies to limit transmission within the facilities such as screening of visitors and staff; increased sanitization and provision of cleaning supplies; and staggered dining hours to allow greater distancing between detainees during meals. Unless DHS takes immediate steps to reduce the population of detainees lacking a significant criminal history or pending criminal charges and implement policies to reduce the risk of transmission among the remaining detainees and staff, detainees, detention facility staff, and members of neighboring communities will face increased risk of death due to a shortage of medical equipment.

###

Significant steps are needed to avoid COVID-19-related catastrophe in our immigration detention facilities and their surrounding communities. I urge you immediately to:

- Limit the transfer or transport of detainees and halt the introduction of new detainees to immigration detention facilities, requiring a 14-day quarantine for any detainee for whom transfer or admission is unavoidable;
- Obtain COVID-19 test kits and conduct comprehensive testing of staff and the detained population in order to avoid transmission, using temperature and other vital statistics screens while waiting for such tests to become available;
- Obtain protective equipment such as masks, gloves, soap, and cleaning products for detainees and staff, and educate detainees and staff about how to minimize transmission, taking care to ensure that language minorities also receive this vital information;
- Identify and release detainees that pose no risk to public safety, such as those without significant criminal histories or pending criminal charges, prioritizing those that are in fragile health, so as to reduce the risk in detention facilities in a manner that balances any public safety concerns associated with such releases; and

estimates that between 10-33% of those individuals have been hospitalized. Based on detainee rosters immigration detention facilities provided to my Department in 2019 and 2020, 99.45% of immigration detainees in California are aged 18-64. Thus, immigrant detainees are also highly likely to need hospitalization if exposed to the virus. (See Center for Disease Control, Coronavirus Disease 2019 in Children — United States, February 12–April 2, 2020 (April 6, 2020) https://www.cdc.gov/mmwr/volumes/69/wr/mm6914e4.htm?s_cid=mm6914e4_w [as of April 7, 2020]).

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- Increase sanitation, availability of cleaning supplies and sanitizer, alter schedules, meal delivery, and physical space in detention facilities for remaining detainees while taking care not to further curtail detainees' liberty within the facilities.

Our communities are facing an unprecedented threat, and all of us must take affirmative steps to minimize it. I urge you to use your authority to address the countless unnecessary deaths that will follow if immigration detention proceeds without change during this public health crisis.

Sincerely,



XAVIER BECERRA
California Attorney General

cc: The Honorable Ron Johnson, Chairman, Committee on Homeland Security and Government Affairs

The Honorable Gary Peters, Ranking Member, Committee on Homeland Security and Government Affairs

The Honorable Bennie G. Thompson, Chairman, Committee on Homeland Security

The Honorable Mike D. Rogers, Ranking Member, Committee on Homeland Security