



March 20, 2019

VIA EMAIL

The Honorable John C. Carney
Governor of The State of Delaware

Dear Governor Carney,

We write today on behalf of the ACLU of Delaware and the Coalition for Smart Justice. As COVID-19 continues to spread across the globe, country, and Delaware, we hope that you will consider the ACLU of Delaware and the Coalition as a resource in your work to develop a response plan that protects the health, safety, and civil liberties of all Delawareans—especially those most vulnerable. We must recognize prisoners as a vulnerable population in the same way that we recognize the homeless, undocumented immigrants, people with disabilities, people over the age of 60, and those with chronic illnesses as most at risk.

As you know, challenges will mount in our state's prisons as this public health emergency evolves. People in prison are highly vulnerable to outbreaks of contagious disease. They are housed in close quarters and are often in poor health. Once a virus enters a prison, it could potentially infect the entire prison population and employees despite best efforts to contain it.

Currently, there are 4,158 sentenced inmates and 860 offenders on pretrial detention. DOC has stopped all outside visitors, but correction and support staff interact — sometimes in very limited spaces — with inmates. Any of these people can bring the virus into the prisons and/or take it out at the end of a shift. Screening is of limited utility, as public health experts report that individuals who are asymptomatic can still spread the virus. Both those incarcerated and those who watch over them are at risk for contracting the virus, which is why it is so important to have policies in place that will minimize this risk as much as possible for everyone's safety.

Delaware's Department of Correction has taken important preliminary precautions. However, there is still work to do in downsizing the footprint of the prison population and minimizing new admissions. Delaware's prisons are already operating beyond their design capacity, and preventing the spread of COVID-19 once introduced will be nearly impossible. Our prisons are potentially faced with

staff coming to work despite being ill, disruption to the medical or food supply to the institutions, and the personnel's capacity, including correctional officers and health care workers, to run a fully occupied facility during a national pandemic. We must do more.

Nationwide, authorities are responding to mitigate the impact of an outbreak in prisons. In Boulder, Colorado, prosecutors have filed motions recommending the release of some inmates with compromised immune systems, serious health conditions, those who have little time left on their sentence, and inmates being held pre-trial because they cannot afford to post bond. In Salt Lake, Utah, authorities plan to release between 150 to 200 non-violent offenders being held for technical probation violations or not showing up to court.

Just north of us in New York City, officials are identifying individuals for release including those arrested for minor crimes and those most vulnerable to infection due to underlying health problems. Two prisons in New York have had inmates test positive for coronavirus. One employee for the state's corrections department has died from it.

In your role as Governor, you have unique powers to stop the spread of COVID-19 in prisons and limit the harm it inflicts on communities by decreasing incarcerated populations and creating a culture in which transparency, safety, and the health of all people are the paramount concerns. By developing and implementing policies that align with guidance from public health experts, you can minimize harm inflicted on people involved in the criminal legal system – and, by extension, the harm inflicted on broader communities.

First and foremost, Governors should grant immediate commutation or issue an executive order to release, where it is in line with public safety and the success of the inmate:

- Anyone identified by the CDC as particularly vulnerable (over the age of 60 and individuals with immune deficiencies, chronically ill, infirmed) whose sentence would end in the next two years;
- Anyone whose sentence would end in the next 6 months;
- Anyone being held pre-trial for inability to post bail; and
- Anyone incarcerated on a probation revocation based on a technical violation.



According to the DOC's 2019 annual report, more than 10% of our prisoners are there for violations of probation. There are at least 285 people over the age of 60 in our Level V facilities. 860 people are being held on pre-trial detention.

We urge you to ensure the Department of Correction, when processing releases, coordinates with local service providers such as re-entry stakeholders, inpatient chronic-care facilities, Medicaid, and public health experts from the Division of Health and Social Services (DHSS) to ensure that people who are released from prison have a safe, accessible place to live, a liveable income, and access to healthcare. Additionally, we request that all criminal legal system agencies and actors who are part of the state's coronavirus response maintain transparency and release timely information in regards to the plans to ensure the safety of this vulnerable population.

The state will come under intense scrutiny for how the system responds to this national public health crisis. Now is the time to act.

We are available to discuss other ideas to mitigate the spread of COVID-19 within prisons. First and foremost, we hope you will act to protect those people in our prisons who do not present a safety risk if they were released and able to safely quarantine at their homes.

Thank you for your time and consideration.

Sincerely,

Dubard McGriff
Campaign for Smart Justice Organizer

Javonne Rich
Policy Advocate
ACLU of Delaware

Coalition for Smart Justice

The Coalition for Smart Justice is composed of over 40 organizations statewide dedicated to reducing the prison population and eliminating racial disparities in the criminal legal system.

Cc. Bethany Hall- Long
Lieutenant Governor of Delaware

Kathy Jennings
Attorney General



Claire DeMatteis
Commissioner, Department of Corrections

Secretary Kara Odom Walker
Department of Health and Social Services

Brendan O'Neill
Chief Defender, Delaware's Office of Defense Services

Chief Justice Collins J. Seitz, Jr.
Delaware Supreme Court