



New Jersey

P.O. Box 32159
Newark, NJ 07102
Tel: 973-642-2086
Fax: 973-642-6523
info@aclu-nj.org
www.aclu-nj.org

AMOL SINHA
Executive Director
973-854-1716
asinha@aclu-nj.org

VIA EMAIL

March 31, 2020

Hon. Philip D. Murphy
Governor
225 W. State Street
Trenton, NJ 08625

Dear Governor Murphy,

I hope this letter finds you recovering from your recent surgery despite the demands on you, and that your family is also in good health. We deeply appreciate the leadership you and your administration have demonstrated during this time of crisis. As you are well aware, the novel coronavirus is endangering the lives of everyone in our state. We are grateful that you have reiterated your concern for *all* New Jerseyans, including those who are often ignored by mainstream society, such as people in prison. Those who are incarcerated in New Jersey's jails and prisons, corrections officers, and civilian staff working in these facilities—where social distancing is virtually impossible—are particularly at risk to the spread of coronavirus.

We have received dozens of calls from family members of incarcerated people expressing their uncertainty and fear. Their concerns are well-founded: at least 132 inmates and 104 staff in jails across New York City tested positive for COVID-19 on March 28, 2020; the virus appears to be spreading quickly through that jail system.¹ The first reported coronavirus-related death of a federal prisoner occurred in Louisiana, after the prison experienced a disastrous spread of the virus among incarcerated people and corrections staff.² In New Jersey, at least four correctional police officers have already tested positive for the virus.³ New Jersey currently has the opportunity to reduce the likelihood of the tragic outcomes elsewhere, but not without meaningful and prompt executive action.

Many incarcerated people will fall sick or die during this pandemic. This outcome is equally true for prison and jail staff, those they may come in contact with, and those they may bring the virus home to. Put simply: as go our prisons and jails, so goes our state. Failing to contain the pandemic there allows for community spread outside the walls of these institutions.

¹ See <https://www.reuters.com/article/us-health-coronavirus-usa-inmates-insigh/spread-of-coronavirus-accelerates-in-u-s-jails-and-prisons-idUSKBN21F0TM>

² See https://www.washingtonpost.com/national/an-explosion-of-coronavirus-cases-cripples-a-federal-prison-in-louisiana/2020/03/29/75a465c0-71d5-11ea-85cb-8670579b863d_story.html

³ See <https://www.nj.com/coronavirus/2020/03/as-prison-coronavirus-cases-rise-nj-officers-want-hazard-pay-and-their-own-testing-center.html>

The burden this potential failure could place on our already taxed hospitals could affect thousands of people with no connection to the carceral system at all. There are, however, tools we can use to curb the spread.

The enclosed memorandum presents several options for your administration to consider that could provide life-saving relief to two large groups of people: those people incarcerated in New Jersey and the staff who are adjacent to those incarcerated persons every day. Some options include unilateral actions, while others consist of agency responses through the Department of Corrections or Parole Board. As this moment demands moving past the use of subtleties, let us be plain: a failure to significantly reduce the prison population in this moment means that people will die. Every day that we do not move with urgency concerning those living or working in prisons is another day that lives are put at risk.

We understand the legitimate concerns about access to stable housing and social services for those who might be released at this time. There are reentry-specific organizations willing to provide crucial supports during the pandemic. Additionally, networks of advocates working in the fields of housing, economic justice, health, criminal justice, and workers' rights have been activated and have begun to coordinate their efforts in response to COVID-19. These groups, with far-reaching community ties and on the ground networks (some that reach inside the State prisons and jails due to the incarceration of loved ones), stand ready to assist in coordinating support access across the state. As one example of response, New Jersey Re-entry Corporation has launched a 24/7 hotline for people who are released and need crucial services in this crisis. With state support, fiscal and otherwise, to bolster their capacity, these groups would likely be able to cushion the housing demand. Even if the need for social services feels overwhelming, however, the alternative – having people remain incarcerated and risking the lives of even more incarcerated people and corrections staff – presents the possibility of a far more dire outcome.

As Governor, you have repeatedly noted the effects of the virus on the most marginalized among us, particularly those in jails and prisons. You have also noted in the past that New Jersey is dead last with regard to the racial disparities clearly on display in those jails and prisons. This issue, then, is also an issue of racial equity. In addition to the incarceration disparities, historic barriers to health care and higher rates of serious chronic health conditions make New Jerseyans of color uniquely vulnerable to the ravages of COVID-19. Activating paths to release is a direct way to address the structural racism that exacerbates all these issues while simultaneously saving lives.

The ACLU-NJ is deeply aware of the demands and novel challenges that face New Jersey in this time; we are fully cognizant that every day brings forth a new set of horrors and an open fire hydrant of seemingly Sisyphean tasks. Our hope is that the suggestions contained in this document may help lighten the load and clarify potential paths that might assist in stemming the flow. We have significant expertise regarding the state's criminal justice system and are available to provide more details on these suggestions. As an affiliate of a national organization, we are also happy to provide you with information from Governors and Departments of Correction in other states who are successfully implementing similar guidelines to the ones presented here to insulate their staffs and incarcerated people from the virus.

It is our sincerest hope that that you will, using the fullest extent of your power as Governor, implement some of the options laid out on the following pages or, alternatively, direct

the relevant agencies to take the necessary steps to do so.

Please consider the ACLU-NJ as a partner and resource to and for you during this time. We remain, as always, ready to assist you and your administration in any way that could be of use. Thank you again for your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Sinha', with a small dot at the end.

Amol Sinha
Executive Director

MEMORANDUM

To: Governor Philip D. Murphy
Fr: ACLU of New Jersey
Date: March 31, 2020

PROVIDING RELIEF FOR THOSE INCARCERATED OR WORKING IN NEW JERSEY PRISONS DURING THE CORONAVIRUS PANDEMIC

This outline presents a series of options for Governor Murphy to consider to help curb the spread of coronavirus in New Jersey's prisons. Reducing the prison population will help save lives of people who are incarcerated and those who are connected with prisons, including corrections staff and their families. These options include unilateral executive actions and actions through specific agencies.

I. EXPEDITING RELEASE THROUGH DIRECT GUBERNATORIAL ACTION OR DIRECTION TO DEPARTMENT OF CORRECTIONS

A. *Commutation*

1. The Governor has broad plenary power to commute sentences and the ACLU-NJ recommends that the Governor consider categorical commutations of particularly vulnerable groups. This includes:
 - a) Pregnant people;
 - b) Those over the age of 60 (796 people) or 65 (413 people) who not only face a higher risk of death if infected but are much less likely to re-offend;
 - c) The medically vulnerable – the CDC's criteria serves as a useful guide;⁴
 - d) People particularly vulnerable to the harms of isolation, as defined by the Isolated Confinement Restriction Act (N.J.S.A. 30:4-82.7);
 - e) Those who have the maximum date of their sentences approaching within the next year.
 - f) People originally sentenced to probation who have been resentenced to state prison as a result of a violation of probation.
2. Currently, people can request commutations through the Clemency Unit of the State Parole Board, but the process is insufficiently accessible to those who need it the most in this time. The Governor could address this by

⁴ See https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fpeople-at-higher-risk.html

creating a portal where people can request commutations, and elevating and amplifying that process so that more people can access it.

B. *Reprieves*

1. Under the NJ Const. Art. 5, Sect. 2, Para 1, the Governor also has broad power to grant reprieves, or temporary suspensions of sentences for those who do not fall into the commutation categories mentioned above. As with commutations, this power is plenary and unreviewable.
2. The ACLU-NJ recommends that the Governor grant reprieves for people described above to whom he may not feel comfortable granting clemency, until the end of the state of emergency or some other date certain, and then permit people to seek commutation, depending on behavior while outside and how much time is remaining on their sentences.

C. *Medical Furlough*

1. The DOC can grant medical furlough to individuals who are incarcerated, subject to certain limitations. (N.J.S.A. 30:4-91.3). The limitations include excluding those who are convicted of murder, manslaughter, sexual assault, robbery, kidnapping, or aggravated assault.

D. *Credits*

1. The state could release significant numbers of people through accelerated time credit calculations and other tools. The DOC should consider restoring “good time credits” for incarcerated people who have lost them as a result of institutional disciplinary hearings.

II. EXPEDITING RELEASE THROUGH THE STATE PAROLE BOARD

A. *Parole Eligibility*

1. We recommend that the Governor direct the Parole Board to (re)consider those who were denied parole, those whose timelines were extended in the last year, and those eligible for consideration over the next 12 months.

III. COLLECTING DATA AND IMPROVING CONDITIONS IN FACILITIES THROUGH DEPARTMENT OF CORRECTIONS ACTION

A. *Ombudsman* – DOC should designate a “virus ombudsman” to report out relevant data to the public, disseminate DOC specific information about the virus, and make course corrections quickly and where necessary.

1. *Publicly report out data on COVID-19 cases daily*
 - a) For each category (officers, civilians, people in custody), are there any confirmed cases of COVID-19 in any jails/DOC facilities? If so, how many? Which facilities?
 - b) For each category, are there any suspected cases of COVID-19 in any jails/DOC facilities? If so, how many? Which facilities?
 - c) Is anyone in custody being quarantined? If so, how many? Which facilities? How/under what conditions?

2. *Education*

- a) Disseminate accurate, up-to-date information for people in DOC custody, corrections officers, and civilian staff, including information to provide transmission prevention education and combat stigma. These should be translated into multiple languages, but at the very least, they must be translated into Spanish and people in custody who speak other languages should be offered language line assistance.

B. *Health, Hygiene, and Sanitation*

1. *Supplies*

- a) Ensure adequate hygiene supplies necessary to comply with sanitation protocols for workers and people in custody are available at no cost; ensure people in custody have access to supplies at all times.
- b) Suspend policies classifying hygiene products as contraband, including those banning hand sanitizer.

2. *Incarcerated people*

a) *Social distancing*

- (1) End performance of tasks and jobs by inmates that could contribute to spread.
- (2) Quarantine elderly and medically vulnerable populations who remain in custody in scientifically sound ways that do not result in prolonged, widespread lockdowns.
- (3) Find alternatives to extended isolation.

b) *Mitigate harm from restrictions*

- (1) Increase mental health services and advise people in custody about those services.
- (2) Increase PREA enforcement directly proportional to any decreasing supervision due to officer illness.

3. *Corrections Officers and Civilian Staff*

- a) Access to PPE (N95 Masks, Gloves, suiting).
- b) Clear guidance upon exposure or if becoming symptomatic.
- c) Knowing that virus creates stressful dynamics, re-emphasize de-escalation tactics.

C. *Health care / Bolstering medical systems*

- 1. Ensure that jails and prisons are staffed with sufficient medical personnel as infection rates climb.
- 2. Monitor administrators and health care providers to ensure they are

following protocols for testing and treatment and are sending patients to hospitals as appropriate.

3. Provide and monitor stock levels of PPE and appropriate equipment and medicines for treating infections.