



**Written Statement of Celeste Trusty
Pennsylvania State Policy Director, FAMM
Pennsylvania House of Representatives
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We commend the Pennsylvania General Assembly for considering legislative action to protect people who live and work in Pennsylvania state prisons from the COVID-19 pandemic, and thank the House Judiciary Committee for the opportunity to share our comments.

FAMM is a nonpartisan, nonprofit organization that advocates sentencing and prison policies that are individualized and fair, protect public safety, and preserve families. FAMM has always advocated evidence-based policies to safely reduce our prison population, but it is evident now more than ever, that reducing Pennsylvania's bloated prison population is in the interest of both public safety and public health. Therefore, we urge **the General Assembly to take immediate action to 1) safely and quickly remove as many vulnerable people from prison as possible, and 2) ensure proper precautions are implemented within every prison facility in the state to protect people who remain incarcerated, as well as the corrections staff.**

COVID-19 is an unexpected and dire emergency that requires immediate action across all institutions—including our prisons. While it is encouraging that the General Assembly has chosen to undertake a legislative response to COVID-19 in our state prisons, capping the legislative depopulation efforts at 450 people is far, far too little to make a noticeable or sustained impact on mitigating the spread of the virus. We can, and must do more to protect the populations inside and outside of our prisons.

There are now multiple confirmed cases of COVID-19 within Pennsylvania's prison population and corrections staff. Unfortunately, people in prison cannot take any of the precautions recommended by experts to reduce their chances of contracting and spreading COVID-19. Social distancing is impossible, given that people in prisons and jails are forced to eat, sleep, and bathe in close quarters with others. This is especially dangerous for people who are elderly or have underlying medical conditions, who are at a high risk of serious health complications or death if they contract COVID-19, according to the Centers for Disease Control and Prevention (CDC).¹

The Pennsylvania Department of Corrections has stated that approximately 12,000 people incarcerated in their system would qualify as vulnerable according to the CDC guidelines,

¹ Centers for Disease Control and Prevention, Are you at Higher Risk for Severe Illness?, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications/older-adults.html>



including the elderly and sick.² The criteria proposed in A04916 does not include a provision for relief based on the CDC's most vulnerable age category, and only allows relief for a narrow category of people who are within three months of their minimum sentence, or within nine months of their minimum if the person has a medical diagnosis that places them at higher risk of severe COVID-19-related illness. To make a noticeable impact in slowing the spread of the virus, we must consider additional pathways to relief for larger categories of vulnerable people.

To mitigate further spread of COVID-19 in our prisons and communities, the Pennsylvania Department of Corrections believes 1,200 people should be released monthly for a period of three months. Releasing 450 people is a start, but falls desperately short of the DOC's stated goal to keep their residents and staff as safe and healthy as possible during this public health emergency. Releasing more significant numbers of vulnerable populations so they can self-isolate in their own homes and avoid the inevitable outbreak in their prison facility will save lives. FAMM urges the legislature to support and advance legislation that would allow the DOC to immediately release as many vulnerable people from prisons as is safely possible.

As we are witnessing, this disease has not even peaked yet, and our country's hospitals are already becoming overwhelmed by COVID-19, desperately short of the critical care equipment necessary to treat and save the infected. We certainly cannot expect a more positive outcome in our prisons and jails, which lack sufficient medical personnel, budget, and equipment to handle what will most definitely be a surge in positive cases among residents and staff. The Pennsylvania DOC has just four ventilators – all of which are currently in use.³ Without the ability to follow the CDC's safe social distancing guidelines, and without access to adequate healthcare inside our prisons and jails, it is critical that our most vulnerable Pennsylvanians be removed from prisons and jails immediately. Those not removed who become seriously ill and require critical care they cannot obtain in prison will eventually end up in community hospitals, which are already strained. **Prison health is public health. If we do nothing to protect incarcerated people and corrections staff now, we will all suffer for it later.**

Specifically, FAMM urges the legislature to:

- i) Create non-lapsing emergency release provisions as additional mechanisms for release of people who pose no risk to the public, including the aging, seriously ill, and immunocompromised.**

The COVID-19 pandemic has amplified the shortcomings of many of our institutions and underscored the need to create and expand legal mechanisms to swiftly release large numbers of vulnerable people from prisons and jails to save lives and protect public health during a public health crisis. On behalf of thousands of Pennsylvania families who care about the people who

² Pa. prison system mulls releasing hundreds to prevent coronavirus spread. Philadelphia Tribune. Moselle. April 1, 2020.

https://www.phillytrib.com/news/health/coronavirus/pa-prison-system-mulls-releasing-hundreds-to-prevent-coronavirus-spread/article_15b2a10f-a7df-5183-b9f4-9496ed0d850d.html

³ Hundreds could be released from Pa. State prisons under draft plans to help prevent a coronavirus outbreak. Spotlight PA. Fernandez & McKinney. March 31, 2020.

<https://www.inquirer.com/health/coronavirus/spl/pennsylvania-coronavirus-state-prisons-release-john-wetzel-20200401.html>

reside and work inside our correctional institutions, we urge you to draft and adopt legislation that would provide permanent legal avenues for relief for our aging and ill incarcerated, as well as permit the expedited release of incarcerated people in emergency situations.

A broad new emergency release mechanism, in combination with other efforts, may also help us in our fight to survive this pandemic. The COVID-19 crisis might roll out in waves, with multiple peaks and periods of social distancing and isolation required as we wait for the discovery and widespread application of a vaccine or cure over the next 18 months. We will likely face our current circumstances again, and next time we will need efficient, effective legal mechanisms to remove those most vulnerable to the coronavirus before it becomes too late. Amendment A04916 would create emergency release authority that would lapse after a mere 90 days. We encourage the legislature to consider making this emergency release authority permanent – for the next wave of this crisis, and for the next pandemic we don't yet see coming.

II) Draft and adopt legislation to expand and simplify processes for releasing aging and ill people from Pennsylvania's prisons and jails in non-emergency situations

Under Pennsylvania law, an extremely limited number of people who are critically ill are eligible for early release through an infrequently used “deferment of sentence due to serious or terminal illness” program. Only nine people were granted relief under this program between 2009 and 2015.⁴ The process is full of bureaucratic red tape and has exceptionally narrow eligibility criteria. Although legislation has been introduced to reduce our aging and sick prison population,^{5,6,7} none of these policies have successfully advanced through the legislative process this session.

Pennsylvania must create legal mechanisms for more broad and swift relief in cases deserving of medical or geriatric parole, and adequate opportunities for resentencing based on age or time served. Now more than ever, it is imperative that we expand and create robust mechanisms to safely reduce the prison and jail population, preserve limited healthcare resources, and protect public health. These mechanisms will save taxpayer money because elderly and ill people are the most expensive to incarcerate. Medical and geriatric release mechanisms will also make us safer by removing those who are a minimal risk to public safety from our prison facilities.

III.) Ensure that every measure is taken to mitigate the threat of exposure to COVID-19 to the people who remain under correctional care, as well as all corrections staff.

⁴ Everywhere and Nowhere: Compassionate Release in the States. Price.

<https://fam.org/wp-content/uploads/Exec-Summary-Report.pdf>

⁵ Commonwealth of Pennsylvania Regular Session 2019-2020. Senate Bill 942 - Parole Eligibility for Life Sentences.

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0942>

⁶ Commonwealth of Pennsylvania Regular Session 2019-2020. House Bill 642 – Medical Parole and Early Release.

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=0642>

⁷ Commonwealth of Pennsylvania Regular Session 2019-2020. House Bill 135 - Parole Eligibility Expansion for Life Sentences (HB135 from 2017-2018)

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=0135>

Throughout this pandemic, we should require strict adherence to the CDC's "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,"⁸ which would, at minimum:

- 1) Require that prisons and jails provide incarcerated residents with adequate supplies of soap and alcohol-based hand sanitizer, and ensure that all washable surfaces are thoroughly and regularly disinfected;
- 2) Require all staff to be screened regularly for COVID-19 symptoms upon entrance to prisons and jails, suggest that staff stay home when sick, and provide adequate paid leave for staff, if needed;
- 3) Require prisons and jails to keep families informed and aware throughout this crisis of any outbreaks and steps the DOC is taking to mitigate the spread of the disease and secure proper treatment for those who become ill;
- 5) Ensure that people in prison and their families have access to free phone calls, emails (where available), and video communication (where available) in lieu of cancelled in-person visits, so that families may stay connected and apprised of their loved one's health and needs.

Thank you for considering our views on this critical issue.

⁸ Centers for Disease Control and Prevention, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities
https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Min_Mod_Trans