



5/6/2020

Dear Secretary Inch,

Despite the best efforts by the Florida Department of Corrections (FDC) to contain the coronavirus, COVID-19 is now spreading inside Florida's state prisons, infecting prisoners and corrections professionals by the day. As of May 5, FDC has reported that 390 prisoners and 174 staff have tested positive for COVID-19. The virus has also killed seven prisoners so far. Infection rates among prisoners are higher than overall state rates, despite testing in state prisons occurring at a fraction of the state rate.

As you know, FDC has no unilateral authority to release prisoners permanently. For example, FDC's authority under Florida's "conditional medical release" program is limited to identifying those who meet narrow eligibility requirements; release authority rests with the Florida Commission on Offender Review. However, FDC does have broad furlough authority, and we urge you to begin using it immediately.

Section 945.091, F.S. authorizes FDC to adopt rules related to furloughs. Under this statute, FDC adopted Rule 33-601.603. Under subsection (6) of that rule, FDC may grant "Type A" furloughs to any eligible prisoner for certain family emergencies, or "**for any other reasons deemed consistent with the public interest**, including medical or mental health treatment, attendance at civil hearings, or to otherwise aid in the rehabilitation of the inmate." (Emphasis added.)

The Florida Supreme Court has held that the word "including" before a list of particulars implies a non-exhaustive list. *White v. Mederi Caretenders Visiting Servs. of Se. Fla., LLC*, 226 So. 3d 774 (2017). This interpretation is consistent with canons of statutory construction. (See, e.g., "Presumption of Nonexclusive 'Include'" in Scalia and Garner, *Reading Law*.) FDC may therefore grant furloughs for any reasons it deems consistent with the public interest. Reducing the spread of COVID-19 in prisons is consistent with the public interest, of course. FDC may therefore grant furloughs to help achieve this end. However, even if one rejects this interpretation, "the rehabilitation of" prisoners would unquestionably be aided by protecting them from uncontrolled threats to their lives or health. Under any plausible interpretation of Rule 33-601.603, then, FDC may grant furloughs to help stop the spread of COVID-19.

Things will likely get worse in Florida's prisons. It's likely more people will get sick, and more will die. Florida law gives FDC the authority to protect some of the people in your care by releasing them temporarily into the care of a qualified sponsor. FAMM urges you to use that authority immediately to protect the lives and health of incarcerated people, corrections professionals, and the citizens of Florida.

Sincerely,

Greg Newburn
Florida FAMM Director

cc: Governor Ron DeSantis