



March 25, 2020

Dear Rep. John Bell, Rep. David Lewis, and Rep. Darren Jackson:

We commend House Speaker Tim Moore for establishing the House Select Committee on COVID-19, and write today to urge you and members of the Continuity of State Operations (Emergency Services, Elections, and Public Safety) working group to consider the recommendations outlined below to protect incarcerated people in North Carolina from the coronavirus pandemic.

As the number of people infected with COVID-19 and the death toll continue to rise across the country, and reports of infections begin to crop up in prisons and jails, it is vital for the working group to partner with the Department of Public Safety (DPS) and county jails to ensure every proactive measure is taken to (1) safely and quickly remove vulnerable populations from prisons and jails, and (2) protect the safety and health of people who remain in custody, as well as the staff who work in the prisons and jails. In particular, we urge the working group to:

- I) Ensure the use and expansion of all available legal authority to expedite the release of elderly, immunocompromised, and seriously ill people from prisons and jails immediately.**

According to the Centers for Disease Control and Prevention (CDC), adults 65 years old and older and people with underlying medical conditions are at a high risk of contracting the coronavirus and face serious health complications from the virus, including death.¹ According to a 2006 study, North Carolina's number of prisoners over age 50 grew by 61 percent between 2001 and 2006 alone.² Of the approximately 35,000 people in state prisons currently, more than 8,000 are over age 50, including more than 1,200 people over age 65.³ Elderly prisoners are also more likely to have multiple or serious health conditions like heart disease, diabetes, autoimmune disorders, or other conditions⁴ that, according to the CDC, lead to higher risk of complications or death from COVID-19.

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

² North Carolina Dep't of Correction, Division of Prisons, Aging Inmate Population Study, May 2006, <https://files.nc.gov/ncdps/documents/files/AgingStudyReport.pdf>.

³ Search for prisoners age 50 and older or age 65 or older, performed using North Carolina Dep't of Public Safety Research and Planning Automated Query System, Mar. 24, 2020, at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

⁴ See North Carolina General Assembly, Modifying Criteria for North Carolina's Medical Release Program Could Reduce Costs of Inmate Healthcare: Final Report to the Joint Legislative Program Evaluation Oversight Committee, Report No. 2018-11, Sept. 17, 2018, at 3, https://www.ncleg.gov/PED/Reports/documents/InmateHealth_Release/Report4_Release.pdf.

The CDC also advises that people keep a six-foot distance from each other in order to reduce the risk of contracting and spreading the virus.⁵ This is nearly impossible for people in North Carolina prisons and jails to practice, as they are housed tightly together, often in overcrowded facilities, and share a common sleeping space, cafeteria, restrooms, and showers. Most state prisons also lack sufficient medical personnel, hospital beds, and critical care equipment to cope with a widespread outbreak of the coronavirus among a vulnerable population. Without the ability to adhere to social distancing and receive sufficient health care on-site, it is important that those who are most at risk from COVID-19 are removed from prisons and jails immediately.

Under North Carolina law, some people who are terminally ill, permanently and totally disabled, or geriatric (age 65 or older) can be released and returned home through medical release. Additionally, the Secretary of the DPS has authority to “extend the limits of confinement” for people who are permanently and totally disabled or terminally ill so they can receive medical care outside of prison.⁶ Unfortunately, North Carolina’s medical release and extension of confinement programs have stringent requirements and a lengthy and bureaucratic review process, and such relief has been granted to only 13 people each year, on average.⁷

Now more than ever, it is important that the available medical release and medical furlough provisions are efficient and able to be used to their fullest extent to save as many lives as possible, conserve prison healthcare resources, and protect public health. We urge the working group to ensure that DPS is using and expediting current release processes for prisoners who are elderly or have underlying medical conditions, so that they can self-isolate in their own homes and avoid the inevitable outbreak in their prison facility. The working group should also draft and recommend legislation to streamline the medical release and extension of confinement programs and expand eligibility for those programs.

II) Ensure the Department of Public Safety and county jails take appropriate precautions to mitigate the risk of a COVID-19 outbreak for people who aren’t able to secure early release.

In addition to working for the swift removal of as many vulnerable people as possible from prisons and jails in the coming months, the working group should partner with DPS to ensure that every measure is taken to minimize the threat of COVID-19 to people who remain incarcerated, and also the correctional staff. These measures should adhere to the CDC’s “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,”⁸ and at the minimum include measures that would:

- 1) Require prisons and jails to provide adequate supplies of soap and alcohol-based hand sanitizer to everyone in the prison and ensure that washable surfaces are properly disinfected on a regular basis;

⁵ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19: How to Protect Yourself, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

⁶ See North Carolina Compassionate Release, https://famm.org/wp-content/uploads/North-Carolina_Final.pdf.

⁷ North Carolina General Assembly, Modifying Criteria for North Carolina’s Medical Release Program Could Reduce Costs of Inmate Healthcare, at 1, 13.

⁸ CDC, 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>.

- 2) Require prisons and jails to screen staff regularly for COVID-19 symptoms, encouraging them to stay home if feeling sick, and providing enough paid sick leave for staff;
- 3) Increase DPS funding to hire additional staff to ameliorate staff shortages and minimize the use of overtime;
- 4) Require prisons and jails to keep families aware throughout this crisis of any outbreaks and steps the DPS is taking to mitigate the spread of the disease and secure proper treatment for those who become ill;
- 5) Ensure that prisoners 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.

III) Create an emergency release provision as an additional mechanism for release of people who pose no risk to the public.

This current pandemic has highlighted the cracks in many of our institutions, including the lack of legal authority for courts, Department of Public Safety officials, and the governor to swiftly release large numbers of vulnerable people from prisons and jails to save lives and protect public health during a contagious disease outbreak. We urge you to draft and recommend legislation that would permit the expedited release of prisoners during a public health emergency. We stand ready to provide support and research to assist you with this effort.

Thank you for considering our views.

Sincerely,

Molly Gill,
Vice President of Policy, FAMM

cc: members of the Continuity of State Operations working group