

Executive Order No. _____

**Controlling COVID-19 Transmission and Mortality
by Reducing Certain Populations in State and Local Correctional Facilities**

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in Washington as a result of COVID-19 (“virus”), and;

WHEREAS the virus remains an urgent threat to the public safety and welfare and immediate efforts to control the spread of the virus in our communities, reduce and minimize the impacts of infection on our citizens, and otherwise mitigate the effects of the virus in Washington are needed, and;

WHEREAS at least four staff members employed by the Washington State Department of Corrections and multiple people held in our local jails have tested positive for the virus, and numerous units in our prisons and jails are in quarantine, making an outbreak of the virus in Washington’s jails, prisons, juvenile detention facilities, private detention facilities contracted with the State, and all other correctional facilities (“correctional facilities”) a near certainty, and;

WHEREAS an outbreak of the virus in these correctional facilities would likely spread rapidly, overwhelming the medical capacity inside these facilities, as well as the capacity in surrounding, often rural community hospitals, and would be potentially catastrophic for the people incarcerated in these correctional facilities, and;

WHEREAS the current state prison population includes a significant number of people who are over the age of 50 or who have medical conditions that the Center for Disease Control has identified as increasing the risk of morbidity and mortality from COVID-19, and;

WHEREAS reducing the overall population of people in correctional facilities is compatible with the prior Orders of my office directing social distancing, self-isolation, and individual quarantine, and;

WHEREAS Washington’s dedicated law enforcement and correctional officers, as well as other staff protecting our State’s communities, deserve protection from exposure to the virus, and;

WHEREAS close coordination and alignment between and among the many various law enforcement, judicial and correctional agencies of this State is essential to ensure an effective system-wide response that controls the spread of the virus in our criminal justice system, and;

WHEREAS local jurisdictions may determine that they need to take actions to control the transmission of the virus in correctional facilities in a manner they believe would be contrary to existing state law or procedure, and;

WHEREAS a local jurisdiction's failure to take immediate steps to reduce local jail populations would undermine the State's ability to protect its citizens and would thwart the State's efforts to control the spread of the virus, including in State correctional facilities that receive individuals transferred directly from local correctional facilities, and;

WHEREAS efforts by state entities will be furthered by a cohesive and coordinated response from local entities, including law enforcement, judicial officers, and local jails and guidance to those entities will further the state's emergency response to the virus, and:

NOW THEREFORE I, Governor Jay Inslee, in accordance with the authority vested in me by the Washington State Constitution and laws of Washington State during this state of emergency, in particular RCW 43.06.220(h), do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED:

DEPARTMENT OF CORRECTIONS

- A. Pursuant to my powers to grant executive clemency under Wash. Const. art III, § 9, RCW 9.94A.565 (1) and my powers to take other such activities as I believe will "help preserve and maintain life, health, property or the public peace" under RCW 43.06.220(h), my office will grant expedited clemency to individuals particularly vulnerable to mortality from the virus unless my office determines clemency for a particular individual would pose an immediate and direct threat to public safety, thereby protecting both incarcerated people and corrections staff from wide-spread infection while preserving public safety.
- B. To that end the Department of Corrections shall immediately identify for my office all people who are incarcerated who are currently past their Earned Release Date, or will be within 2 years of the date of this Order, and who also meet one or more of the following conditions: (1) 50 years of age or older; (2) chronic respiratory disease; (3) cancer; (4) heart disease; (5) lung disease, (6) diabetes, (7) pregnant; or (8) those who are otherwise immuno-compromised ("vulnerable individual"). Effective immediately and on a rolling basis through May 31, 2020, the files of these individuals should be sent to my office for an expedited review and a presumptive grant of clemency, unless my office determines clemency for a particular individual would pose an immediate and direct threat to public safety.
- C. The Department of Corrections shall immediately identify for my office all persons held in a state correctional facility who currently have 365 days or less of incarceration left to serve as of the date of this Order. Effective immediately and on a rolling basis through May 31, 2020, the files of these individuals should be sent to my office for an expedited review and

a presumptive grant of clemency, unless my office determines clemency for a particular individual would pose an immediate and direct threat to public safety.

- D. The Department of Corrections shall immediately identify any individual who is currently serving life without parole due to a conviction of Robbery in the Second Degree prior to April 29, 2020, which resulted in a “third strike,” and refer all such individuals to my office for an expedited review and a presumptive grant of clemency, unless my office determines clemency for a particular individual would pose an immediate and direct threat to public safety.
- E. The Clemency and Pardons Board shall commence emergency sessions in order to effectuate these reviews as necessary.
- F. The Department of Corrections shall immediately identify for my office all other people who are incarcerated, regardless of age, release eligibility, or date of release, who are vulnerable individuals as defined above. Effective immediately and until May 31, 2020, these individuals should be immediately reviewed by the Department of Corrections for release to Extraordinary Medical Placement pursuant to RCW 9.94A.728(c)(1) unless the Department of Corrections determines such release of a particular individual would pose an immediate and direct threat to public safety. Due to the current state of emergency and the extreme vulnerability and medical needs of some of these individuals, the statutory preclusion of people with certain offenses from being considered for this release is hereby waived immediately, until May 31, 2020.
- G. In the event that the Department of Corrections determines that a vulnerable individual does not meet the medical criteria for Extraordinary Medical Placement, the Department will provide the files of these individuals to my office for an expedited review and a presumptive grant of clemency, unless my office determines clemency for a particular individual would pose an immediate and direct threat to public safety.
- H. The Department of Corrections shall also immediately identify all currently incarcerated people who, on the date of this Order, are within six months of their release date and immediately release those people onto the Graduated Reentry Program established by the Department of Corrections pursuant to RCW 9.94.733. To the extent that the provisions of that chapter limit people from participation in the program who have not already served twelve months in total confinement, such limitations are hereby waived immediately, until May 31, 2020.
- I. The Department of Corrections should reinstate the accrual of earned time to that originally provided for by the Sentencing Reform Act, providing 10 days for every thirty days of “good conduct” and 5 days for every thirty days of program participation, resulting in an accrual rate of 1/3 of the person’s total sentence through the accrual of earned time. This rate of accrual shall be implemented without exclusion for mandatory minimum

terms, sentence enhancements, or other provisions that prevent good time on any portion of a sentence.

- J. Individuals released pursuant to this Order will be discharged from custody subject to such conditions of supervision, if any, as they would have received if they had completed the full remaining term of incarceration. Those individuals who were not previously eligible for release will be subject to conditions of supervision as deemed necessary by the Department.
- K. The Department of Corrections shall immediately identify all individuals in its custody that are not eligible for any of the above provisions but for whom temporary furlough is available pursuant to RCW 72.66.014. To the extent that the provisions of that chapter limit people from participation in the program who have not served a minimum number of days in total incarceration, such limitations are hereby waived immediately, until May 31, 2020. Notwithstanding any other provisions of that chapter, the Department of Corrections will extend individual furlough orders until the state of emergency in Washington State has ended or the individual is determined to have violated the furlough conditions pursuant to RCW 72.66.036.
- L. Individuals granted furlough under this Order will be subject to whatever conditions the Department of Corrections deems appropriate to ensure public safety and their return to custody as directed by this Order, provided such conditions shall comply with Section O, below.
- M. The Department of Corrections will work with other state agencies, including the Department of Social and Health Services, as well as community based service providers, to link people who are released from incarceration pursuant to this Order to needed services in the community when appropriate.
- N. All efforts will be made by the Department of Corrections to ensure adequate, orderly and normal discharge planning and support for released individuals, provided that exceptions may be made to normal procedures consistent with the guiding imperative of this Order to reduce overall populations as rapidly and safely as possible.
- O. For all people under community supervision, including people granted temporary furlough under this Order, until May 31, 2020, the Department of Corrections shall (1) cease all in-person check-ins, suspend check-in requirements or allow check-ins to occur by voice or video call; (2) suspend enforcement of any mobility-restricting supervision conditions that impede a person's ability to seek medical care or to support a dependent; and (3) suspend all issuance of detainers or other revocations that would result in incarceration for technical (crimeless) rule violations.

LAW ENFORCEMENT OFFICERS

- P. Pursuant to my powers to take activities as I believe will “help preserve and maintain life, health, property or the public peace” under RCW 43.06.220(h) and in an effort to further coordination across the criminal justice system, I hereby issue the following guidance to local law enforcement agencies:
1. Increase the use of warnings in lieu of arrest when safe to do so. Except when otherwise prohibited by statute, law enforcement should issue a warning instead of effectuating a warrantless arrest when there is no clear risk of physical harm to others or the community.
 2. Attempt whenever possible to prioritize arrests of serious and violent offenses over nonviolent crimes, while always considering victims’ rights.
 3. Through the performance of their duties, law enforcement officers should be aware of and weigh the severity of an offense when an individual has any cold or flu-like symptoms, including but not limited to any combination of cough, body aches, fatigue, chest tightness, shortness of breath or fever (collectively, COVID-19 Symptoms), as well as the risk posed by continuing to remain in contact with the person. Consonant with public safety and their duty, law enforcement officers should avoid contact with individuals manifesting COVID-19 symptoms.
 4. When law enforcement officers must contact members of the public who may have COVID-19 Symptoms and if the contact is for an offence unlikely to immediately compromise public safety, law enforcement officers should:
 - a. Adhere to the State’s social distancing directives;
 - b. Limit the amount of time they are exposed to the person;
 - c. Allow the individual to proceed with a verbal warning; and
 - d. Document the individual’s name and date of birth on their notepad, rather than exchanging documents through hand-to-hand contact as necessary.
 5. When contacting members of the public who appear to be visibly ill or have COVID-19 Symptoms, and the violation is serious in nature such that there is a clear, immediate risk of physical harm to others or the community, uniformed members should engage with the person to uphold the law. In these situations, law enforcement officers should, to the fullest extent possible:
 - a. Wear issued personal protective equipment (PPE);

- b. Place a surgical mask on an arrestee to limit potential virus exposure and transmission;
- c. Practice personal hygiene, including hand sanitizer and hand washing, to protect against transmission; and
- d. Clean and disinfect equipment, transport vehicles, and other potential areas of transmission using disinfectant according to the product label.

JUDICIAL OFFICERS

Q. Pursuant to my powers to take activities as I believe will “help preserve and maintain life, health, property or the public peace” under RCW 43.06.220(h) and in an effort to further coordination across the state court system and limit the spread of the virus across the state, particularly in the state’s jails, I hereby issue the following guidance to judicial officers:

1. The Washington State Supreme Court should order the presiding judge of each court to create a written plan to decrease the jail population. These plans should ensure the release of all nonviolent offenders and those who do not pose an immediate and direct threat to public safety. In order to minimize the threat of an uncontrollable COVID-19 outbreak, the goal of each plan should be the dramatic reduction of the incarcerated population that ensures, at minimum, that each incarcerated person has a single cell. Presiding judges should consider the following emergency actions:
 - a. Suspending all probation or pretrial conditions—including drug testing, employment requirements and education requirements—whose adherence would require the individual to violate the World Health Organization’s physical isolation instructions;
 - b. Ordering the release, with or without conditions, of the following categories of individuals currently held pretrial or serving sentences in jails:
 - i. All vulnerable individuals unless those held for one of the most serious offenses as defined in RCW 9.94A.030, and whose release poses an immediate and direct threat to public safety;
 - ii. All individuals held for a technical violation of a condition of release; and
 - iii. All individuals EXCEPT those held for the most serious offenses and when there is a risk of physical harm to another person or persons.

COUNTY, CITY, AND REGIONAL JAILS

- R. Further pursuant to my powers to take activities as I believe will “help preserve and maintain life, health, property or the public peace” under RCW 43.06.220(h) and in an effort to further coordination across the state court system and limit the spread of the virus in our jails and the impact such spread would have on the state prisons, I hereby issue the following guidance to County, City, and Regional Jails (“jails”):
1. All units of government that own or operate jails should take immediate steps to significantly reduce the local incarcerated population consonant with public safety. The determination of public safety should balance the immediate needs to maintain criminal law enforcement and the imminent danger posed by the COVID-19 pandemic in Washington. To the fullest extent possible, such steps should be coordinated with local courts, prosecutors, and public health departments.
 2. Ensure that all jails adopt and follow policies that reflect the latest guidance from the state and local health departments, as well as the U.S. Center for Disease Control and Prevention on the Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities.
 3. Under no circumstances should anyone exhibiting COVID-19 Symptoms have interaction with those being held in custody. Such individuals should be isolated and sent home. This also applies to staff or outside contractors who have known contact with third-party individuals outside the detention center who are exhibiting COVID-19 Symptoms.
 4. Ensure that the local public health agency is notified of any and all suspected or confirmed cases of COVID-19 that occur within a jail.
 5. End chains and other transfers of individuals between jails and jurisdictions.
 6. Suspend all inter-local jail services contracts and refuse to book any person for any outside jurisdiction.
 7. Impose the following booking restrictions:
 - a. Refuse to book all vulnerable individuals unless they are charged with one of the most serious offenses as defined in RCW 9.94A.030, and whose release poses an immediate and direct threat to public safety.

- b. Refuse to book individuals surrendering for sentences (including weekend sentences) and work with courts to reset surrender dates.
 - c. Limit bookings to only the most serious offenses and where there is a risk of physical harm to another person or persons.
- 8. In the absence of court orders to release individuals serving sentences in jails, increase good time credit to ensure the rapid release of individuals serving such sentences pursuant to RCW 9.92.151.
- 9. To the fullest extent possible, jails should work with local social service agencies and community based providers to ensure that vulnerable individuals and those without capacity find safe community placement.
- 10. To promote transparency with the public, regional jails should post daily:
 - a. The number of people incarcerated;
 - b. The percentage of individuals housed in single cells;
 - c. The number of incarcerated people tested and the results of such tests;
 - d. The number of staff tested and the results of such tests; and
 - e. All current policies related to the management of COVID-19 in the facility that may be publicized consonant with public safety. If policies may not be publicized, a summary of such policies must be posted.