

prison terms of as many as possible through commutations or pardons, 2) release as many people as possible using the furlough system, and 3) drastically increase the testing capacity within the prison system.

Right now, almost 100,000 people are incarcerated in the Florida Department of Corrections (FDC) without the option of practicing physical distancing or taking other necessary steps to protect their health. When we wrote our initial letter to Governor DeSantis on March 16, 2020, there were approximately 550 cases in Florida and 11 deaths. In our April 9, 2020, letter to Governor DeSantis, we noted that as of April 8th, the public had been made aware of at least thirty-seven Florida prison workers who have tested positive for COVID-19, four people incarcerated in Florida prisons, at least five Florida residents detained in jail pre-trial, and that one individual detained pre-trial died of COVID-19. As of May 8, 2020, 575 people in FDC custody and 187 corrections workers have tested positive for COVID-19; nine of the incarcerated have died. These numbers are increasing exponentially and are undoubtedly undercounts. For instance, 60% of the tests of imprisoned people at Tomoka Correctional Institution have yielded positive results; the rate is over 65% at Sumter Correctional Institution.¹ Other systems show similar trends. Approximately 70% of all Bureau of Prisons inmates who have been tested have received positive results. One model predicts that 99% of the Arizona prison population will contract the disease.²

As countless medical experts have opined, it will not be possible to contain the spread of COVID-19 throughout the prison system.³ No matter the measures that the FDC adopts, it is impossible to maintain adequate physical distancing within prison. Incarcerated people use communal bathroom and shower facilities with little ability to sanitize them between uses. Those in open bay dorms must sleep less than three feet from their neighbors. They eat in communal facilities and spend their days in communal spaces. Thus, it is virtually certain that thousands of people will contract the disease. A significant percentage of those will become seriously ill, and some of them will die. A recent academic study predicts that there will be between 99,000 and 188,000 more COVID-related deaths than currently estimated because of the failure to account for the spread of infections within prison and jails.⁴ Given this alarming reality, the calls to significantly reduce the prison and jail population have multiplied,^{5 6 7} including by public health and correctional experts.⁸

In keeping with this chorus of recommendations, the only viable method to prevent the widespread illness and death of thousands of Floridians is to significantly reduce the prison population. We therefore strongly urge you to take the following steps.

¹ <https://www.orlandoweekly.com/Blogs/archives/2020/05/02/covid-19-continues-to-spread-in-floridas-prisons>

² <https://www.npr.org/2020/04/28/846678912/a-ticking-time-bomb-advocates-warn-covid-19-is-spreading-rapidly-behind-bars>

³ <https://www.newyorker.com/news/news-desk/it-spreads-like-wildfire-covid-19-comes-to-new-yorks-prisons>

⁴ <https://www.aclu.org/report/flattening-curve-why-reducing-jail-populations-key-beating-covid-19?redirect=covidinjails>

⁵ <https://www.orlandosentinel.com/opinion/guest-commentary/os-op-coronavirus-prison-release-20200429-qlirje7fdneldho3wfyotybiaq-story.html>

⁶ <https://www.cnn.com/2020/04/20/opinions/covid-19-prosecutors-prison-release-honig/index.html>

⁷ <https://www.nytimes.com/2020/04/23/opinion/coronavirus-prisons.html>

⁸ <https://theappeal.org/a-public-health-doctor-and-head-of-corrections-agree-we-must-immediately-release-people-from-jails-and-prisons/>

First, Governor DeSantis and the Florida Cabinet should suspend prison sentences by granting pardons or commutations. Only the Governor and Cabinet have the power to grant such forms of relief. *See* Fla. Const. Art. IV, Sec. 8(a); Fla. Stat. § 940.01. Thus, we strongly urge the Governor to request from the FDC a list of all incarcerated people who are over 60 years old and all those who are medically vulnerable.⁹ There are likely thousands or tens of thousands of people who fall into these categories. For instance, as of April 2020, the FDC system held 8,946 people over 60, 1,927 over 70, 238 over 80, and 11 over 90, respectively.

The Governor should direct the FDC Secretary, the Office of Executive Clemency, and the Florida Commission on Offender Review to initiate an expedited review process of these individuals and produce to the Governor and Cabinet a list of individuals whose sentences should be commuted immediately. Priority can be given to those who are nearing the end of their sentences or who have served a significant portion of them. We urge the Governor and Cabinet to issue commutations to as many people as possible so that their prison terms are suspended, either permanently or for at least six months. Conditional commutations may be granted, such that people may be required to comply with certain conditions and may be required to return to prison if they violate them.¹⁰

This is the approach taken by several correctional systems. At least 25 state prison systems and 48 local jail systems (including several in Florida) have taken steps to reduce the incarcerated population to stop the spread of the disease.¹¹ For instance, in April, Oklahoma Governor Kevin Stitt commuted the sentences of over 450 people.¹² The federal Bureau of Prisons has released at least 2,144 people to home confinement because of COVID-19.¹³

Second, the FDC Secretary should issue furloughs that allow people to serve a portion of their sentence at home or a community location. Florida Statute § 945.091(1)(a)(3) authorizes the Ugetgvt{ vq kuwgu hwtqw j u hqt cp{ õcompelling reason consistent with the public interest.ö Ulo kctn{, HFE tgi wvqpu r gto kvj g Ugetgvt{ vq kuwgu hwtqw j u hqt õcp{ qvj gt 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.ö Htc. Af o kp. Eqfg 33-601.603(6)(a)(3). Avoiding the needless illness and death that will occur because of the COVID-19 crisis certainly qualifies as a reason that is consistent with the public interest. As with commutations, furloughs can be issued with conditions, and furloughed individuals can be required

õO gf lecm{ xwpgtedrgö lpf kxf wcnuj qwf lpenf g y qug y kj : (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure or coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; (l) a current or recent (within the last two weeks) pregnancy; and/or (m) any other condition that has been identified as a particular risk for severe illness and/or death caused by COVID-19.

Although the Rules of Executive Clemency prescribe certain waiting periods and conditions for clemency applications, they cannot constrain the constitutional authority of the Governor and Cabinet, who can simply waive them if necessary.

¹¹ <https://www.prisonpolicy.org/virus/virusresponse.html#state>

¹² *Id.*

¹³ <https://www.bop.gov/coronavirus/>

to return to prison after the crisis has subsided. Thus, we strongly urge the Secretary to conduct an expedited review of all incarcerated people over 60, and all those who are medically vulnerable, and issue as many furloughs as possible.

