

April 14, 2014

Sent via electronic mail

The Honorable Bill Lee
State Capitol, First Floor
Nashville, TN 37243

Dear Governor Lee,

As you are well aware, with each passing day the COVID-19 pandemic poses enormous and potentially catastrophic risk to individuals incarcerated and staff in Tennessee correctional facilities. When you spoke at your press conference several weeks ago you emphasized that we each have a choice to engage in physical distancing to flatten the curve.

However, incarcerated individuals and correctional staff in Tennessee's custodial facilities are not able to make those choices to protect themselves. As a result, the risk of a public health catastrophe for people residing or working in custodial facilities remains unmitigated. When correctional staff return to their homes, there is a likelihood of even greater risk to the larger community.

We write to strongly urge you to use your broad powers as set out in the Tennessee State Constitution and under state law to reduce the state prison population by safely releasing individuals 1) whose sentence would end in the next year, 2) who are currently being held on a technical supervision violation, and 3) who are especially vulnerable if infected by COVID-19 and have sentences that would end in the next two years.

In addition, we ask that you fund public and private non-profit re-entry programs that can support those individuals returning to our communities so that they have a range of available re-entry services they can access.

We hope that you will issue an executive order immediately that will address many of these risks. A decisive, swift, coordinated and uniform response by all stakeholders in the criminal legal system is needed to save lives and protect incarcerated individuals, correctional staff and the public at large from the threats posed by COVID-19.

While the Tennessee Supreme Court has ordered judicial districts to submit plans to reduce the local jail populations in their districts, it is critical that you use your executive powers to ensure that both the Tennessee Department of Corrections and local jails are quickly and safely reducing their incarcerated populations and that the state, at the same time, is expanding funding for critical re-entry programs to provide services to those released.



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There is strong support for dramatically reducing the prison and jail population to slow the spread of COVID-19. Sixty-six percent of likely voters, including 59% of those who identify as “very conservative,” said elected officials should be considering measures to reduce populations in prisons and jails as a response to coronavirus.¹

One of the biggest impediments to an effective response is the fact that our state’s criminal legal system is decentralized and made up of dozens of agencies and thousands of individual decision makers. When each of these stakeholders – from police and prosecutors to sheriffs, and probation and parole divisions – implement responses to this public health crisis in an inconsistent or case-by-case fashion, it will inevitably lead to delay, confusion, misallocation of resources and – most importantly preventable deaths. What this also means is that Tennesseans in different counties experience the criminal system differently because of geography.

Infections and deaths will disproportionately impact people of color who are overrepresented in jails and prisons. Black individuals in Tennessee constitute 17% of Tennessee’s population but make up 42% of the prison population. People of color are also disproportionately represented among vulnerable populations with diabetes, heart disease, respiratory disease and other conditions with COVID comorbidity.

You are in the unique position to mandate a coordinated response that brings multiple system actors together by offering clarity, consistency and vision with a plan rooted in guidance from public health experts and informed by the racial disparities rampant across our criminal legal and healthcare systems.

There are three steps you could take right now to forcefully address the spread of COVID-19 among some of our most vulnerable communities:

1. **Release vulnerable people in state custodial facilities.** Use your reprieve powers under Tennessee Constitution, Article III, Section 6 and affirmed by TCA § 40-27-101 to begin a process of immediate release of all people identified by the Centers for Disease Control and Prevention as particularly at-risk – older people and people with underlying health conditions or who are otherwise immune-compromised – whose sentences would end in the next two years.

¹ *Fighting the Coronavirus with Decarceration: Policies and Polling, Data for Progress, March 2020, (March 16, 2020 to March 17, 2020, survey of 2,509 likely voters. The margin of error is +/-1.9 percent).*



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2. **Reduce the overall population in state custodial facilities.** Using the same powers begin a process of immediate release for anyone who is being held on a technical violation and/or whose sentence would end in the next year. Correctional facilities make social distancing impossible and are not built or prepared to fulfill the health care needs associated with COVID-19.
3. **Release the vulnerable overall population in local custodial facilities.** Provide guidance for local stakeholders, including police and prosecutors overseeing criminal matters, to take all possible steps to reduce the intake of people into state and local custodial settings, immigrant detention facilities or other carceral environments. This includes stopping arrests for low-level offenses and issuing citations in lieu of arrest for other offenses, temporarily suspending the use of cash bail to hold people pretrial, limiting pretrial detention entirely except in those very rare cases where it is the least restrictive means to ensure a person's return to court, and setting conditions of release that allow people the freedom to seek medical help or care for loved ones who have COVID-19.



The pandemic is here, and incarcerated individuals and staff in Tennessee custodial facilities have already tested positive for COVID-19. It is inconceivable that an outbreak in a correctional facility will stay confined to that facility. Staff, correctional officers and health care workers will be exposed to COVID-19 in these facilities and carry and spread the virus in the larger community.

We cannot overstate the need for you to reduce Tennessee's prison and jail population immediately. We ask you to issue an executive order to meet this crisis head on. This is the most critical step you can take to reduce the likelihood of a public health catastrophe for all Tennesseans and save lives.

With many thanks for your immediate attention.

Sincerely,

A handwritten signature in blue ink that reads "Hedy Weinberg". The signature is written in a cursive, flowing style.

Hedy Weinberg
Executive Director

cc: Brandon Gibson, Senior Advisor