



We have the legal right of way.

April 9, 2020

Mike DeWine
Governor of Ohio
77 South High Street, 30th Floor
Columbus, Ohio 43215

Dear Governor DeWine:

Disability Rights Ohio (“DRO”) appreciates the leadership your office has shown during the COVID-19 pandemic and your efforts to “flatten the curve” in Ohio. We also appreciate the opportunity to provide you input on ways to mitigate harm to people with disabilities who face unique risks from the COVID-19 outbreak.

DRO is the state’s designated and federally authorized protection and advocacy system with the mission to advocate for the human, legal, and civil rights of people with disabilities. Under DRO’s statutory authority, we have access to monitor facilities that provide care and treatment for individuals with disabilities, including prisons.

The Problem

As you are acutely aware, Ohio prisons are already experiencing COVID-19 outbreaks. Unfortunately, we anticipate that this crisis will worsen over the coming hours, days, weeks and possibly months. DRO is concerned that the response to the crisis by Ohio’s prisons is simply not enough to mitigate the imminent dangers facing Ohio’s prison population, which will impact individuals with disabilities at a higher rate. People with disabilities are disproportionately represented in the prison setting. In fact, 32% of prison inmates report having at least one disability.¹ And, more than half of prisoners (54%) with a disability reported a co-occurring chronic condition.² Additionally, 49% of all prison inmates report having symptoms of a psychiatric disability.³

¹ Bureau of Justice Statistics, *Disabilities Among Prison and Jail Inmates*, 2011-2012 (U.S. Department of Justice, 2015), available at <http://www.bjs.gov/content/pub/pdf/dpji1112.pdf>.

² *Id.*

³ Bureau of Justice Statistics, *Mental Health Problems of Prison and Jail Inmates*, 2006 (U.S. Department of Justice, 2006), available at <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>.

According to the Centers for Disease Control and Prevention (“CDC”), persons with disabilities are at a higher risk for serious illness resulting from COVID-19.⁴ This includes individuals with impaired lung function, immunocompromising disorders, including individuals taking immunocompromising drugs, high blood pressure, diabetes, and heart disease.⁵ Although not an exhaustive list, the CDC identifies the following chronic conditions as more common in individuals with disabilities: arthritis, asthma, cancer, chronic fatigue syndrome, diabetes, heart disease, limb loss, MRSA, and musculoskeletal disorders.⁶ Anyone who has an underlying acute health condition is at increased risk of severe symptoms for both illnesses because “there would be two separate issues for their immune system to fight.”⁷ Additionally, chronic health challenges and mental illness often co-occur.⁸

Steps to Mitigate Harm

First, we are requesting that your office issue a unified set of policies and procedures to be implemented among all of Ohio’s prisons. The current Ohio Department of Rehabilitation and Correction (“ODRC”) guidelines in response to COVID-19 are largely preparatory and inadequate to protect persons with disabilities. The CDC offers a comprehensive set of guidelines that, if implemented, will mitigate the spread of the virus throughout facilities.⁹

Second, in order to implement the CDC’s social distancing recommendations, and to ease the burden on ODRC’s medical personnel, the prison population will need to decrease significantly. Consequently, we ask your office to utilize your statutory and inherent powers to effectuate additional measures to further reduce the population. These measures are imperative in order to not only release individuals with disabilities who are at a higher risk for contracting the virus and developing more serious illnesses as a result, but also to protect high risk individuals who will remain in these facilities because they are not ideal candidates for release.

⁴ Centers for Disease Control and Protection, Coronavirus Disease 2019 (COVID-19), *People Who Are at Higher Risk for Severe Illness* (April 2, 2020), available at https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhigh-risk%2Fhigh-risk-complications.html.

⁵ New Mobility Magazine, *Disability Specific Recommendations for COVID-19* (April 3, 2020), available at <https://www.newmobility.com/2020/03/disability-specific-recommendations-for-covid-19/>.

⁶ Centers for Disease Control and Protection, Coronavirus Disease 2019 (COVID-19), *Disability and Health Related Conditions* (September 9, 2019), available at <https://www.cdc.gov/ncbddd/disabilityandhealth/relatedconditions.html>.

⁷ New Mobility Magazine, *Disability Specific Recommendations for COVID-19* (April 3, 2020), available at <https://www.newmobility.com/2020/03/disability-specific-recommendations-for-covid-19/>.

⁸ Mental Health America, *Co-occurring: Mental Health and Chronic Illness*, available at <https://www.mhanational.org/conditions/co-occurring-mental-health-and-chronic-illness>.

⁹ Centers for Disease Control and Protection, Coronavirus Disease 2019 (COVID-19), *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (March 23, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

We are requesting that your office, in coordination with ODRC officials, work together to identify additional and broader categories of individuals who can be released in substantial numbers; numbers that would efficiently and effectively reduce the populations to a safe level. Of course, we understand that public safety is a consideration here, and should be balanced against the immediate and increasing threat to the health and safety of individuals who are incarcerated. In order to mitigate these concerns, in cases in which your office is uncomfortable with outright release for certain individuals, we suggest alternatives in the form of conditional release or furloughed release.¹⁰

A prison sentence in itself should not be a death sentence for persons with disabilities. If additional, more sweeping measures are not implemented immediately, we fear the current conditions at Ohio prisons will inevitably contribute to avoidable COVID-19 deaths. We recognize that this is an exceedingly challenging time, and we appreciate the efforts made thus far and going forward in response to the COVID-19 pandemic in our prison system. If you have any questions or wish to discuss these issues further feel free to reach out to me or our staff.

Sincerely,

Kerstin Sjoberg
Executive Director

CC: Amy Acton
Lindsay Sestile
Correctional Institution Inspection Committee

¹⁰ DRO recommends considering the following categories of individuals as eligible for release: (1) People with disabilities who not only face a higher risk of contracting the virus, but also a higher risk of serious illness caused by the virus; (2) People who are aged 60 or older; (3) People with 6 months or less remaining on their sentence; (4) Non-violent offenders; (5) People serving sentences for F-4 and F-5 offenses.