



We have the legal right of way.

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April 24, 2020

The Honorable Maureen O'Connor  
Chief Justice  
The Ohio Supreme Court  
65 South Front Street  
Columbus, Ohio 43215

**RE: Ohio's jails, prisons, and juvenile correctional facilities**

Dear Chief Justice O'Connor:

Disability Rights Ohio ("DRO") appreciates the steps the Ohio Supreme Court has already taken to protect public health during this unprecedented crisis. We are writing now to ask the Court to take any action within its authority to require or further encourage judges in Ohio's courts to review their dockets and release as many people as possible from Ohio's jails, prisons, and juvenile correctional facilities.

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 jails, prisons, and juvenile correctional facilities.

As you are acutely aware, Ohio jails and prisons are already experiencing devastating COVID-19 outbreaks. And yesterday, the Department of Youth Services confirmed its first case at Cuyahoga Hills Juvenile Correctional Facility.<sup>1</sup> As of April 23, there are 3,816 positive cases of COVID-19 in Ohio's prisons, including 346 staff, an increase of over 800% from April 16.<sup>2</sup> So far,

<sup>1</sup> Ohio Department of Youth Services, *COVID-19 Youth Testing* (updated April 23, 2020), available at [https://www.dys.ohio.gov/Portals/0/PDFs/Home/COVID-19\\_Updates/Information/Youth/23APR20\\_COVID-19\\_DYS\\_Data.pdf](https://www.dys.ohio.gov/Portals/0/PDFs/Home/COVID-19_Updates/Information/Youth/23APR20_COVID-19_DYS_Data.pdf).

<sup>2</sup> Ohio Department of Rehabilitation and Corrections, *COVID-19 Inmate Testing* (updated April 23, 2020), available at [https://www.drc.ohio.gov/Portals/0/DRC%20COVID-19%20Information%2004-23-2020%201300\\_1.pdf](https://www.drc.ohio.gov/Portals/0/DRC%20COVID-19%20Information%2004-23-2020%201300_1.pdf)



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15 inmates and one staff member have died from COVID-19.<sup>3</sup> Comparable data does not exist for Ohio's jails.<sup>4</sup> Marion Correctional Institution<sup>5</sup> and Pickaway Correctional Institution<sup>6</sup> are currently the first and second largest sources of infection in the United States, with 2,188 and 1,637 confirmed cases respectively.<sup>7</sup> Governor Mike DeWine has cited increased testing as the reason for the rise in cases. Although many other states may not be testing their prisons as aggressively as Ohio, these numbers remain staggering and unacceptable.

Unfortunately, we anticipate that this crisis will worsen over the coming hours, days, weeks and possibly months, and will impact people with disabilities at a higher rate. People with disabilities are disproportionately represented in prison and jail settings. In fact, 32% of prison inmates and 40% of jail inmates report having at least one disability. And, more than half of inmates (54% in prisons, 53% in jails) with a disability reported a co-occurring chronic condition. Additionally, 49% of all prison inmates and 60% of all jail inmates report having symptoms of psychiatric disabilities.<sup>8</sup> 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.<sup>9</sup>

DRO is concerned that the response to the crisis by Ohio's jails, prisons, and juvenile correctional facilities has been insufficient to mitigate the imminent dangers facing Ohio's incarcerated population. United States District Court Judge James Gwin has recognized decarceration as the necessary and appropriate method to protect Ohio's vulnerable incarcerated population.<sup>10</sup> Judge Gwin issued a preliminary injunction on April 22, ordering the Federal Bureau of Prisons to determine the appropriate method of transferring or releasing members of the medically vulnerable subclass out of Elkton Federal Correctional Institution.<sup>11</sup>

<sup>3</sup> *Id.*

<sup>4</sup> Despite Governor DeWine's request on March 10th that the Buckeye State Sheriff's Association (BSSA) get involved in developing a uniform approach to COVID-19 among Ohio's jails, BSSA stated to DRO that they would not be issuing such guidance.

<sup>5</sup> Marion County, Ohio has the most cases of COVID-19 per capita in the United States. Nick Swartsell, *Two of America's Top Five Coronavirus Hot Spots are Ohio Prisons* (April 23, 2020), available at <https://www.clevescene.com/scene-and-heard/archives/2020/04/23/two-of-americas-top-five-coronavirus-hot-spots-are-ohio-prisons>

<sup>6</sup> Pickaway County, Ohio has the fourth highest number of COVID-19 cases per capita in the United States. *Id.*

<sup>7</sup> New York Times, Coronavirus in the U.S.: Latest Map and Case Count, *In America's nursing homes, outbreaks surge* (updated April 24, 2020), available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

<sup>8</sup> 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>.

<sup>9</sup> 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](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).

<sup>10</sup> *Wilson v. Williams*, 4:20-cv-00794, 2020 WL 1940882, 9 (N.D. Ohio April 22, 2020).

<sup>11</sup> *Id.* at 4.

The Court cited Marion Correctional Institution as an example of “how quickly and insidiously the virus spreads among a tightly quartered prison population.”<sup>12</sup>

In efforts led by county common pleas judges, many county jails around the country, including Cuyahoga County Corrections Center in Ohio, have successfully decarcerated to safer levels in quick and efficient manners.<sup>13</sup>

We are requesting that the Supreme Court issue additional, stronger guidance or requirements for local judges to use their own authority to address pressing needs caused by the COVID-19 outbreak. In order to implement the CDC’s social distancing recommendations, and to ease the burden on facility medical personnel, the jail and prison populations will need to decrease significantly and swiftly. Our local judges in juvenile, municipal, and common pleas courts are best situated to address these needs expeditiously and in an informed, responsible manner. Under this Court’s guidance, Ohio judges in coordination with prosecutors and defense attorneys can and should work together to identify additional and broader categories of individuals who can be safely released in substantial numbers, and quickly hold hearings to implement the same.<sup>14</sup>

Pre-trial detention and jail/prison sentences should not be death sentences for persons with disabilities. If stronger, more sweeping measures are not implemented immediately, we fear the current conditions at Ohio jails, prisons, and juvenile correctional facilities will inevitably contribute to additional avoidable COVID-19 deaths. We recognize that this is an exceedingly challenging time, and we appreciate the guidance issued thus far and going forward in response to the COVID-19 pandemic in our detention and correctional facilities. 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

Attachments

<sup>12</sup> *Id.*

<sup>13</sup> Kimberly Kindy, et al., ‘Disaster waiting to happen’: Thousands of inmates released as jails and prisons face coronavirus threat, The Washington Post, March 25, 2020, [https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc\\_story.html](https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc_story.html).

<sup>14</sup> See attached letters to Governor DeWine dated April 9, 2020 and April 13, 2020 for DRO’s specific recommendations regarding prisons and jails, respectively.