



# INNOCENCE PROJECT OF FLORIDA

*Unlock the Truth*

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## FOR IMMEDIATE RELEASE

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### **Innocence Project of Florida Urges Swift Action to Prevent COVID-19 Outbreak in Florida's Jails and Prisons**

*IPF sends letter to Governor and DOC Secretary urging greater protection for inmates and prison staff*

**Tallahassee, FL** (April 2, 2020) – Today the Innocence Project of Florida, along with the Florida Association of Criminal Defense Lawyers, sent a letter to Governor Ron DeSantis and Secretary of the Department of Corrections Mark Inch, urging them to “take swift and immediate action to try to mitigate the damage to thousands of incarcerated individuals and facility staff throughout the State of Florida.” In the letter, IPF notes the quick and ongoing spread of COVID-19 in jails and prisons across the country and recommends fifteen actions that government can take to slow the spread of the virus in jail and prison facilities, protect incarcerated individuals and staff alike, and provide consistent, updated information to the public about the effect of COVID-19 corrections system.

IPF Executive Director Seth Miller said, “these recommendations are designed, among other things, to reduce the population of jails and prisons and provide sufficient hygiene products to prisoners so that those that remain can do their part to social distance, stay clean and help keep all in the corrections community safe from this deadly virus.”

IPF Staff Attorney Krista Dolan said, “IPF has dozens of innocent clients that remain incarcerated, many of whom are elderly and have medical conditions that make them particularly vulnerable to serious illness and death should the contract COVID-19. It is imperative that our clients and incarcerated individuals like them are protected in this time from this deadly virus.”

*Since 2003, the Innocence Project of Florida (IPF) has assisted in the release from wrongful incarceration of 21 innocent individuals who have collectively served more than 470 years for the crimes of others. Located in Tallahassee, IPF's mission is to find and free the innocent in Florida prisons, help these individuals transition back into a changed society, and work to reform the criminal justice system. For more information, visit [www.FloridaInnocence.org](http://www.FloridaInnocence.org).*

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*Our Mission: Find and free the innocent in Florida prisons, help those who have been released rebuild their lives and work to prevent wrongful convictions from happening in the future.*



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April 2, 2020

Governor Ron DeSantis  
State of Florida  
The Capitol  
400 S. Monroe St.  
Tallahassee, FL 32399-0001  
(sent via emailed PDF)

Mr. Mark S. Inch, Secretary  
Florida Department of Corrections  
501 South Calhoun Street  
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(sent via emailed PDF)

Dear Governor DeSantis and Secretary Inch:

We write regarding the anticipated spread of the coronavirus (COVID-19) throughout corrections, and urge you to take swift and immediate action to try to mitigate the damage to thousands of incarcerated individuals and facility staff throughout the State of Florida.

We work with thousands of clients in the trial, appellate and postconviction phases of the criminal legal process, many who are raising claims of innocence after they have been convicted; as such, we are acutely aware of the problems leading to wrongful convictions. In fact, it is estimated that roughly 1.5% of prisoners are wrongfully incarcerated<sup>1</sup> —applying these numbers to Florida's prison population, that translates to more than 1,400 wrongfully-incarcerated individuals, not including the jail population. While we are deeply concerned with the dangers that COVID-19 poses to our clients who are innocent, we are equally concerned with the dangers that COVID-19 poses to all incarcerated individuals, who deserve not to be ignored in this unprecedented time. Likewise, the risk of danger from this virus is not borne by incarcerated individuals alone, jail and prison officers and staff are equally at risk for infection simply by going to work.

On March 11, 2020, the World Health Organization (WHO) designated COVID-19 a global pandemic.<sup>2</sup> As of March 30, 2020, the Florida Department of Corrections reported twelve confirmed COVID-19 cases across ten facilities and/or regions.<sup>3</sup> Notably, all of these cases were among corrections staff, who likely had interactions

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<sup>1</sup> Zalman, Marvin, *Qualitatively Estimating the Incidence of Wrongful Convictions* (2012). CRIM. L. BULL., Vol. 48, No. 2, pp. 221-279. Available at SSRN: <https://ssrn.com/abstract=2913631>.

<sup>2</sup> World Health Organization, *Rolling updates on coronavirus disease (COVID-19)* (March 11, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

<sup>3</sup> Florida Department of Corrections Press Release, March 30, 2020, available at <http://www.dc.state.fl.us/comm/press/main/03-30-Covid.html>.



with hundreds of incarcerated people daily before their diagnosis. The press release notes that staff is placed on leave until there is a full recovery; unfortunately, due to the incubation periods of this virus, which is 2-14 days,<sup>4</sup> by the time a positive test results, dozens may have been infected. This is why one case quickly turns into thousands if not properly managed, particularly in a prison setting that is ripe for contagion.<sup>5</sup> Indeed, several facilities throughout the country have already seen the deleterious impact of COVID-19 in a prison and/or jail. At the Cook County Jail in Chicago, two cases of COVID-19 were announced on March 23, 2020. Just seven days later, that number increased to 134 cases.<sup>6</sup> At Rikers Island in New York, as of March 31, 2020, more than 300 individuals, staff and incarcerated individuals, tested positive for the virus. There, it is spreading so fast that the chief doctor said that Rikers is a “public health disaster unfolding before our eyes.”<sup>7</sup>

Because of this, the Centers for Disease Control, just last week, issued a guide on dealing with the coronavirus in detention facilities.<sup>8</sup> Aside from the rapid spread of the virus among the prison population generally, certain populations are more at risk to suffer more deadly consequences if they contract the virus. The WHO has classified those with asthma as high-risk,<sup>9</sup> and those who are elderly and have health conditions are uniquely vulnerable to this virus.<sup>10</sup> Indeed, 8 out of 10 deaths in the U.S. have been adults 65 years and older. See CDC, Coronavirus Disease 2019, Older Adults. Further, most deaths occur in patients with comorbidities, with the highest rates of death being for those who contract COVID-19 with cardiovascular disease (10.5%), diabetes (7.3%), chronic respiratory disease (6.3%), hypertension (6%), and cancer (5.6%).

Florida’s prisons house large numbers of elderly individuals. As of June 2019, elderly inmates, defined by the Florida Department of Corrections, accounted for 25% of the total prison population.<sup>11</sup>

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<sup>4</sup> See Centers for Disease Control, *Healthcare Professionals: Frequently Asked Questions and Answers*, updated March 30, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html>.

<sup>5</sup> See The Justice Collaborative, *Explainer: Prisons and Jails are Particularly Vulnerable to COVID-19 Outbreaks* (explaining that incarcerated people “represent the most vulnerable demographic” to COVID-19), available at <https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJCVulnerabilityofPrisonsandJailstoCOVID19Explainer.pdf> (last visited March 31, 2020).

<sup>6</sup> Sam Kelly, *134 inmates at Cook County Jail confirmed positive for COVID-19*, Chicago Sun Times, March 30, 2020, available at <https://chicago.suntimes.com/coronavirus/2020/3/29/21199171/cook-county-jail-coronavirus-positive-134-cases-covid-19>

<sup>7</sup> Megan Flynn, *Top doctor at Rikers Island calls the jail a ‘public health disaster unfolding before our eyes.’* Washington Post, March 31, 2020, available at <https://www.washingtonpost.com/nation/2020/03/31/rikers-island-coronavirus-spread/>.

<sup>8</sup> Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (March 23, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Lim\\_Onsite](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Lim_Onsite).

<sup>9</sup> World Health Organization, *Coronavirus disease (COVID-19) advice for the public: Myth busters*, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters> (“People of all ages can be infected by the new coronavirus (2019-nCoV). Older people, and people with pre-existing medical conditions (such as asthma, diabetes, heart disease) appear to be more vulnerable to becoming severely ill with the virus.”).

<sup>10</sup> See CDC Guidelines, *Frequently Asked Questions, Who is at Higher Risk for serious illness from COVID-19?* (highlighting that “older adults,” defined as “people 65 years or older” and people who have serious underlying medical conditions such as heart disease, diabetes, or lung disease are at “higher risk for serious illness from COVID-19”); The Justice Collaborative, *Explainer: Prisons and Jails are Particularly Vulnerable to COVID-19 Outbreaks* (explaining that incarcerated people “represent the most vulnerable demographic” to COVID-19).

<sup>11</sup> Inmate Mortality, Florida Department of Corrections, available at <http://www.dc.state.fl.us/pub/mortality/index.html>.



While individual counties or facilities have taken steps to mitigate harm,<sup>12</sup> a statewide coordinated effort is necessary. Prisons are not medical care facilities—they lack adequate medical staff, medical supplies, and resources to deal with a widespread outbreak. Further, preemptively addressing an inevitable problem likely will reduce the likelihood of disturbances by prisoners, who are in fear of their lives. In the U.S., ICE detainees in New Jersey have gone on hunger strike, and at Rikers Island in New York, eight prisoners were pepper-sprayed after refusing to return to their cells. They only wanted to be admitted to the jail clinic to have their temperatures checked.<sup>13</sup> Abroad, prisoners have escaped and incited riots resulting in the deaths of several prisoners.<sup>14</sup> A failure to reduce the prison population now will result in DOC staffing shortages, conflicts within the facilities, and disruptions to day-to-day operations within facilities, which will create additional health and safety concerns.

We appreciate that you both are doing your best to manage what is undoubtedly a very complicated situation, but we are writing to you today to request that you use your power to take action before it is too late to do so in a meaningful way. As such, we ask for you to implement the following recommendations to supply information and to reduce the prison population by 5-10%. This is a measure that has widespread public support—indeed, 66% of voters believe that elected officials should be taking steps to reduce overcrowding in jails.<sup>15</sup> These recommendations will help accomplish that:

- 1. Create and implement protocols for each prison and jail within the state:** Among the protocols that should be created and/or made public: facility access to sanitization for both staff and incarcerated individuals, steps to reduce population density, protective measures for legal and non-legal calls, screening measures for staff (i.e., taking temperatures of guards coming into work), screening protocols for staff or incarcerated individuals with symptoms, food preparation and dissemination, and any social distancing efforts.
- 2. Ensure transparency:** These protocols should be available to any member of the public in a centralized locations. Further, DOC should be transparent in its communication with family members of incarcerated individuals and the public through press releases, as well as accurate daily reporting of data on positive cases, along with measures to address it.

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<sup>12</sup> See Kathryn Varn & Tony Marrero, *More than 200 Pinellas inmates sleep on floor as coronavirus creates bottleneck*, Tampa Bay Times, March 17, 2020 (noting that the Florida state prison system has stopped accepting new inmates, resulting in overcrowding in county jails while noting that Pinellas County Sheriff has urged police chiefs and officers to use caution in making arrests that would result in jail stays); *Florida County Releasing Over 150 'Low Level' Inmates Over Coronavirus Concerns*, NBC Miami (noting that the Hillsborough County Sheriff would be releasing 164 offenders from two jails); Andrew Pantazi, *Coronavirus: Jacksonville state attorney calls for release of more inmates to avoid COVID-19 spreading*, FLORIDA TIMES-UNION, March 22, 2010 (noting that the Jacksonville State Attorney's Office has called for a significant reductions in the jail population in Duval, Clay, and Nassau counties); Matt Bruce, *Coronavirus forcing inmate releases from local jails; state prisons go on full lockdown*, ST. AUGUSTINE RECORD, March 20, 2020 (noting that 88 inmates at the Volusia County Branch Jail were released on a variety of misdemeanor and felony charges).

<sup>13</sup> Zak Cheney-Rice, *Coronavirus Fears Spark Prison Strikes, Protests, and Riots Around the World*, *The Intelligencer*, March 27, 2020, available at <https://nymag.com/intelligencer/2020/03/coronavirus-fears-spark-prison-unrest-worldwide.html>.

<sup>14</sup> *Id.*

<sup>15</sup> *Fighting the Coronavirus with Decarceration: Policies & Polling*, Data for Progress (March 2020), available at <http://filesforprogress.org/memos/fighting-coronavirus-with-decarceration.pdf>.





3. **Provide free means of communication for family members:** In line with recommendations one and two, family members who are already under a great deal of stress should not have to pay for phone calls, video calls, or emails with incarcerated loved ones during this time. As such, DOC should suspend payment on these systems during this crisis.
4. **Provide paid sick leave for any staff:** This will ensure that anyone with symptoms can come forward without risk of unpaid leave.
5. **Increase testing for COVID-19 within facilities.**
6. **Work with appropriate officials to aid in the release of all people accused of ordinance violations, misdemeanors, traffic offenses, and third-degree felonies.** This will significantly reduce the jail population and help with overcrowding that increases the risk of transmission of COVID-19.
7. **Identify medically at-risk individuals:** An important step in taking additional action is making sure the necessary parties are aware of those who are medically at risk to enable action by the courts and prosecutors to help mitigate risk.
8. **Work with appropriate officials to aid in the release of those who have been granted bail, but who have not been able to post bail due to amount:** Pretrial, incarcerated individuals are entitled to pretrial release with reasonable conditions. To the extent bail has been granted, but the amount has made is such that an individual has not been able to post bail, those individuals should be released.
9. **Work with the appropriate officials to aid in the release of non-violent offenders:** At minimum, non-violent offenders who are elderly (older than 65), or medically at-risk should be released.
10. **Work with the appropriate officials to aid in the release of all offenders who have six months or less left on their sentences:** Fifty-six percent (56%) of voters support releasing people who are within six months of completing their sentence in order to reduce the risk of transmitting the coronavirus within jails and prisons.<sup>16</sup>
11. **Comply with CDC, Florida Department of Health, and National Commission on Correctional Health Care (NCCHC Guidelines):** We especially request that DOC follow the CDC's Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, issued on March 23, 2020, referenced above, as well as those issued by NCCHC and its partners at Emory University, accessible here: <https://www.ncchc.org/blog/covid-19>.

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<sup>16</sup> *Fighting the Coronavirus with Decarceration: Policies & Polling*, Data for Progress (March 2020), <http://filesforprogress.org/memos/fighting-coronavirus-with-decarceration.pdf>.



12. **Ensure access to soap, tissue, cleaning and sanitation products, and clean laundry:** These should be provided at no cost to incarcerated individuals.
13. **Sanitize common areas, and especially phones:** All phone should be sanitized between phone calls, as should common areas.
14. **Implement medical quarantine where appropriate, and take steps to mitigate effect of quarantine:** Develop a plan to quarantine those who have been exposed, which should address how to isolate and for how long. These should be non-punitive and limited in scope and duration based on the best science available. To mitigate the effects of non-punitive isolation, DOC should ensure these individuals have access to reading materials, tablets, electronic programming, crossword puzzles, etc. Access to time on the prison yard is particularly important. These measures will help to keep tensions and anxiety levels down and support good mental health.
15. **Ensure that incarcerated people can meaningfully contribute to their legal case.** People who are in prison should continue to have access to regular communication with their legal team, and access to court proceedings.

These are but a few of the ways to help manage the spread of coronavirus with the well-being of incarcerated individuals and DOC staff in mind. Given the nature of this crisis, this letter will be shared publicly. We appreciate the steps you are taking to address COVID-19, and we hope you will swiftly implement these recommendations as well. Thank you for your consideration.

Sincerely,

Seth Miller, Executive Director  
Krista Dolan, Staff Attorney  
Innocence Project of Florida

Hal Schuhmacher  
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