



We have the legal right of way.

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April 13, 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 jails.

#### *The Problem*

As you are acutely aware, Ohio jails 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 sheriffs, including the Buckeye State Sheriff’s Association, are simply not enough to mitigate the imminent dangers facing Ohio’s jail population, which will impact individuals with disabilities at a higher rate. People with disabilities are disproportionately represented in the jail setting. In fact, 40% of jail inmates report having at least one disability.<sup>1</sup> And, more than half of the individuals detained in

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<sup>1</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/dpj1112.pdf>

jails (53%) with a disability reported a co-occurring chronic condition.<sup>2</sup> Additionally, 60% of all jail inmates report having symptoms of psychiatric disabilities.<sup>3</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>4</sup> This includes individuals with impaired lung function, immunocompromising disorders, including individuals taking immunocompromising drugs, high blood pressure, diabetes, and heart disease.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> Often chronic health challenges and mental illness co-occur.<sup>8</sup>

Currently there is no unified response to COVID-19 among Ohio’s jails despite your request on March 10, 2020, over one month ago, that the Buckeye State Sheriff’s Association (“BSSA”) issue certain guidance for jails in conjunction with recommendations from the Department of Health. During a phone call with our office, the BSSA stated that they have not and would not be issuing a directive, and they currently recommend jails follow the minimum standards as set out in the Ohio Administrative Code (“OAC”). These standards are wholly inadequate to address the current health threat to incarcerated persons with disabilities. Furthermore, the BSSA website directs individuals to their local Sheriff’s social media accounts and local health departments, equally deficient responses.<sup>9</sup>

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<sup>2</sup> Id.

<sup>3</sup> 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>

<sup>4</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/species-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/species-groups/high-risk-complications.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhigh-risk%2Fhigh-risk-complications.html)

<sup>5</sup> 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/>.

<sup>6</sup> 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>

<sup>7</sup> 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/>.

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

<sup>9</sup> <https://buckeyesheriffs.org/>

## *Steps to Mitigate Harm*

First, we are requesting that your office issue a unified set of policies and procedures to be implemented at all Ohio jails. Although the OAC directs each jail to have an infectious disease control program, it does not provide any further guidance on what must be included in these programs or how often these programs should be updated.<sup>10</sup> DRO believes that the OAC requirement does not go far enough to combat the novel COVID-19 crisis our state is currently facing. Therefore, we urge your office to step in where sufficient guidance is currently lacking. The CDC offers a comprehensive set of guidelines that, if implemented, will mitigate the spread of the virus throughout facilities.<sup>11</sup>

Secondly, in order to implement the CDC's social distancing recommendations, and to ease the burden on medical personnel, the number of Ohioans in jail will need to decrease significantly. We are requesting that your office, in coordination with entities like the Buckeye State Sheriff's Association, the Bureau of Adult Detention, the Correctional Institution Inspection Committee, as well as local judges and prosecutors, work to identify categories of individuals who can be released in substantial numbers; numbers that would efficiently and effectively reduce the populations to a safe level. 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.

In efforts lead by county common pleas judges, many county jails around the country, including Cuyahoga County Corrections Center in Ohio, have successfully decarcerated to safe levels in quick and efficient manners.<sup>12</sup> DRO recommends that all non-violent pretrial detainees be considered for immediate release on their own recognizance.<sup>13</sup> For individuals who are currently serving sentences at jails, we recommend the swift release<sup>14</sup> of individuals who fall within at least one of the following categories: (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) Non-violent offenders; (4) People with 6 months or less remaining

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<sup>10</sup> O.A.C. 5120:1-08-09(P).

<sup>11</sup> 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>

<sup>12</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>13</sup> Conditional recognizance bonds may be appropriate for individuals who are considered flight risks.

<sup>14</sup> Where there are reasonable safety concerns, please consider conditional or furloughed release.

in their sentence.<sup>15</sup> 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.

A jail sentence should not be a death sentence for persons with disabilities. If measures are not implemented immediately, we fear the current conditions at Ohio jails 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 jails. 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  
Buckeye State Sheriff's Association  
Bureau of Adult Detention  
Correctional Institution Inspection Committee  
County Sheriff's Departments  
Municipal Court Administrative Judges  
Common Pleas Court Administrate Judges  
County Commissioners

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<sup>15</sup> See also, Michele Deitch, *Recommended Strategies for Sheriffs and Jails to Respond to the COVID-19 Crisis* (March 20, 2020), available at [https://www.americanjail.org/files/Deitch--Strategies%20for%20Sheriffs%20and%20Jails%20to%20Respond%20to%20the%20COVID-19%20Crisis--3-20-20--FINAL\\_rev%20\(1\).pdf](https://www.americanjail.org/files/Deitch--Strategies%20for%20Sheriffs%20and%20Jails%20to%20Respond%20to%20the%20COVID-19%20Crisis--3-20-20--FINAL_rev%20(1).pdf)