



Components of Emergency Management Policy Recommendations

When in Effect:

Emergency release during a time of crisis, defined as: an epidemic, a natural disaster, a climate disaster, a man-made disaster, war or other similar emergency which places the lives, health or well-being of people in custody at risk:

Overarching goals:

- The plans should proactively respond to reduce the potential impact and harm.
- All protocols and procedures should be designed by the corresponding agency of jurisdiction. The agency must have unfettered access to correctional facilities including design of facility, population, and staff to incarcerated person ratio.
- It shall be unlawful to keep people in prison or jail if the [State Department of Corrections or Federal Bureau of Prisons] cannot replicate the conditions and guidelines recommended by the agency of jurisdiction. For example, if all people in a geographic region must be evacuated then those in jail or prison in the same region must also be evacuated.
- Finally, the purpose of this legislation is to have every contingency plan in place such that no individual is exposed to any harm, illness or otherwise due to a delayed emergency response.

Advisory Board:

There shall be an advisory board created within [State Department of Corrections or Federal Bureau of Prisons] that will provide recommendations on how [State Department of Corrections or Federal Bureau of Prisons] and each of their facilities [including County/Local and all other Jails] shall develop their decarceration and emergency plans and update accordingly.

The advisory board shall issue such recommendations within six months of when the law becomes effective. These must be updated on a yearly basis.

The advisory board shall consist of 8 members appointed by the Governor. The advisory board members shall include:

- [Head] of [State Department of Corrections or Federal Bureau of Prisons] or his or her designee.
- [Head] of [State/Federal Agency Charged with Overseeing Health] or his or her designee.
- [Head] of [State/Federal Agency Responsible with Coordinating Emergency Management].
- At least two members must be formerly incarcerated individuals.
- Member(s) of [Union Representatives for Corrections Officers or in the absence of a Union one Officer could be selected by peers to represent staff interests].

- An individual with a demonstrated background in emergency planning who has created an Emergency Management Accreditation Program (EMAP) for accreditation purposes in the past.
- An individual with a background in public health, must be capable of ascertaining particular vulnerabilities to any emerging diseases or infections that could face this population.

The advisory board shall have access to all relevant data necessary to make recommendations including, but not limited to:

- The number of individuals incarcerated.
- Information necessary related to the facility that informs its vulnerability and resiliency.
- Custody staff to individual incarcerated ratio per shift.
- Number of vacant spots at correctional facilities. The number released under this plan and detailed report on those that fit into a category but were determined ineligible and the factors utilized for that determination.

The advisory board shall be required to visit every facility in the State at least once per year. The advisory board will have authority based on the declared emergency to evaluate the reports and draft counter reports that may justify the harms of refusing to release those that are deemed eligible based on vulnerability.

Actions by State Department of Corrections or Federal Bureau of Prisons]

Plan:

[State Department of Corrections or Federal Bureau of Prisons] shall develop, based upon the advisory board’s recommendations, facility-based emergency and decarceration plans, such plans shall also include the below provisions. [State Department of Corrections] shall have the authority to implement the decarceration plans upon a declared emergency without legislative or judicial approval. Such decarceration and emergency plans shall be updated every 3 months at minimum in order to ensure the safety and well-being of those incarcerated.

These emergency plans shall include, but not be limited to:

- How the correctional facilities will continue to operate for those remaining incarcerated.
- How individuals will be evacuated if needed due to a declared emergency.
- Guidelines for staff to ensure staff safety and ongoing well being.
- Alternative methods that can be deployed in order to ensure the safety and well-being for those still incarcerated and to be able to meet their needs, including alternatives to help facilitate family visitation and notification.

Within 24 hours of a declared emergency [State Department of Corrections or Federal Bureau of Prisons] must provide the Governor’s office or appropriate Executive, advisory board and the State Legislature their decarceration and emergency plans. [State Department of Corrections or or Federal Bureau of Prisons] shall create and routinely update a sustainable facility-based emergency plan, including an evacuation plan. Such plan shall be implemented upon declaration of emergency without legislative or judicial review or approval and shall not require any further action by the Executive.

Criteria for Release - Upon declared emergency:

- Release individuals that are most vulnerable to the declared emergency. Those that should be released to the least confining conditions possible include:
 - Individuals over 50;
 - Pregnant women;
 - Anyone who has completed more than 50% of their sentence;
 - Individuals with a compromised immune system;
 - Those with additional documented illnesses determined by an independent health practitioner not affiliated with the facility who determines that due to such illness would put the individual at risk;

- Those determined by the individual with an EMAP background to be particularly vulnerable to whatever emerging disaster is in place
- Individuals within 24 months of release from the current sentence, only if no consecutive sentence is to be served.
- When determining eligibility for release, an individual's base crime shall not serve as a justification for exclusion, unless an individual has been found guilty by the institutional review board of a violent institutional infraction within the last 180 days prior to release consideration. After the initial 180 days an individual may be reconsidered for release.
- Any person released under this provision shall not be remanded back into custody at the conclusion of the emergency.

System to prohibit in-take into state correctional facilities: Upon declaration there should be:

- An immediate stop gap of all admissions and orientation reception intake from local, county, or any remaining facilities of anyone who would be released under the section of recommendations titled: "Actions by [State Department of Corrections or Federal Bureau of Prison]."
- A lack of housing shall never stop the release of any individual. [State Department of Corrections or Federal Bureau of Prisons] shall create and maintain a plan for support within the community based on the make-up of the prison population at any given time.
- For those individuals that are eligible for release but are without their own housing opportunities, [State Department of Corrections or Federal Bureau of Prisons] shall maintain a list of eligible services provided by not-for-profits (NFPs), community-based organizations (CBOs), and others who provide social safety supports, including, but not limited to, housing and shall enter into Memorandums of Understanding (MOUs) or any necessary agreements to ensure that individuals can utilize these services upon release. The state shall reimburse at the providers' cost for services provided.
- A State- or Federal-approved Needs Assessment must be established and conducted bi-annually on each member of the population as part of an established protocol and directive.
 - This needs assessment will include but is not limited to:
 - Needed substance abuse supports.
 - Needed trauma-related supports.
 - Identification of plans for those with risk of domestic violence concerns.
 - Needed medical care.
 - Needed housing and determination of which kind is most helpful.
 - Needed facilitation of education.
 - Needed employment opportunities.
- Such assessments shall be conducted bi-annually with the entire carceral population to ensure that individuals have the proper community supports upon release [State Department of Corrections or Federal Bureau of Prisons] is required to report out to the advisory group quarterly exactly how many incarcerated people per facility needed and how many received access to NFPs, community-based supports.
 - People shall be placed in the least restrictive environments based on their assessed needs.
 - [State Department of Corrections or Federal Bureau of Prisons] shall work with any agency responsible for state social services to administer and evaluate requests for proposals for [State Department of Corrections or Federal Bureau of Prisons] contracts for payment on a monthly basis.
 - Once established, these networks in the same region should meet with the local government a minimum of once per month to update them on offered services.
 - A portion of [State Department of Corrections or Federal Bureau of Prisons] funding shall be used to monitor provision of services and audit contracting services.

Individuals still incarcerated:

- For those who do not fall into the above categories and will therefore remain in custody - [State Department of Corrections or Federal Bureau of Prisons] - within its plans, must ensure for proper care and any alternatives that are put in place due to a declared emergency can be suspended when the declared emergency ends. Such plan must:
 - Eliminate barriers to obtaining medical care such as co-pays.
 - Ensure access to needed medication.
 - Ensure access to necessities to ensure personal hygiene is able to be maintained.
 - Ensure remaining individuals have access to necessary exercise and meals.
 - Ensure safety for everyone in the prison.
 - Stockpile PPEs and any other items deemed as necessary by the agency of jurisdiction for that disaster, including enough for the entire prison, including staff
 - Creation of a clear internal communications plan for Correctional staff.
 - Should there not be enough equipment, testing or supplies needed for correctional staff and those incarcerated, deviations from the expected plan must be vetted and approved immediately by the advisory committee.
 - Continued access to Commissary.
 - Stop exploitative labor practices to fix emergencies.
 - Acquire anticipated equipment needed to deal with any disaster.
 - Use of lockdowns, solitary confinement or anything punitive as a means to deal with crisis is prohibited.
 - Allow the use of certain contraband that would be necessary for an individuals' health and safety. DOCCS shall consider alternatives in order to ensure health and safety, but the alternatives must remain equal in effectiveness.
 - Provide weekly communication to family members of those detained, updating them on the circumstances of their detained or incarcerated family member.
- **Substitutions**
 - In the event family visitation is suspended, the plan must provide for appropriate alternative means, including tele-visitation, to allow the remaining population to communicate with family; these means shall not place a financial burden on the incarcerated or their family.
 - Programming should continue uninterrupted, especially programming that makes someone eligible for earned good time credits, merit time, or any programming that reduces length of sentence.

Once the emergency is terminated by the declarant then all substitutions utilized for in person programming or visitation shall cease and in person programming and visitation shall resume. Video conferencing can only act as a substitution for the duration of the emergency.

Enforcement Mechanism for the Plan:

An independent body that has, under current law of jurisdiction, the ability to monitor prisons and/or jails and report findings to the legislature shall do so. If one does not exist in the jurisdiction in which these recommendations are being carried out, one shall be created. The legislation should expand the powers of the independent oversight body to act as an ombudsman to provide oversight over the implementation of the decarceration and emergency plans for everyone in the prison/jail. They shall also monitor that the needs assessment created by NFPs or CBOs is being met pursuant to the needs assessment provision above. If possible, allow this association or an ombudsman-like program to be able to respond to prisoners who feel they were eligible to be released under the decarceration plan approved by the advisory committee and were denied release.

Reporting:

After a declared emergency [State Department of Corrections or Federal Bureau of Prisons] and [County/Local/All Existing Jails and Detention Centers] shall provide the legislature and [Governor/or Whichever Executive Presides] with a report that includes, but is not limited to, the following:

- The number of individuals released under this plan.
- Demographic breakdown.
- The census of each correction facility prior to, and after, the emergency releases.
- Deaths per facility as a result of the declared emergency.
- As practicable, the infection rate per facility.
- Number of individuals that required NFPs or CBOs to help find suitable housing.
- Number of individuals that were referred to other social services programs.
- The alternative methods that the facilities adopted to ensure individuals continued to receive programming and were able to communicate with family.
- The report must be delivered in 90 days.

Courts

Under these provisions, [State Department of Corrections or Federal Bureau of Prisons] and [County/Local/All Existing Jails and Detention Centers] will no longer be accepting admissions. As a result, the Courts must refrain from sentencing and instead shall utilize alternatives to incarceration including community resources and social services in order to reduce overcrowding in local facilities.

The [Institution overseeing the State or Federal Court System] shall:

- Establish systems to promote access to counsel prior to any possible detention.
- Prepare established procedures for any variation of circumstance in which all parties cannot be physically present to preserve speedy trial.
- Prohibit tolling of statute of limitations during emergency.
- Court must proactively forgive any debts extending from an interaction with the criminal justice system and stop the exercise of ‘bench warrants.
- Stop use of cash detainers/bail.
- Judges should continuously identify those on detained dockets for immediate release.
- Utilization of the least restrictive sentencing during a declared emergency.
- Appoint a “special master” to coordinate mass releases with public defenders and prosecutors. Consolidated release permissions are allowed for the release of large classes at once. Attorneys are not required to submit individual petitions for release.

Law Enforcement (Police/Sheriff)

- Establish cite and release mechanisms to be used in all circumstances except where the individual posed a threat of imminent bodily harm to a reasonably identified person.

Entities of Community Supervision (Probation/Parole)

- Expedite parole decisions and, once granted, such person must be immediately released. Alternatives to required in-person check-ins with entities of Community supervision shall be established based on whatever the parolee, probationer, or person in community supervision has access to. No one shall be penalized for lack of access to a camera or anything similar.
- Eliminate all use of technical violations that is not the direct result of committing a new crime.

Local Plans

- Require localities to establish a plan that provides local criminal justice stakeholders with a plan to reduce the number of individuals arrested, detained, and processed within the local criminal justice system. And jurisdiction plans must include a plan to provide sufficient resources to entities that can potentially provide resources such as food, shelter and medical care to those released and homeless.