

Executive Order No. _____

**Controlling COVID-19 Transmission and Mortality
by Reducing Certain Populations in State and Local Custodial Facilities**

WHEREAS on March 16, 2020, I proclaimed a State of Emergency to exist in West Virginia as a result of COVID-19 (“virus”), and;

WHEREAS the virus remains an urgent threat to the public safety and welfare, and immediate efforts to control the spread of the virus, reduce and minimize the impacts of infection, and otherwise mitigate the effects of the virus are needed, and;

WHEREAS an outbreak of the virus in West Virginia’s jails, prisons, juvenile detention facilities, and all other correctional facilities (“custodial facilities”) risks the rapid transmission of the virus, will significantly prolong the time needed to bring the virus until control, would overwhelm existing medical capacity inside custodial facilities, and would be potentially catastrophic for the people incarcerated in state correctional facilities who disproportionately include populations the Center for Disease Control has identified at increased risk of morbidity and mortality from COVID-19, and;

WHEREAS West Virginia’s dedicated law enforcement and correctional officers and other staff protecting our communities and working in custodial facilities deserve the utmost protection from exposure to the virus, and;

WHEREAS the continued intake of people into custodial facilities works directly against the prior Orders of my office and this State for people to engage in social distancing, self-isolation and individual quarantine, and;

WHEREAS close coordination and alignment between and among the many various law enforcement, judicial and correctional agencies of this State is essential to ensure an effective system-wide response that controls the spread of the virus, and;

WHEREAS local jurisdictions may determine that they need to take actions to control the transmission of the virus in custodial facilities in a manner they believe would be contrary to existing state law or procedure, and;

WHEREAS a local jurisdiction’s failure to take immediate steps to reduce local jail populations would undermine the State’s ability to protect its citizens and would thwart the State’s efforts to control the spread of the virus, including in State correctional facilities that receive individuals transferred directly from local custodial facilities;

NOW THEREFORE I, Governor James C. Justice, in accordance with the authority vested in me by the constitution and laws of the state of West Virginia do hereby issue the following order to become effectively immediately:

IT IS HEREBY ORDERED:

**1. WEST VIRGINIA DIVISION OF CORRECTIONS
AND REHABILITATION AND WEST VIRGINIA PAROLE BOARD**

- A. Pursuant to my powers to grant executive commutations and clemency under Article VII, section 11 of the West Virginia Constitution, my office will grant expedited commutations and temporary release of certain individuals to reduce the overall population in state custodial facilities and to discharge individuals particularly vulnerable to mortality from the virus.
- B. The Division of Corrections and Rehabilitation shall immediately identify for my office all persons currently held in a state correctional facility who currently have 365 days or less of incarceration left to serve as of the date of this Order, for the purpose of granting immediate commutation of the remainder of these individuals' carceral term.
- C. The Division of Corrections and Rehabilitation, in concert with the West Virginia Parole Board, shall also immediately identify for my office all people who are incarcerated who are currently parole-eligible or will be within 2 years of the date of this Order and who also meet one or more of the following conditions: (1) 55 years of age or older; (2) chronic respiratory disease; (3) cancer; (4) heart disease; (5) lung disease, (6) diabetes or (7) who are otherwise immuno-compromised ("vulnerable populations"). Effectively immediately and on a rolling basis through May 31, 2020, the files of these parole-eligible individuals should be sent to my office for an expedited review and a presumptive grant commuting the remainder of their carceral term, unless my office determines commutation of a particular individual would pose an immediate and direct threat to public safety.
- D. For all individuals released by commutation pursuant to this Order, I will issue legally binding commutation order(s), separate from this Order, to effectuate release.
- E. The Division of Corrections and Rehabilitation shall also immediately identify for my office all other people who are incarcerated, regardless of parole eligibility or date or release, identified above as "vulnerable populations." Effective immediately these individuals should be granted medical furlough, temporary parole, or the equivalent, by the Division of Corrections and Rehabilitation or the West Virginia Parole Board until May 31, 2020, unless it is determined such temporary release of a particular individual would pose an immediate and direct threat to public safety.

- F. Individuals released with commuted sentences pursuant to this Order will be discharged from custody subject only to parole, probation or other conditions of supervision, if any, as they would have received if they had completed the full remaining term of incarceration. Individuals granted temporary release under this Order will be subject to whatever conditions the Division of Corrections and Rehabilitation or the West Virginia Parole Board deem appropriate to ensure public safety and their return to custody on May 31, 2020, provided such conditions shall comply with Section 1(H), below.
- G. All efforts will be made by the Division of Corrections and Rehabilitation and the West Virginia Parole Board to ensure adequate, orderly and normal discharge planning and support for released individuals, provided that exceptions may be made to normal procedures consistent with the guiding imperative of this Order to release vulnerable populations from the states' custodial facilities and reduce overall populations as rapidly as safely possible.
- H. For all people under parole supervision, including people granted temporary release under this Order, until May 31, 2020, the Parole Board shall (1) cease all in-person check-ins, suspend check-in requirements or allow check-ins to occur by voice or video call; (2) suspend enforcement of any mobility-restricting supervision conditions that impede a person's ability to seek medical care or to support a dependent; and (3) suspend all issuance of detainers or other revocations that would result in incarceration for technical (crimeless) rule violations.

2. WEST VIRGINIA STATE POLICE

- A. Until May 31, 2020, the West Virginia State Police shall respond to legal violations through warnings, summonses, and citations. Officers shall cease making custodial arrests unless necessary to prevent an imminent and serious risk of bodily harm to another person. Arrests for misdemeanor offenses are prohibited for the duration of this order, and arrests for felony offenses must be individually approved by a supervisory official.
- B. Until May 31, 2020, West Virginia law enforcement agencies shall be prohibited from making any custodial arrests of any person on an outstanding warrant for failing to appear for a court date or failing to pay a fine or fee related to a conviction.

3. WEST VIRGINIA JUDICIARY

- 4. I recommend that the West Virginia Supreme Court of Appeals issue an order taking all steps possible within our judicial system to accomplish the goals reducing intake into and the overall populations of custodial facilities, to include:
 - a. Directing individual judges overseeing criminal matters to take all steps possible to reduce in the intake of people into state and local custodial settings, including

setting release on recognizance for all non-felony offenses, and for felony offenses setting conditions of pre-trial release that will not require any custodial detention, nor any in-person contact for community supervision, unless custodial detention is determined to be absolutely necessary to avoid an imminent and serious threat to public safety;

- b. Establishing judicial review and release processes for individuals in local custodial facilities where courts have suspended criminal processes.
- c. Vacating existing failure to appear, failure to pay and any similar warrants for non-criminal or technical violations, and prohibiting the issuance of any new such warrants, from the date of the order through May 31, 2020.
- d. Any and all other steps deemed necessary and effective by the Chief Justice of the West Virginia Court of Appeals to reduce daily intake and the overall population of custodial facilities.

4. LOCAL JURISDICTIONS AND CONTRACT CUSTODIAL FACILITIES

- A. All county and municipal governments and all businesses contracted with the state that operate custodial facilities (“local jurisdictions”) are directed to take immediate steps to significantly reduce the population in local custodial facilities through May 31, 2020.
- B. Local jurisdictions shall take whatever steps possible, tailored to local needs and practices, consistent with the goals of this Order. Such steps may include, at the discretion of local jurisdictions:
 - a. Reducing intake into local custodial settings by primarily responding to legal violations through warnings, summonses, and citations, and cease making custodial arrests unless necessary to prevent an imminent and serious risk of bodily harm to another person and only if individually approved by a supervisory official;
 - b. Reducing the population of local custodial facilities by releasing all individuals held only on cash bail, individuals held on immigration or other agency’s detainers, individuals within 6 months of completing a post-conviction sentence, releasing or granting temporary release to all “vulnerable populations” as defined above in this Order, and suspending contracts with U.S. Immigration and Customs Enforcement for civil immigration detention bedspace;
 - c. Any and all other steps deemed necessary and effective by local jurisdictions to reduce daily intake and the overall population of local custodial facilities.

- C. Any provision of state law that could be interpreted as preventing or otherwise limiting or delaying the ability of a local jurisdiction to take steps to quickly reduce intake and populations of custodial facilities to prevent the spread of the virus is hereby waived through May 31, 2020.
- D. No later than 48 hours after the issuance of this Order, all local jurisdictions shall certify to the Governor's Office receipt of this Order, and provide copies of any policies or orders that have been implemented to accomplish the goals of this Order.
- E. Effective immediately and on a rolling basis through May 31, 2020, local jurisdictions shall report to the Governor's Office any instance of a person infected or presumed to be infected with COVID-19 working or incarcerated in any custodial facility operated by the local jurisdiction.

The provisions in this order may be terminated, extended or otherwise modified by issuance of additional Orders;

Nothing in this Order shall be construed in any way to restrict state or local authorities to order any lawful quarantine, isolation, or take any other lawful public health measure that exceeds or augments the actions in this Order;

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity against the State of West Virginia and its agencies, departments or any other person.

Nothing in this Order shall be construed to alter existing laws protecting the constitutional rights of defendants or the privacy of an individual's medical information.

I DIRECT that this Executive Order be filed with the Secretary of State and that all State and Local Agencies cooperate in widespread publicity and notice of this Order.

IN WITNESS WHEREOF, I set my hand and affix the seal of the West Virginia this ____ of _____, 2020.

Governor James C. Justice