

# THE IMPACT OF COVID-19 ON INCARCERATED OHIOANS IN 2020



Since the beginning of the coronavirus (COVID-19) pandemic, the ACLU of Ohio has been concerned about the impact of COVID-19 in Ohio's prisons, jails, and youth detention facilities and its effect on people held in these locations. Through a series of integrated advocacy efforts, we urged decision makers to safely decrease incarcerated populations and develop and implement holistic policies to minimize harm to those incarcerated and the broader community.

## A NEED FOR TRANSPARENCY

In times of crisis, transparency is key. At the start of the pandemic, the ACLU of Ohio called on state and local leaders to publically communicate their plans to prevent and manage the spread of the virus among Ohio's prisons, jails, and youth detention facilities. Our commitment to hold government officials accountable was — and continues to be — at the forefront of our fight.

### Daily Report-outs

On March 24, the ACLU of Ohio initiated the call for the Ohio Department of Rehabilitation and Correction (ODRC) and the Ohio Department of Youth Services (DYS) to provide daily public report-outs on the COVID-19 situation in Ohio's prisons and youth facilities. The next day, the agencies published comprehensive status updates about the number of people tested and those held in isolation or quarantine. Over time, the reports expanded, including updates on COVID-19-related deaths and the number of people who have recovered. Reports continue to be issued on a daily

basis and demonstrate how government transparency should function during a public health crisis.

### Public Records Request

In late April and early May, the ACLU of Ohio sent three separate records requests to ODRC, DYS, and Governor DeWine to learn more about what Ohio officials have — and have not — done to prevent and mitigate the spread of the highly contagious and often deadly virus. We received responses from ODRC and DYS, but as of December 2020 have yet to receive any related documents from Governor DeWine's office.

## Updates from ODRC Director at Daily Press Briefing

In the early stages of the pandemic, one topic seemed to be absent from Governor DeWine's COVID-19 press briefings — Ohio's prison system and the health and safety of those incarcerated and staff. That is why the ACLU of Ohio took to social media and repeatedly called for ODRC Director Chambers-Smith to provide a public update on measures taken to protect those incarcerated and working within the facilities. On April 30, Director Chambers-Smith provided her first report during the daily press briefing. While her initial appearance was a step in the right direction, it was disappointing that the press was unable to directly question the Director, especially considering her report left Ohioans with more questions than answers. Director Chambers-Smith appeared at a few subsequent press briefings, which was continued progress in our push for transparency.

MARCH

APRIL

**March 29**

The first case of COVID-19 in Ohio's prison system is reported after a staff member tests positive.

**April 1**

The ACLU of Ohio sends a letter to Governor DeWine urging him to consider seven categories when determining prison reductions.

**April 3**

The first Ohio prisoner tests positive for COVID-19. Governor DeWine recommends the release of 38 people, 23 women who are either pregnant or who recently gave birth and 15 people over 60 years of age who are approaching their release dates.

**COVID-19 HOTLINE**

Under ordinary circumstances, it is difficult for incarcerated people to report problems to those outside. Voicing concern during the COVID-19 pandemic presents even more of a challenge. For that reason, the ACLU of Ohio established an email hotline, [covid19@acluohio.org](mailto:covid19@acluohio.org), for families, loved ones, facility staff and others to share problems, concerns, and, observations.

**We received over 200 contacts to our hotline between March 20 and May 5. The top three issues reported were inadequate medical attention, unsanitary living conditions, and no social distancing.**

## April 7

Governor DeWine recommends an additional 167 people for release: 141 who are scheduled to be released within the next 90 days and meet certain requirements and 26 who are 60 or older with an underlying medical condition.

## April 8

The first ODRC staffer dies from COVID-19.

## COVID-19 AND OHIO'S PRISON SYSTEM

To no one's surprise, the first case of COVID-19 in Ohio's prison system was reported on March 29 after a staff member at Marion Correction Institution tested positive. We knew that it was only a matter of time before a spark would ignite a deadly wildfire. **That is why the ACLU of Ohio and other advocates urged state officials to use their powers to quickly and safely reduce incarcerated populations across the state as early as March 10.** Yet, weeks passed without action, and cases continued to climb. Entire facilities were under quarantine as Ohio's COVID-19 prison "hotspots" gained national attention.

**Then, in a series of announcements at the beginning of April, Governor DeWine provided three release recommendations for select people in Ohio prisons. This resulted in the recommended, but not guaranteed, release of 205 individuals — a mere .4% of the prison population — as of April 7.** During the following week, Governor DeWine made additional statements about those that qualified for release and commutations. While these efforts were welcomed, they were woefully inadequate.

### We urged Governor DeWine to consider the following categories when determining prison reductions:

- People with health vulnerabilities
- People age 60+
- People with 6 months or less remaining on their sentence
- People with "technical violations"
- People serving for drug possession
- Non-violent offenders
- People in prison for F-4 and F-5 offenses

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### April 13

The first incarcerated person in an ODRC facility dies from COVID-19. The ACLU of Ohio and the Ohio Justice and Policy Center file a class action habeas petition on behalf of individuals detained in the Elkon Federal Correctional Institution (FCI) who are at risk from the coronavirus.

### April 14

After the announcement of widespread testing on April 10, the number of positive cases among Ohio's prison population grows from 14 on April 7 to 150 a week later on April 14.

### April 15

Governor DeWine announces authorization to release 105 people who had previously been set for release over the course of the next 90 days.

## COVID-19 AND OHIO'S PRISON SYSTEM (CONT.)

The number of people released under Governor DeWine's authority versus decarceration via other methods is unclear. Diversion undoubtedly played a role, as the state blocked prisons from accepting new people from county jails, local officials took preventative measures, and courts experienced closures and delays during the early stages of the pandemic. Reports from ODRC have revealed a steady reduction in Ohio's prison system population. **From March to November, the population decreased by more than 4,000 people** (March 3 – 48,795; November 3 – 44,471).

Ohio's prison system has operated over 130% capacity for years. Governor DeWine went on record in September stating that Ohio's prisons had the fewest number of incarcerated people since 2005. This could be interpreted as a silver lining and be taken as an opportunity to praise the state's pandemic response, but we know that is not true. COVID-19 led to one of the country's deadliest outbreaks behind bars. **Ohio is among states with the highest overall number of COVID-19 cases in prison populations. We've seen the fourth highest number of COVID-19-related deaths in state prisons.** This is what we feared and warned Ohio's leaders of since the very start. **There were new cases and fatalities being reported in ODRC facilities leading into the new year, and a prison system designed to house 38,000 is still operating well over capacity.**

**April 17**

Governor DeWine announces he's granting seven commutations and denying 84.

**April 22**

ODRC suspends intake from county jails. The first positive case of COVID-19 among youth in a DYS facility is reported. A federal judge orders Elkton FCI to identify and evaluate individuals eligible for transfer out of prison due to our lawsuit.

**April 30**

Roughly a month after the first case was reported, there have been 3,964 positive cases and 28 confirmed COVID-19 related deaths among the ODRC prison population and 427 positive cases and two deaths among ODRC staff.

**COVID-19 AND OHIO'S PRISON SYSTEM (CONT.)**

Despite surges of the virus, restrictions and mitigation efforts put in place during the early stages of the crisis are no longer implemented with the same sense of urgency. State plans to manage the spread continue to be insufficient. A small reduction in an already overcrowded system is a drop in the bucket when lives are on the line. **We continue to urge our government officials to do more to protect the safety of Ohioans behind bars and staff who work in ODRC facilities by taking direct and meaningful action to release incarcerated populations.**

**Over 2,000 people took action and called upon elected officials to protect Ohio's incarcerated population.**

**May 4**

Sixth Circuit denies Bureau of Prisons request to stall the release & transfer of medically vulnerable people in Elkton FCI.

**May 18**

ODRC resumes accepting some intakes from county jails and an analysis by ACLU of Ohio and Policy Matters Ohio reveals that the death rate in Ohio Prisons is 10 times higher than the rate for the state's total population.

**DEPOPULATING COUNTY JAILS**

While ODRC and DYS provide daily reports on COVID-19 in Ohio's state prison system, the same is not true for jails. The unfortunate lack of transparency means that we don't have a full picture of how COVID-19 is actually impacting Ohio's jail population. However, the ACLU of Ohio tracked news articles and publically available data released within the first few months of the pandemic to learn how local jails were responding to COVID-19 and what depopulation measures, if any, they were implementing to prevent the spread.

Fortunately, many at the county and municipal levels throughout Ohio recognized the severity of COVID-19 and its impact on incarcerated people and local communities and took immediate action. Judges, prosecutors, defense attorneys, and law enforcement worked collaboratively to reduce county jail populations in order to keep incarcerated people, staff, and their greater communities safe. **According to media reports, it's estimated over one-third of counties across the state took steps to decrease their jail populations within the onset of COVID-19.** This didn't just include counties housing major metropolitan areas either; counties of all shapes and sizes took steps to get people out of their jails. **By taking swift action, counties were able to reduce jail populations, up to around 60% in some instances, and undeniably save lives.** However, not all strategies employed, such as mass plea deals and postponing sentences, were beneficial. This highlighted the crucial need for counties to adopt effective, harm-reducing measures to decrease jail populations.

**May 19**

A federal judge issues an order requiring Elkton Prison Officials to expedite the transfer & release of medically vulnerable people in Elkton FCI through home confinement and compassionate release.

**May 27**

All 28 ODRC facilities are under some form of quarantine due to the spread of COVID-19.

**DEPOPULATING COUNTY JAILS (CONT.)**

Despite depopulation efforts, cases within county jail facilities across the state continued to surface. This was especially concerning as reports of jail census numbers started to rise when state mandates and restrictions lifted in late spring/early summer.

In August, in anticipation of a second wave, we sent a letter to all Ohio administrative judges and elected prosecutors with urgent recommendations to mitigate the ongoing risks associated with COVID-19 for people in Ohio's county jails. We urged criminal legal stakeholders to immediately eliminate or decrease money bonds that hold pretrial individuals in jail and release certain categories of people through a collaborative systems approach. The first wave of COVID-19 showed us that such reforms are possible and must continue to be implemented.

Ohio has one of the largest jail and prison populations in the nation, with over 65,000 people combined, and our mass incarceration problem has become deadly in the wake of the pandemic. People held in Ohio's jails and prisons remain at heightened risk of potentially fatal outcomes due to overcrowding, the lack of social distancing, and subpar conditions. We know that the spread of COVID-19 in jails and prisons does not stop at the gate. The ripple effect of COVID-19 is, and will continue to be, ongoing, which is why Ohio cannot afford to return to the status quo.

JUNE

JULY

JULY

### June 9

Sixth Circuit Court of Appeals strikes down ruling requiring the Bureau of Prisons to release medically vulnerable people in Elkton FCI.

### July 2

There have been 5,015 positive cases and 76 confirmed COVID-19 related deaths among the ODRC prison population, and 815 positive cases and five deaths among ODRC staff.

## PROTECTING OHIO'S YOUTH

Systems-involved youth were rarely at the forefront of conversations about COVID-19 mitigation and depopulation efforts. The ACLU of Ohio, along with other juvenile justice advocates, pushed for state leaders and criminal legal system stakeholders to ensure that steps were being taken to protect these vulnerable youth and #TreatKidsLikeKids.

On March 19, the ACLU of Ohio, Policy Matters Ohio, and Juvenile Justice Coalition sent a letter to Governor DeWine urging him to publish and enact plans for DYS and local jurisdictions. This was followed by a call for DYS to implement transparency measures for their state-operated facilities. DYS complied with this request and started issuing daily reports on March 25.

The ACLU of Ohio then partnered with other juvenile justice organizations to express concern about youth in shelter care, non-secure residential facilities, and all other community-based facilities part of the detention continuum. Our stakeholder letter, sent April 6, encouraged immediate steps be taken to ensure the safety of youth in these facilities and that DYS emergency policies include each of the following measures: population reduction, education, programming and social connections, staffing plans, hygiene, screenings, housing and treatment, data, and legal contacts.





NOVEMBER

**November 1**

There have been 6,934 positive cases and 103 confirmed COVID-19 related deaths among the ODRC prison population, and 1,544 positive cases and five deaths among ODRC staff.

NOVEMBER

DECEMBER

**December 7**

The ACLU of Ohio sends a letter to Governor DeWine regarding Ohio's COVID-19 vaccination plan, urging him to include incarcerated populations in the same tier as all others in congregate living situations.

**PROTECTING OHIO'S YOUTH (CONT.)**

At the local level, we received reports of juvenile detention centers utilizing extreme procedures in an attempt to protect youth from COVID-19, such as quarantining and family visitation restrictions, which ultimately would expose them to other harm. In September, the ACLU of Ohio sent a letter to Ohio's juvenile judges with specific methods to urgently depopulate juvenile detention centers and implement age-appropriate pandemic policies for court-involved youth. **Given the impracticability of safeguarding detained youth without creating other significant harms, we strongly encouraged courts to release all youth from pretrial detention to safe, home-based alternatives.** We know that depopulation is the best way to avoid unnecessary infection and long-term complications for youth.

## OHIO'S COVID-19 VACCINATION PLAN

On December 4, Governor DeWine gave a general outline of Ohio's COVID-19 vaccination distribution plan but failed to address individuals in Ohio's prisons, jails, and youth detention facilities. The ACLU of Ohio sent a letter to Governor DeWine regarding the rollout to ensure incarcerated Ohioans are included in the same tier as all others in congregate living situations such as nursing homes and psychiatric facilities.

## LEGAL CASES

The Federal Correctional Institution Elkton (FCI Elkton), Ohio's only federal prison, was one of the first locations where incarcerated people died from COVID-19. In April, the ACLU of Ohio and the Ohio Justice and Policy Center filed a lawsuit on behalf of those being detained in the facility. They sought the immediate release, furlough, or transfer to home confinement of all medically vulnerable individuals at high risk for serious illness or death in the event of contracting COVID-19. In May, a federal judge responded to the lawsuit and ordered Elkton FCI to release more than 800 high-risk individuals. However, the federal government appealed and the Sixth Circuit Court of Appeals struck down that ruling. **At the time of the decision, one of every four people incarcerated in the facility had tested positive for COVID-19 and nine people had died,** emphasizing a lack of action and accountability among prisons and courts in taking necessary measures to save lives.

The ACLU of Ohio also sued U.S. Immigration and Customs Enforcement (ICE) on behalf of immigrants detained in crowded jail facilities in Geauga, Seneca, Morrow, and Butler Counties. We sought the release of individuals who were in civil detention and at high risk for serious illness or death in the event of contracting the virus. Because of the ACLU of Ohio's intervention on their behalf, 21 individuals in ICE detention were released from local Ohio jails due to their high risk for COVID-19 infection.