

Executive Department—Executive Order 2020-

WHEREAS, on March 6, 2020, I issued Executive Order 2020-06 regarding the novel coronavirus (COVID-19), directing all state agencies to take necessary steps to protect vulnerable populations, specifically including Oklahoma correctional facilities; and

WHEREAS, on March 14, 2020, the President of the United States issued a Declaration of National State of Emergency regarding the COVID-19 virus; and

WHEREAS, on March 15, 2020, I issued Executive Order 2020-07 regarding COVID-19, invoking the emergency powers contained in the Oklahoma Emergency Management Act of 2003, and declaring an emergency based on the impending threat of COVID-19, and giving state agencies the authority to promulgate any emergency rules to respond to the emergency; and

WHEREAS, on March 16, 2020, the President of the United States issued Coronavirus Guidelines for America; and

WHEREAS, on March 16, 2020, the Oklahoma Supreme Court and the Oklahoma Court of Criminal Appeals issued the First Emergency Joint Order 2020-24 regarding COVID-19 and administration of the State's court operations; and

WHEREAS, on March 16, 2020, the Oklahoma Senate and the Oklahoma House of Representatives enacted House Concurrent Resolution 1017 regarding COVID-19; and

WHEREAS, on March 17, 2020, the Oklahoma House of Representatives passed House Resolution 1017, finding that emergency conditions exist that warrant enactment of special procedures; and

WHEREAS, on March 17, 2020, I issued Executive Order 2020-08, whereby I recommended that Oklahomans follow the President's Coronavirus Guidelines; and

WHEREAS an outbreak of the virus in Oklahoma's jails, prisons, juvenile detention facilities, private detention facilities contracted with the State, 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 Oklahoma's law enforcement and correctional officers and other staff protecting our Oklahoma 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, J. Kevin Stitt, in accordance with the authority vested in me by the constitution and laws of the State of Oklahoma, and in particular Article VI, Section 2 and Article VI, Section 10 of the Oklahoma Constitution, and Okla. Stat. tit. 63, § 683.1, do hereby issue the following Executive Order to become 1 immediately:

**I. OKLAHOMA DEPARTMENT OF CORRECTIONS AND OKLAHOMA PARDON AND PAROLE BOARD.**

- A. Subject to the limitations of Article VI, Section 10 of the Oklahoma Constitution, the Department of Corrections and Pardon and Parole Board shall immediately identify 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 reviewing and recommending immediate commutation of the remainder of these individuals' carceral term, if eligible.
- B. The Department of Corrections and the Pardon and Parole Board shall also immediately identify 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 considered for expedited review and a presumptive recommendation commuting the remainder of their carceral term, unless the Pardon and Parole Board determines commutation of a particular individual would pose an immediate and direct threat to public safety.
- C. The Pardon and Parole Board shall immediately identify all persons who have passed the first stage but have not yet had a second stage hearing, or persons who were denied at the second stage, and shall expedite consideration for recommendation for parole or commutation, with a presumption towards release.
- 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. Except as limited in Article VI, Section 10 of the Oklahoma Constitution and Oklahoma statutes, the Department of Corrections and Pardon and Parole Board shall also immediately identify all other people who are incarcerated, regardless of parole eligibility or date of release, identified above as "vulnerable populations." The Pardon and Parole Board shall implement emergency rules whereby members of vulnerable

populations should be granted either a medical parole or medical furlough until May 31, 2020, unless the Pardon and Parole Board determines 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 Pardon and Parole Board deems 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 Pardon and Parole Board to ensure an expedited, 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 Pardon and Parole Board shall:
  - 1. suspend any incarceration to a jail or prison for technical violations of a person's parole or probation;
  - 2. suspend all in-person reporting and check-ins, suspend check-in requirements or allow check-ins to occur by voice or video call, unless persons request an in-person check-in;
  - 3. suspend enforcement of any mobility-restricting supervision conditions that impede a person's ability to seek medical care or to support a dependent;
  - 4. suspend all issuance of detainers or other revocations that would result in incarceration for technical (crimeless) rule violations;
  - 5. suspend revocation hearings of persons who have been accused of a new crime; and
  - 6. suspend the collection of supervision fees with notice to persons that non-payment will not result in revocation of their parole or probation.
- I. The Pardon and Parole Board shall expedite and accelerate any and all hearings to further the goals of this Executive Order.

## **II. OKLAHOMA HIGHWAY PATROL**

- A. Until May 31, 2020, the Oklahoma Highway Patrol shall respond to legal violations through warnings, summonses, and citations. Officers shall cease making custodial arrests unless absolutely necessary to prevent an imminent and serious threat to public health and safety. Accordingly, 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, the Oklahoma Highway Patrol 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.

### **III. OKLAHOMA SUPREME COURT AND OKLAHOMA COURT OF CRIMINAL APPEALS**

- A. With due respect to the independence of judiciary, I ask that the Oklahoma Supreme Court and Oklahoma Court of Criminal Appeals consider an order taking all steps possible within the Oklahoma Court system to accomplish the goals reducing intake into and the overall populations of custodial facilities, to include:
  - 1. 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 personal 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;
  - 2. Establishing judicial review and release processes for individuals in local custodial facilities where courts have suspended criminal processes.
  - 3. Vacating existing failure to appear, failure to pay and any similar warrants for non-criminal or technical violations, suspending the accrual of fines, fees, and penalties, and prohibiting the issuance of any new such warrants, from the date of the order through May 31, 2020.
- B. Taking any and all other steps deemed necessary and effective by the Oklahoma Supreme Court and Court of Criminal Appeals to reduce daily intake and the overall population of custodial facilities.
- C. I direct that the Office of General Counsel to the Governor to take all actions required by the Oklahoma Supreme Court and Oklahoma Court of Criminal Appeals to effect the goals of this Executive Order.

### **IV. State and Local Political Subdivisions 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:
  - 1. Reducing intake into local custodial settings by primarily responding to legal violations through warnings, summonses, and citations. Local jurisdictions

should cease making custodial arrests unless absolutely necessary to prevent an imminent and serious threat to public health and safety. Accordingly, arrests for misdemeanor offenses should be prohibited for the duration of this order, and arrests for felony offenses should occur only if individually approved by a supervisory official;

2. 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, and releasing or granting temporary release to all "vulnerable populations" as defined above in this Order;
  3. 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 receipt of this Order, and provide copies of any policies or orders that have been implemented to accomplish the goals of this Order, by email to the Director of Emergency Management.
- E. Effective immediately and on a rolling basis through May 31, 2020, local jurisdictions shall report 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 by email to the Director of Emergency Management and the Oklahoma State Health Commissioner.

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 Oklahoma 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 Oklahoma 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 caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 20<sup>th</sup> day of March, 2020.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

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J. KEVIN STITT