

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Shari L. Kimoto
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

March 25, 2020

Mr. James S. Tabe, Public Defender
Office of the Public Defender
1130 North Nimitz Highway, Suite A-254
Honolulu, Hawaii 96817

Dear Mr. Tabe:

In response to the COVID-19 outbreak, the Department of Public Safety has developed a comprehensive response plan consistent with the conditions and environment of our correctional facilities and the communities in which they reside. We are closely monitoring entry into our facilities to prevent any possible community spread from reaching the facilities. The Department's top priority remains the continued health and safety of the public, staff, and inmates under our supervision.

The Department has, and continues to, dialog with the State Department of Health, other governmental agencies and national correctional institutions to formulate and update our current response plan. Within the Department, the Health Care Division is leading ongoing "tabletop" discussions that address health care issues for both staff and offenders. The current plan includes widely disseminating COVID-19 information to offenders and staff, reinforcing guidelines for safety and sanitation among staff, and implementing robust health care practices specific to COVID-19 at all facilities statewide.

The Department is in the process of screening low-risk, non-violent inmates in the event the Director is given authorization to release certain inmates from incarceration. In addition, the Health Care Division continues working with the Hawaii Paroling Authority to identify inmates with serious medical conditions who may qualify for compassionate medical release.

The Department has submitted its request to our vendor, GlobalTel Link (GTL) to temporarily increase call duration times for legal and personal calls.

If there are further questions, please do not hesitate to contact Ms. Shari Kimoto, Deputy Director of Corrections at (808) 587-1340.

Sincerely,

A handwritten signature in black ink that reads "Nolan P. Espinda". The signature is written in a cursive style.

Nolan P. Espinda
Director

JAMES S. TABB
STATE PUBLIC DEFENDER

DEFENDER COUNCIL
1130 NORTH NIMITZ HIGHWAY
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HONOLULU OFFICE
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DISTRICT COURT DIVISION
TEL. NO. (808) 586-2100

FAMILY COURT DIVISION
TEL. NO. (808) 586-2300

FELONY DIVISION
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STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

March 23, 2020

LEE S. HAYAKAWA
ASSISTANT PUBLIC DEFENDER

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TEL. NO. (808) 241-7128
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MAUI OFFICE
81 N. MARKET STREET
WAILUKU, HAWAII 96793
TEL. NO. (808) 984-5018
FAX NO. (808) 984-5022

Mr. Nolan Espinda
Director of the Department of Public Safety
919 Ala Moana Boulevard
Honolulu, Hawaii 96814

Dear Director Espinda:

I appreciate the proactive actions in which the Department of Public Safety (PSD) has implemented rules and procedures to prevent the entry and spread of COVID-19 in the State's correctional facilities, as evidenced by the most recent news release on March 20, 2020.

Because the Office of the Public Defender represents a significant percentage of the inmates housed at the State's correctional facilities, I wish to address our concerns, including but not limited to the following:

Release of prisoners charged with misdemeanors and petty misdemeanors

HRS § 353-36 authorizes the PSD Director to release certain people charged with a misdemeanor or petty misdemeanor "on recognizance" to prevent overcrowding when a community correctional center has reached capacity, as determined by the director. Moreover, the PSD Policy No. COR.16.11 (effective date March 1, 2017) provides, in pertinent part,

3.0 POLICY

1. The authority to release an offender on his/her own recognizance or on comparable supervised release, who is held exclusively on misdemeanor offenses (including petty misdemeanor, pre-trial, pending sentencing, or sentenced) based on HRS 706-663, shall be for the sole purpose of managing the population of the community correctional centers (CCC) and shall be initiated when the jail population at a CCC has reached capacity as determined by the Director of the Department of Public Safety.

Finally, Governor David Ige, on March 16, 2020, issued a Supplemental Emergency Proclamation authorized and invoked the following measures:

4. Sections 127A-12 and 127A-13, HRS, and suspend as allowed by federal law the following statutes and any related administrative rules, in order for state and county agencies to more

effectively provide emergency relief and engage in emergency management functions, including, but not limited to, implementing social distancing measures, as a result of the COVID-19 pandemic:

u. Sections 706-669, 706-670 and 706-670.5, HRS, disposition of convicted defendants, to the extent that these sections and related administrative rules prescribe time limits for matters before the Hawaii Paroling Authority.

Based on the foregoing, you have the authority to release persons charged with misdemeanors and petty misdemeanors, as the facilities are "overcrowded." And once inmates begin meeting the PUI (Persons Under Investigation) criteria for COVID-19, the facilities will become even more crowded due to the necessity to accommodate quarantined inmates. Therefore, to reduce the current inmate population, I urge you to release misdemeanants to prepare for those inmates meeting the PUI criteria. Moreover, the Governor's Supplementary Emergency Proclamation grants you authority to release inmates whether the facilities are overcrowded.

In regard to persons serving indeterminate prison terms, I am requesting PSD use medical parole and furlough as a means of releasing vulnerable populations. I am also requesting PSD to consider releasing persons who have one year or less remaining on their sentences. Moreover, any incarcerated individuals who can safely live in the community -- even if only temporarily -- should be given that option as a measure to further minimize the number of people who will likely be infected in our prisons and jails. In this vein, the Hawai'i Paroling Authority should also be encouraged to release those eligible for parole, and both Adult Client Services and the Hawai'i Paroling Authority should refrain from reincarcerating individuals in the community on technical (non-criminal) violations. Finally, both clemency and commutation provide additional mechanisms for release of individuals who present a low safety risk.

Similarly, if a positive case of COVID-19 is identified in a prison or jail, release to a quarantine environment outside of the correctional system should be considered to minimize or eliminate additional exposure to staff and individuals in custody.

Inmate Phone Calls to Attorneys

To reduce the risk of introducing COVID-19 into the correctional facilities and to comply with the Governor's "15 Days to Slow the Spread," our attorneys have been encouraged to communicate with their clients by phone or by mail, and limit their visits to the facilities. A few of our attorneys, however, are having difficulty in contacting their clients. I imagine that the number of phone calls in and out of the facilities have dramatically increased; therefore, I am requesting to increase the available hours to call our clients.

Inmate Personal Phone Calls

I appreciate that PSD has increased the phone call duration, up to 30 minutes per call. Many of the families of our clients, however, cannot afford the cost of phone calls, especially as many of the families will soon be or are now out of work. I am requesting that the PSD offers inmates a certain number of phone calls per week free of charge, in addition to the existing phone call and written letter privileges.

Provision of hygiene supplies and access to health care services

The most basic aspect of infection control is hygiene. There must be ready access to warm water and adequate hygiene supplies (soap, masks, etc.) free of charge for all prisoners, including indigent prisoners, both for frequent handwashing, as the Department of Health has recommended that frequent handwashing remains the preferred method of virus prevention.

Prisons and jails should also temporarily allow alcohol-based hand sanitizer to be used by prisoners, and hand sanitizer should be readily available in the lobby and in common areas of each prison and jail.

Any surcharge/co-payment that inmates must pay for health care services must be waived for those experiencing flu or cold-like symptoms.

Housing of persons exposed to the virus

I am confident that PSD has a plan to house persons exposed to the virus. If possible, I am requesting PSD to share the plan, which describes how and where people in the prison and jail system will be housed once they are exposed to the virus, or are at high risk of serious illness if they become infected, or become sick due to the virus.

I would like to be reassured that any plan will not result in prolonged, widespread lock-downs. Any lock-downs or interruptions in regular activities, such as exercise or visits and phone calls with families or attorneys, should be based solely on the best science available and should be as limited as possible in scope and duration.

Conclusion

Our office remains ready and willing to work with the Department of Public Safety within the limitations presented by the current state of affairs. My office is willing to discuss our foregoing concerns with you or your staff. Towards that end, we hope you will consider these requests.

Sincerely,



James S. Tabe
Public Defender

cc: Hawai'i Correctional Systems
Oversight Commission
(c/o Hon. Michael Town (ret.))

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2020-1201

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