July 6, 2020

Governor Gavin Newsom
Governor of California
1303 10th Street, Suite 1173
Sacramento, CA 95814
gavin.newsom@gov.ca.gov, governor@governor.ca.gov

RE: Recommendations for Reducing the Prison Population and Protecting People in California Prisons

Dear Governor Newsom,

This is an immeasurably difficult time. With 2,419 incarcerated persons with active cases of COVID-19 in California prisons statewide and over 1,500 people who are incarcerated or work in San Quentin testing positive, I am strongly urging you to exercise your authority to release people from California’s overcrowded prisons and to take additional steps to improve the health and wellbeing of incarcerated people, prison staff, and the broader community as outlined below.

At this point, the only way we can protect the lives, dignity, and wellbeing of people in San Quentin and other prisons across the state is to dramatically reduce the prison population as quickly as possible. I stand with incarcerated people and their family members across the state. Recently, the ACLU and the Prison Policy Initiative gave California an F+ in the state’s responses to COVID-19 in jails and prisons. We must do better. While we have missed the opportunity to prevent the most harm, we can still change course and strive to reduce further harm going forward.

On March 27, District Attorney Chesa Boudin and I first wrote to you regarding our concerns and recommendations for decarceration. Our recommendations included encouraging local jurisdictions across the state to expedite 1170(d) cases that have been referred for resentencing, as we have done here in San Francisco. We also recommended that the Governor, CDCR, and wardens use their authority under Government Code section 8658 to effectuate releases. I am heartened to learn that the CDCR Secretary has exercised his authority under this code section, but I remain concerned that more has not been done to dramatically reduce the prison population. I again urge you to include individual wardens at institutions in making determinations regarding releases and to encourage them to use their powers under GC 8658.

The widespread support for releases is unprecedented: public health experts, judges, and elected officials across the state have joined the repeated calls of incarcerated people, their families, and advocates. Below, I offer my office’s insight, expertise, and resources regarding how you can make this happen quickly and responsibly.

3 https://www.prisonpolicy.org/reports/failing_grades.html
1. **Release without categorical exceptions.**

We are aware that CDCR expedited releases for those nearing the end of their sentences in April, as well as the new Supervised Release Program, and we encourage the creation of cohorts to facilitate mass release, but we do not believe that release decisions should stop there. This is because cohorts are generally created in ways that exclude people with violent and serious convictions. We are concerned that continuing to support these exclusions actually works against your commitment to close three prisons in the next two years. This goal will not be possible without releasing more than just the “non-non-non’s,” and we must take steps to change both our rhetoric and our actions in this moment.

We strongly believe that release decisions should also be made on an individual basis, based on who the incarcerated person is today and their readiness to return home. Many people who are serving life sentences have robust reentry plans and can be safely and easily released. This is in line with comments made by Judge Tigar during the recent Case Management Conferences in the *Plata v. Newsom* case. We understand and are sensitive to concerns that those released will have inadequate support and nowhere to go, but we know this is not true across the board, and we would be happy to share information and strategize about how to ensure that people are properly supported upon release.

2. **Grant immediate release to those found suitable for parole.**

California is one of only a small handful of states that allows for the Governor to review and reverse parole board grants. As you know, being granted parole in the first place is incredibly difficult, with the California Board of Parole Hearings granting parole to only about 20% of people who are eligible for parole each year. We urge you to refrain from using your authority to review parole grants, both during this crisis and beyond. This will help to speed up the process of release for those who have earned a parole grant as well as free up resources within your office to review and expedite additional commutation and pardon applications. As you have done with the moratorium on the death penalty, we believe this is the right, bold, and just decision with the benefit of also being based in sound public policy.

3. **Order CDCR to immediately stop cooperating with ICE.**

Senator Weiner raised this issue during the Senate Public Safety Hearing, during which Secretary Diaz stated that they would continue to provide information to ICE regarding releases from CDCR custody. We urge you to issue an Executive Order halting this practice immediately and permanently. We echo the demands of the large coalition of advocates who have been fighting vigorously on this issue.

4. **Proper care and protections for those who remain inside.**

We would like to echo the following demands made by those currently incarcerated:

- COVID-19 has forced CDCR to shut down all in-prison programming, halting credit-earning opportunities for incarcerated people that would allow them to accelerate their release dates. CDCR should expand credit-earning opportunities during the pandemic to allow incarcerated people to participate in programming and work toward accelerating their release date.
- CDCR must provide adequate personal protective equipment (PPE), sanitizer, hygiene products, and other essential goods (stamps, envelopes, food) for free, now through the end of the pandemic. *Note from incarcerated people on Death Row: Sanitizer should be distributed daily, not once every 5 days.*

- All visiting has been suspended since the pandemic began three months ago, cutting off contact between incarcerated people and their families and communities. As we know, ongoing connections with outside community and family members is an essential support system to incarcerated people and their loved ones during these times and always. We urge CDCR to provide free tele-visiting privileges, a timeline for resumption of non-contact visits for the general population in the scaling up to modified contact visiting, the installation of existing JPAY email kiosks in housing units without CDCR facilitating communication between loved ones, and a timeline to reinstate family visiting.

- Phone access should be expanded immediately. CDCR should not attempt to (further) monetize these calls. All phone calls should be free, beginning now and continuing at least through the duration of the pandemic.

Again, I am acutely aware that the work to reduce incarcerated populations does not happen in a vacuum, and that in order to be successful, we must be sensitive to a myriad of overlapping issues -- including housing, healthcare, employment, and the concerns of survivors of all kinds, especially those who have suffered family violence. However, the crisis that is currently unfolding in San Quentin and other prisons across the state requires aggressive, bold, and human-centered measures. I welcome the opportunity to collaborate with you on just and thoughtful plans to address the current crisis and to offer whatever support I, along with my office, can provide.

Sincerely,

Manohar Raju
San Francisco Public Defender
Manoj.Raju@sfgov.org

Cc: Daniel Seeman, Deputy Cabinet Secretary, Office of the Governor
Kelli Evans, Chief Deputy Legal Affairs Secretary, Office of the Governor
Eliza Hersh, Deputy Legal Affairs Secretary, Office of the Governor
March 27, 2020

Governor Gavin Newsom
1303 10th Street Suite 1173
Sacramento, CA 95814

Dear Governor Newsom,

As we work collectively to protect all Californians in the midst of the COVID-19 pandemic, we appreciate the strong leadership you have shown during this crisis. Though we have made great strides in our efforts to flatten the curve, in order to be truly successful we must do more to reduce the number of people in jails, detention centers, and prisons across the state. COVID-19 poses a heightened risk to people incarcerated in overcrowded facilities, who cannot exercise proper social distancing, and are instead forced to remain in close quarters without easy access to proper hygiene or medical care. This greatly increases the risk of rapidly spreading the infection amongst incarcerated people and correctional staff.

In the midst of these rapidly developing circumstances, and in response to urgent pleas from public health officials, our offices have collaboratively developed processes to reduce our incarcerated population locally. We have done so making sure that people are released with reentry plans so they do not cycle back into the jail. We write to you to provide our insight at this crucial time, to present some pathways that may assist in the statewide reduction effort, and to urge you to take all available steps to swiftly and safely bring as many people home as possible.

We are deeply aware that the work to reduce incarcerated populations does not happen in a vacuum, and that in order to be successful we must be sensitive to a myriad of overlapping issues -- including housing, healthcare, employment, the concerns of survivors of all kinds, and especially those who have suffered family violence. We also know it is imperative we collaborate across a broad section of stakeholders, to ensure our efforts are successful and sustainable. Though the work is complex and challenging, we believe there are real and attainable solutions--some of which we outline below--and that reducing the incarcerated population is a key component in the effort to keep us all safe and bring an end to the pandemic.

We are aware the California Department of Corrections and Rehabilitation has been taking precautions to prevent the virus from making its way into the prisons, but with the news last weekend that an incarcerated person tested positive at CSP Los Angeles, it is inevitable that we will see more. Former CDCR Secretary Scott Kernan has described the situation in the prisons as a “tinderbox of potential infection,” and has urged state leaders to look at all options to reduce the prison population to mitigate the worst impacts of an outbreak. With 120,000 people incarcerated in California’s prisons, over 60,000 correctional officers and thousands of other
CDCR employees, thousands of people cycle in and out of correctional facilities across the state on a daily basis. When you combine these numbers with the family members of CDCR staff, a staggering number of Californians are affected.

Therefore, we propose the following steps be considered as important components in the effort to reduce the incarcerated population:

1) **Expand and expedite the 1170(d)(1) resentencing process:**

The Penal Code section 1170(d)(1) “Recall of Sentence and Resentencing” process is meant to be a safety valve to release people incarcerated in California, especially those who have fallen through the cracks of other reforms. This process works well because decisions are made at the local level about who can be safely released into the community. We propose three ways this process should be expanded: 1) encourage CDCR to expand its current guidelines to allow for more referrals, 2) encourage local jurisdictions to expeditiously process CDCR referrals, and 3) encourage District Attorneys to use their authority to refer people for resentencing.

First, CDCR Secretary Diaz has nearly unlimited power to recommend courts across the state recall sentences and replace them with shorter, time-served sentences. However, the current guidelines for identifying and referring individuals through this process should be expanded. Specifically, the “Exceptional Conduct” category should better reflect the reality of prison life when assessing disciplinary records (more detail on this below).

Second, local jurisdictions should be encouraged to act on outstanding recommendations for resentencing immediately. While we have been advised that Secretary Diaz has sent over 900 such recommendations, we do not know how many of Secretary Diaz’s recommendations for resentencing have been resolved. Though we have only received a few such recommendations in San Francisco, we have acted on them expeditiously, and have connected each person to housing, employment opportunities, and healthcare upon release. Helping people into this reentry space is critical and extremely rewarding.

Third, since last year, local prosecutors are also empowered to independently recommend people for resentencing. We have begun to use that power in San Francisco, particularly for sentences that have been increased due to sentence enhancements for prior convictions. We want those in prison to know that if they take part in self-help programs, and determine to make new and different choices, it will matter in big ways. We want families and communities to notify us when they have seen a change in their loved one. We would like to see prosecutor offices statewide scouring their files to make 1170(d)(1) recommendations in every appropriate case.

2) **Encourage prison officials and staff to identify people under their ward who can be safely released:**

Prison administrations at institutions across the state should be encouraged to make determinations about people in their institutions who can most safely be released without further strain on social safety nets. Wardens, and their staff, are well equipped to make these determinations and are important partners in the effort to ensure we are balancing release decisions with public safety interests. This should include a process whereby individual correctional officers can make recommendations (confidentially if necessary) regarding people
they believe to be safe and ready for release. We have seen incredible letters of support and
chronos from correctional staff for the incarcerated people they work with every single day,
underlining this as an important and necessary component of this effort.

3) Encourage release decisions to be made based on current and substantiated public
safety risk:

While many calls for release have rightfully focused on the elderly and immunocompromised, a
far broader swath of the population can be considered. In particular, people who are not a public
safety risk and have re-entry plans in place should be released in a feasible, responsible, and safe
manner. We must not over-emphasize commitment offenses, or prison disciplinary record, in
making these decisions.

Rather than determining public safety risk based upon being convicted of a “violent” or “non-
vviolent” offense many years ago, a true assessment must be based on someone’s risk of
committing violence today. Notably, 2018 statistics show almost 50% of all people currently in
California prisons have the lowest risk score by CDCR's evidence-based risk assessment for
recidivism.1 Additionally, all convictions must be examined with the understanding that 97% of
criminal cases are resolved through plea deals rather than full evidentiary hearings in jury trials
where factfinders carefully examine actual conduct. Finally, many people in prison have already
served decades of time, engaged in many self-help programs, and built lives outside the prison
walls that will allow for them to be safely released.

Though someone’s disciplinary history while in prison may help in determining current risk, it is
frequently given outsized emphasis in making these assessments. Often, individuals are denied
parole, or other forms of relief, for having incurred write-ups for conduct that is neither serious
nor violent. This is always myopic, and even more so in the current climate. While a rules
violations report may make it appear that a person has engaged in misconduct, the reality is that
people in prison live under draconian circumstances, and are subject to ever-changing rules with
constantly morphing application. We must also be sensitive to the fact that people in prison are
trying to survive in dangerous conditions and that the process for write ups lacks due process and
procedural protections. Looking at someone’s disciplinary history without a clear understanding
of the context leads to injudicious results.

We propose the following criteria be considered when determining when someone can safely be
released (many of which can easily be assessed through already compiled commutation packets,
parole plans, and an individual’s central file): 1) Does the individual have a verifiable reentry
plan? 2) Have they made substantial efforts in prison consistent with their known access and
abilities? 3) Does the individual have a disciplinary record that suggests they are a current public
safety threat, like recent violence?

1 Offender Data Points: Offender Demographics for the 24-Month Period Ending December 2018, California
Department of Corrections and Rehabilitation’s Office of Research (January 2020), pg. 16, available at:
CDCR, “The California Static Risk Assessment utilizes an offender’s demographic and criminal history data to
predict a low, moderate, or high risk to reoffend. The California Static Risk Assessment scores range from one (1) at
the lowest to five (5) at the highest.” See attachment A.
In conclusion, we recommend you take the following steps to quickly and safely reduce the prison population in light of the current crisis:

1. Expand and expedite the 1170(d)(1) resentencing process.
2. Encourage prison officials and staff to identify people under their ward who can be safely released.
3. Encourage release decisions to be made based on current and substantiated public safety risk.

Our offices stand ready to assist you in taking steps to proactively protect not only the physical health and safety of some of the most vulnerable Californians and the staff tasked with protecting them, but also their mental and emotional wellbeing, and that of their families. We would be happy to meet with your staff to assist in taking the steps outlined above.

Thank you for your consideration of these urgent requests.

Sincerely,

Manohar Raju
San Francisco Public Defender

Chesa Boudin
San Francisco District Attorney

CC: The Honorable Xavier Becerra, California Attorney General
Ann O’Leary, Chief of Staff, Office of the Governor
Daniel Seeman, Deputy Cabinet Secretary, Office of the Governor
Kelli Evans, Chief Deputy Legal Affairs Secretary, Office of the Governor
Eliza Hersh, Deputy Legal Affairs Secretary, Office of the Governor
Ralph Diaz, Secretary, California Department of Corrections and Rehabilitation
Attachment A

Offender Demographics

Table 1.16: In Custody Population by California Static Risk Assessment Score

<table>
<thead>
<tr>
<th>In Custody Population</th>
<th>12/31/2017 Total</th>
<th>12/31/2017 Rate</th>
<th>12/31/2018 Total</th>
<th>12/31/2018 Rate</th>
<th>12 Month Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Risk to Reoffend (1)</td>
<td>63,410</td>
<td>48.7%</td>
<td>63,607</td>
<td>49.8%</td>
<td>+ 0.3%</td>
</tr>
<tr>
<td>Moderate Risk to Reoffend (2)</td>
<td>31,050</td>
<td>23.8%</td>
<td>29,428</td>
<td>23.0%</td>
<td>- 5.2%</td>
</tr>
<tr>
<td>High Risk to Reoffend for a Drug Offense (3)</td>
<td>3,356</td>
<td>2.6%</td>
<td>2,912</td>
<td>2.3%</td>
<td>- 13.2%</td>
</tr>
<tr>
<td>High Risk to Reoffend for a Property Offense (4)</td>
<td>7,299</td>
<td>5.6%</td>
<td>6,939</td>
<td>5.4%</td>
<td>- 4.9%</td>
</tr>
<tr>
<td>High Risk to Reoffend for a Violent Offense (5)</td>
<td>23,204</td>
<td>17.8%</td>
<td>23,121</td>
<td>18.1%</td>
<td>- 0.4%</td>
</tr>
<tr>
<td>No Score</td>
<td>1,944</td>
<td>1.5%</td>
<td>1,702</td>
<td>1.3%</td>
<td>- 12.4%</td>
</tr>
<tr>
<td>Total In Custody Population</td>
<td>130,263</td>
<td>100.0%</td>
<td>127,709</td>
<td>100.0%</td>
<td>- 2.0%</td>
</tr>
</tbody>
</table>

Note: The California Static Risk Assessment utilizes an offender’s demographic and criminal history data to predict a low, moderate, or high risk to reoffend. The California Static Risk Assessment scores range from one (1) at the lowest to five (5) at the highest. Some offenders may have no score because they have not been scored or their information has not yet been entered into the Strategic Offender Management System.

Figure 1.16: Graph of In Custody Population by California Static Risk Assessment Score