

Indiana NLG Demands Governor Holcomb Exercise Constitutional Authority to Release Vulnerable State Prisoners

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The Indiana Chapter of the National Lawyers Guild (NLG) demands Indiana Governor Eric J. Holcomb immediately exercise his executive authority under the Indiana Constitution to release all state prisoners vulnerable to death and serious injury held under dangerous conditions of confinement during the COVID-19 global pandemic.

According to the Indiana Department of Correction, more than 200 prisoners across the state are infected with the novel coronavirus. At least three prisoners have already died. More than 80 correctional employees have tested positive. There is currently an outbreak of more than 100 cases among prisoners at one northern Indiana prison alone.

Indiana incarcerates approximately 27,000 individuals at 21 state prisons. Thousands more prisoners of the state are held at local jails, community corrections facilities, and contract facilities, bringing the population to over 45,000.

Prisoners by nature of their confinement face unique risks of danger during the pandemic. As the Indiana State Department of Health reports positive cases exceeding 11,000 in the general state population and growing, health officials acknowledge prisoners face an increased threat of danger to their lives and health.

Governor Holcomb remains active in making proclamations to combat the pandemic since his first emergency order went into effect almost a month ago. The governor's orders have affected and compelled the compliance to some degree of almost every individual, business, school, religious institution, and state and local governmental body.

Unfortunately, the governor continues to defer to state jailers and to resist calls to take any executive-level steps to protect prisoners despite his constitutional authority to decisively act.

Rather, Governor Holcomb continues to allow the Indiana Department of Correction to manage itself and the health of prisoners in near-secrecy. The department has stonewalled the public and the press and, in a statement, told the families and loved ones of prisoners simply to "remember that there are still reasons to feel hopeful and things to be grateful for even during this difficult time." Further, all in-prison medical care continues to be managed by a for-profit corporation, Wexford of Indiana LLC, the local division of Wexford Health Sources, Inc. Neither the department of correction nor this for-profit corporation has sufficiently explained how the state will provide adequate medical care to prisoners and protect them from the known dangers of the pandemic.

Governor Holcomb has executive authority under the Indiana Constitution to immediately release all prisoners threatened by their conditions of confinement during this time. Under Article 5, Section 17 of the Indiana Constitution, the governor may, in his discretion, "grant reprieves, commutations, and pardons, after conviction, for all offenses" to prisoners except

where the authority is left to the General Assembly. Indiana state statute under Indiana Code § 11-9-2-3 explicitly places no limitation on this constitutional authority of the governor. No state official or employee, including the state attorney general, may intervene in the governor's use of this power.

Therefore, the Indiana chapter of the National Lawyers Guild demands Governor Eric Holcomb immediately and until the pandemic abates make full exercise of his authority under the Indiana Constitution to protect the lives and health of state prisoners.

The National Lawyers Guild, whose membership includes lawyers, legal workers, jailhouse lawyers, and law students, was formed in 1937 as the United States' first racially-integrated bar association to advocate for the protection of constitutional, human and civil rights.



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