



## Legislative Council Staff

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## Memorandum

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**TO:** Interested Persons

**FROM:** Juliann Jenson, Research Analyst, 303-866-3264

**SUBJECT:** Colorado Department of Corrections and COVID-19

### Summary

Coronavirus (COVID-19) has impacted almost every aspect of society, including the criminal justice system, leaving crowded courts, prisons, and jails especially susceptible to the outbreak. This memorandum provides an overview of how prisons in Colorado are reacting to this public health emergency.

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### Prison Operations

The Colorado Department of Corrections (DOC) has temporarily modified operations in an attempt to curtail the spread of COVID-19. These changes are summarized below.

**Co-pays.** Medical co-pays have been for waived for offenders who are showing symptoms of COVID-19.

**COVID response coordinator.** As part of a consent decree, explained in more detail below, DOC hired a COVID response coordinator who acts as a liaison with the Governor's office. The response coordinator also monitors the distribution of Personal Protective Equipment (PPE) and prison adherence to Centers for Disease Control and Prevention (CDC) guidelines.

**Face masks.** Inmates, employees who work in the prisons, and parole officers must wear face masks. Masks are made available at no cost, and KN95 masks are provided to staff. Inmate masks are laundered on a regular basis and made available as needed. PPE is provided to both staff and inmates as needed.

**Hygiene.** Inmates are provided with free bars of soap and cleaning supplies on a weekly basis, and facilities increased disinfection efforts. Parole offices have also implemented precautionary cleaning procedures.

**Inter-facility travel.** Inter-facility travel by staff is conducted only if absolutely necessary, and meetings between facilities are conducted via phone or web conference whenever possible.

**Mental health treatment and other programming.** Inmates continue to receive mental health treatment, and educational and other programs are offered either virtually or via written correspondence.

**Operational status.** Of Colorado's 23 facilities, 14 are operating at a Phase III status, which means inmates have limited time outside of cells except for showering and bathroom trips. The remaining facilities are on a Phase II operational plan that isolates inmates by unit. This plan also reduces the number of people in shared areas.

**Quarantines.** Inmates who test positive for COVID-19 are quarantined from the general population. To the extent possible, staff and inmates who have been in contact with the positive individual are quarantined in the facility or sent home.

**Social distancing.** Social distancing policies limit the number of people in common and recreation areas, which has halted facility communal programs.

**Staffing.** A high number of staff are on-leave due to COVID-19 exposure or a positive test result. Almost 400 staff members were on-leave in mid-December 2020, but that number was cut in half a month later. Additionally, many vacant positions are unfilled due to the pandemic. This staffing shortage has impacted food service, canteen operations, inmate hygiene, operational status, recreational outdoor time, and overall safety and security.

**Testing and screening.** The DOC regularly tests staff and inmates in coordination with the Colorado Department of Public Health and Environment. Staff also have access to rapid tests for an additional level of screening and get a temperature check prior to entry.

Testing results across all DOC facilities as of mid-January 2021:

- Number of tests: Approximately 140,000 tests conducted on close to 18,000 distinct inmates
- Positive tests (may include duplicates): 7,937
- Active cases (positive tests within the last 14 days): 438
- Deaths: 25

**Treatment.** Inmates who test positive are monitored regularly by medical staff. Treatment plans are based on an inmate's specific needs, and more serious cases are transported to an outside medical facility to receive care if necessary.

**Tours and events.** Facilities postponed all public tours and family reunification events.

**Visits and communication.** DOC has temporarily banned in-person visits, but will resume them once certain [safety parameters](#) are met. Phone calls and video visits are allowed, but may be limited. Volunteers are not allowed inside prisons, but noncontact legal visits are still permissible.

DOC's FAQ and COVID-19 updates may be read in their entirety here:

<https://www.colorado.gov/pacific/cdoc/covid-19-faq-and-updates>

## Executive Orders

Governor Polis has so far issued ten executive orders addressing prison operations and the pandemic. The first order, [Executive Order D 2020-016](#), issued in March 2020, responded to concerns about the spread of COVID-19 in state prisons and community corrections facilities. It gave the DOC broad authority to:

- limit new intakes from county jails;
- facilitate the release of inmates by addressing inmate earned time credits, special needs parole and Intensive Supervision Program inmate eligibility requirements, and the release of inmates who are within 180 days of their parole eligibility date.
- house inmates at mixed custody levels at the Centennial Correctional Facility-South (CSP II) prison, which had been previously vacant, for quarantine, intake, and other operational purposes.

Additionally, the order suspended the \$17 daily subsistence fee assessed to community corrections clients, and instead gave the Department of Public Safety budgetary flexibility to purchase necessities.

**Expired and extended provisions.** The Governor let the early release and community corrections provisions expire in June 2020 and has since only extended the orders limiting county jail transfers and expanding the use of CSP II.

The criminal justice-related executive orders can be found here: [D 2020-016](#), [D 2020-043](#), [D 2020-078](#), [D 2020-112](#), [D 2020-140](#), [D 2020-166](#), [D 2020-192](#), [D 2020-221](#), [D 2020-248](#), [D 2020-278](#).

## Prison Population Changes

Significant prison population changes have occurred since the beginning of the pandemic in March 2020.

**Population decrease.** The inmate population decreased by approximately 13 percent since March 2020 (17,412 inmates on March 31, 2020 and 13,528 at the end of December). There are a number of reasons the head count has fallen during this time period:

- Executive Order provisions that allowed the DOC to release “special needs” and nonviolent inmates (this has since expired, but initially contributed to reducing the prison population);
- House Bill 19-1263 reduced penalties for drug possession charges and coincided with the arrival of COVID-19 in the state; and,
- policy changes throughout the criminal justice system in response to the virus. For example, prisons stopped accepting new inmates from county jails to avoid spreading the virus, police made fewer arrests for less serious crimes, court closures meant fewer people were receiving sentences, and parole and probation officers sent fewer individuals back for low-level violations.

**Vacancy rate.** The state's prison system has the capacity to hold approximately 17,600 inmates. Currently, there is a 26 percent vacancy rate, meaning that approximately 13,100 people are inside facilities across the state. The highest vacancy rate is at women's facilities (39 percent), followed by male state prisons (27 percent), and private prisons (13 percent).

**Parole.** The parole population increased by almost 15 percent earlier in the year when the Executive Order that allowed for the release of inmates was in effect. The population has stabilized since the initial bump.

**Intensive Supervision Program-Inmate.** This program initially added 164 inmates to its rolls with the easing of eligibility requirements. These numbers declined to pre-pandemic levels by December.

**Increase in jail backlog.** The jail backlog increased by almost 90 percent since the Executive Order allowing DOC to deny new intakes (1,079 individuals on jail backlog in December compared to 208 in March).

**Private prisons.** The state's two private prisons housed approximately 400 fewer inmates over the past six months.

## Legal Action

The American Civil Liberties Union (ACLU) filed a class action lawsuit in May 2020 against both the DOC and Governor Polis on the grounds that state officials were not adequately reducing the prison population nor doing enough to prevent the spread of COVID-19 in prisons. The DOC portion of the lawsuit was resolved in November with a consent decree. The decree requires the DOC to:

- 1) provide every inmate with free masks and soap on a weekly basis;
- 2) identify vulnerable inmates and house them in a safer environment;
- 3) be transparent about testing and positive cases; and
- 4) seek an outside expert to advise on COVID-related policies and procedures.

The case against Governor Polis was dismissed.

## Vaccinations

Prison inmates will not receive preferential access to the vaccine. Instead, they will receive the vaccine based on age and health risks, similar to the rest of the state's population. Prison workers who transport inmates or guard hospitalized ones have started the vaccination process. Other corrections staff will get the vaccine in Phase Two following first responders.