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EMAIL TO: All Sheriffs
FROM: Eddie Caldwell
Executive Vice President and General Counsel
North Carolina Sheriffs' Association
SENT: March 26, 2020
SUBJECT: Answers to Questions Submitted to the Governor

On Monday, we asked all sheriffs to submit to us any questions that you wanted to be considered by Governor Roy Cooper prior to his telephone conference call with all sheriffs on Tuesday.

We submitted those questions to the Governor and this afternoon we received his responses. They are attached to this email.

I personally apologize for the inability of some sheriffs to be able to join the telephone conference call and for the problem that some sheriffs encountered with having to call in numerous times before being connected. We confirmed before the call with our telephone conference call vendor that the call could easily accommodate up to 150 callers. We had 90+ callers, with some of them staff, but most of them were sheriffs. There is no excuse for the failure of our vendor's system to allow all callers access to the call, on the first call.

If you have any questions about the information on the attached document from the Governor, please contact Matthew Boyatt, NCSA Deputy General Counsel, at 919-459-6467 or mboyatt@ncsheriffs.net. He will be sure that the proper person on our staff assists you with your question.

As always, if I can be of help in any way whatsoever, please do not hesitate to call me on my mobile telephone at 919-810-6333.

Thanks...Eddie C.



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100% Membership

*Office of the Governor
State of North Carolina*

*Roy Cooper
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*20301 Mail Service Center
Raleigh, N.C. 27699-0301*

March 26, 2020

The Hon. John Ingram, President
North Carolina Sheriffs Assoc.
P. O. Box 9
Bolivia, N.C. 28422

Dear Sheriff Ingram:

I wanted to take this opportunity to thank you and the other Sheriffs who participated in the conference call on Tuesday. I sincerely appreciate your suggestions, comments and questions. I know your people are out there on the front lines, and I'm grateful for their courage and hard work.

As you know, North Carolinians are strong and resilient. By working together, we will get through this unprecedented crisis. Again, thank you for all that you are doing to keep our state safe.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Roy Cooper". The signature is written in a cursive style with a large, prominent "R" and "C".

Roy Cooper

RAC/sm

Questions from Sheriffs and Answers by the Governor

Current as of March 26, 2020

There is a current limit of 200 inmates that can be sent by local jails to the Division of Prisons as “safekeepers”. Is there a mechanism for increasing this number if county jails get inmates that are on respirators? Most of the jails, if not all, are not able to deal with very sick inmates.

NCDPS is already over the 200-person safekeeper cap. To assist our law enforcement partners, the Division of Prisons continues to evaluate on a case-by-case basis requests to accommodate offenders held in county jails that require medical or mental health treatment that the county has decided can best be provided by the Division of Prisons. Like many of you, the Division of Prisons is extremely short staffed and therefore does not have the capability to take on all high medical need offenders at this time.

Division of Prisons medical facilities at Central Prison and North Carolina Correctional Institution for Women do not have ventilators. Therefore, offenders who require a ventilator must be hospitalized at local hospitals.

What can the Division of Adult Correction and Juvenile Justice [Division of Prisons] do to resolve the Jail Backlog that has about 1,000 State prisoners who have been sentenced to prison that are currently back logged in county jails?

The Division of Prisons is aware of the burden the jail backlog places on local jails and confinement facilities and is working diligently to reduce the backlog numbers. In the past two weeks, more than 220 offenders have been removed from the backlog and transferred to Division of Prison facilities. Commissioner Ishee has been maintaining close contact with the NC Sheriffs’ Association and individual sheriffs regarding plans to reduce the jail backlog.

Many sheriff’s offices use retired deputies on a part-time basis to supplement their workforce. Under the Local Governmental Employees Retirement System (LGERS), those part-time employees can only work up to 1,000 hours per year and cannot make any more than \$34,340 per year. Can you legally issue an Executive Order to lift those maximums, and if not, will you support legislation to do so the first time the General Assembly reconvenes?

This is also an issue for state employees and will require the legislature to make statutory changes.

What steps can you, and the Department of Health and Human Services, take to obtain adequate personal protective equipment (PPE) for law-enforcement officers who are on the front lines? There seems to be a priority on medical personnel, which is important, but law enforcement and detention personnel are equally important.

It is important to understand we want to provide all of our partners with needed PPE; however, in light of the national shortage, we do not have the supply to meet the demand at this time. We are trying to fill the many resource requests we have received and have implemented a scarce resource process to prioritize acute care and critical care as these facilities are also unable to get needed PPE. We have on order a few million masks and other critical PPE items; as soon as it is received, it will be pushed out to counties. Even when this PPE is pushed out it will be vital to follow the extended use, reuse, and other aggressive conservation methods that have been implemented. The supply chain for this gear is compromised and we have to aggressively conserve the resources that are available as a stop gap measure until large numbers of PPE become available. Law enforcement officers that are unable to source the PPE should place a resource request through their local emergency manager and as additional resources become available, we will begin filling those resource requests.

Recommendations for PPE for law enforcement <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-law-enforcement.html>

Due to scarce resources we are prioritizing the distribution of personal protective equipment in accordance with public health guidance as follows:

1. Healthcare
 - a. Acute Care
 - i. Hospitals
 - ii. Transport EMS Agencies
 - b. Long Term Care with positive COVID Patients (or other infectious disease outbreak)
 - c. Health Departments
 - d. Non-transport EMS Agencies/First Responders
 - e. Long Term Care / Dialysis Centers / Urgent Cares
 - f. Primary Care
2. County Transport Services / Convalescent EMS Services
3. Law Enforcement & Jails / Corrections / Child Protective Services
4. Other government entities who are required to interact with public such as:
 - a. DMV
 - b. County services

We are a small rural county, depending on tourism but is there a way we can stop the influx of people from very infected counties in Florida or New York from coming into our area and creating greater exposure for our residents.

This question is best answered by your legal counsel. We understand the concern, and as a reminder the CDC guidance regarding social distancing and exposure quarantine applies to all residents including visitors who may be traveling from communities affected by COVID-19.

We are working to keep people out of our jails, yet child support warrants continue to be issued and served on persons who are not a danger to the community, although we acknowledge they should pay their child support. Could you waive the service of these warrants during the pandemic, or would you call on the Chief Justice to do so?

This question falls under the purview of the Office of the Chief Justice. We suggest the Association reach out to AOC Director McKinley Wooten for assistance and guidance.

We are having difficulties with people who want mental health services voluntarily because of suicidal thoughts. They are being turned away from hospitals and told to go home and seek outpatient treatment. This puts law enforcement in a difficult situation of either taking them back home or seeking voluntary commitment orders which puts them back in the emergency department at the hospital. Is there anything that you, or the Department of Health and Human Services can do to encourage hospitals to provide these badly needed mental health services?

If someone is having a behavioral health crisis, the Local Management Entity/Managed Care Organization (LME/MCO) is the right place to call for crisis services. That contact information is here: <https://www.ncdhhs.gov/providers/lme-mco-directory>. Individuals may also call 211 to be connected with available resources.

If there is a behavioral health urgent care (BHUC) in your community, that should be the first place to bring these individuals (all BHUC's should have medical screening procedures in place to subsequently divert someone to the emergency department (ED) if additional medical care is indicated). We are working with hospitals and LME/MCOs to create alternative care sites and additional crisis supports for behavioral health crises in the midst of this pandemic. However, hospitals should not be turning individuals away who are truly in crisis.

Are there facilities available for patients from the detention centers that show signs or test positive for the coronavirus?

Currently, there are no state facilities available for patients that show signs or test positive for the coronavirus. Your local health department may be able to assist you with guidance and resources.

Would it be possible, if the need arises, to utilize the dormitories at the Western campus and the Eastern campus of the North Carolina Justice Academy, as well as at the DPS training facility in Samarkand to house any first responders that may need to be quarantined?

Generally, individuals should quarantine at home when possible. Our hope is to bring training facilities back online as soon as possible to provide critical law enforcement training.

As to the use of the Eastern and Western campuses of the North Carolina Justice Academy, that question is more appropriately directed to the NC Department of Justice, specifically Trevor Allen, Director of the NC Justice Academy. Samarkand Training Academy is not available for this type of use.

It is a Class 2 misdemeanor to violate the restrictions contained in the Executive Orders and the Executive Orders call on State and local law-enforcement officers to enforce them. What direction have you given to the State Highway Patrol and the Alcohol Law Enforcement Division about their role in enforcing the Executive Orders? We have been told by our local ALE agent that they have been told not to enforce the Executive Orders and leave that to local law-enforcement.

Individuals, businesses and other entities are strongly encouraged to voluntarily comply with the terms and the spirit of the Executive Orders, so law enforcement can focus on serving vital needs in our communities during the ongoing emergency. Individual events are handled on a case by case basis. Law enforcement personnel should use their professional judgment and rely on guidance from their legal counsel and local district attorney. State law enforcement has been instructed to do the same.

What criteria will be used to determine whether or not your Executive Order will be amended to intensify the “shelter in place” restriction? If you find it necessary to issue an Executive Order to require all citizens to “shelter in place”, how much advance time will you be able to give us before that becomes effective?

The COVID-19 pandemic is a rapidly evolving situation and we are monitoring progress daily. The Governor is seeking the input of his HHS and Public Safety advisors, who are constantly reviewing data to determine what effective measures we can take to mitigate the spread of COVID-19.

Can you please clarify whether or not “drive-in” church services are allowed under your Executive Order that limits the number of people in a mass gathering to less than 50 people. The way these church services have been explained, all church members are “quarantined” inside their individual vehicles, with the windows down, with the pastor standing outside giving the sermon via a speaker. Some of our churches would like to do this and we need to know whether or not it is lawful under your Executive Order.

Any such gathering would have to comply with social distancing and mass gathering guidelines as set out in Executive Orders 117 and 120. Thus, no more than 50 people could gather in a parking lot even in vehicles, and the cars would need to be spaced 6 feet or more apart.

Also, regarding churches, if a church runs a training center, can they continue to operate their cafeteria for the individuals that take part in the training centers activities? Sections 1(b) and 1(e) of Executive Order 118 appear to prohibit the operation of a church cafeteria even if the patrons are receiving food free of charge. Is this correct?

Cafeteria and onsite dining facilities can only provide drive-through and carry-out meals. Individuals should take their meals to smaller settings to comply with social distancing and mass gathering guidelines.

Do you anticipate issuing an Executive Order that would implement a statewide curfew? Do you foresee a limit on intrastate travel as well as interstate travel?

The State is constantly engaged in scenario planning to seek an effective approach to combat the spread of COVID-19. At this time, we do not anticipate issuing an Executive Order instituting a curfew or restricting intrastate or interstate travel.

We have seen what appears to be “boilerplate” motions drafted by defense attorneys to get their clients out of jail because of the COVID-19 pandemic. It would be helpful to the district attorneys, and to public safety, across the state if someone at the state level could draft a “boilerplate” response. Can you call on the Attorney General or other appropriate state officials to do so in order that our local court system is not overwhelmed with these defense attorney “boilerplate” motions?

This question falls under the purview of the NC Office of the Attorney General. We suggest you reach out to the office of Attorney General Josh Stein for assistance and guidance.

Can you call on the Chief Justice to clarify her recent order, so that we know definitively whether or not sheriffs are allowed or required to stop executing Writs for Possession of Property? The most recent Order from the Chief Justice is not clear on that point, and is subject to widely different interpretations across the state.

This question falls under the purview of the Office of the Chief Justice. We suggest you reach out to NC Administrative Office of the Courts for assistance and guidance.

Although you have reduced the minimum gathering number from 100 to 50, why have you not reduced it to 10? Doing so will help local law-enforcement in our daily interactions and involvement with mass gathering issues and will encourage others to heed the advice contained in federal recommendations.

The CDC guidance is to limit mass gatherings to no more than 50 people for a term of 8 weeks and is a longer-term measure than the Presidential recommendation which was 10 or fewer people for 15 days. DHHS has recommended we follow the CDC guidance at this time.

Some DMV driver's license offices in rural areas have been closed, even in counties where no reported coronavirus cases exist. That forces our citizens to drive, in some cases 2-3 hours, to another county where there are reported coronavirus cases in order for our citizens to transact their business. Can you get DMV to open back up these local DMV offices?

The Division of Motor Vehicles (DMV) understands that the closure of certain driver license offices, the movement to appointment-only service, and other limits on DMV services presents a hardship for our citizens, particularly those who live in the rural areas of our state. Unfortunately, these limitations are necessary as we confront the threat posed by this pandemic and seek to limit the spread of the virus, even in counties that have not yet had a confirmed case of COVID-19 reported. The offices that have been closed were either too small to provide proper social distancing, were insufficiently staffed to handle the appointment-only process or were closed to address safety concerns related to potential exposure to COVID-19. DMV's goal is to keep an office open within a 45-minute drive any office that has been closed but knows this is not possible for all areas of the state. When the legislature comes into session, DMV will ask the legislature to authorize the extension of license expiration dates and other relief that will alleviate the burden on our citizens caused by the limitations on DMV services.

Additional questions raised:

If the National Guard gets mobilized, can law enforcement and detention officers be exempted?

The National Guard will try to be sensitive to the needs of law enforcement as well as health care professionals when calling up additional troops for state active duty. The state has less control if units are called up for federal duty. Secretary Hooks will consult with Major General Hunt and EM Director Sprayberry before making any activation recommendation to the Governor.

Can the Governor add additional immunity for law enforcement in an Executive Order?

Law enforcement officers should have immunity as applicable pursuant to N.C. Gen. Stat. § 166A-19.60 and any other good Samaritan laws applicable to the particular situation. As always, you should consult your legal counsel.