STATE OF ALABAMA

PROCLAMATION

BY THE GOVERNOR

WHEREAS, on March 13, 2020, I declared the existence of a state public health emergency based on the appearance of the 2019 novel coronavirus known as COVID-19 in the State of Alabama as the result of the national epidemic and international pandemic;

WHEREAS that initial proclamation included provisions designed to assist in preventing the spread of COVID-19 and in mitigating the consequences of COVID-19;

WHEREAS, on March 18, 20, 23, and 26 and April 2, 3, and 13 and May 8 and 21 of 2020, I issued supplemental proclamations to further address the occurrence of COVID-19 in the State of Alabama; and

WHEREAS new implications of COVID-19 come to light on a continual basis, requiring flexibility and adaptability by all levels of government within the State of Alabama;

NOW THEREFORE, I, Kay Ivey, Governor of the State of Alabama, pursuant to the relevant provisions of the Alabama Emergency Management Act of 1955, as amended, Ala. Code §§ 31-9-1, *et seq.* (hereinafter, the "Alabama Emergency Management Act"), do hereby proclaim the existence of conditions that warrant implementation of additional extraordinary measures and relief during the state health emergency now in effect in order to guard public health and protect human life.

I. Managing COVID-19 among the State's inmate population

To manage COVID-19 among the State's inmate population while preserving public safety, I proclaim and direct all of the following:

A. **Findings.**

1. COVID-19 poses serious challenges in detention settings such as county jails and state correctional facilities.

    a. According to the Centers for Disease Control and Prevention (the "CDC"), these challenges stem from, among other things, the congregate nature of life in a detention setting, the often-frequent movement of people into and out of detention facilities, and unique challenges faced by detention facilities in providing medical isolation as a means of preventing and mitigating COVID-19.

    b. The possibility of COVID-19 transmission in state correctional facilities is particularly concerning because of the size of the inmate population, the physical configuration of state correctional facilities, and the underlying health conditions of many state inmates. A large-scale outbreak at any Department of Corrections facility is likely to seriously strain the healthcare facilities of the surrounding communities.

2. Through a spirit of intergovernmental cooperation, our State has begun to address the complex challenges county jails face as a result of COVID-19.

    a. My March 26, 2020, emergency proclamation allowed law enforcement officers to issue a summons and complaint in lieu of custodial arrest for certain low-risk crimes, thereby facilitating a reduction in the movement of persons into and out of county jails.

    b. My April 2, 2020, proclamation allowed county jails to release persons who have served certain minimum time periods for "technical" parole or probation violations, thereby further reducing the size of the county jail populations.

    c. On May 21, 2020, the Legislature passed, and I signed, Act Number 2020-199, which appropriates $1.786 billion in federal CARES Act funds to reimburse local governments and state agencies for expenditures directly related to the coronavirus pandemic.

    d. My office understands that local officials have taken additional, independent steps to reduce county jail populations in a manner consistent with public safety.

    e. Since the outset of the COVID-19 pandemic, the Department of Corrections has produced over 5,000 face masks and provided them to county jails, free of charge, to be used as personal protective equipment in reducing the spread of COVID-19.

3. My administration has also begun to address the complex challenges the Department of Corrections faces as a result of COVID-19.

    a. Since I first declared a state public health emergency on March 13, 2020, the Department has undertaken numerous efforts to prevent and mitigate the effects of COVID-19 in state correctional facilities, including reinforcing hygiene practices among inmates and staff; enhancing cleaning and sanitation practices; screening staff and inmates for symptoms; improving communication among correctional, administrative, medical, and mental-health staff; social distancing; restricting visitation; and developing plans to manage confirmed or suspected COVID-19 cases.

    b. As part of these efforts, on March 20, 2020, the Department announced an emergency, 30-day moratorium on inmate intake as a means of preventing, to the greatest extent possible, the introduction of COVID-19 into the Department's inmate population.

    c. The Department has also begun to develop new procedures governing intake of state inmates from county jails into department facilities. Consistent with CDC guidance, these new intake procedures call for a 14-day quarantine of all inmates entering state correctional facilities.

4. Additional action is warranted to manage COVID-19 within state and local detention facilities while also maximizing their use in promoting public safety.

    a. The Department of Corrections must identify opportunities to resume intake to pre-COVID-19 levels as soon as practicable

under the circumstances while complying with the prevailing medical standards applicable to correctional facilities.

b. Until the Department can return intake to pre-COVID-19 levels, counties must cooperate with the Department with respect to the housing of state inmates.

5. Legally and practically, state and county detention facilities act as players on the same "team," both as a general matter and with respect to the transfer of state inmates in particular.

a. The Alabama Supreme Court has long recognized that "[a]ll the powers with which the county is entrusted, are the powers of the State, and all the duties with which they are charged, are the duties of the State." *Askew v. Hale County*, 54 Ala. 639, 641 (1875).

b. The Emergency Management Act recognizes this principle insofar as it authorizes the Governor, in the event of a proclaimed state of emergency, to "utilize the services and facilities of existing officers and agencies of the state and of the political subdivisions thereof." Ala. Code § 31-9-8(a)(7). "All such officers and agencies shall cooperate with and extend their services and facilities to the Governor as he or she may request." *Id.*

c. The Legislature has specifically required counties and the Department of Corrections to work together when it comes to the transfer of inmates between county jails and department facilities—for example, where an inmate is awaiting transfer to a Department facility following the Department's receipt of a final sentencing transcript, *see* Ala. Code § 14-3-30, or where an inmate is awaiting transfer to a Department facility following revocation of parole or probation, *see id.* §§ 15-22-32(b) & 15-22-54(e).

d. In 1998, in litigation styled *Barbour County v. Commissioner of Corrections*, the Department of Corrections and representatives of the State's counties and sheriffs entered a consent decree concerning the transfer of "state inmates" from county jails to Department of Corrections facilities. *See Ex parte Glover*, 801 So. 2d 1, 3 n.5 (Ala. 2001) (setting out text of the original consent decree).

e. Since I took office in April 2017, it has been the intent of my administration to honor, and to substantially comply with, the *Barbour County* consent decree.

f. Although the COVID-19 pandemic represents exigent circumstances that were unforeseen at the time the *Barbour County* consent decree was entered, it remains the intent of my administration to seek compliance with that decree to the greatest extent possible under the circumstances.

B. **Ratification of initial DOC moratorium.** I hereby ratify the emergency, 30-day moratorium on inmate intake announced by the Department on March 20, 2020, as a means of preventing, to the greatest extent possible, the introduction of COVID-19 into the Department's inmate population. Acting under the powers conferred on me by the Emergency Management Act, I approved this action prior to its announcement on March 20, 2020, and I now memorialize that approval for clarity of the public record.

C. **Resumption of intake by DOC.** The Department is directed (and has been directed, since March 20, 2020) to develop and implement revised inmate-

intake procedures appropriate to the COVID-19 public health emergency as follows:

1. **Policy.** The goal of the revised intake procedures is to resume the Department's intake of state inmates to pre-COVID-19 levels as soon as practicable under the circumstances while complying with the prevailing medical standards applicable to correctional facilities.

2. **Specific components.** The revised intake procedures shall include consideration of the following:

    a. Identification of alternative intake sites for the screening, quarantining, and isolating inmates for COVID-19;

    b. Implementation of new departmental policies imposing reasonable procedures for the acceptance of any state inmate or inmates from any jail facility; and

    c. Implementation of new departmental policies restricting acceptance of a state inmate or inmates from a county jail facility who has or have symptoms consistent with COVID-19, exposure to a person with COVID-19, or tested positive for or been diagnosed with, isolated, or hospitalized for COVID-19 during the fourteen-day period preceding the date of transfer.

D. **Custody of state inmates in county jails.** County sheriffs and county jails are hereby ordered to maintain custody of state inmates until the inmates can be safely transferred to a Department facility pursuant to the revised intake procedures described in paragraph C.

E. **Reimbursement of counties.** The Department is hereby directed to ensure reimbursement of the appropriate county officials for the counties' costs in housing and providing medical care to those state inmates held as a result of this order. The reimbursement amounts shall be set by the Commissioner of the Department of Corrections and should take into consideration documented historical reimbursement rates as well as any additional, documented costs that the counties may bear specifically as a result of the COVID-19 pandemic.

F. **Immunity for counties and others complying with this order.** All county and sheriff employees, including Deputy Sheriffs, jailers, and other jail staff, whose job function relates substantially to the care, control, and/or custody of state inmates incarcerated in county jails—as well as all Department of Corrections employees—are hereby declared "emergency management workers" pursuant to the Alabama Emergency Management Act of 1955, specifically section 31-9-16 of the Alabama Code, insofar as they act to implement this order. As such, they, along with the counties themselves, are entitled to the full immunity provided by the Emergency Management Act, specifically section 31-9-16 of the Alabama Code, for persons complying or reasonably attempting to comply with this order.

G. **Definition.** For purposes of this proclamation, unless a different meaning is required in context, the term "state inmate" means any inmate in a county jail who should be in a Department of Corrections facility, including inmates awaiting transfer to a Department facility following the Department's receipt of a final sentencing transcript, inmates awaiting transfer to a Department facility following revocation of parole or probation, or inmates awaiting return transfer to a Department facility.

H. **No right of action.** This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any

party against the State of Alabama, its departments, agencies, political subdivisions, or instrumentalities, or any of their officers, employees, or agents.

I. **Reconsideration of this order.** This order will be reconsidered from time to time and modified in writing if circumstances warrant.

FURTHER, the provisions of this proclamation shall be interpreted to the greatest extent possible as consistent with existing law.

FURTHER, the provisions of this proclamation shall have the full force and effect of law, and all inconsistent laws, or any provisions thereof, are hereby suspended.

FURTHER, I declare that this proclamation and all subsequent orders, laws, rules or regulations issued pursuant hereto shall remain in full force and effect for the duration of the public health emergency unless rescinded or extended by proclamation.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused the Great Seal to be affixed by the Secretary of State at the State Capitol in the City of Montgomery on this 9th day of June 2020.

Kay Ivey

Kay Ivey
Governor

ATTEST:

John H. Merrill

John H. Merrill
Secretary of State