No. 160P20

SUPREME COURT OF NORTH CAROLINA

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NORTH CAROLINA STATE CONFERENCE OF THE NAACP, DISABILITY RIGHTS NORTH CAROLINA, AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION, ALBERTA ELAINE WHITE, KIM T. CALDWELL, JOHN E. STURDIVANT, SANDARA KAY DOWELL, and CHRISTINA RHODES,	)
Petitioners,	)
v.	)
ROY COOPER, in his official capacity as Governor of North Carolina; and ERIK A. HOOKS, in his official capacity as Secretary of the North Carolina Department of Public Safety,	)
Respondents.	)

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RESPONSE TO PETITION FOR WRIT FOR MANDAMUS

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RESPONSE TO PETITION FOR WRIT FOR MANDAMUS

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INTRODUCTION

The COVID-19 pandemic is among the gravest public-health emergencies that this State has encountered in its 245-year history. Under the separation of powers principles embedded in our State's Constitution, as well as statutes enacted by our General Assembly, it is the province of the executive branch to plan and carry out the State's immediate response to this evolving public crisis.

Governor Cooper and Secretary Hooks have been vigorously managing that response. Since even before the first infection was confirmed within our State's borders, Governor Cooper's highest and most urgent priority has been to meet the current crisis with well-calibrated, decisive actions to limit the spread of the virus. Over the past two months, the Governor and his administration, including Secretary Hooks and the Department of Public Safety, have ordered a sweeping set of public-health measures that are, like the current crisis, unprecedented in scope. At all times, these measures have been guided by ongoing assessments by state and national experts on health and public safety, whose advice is critical to addressing a fast-moving emergency. As Governor Cooper continues to evaluate and implement new public-health measures, he will continue to take decisive and well-calibrated

actions to protect the lives and well-being of every North Carolinian, including those who work and live in state prisons.

Governor Cooper and Secretary Hooks also recognize the unique risks that the current pandemic poses for those North Carolinians who live in institutional settings, such as correctional facilities, homeless shelters, and long-term care facilities. Respondents take with utmost seriousness the need to safeguard the health of people who are confined in state prisons. With this in mind, respondents have adopted comprehensive measures to prevent and mitigate the spread of the virus in state prisons. The Department of Public Safety began planning for and implementing these measures well before the first confined person tested positive for COVID-19, less than two weeks ago. The measures encompass every facet of the state's correctional system that is under respondents' lawful control. They include:

- *Limits on exposure to the public*. The Department has strictly limited in-person interaction between inmates and the general public.
- *Extensive medical screening.* The Department has required all staff, essential visitors, and inmates to undergo comprehensive medical screening before entering a Department facility.

- *Aggressive sanitary and protective protocols*. The Department has implemented wide-ranging cleaning and sanitization measures in all its facilities. It has also substantially expanded the procurement, production, and availability of personal hygiene products and personal protective equipment.
- *Strict social-distancing requirements.* The Department has enforced strict social-distancing requirements in all prisons. To ameliorate the negative effects of such restrictions, the Department has provided enhanced access to remote forms of social contact and entertainment.
- *Education campaigns*. At every state facility under its control, the Department has taken a variety of actions to educate inmates on the heightened hygienic and social-distancing measures that are required to avoid contracting and spreading the virus.
- *Enhanced medical care.* The Department has facilitated inmate access to medical care by waiving medical co-pays for inmates that exhibit COVID-19 systems. Inmates who request medical assistance, for any reason, are provided immediate care by the Department's medical staff and, as necessary, outside providers.

- *Remote post-release supervision*. For those on probation, parole, or post-release supervision, the Department has suspended all non-emergency home contacts and in-person meetings.

These and many other procedural and operational changes constitute the most aggressive emergency public-health program that has ever been instituted in our State's correctional facilities.

Respondents further recognize that the nature of the current pandemic is ideally met with a measured reduction of the incarcerated population in state prisons and local jails. Like the broader public-health response, this effort must be exercised responsibly. The Department has taken carefully considered steps to reduce the prison population in ways that are consistent with public safety. These steps include:

- A suspension on accepting any new admissions from county jails.
- A suspension on new admissions for short-term confinement due to probation violations.
- Enactment of a plan that allows certain inmates for whom infection poses a high risk to their health, and whose release poses a low danger to the public, to be transferred to the community to complete their sentence. Currently, more than 500 inmates with release dates in 2020

are being considered for release under this program. To date, 6 individuals have been released and several more are under active review. The Department will continue to review and release individuals under this program, to the extent consistent with public safety and state law.

- Awarding discretionary time credits to facilitate earlier release for inmates with impending release dates. To date, more than 400 inmates have been released early, or soon will be, under these credits.
- Enactment of a comprehensive plan to release, and refrain from detaining, juvenile offenders who have committed nonviolent offenses. Through these measures, the number of detained juvenile offenders in state custody has been reduced by 25%.

In addition to these extensive measures to support earlier release for those within respondents' direct control, respondents can also report that the Post-Release Supervision and Parole Commission—an independent executive agency—has also established measures to allow early release of inmates on parole. These efforts have resulted in at least 26 inmates being released over the past two weeks, with more scheduled for release this week, including today.

Likewise, respondents can report that their local law-enforcement partners across the State have taken similarly expansive steps to reduce inmate populations in local jails, which are county-run facilities that are outside respondents' direct supervision. These measures include the application of law-enforcement discretion on arrests, charging decisions, and sentencing recommendations. Specifically, local law-enforcement officials have (1) reduced arrests for nonviolent crimes, issuing citations instead, (2) agreed to the release, on unsecured bond, of persons arrested for certain crimes, and (3) agreed to sentences of probation instead of jail time, when appropriate. Respondents are working with their local law-enforcement partners to facilitate these measures in appropriate ways.

In sum, respondents have taken a broad range of well-considered and well-calibrated actions, consistent with current law, to protect the health and safety of incarcerated persons in the face of an ongoing and rapidly evolving public-health crisis of unprecedented scale. Many of these actions are described publicly for the first time in this brief and Secretary Hooks' sworn affidavit, and coincide with the relief sought by petitioners here.

Going forward, respondents intend to continue diligently working to mitigate the effects of the current public-health crisis. As respondents

implement additional measures, they will continue to be guided by their solemn obligation to protect the health and safety of all North Carolinians, including those who are incarcerated in state prisons.

The people of North Carolina have entrusted these decisions by law to respondents and their executive policymaking discretion. The petition here, however, seeks to interfere with that constitutional delegation of authority and put the court system at the forefront of managing a fast-moving public emergency. But consistent with their constitutional role, respondents have applied, and will continue to apply, their policy judgments to meet this emergency, based on the advice and analysis of public-health, law-enforcement, and other experts.

These decisions are inherently discretionary and executive in nature, and therefore inappropriate for mandamus review. In particular, the decision to release persons who have been lawfully convicted and sentenced for serious crimes require balancing a complex web of factors that defy a mechanical formula. Most significantly, it requires a fact-specific assessment of whether releasing a particular person is likely to reduce their risk of infection and improve their access to quality medical care—and, if so, whether the release is likely to pose undue risks to public safety. As our

constitutional structure recognizes, these kinds of sensitive and difficult crisis-management decisions are best placed within the discretion of executive officials. And the executive officials here are responsibly devoting their full energies to managing the State's overall response to the COVID-19 pandemic.

For these and other reasons, mandamus relief is not appropriate in the circumstances here. Nevertheless, respondents stand ready to assist this Court and other courts to develop appropriate responses to the pandemic that are within the lawful province of the judicial branch, and that are consistent with respondents' overriding commitment to public health and safety.

BACKGROUND

On January 21, 2020, the CDC reported the first confirmed case of COVID-19 in the United States. According to the CDC, on the morning of April 13, there were more than 500,000 reported cases of COVID-19 in the United States and more than 20,000 Americans had died from complications

related to the virus.[1] To address this escalating public-health crisis, respondents are continually assessing how best to keep North Carolinians as safe from COVID-19 as possible.

These assessments have resulted in numerous concrete actions to mitigate the risk of infection and spread in North Carolina's prisons. All of these actions were taken in advance of this lawsuit. Given the rapidly evolving situation, respondents and other executive officials are continually assessing and adjusting the State's policy response to safeguard the health and well-being of all who live in and work in state prisons.

A. The Governor Has Taken Robust and Decisive Actions to Mitigate the Effects of the Pandemic Statewide.

The Governor has taken extraordinary measures to address the current public-health crisis. On March 10, the Governor declared a state of emergency via Executive Order to coordinate the State's response and implement protective actions to prevent the spread of COVID-19. Affidavit of Erik A. Hooks (Hooks Aff.), ¶ 5 & Ex. 1. In this order, the Governor delegated to Secretary Hooks the power and authority to implement the

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[1] Centers for Disease Control and Prevention, *Coronavirus Disease 2019: Cases in U.S.*, *available at* https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.

State's emergency plan and coordinate the deployment of the State Emergency Response Team. *Id.*

In a systematic effort to reduce the spread of COVID-19 in North Carolina, the Governor has issued 11 additional executive orders over the past five weeks. Among other things, these orders required the closure of K-12 public schools through May 15th; placed severe limits on mass gatherings; closed non-essential businesses; implemented social-distancing requirements; generated unprecedented flexibility in healthcare licensure, promoting the availability of healthcare personnel; prohibited utility shutoffs and restricted evictions; and established risk-mitigation measures at long-term care facilities. *Id.* ¶¶ 9-19. The Governor will continue to take decisive action, as appropriate, to respond to the evolving crisis.

B. The Department of Public Safety Has Taken Equally Aggressive Steps to Protect the Health of Its Inmates.

The Department has taken aggressive measures to prevent and mitigate the spread of COVID-19 among both incarcerated persons and staff. *Id.* ¶¶ 32-33. These measures have been informed by expert public-health guidance from the Centers for Disease Control and Prevention (CDC) and other sources.

First, the Department has taken several steps to limit inmates' exposure to unscreened members of the public. *Id.* ¶¶ 35-42. For example, the Department has suspended all nonessential outside visitors—with the only exceptions for legal consultations and meetings with faith advisors. *Id.* ¶¶ 35-36. It has suspended volunteer visits within the prisons, as well as all face-to-face educational instruction. *Id.* ¶¶ 35, 39. It has also limited all non-essential inmate travel outside of the facility, with exceptions for necessary travel like court-ordered movements and to access outside medical care. *Id.* ¶ 41.

The Division of Community Corrections, which supervises those who have been released on probation, parole, or post-release supervision, has adopted similar measures to implement social-distancing. *Id.* ¶¶ 80-88. For example, the Division has suspended all in-person routine home and management contacts, and replaced those contacts with telephone consultations. *Id.* ¶ 84. Home visits are only authorized for emergency situations or in response to violations that threaten public safety. *Id.*

Second, the Department has increased the screening requirements for all staff, contractors, vendors, attorneys, religious and spiritual advisers, and inmates who enter Department facilities. Every person who enters a

Department facility is now subject to medical evaluation, including temperature checks and screening for respiratory symptoms. People are denied entry if they exhibit symptoms of COVID-19 or have been exposed in the past 14 days to anyone who is suspected to have COVID-19. *Id.* ¶ 42. Inmates who are transported and returned to a facility are also immediately screened upon arrival. *Id.* ¶ 41. If an inmate exhibits symptoms of COVID-19, that person is immediately isolated and provided appropriate medical care. *Id.* ¶ 46.

Third, the Department has taken aggressive measures to ensure that people are as safe as possible while they are inside its facilities. *Id.* ¶ 43. To protect inmates with underlying health conditions that might make them more susceptible to infection, the Department has required that these inmates be housed in designated cohorts with limited movement within and outside the facility, in accordance with CDC guidance. *Id.* ¶ 48. In addition, whenever an inmate exhibits symptoms of fever or respiratory illness—indicators of a potential COVID-19 diagnosis—that person is immediately issued a surgical mask to reduce the risk of infection. *Id.* ¶ 54.

To encourage inmates to promptly report symptoms and seek appropriate medical care, the Department has waived medical co-pays for

inmates with these symptoms. *Id.* ¶ 46. The Department also requires inmates to be tested whenever clinically indicated and to be treated appropriately, including in medical quarantine when appropriate, in accordance with CDC guidelines. *Id*. Moreover, in any facility at which any incarcerated individual has tested positive for COVID-19, the Department distributes washable face-masks to all inmates and staff. *Id.* ¶ 54.

Each prison facility is equipped to provide onsite medical care. *Id.* ¶ 14. In addition, the Department contracts with University of North Carolina Health System providers to provide inmates onsite specialty services as necessary. *Id*. When inmates need care that is either emergent or exceeds the level of care that can be provided onsite, they are transported to one of two dedicated healthcare institutions operated by the Department or the nearest local hospital. *Id.*.

Fourth, the Department has accelerated the production and distribution of both personal-hygiene supplies and personal protective equipment. For example, the Department has substantially increased the availability and distribution of soap and hand cleanser. *Id.* ¶ 50. All staff and inmates are being provided hand cleanser, and inmates are being provided double rations of soap. *Id*. More broadly, the Department has

implemented heightened and aggressive cleaning and sanitization efforts within all its facilities. *Id.* ¶ 51. In particular, at facilities where inmates have tested positive for COVID-19, the Department has required that the walls, floors, lockers, table, and bed frames are all cleaned with health-grade disinfectant daily. *Id.*

The Department has ordered 100,000 medical-grade surgical masks, 15,000 N95 masks, 5,000 face shields, and 4,000 gowns for its facilities. *Id.* ¶ 55. The Department has also begun to produce each week more than 3,600 face shields, 6,000 washable face masks, 500 hospital-style gowns, and more than 6,000 four-gallon cases of disinfectant spray, a similar amount of non-alcohol-based hand cleanser, and large quantities of hand lotion. *Id.* ¶ 54. The Department has also acquired alcohol-based hand sanitizer to be used by staff and inmates—and relaxed restrictions on use of such products by inmates, subject to close staff supervision. *Id.*

To ensure adequate supplies going forward, the Department is conducting an inventory of medical and other supplies that might be needed to reduce the spread of COVID-19 in its facilities. *Id.* ¶ 53. Based on this review, the Department intends to procure additional supplies as necessary. *Id.*

Fifth, the Department has engaged in comprehensive education campaign among inmates and staff. *Id.* ¶ 49. In every facility, leadership has met with inmates to educate them on the heightened hygienic measures that are necessary to protect themselves and others from contracting the virus. *Id*. COVID-19 prevention posters created by the Center for Disease Control have been placed in all Department facilities to remind incarcerated individuals of these practices. *Id.*. In addition, facility leadership is actively and continually encouraging inmates and staff to practice frequent hand-washing and social distancing to the greatest extent possible. *Id*.

Finally, the Department understands that the COVID-19 pandemic has further restricted the lives of many in the prison population. *Id.* ¶ 57. To ameliorate these necessary restrictions, the Department has offered every incarcerated individual expanded access to free phone calls and prepaid postcards. *Id*. The Department has also increased recreational opportunities for all inmates, to the extent consistent with social-distancing requirements. *Id*.

C. The Secretary Has Taken Appropriate Steps to Reduce the Prison Population while Maintaining Public Safety.

The unprecedented situation created by COVID-19 poses unique challenges to the Department's administration of the State's prisons. In particular, the crisis requires the Department to balance its dual obligations to safeguard the welfare of people within its prisons and to protect the general public. *Id.* ¶ 21.

The Department houses approximately 34,042 inmates across 52 adult facilities. *Id.* ¶ 20. In light of this high number of adults who are housed in close proximity to each other, these inmates are at risk of contracting COVID-19. *Id.* ¶ 21. Moreover, incarcerated populations are required to be subjected to far greater supervision than persons living outside prisons. *Id.* Accordingly, while the Governor was able to place restrictions on mass gatherings and high-density living environments like schools, universities, and long-term living facilities, the Department cannot unilaterally and indiscriminately return all incarcerated individuals to their communities. *Id.* Because of these constraints, the Department has implemented a comprehensive plan to manage the pandemic within its facilities. *Id.* Every action, including extending the limits of confinement of incarcerated people,

requires the consideration of numerous factors, including public safety and the released person's ability to successfully reintegrate into society. *Id.*

1. Considerations involved in release

The process of reentry for incarcerated persons is complex. It includes numerous steps, often starting years before an inmate's release. *Id.* ¶ 22. These steps can include, at a minimum, screening each inmate for pending charges and detainers in other jurisdictions; developing a release plan (including a proposed place of residence); transferring an inmate to an institution as close as possible to their proposed residence, to minimize transportation difficulties upon release; reviewing the post-release supervision agreement; addressing issues related to an inmate's trust-fund balance; and procuring required identification and other records. *Id*. When the Department releases persons from custody, it tries to do so in a way that gives them the best chance to successfully reintegrate into society. Among the Department's most important objectives is to minimize the likelihood that a released person again engages in criminal activity. *Id.* ¶¶ 27-28.

To advance these goals, the Department verifies and approves the inmate's home plan, including by performing an in-person investigation of the home to make sure it is a safe environment. *Id.* ¶ 23. If an inmate being

released is unable to identify a suitable home plan, she is eligible to apply for limited state transitional housing. *Id.* ¶ 24. If that housing is unavailable—as is often the case—the Department works with community resources, like reentry councils, to find housing for inmates upon release. *Id*.

While an inmate's home plan is being evaluated, prison social workers begin processing paperwork for inmates who are eligible for public benefits, to ensure that they do not encounter an interruption in access to medical services upon release. When this process is not complete before a person's release, as is often the case, the Department partners with the University of North Carolina Health System to provide medical care at community-health clinics. *Id.* ¶ 25.

Release is just the beginning of successful reentry. People reentering society frequently face acute needs related to job training, healthcare (which often includes substance-abuse and mental-health treatment), and access to food. *Id.* ¶ 26. These needs may be met by local reentry councils, which coordinate among a network of government agencies and nonprofits to assist persons released from prison. *Id*.

As all of the above illustrates, reentry is complicated in the best of circumstances. But the global pandemic caused by COVID-19 poses

additional challenges to successful reentry. *Id.* ¶ 27. For example, a person released from prison without a stable housing environment risks entering homelessness—a population that is particularly vulnerable to contracting COVID-19. *Id.*

In all cases, the Department manages the release process to minimize the likelihood that a released person will reoffend. Thus, all discretionary release decisions are made against the backdrop of the various factors that affect likely recidivism, including each inmate's criminal and disciplinary histories, rehabilitative needs, community and family support structures, substance-abuse and mental-health histories, among other relevant factors. *Id.* ¶ 28.

2. Other legal considerations in the release of incarcerated persons

The Department operates under a number of legal restrictions that constrain its discretion to take immediate action to release persons from incarceration. *Id.* ¶ 29. One such obligation requires the Department to ensure that victims are notified before an individual may return to the community. *Id.* Another limitation is the need to determine whether there are detainers or pending charges. *Id.* The Department may not be able to release individuals who are legally obligated to be presented back to law

enforcement on another charge. *Id*. Additionally, the Department is barred from releasing most inmates who have been convicted of felonies until they have served at least their statutory minimum sentence. N.C. Gen. Stat. § 15A-1340.13(d). Any accelerated reentry policy must be tailored to comply with these and other legal constraints. Hooks. Aff. ¶ 29.

3. Changes implemented for extending the limits of confinement of certain adult inmates

Taking all of these considerations into account, the Department has adopted measures to extend the limits of confinement of incarcerated persons in response to the current pandemic. *Id.* ¶ 31. In doing so, the Department has followed the four established legal channels by which a person may be released early. *Id.* ¶ 58.

First, the Department has implemented a process, pursuant to N.C. Gen. Stat. § 148-4, to extend the limits of confinement of qualifying inmates to reduce the population of North Carolina's prisons. *Id.* ¶ 59. Persons released under this plan complete their sentence outside of a Department facility under the supervision of community corrections officers. *Id*.

In response to the COVID-19 pandemic, the Department has identified certain inmates who may be eligible for this process under section 148-4. These inmates include persons who, based on underlying risk factors, are

likely to face serious health complications if they contract COVID-19. *Id.* ¶ 60. To be eligible, an inmate must not have been convicted of a violent crime and must have a projected release date in 2020. *Id*.

At present, more than 500 individuals are being considered for release under this program. *Id.* ¶ 61. Since April 1st, when the first infection was detected in the state prison system, the Department has released 6 persons under this process and has scheduled the release of more. *Id*.

Second, pursuant to N.C. Gen. Stat. § 15A-1340.13, the Department has begun awarding discretionary time credits to inmates with impending release dates. These credits will render them eligible for earlier release by reducing the maximum sentence. *Id.* ¶ 62. Through this process, more than 400 persons who were originally scheduled for release in April, May, June, or July of this year were released early or are on an expedited process for release within the coming weeks. *Id*.

Third, the Parole Commission[2] is prioritizing for early release certain individuals enrolled in the Mutual Agreement Parole Program (MAPP). *Id.*

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[2] The Department does not control decisions to grant, deny, revoke, or rescind parole. These decisions are vested in the Parole Commission, which is an independent executive agency. Hooks Aff. ¶ 79.

¶ 82. MAPP is a program by which prison inmates and the Department mutually agree to establish certain benchmarks that, upon completion, allow inmates to be preapproved for parole. *Id*. In general, individuals eligible to participate in MAPP must be statutorily eligible for parole (parole was abolished in North Carolina in 1994) and be within three years of parole eligibility. *Id*.

In light of the COVID-19 crisis, the Commission has allowed individuals enrolled in MAPP to accelerate their release if they are within six months of their scheduled parole date. *Id*. To date, the Commission has released 4 inmates under this program, and has scheduled 11 more inmates for release within the next week. *Id*.

Fourth, pursuant to the medical-release statute, the Department may release early certain inmates who meet the qualifying criteria for release. *See* N.C. Gen. Stat. § 15A-1369. To be eligible for release under this statute, and subject to the considerations noted above, inmates must be (1) permanently and totally disabled, terminally ill, or geriatric, and (2) incapacitated to the extent that they do not pose a public safety risk. Hooks Aff. ¶ 63. The Department is diligently reviewing these cases to identify inmates who qualify for this form of medical release. *Id*.

4. Changes to reduce new admissions to Department prison facilities

In addition to these programs, the Department has taken steps to reduce the population at state prisons by limiting new admissions of inmates.

First, the Department has suspended acceptance of new entrants from county jails in an effort to limit potential COVID-19 cases in the prisons. *Id.* ¶ 40. The Department is monitoring the situation and will continue to work to limit admissions until the risk to inmates subsides. *Id.* ¶¶ 40-42.

Second, the Department has taken steps to reduce the number of prison admissions based on probation violations during the crisis in order to limit potential COVID-19 cases in the prisons. *Id.* ¶ 88. Decisions on whether to revoke probation are made by courts, not by the Department. However, in response to the current crisis, the Department is currently declining to receive new prison admissions based on probation violations. *Id*.

Third, the Department has prioritized releasing as many nonviolent juveniles who are awaiting adjudication from detention centers as possible. *Id.* ¶ 66. These measures are explained in more detail below.

5. Changes implemented specifically for juveniles

The Department has developed and implemented a plan to identify juveniles who may be eligible for early release. *Id.* ¶¶ 71, 72. The Department operates two types of facilities for juveniles: detention centers, which typically house juveniles who are awaiting adjudication; and youth development centers, where juveniles are housed for longer-term care. *Id.* ¶ 65.

For juveniles housed in detention centers, the Department has prioritized releasing as many juveniles housed for nonviolent offenses as possible. *Id.* ¶ 66. Instead of detention, the Department has turned to less-restrictive alternatives, including electronic monitoring and community-based programs. *Id*. The Department is working closely with a number of community agencies to ensure that these released juveniles are cared for and monitored safely. *Id.* To reduce new admissions, the Department has instructed its staff to request that judges rescind outstanding bench orders to secure custody of juveniles accused of nonviolent offenses. *Id.* ¶ 69. Where confinement is court-ordered, the Department has instructed its staff to request that such confinement begin only after the COVID-19 crisis has passed. *Id.* ¶ 68. Through these measures, between March 1st and April

10th, the Department reduced its detained juvenile population rate by 25%. *Id.* ¶ 70.

The Department has also prioritized releasing juveniles from youth-development centers, when doing so is possible given their circumstances at home. *Id.* ¶ 71. Before releasing these juveniles, the Department ensures that the home and community environments are both safe and able to meet their educational and mental-health needs. *Id.* To further this effort, the Department has assigned a dedicated team to (1) review all juvenile cases that may be eligible for release, and (2) work with community-based partners to ensure that effective transitions can occur. *Id.* ¶ 72. It has also deferred certain preconditions to release, such as a requirement that a juvenile complete pre-release home visits. *Id.* ¶ 76. Between March 1st and April 10th, the Department released 9% of its juvenile population in youth-development centers back to their homes or community-based step-down programs. *Id.* ¶ 73.

The Department has also implemented several changes to protect the safety of the staff and juveniles who are not eligible for early release. *Id.* ¶ 74. In particular, to limit potential infection, the Department has adopted many of the same measures it has implemented in its adult facilities, such as

suspending nonessential outside visitors and requiring medical screening for all staff and visitors. *Id.* ¶¶ 74-75.

Although there are, at this time, no confirmed cases of COVID-19 within juvenile facilities, the Department has implemented procedures to prevent the spread of the virus among juvenile populations. *Id.* ¶ 77. These procedures require quarantine for any juvenile who experiences a fever or respiratory symptoms until they can be cleared by a medical professional. *Id*. In addition, the Department posted informational literature in all of its juvenile facilities to remind both juveniles and staff to wash their hands and take other preventative measures to avoid or slow the spread of COVID-19. *Id*. The Department has also added two additional nurses and will be adding six more over the coming week to help the juvenile justice section prevent infection in its facilities and mitigate the possible spread of the virus. *Id.*

Finally, understanding that the stress and uncertainty surrounding COVID-19 may leave a particularly lasting impact on youth, the Department has increased the number of phone calls between juveniles and their families and increased the use of telehealth services, including mental health care, for individuals affected during this time. *Id.* ¶ 78.

* * *

In these and other ways, the Department has implemented comprehensive measures to slow the spread of COVID-19 in prisons and to protect the health and well-being of both inmates and prison staff. The Department confirmed its first case of the virus among its inmates on April 1, 2020. *Id.* ¶ 89. As of 8 a.m. on April 13, there are 37 confirmed cases, distributed across a prison population of approximately 34,870 housed in 52 facilities across the State. *Id*. This infection rate is comparable to the statewide rate of infection, and is currently lower than the nation's overall infection rate. *Id.* The Governor and the Secretary, along with other executive officials, continue to remain vigilant as the current crisis continues to evolve. They intend to take any additional measures that are necessary to further reduce the risk of infection and spread of COVID-19 within prison facilities. *Id.* ¶¶ 5, 89.

SUMMARY OF THE ARGUMENT

Respondents appreciate the importance of the concerns expressed in the petition. Nevertheless, because the petition is not a proper means for addressing those concerns, it should be denied.

First, the petition is not an appropriate procedural vehicle for the relief that petitioners seek. Petitioners invoke this Court's powers to issue extraordinary writs, as well as its inherent authority. Instead of seeking relief in a lower court in the ordinary course, however, petitioners invoke this Court's jurisdiction in the first instance. But this Court lacks original jurisdiction to issue writs of mandamus to executive officials. It also lacks jurisdiction, in this unusual procedural posture, to grant relief to petitioners under its inherent and habeas authorities.

The petition is also not an appropriate procedural vehicle for another reason: our courts grant relief under their mandamus, inherent, and habeas powers only when other remedies are unavailable. Here, however, a range of established alternative avenues exist for petitioners to seek relief.

Second, mandamus relief is also unwarranted here because petitioners seek to force respondents to take discretionary acts. It is settled law, however, that mandamus can compel officials to perform only mandatory, ministerial acts.

Petitioners seek to compel the Governor and the Secretary to take certain specific steps to respond to the current pandemic. But the authorities that petitioners ask respondents to exercise—the clemency

power and statutory release powers—are all fundamentally discretionary in nature. As a result, respondents cannot be compelled through a mandamus petition to take the specific steps that petitioners seek.

Third, the extraordinary relief that petitioners seek is also unwarranted because, as detailed above, respondents are already working diligently to protect the health and safety of incarcerated persons during this evolving crisis. For instance, the Governor and Secretary have already taken steps to reduce the prison population, to the extent consistent with public safety. In these circumstances, the extraordinary relief that petitioners seek is not warranted.

For these reasons, respondents respectfully request that this Court deny the petition.

ARGUMENT

I. The Petition Is Not Procedurally Proper.

The petition is not an appropriate procedural vehicle to seek the relief requested by petitioners.

This Court lacks original jurisdiction to hear mandamus petitions like this one. Under North Carolina law, this Court's mandamus authority extends only to supervising the State's lower courts. The extraordinary relief

requested here—a mandatory order requiring executive-branch officials, including the Governor, to take certain actions—falls far outside the Court's original jurisdiction. When a petitioner seeks to use mandamus to compel executive officials to take certain action, the petitioner must file that request in a trial court.

Petitioners' alternative requests for relief under this Court's inherent authority and habeas powers are similarly meritless. Although this Court has broad inherent authority to manage the State's court system, that authority does not extend to supervising the discretionary decisions of executive officials. Habeas relief is likewise inappropriate here, because petitioners do not seek to correct any errors in a trial court proceeding.

In sum, even if their claims had merit, petitioners have sought relief in the wrong forum. Trial courts are better suited to engage in the type of fact-sensitive proceedings that petitioners' claims require.

A. This Court does not have jurisdiction over an original mandamus petition of this kind.

Petitioners urge this Court to consider their petition under its original mandamus jurisdiction. However, the Court lacks constitutional authority to do so. Although North Carolina law gives the Court broad authority to

supervise and control the State's lower courts, this power does not extend to ordering relief directly against officials in a separate branch of government. This type of mandamus petition must be heard by a trial court in the first instance, subject to appellate review in this Court.

To issue a writ of mandamus, a court must have jurisdiction, which can be conferred by constitution or statute. 52 Am. Jur. 2d *Mandamus* § 7.

The North Carolina Constitution sets out the jurisdiction of this Court. *See* N.C. Const. art. IV, § 12. Specifically, section 12 of article IV provides that this Court only has "jurisdiction to review upon appeal any decision of the courts below." *Id.* § 12(1). In keeping with this jurisdictional limit, this Court has previously held that it "is strictly an appellate court," that it "has no original jurisdiction," and that "the General Assembly has no authority to confer [original] jurisdiction upon it." *Smith v. State*, 289 N.C. 303, 330, 222 S.E.2d 412, 429 (1976).

To be sure, the Constitution also grants this Court authority to issue remedial writs, like the writ of mandamus. But it only allows this Court to issue such "writs [as are] necessary to give it general supervision and control over the proceedings of the *other courts*." N.C. Const. art. IV, § 12(1) (emphasis added). If a party seeks issuance of a writ of mandamus for

another purpose, that party must go to the superior courts. Those courts can grant such relief, because the Constitution vests them with "original general jurisdiction throughout the State." *Id.* § 12(3).[3]

As a result, when mandamus petitions are filed seeking to direct executive officers to take certain actions, these petitions must be filed in superior court, which has original jurisdiction over those types of actions. Therefore, before this Court can consider the issues raised in the petition, it must be filed in the superior court in the first instance.

North Carolina's statutes and rules further confirm this division of jurisdictional authority. For example, N.C. Gen. Stat. § 7A-32(b) only gives this Court authority to issue writs of mandamus "in aid of its own jurisdiction or in exercise of its general power to supervise and control [judicial] proceedings." Additionally, the rules of appellate procedure contemplate that a mandamus petition can only be filed in an appellate court when the petition concerns lower-court proceedings. *See* N.C. R. App. P. 22(a) (directing that petitions for writs of mandamus "shall be made by

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[3] *Cf. Marbury v. Madison*, 5 U.S. 137, 175-76 (1803) (holding that the U.S. Supreme Court lacks original jurisdiction to issue mandamus petitions to executive officials).

filing a petition therefor with the clerk of the court to which appeal of right might lie from a final judgment entered in the cause by the judge . . . to whom issuance of the writ is sought"). Rule 22's commentary likewise explains that a petition filed in this Court is "technically against the judicial officer sought to be controlled in respect of judicial action." N.C. R. App. P. 22, Drafting Committee Note (1975), *reprinted at* 287 N.C. 671, 732. (commentary).

As these sources of law confirm, this Court only has jurisdiction to issue mandamus to another court, not to an executive official. This Court has repeatedly enforced these kinds of jurisdictional limits on the scope of mandamus relief. For example, on at least two occasions, this Court has held that superior courts lack mandamus authority over district courts, because North Carolina law allows only appellate courts to issue writs of mandamus to lower courts. *See State ex rel. Edmisten v. Tucker*, 312 N.C. 326, 358, 323 S.E.2d 294, 314 (1984); *In re Redwine*, 312 N.C. 482, 484, 322 S.E.2d 769, 770 (1984).

Notwithstanding the authority above, petitioners assert that this Court can issue mandamus not only to supervise lower courts, but to compel

action from executive officials as well. But petitioners have not cited any case ever where a petition of this kind was filed originally in this Court.

For example, petitioners rely on *Wilson Realty Co. v. City & County Planning Board*, but that case involved a mandamus petition that was filed in a trial court. 243 N.C. 648, 655, 92 S.E.2d 82, 87 (1956). The petitioners in *Wilson* sought mandamus relief against a city planning board, but the trial court wrongly believed that it was exercising appellate review over the city's action. *Id.* In correcting the trial court's error, this Court explained that plaintiffs had instead sought "relief by way of mandamus" as an "exercise of the [trial] court's original . . . jurisdiction." *Id*. Thus, when the Court spoke of "original" jurisdiction to hear mandamus petitions, it was speaking about jurisdiction in the trial courts.

As this Court's cases confirm, the proper procedure to seek mandamus relief against executive officials is to file a petition in superior court, subject to this Court's appellate review. The Court has a long tradition of considering appeals of this type. *See, e.g., Morningstar Marinas/Eaton Ferry, LLC v. Warren Cty.*, 368 N.C. 360, 367, 777 S.E.2d 733, 738 (2015) (holding that trial court may issue writ of mandamus to county administrator); *Hamlet Hosp. & Training Sch. for Nurses v. Joint Comm. on Standardization*,

234 N.C. 673, 676, 68 S.E.2d 862, 865 (1952); *City of Hickory v. Catawba Cty.*, 206 N.C. 165, 173 S.E. 56, 61 (1934); *Bd. of Educ. of Alamance Cty. v. Bd. of Comm'rs of Alamance Cty.*, 178 N.C. 305, 100 S.E. 698, 702 (1919).

This procedure exists for good reason: it allows the trial court to develop the record and make factual findings for this Court's review. *See Tucker*, 312 N.C. at 358, 323 S.E.2d at 314. By seeking relief directly in this Court, petitioners seek to bypass the "orderly process of judgment and appeal," including the development of an appropriate factual record. *Id.* at 361, 323 S.E.2d at 316. Without such a record, this Court is not well equipped to rule on the complex factual and evidentiary issues raised in the petition and bypass a statutory scheme setting forth the Department's release guidelines.

Because petitioners' claims present complicated factual issues, those claims should be first resolved by a trial court. For instance, a court ruling on the petition would need to assess the efficacy of different measures to contain the virus, the prevalence of risk factors for the virus among different inmate populations, and the risk to public safety of different forms of relief. A trial court is well-suited to take evidence, develop a record, and make

findings on these questions; an appellate court is not. *See id.* at 360, 323 S.E.2d at 315.

Petitioners nevertheless assert that this Court should not defer to the lower courts to hear these matters because "time is of the essence." Pet. at 19. Petitioners are correct that the issues they raise are important and merit speedy resolution. But that only reinforces the wisdom of pursuing their claims in the ordinary course. The state's trial courts, unlike the appellate courts, routinely consider complex matters on an expedited timeframe. Indeed, trial-court mechanisms like temporary restraining orders and preliminary injunctions are designed precisely for this purpose. *See* N.C. R. Civ. P. 65. It is therefore no surprise that trial courts across the country have already issued expedited rulings—and, where appropriate, issued preliminary relief—in response to the COVID-19 pandemic. *See, e.g.*, *Mays v. Dart*, No. 20C2134, 2020 WL 1812381, at *14-*15 (N.D. Ill. Apr. 9, 2020).

In sum, this Court does not have constitutional authority to consider the petition. And even if the Court did, it should decline to exercise that authority here.

B. This Court does not have jurisdiction to grant the other relief that petitioners seek.

In the alternative, Petitioners request relief under this Court's inherent authority and habeas corpus power. But this Court lacks jurisdiction to grant that relief as well.

First, petitioners ask this Court to grant their petition under the Court's inherent authority, which allows the Court to take actions that are "reasonably necessary for the proper administration of justice." *Beard v. N.C. State Bar*, 320 N.C. 126, 129, 357 S.E.2d 694, 696 (1987). But this authority only empowers the Court to supervise the State's court system. It does not give it original jurisdiction to compel action by other branches of government.

This Court's decision in *Beard*, cited by petitioners, illustrates the point. In that case, the Court ruled that it had inherent authority to order attorneys admitted to practice in North Carolina to make payments into a client security fund. *Id.* at 130, 357 S.E.2d at 696. In ruling on this issue, the Court described its inherent authority as the power that courts possess by virtue of their nature as courts. That is, the authority extends to matters that are "essential to the existence of the court and the orderly and efficient

exercise of the administration of justice." *Id.* at 129-30, 357 S.E.2d at 696. The Court held that this authority gave it the power "to deal with [the] attorneys" that appear before it and who submit to its jurisdiction. *Id.* at 130, 357 S.E.2d at 696.

Indeed, in every case where this Court has exercised its inherent authority, it has been for the purpose of supervising the administration of the judicial system. *See, e.g., Gardner v. N.C. State Bar*, 316 N.C. 285, 287-88, 341 S.E.2d 517, 519 (1986) (recognizing this Court's inherent authority to decide ethics question originally presented to the State Bar); *State v. Cannon*, 244 N.C. 399, 403, 94 S.E.2d 339, 342 (1956) (holding that courts have inherent authority to correct court records); *Ex Parte McCown*, 139 N.C. 95, 51 S.E. 957, 960 (1905) (holding that courts have inherent authority to hold lawyers in contempt).

This case presents a different situation. Here, petitioners are not seeking an order to regulate the courts of justice. Instead, they seek an order directing executive officials to release inmates from prisons—facilities that the executive branch administers. But this Court's inherent authority over the judicial system does not include a supervisory power over the Executive Branch. *See* N.C. Const. art. I, § 6 ("The legislative, executive, and supreme

judicial powers of the State government shall be forever separate and distinct from each other."). Indeed, this Court has disclaimed even ordinary judicial review over the quintessentially executive decisions at issue here, such as granting early release from prison. *See Goble v. Bounds*, 281 N.C. 307, 312, 188 S.E.2d 347, 350 (1972) (holding that executive "agencies are charged with the duty" to decide access to parole and other forms of early release, and so review of these decisions is "not available to the courts").

To be sure, petitioners are right that in *Corum v. University of North Carolina*, this Court held that courts, as part of administering the judicial system, can create remedies for constitutional violations where no other remedy exists. 330 N.C. 761, 783, 413 S.E.2d 276, 290 (1992). But this Court did not hold in *Corum* that it has inherent authority to decide claims over which it would otherwise lack jurisdiction. The Court did not hear *Corum* through an exercise of original jurisdiction. Instead, the case reached this Court in the ordinary course—on appeal, after a lawsuit was filed in superior court. *Id.* at 766-67, 413 S.E.2d at 280. Thus, nothing in *Corum* supports the proposition that this Court may exercise its power to craft constitutional remedies through original jurisdiction. *See Smith*, 289 N.C. at 330, 222 S.E.2d at 429 (holding that this Court "has no original jurisdiction").

But even if *Corum* were relevant here, *Corum* itself cautions that courts should "bow to established claims and remedies" before resorting to "extraordinary exercise[s] of . . . inherent constitutional power" to fashion new remedies. 330 N.C. at 784, 413 S.E.2d at 291. Here, an "established . . . remed[y]" is available to petitioners: they can file appropriate claims in superior court. *See id.* As a result, even if this Court could rely on its inherent powers to expand its jurisdiction, such a step would not be appropriate here.[4]

Finally, Petitioners argue that this Court has authority to consider the petition under its habeas corpus powers. Again, however, petitioners cannot seek the type of habeas relief requested here directly in this Court.

Although habeas petitions can be filed in the appellate courts, *see* N.C. Gen. Stat. § 17-6(1), this Court only has jurisdiction to consider those petitions in exercising its supervisory authority over lower courts. As with mandamus, this Court's authority to issue remedial writs extends only to

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[4] In *Corum*, this Court also recognized that, in crafting new remedies, courts "must minimize the encroachment upon other branches of government." 330 N.C. at 784, 413 S.E.2d at 291. Any remedy ordered here would violate this principle by encroaching on the executive branch's authority to administer the corrections system. *See Goble*, 281 N.C. at 312, 188 S.E.2d at 350.

writs that aid its "general supervision and control over the proceedings of the other courts." N.C. Const. art. IV, § 12(1). Indeed, this Court has already held that when it considers a habeas petition, it does so as "a court of appeals only, and has no jurisdiction to issue any original process, except to enforce its own judgments, and to issue such remedial writs as may be necessary to give it a general supervision and control of the inferior courts." *In re Schenck*, 74 N.C. 607, 610 (1876) (per curiam) (rejecting habeas petition addressed to Supreme Court).

Here, however, petitioners are not challenging errors in any underlying court proceeding. Instead, they ask this Court to grant them direct relief against executive-branch officials through an exercise of original jurisdiction. Pet. at 20. Relief of that kind exceeds the scope of this Court's authority to issue remedial writs.[5]

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[5] Granting habeas relief is inappropriate for another reason as well. Habeas relief is unavailable under state law when "persons are committed or detained by virtue of the final order, judgment or decree of a competent tribunal of civil or criminal jurisdiction." N.C. Gen. Stat. § 17-4(2). As a result, in North Carolina, "habeas is not the proper procedure for challenging a detention pursuant to a valid final judgment in a criminal case entered by a court with proper jurisdiction." Jessica Smith, *North Carolina Superior Court Judges' Benchbook, Habeas Corpus* 1 (Mar. 2014). Rather, in a state habeas proceeding, "[t]he only questions open to inquiry are whether on the record

C. Petitioners have not shown that alternative remedies are ineffective.

The relief sought by petitioners is not warranted for another reason: resort to extraordinary writs is available only where alternative remedies are unavailable. Here, petitioners have alternative possible means to seek the requested relief.

As an extraordinary writ, a court "may only issue a writ of mandamus in the absence of an alternative, legally adequate remedy." *In re T.H.T.,* 362 N.C. 446, 454, 665 S.E.2d 54, 59 (2008). The same procedural limit applies to petitioners' alternative claims. For example, this Court cautioned in *Corum* that the Court's inherent authority should "bow to established claims and remedies." 330 N.C. at 784, 413 S.E.2d at 291. Likewise, "[h]abeas corpus is an extraordinary legal remedy that should be used only when relief cannot be obtained using ordinary procedures and is not generally available when there is an adequate statutory remedy or remedy at law." 39 C.J.S. *Habeas Corpus* § 20.

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the court which imposed the sentence had jurisdiction of the matter or had exceeded its powers." *In re Burton*, 257 N.C. 534, 540, 126 S.E.2d 581, 586 (1962). Because petitioners are not challenging the legal validity of their convictions, state habeas relief is not available here.

Here, petitioners have not shown that they lack adequate statutory or administrative remedies. To the contrary, other established avenues exist for petitioners to seek the requested relief.

For example, inmates may file motions for appropriate relief to be released from prison. *See* N.C. Gen. Stat. § 15A-1415. This mechanism is already being used at the local level. Hooks Aff. ¶ 91.

Other types of actions are also possible, whether in federal court pursuant to 42 U.S.C. § 1983 or in state trial courts. Such proceedings may include requests for emergency relief like that sought by petitioners here. *See generally* N.C. R. Civ. P. 65(a)-(b) (providing for temporary and emergency relief). Importantly, these forms of litigation would take place before trial courts, which are better situated to evaluate evidence and make the kinds of individualized determinations necessary when considering the extraordinary relief sought here: release from a lawful term of imprisonment for the commission of a felony offense.

Indeed, state and federal trial courts around the nation are addressing claims of this kind in response to the current crisis. They have reached different results, based on the unique facts and circumstances of each case. In *Mays v. Dart*, for example, a federal district court in Illinois has ordered

that certain COVID-19 mitigation measures be taken at the Cook County Jail in Chicago. 2020 WL 1812381, at *14-*15. Notably, before this lawsuit was even filed, respondents here had already adopted all of those measures in North Carolina prisons. *Compare id.* at *14-*15 (ordering jail officials to test detainees as medically appropriate, impose social distancing during the inmate intake process, and take extra sanitation measures), *with* pp 12-16, *supra*. And the court in *Mays* declined to grant the plaintiffs' request for release—even though, unlike here, the plaintiffs were pre-trial detainees who have not been convicted of any crime. 2020 WL 1812381, at *12; *see also Baxley v. Jividen,* No. 3:18-cv-1526, 2020 WL 1802935, at *6 (S.D. W. Va. Apr. 8, 2020) (declining to order preliminary relief where "Defendants have produced what appears to be a comprehensive plan addressing the spread of COVID-19 in state jails and prisons"); *Sacal-Micha v. Longoria*, No. 1:20-CV-37, 2020 WL 1518861, at *5 (S.D. Tex. Mar. 27, 2020) (denying motion for habeas corpus relief where "respondents submit evidence of the protective measures they have undertaken to protect [petitioner] and other detainees").

In short, far from having no legally adequate remedy, petitioners have well-established avenues open to them to seek relief where appropriate if their claims have any merit. Petitioners have not alleged, much less shown,

that these alternative remedies are ineffective. Because petitioners can seek relief through the ordinary judicial process, exercise of this Court's extraordinary powers is not warranted here.

II. Mandamus Relief Is Not Designed to Address the Kinds of Unique Challenges Posed by COVID-19.

A. Mandamus is appropriate only to enforce mandatory, non-discretionary functions.

As petitioners acknowledge, a writ of mandamus may be used only to compel the performance of mandatory acts. Pet. at 20. That is, for mandamus to be an appropriate remedy, the petitioner usually must demand that a government official perform an act that is "ministerial in nature and [does] not involve the exercise of discretion." *In re T.H.T.*, 362 N.C. at 454, 665 S.E.2d at 59; *see also Morningstar Marinas*, 368 N.C. at 364, 777 S.E.2d at 736. Moreover, when a writ of mandamus seeks to compel officials to make discretionary decisions, courts can at most only order officials to take action generally. *In re T.H.T.*, 362 N.C. at 454, 665 S.E.2d at 59. They cannot direct officials to exercise their discretion in particular ways, or to take specific actions.

The relief that petitioners seek here does not meet these standards. Rather, the parties agree the current crisis demands that respondents, like

many public officials in this State, exercise their powers in unprecedented and discretionary ways. In doing so, respondents have been required to *depart* from established rules and procedures.

B. The petition seeks relief that is inherently discretionary.

Petitioners seek to compel Governor Cooper and Secretary Hooks to take additional measures to further limit inmates' exposure to COVID-19. But all of the authorities that petitioners cite are inherently discretionary in nature. They therefore cannot justify mandamus relief.

1. Governor Cooper's clemency power is discretionary.

First, petitioners request that Governor Cooper exercise his authority to grant clemency to persons currently incarcerated in state prisons. Pet. at 2, 28. Clemency, however, is fundamentally an act of executive discretion.

Petitioners are right that the Governor has the constitutional authority to "grant reprieves, commutations, and pardons, after conviction, for all offenses . . . upon such conditions as he may think proper." N.C. Const. art. III, § 5(6). This constitutional language, however, "expressly commits the substance of the clemency power to the sole discretion of the Governor." *Bacon v. Lee*, 353 N.C. 696, 717, 549 S.E.2d 840, 854 (2001). Given this "undeniable textual commitment of clemency to the Executive Branch," this

Court has already held that "judicial review of the exercise of clemency power would unreasonably disrupt a core power of the executive." *Id.* Because clemency is "substantively discretionary" in nature, the Governor's exercise of this power is not an appropriate subject of mandamus. *Id.* at 711 n.5, 549 S.E.2d at 850.[6]

2. Secretary Hooks' early-release powers are discretionary.

Second, petitioners ask Secretary Hooks to exercise his statutory powers to release inmates early. Pet. at 28-29 (citing N.C. Gen. Stat. §§ 148-4.1, -4(3)). But like the Constitution's grant of clemency power to the Governor, these statutes only confer discretionary power on the Secretary; they do not prescribe mandatory duties that are enforceable by mandamus.

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[6] Judicial restraint in this area also preserves separation of powers. The wisdom of that restraint is illustrated by the consequences of allowing judicial review of the Governor's clemency decisions. If the Governor's decision not to exercise his pardon power were subject to mandamus review, so too would his decisions to *grant* clemency. But courts have uniformly rejected claims of that kind. *See, e.g., People ex rel. Madigan v. Snyder,* 804 N.E.2d 546 (Ill. 2004) (citing separation-of-powers concerns to reject challenge to then-Illinois Governor George Ryan's decision to commute the death sentences of all 164 people on Illinois's death row).

Specifically, section 148-4.1 gives the Secretary the authority to direct inmates to be released on parole. But the statute allows release only when the Secretary "determines" that action "is necessary reduce the prison population to a more manageable level or to meet the State's obligations under law." N.C. Gen. Stat. § 148-4.1(a). Thus, the statute empowers the Secretary to determine, in his discretion, when releasing inmates is necessary.[7]

Similarly, section 148-4 gives the Secretary authority to release inmates on medical leave. But again, this power is discretionary. That statute provides that "[t]he Secretary of Public Safety may extend the limits of the

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[7] It bears noting that the Secretary's discretionary release powers are circumscribed in ways that limit him from authorizing the relief sought here. For example, section 148-4.1 explicitly excludes persons sentenced under the Structured Sentencing Act. *See* N.C. Gen. Stat. § 148-4.1(h) ("A person sentenced under Article 81B of Chapter 15A of the General Statutes shall not be released pursuant to this section."). The Secretary's powers under section 148-4.1 therefore do not apply to the vast majority of persons who are currently incarcerated, including four of the five named petitioners here. *See* N.C. Gen. Stat. § 15A-1340.10 (providing that the Act applies to most offences committed after 1994); Pet. Exs. B, C, D, F. Moreover, the statute excludes from eligibility persons convicted of a "sex offense," "a drug trafficking offense," or "any other violent felon." N.C. Gen. Stat. § 148-4.1(a). These limits further constrain the Secretary's exercise of discretion, preventing him from releasing large numbers of inmates—including the remaining petitioner here, who was convicted of murder. Pet. Ex. E.

place of confinement of a prisoner, as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place . . . for a prescribed period of time to . . . [o]btain medical services not otherwise available." N.C. Gen. Stat. § 148-4(3).[8]

The terms of this statute are manifestly discretionary. The Secretary "may" decide to authorize medical release for inmates he believes will "honor his trust." *Id.* Given such language, it is no surprise that this Court has previously cited this statute for the proposition that "the General Assembly has delegated certain authority to the DOC to govern prisoners and administer criminal sentences." *State v. Bowden*, 367 N.C. 680, 683-84, 766 S.E.2d 320, 323 (2014).

More broadly, this Court has previously interpreted statutes with language similar to sections 148-4.1 and 148-4(3) as establishing discretionary authorities that are not appropriate for mandamus relief. For example,

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[8] Because section 148-4(3) is limited to releasing inmates to seek medical services, it seems questionable whether this statute could apply here. The principal basis for release cited by petitioners is to avoid the possible risk of infection. Pet. at 1-2, 33-35. Moreover, as described, the Department provides comprehensive medical services to inmates—including those who are infected by COVID-19. Hooks Aff. ¶ 44.

Gaddis v. Cherokee County Road Commission involved a statute stating that a road commission "*may* order the laying out and construction of new roads." 195 N.C. 107, 141 S.E. 358, 360 (1928) (emphasis added). The Court held that this statutory language granted authority that was "committed to the sound and reasonable discretion" of the commission, and therefore could not support the exercise of mandamus relief. *Id.* Likewise, in *Harris v. Board of Education of Vance County*, the Court held that a statute empowering a school board to "approve" the selection of school principals conferred a discretionary power that could not be compelled by a writ of mandamus. 216 N.C. 147, 151, 4 S.E.2d 328, 331 (1939).

Here, the statutes at issue confer the Secretary with similar discretionary powers. They allow him to "determine" how to act, and they provide that he "may" take certain actions. N.C. Gen. Stat. §§ 148-4.1(a), -4(3). Thus, under this Court's precedents, the Secretary's exercise of authority under these statutes is not subject to mandamus.

3. The Parole Commission's release powers are discretionary.

Third, petitioners ask this Court to require respondents to compel the Parole Commission to exercise its authority to release certain inmates. Pet.

at 28-29. Here, too, petitioners invoke only the Commission's discretionary authorities. Thus, even assuming that respondents have the power to direct the Commission to act in these ways,[9] petitioners seek relief that is outside the scope of mandamus.

Specifically, petitioners request that the Commission reinstate parole and post-release supervision for those who have had that status revoked. Pet. at 28. By law, however, these decisions are fact-sensitive and discretionary. For example, the Commission "may" grant or refuse parole, based on its individualized assessment of the risks and benefits of releasing any particular person from prison. N.C. Gen. Stat. § 15A-1371(d). Likewise, if a parolee violates a condition of his parole, the Commission "may" continue

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[9] The Commission is an independent, multi-member agency that operates largely outside the Governor's and Secretary's direct control. Although the Governor appoints the Commission's four members, he may remove three of them only for good cause. *See* N.C. Gen. Stat. § 143B-721(a)-(c). The Commission's decisions are decided by a majority vote of its members, and must follow detailed statutory criteria. *Id.* §§ 143B-721(d), 15A-1371. These decisions are generally not subject to review, approval, or reversal by the Governor or the Secretary. *See id.*; *but see id.* § 148-4.1 (authorizing the Secretary to reduce the prison population by directing the Board to release inmates on parole). Given this structure, it is unclear whether respondents have the authority to direct the Commission to take the measures that petitioners propose.

or revoke parole, in its discretion. *Id.* § 15A-1373(d); *see also id.* § 15A-1368.3 (same, for supervised release).[10]

The Commission's decisions on parole and supervised release are thus inherently discretionary, and therefore not appropriate for mandamus relief. Indeed, this Court has long held that decisions of this kind are not subject to judicial review at all. *See Goble*, 281 N.C. at 312, 188 S.E.2d at 350. As the Court held in *Goble*, the decision "[w]hether to release a prisoner before the completion of his sentence is a question" that "cannot be answered by rules of law." *Id.* at 310, 188 S.E.2d at 349. Instead, parole and other forms of early release "involve[ ] policy decisions" that are within "'the discretion of an administrative board.'" *Id.* at 311-12, 188 S.E.2d at 350 (quoting *Williams v. New York*, 337 U.S. 241, 248 (1949)); *see also, e.g.*, *Jernigan v. State,* 279 N.C. 556, 564, 184 S.E.2d 259, 266 (1971) (holding that whether parole should be revoked is "a matter committed to the discretion of the Board of Paroles").

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[10] The Petition also suggests that respondents could reduce revocations of probation. Pet. at 28. But respondents are not involved in decisions to revoke probation; those decisions are made by the courts. That said, respondents have already adopted measures that are within their power to temporarily suspend imprisonment in response to probation violations. *See* p 24, *supra*.

Petitioners also request that the Commission exercise its discretion to authorize medical release. Pet. at 28. Again, however, the medical-release statute makes clear that it does not create mandatory duties susceptible to mandamus relief. Instead, it allows the Commission to "consider" inmates for medical release. N.C. Gen. Stat. § 15A-1369.3(a). The Commission determines, in its discretion, "when and under what conditions an inmate *may* be released." *Id.* § 15A-1369.1 (emphasis added). Its decision in a particular case is based on its "independent assessment of the risk for violence and recidivism that the inmate poses to society." *Id.* § 15A-1369.3(d). Like parole decisions, these discretionary determinations are not subject to judicial review at all—let alone in a mandamus posture. *See id.*[11]

[11] Moreover, the medical-release statute limits the Commission's discretion in ways that, in nearly all cases, bar it from providing the relief sought by petitioners here. Under the statute, inmates may be considered for release only if they are (1) "[d]iagnosed as permanently and totally disabled, terminally ill, or geriatric," *and* are (2) "[i]ncapacitated to the extent that [they do] not pose a public safety risk." N.C. Gen. Stat. § 15A-1369.2(a). In addition, persons convicted of serious felonies or a reportable sex offense may not be released. *Id.* § 15A-1369.2(b). Because the number of inmates who meet these criteria is so limited, only a handful are eligible for release under this statute. *See* Jamie Markham, *Early Medical Release*, N.C. Crim. Law Blog (Jan. 8, 2014), *available at* https://nccriminallaw.sog.unc.edu/early-medical-release.

In sum, respondents agree that COVID-19 presents serious and urgent concerns regarding the welfare of incarcerated persons. But whether and how to release inmates in response to those concerns, under either the Governor's pardon powers, the Secretary's statutory powers, or the Commission's parole powers, are decisions legally vested in the discretion of executive officials. They are therefore inappropriate for judicial enforcement through mandamus.

* * *

Mandamus exists to allow courts to require government officials to take actions that are truly mandatory. It does not apply when the government must choose between competing legal obligations,[12] or when an

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Here, petitioners seek the release of inmates with "underlying medical conditions that, according to the CDC guidelines, put them at particular risk" from COVID-19. Pet. at 33-34. This request includes inmates with common conditions like obesity and asthma that affect a large proportion of the prison population. *See* Centers for Disease Control and Prevention, *People Who Are at Higher Risk for Severe Illness* (Apr. 2, 2020), *available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html. The medical-release statute does not extend to conditions of this kind.

[12] *See, e.g., Mendota Golf, LLP v. City of Mendota Heights,* 708 N.W.2d 162, 174 (Minn. 2006) (mandamus does not apply in this situation because "the conflict . . . indicates that the city did not have a clear duty" one way or the other); *Carkeek v. City of Seattle*, 766 P.2d 480, 483-84 (Wash. Ct. App.

official is vested by law with policymaking discretion. There may potentially be appropriate ways for this Court, and the courts generally, to assist in the ongoing statewide effort to protect incarcerated persons from the risks posed by COVID-19. But mandamus is not among them.[13]

III. Respondents Are Acting Appropriately To Protect the Health and Safety of Incarcerated Persons and the Public as a Whole.

The extraordinary judicial relief sought by petitioners is also unwarranted for another reason: as recounted in detail above, Governor Cooper, Secretary Hooks, and other officials are already acting to address the unique challenges posed by the COVID-19 pandemic, including in state prisons. They have done so by using their best policy judgment to maximize

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1989); *State ex rel. Gladfelter v. Lewis*, 595 S.W.2d 788, 790 (Mo. Ct. App. 1980) (same).

[13] Another constraint on respondents' authority to release persons from incarceration are North Carolina laws that provides rights to victims during the release process. Among these many rights is a victim's right to notice and an opportunity to be heard before any executive release of the person who caused them harm. N.C. Gen. Stat. § 15A-830.5(b)(7); *see also* N.C. Const. art. I, § 37; N.C. Gen. Stat. §§ 15A-830.5(b)(3), (b)(8); 15A-836(a)(6) (conferring additional rights). Of course, respondents, like all public officials, must have the authority to relax legal requirements when necessary to advance other important interests. This authority is at its zenith when officials face an unprecedented public-health crisis like the COVID-19 pandemic. But, as shown above, mandamus is not a proper tool for resolving discretionary policy decisions of this kind.

the health and safety of incarcerated persons, prison staff, and the people of North Carolina as a whole.

These ongoing efforts make mandamus relief, as well as any other relief from this Court, inappropriate. As noted above, when mandamus is used to compel action from an official that is discretionary in nature, courts can at most only order an official to act—not to take any specific action. *See In re T.H.T.*, 362 N.C. at 454, 665 S.E.2d at 59. The Governor and Secretary are already acting.[14]

Respondents reiterate that they recognize that the current crisis poses special dangers to persons confined in state prisons and local jails. They have therefore taken aggressive measures to safeguard the health and safety of those entrusted to their care. They have also encouraged local officials to do the same with regard to local jail populations. In taking these and other protective measures, respondents have been guided by the same expert

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[14] Courts have at times suggested that, in rare instances, mandamus relief might be available to correct gross abuses in the exercise of an official's discretion. *See In re Alamance Cty. Court Facilities*, 329 N.C. 84, 104, 405 S.E.2d 125, 135 (1991). No such abuse exists here, however, where the Governor and Secretary are already engaged in ongoing efforts to address the concerns that petitioners have raised.

advice and recommendations that inform all of Governor Cooper's statewide emergency directives in response to the COVID-19 pandemic.

Respondents further recognize that addressing the current crisis will require responsible and well-calibrated measures to reduce the population of state prisons. The Governor and Secretary will continue to exercise their discretion in appropriate ways to balance the health and well-being of incarcerated persons with public safety and other concerns. Because respondents are exercising their discretion responsibly to protect the public welfare, the relief requested here is unwarranted.

CONCLUSION

For the reasons explained in this response, the petition should be denied. However, respondents welcome any initiatives by this Court, acting under its lawful authority, to address the grave and urgent concerns raised in the petition. Respondents therefore stand ready to assist the Court to take any appropriate measures, within the lawful authority of the judicial branch, to mitigate the risks of COVID-19 to incarcerated persons.

This 13th day of April, 2020.

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No. 160P20

SUPREME COURT OF NORTH CAROLINA

****

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, DISABILITY RIGHTS NORTH CAROLINA, AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION, ALBERTA ELAINE WHITE, KIM T. CALDWELL, JOHN E. STURDIVANT, SANDARA KAY DOWELL, and CHRISTINA RHODES,	)
Petitioners,	)
v.	)
ROY COOPER, in his official capacity as Governor of North Carolina; and ERIK A. HOOKS, in his official capacity as Secretary of the North Carolina Department of Public Safety,	)
Respondents.	)

****

AFFIDAVIT OF ERIK A. HOOKS

****

I, ERIK A. HOOKS, who, under penalty of perjury, declare as follows:

1. I am over 18 years of age, legally competent to give this declaration, and have personal knowledge of the facts set forth in it.

2. I am Secretary of the North Carolina Department of Public Safety (DPS). DPS is an agency of the State of North Carolina and is responsible for the supervision of North Carolina's prisons and juvenile detention centers. DPS also supervises members of the community who are under State supervision. In addition to DPS's role in the supervision of those who have been found to have violated state law, DPS is the State's chief coordinating agency on criminal justice and safety issues. Finally, DPS is also responsible for the preparation, coordination, and condition of the State's military and civil preparedness plans and the effective conduct of emergency operations by participating agencies in response to disasters or hostile actions, including the COVID-19 pandemic.

3. As Secretary, the position in which I have been serving since January 2017, I am responsible for overseeing DPS, which includes the Division of Adult Correction and Juvenile Justice, the Division of Emergency Management, the North Carolina National Guard, the North Carolina State Highway Patrol, North Carolina Alcohol Law Enforcement, the State Capitol Police, and other divisions. In addition, I serve as the State's Homeland

Security Advisor, chair of the State Emergency Response Commission, and chair of the State Reentry Council Collaborative. Before assuming my role as Secretary, I was a full-time sworn agent for the North Carolina State Bureau of Investigation beginning in August 1, 1989.

4. As Secretary, and in the scope of my role in this litigation, I have familiarized myself with all of the facts set forth in this affidavit.

Executive Orders Directing the State's Response to the COVID-19 Crisis

5. On 10 March 2020, Governor Cooper declared a state of emergency to coordinate the State's response and protective actions to prevent the spread of COVID-19. Exhibit 1 (Executive Order No. 116). As part of that declaration, Governor Cooper delegated to Secretary Hooks the power and authority to "implement[] the [State's emergency] Plan and deploy[] the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina." Ex. 1, § 3.

6. In addition to this delegation, Governor Cooper also appointed Secretary Hooks as the Chief Coordinating Officer for the State and directed him to "implement the [State's emergency] Plan in coordination with the Secretary of the Department of Health and Human Services (DHHS), Dr.

Mandy Cohen, and the State Health Director, Dr. Elizabeth Tilson." *Id.*, §§ 3, 4.

7. Governor Cooper further directed Secretary Hooks to seek "assistance from any and all agencies of the United States Government as may be needed to address the emergency and seek reimbursement for costs incurred by the state in responding to this emergency." *Id.*, § 17.

8. That same day, Governor Cooper also memorialized the establishment of the Novel Coronavirus Task Force on COVID-19 and appointed the State Health Director, Dr. Elizabeth Tilson and Director of Emergency Management (a division of DPS), Michael Sprayberry, to serve as the co-chairs of the Task Force. *Id.*, § 10. The Task Force was charged with working with all "state, local, and federal partners in responding to challenges posed by COVID-19." *Id.*

9. On 14 March, Governor Cooper issued an executive order that prohibited mass gatherings and directed the statewide closure of K-12 public schools to limit the spread of COVID-19. Ex. 2 (Executive Order No. 117).

10. On 17 March, Governor Cooper issued an executive order that limited the operation of restaurants and bars and broadened unemployment insurance benefits in response to COVID-19. Ex. 3 (Executive Order No. 118).

11. On 20 March, Governor Cooper issued an executive order that facilitated critical motor-vehicle operations and delegated authority to the Secretary of DHHS to waive regulations to expand access to child care and support local health departments. Ex. 4 (Executive Order No. 119).

12. On 23 March, Governor Cooper issued an executive order that imposed additional limitations on mass gatherings and restrictions on venues, imposed new limitations on long-term care facilities, and extended the statewide closure of K-12 public schools. Ex. 5 (Executive Order No. 120).

13. On 27 March, Governor Cooper issued a stay-at-home order, imposed additional limitations on mass gatherings, and addressed the adoption of local orders to complement the Governor's executive orders. Ex. 6 (Executive Order No. 121).

14. On 30 March, Governor Cooper issued an executive order that mandated the donation or transfer of state surplus property to assist state agencies, local governments, and schools in response to the COVID-19 public health emergency. Ex. 7 (Executive Order No. 122).

15. On 31 March, Governor Cooper issued an executive order to assist North Carolinians by prohibiting utility shut-offs, late fees, and reconnection fees, providing guidance about restrictions on evictions, and

encouraging telecommunications providers, banks, and mortgage servicers to provide assistance and flexibility to their customers. Ex. 8 (Executive Order No. 124).

16. On 1 April, Governor Cooper issued an executive order authorizing and encouraging remote shareholder meetings during the COVID-19 state of emergency. Ex. 9 (Executive Order No. 125)

17. On 7 April, Governor Cooper issued an executive order granting flexibility in the training of certain law-enforcement officers in light of the COVID-19 public health emergency. Ex. 10 (Executive Order No. 129).

18. On 8 April, Governor Cooper issued an executive order to direct the resources of the State to help meet North Carolina's health and human services needs in light of the COVID-19 public health emergency. Ex. 11 (Executive Order No. 130).

19. On 9 April, Governor Cooper issued an executive order to establish additional policies for retail establishments, implement further risk-mitigation measures at long-term care facilities, and institute new processes to expedite payment of unemployment insurance claims. Ex. 12 (Executive Order No. 131).

Considerations in the Implementation of Changes in Procedures

20. As of 11 April, DPS's adult facilities house approximately 34,042 inmates across its 52 adult facilities. In addition, DPS operates two short-term confinement centers to house probationers who violate the conditions of their probation. Statewide, the adult facilities are operating at roughly 90% of their operational capacity.

21. The unprecedented situation created by COVID-19 has given rise to unique challenges to DPS's administration of the State's prisons, including its obligation to protect people within its prisons and the general public. People incarcerated in North Carolina's prisons live in an environment where they are in close proximity to each other. Incarcerated populations are subject to more supervision and a more restrictive living environment than North Carolinians living outside prisons. Offenders incarcerated in the state's prison system are sentenced by judicial officers to serve time for the commission of a crime. Accordingly, DPS is unable to simply return all offenders to their communities. Instead, DPS must implement a comprehensive plan to manage the pandemic within its facilities and every action, including extending the limits of confinement for incarcerated people, requires the consideration of a variety of additional factors.

22. For example, DPS must follow its policies and procedures for release and successful reentry of offenders in the custody of the State. This process involves multiple steps. These steps include, at a minimum, screening of each prisoner for pending charges and detainers; developing a release plan, including a proposed place of residence; ideally moving the person to an institution as close as possible to that location to minimize transportation difficulties upon release; reviewing the supervision agreement with the incarcerated person; and addressing issues related to the incarcerated person's trust fund balance and identification.

23. In general, nine months before release, a prison case manager begins the process of verifying the home plan of a person about to be released. The offender first identifies the home where he/she intends to stay after release and a person with whom he/she plans on living. The case manager then contacts that person to verify that the released person can reside there. After the initial verification, in preparation for post-release supervision, DPS's Division of Community Corrections (CC), does an in-person investigation and must approve the placement, along with other time-intensive requirements for accepting a person for post-release

supervision. Each stage of this process often has to be repeated more than once, as housing plans fall through for a variety of reasons.

24. If an offender is unable to identify a suitable home plan, he/she is eligible for limited state transitional housing. If that housing is full, DPS begins working with community resources, like local reentry councils, to find housing for reentering people.

25. While the offender's case manager evaluates the offender's housing options, prison social workers begin processing paperwork for offenders who are eligible for Medicare, Medicaid, and disability to ensure there is no interruption in medical services. This process is often not complete before an offender's release, so DPS partners with University of North Carolina medical staff to provide care at community health clinics, a process that generally has significant bureaucratic hurdles.

26. Release is just the beginning of successful reentry. People reentering have needs related to job training, healthcare (sometimes including substance use and mental health treatment), and food. These needs are often met by local reentry councils, which coordinate among a network of government agencies and nonprofits to assist those reentering.

In North Carolina, there are only 19 local reentry councils spread across the state, all of which have been provided initial startup support by DPS.

27. While reentry is complicated in the best of circumstances, the global pandemic caused by COVID-19 poses additional challenges. State housing is still limited and an offender who reenters the community without housing or other necessary support is particularly vulnerable to the challenges brought by COVID-19. When DPS releases an offender, it tries to do so in a way that gives the offender the best chance for success and lowers the likelihood of reoffending.

28. Reducing the likelihood of reoffending is critical to DPS's mission to protect the public safety. Therefore, all decisions about individual conditions of confinement must be made with each individual's criminal and disciplinary histories and rehabilitative needs in mind.

29. In addition, DPS is still under a number of legal obligations that may restrict its discretion in taking immediate action to release offenders to the community or post-release supervision. One such obligation requires DPS to ensure that victims are notified before an individual may return to the community. Another limitation is the existence of detainers or other pending charges. DPS may not be able to release individuals who are legally

obligated to be presented back to a North Carolina county or another state. Additionally, DPS is statutorily prohibited from releasing individuals who have been convicted of felonies until those individuals have served at least their minimum sentences. N.C. Gen. Stat. § 15A-1340.13(d). These obligations are not waived, even in light of the pandemic. Therefore, any accelerated reentry that DPS administers must still comply with these legal obligations.

30. DPS is also considering how best to implement medical isolation when necessary. DPS recognizes that a person who is isolated for medical reasons should not be subjected to punitive conditions attendant with confinement. Accordingly, DPS has instituted a procedure that allows the use of restrictive housing for medical isolation only to the extent required by the medical circumstances presented and ensures that offenders who are in medical isolation maintain privileges, including continued access to phone calls and commissary accounts.

31. Taking all of these considerations into account, DPS has implemented a number of changes in internal processes to limit the contraction and spread of COVID-19 within its facilities. In addition, DPS

has also implemented changes to reduce the population of its facilities by releasing certain qualifying offenders.

Changes in Internal Procedures Implemented Within the State's Prisons

32. Since Governor Cooper declared a state of emergency and directed Secretary Hooks to coordinate the State's response to the pandemic, DPS has, separately and in coordination with DHHS, taken many steps to address the impact of COVID-19 within the prison system.

33. DPS has moved swiftly to limit the potential for spread of COVID-19 within its correctional facilities and to safeguard, to the greatest extent possible, the health and safety of both correctional officers and incarcerated people, consistent with public safety.

34. DPS's response to the global pandemic involves two tracks, which DPS is pursuing simultaneously. On one, DPS is taking steps to decrease the risk of contraction and spread of COVID-19 within its population by reducing the number of people currently housed in DPS custody. Because of the nature of the COVID-19 pandemic, however, DPS has determined, in conjunction with DHHS, that any mitigation must also include preventative measures applied to the offenders and staff of DPS facilities. DPS is proceeding on a separate track and taking aggressive

measures to limit the contraction and spread of COVID-19 among its offenders and staff by isolating and testing those offenders who are suspected of having COVID-19 and quarantining those who may have been exposed to it.

35. On 16 March, DPS suspended visitation and volunteer visits within the prisons to prevent the introduction of COVID-19 into the State's facilities.

36. DPS has allowed legal visitation and pastoral care visits to continue, but has instituted heightened protective procedures to govern these visits. Attorneys and members of the clergy who visit DPS's population are subjected to medical screening and anyone with symptoms of COVID-19 is denied entry.

37. Vendors and contractors working with DPS are subject to the same screening as attorneys and members of the clergy.

38. To limit contact with members of the public who are not screened and to limit DPS's offenders' potential exposure to COVID-19, and in alignment with the Governor's stay-at-home orders, on 24 March, DPS temporarily suspended the work-release program.

39. DPS has taken other measures to limit contact with unscreened members of the public. For example, DPS has also limited education and other self-improvement opportunities and suspended all face-to-face instruction for the duration.

40. In addition, on 6 April, DPS instituted a two-week moratorium on accepting new entrants from county jails. From 31 March to 6 April, all new entrants from county jails were subjected to a 14-day quarantine period to prevent the introduction of COVID-19 into the prison system. Until DPS stopped accepting new entrants, it instituted a procedure that required all new entrants to the state prison system to be medically screened for COVID-19 symptoms to prevent the introduction of the virus into the prison system. Those new entrants who exhibited symptoms of COVID-19 were immediately isolated and tested as necessary, in accordance with public health guidelines.

41. To further protect the population from unscreened members of the public, DPS has limited the availability of transportation to court-ordered, high-priority, and healthcare-related movements only. Every person who is transported is medically screened for potential COVID-19 symptoms. Those who exhibit symptoms are immediately isolated. In

addition, all transport vehicles are required to be cleaned thoroughly after each use.

42. Every person entering a DPS facility is screened for symptoms of COVID-19. Entry into any DPS facility is denied to anyone who has a temperature of 100 degrees or more, has symptoms of respiratory illness, or has been exposed in the past 14 days to anyone who is suspected to have or has been diagnosed with COVID-19.

43. In addition to limiting the DPS population's exposure to unscreened members of the community, DPS has also taken measures to ensure that people are safe while they are inside DPS premises.

44. Each DPS prison facility is equipped to provide onsite medical care. Each DPS facility is stocked with medications that can be procured within DPS's own pharmacy. In addition, DPS contracts with University of North Carolina providers to afford its offenders specialty services as necessary. In the event that an offender needs care that is either emergent or exceeds the level of care that can be provided in the offender's home facility, the offender is transported to one of two healthcare institutions operated by DPS. In the event that an offender cannot be treated in their home facility or at one of the healthcare institutions operated by DPS, that

offender is transported directly to a nearby hospital, where the offender is provided the necessary care while in custody.

45. DPS operates the Central Prison Healthcare Complex (CPHC). CPHC provides inpatient and outpatient services for DPS's male offenders, including emergency care and specialty clinics. CPHC has 120 medical and surgical beds and another 216 beds for in-patient mental health treatment. DPS also operates the North Carolina Correctional Institution for Women (CIW), which provides inpatient and outpatient services, including emergency care and specialty clinics, for DPS's female offenders.

46. In response to the COVID-19 pandemic, DPS has clarified and streamlined the procedure for offenders to obtain medical care when they are suspected to have been infected. When an offender exhibits symptoms of fever or respiratory illness, the offender is immediately quarantined to reduce risk of infection. To encourage offenders to promptly report these symptoms and seek appropriate medical care, DPS has implemented a procedure to waive medical co-pays for offenders with these symptoms. DPS's procedure also requires that offenders are tested whenever clinically indicated and treated appropriately, including in medical isolation when appropriate, in accordance with CDC guidelines.

47. DPS has continued to retain its policies allowing its offenders to request to be seen for any medical complaint and medical staff will continue to respond to all medical emergencies immediately. To reduce population movement within facilities and interaction among other offenders and unscreened members of the public, non-essential medical appointments have been canceled and facilities with populations suffering from chronic diseases have taken efforts to restrict interactions with people outside the facility.

48. To protect inmates with underlying health conditions that make them particularly susceptible to contracting COVID-19, and in accordance with CDC guidance, DPS has changed its procedure to house these individuals in cohorts with limited movement within and outside the facility. This cohort-style living arrangement has been implemented system-wide across all housing units.

49. DPS is also engaged in an aggressive education campaign within its facilities. In every facility, leadership has met with the offenders to explain the actions that DPS is taking and to educate the offenders about heightened hygienic measures that will help offenders protect themselves from contracting the virus. COVID-19 prevention posters created by the

Center for Disease Control have been placed in all of DPS's adult correctional facilities to remind offenders of practices to reduce exposure to and transmission of the virus. In addition, leadership frequently reminds offenders at each facility to practice frequent hand-washing and social distancing to the greatest extent possible.

50. To facilitate these measures, DPS has substantially increased the production and availability of soap and hand cleanser. All staff and offenders are being provided hand cleanser, and offenders are being provided double rations of soap. In addition, DPS has begun permitting alcohol-based hand cleanser to be used within its facilities by staff and, under staff supervision, by offenders.

51. DPS has also implemented heightened and aggressive cleaning efforts within its custodial facilities daily. At facilities that are housing inmates who have tested positive for COVID-19, in addition to the daily cleaning schedule, the walls, floors, lockers, tables, and bed frames are cleaned with health-grade disinfectant daily.

52. To further protect both the incarcerated population and DPS staff, DPS has limited staff gatherings groups of 10 or fewer. In addition, whenever staff is gathered in any facility, DPS requires them to follow social

distancing guidelines when possible. Offenders are also not permitted to congregate in groups.

53. DPS is currently conducting an inventory of medical and other supplies that might be needed to reduce the contraction and spread of COVID-19 in its facilities. DPS will place orders to procure additional supplies as necessary.

54. In each of the facilities at which any offender has tested positive for COVID-19, DPS has distributed two washable face masks to all staff and offenders. DPS has also begun to produce each week more than 3,600 face shields, 6,000 washable face masks, 500 hospital-style gowns, and more than 6,000 four-gallon cases of disinfectant spray, a similar amount of non-alcohol-based hand cleanser, and large quantities of hand lotion. DPS is also acquiring large quantities of alcohol-based hand sanitizer to be used by staff and offenders who are closely supervised by staff.

55. DPS has also focused on procurement of additional personal protective equipment (PPE). In addition to distributing washable face masks, DPS has ordered 100,000 medical-grade surgical masks, 15,000 N95 masks, 5,000 face shields, and 4,000 gowns for staff at its facilities.

56. To inform the community and maintain open communications, DPS is publishing daily a compilation of the results of the COVID-19 tests that are completed, breaking down the test results by facility and result. This daily compilation is available at: https://www.ncdps.gov/our-organization/adult-correction/prisons/prisons-actionsinfo-covid-19.

57. Finally, DPS is sympathetic to the fact that the COVID-19 pandemic has restricted the lives of many in the prison population. To ameliorate these necessary restrictions, DPS has made arrangements for every offender to receive two free five-minute phone calls to friends and family each week and is providing pre-paid postcards for offenders in restrictive housing who do not have phone privileges. At this time, DPS's facilities are not technologically equipped to support video visitation. In addition, DPS is increasing recreational opportunities for all offenders where reasonable and is providing access to a movie-subscription service for all offenders. Finally, DPS has provided each of its offenders with an opportunity to submit orders for an extra care package from their friends and families to be delivered during this difficult time.

Changes in Procedure for Extending the Limits of Confinement for Certain Adult Offenders

58. In addition to the many changes in internal procedures that have been implemented to reduce the chance of infection and spread of COVID-19 within North Carolina's prisons, DPS is implementing changes to reduce the overall population within the prisons as well. DPS has identified four different channels by which DPS may reduce the number of offenders in its custody.

59. DPS leadership has implemented a plan, pursuant to N.C. Gen. Stat. § 148-4, to extend the limits of confinement for certain offenders to reduce the population within North Carolina's prisons. Those offenders may complete their sentence outside of a DPS facility under the supervision of community corrections officers or special operations officers.

60. DPS has identified certain groups of offenders who are eligible under this authority because they have been identified as being at high risk of contracting COVID-19 with serious health complications and as posing a lower risk to public safety. In particular, currently those being considered for extending the limits of confinement must not have been convicted of a violent crime and must have a projected release date in 2020.

61. More than 500 individuals are being considered for this extension to allow them to complete their sentences in the community

under this program. Since 1 April, the State has extended the limits of confinement for 6 offenders identified in the above categories and has scheduled the release of more.

62. In addition to extending the limits of confinement of some adult offenders, pursuant to N.C. Gen. Stat. § 15A-1340.13, DPS has also begun awarding extra discretionary time credits to hundreds of offenders so that they may be eligible for earlier release. Through this process, more than 400 offenders have been released so far.

63. Finally, DPS may release early certain offenders who qualify for medical release. N.C. Gen. Stat. § 15A-1369. DPS may only release individuals under this provision if they are assessed to be permanently and totally disabled, terminally ill, or geriatric, and assessed to be incapacitated to the extent that the offender does not pose a public safety risk. DPS is diligently reviewing all cases to identify any offender who may qualify for medical release.

64. Following these procedures, DPS has extended the conditions of confinement for one of the plaintiffs in this case, Alberta Elaine White.

Changes in Procedures for Housing Juvenile Offenders

65. In addition to identifying groups of adult offenders who may be most eligible for early release, DPS has also identified certain groups of juveniles who may be similarly eligible.

66. The Juvenile Justice Section (JJ) operates two types of facilities: juvenile detention centers, which typically house juveniles who are awaiting adjudication; and youth development centers, where juveniles are housed for longer-term care.

67. JJ has prioritized releasing as many nonviolent juveniles who are awaiting adjudication from detention centers as possible. Instead of detention, JJ has changed its procedure to use alternatives, including electronic monitoring and community-based programs. JJ is working closely with a number of community agencies to ensure that these juveniles are cared for and monitored safely.

68. To operationalize this procedure, JJ staff prioritize the review of juvenile cases to identify those who might be appropriate for release and bring these cases to the attention of the detaining judges for approval for release.

69. In addition, where confinement is court-ordered for violations of probation, JJ staff have been instructed to request that such confinement begin only after the COVID-19 crisis has passed.

70. Finally, JJ staff have been directed to request that judges rescind, in all appropriate cases, outstanding bench orders for secure custody on juveniles with complaints for non-violent offenses.

71. Between 1 March and 10 April, JJ has reduced its daily juvenile population rate in juvenile detention centers by 25%.

72. In addition to declining to detain nonviolent juveniles, JJ has prioritized returning juveniles who have been committed to youth-development centers to their home communities. Before releasing these juveniles, JJ ensures that the home and community environments are safe, supportive of the young person's continued growth, and are able to meet the young person's needs in the areas of education and mental-health treatment.

73. JJ leadership has assigned a special team to review all juvenile cases that may be eligible for release and to work with community-based partners to ensure effective transitions can occur.

74. Between 1 March and 10 April, JJ has released 9% of its juvenile population in youth-development centers back to their homes or community-based step-down programs.

75. Finally, JJ leadership has also implemented several changes to protect the safety of the staff and all juveniles who are not eligible for early release. In particular, JJ has suspended all visitation and volunteer activities to limit potential infection and spread from interactions with unscreened members of the community. Only essential staff is permitted to enter any JJ premises and must undergo procedures similar to those set forth for staff at adult correctional facilities before they may enter JJ premises. In addition, JJ encourages using videoconferences to attend any court hearings that are scheduled during this time.

76. All incoming new juveniles must also be placed in medical quarantine for 14 days and cleared by a medical provider before they are able to join the general population of JJ's juvenile detention centers. In addition, all juveniles are medically screened before any transportation. If a juvenile exhibits symptoms of fever or respiratory illness, the juvenile may not be transported.

77. For those youth who reside in a JJ youth development center, JJ leadership has suspended home visits and deferred the requirement that a juvenile complete all pre-release home visits before being released from a youth development center.

78. Although there are, as yet, no confirmed cases of COVID-19 within JJ facilities, JJ leadership has implemented procedures to stop or slow the spread of the virus within its facilities. These procedures require quarantine for any juvenile who experiences a fever or respiratory symptoms until he/she can be cleared by a medical professional. In addition, JJ leadership has required the posting of information literature in all of its facilities to remind both juveniles and staff to wash hands and take other preventative measures to avoid or slow the spread of COVID-19. The Department has also added two additional nurses and will be adding six more over the coming week to help JJ prevent infection in their facilities and mitigate the spread of the virus if diagnosed in one of its facilities.

79. Finally, understanding that the stress and uncertainty surrounding COVID-19 may leave a particularly lasting impact on youth, JJ has implemented procedures to increase the number of phone calls permitted between juveniles and their families and to increase the use of

telehealth services, including mental health care, for individuals affected during this time.

Changes in Procedure Implemented for People on Probation, Parole, or Post-Release Supervision

80. The Post-Release Supervision and Parole Commission is responsible for determining whether and when a person is eligible for parole or post-release supervision. The Commission is not an agency or subdivision of DPS. Any decision to grant, deny, revoke, or rescind post-release supervision or parole is decided by a vote of the Commission.

81. The Division of Community Corrections (CC) provides meaningful supervision over those who have been released on probation, parole, or post-release supervision. Probation and parole officers protect the public safety and those on supervision by ensuring that those on supervision comply with court orders and court-ordered conditions of supervision.

82. In response to Governor Cooper's direction to protect the health and well-being of those involved in the corrections system, and in conjunction with DHHS, CC implemented a number of changes to internal procedure in response to the COVID-19 epidemic.

83. Another group of offenders who are being prioritized for early release is certain individuals enrolled in the Mutual Agreement Parole

Program (MAPP). Ordinarily, MAPP provides a mutually agreed-upon roadmap by which an offender may meet certain benchmarks while incarcerated so that, upon completion, he/she may be preapproved for parole. In general, individuals eligible for parole through MAPP must be eligible for parole (parole was abolished in North Carolina in 1994) and be within three years of parole eligibility. In light of the COVID-19 crisis, the Post-Release Supervision and Parole Commission is allowing individuals enrolled in MAPP to accelerate their release if they are within six months of their scheduled parole date. To date, the Commission has accelerated parole and released four incarcerated people and has scheduled 11 more for release within the next week.

84. All CC staff have been directed to prioritize teleconferencing for all interviews and non-essential meetings. In the event that any employee experiences symptoms of COVID-19, the employee must seek medical assistance and report the possible exposure immediately. Employees who are sick have been instructed to stay at home.

85. In addition, CC has suspended all routine home contacts. Officers will, instead, conduct telephone contacts instead of home contacts and curfew contacts. CC officers will only conduct home contacts for

emergency situations or in response to violations considered to be a threat to public safety.

86. Any face-to-face management contact requirements are suspended. Remote reporting will instead be used.

87. CC has prohibited all third parties from accompanying any supervised people to a required office visit unless warranted by special circumstances.

88. In addition, all interstate transfers have been suspended until the end of April. And any requests for out of state travel are denied unless such travel is for an emergency.

89. In general, when CC finds that a supervised person has violated the conditions of her supervision, CC must report this violation to a court. A court may not revoke probation until the supervised person has been sentenced on two occasions to 90-day terms in confinement-in-response-to-violation (CRV), except in cases where he/she absconds or commits a new crime. DPS is currently not receiving new admissions to CRV to limit the potential for contraction and spread of COVID-19.

* * *

90. As reflected above, DPS has taken a number of aggressive steps to respond to the COVID-19 pandemic. DPS confirmed its first case of COVID-19 among its offenders on 1 April 2020. The steps that DPS has taken appear to have contributed to preventing wide-range spread of the illness through DPS's facilities. As of 8 a.m. on 13 April, there have been 37 confirmed cases of COVID-19, distributed across a prison population of approximately 34,870. This infection rate is comparable to the reported rate of infection across the entire State's population, and is significantly lower than the nation's overall infection rate. DPS continues to remain vigilant and look for new opportunities to further reduce the risk of infection and spread, while remaining mindful of its obligation to maintain public safety.

91. Attached hereto as Exhibit 13 is a true and correct copy of a letter dated 13 April 2020 from Peg Dorer, the Director of the North Carolina Conference of District Attorneys to me, copying Leslie Cooley-Dismukes, the Criminal Bureau Chief of the North Carolina Department of Justice and Jane Ammons Gilchrist, the General Counsel for the North Carolina Department of Public Safety.

92. I stand ready to assist the Court with any questions or concerns it might have.

I declare under the penalty of perjury under the laws of the State of North Carolina that the foregoing is true and correct.

Dated this 13th day of April, 2020

Erik A. Hooks
Secretary
North Carolina Department of Public Safety

EXHIBIT 1

EXECUTIVE ORDER NO. 116

State of North Carolina

ROY COOPER

GOVERNOR

MARCH 10, 2020

EXECUTIVE ORDER NO. 116

DECLARATION OF A STATE OF EMERGENCY TO COORDINATE RESPONSE AND PROTECTIVE ACTIONS TO PREVENT THE SPREAD OF COVID-19

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death by the SARS-CoV-2 virus, which is a new strain of coronavirus previously unidentified in humans and which can spread from person to person; and

WHEREAS, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern on January 30, 2020; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") has warned of the high public health threat posed by COVID-19 globally and in the United States and has deemed it necessary to prohibit or restrict travel to areas designated by the CDC; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency in the United States for COVID-19 under Section 319 of the Public Health Service Act; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") confirmed multiple cases of COVID-19 in North Carolina as of March 10, 2020; and

WHEREAS, NCDHHS has organized a Public Health Incident Management Team to manage the public health impacts of COVID-19 in this state; and

WHEREAS, health insurance companies have begun to waive the costs for COVID-19 testing and are encouraged to continue to ensure ease of access to health care for diagnostics and treatment without regard to the issue of cost or a patient's ability to pay; and

WHEREAS, first responders and health care professionals remain integral to ensuring the state is best situated to respond to and mitigate the threat posed by COVID-19 and such first responders and health care professionals should have the availability of all necessary personal protective equipment and continue to follow all necessary response protocols; and

WHEREAS, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the undersigned to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(3), the undersigned, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the congregation of persons in public places or buildings; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise other such functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned has authority to requisition state property and state resources to utilize state services, equipment, supplies and facilities in response to a state of emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70, the undersigned may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C. Gen. Stat. § 20-381 and similar rules should be waived for essentials, as defined in N.C. Gen. Stat. § 166A-19.70(f)(3), for assisting in the restoration of utility services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70(g), upon the recommendation of the North Carolina Commissioner of Agriculture and the existence of an imminent threat of severe economic loss of livestock, poultry or crops ready to be harvested, the Governor shall direct the North Carolina Department of Public Safety ("DPS") to temporarily suspend weighing vehicles used to transport livestock, poultry or crops to include timber ready to be harvested; and

WHEREAS, 49 C.F.R. § 390.23 allows the governor of a state to suspend the rules and regulations under 49 C.F.R. §§ 390-399 for up to thirty (30) days if the governor determines that an emergency condition exists; and

WHEREAS, the undersigned, in consultation with the Secretary of NCDHHS, has determined it is necessary and appropriate to act to ensure that COVID-19 remains controlled and that residents and visitors in North Carolina remain safe and secure; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. State of Emergency

I hereby declare a State of Emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19) for the State of North Carolina based on the public health emergency posed by COVID-19.

The emergency area, as defined in N.C. Gen. Stat. §§ 166A-19.3(7) and 166A-19.20(b) is the State of North Carolina (the "Emergency Area").

Section 2. Application

All state and local government entities and agencies are ordered to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan (the "Plan").

Section 3. Delegation of Authority

I delegate to Erik A. Hooks, the Secretary of the North Carolina Department of Public Safety ("DPS"), or his designee, the power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

Secretary Hooks, or his designee, shall implement the Plan in coordination with the Secretary of the Department of Health and Human Services, Dr. Mandy Cohen, and the State Health Director, Dr. Elizabeth Tilson.

Section 4. Exercise of Powers

Further, Secretary Hooks, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. §§ 143B-602 and 166A-19.11.

Section 5. Maximum Hours of Service

In order to ensure adequacy and location of supplies and resources to respond to COVID-19, DPS, in conjunction with the North Carolina Department of Transportation ("DOT"), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381, if the driver is transporting medical supplies and other equipment in support of the Plan or other efforts to address the public health threat posed by COVID-19, through the duration of the State of Emergency or until further notice.

Section 6. Height and Weight Restrictions

DPS, in conjunction with DOT, shall waive certain size and weight restrictions and penalties arising under N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119, certain registration requirements and penalties arising under N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49 for vehicles throughout the Emergency Area involved in transporting medical supplies and other equipment in support of the Plan or other efforts to address the public health threat posed by COVID-19. Furthermore, pursuant to N.C. Gen. Stat. § 20-118.1, DPS shall temporarily suspend weighing vehicles throughout the Emergency Area used to transport medical supplies and other equipment in support of the Plan or other efforts to address the public health threat posed by COVID-19. Furthermore, pursuant to N.C. Gen. Stat. § 20-118.1, DPS shall temporarily suspend weighing vehicles used to transport livestock, poultry, or crops to include timber ready to be harvested and feed to livestock and poultry in the Emergency Area.

Section 7. Unwaived Size and Weight Restrictions

I. Notwithstanding the waivers set forth above in Section 6, size and weight restrictions and penalties have not been waived under the following conditions:

   a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
   b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
   c. When a vehicle and vehicle combination exceed twelve (12) feet in width and the total overall vehicle combination's length exceeds seventy-five (75) feet from bumper to bumper.
   d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having (i) a yellow banner on the front and rear that is seven (7) feet long and eighteen (18) inches wide and bears the legend "Oversized Load" in ten (10) inch black letters, 1.5 inches wide and (ii) red flags measuring eighteen (18) inches square on all sides at the widest point of the load. When operating between sunset and sunrise, a certified escort shall be required for loads exceeding eight (8) feet 6 inches in width.

II. Vehicles subject to this Executive Order shall adhere to the following conditions:

   a. The size and weight exemption for vehicles will be allowed on all DOT designated routes, except those routes designated as light traffic roads under N.C. Gen. Stat. § 20-118. This Order shall not be in effect on bridges posted pursuant to N.C. Gen. Stat. § 136-72.
   b. The waiver of regulations under Title 49 of the Code of Federal Regulations ("Federal Motor Carrier Safety Regulations") does not apply to the Commercial Drivers' License and Insurance Requirements. This waiver shall be in effect for thirty (30) days or the duration of the emergency, whichever is less.
   c. Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are limited to medical supplies and other equipment to be used in support of the Plan or other efforts to address the public health threat posed by COVID-19.

III. The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 5 through 8 of this Executive Order in a manner that does not endanger North Carolina motorists.

Section 8. Additional Transportation Waivers

Vehicles subject to this Executive Order shall be exempt from the following registration requirements:

a. The requirement to obtain a temporary trip permit and pay the associated $50.00 fee listed in N.C. Gen. Stat.§ 105-449.49.
b. The requirement of filing a quarterly fuel tax return as the exemption in N.C. Gen. Stat.§ 105-449.45(b)(1) applies.
c. The registration requirements under N.C. Gen. Stat.§ 20-382.1 concerning intrastate for hire authority and N.C. Gen. Stat.§ 20-382 concerning interstate for-hire authority; however, vehicles shall maintain insurance as required as required by law.
d. Non-participants in North Carolina's International Registration Plan and International Fuel Tax Agreement will be permitted to enter North Carolina in accordance with the exemptions identified by this Executive Order.

Section 9. Consumer Protection

Pursuant to N.C. Gen. Stat. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C. Gen. Stat. §§ 75-37 and 75-38.

I further hereby encourage the North Carolina Attorney General to use all resources available to monitor reports of abusive trade practices towards consumers and make readily available opportunities to report price gouging as well as unfair and deceptive trade practice under Chapter 75 of the North Carolina General Statutes to the public.

Section 10. Task Force

I hereby memorialize the establishment of the Governor's Novel Coronavirus Task Force on COVID-19 ("Task Force"). The Director of Emergency Management and the State Health Director shall continue to serve as co-chairs of the Task Force. The Task Force shall continue to work with state, local, and federal partners in responding to challenges posed by COVID-19.

Section 11. State Employee Policy Guidance

a. I hereby authorize hiring of temporary employees and contractors to support NCDHHS and local health departments in responding to the threats posed by COVID-19.

b. I hereby authorize the State Health Director to monitor areas of concentration of COVID-19 and make recommendations regarding travel restrictions for travel of state employees conducting state business. Agencies shall have the authority to cancel, restrict or postpone travel of state employees as needed to protect the wellbeing of others. Agencies are urged to cancel travel to restricted areas (as defined by the Division of Public Health of NCDHHS and the CDC). Exceptions to travel restrictions may be needed based on the unique circumstances or job duties of state employees.

Section 12. Public Health Surveillance and Control Measures

Notwithstanding the public health authorities in place under Chapter 130A of the North Carolina General Statutes, I hereby order the State Health Director to work with local health directors to implement public health surveillance and control measures where appropriate for individuals who have been diagnosed with or are at risk of contracting COVID-19 in order to control or mitigate spread of the disease. I hereby order the State Health Director to utilize all authorities under N.C. Gen. Stat. Chapter 130A to obtain information and records necessary to prevent, control, or investigate COVID-19.

Section 13. Laboratory Testing

I hereby order the State Health Director to work with the State Laboratory of Public Health to maximize the availability of laboratory testing for COVID-19.

I further encourage private laboratories and universities to take all reasonable steps to expand COVID-19 testing capacity.

Section 14. Right of Entry and Disinfection for Local Health Departments and NCDHHS Secretary

With the concurrence of the Council of State and notwithstanding the public health authorities in place under Chapter 130A of the North Carolina General Statutes, I hereby grant local health departments, the Secretary of NCDHHS, and Division of Public Health employees serving the Secretary of NCDHHS' agents, and on her direction, a right of entry into public places for the purposes of assisting with or investigating potential COVID-19 cases or exposure and requiring cleaning and disinfecting measures to help control transmission of COVID-19.

Section 15. Cleaning of Regulated Facilities

With the concurrence of the Council of State, I hereby waive restrictions related to the type of product or chemical concentration used to control COVID-19 at facilities whose sanitation is regulated by NCDHHS, if conducted and handled in a safe manner and approved by the local health department in consultation with the Division of Public Health of NCDHHS. The State Health Director may issue additional orders or regulations consistent with the state's Public Health Law to regulate the sanitation of public facilities regulated by NCDHHS or local health departments.

Section 16. Out of State Health Care Licensure and Additional Testing Resources

With the concurrence of the Council of State, I hereby temporarily waive North Carolina licensure requirements for health care and behavioral health care personnel who are licensed in another state, territory, or the District of Columbia to provide health care services within the Emergency Area.

With the concurrence of the Council of State, and in the interest of alleviating immediate human suffering, nothing in Subchapters 32B, 32M, or 32S of Article 21 of the North Carolina Administrative Code shall be interpreted to prevent physicians, nurse practitioners, and physician assistants from issuing a standing order for qualified agents or employees who are working under the direct supervision of a physician, physician assistant or nurse practitioner to collect throat or nasopharyngeal swab specimens from individuals suspected of suffering from a COVID-19 infection, for purposes of testing.

Section 17. Federal Support

I further direct Secretary Hooks, or his designee, to seek assistance from any and all agencies of the United States Government as may be needed to address the emergency and seek reimbursement for costs incurred by the state in responding to this emergency.

Section 18. Local County Public Health Aid Funding Formula

With the concurrence of the Council of State, I hereby grant the Secretary of NCDHHS, or her designee, the authority to waive the formula requirements of 15A NCAC 18A .2901 and adjust aid-to-county funding, if a local health department's resources are diverted in response to COVID-19.

Section 19. Access to State Funds

I hereby order access to the State Emergency Response and Disaster Relief Fund to the extent necessary to cover costs associated with responding to this State of Emergency as provided in N.C. Gen. Stat. § 166A-19.42, including but not limited to the substance of this Executive Order.

Section 20. Purchase and Contract Regulation Waivers

With the concurrence of the Council of State, I hereby temporarily waive Sections .0301 through .0317 of Chapter 5B in Title 1 in the North Carolina Administrative Code to the extent necessary to permit NCDHHS, DPS, and local governmental entities to enter into contracts to secure resources and equipment needed to respond to COVID-19.

In addition to the provisions in Section 11, I further order all components of state government to expedite and prioritize the leasing of real property, including but not limited to, laboratories and health care facilities in order to provide the state with the resources needed to address COVID-19.

Section 21. Cost Sharing Reduction

Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), I hereby direct NCDHHS and the North Carolina Department of Insurance to immediately work with health insurance plans operating in the state to identify any burdens for testing for COVID-19 as well as access to prescription drugs and telehealth services, as needed, in order to reduce cost-sharing (including, but not limited to, co-pays, deductibles, or coinsurance) to zero for all medically necessary screening and testing for COVID-19.

Section 22. Clinical Coverage Policy

With the concurrence of the Council of State, and in order to provide the immediate relief of human suffering, I hereby temporarily waive the regulatory requirements and suspend the enforcement of the statutory requirements under N.C. Gen. Stat. § 108A-54.2 for modifications of Medicaid Clinical Coverage Policy.

I order the NCDHHS, Division of Health Benefits to create coverage policies necessary for Medicaid and Health Choice Beneficiaries to receive medically necessary services for testing and treatment of COVID-19 and to create coverage policies or modify existing policies that will allow beneficiaries to continue to receive necessary services without disruption during the State of Emergency.

Section 23. Inapplicability of Section 166A-19.30(c)

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C. Gen. Stat. § 166A-19.30(c).

Section 24. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of DPS, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 25. Effective Date

This Executive Order is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 10th day of March in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXHIBIT 2

EXECUTIVE ORDER NO. 117

State of North Carolina

ROY COOPER

GOVERNOR

March 14, 2020

EXECUTIVE ORDER NO. 117

PROHIBITING MASS GATHERINGS AND DIRECTING THE STATEWIDE CLOSURE OF K-12 PUBLIC SCHOOLS TO LIMIT THE SPREAD OF COVID-19

WHEREAS, the undersigned issued Executive Order No. 116 on March 10, 2020, which declares a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, the undersigned established the Novel Coronavirus Task Force on COVID-19 to work with state, local, and federal partners in responding to challenges posed by COVID-19; and

WHEREAS, the World Health Organization declared COVID-19 a global pandemic on March 11, 2020; and

WHEREAS, on March 11, 2020, the President of the United States took executive action to restrict travel from Europe into the United States of America; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq*. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared a national emergency that the COVID-19 outbreak in the United States constitutes a national emergency beginning March 1, 2020; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") confirmed the number of cases of COVID-19 in North Carolina continues to rise; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the Governor to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, NCDHHS has organized a Public Health Incident Management Team to manage the public health impacts of COVID-19 in this state; and

WHEREAS, first responders and health care professionals remain integral to ensuring the state is best situated to respond to and mitigate the threat posed by COVID-19 and such first responders and health care professionals should have the availability of all necessary personal protective equipment and continue to follow all necessary response protocols; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(3), the undersigned, with the concurrence of the Council of State, has the power to regulate and control the congregation of persons in public places or buildings; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise other such functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, further action is necessary to protect the health and safety of the residents of North Carolina, slow the spread of the COVID-19 outbreak, reduce the number of people infected, and avoid strain on our health care system; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Prohibition of Mass Gatherings

Pursuant to N.C. Gen. Stat. § 166A-19.30(b)(3), which allows for the undersigned to regulate and control the congregation of persons in public places or buildings and with the concurrence of the Council of State, to help protect the health and well-being of North Carolinians, I hereby prohibit mass gatherings in the State of North Carolina.

a. A mass gathering is defined as any event or convening that brings together more than one hundred (100) persons in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, theater, or any other confined indoor or outdoor space. This includes parades, fairs and festivals.

b. A mass gathering does not include normal operations at airports, bus and train stations, medical facilities, libraries, shopping malls and centers, or other spaces where more than one hundred (100) persons are gathered. It also does not include office environments, restaurants, factories, grocery stores or other retail establishments.

c. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provision of this section shall be enforced by state and local law enforcement officers.

d. Violations of this section or orders issued pursuant to N.C. Gen. Stat. § 166A-19.30 may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d) and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.

Section 2. School Closures

a. Pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5) which allows the undersigned to perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population, and with the concurrence of the Council of State, I hereby direct that all public schools close for students effective Monday, March 16, 2020 until March 30, 2020, unless extended beyond that date.

b. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), I hereby direct NCDHHS, the North Carolina Department of Public Instruction, and the North Carolina State Board of Education to immediately work together to implement measures to provide for the health, nutrition, safety, educational needs and well-being of children during the school closure period.

Section 3. Social Distancing

In coordination with the State Health Director and alignment with guidance from the Centers for Disease Control and Prevention, all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible and to continue to wash hands, utilize hand sanitizer and practice proper respiratory etiquette (including coughing into elbow).

Section 4. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 5. Effective Date

With the exception of section 2, this Executive Order is effective immediately and shall remain in effect for thirty (30) days or until rescinded or superseded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 14th day of March in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXHIBIT 3

EXECUTIVE ORDER NO. 118

State of North Carolina

ROY COOPER

GOVERNOR

MARCH 17, 2020

EXECUTIVE ORDER NO. 118

LIMITING OPERATIONS OF RESTAURANTS AND BARS AND BROADENING UNEMPLOYMENT INSURANCE BENEFITS IN RESPONSE TO COVID-19

WHEREAS, the undersigned issued Executive Order No. 116 on March 10, 2020 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, the World Health Organization declared COVID-19 a global pandemic on March 11, 2020; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq*. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 outbreak in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, on March 14, 2020, the undersigned issued Executive Order No. 117 which prohibited mass gatherings of more than one hundred (100) people in the State of North Carolina and closed K-12 public schools to limit the spread of COVID-19; and

WHEREAS, on March 15, 2020, the Centers for Disease Control ("CDC") updated their guidance for large events and mass gatherings, and recommended that for the next eight (8) weeks, organizers (whether groups or individuals) cancel or postpone in-person events that consist of fifty (50) people or more throughout the United States; and

WHEREAS, on March 16, 2020, the White House issued new guidelines called The President's Coronavirus Guidelines for America -- 15 Days to Slow the Spread of Coronavirus (COVID-19), calling on people to "avoid social gatherings in groups of more than ten (10) people"; and

WHEREAS, the undersigned, pursuant to Section 401 of the Stafford Act is requesting a major disaster declaration from the United States Federal Government; and

WHEREAS, the North Carolina Department of Health and Human Services("NCDHHS") confirmed that the number of cases of COVID-19 in North Carolina continues to rise; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the Governor to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, the Governor has established the Novel Coronavirus Task Force on COVID-19 to work with state, local, and federal partners in responding to challenges posed by COVID-19; and

WHEREAS, NCDHHS has organized a Public Health Incident Management Team to manage the public health impacts of COVID-19 in this state; and

WHEREAS, COVID-19 has caused and will continue to cause substantial economic disruption in North Carolina, including disruptions to employees and employers; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, the Governor, Secretary of Public Safety, and Director of Emergency Management have the authority to act under N.C. Gen. Stat. §§ 166A-19.10, 166A-19.12, and 166A-19.30(a)-(b); and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(4) gives the Governor the authority to "cooperate and coordinate" with the President of the United States; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.12(3)(e), the Division of Emergency Management must coordinate with the State Health Director to revise the North Carolina Emergency Operations Plan as conditions change, including making revisions to set "the appropriate conditions for quarantine and isolation in order to prevent the further transmission of disease; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the Governor has the power to "give such direction to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this article; and

WHEREAS, pursuant to N.C. Gen. Stat. § 130A-145(a), the State Health Director has the power to exercise quarantine and isolation authority when the public health is endangered; and

WHEREAS, quarantine authority is defined by N.C. Gen. Stat. § 130A-2(7a) to mean the authority to issue an order to limit the freedom of movement or action of persons or animals which been exposed to or are reasonably suspected of having been exposed to a communicable disease or communicable condition for a period of time as may be necessary to prevent the spread of that disease; and

WHEREAS, under N.C. Gen. Stat. § 130A-2(3), an "imminent hazard" is defined as a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken; and

WHEREAS, under N.C. Gen. Stat. § 130A-20(a), if the Secretary of Health and Human Service determines that an imminent hazard exists, the Secretary may order the owner, lessee, operator, or other person in control of the property to abate the imminent hazard; and

WHEREAS, quarantine authority is defined by N.C. Gen. Stat. § 130A-2(7a) to also mean the authority to issue an order to limit access by any person or animal to an area of facility that may be contaminated with an infection agent; and

WHEREAS, further action is necessary to protect the health and safety of the residents of North Carolina, slow the spread of the COVID-19 outbreak, protect our most vulnerable citizens, and avoid strain on our health care system; and

WHEREAS, the undersigned has sought and obtained the necessary concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30(b) for Sections 2 and 3 of this Order, and reserves the right to act under N.C. Stat. §§ 166A-19.10 and 166A-19.30(a).

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Limiting the Sale of Food and Beverages, to Carry-Out, Drive-Through, and Delivery Only.

(a) Pursuant to the following authorities, the Governor, in consultation and at the recommendation of the state Secretary of Health and Human Services, the State Emergency Management Director, and the State Health Director, orders the following limitations on the sale of food and beverages to carry-out, drive-through, and delivery only:

(i) Per N.C. Gen. Stat. §§ 166A-19.30(c),-19.31(b)(2), the Governor has authority to restrict or prohibit the operation of business establishments and other place to or from which people may travel or at which they may congregate;

(ii) Per N.C. Gen. Stat. § 166A-19.10(b)(4), giving the Governor authority to "cooperate and coordinate" with the President of the United States, who issued guidelines directing the reduction of the congregating of persons to no more than ten (10) people the President's Coronavirus Guidelines for America, March 16, 2020, and this Order is cooperating therewith;

(iii) Per N.C. Gen. Stat. § 166A-19.12(3)(e), the Division of Emergency Management must coordinate with the State Health Director to revise the North Carolina Emergency Operations Plan as conditions change, including making revisions to set "the appropriate conditions for quarantine and isolation in order to prevent the further transmission of disease," and the Emergency Management Director and State Health Director having done so, have recommended the Governor order the actions identified in this Section;

(iv) Per N.C. Gen. Stat. § 130A-20(a), the Secretary has determined an imminent hazard exists and that entities subject to this Section must limit the sale of food and beverages to carry-out, drive-through, and delivery only in order to abate the hazard, and has issued an order of abatement dated March 17, 2020;

(v) Per N.C. Gen. Stat. § 130A-145(a), the State Health Director is exercising quarantine and isolation authority to limit access to facilities that sell food and beverage to carry-out, drive-through and delivery services only.

(vi) Per N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the Governor has the power to "give such direction to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this article that restaurants are restricted to carry-out, drive-through, delivery, and onsite consumption in outdoor seating areas, subject to mass gathering restrictions to create an environment where staff and patrons maintain social distancing (at least 6 feet from other people) whenever possible. Bars are directed to close. These restrictions are effective as of 5:00pm, Tuesday, March 17, 2020 until March 31, 2020, or until this Order is rescinded or replaced.

(b) For the purposes of this Order, restaurants are defined as permitted food establishments, under N.C. Gen. Stat. § 130A-248, and other establishments that both prepare and serve food, including but not limited to, restaurants, cafeterias, food halls, dining halls, food kiosks at airports and shopping centers, or educational institutions, ("food courts"), as well as private or members-only clubs where food and beverages are permitted to be consumed on premises.

(c) For purposes of this Order, bars are defined as establishments that are not restaurants and that have a permit to sell alcoholic beverages for onsite consumption, under N.C. Gen. Stat. § 18B-1001.

(d) This Order does not direct the closure of retail beverage venues that currently provide for the sale of beer, wine, and liquor for off-site consumption only. It also does not require the closure of production operations at breweries, wineries, or distilleries.

(e) This Order does not affect grocery stores, pharmacies, convenience stores, gas stations and charitable food distribution sites to the extent they sell or distribute prepared food. However, sit-down food or beverage service within these facilities is prohibited.

(f) If the Alcoholic Beverage Control Commission "ABC Commission" identifies other state laws, regulations, and policies that may affect bars, restaurants, and other dining establishments identified in this Section, it is directed to inform the Office of the Governor in writing. Upon written authorization from the Office of the Governor, the ABC Commission may interpret flexibly, modify, or waive those state laws, regulations and policies, as appropriate, and to the maximum extent permitted under applicable state and federal law, to effectuate the purposes of this Order.

(g) In light of this Executive Order, Executive Order No. 117 Section 1(b) (March 14, 2020) is revised as follows:

"A mass gathering does not include normal operations at airports, bus and train stations, medical facilities, libraries, shopping malls and centers. It also does not include office environments, factories, grocery stores, and child care centers."

These locations or facilities, however, are subject to the dine-in food and beverage restrictions listed in this Order.

Section 2. Unemployment Insurance Policy Related to COVID-19

The undersigned has sought and obtained the necessary concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30 (b), and reserves the right to act under N.C. Stat. §§ 166A-19.10 and 166A-19.30(a).

The Department of Commerce, through the Secretary of Commerce and Assistant Secretary of the Division of Employment Security, is directed to ensure that individuals who, as a result of COVID-19, are separated from employment, have had their hours of employment reduced, or are prevented from working due to a medical condition caused by COVID-19 or due to communicable disease control measures, shall be eligible for unemployment benefits to the maximum extent permitted by federal law. For purposes of this Executive Order, communicable disease control measures shall include quarantine or isolation directives or orders related to COVID-19 issued by the State of North Carolina, the federal government, a local governmental entity, or a medical or public health professional.

Section 3. Unemployment Insurance Changes

(a) To provide the necessary unemployment benefits to those affected by COVID-19, the Department of Commerce is authorized, to the maximum extent permitted under federal law, and for so long as the Declaration of a State of Emergency regarding COVID-19, dated March 10, 2020, remains in place, to interpret flexibly or waive, as appropriate, the following:

i. the one-week waiting period for benefits (N.C. Gen. Stat. § 96-14.1(b));

ii. the able to work and available to work requirements (N.C. Gen. Stat. § 96-14.9(b));

iii. the work search requirements (N.C. Gen. Stat. § 96-14.9(b));

iv. the actively seeking work requirements (N.C. Gen. Stat. § 96-14.9(e)); and

v. the "lack of work" requirement of the unemployed provisions of N.C. Gen. Stat. § 96-15.01(b)(2)(a).

(b) The Department of Commerce is further directed not to allocate charges to employers' accounts for individuals who are paid benefits for reasons related to COVID-19 (N.C. Gen. Stat. § 96-11.2 and 96-11.3(b)). The Department of Commerce shall separately account for these expenditures so that the State of North Carolina can seek reimbursement from the federal government.

(c) If the Department of Commerce identifies other state laws, regulations, and policies that may inhibit the fair and timely distribution of unemployment benefits to those affected by COVID-19, it is directed to inform the Office of the Governor in writing. Upon written authorization from the Office of the Governor, the Department of Commerce may interpret flexibly, modify, or waive those state laws, regulations, and policies, as appropriate, to the maximum extent permitted under applicable federal law to effectuate the purposes of this Order.

(d) The Department of Commerce is ordered to postpone all mandatory in-person contact with individuals seeking unemployment benefits, including but not limited to the Employability Assessment Interview, as long as the State of Emergency for COVID-19 remains in effect. The Department of Commerce is further ordered to provide reasonable means for the filing of initial claims and weekly certifications, including both telephone and internet access.

Section 4. Enforcement

(a) Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Order shall be enforced by state and local law enforcement officers.

(b) Violations of this Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d) and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.

Section 5. Effective Date

Section 1 of this Executive Order is effective as of 5:00 pm, Tuesday, March 17, 2020 through March 31, 2020. The remainder of this Executive Order is effective immediately and shall remain in effect until rescinded or superseded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 17th day of March in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox
Chief Deputy Secretary of State

EXHIBIT 4

EXECUTIVE ORDER NO. 119

State of North Carolina

ROY COOPER

GOVERNOR

March 20, 2020

EXECUTIVE ORDER NO. 119

FACILITATING CRITICAL MOTOR VEHICLE OPERATIONS AND DELEGATING AUTHORITY TO THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO WAIVE REGULATIONS IN ORDER TO EXPAND ACCESS TO CHILD CARE AND SUPPORT LOCAL HEALTH DEPARTMENTS

WHEREAS, the undersigned issued Executive Order No. 116 on March 10, 2020 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, the World Health Organization declared COVID-19 a global pandemic on March 11, 2020; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq*. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency beginning March 1, 2020; and

WHEREAS, on March 14, 2020, the undersigned issued Executive Order No. 117 which prohibited mass gatherings to no more than one hundred (100) people in the State of North Carolina and closed K-12 public schools to limit the spread of COVID-19; and

WHEREAS, on March 17, 2020, the undersigned issued Executive Order No. 118 which limited operations of restaurants and bars and broadened unemployment insurance benefits in response to COVID-19; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") confirmed the number of cases of COVID-19 in North Carolina continues to rise and has lab documentation of community spread; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the Governor to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, as a result of Executive Order No. 117 providers of health care, emergency medical services, law enforcement, and many other services may be in need of child care for their school-aged children due to the closure of schools; and

WHEREAS, as a result of the COVID-19 pandemic, providers of health care, emergency medical services, law enforcement, and other services may be in need of child care for children ages 0-5 in the event their child care providers cease service; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(3) the undersigned, is authorized and empowered to delegate any authority vested in the Governor under this Article and to provide for the subdelegation of any such authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5) the undersigned, with the concurrence of the Council of State, may perform and exercise other such functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, to expand capacity for child care services, it will be necessary to suspend certain State child care regulations; and

WHEREAS, to support local health departments on the front lines of responding to the COVID-19 pandemic, it will be necessary to waive certain local health department regulations; and

WHEREAS, it is necessary to protect the public health, welfare and safety to waive and suspend the effects of certain regulations regarding child care and local health departments; and

WHEREAS, the Division of Motor Vehicles operates 115 offices across the state with the primary purpose of examining applicants and issuing driver licenses to the general public and that these "Driver License Offices" serve thousands of residents on a daily basis; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, further action is necessary to protect the health and safety of the residents of North Carolina, slow the spread of the COVID-19 pandemic, treat those affected by COVID-19 and avoid strain on our health care system; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**

Section 1. Delegation of Authority

With the concurrence of the Council of State, N.C. Gen. Stat. § 166A-19.30(b)(4) provides authority for the undersigned to waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering.

Pursuant to N.C. Gen. Stat. § 166A-19.10(b)(3), which allows the undersigned to delegate any authority vested in the Governor under this Article and to provide for the subdelegation of any such authority, I hereby delegate my authority to waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4) as follows:

1. The Secretary of NCDHHS may, upon finding that the waiver will provide necessary relief to child care facilities and families responding to the COVID-19 pandemic and will not endanger the public health, welfare, or safety, waive the effect and enforcement of any or all of the provisions within the following regulations:

    i. Chapter 09 of Title 10A of the North Carolina Administration Code – Child Care Rules.
    ii. Chapter 10 of Title 10A of the North Carolina Administrative Code – Subsidized Child Care.

2. The Secretary of NCDHHS may, upon finding that the waiver will provide necessary relief to local health departments responding to the COVID-19 pandemic and will not endanger public health, waive local health department mandated services requirements under 10A NCAC 46 Section .0200 and extend the time period for public health nurses to complete training sponsored by NCDHHS under 10A NCAC 46 .0301(2)(b).

3. Upon subdelegation of authority from the Secretary of NCDHHS, the Local Health Department Accreditation Board may, upon finding that the waiver will provide necessary relief to local health departments responding to the COVID-19 pandemic and will not endanger public health, waive the accreditation scheduling requirements of 10A NCAC 48A .0205 and grant an extension of accreditation of no more than twelve (12) months.

While this Executive Order is in effect, upon a finding by the Secretary or Local Health Department Accreditation Board that such requirement is necessary, the Secretary or Local Health Department Accreditation Board may exercise this delegated or subdelegated authority as appropriate. Actions taken consistent with the delegation or subdelegation of the authority granted in this Section shall be reported to the Office of the Governor.

Section 2. Access to Child Care for Essential Personnel

North Carolina has a critical need to support first responders, hospital staff, front-line healthcare providers, nursing and adult group home staff, child care program staff, food service staff, emergency management workers, public safety officers and others working to keep communities safe and healthy during the COVID-19 pandemic, as well as care for their children and those children who are homeless or in unstable or unsafe living arrangements. Recognizing that childcare is an essential service for these priority groups during this time, I hereby encourage communities across the State in counties, cities and municipalities to support the continued operation of child care facilities for children of all ages.

Section 3. Motor Vehicles

Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), I hereby order the Commissioner of the Division of Motor Vehicles ("DMV") take the following actions to protect the general public and limit the spread of COVID-19:

a. Limit services at all Driver License Offices to appointment only.

b. Encourage all customers to limit appointments to those services unavailable online.

c. Close to the public all Driver License Offices that are of insufficient size to maintain social distancing, that are insufficiently staffed to operate on an appointment-only basis, or that are otherwise unable to maintain normal operations due to the COVID-19 pandemic.

d. To the extent practicable, expand service hours at those Driver License Offices that remain in operation during this State of Emergency.

e. Discontinue mobile services through the duration of the State of Emergency.

f. Postpone all DMV-related hearings not required by statute to be held within a set number of days for a period of sixty days.

g. Suspend all road tests for applicants seeking learner's permits, provisional driver licenses, or unrestricted Class C licenses until such a time as it is determined that such tests can be conducted with minimal risk of transmission of COVID-19. DMV, to the extent practicable, shall continue to conduct road tests for Class A and Class B licenses and for those applicants who must complete a road test due to a medical restriction.

Section 4. Waiver of Certain Registration Requirements

In addition to the previous relief provided in Executive Order No. 116 to vehicles throughout the Emergency Area involved in transporting medical supplies and other equipment in support of the Plan or other efforts to the public health threat posed by COVID-19, and pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4) with the concurrence of the Council of State, I hereby waive the enforcement of the registration requirements of N.C. Gen. Stat. § 20-86.1 and any related regulations in Chapter 3 of Title 19A of the North Carolina Administrative Code, including but not limited to 19A NCAC 03E .0400 to the extent it requires vehicles' immediate compliance with the International Registration Plan for the duration of the State of Emergency declared in Executive Order No. 116.

Section 5. Waiver of Certain CDL Renewal Requirements for School Bus Operators

To ensure the continued operation of school and activity buses and the transport of medical supplies, essentials in commerce, transporting essential fuels, food, water, and other supplies and equipment in support of the Plan and other efforts to address the public health threat posed by COVID-19, the Division of Motor Vehicles and the Department of Public Safety ("DPS"), to the maximum extent permitted under state and federal law, to interpret flexibly, or waive enforcement of N.C. Gen. Stat. § 20-7(f) as it pertains to the renewal of commercial driver's licenses for school bus drivers and activity bus drivers who hold a commercial driver license with both "S" (school bus) and "P" (passenger) endorsements and who are assisting or seeking to assist with emergency-related activities.

Section 6. Amending Sections 5 and 6 of Executive Order No. 116

Executive Order No. 116 Sections 5 and 6, are amended as follows:

Section 5. Maximum Hours of Service

In order to ensure adequacy and location of supplies and resources to respond to COVID-19, DPS, in conjunction with the North Carolina Department of Transportation (""DOT"), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381, if the driver is transporting medical supplies, essential fuels, food, water, and other supplies and equipment in support of the Plan or other efforts to address the public health threat posed by COVID-19, through the duration of the State of Emergency or until further notice.

Section 6. Height and Weight Restrictions

DPS, in conjunction with DOT, shall waive certain size and weight restrictions and penalties arising under N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119, certain registration requirements and penalties arising under N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49 for vehicles throughout the Emergency Area involved in transporting medical supplies, transporting essential fuels, food, water, supplies and other equipment in support of the Plan or other efforts to address the public health threat posed by COVID-19. Furthermore, pursuant to N.C. Gen. Stat.§ 20-118.1, DPS shall temporarily suspend weighing vehicles throughout the Emergency Area used to transport medical supplies, essential fuels, food, water, supplies and other equipment in support of the Plan or other efforts to address the public health threat posed by COVID-19. Furthermore, pursuant to N.C. Gen. Stat. § 20-118.1, DPS shall temporarily suspend weighing vehicles used to transport livestock, poultry, or crops to include timber ready to

be harvested and feed to livestock and poultry in the Emergency Area.

Section 7. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the state of emergency would prevent or impede this; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 8. Effective Date

This Executive Order is effective immediately and shall remain in effect for a period of thirty (30) days or until rescinded or superseded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order. Any orders issued by the Secretary of Health and Human Services and the Local Health Department Accreditation Board consistent with the authority delegated or subdelegated in this Executive Order shall remain in effect until the date such waiver ends, unless the authority is explicitly rescinded or superseded by another applicable Executive Order, regardless of whether this Order remains in effect or State of Emergency is lifted.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 20th day of March in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXHIBIT 5

EXECUTIVE ORDER NO. 120

State of North Carolina

ROY COOPER

GOVERNOR

March 23, 2020

EXECUTIVE ORDER NO. 120

ADDITIONAL LIMITATIONS ON MASS GATHERINGS, RESTRICTIONS ON VENUES AND LONG TERM CARE FACILITIES, AND EXTENSION OF SCHOOL CLOSURE DATE

WHEREAS, the undersigned issued Executive Order No. 116 on March 10, 2020, which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, the World Health Organization declared COVID-19 a global pandemic on March 11, 2020; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq*. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency beginning March 1, 2020; and

WHEREAS, on March 14, 2020, the undersigned issued Executive Order No. 117, which prohibited mass gatherings to no more than one hundred (100) people in the State of North Carolina and closed K-12 public schools to limit the spread of COVID-19; and

WHEREAS, on March 17, 2020, the undersigned issued Executive Order No. 118, which limited operations of restaurants and bars and broadened unemployment insurance benefits in response to COVID-19; and

WHEREAS, on March 20, 2020, the undersigned issued Executive Order No. 119, which provides provisions to improve access to childcare and helps facilitate critical motor vehicle operations; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") confirmed the number of cases of COVID-19 in North Carolina continues to rise and has lab documentation of community spread; and

WHEREAS, on March 13, 2020, NCDHHS issued a document entitled "Recommendations on Visitation in Long Term Care Facilities to Reduce Risk of Transmission of COVID-19" urging limitations on visitors at long term care facilities in the state to help limit the spread of COVID-19 among at-risk populations; and

WHEREAS, NCDHHS has now recommended that increased measures are required to control the spread of COVID-19 in long term care settings; and

WHEREAS, needed control cannot be imposed locally because local authorities in some jurisdictions have not enacted appropriate ordinances or issued appropriate declarations as authorized by N.C. Gen. Stat. § 166A-19.31; and

WHEREAS, the area in which the emergency exists has spread across local jurisdictional boundaries, and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, the area subject to the COVID-19 emergency is statewide, covering the jurisdictions of multiple city, county and tribal governments, thus making legal control measures difficult to coordinate and severely hampering efforts to protect life and property; and

WHEREAS, the undersigned has determined that local control measures for the emergency, taken alone, are insufficient to assure adequate protection for lives and property because the scale of the COVID-19 emergency is so great that it exceeds the capability of local government officials to cope with it; and

WHEREAS, the undersigned has determined that the measures identified below are necessary for the purpose of taking care that North Carolinians health, safety, and welfare are protected in accordance with the laws of the state; and

WHEREAS, further action is necessary to protect the health and safety of the residents of North Carolina, slow the spread of the COVID-19 pandemic, reduce the number of people infected, avoid strain on our healthcare system, and to address adverse economic impacts that will lead to additional human suffering upon individuals adversely impacted by the COVID-19 pandemic; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the Governor to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c) during a gubernatorially declared state of emergency, the undersigned determined that local control of the emergency is insufficient to assure adequate protection for lives and property because the area in which the emergency exists has spread across local jurisdictional boundaries; and the legal control measures are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, based upon the findings above, N.C. Gen. Stat. §§ 166A-19.31(b)(1), (b)(2), and (b)(5) authorizes the Governor to prohibit or restrict the operation of business establishments, the congregation of people as well as the movement of people in public places and take other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Mass Gathering

For the reasons and pursuant to the authority set forth above:

a. Executive Order No. 117 § 1 is amended as follows:

1. A mass gathering is defined as any event or convening that brings together more than fifty (50) persons in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, or any other confined indoor or outdoor space. This includes parades, fairs and festivals.

2. A mass gathering does not include normal operations at airports, bus and train stations, medical facilities, shopping malls and centers. It also does not include office environments, factories, grocery stores, and child care facilities.

3. Pursuant to N.C. Gen. Stat. §§ 166A-19.30(a)(2) and 19.30(c), the provision of this section shall be enforced by state and local law enforcement officers.

b. In addition to the restrictions on mass gatherings identified in Executive Order No. 117 § 1, entertainment facilities without a retail or dining component are ordered to close at 5:00 pm on Wednesday, March 25, 2020, though any retail or dining component may operate within that establishment solely for that purpose. Any dining facilities may operate only within the restrictions for restaurants as set out in Executive Order No. 118. These facilities include, but are not limited to, the following types of business:

- Bingo Parlors, including Bingo sites operated by charitable organizations
- Bowling Alleys
- Indoor Exercise Facilities (e.g. gyms, yoga studios, martial arts facilities, indoor trampoline and rock climbing facilities)
- Health Clubs
- Indoor/ Outdoor Pools
- Live Performance Venues
- Movie Theaters
- Skating Rinks
- Spas
- Gaming and business establishments which allow gaming activities (e.g. video poker, gaming, sweepstakes, video games, arcade games, pinball machines or other computer, electronic or mechanical devices played for amusement)

c. In addition, because the ability to practice the social distancing necessary to reasonably protect against COVID-19 is significantly reduced in certain establishments where individuals are in close proximity for extended periods of time, or service personnel are in direct contact with clients, personal care and grooming businesses, including but not limited to the following, are also ordered to close:

- Barber Shops
- Beauty Salons (including waxing and hair removal centers)
- Hair Salons
- Nail Salons/Manicure/Pedicure Providers
- Massage Parlors
- Tattoo Parlors

d. Violations of this section or orders issued pursuant to N.C. Gen. Stat. § 166A-19.30 may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d) and are punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.

Section 2. Mandatory Local Government Operations

a. Consistent with my authority under N.C. Gen. Stat. §§ 166A-19.30(c)(1) and (c)(2), and to the extent that local government functions are required under state and federal law, I hereby direct the appropriate local government agencies and officials to continue to exercise their responsibilities, including but not limited to local county Department of Social Services

of Social Services ("DSS") offices, Health Departments, Registers of Deeds, and other local government functions that are required to protect lives and property.

b. Notwithstanding Section (a) of this Section, local government must take appropriate precautions to maintain the health of the general public and their employees who are required to perform their official duties in a manner that brings them in contact with the general public by putting in place appropriate public health measures, such as social distancing, use of reasonable personal protective equipment, and offering reasonable accommodations to employees who provide services to the public with consideration for their health.

Section 3. Long Term Care Visitation Limitations

a. Long term care facilities shall restrict visitation of all visitors and non-essential health care personnel, except for certain compassionate care situations, for example, an end-of-life situation.

b. This restriction does not include essential health care personnel.

c. For purposes of this Executive Order only, long term care facilities include all of the following:

i. Skilled nursing facilities;
ii. Adult care homes;
iii. Family care homes;
iv. Mental health group homes; and
v. Intermediate care facilities for individuals with intellectual disabilities.

Section 4. Continued School Closure

For the reasons and pursuant to the authority set forth above:

Executive Order No. 117 § 2 is amended as follows:

I hereby direct that all public schools close for students effective Monday, March 16, 2020, as set forth in Executive Order No. 117, through Friday, May 15, 2020, unless extended beyond that date.

Section 5. Effective Date

This Executive Order is effective at 5:00 pm Wednesday, March 25, 2020, and shall remain in effect for thirty (30) days unless rescinded or superseded by another applicable Executive Order. Section 4 of this Executive Order is effective Monday, March 16, 2020, as set forth in Executive Order No. 117, through Friday, May 15, 2020. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 23rd day of March in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXHIBIT 6

EXECUTIVE ORDER NO. 121

State of North Carolina

ROY COOPER

GOVERNOR

MARCH 27, 2020

EXECUTIVE ORDER NO. 121

STAY AT HOME ORDER AND STRATEGIC DIRECTIONS FOR NORTH CAROLINA IN RESPONSE TO INCREASING COVID-19 CASES

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq*. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117 – 120 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, on March 27, 2020, the North Carolina Department of Health and Human Services ("NCDHHS") has documented 763 cases of COVID-19 across 60 counties, and has identified the occurrence of widespread community transmission of the virus; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, to mitigate community spread of COVID-19 and to reduce the burden on the state's health care providers and facilities, it is necessary to limit unnecessary person-to-person contact in workplaces and communities; and

WHEREAS, such limitations on person-to-person contact are reasonably necessary to address the public health risk posed by COVID-19; and

WHEREAS, some areas of the state have seen more rapid and significant spread of COVID-19 than others, and some but not all local authorities have taken steps to address community spread of the illness in their communities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because needed control cannot be imposed locally because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact in workplaces and communities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if issued, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1) authorizes the undersigned to prohibit and restrict the movement of people in public places, including by: (a) imposing a curfew; (b) directing and compelling the voluntary or mandatory evacuation of people from an area; (c) prescribing routes, modes of transportation and destinations in connection with evacuation; (d) controlling the movement of persons within an emergency area; and (e) closing streets, roads, highways, and other areas ordinarily used for vehicular travel, except to the movement of persons necessary for recovery from the emergency; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments and other places to and from which people may travel or at which they may congregate; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict activities which may be reasonably necessary to maintain order and protect lives and property during a state of emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article".

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Stay at Home

1. **Stay at home or place of residence**. All individuals currently in the State of North Carolina are ordered to stay at home, their place of residence, or current place of abode, (hereinafter "residence") except as allowed in this Executive Order. To the extent individuals are using shared or outdoor spaces when outside their residence, they must at all times and as much as reasonably possible, maintain social distancing of at least six (6) feet from any other person, with the exception of family or household members, consistent with the Social Distancing Requirements set forth in this Executive Order. All persons may leave their homes or place of residence only for Essential Activities, Essential Governmental Operations, or to participate in or access COVID-19 Essential Businesses and Operations, all as defined below.

   Individuals experiencing homelessness are exempt from this Executive Order, but are strongly urged to obtain shelter that meets Social Distancing Requirements. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location.

2. **Prohibited and permitted travel**. Only travel for Essential Activities as defined herein is permitted. People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Executive Order allows travel into, within, or out of the State to maintain COVID-19 Essential Businesses and Operations and Minimum Basic Operations.

3. **Leaving the home and travel for Essential Activities is permitted**. For purposes of this Executive Order, individuals may leave their residence only to perform any of the following Essential Activities:

   i. **For health and safety**. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members or persons who are unable to or should not leave their home (including, but not limited to, pets), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional or veterinarian.

   ii. **For necessary supplies and services**. To obtain necessary services or supplies for themselves and their family or household members or persons who are unable or should not leave their home, or to deliver those services or supplies to others, such as, by way of example only and without limitation, groceries and food, household consumer products, supplies they need to work from home, automobile supplies (including sales, parts, supplies, repair and maintenance), and products necessary to maintain the safety, sanitation, and essential operation of residences or places of employment.

   iii. **For outdoor activity**. To engage in outdoor activity, provided individuals comply with Social Distancing Requirements and Mass Gatherings, as defined below, such as, by way of example and without limitation, walking, hiking, running, golfing, or biking. Individuals may go to public parks and open outdoor recreation areas. However, public playground equipment may increase spread of COVID-19, and therefore shall be closed. These activities are subject to the limitations on events or convenings in Section 3 of this Executive Order.

iv. **For certain types of work**. To perform work at businesses authorized to remain open under Section 2 of this Executive Order (which, as defined below, includes Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Operations, and Essential Infrastructure Operations) or to otherwise carry out activities specifically permitted in this Executive Order, including Minimum Basic Operations.

v. **To take care of others**. To care for or assist a family member, friend, or pet in another household, and to transport family members, friends, or pets as allowed by this Executive Order. This includes attending weddings and funerals provided individuals comply with Social Distancing Requirements and Mass Gatherings as set forth below.

vi. **Place of worship**. Travel to and from a place of worship.

vii. **To receive goods and services**. To receive goods and services provided by a COVID-19 Essential Business or Operation.

viii. **Place of residence**. To return to or travel between one's place or places of residence for purposes including, but not limited to, child custody or visitation arrangements.

ix. **Volunteering**. To volunteer with organizations that provide charitable and social services.

Section 2. COVID-19 Essential Businesses and Operations

In order to slow the spread of COVID-19, it is necessary to reduce the instances where individuals interact with one another in a manner inconsistent with the Social Distancing Requirements set forth below. Many of those interactions occur at work. At the same time, it is necessary that certain businesses, essential to the response to COVID-19, to the infrastructure of the State and nation, and to the day-to-day life of North Carolinians, remain open.

A. In light of the above considerations, non-essential business and operations must cease. All businesses and operations in the State, except COVID-19 Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations, as defined below. For clarity, businesses, including home-based businesses, may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home).

B. All COVID-19 Essential Businesses and Operations are directed, to the maximum extent possible, to direct employees to work from home or telework.

C. For purposes of this Executive Order, a COVID-19 Essential Business and Operation includes the following businesses, not-for-profit organizations and educational institutions.

1. **Businesses that meet Social Distancing Requirements.** Businesses, not-for-profit organizations or educational institutions that conduct operations while maintaining Social Distancing Requirements:

   a. Between and among its employees; and

   b. Between and among employees and customers except at the point of sale or purchase.

2. **Businesses operating in CISA identified sectors.** Businesses, not-for-profit organizations or educational institutions operating in the federal critical infrastructure sectors as outlined at https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19 or any subsequent guidance issued by the U.S. Department of Homeland Security that amends or replaces said guidance.

3. **Healthcare and Public Health Operations.** Healthcare and Public Health Operations includes, but is not limited to: hospitals; clinics; dental offices; pharmacies; laboratories and laboratory service providers; public health entities, including those that compile, model, analyze and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology and agricultural biotechnology companies (including operations, research and development, manufacture, and supply chain); organizations collecting blood, platelets, plasma, and other necessary materials; obstetricians and gynecologists; eye care centers, including those that sell glasses and contact lenses; dietary supplement retailers; naturopathic healthcare providers; home healthcare services providers; local management entities/managed care organizations (LME/MCO); mental health and substance use providers; other healthcare facilities and suppliers and providers of any related and/or ancillary healthcare services; and entities that transport and dispose of medical materials and remains.

   Specifically included in Healthcare and Public Health Operations are manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.

   Healthcare and Public Health Operations also includes veterinary care and all healthcare services provided to animals.

   Healthcare and Public Health Operations shall be construed broadly to avoid any impacts to the delivery of healthcare, or public health operations broadly defined. Healthcare and Public Health Operations does not include those businesses ordered to close by Executive Order No. 120.

4. **Human Services Operations.** Human Services Operations includes, but is not limited to: long-term care facilities; child care centers, family child care homes; residential settings and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs, including food, cash assistance, medical coverage, child care, child support services, vocational services, rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, social services, transportation and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.

   Human Services Operations shall be construed broadly to avoid any impacts to the delivery of human services, broadly defined.

5. **Essential Infrastructure Operations.** Essential Infrastructure Operations includes, but is not limited to: food and beverage production, distribution, fulfillment centers, storage facilities; construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long term care facilities, public works construction, school construction, and essential commercial and housing construction); building and grounds management and maintenance including landscaping; airport operations; operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video and telecommunications systems (including the provision of essential global, national and local infrastructure for computing services, business infrastructure, communications, and web-based services).

(including the provision of essential global, national and local infrastructure for computing services, business infrastructure, communications, and web-based services).

Essential Infrastructure Operations shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.

6. **Essential Governmental Operations.** Essential Governmental Operations means all services provided by the State or any municipality, township, county, political subdivision, board, commission or agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Governmental Operations. Each government body shall determine its Essential Governmental Operations and identify employees and/or contractors necessary to the performance of those functions.

   For purposes of this Executive Order, all first responders, emergency management personnel, emergency dispatchers, legislators, judges, court personnel, jurors and grand jurors, law enforcement and corrections personnel, hazardous materials responders, child protection and child welfare personnel, housing and shelter personnel, military, and other governmental employees working for or to support COVID-19 Essential Businesses and Operations are categorically exempt from this Executive Order.

   This Executive Order does not apply to the United States government. Nothing in this Executive Order shall prohibit any individual from performing or accessing Essential Governmental Operations. Nothing in this Executive Order rescinds, amends, or otherwise modifies Section 2 of Executive Order No. 120.

7. **Stores that sell groceries and medicine**. Grocery stores, pharmacies, certified farmers' markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, prepared food, alcoholic and nonalcoholic beverages, any other household consumer products (such as cleaning and personal care products), and specifically includes their supply chain and administrative support operations. This includes stores that sell groceries, medicine, including medication not requiring a medical prescription, and also that sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences and COVID-19 Essential Businesses and Operations.

8. **Food, beverage production and agriculture.** Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, fishing, forestry, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption; and businesses that provide food, shelter, services and other necessities of life for animals, including animal shelters, rescues, shelters, kennels, and adoption facilities.

9. **Organizations that provide charitable and social services.** Businesses as well as religious and secular not-for-profit organizations, including food banks, when providing food, shelter, social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.

10. **Religious entities.** Religious facilities, entities, groups, gatherings, including funerals. Also, services, counseling, pastoral care, and other activities provided by religious organizations to the members of their faith community. All of these functions are subject to the limitations on events or convenings in Section 3 of this Executive Order.

11. **Media.** Newspapers, television, radio, film, and other media services.

12. **Gas stations and businesses needed for transportation.** Gas stations and auto supply, sales, tire, auto-repair, roadside assistance and towing services, farm equipment, construction equipment, boat repair, and related facilities and bicycle shops and related facilities.

13. **Financial and insurance institutions.** Bank, currency exchanges, consumer lenders, including but not limited to, pawnbrokers, consumer installment lenders and sales finance lenders, credit unions, appraisers, title companies, financial markets, trading and futures exchanges, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products. Also insurance companies, underwriters, agents, brokers, and related insurance claims and agency services.

14. **Home improvement, hardware and supply stores.** Home improvement, building supply, hardware stores, and businesses that sell building materials and supplies, electrical, plumbing, and heating materials.

15. **Critical trades**. Building and construction tradesmen and tradeswomen, and other trades, including but not limited to, plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, cleaning services, moving and relocation services, landscaping and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences and COVID-19 Essential Businesses and Operations. This includes organizations that represent employees.

16. **Mail, post, shipping, logistics, delivery, and pick-up services.** Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods, vehicles or services to end users or through commercial channels.

17. **Educational institutions.** Educational institutions including public and private pre-K-12 schools, colleges, and universities for purposes of facilitating remote learning, performing critical research, or performing essential functions, provided that the Social Distancing Requirements set forth below of this Executive Order are maintained to the greatest extent possible. This Executive Order is consistent with and does not amend or supersede prior Executive Orders regarding the closure of public schools.

18. **Laundry services.** Laundromats, dry cleaners, industrial laundry services, and laundry service providers.

19. **Restaurants for consumption off-premises.** Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that provide free food services to students or members of the public may continue to do so under this Executive Order when the food is provided for carry-out, drive-through or delivery. This Executive Order is consistent with and does not amend or supersede prior COVID-19 related Executive Orders restricting the operations of restaurants and temporarily closing bars.

20. **Supplies to work from home.** Businesses that sell, manufacture, or supply office supply products or other products needed for people to work from home.

21. **Supplies for COVID-19 Essential Businesses and Operations.** Businesses that sell, manufacture, support, or supply other COVID-19 Essential Businesses and Operations with the service or materials necessary to operate, including computers, audio and video electronics, household appliances; payroll processing and related services; IT and telecommunication equipment; elections personnel and election-related equipment supplies; hardware, paint, flat glass, electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; and diagnostics, food and beverages, chemicals, soaps and detergent.

22. **Transportation.** Airlines, taxis, automobile dealers, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, trains, marinas, docks, boat storage, and other private, public, and commercial transportation and logistics providers, and public transportation necessary to access COVID-19 Essential Businesses and Operations.

23. **Home-based care and services.** Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who may travel to the child's home to provide care, and other in-home services including meal delivery.

24. **Residential facilities and shelters.** Residential facilities and shelters for adults, seniors, children, pets, and/or people with developmental disabilities, intellectual disabilities, victims of domestic violence, people experiencing homelessness, substance use disorders, and/or mental illness.

25. **Professional services.** Professional services, such as legal services, accounting services, insurance services, professional engineering and architectural services, land surveying services, real estate services (including brokerage, appraisal and title services) and tax preparation services.

26. **Manufacture, distribution, and supply chain for critical products and industries.** Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, communications, as well as products used or commonly sold by other COVID-19 Essential Businesses and Operations.

27. **Defense and military contractors.** Defense and military contractors that develop products, processes, equipment, technology, and related services that serve the United States military, national defense, and national security interests.

28. **Hotels and motels.** Hotels and motels, to the extent used for lodging and delivery or carry-out food services.

29. **Funeral Services.** Funeral, mortuary, cremation, burial, cemetery, and related services. These services are subject to the limitations on events or convenings in Section 3 of this Executive Order.

30. **Additional COVID-19 Essential Retail Businesses.** Additional COVID-19 Essential Retail Businesses are:

    - Electronic retailers that sell or service cell phones, computers, tablets, and other communications technology;
    - Lawn and garden equipment retailers;
    - Book stores that sell educational material;
    - Beer, wine, and liquor stores;
    - Retail functions of gas stations and convenience stores;
    - Retail located within healthcare facilities;
    - Pet and feed stores.

D. All COVID-19 Essential Businesses and Operations shall, to the extent practicable, maintain the Social Distancing Requirements set forth in this Executive Order.

E. "Social Distancing Requirements" as used in this Executive Order means:

    a. maintaining at least six (6) feet distancing from other individuals;

    b. washing hands using soap and water for at least twenty (20) seconds as frequently as possible or the use of hand sanitizer;

    c. regularly cleaning high-touch surfaces;

    d. facilitating online or remote access by customers if possible.

F. Businesses excluded from the list of COVID-19 Essential Businesses and Operations set forth in this Executive Order who believe that they may be essential may direct requests to be included to the North Carolina Department of Revenue (the "Department"). The Department may grant such request if it determines that it is in the best interest of the State to have the business continue operations in order to properly respond to this COVID-19 pandemic. The Department shall post on its website a point of contact and procedure for businesses seeking to be designated as essential. A business that has made a request to the Department to be included as a COVID-19 Essential Business or Operation may continue to operate until that request is acted upon.

G. Businesses that are not COVID-19 Essential Businesses and Operations are required to cease all activities within the State except Minimum Basic Operations, as defined below. Businesses that are not COVID-19 Essential Businesses and Operations should comply with Social Distancing Requirements, to the maximum extent possible, when carrying out their Minimum Basic Operations.

As used in this Executive Order, "Minimum Basic Operations" include the following:

i) The minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or related functions.

ii) The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

H. Notwithstanding any other provision of this Executive Order, the businesses, not-for-profit organizations and educational institutions that were ordered closed by Executive Order Nos. 118 and 120 shall remain closed.

Section 3. Mass Gatherings

For the reasons and pursuant to the authority set forth above:

A. Section 1(a) of Executive Order Nos. 117 and 120 is rescinded and replaced as follows:

1. A mass gathering is defined as any event or convening that brings together more than ten (10) persons in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, or any other confined indoor or outdoor space. This includes parades, fairs and festivals.

2. A mass gathering does not include normal operations at airports, bus and train stations, medical facilities, libraries, shopping malls and centers. It also does not include any COVID-19 Essential Business or Operation as defined in this Executive Order.

3. Notwithstanding the above, and in an effort to promote human dignity and limit suffering, funerals are permitted to include no more than fifty (50) persons, while observing Social Distancing Requirements to the extent practicable.

4. Pursuant to N.C. Gen. Stat. §§ 166A-19.30(a)(2), -19.30(c) the provisions of this section shall be enforced by state and local law enforcement officers.

The remainder of Executive Order Nos. 117 and 120 continue to be in effect.

Section 4. Local Orders

A. The undersigned recognizes that the impact of COVID-19 has been and will likely continue to be different in different parts of North Carolina. Urban areas have seen more rapid and significant spread than most rural areas of the state. As such, the undersigned acknowledges that counties and cities may deem it necessary to adopt ordinances and issue state of emergency declarations which impose restrictions or prohibitions to the extent authorized under North Carolina law, such as on the activity of people and businesses, to a greater degree than in this

Executive Order. To that end, nothing herein is intended to limit or prohibit counties and cities in North Carolina from enacting ordinances and issuing state of emergency declarations which impose greater restrictions or prohibitions to the extent authorized under North Carolina law.

B. Notwithstanding the language in paragraph (A) of this Section, no county or city ordinance or declaration shall have the effect of restricting or prohibiting COVID-19 Essential Governmental Operations of the State as determined by the State.

C. Nothing in this Executive Order rescinds, amends, or otherwise modifies Section 2 of Executive Order No. 120.

Section 5. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 6. Enforcement

A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.

B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.

C. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

Section 7. Effective Date

This Executive Order is effective Monday, March 30, 2020, at 5:00pm, and shall remain in effect for thirty (30) days from that date or unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 27th day of March in the year of our Lord two thousand and twenty.

Roy Cooper

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox

Rodney S. Maddox
Chief Deputy Secretary of State

EXHIBIT 7

EXECUTIVE ORDER NO. 122

State of North Carolina

ROY COOPER

GOVERNOR

March 30, 2020

EXECUTIVE ORDER NO. 122

DONATION OR TRANSFER OF STATE SURPLUS PROPERTY TO ASSIST STATE AGENCIES, LOCAL GOVERNMENTS, AND SCHOOLS IN RESPONSE TO PUBLIC HEALTH EMERGENCY

WHEREAS, the undersigned issued Executive Order No. 116 on March 10, 2020, which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq*. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency beginning March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117 – 121 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, further action is necessary to protect the health and safety of the residents of North Carolina, slow the spread of the COVID-19 pandemic, reduce the number of people infected, avoid strain on our healthcare system, and to address adverse economic impacts that would lead to additional human suffering upon individuals adversely impacted by the COVID-19 pandemic; and

WHEREAS, the State currently has surplus property that may be beneficial to State agencies, political subdivisions of the State, or to public schools in the State, including but not limited to personal protective equipment for health care and other first responders, along with

computers and other items that may be useful in facilitating the ability to participate in distance education opportunities;

WHEREAS, pursuant to N.C. Gen. Stat. § 143-64.01, the Secretary of the North Carolina Department of Administration ("the Secretary") is charged with overseeing and managing the State Surplus Property Office; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the Governor to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(7) authorizes the undersigned to utilize the services, equipment, supplies, and facilities of existing departments, office, and agencies of the State in response to such emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Transfers of Surplus State Property

I hereby authorize the disposal of surplus State property by donation or transfer to any state agency, political subdivision of the State, or public school system in the State.

Section 2. Donations of Personal Protective Equipment and other Healthcare Supplies

I hereby authorize the Secretary, or the Secretary's designee, to approve donations or transfers of personal protective equipment and other health care supplies through the State's Health Care Coalitions or as directed by North Carolina Department of Health and Human Services.

Section 3. Implementation of this Order

I hereby authorize the Secretary, or the Secretary's designee, to carry out this Executive Order. Any North Carolina state agency, political subdivision, or public school system may contact the North Carolina State Surplus Property Office to identify what inventory is available for donation or transfer.

Section 4. Effective Date

This Executive Order is effective immediately and shall remain in effect unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 30th day of March in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox
Chief Deputy Secretary of State

EXHIBIT 8

EXECUTIVE ORDER NO. 124

State of North Carolina

ROY COOPER

GOVERNOR

March 31, 2020

EXECUTIVE ORDER NO. 124

ASSISTING NORTH CAROLINIANS BY PROHIBITING UTILITY SHUT-OFFS, LATE FEES, AND RECONNECTION FEES; PROVIDING GUIDANCE ABOUT RESTRICTIONS ON EVICTIONS; AND ENCOURAGING TELECOMMUNICATIONS PROVIDERS, BANKS, AND MORTGAGE SERVICERS TO PROVIDE ASSISTANCE AND FLEXIBILITY TO THEIR CUSTOMERS

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117 – 122 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") has confirmed the number of cases of COVID-19 in North Carolina continues to rise and has lab documentation that community spread has occurred; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, to mitigate further community spread of COVID-19 and to reduce the burden on the state's health care providers and facilities, it is necessary to limit person-to-person contact in workplaces and communities; and

WHEREAS, such limitations on person-to-person contact are reasonably necessary to address the public health risk posed by COVID-19; and

WHEREAS, due to the State of Emergency, many North Carolinians must stay home, many must also work from home, and many businesses have been ordered closed, to slow the spread of COVID-19, and any dislocations that require people to leave their homes increase the risk of spread; and

WHEREAS, any disruptions or dislocations that would require people to leave their homes increase the risk of spread of COVID-19; and

WHEREAS, the economic effects of the pandemic have broadly affected utility customers across the state; and

WHEREAS, utility services are essential to the continued health and safety of residential utility customers, to the ability of workers and employers to engage in teleworking, and to the continued economic viability of business utility customers, even as the economic effects of the pandemic threaten customers' ability to pay for those utility services; and

WHEREAS, on March 19, 2020, the North Carolina Utilities Commission ("Utilities Commission" or "Commission") issued an Order Suspending Utility Disconnections for Non-Payment, Allowing Reconnection, and Waiving Certain Fees; and

WHEREAS, the Utilities Commission's March 19, 2020 order applied to only some of the utilities that are necessary for the continued well-being of North Carolina residents and the continued viability of North Carolina businesses; and

WHEREAS, the undersigned has determined that it is in the best interest of the people of North Carolina to enact, for all utilities, prohibitions and restrictions similar to and consistent with the Utilities Commission's March 19, 2020 order; and

WHEREAS, during this emergency, North Carolinians rely heavily on mass media and telecommunications systems as part of multiple critical activities, including (1) the public dissemination of critical information regarding governmental orders and advisories in response to COVID-19, including stay at home orders, shifts in the public school calendar, and announcements regarding the availability of resources; (2) educational activities, as students and educators have been required to stay at home but are continuing to participate in educational and instructional activities, many of which require the use of online resources and means of communication; (3) the provision of remote tele-medicine services, as urged by NCDHHS, to preserve healthcare system capacity to address the COVID-19 pandemic; and (4) teleworking that allows many businesses, non-profits, governmental agencies, and other organizations to continue to carry out their essential functions; and

WHEREAS, to minimize the possibility of mandatory measures that may need to be taken in the future, the undersigned urges all telecommunications companies serving North Carolina customers to voluntarily provide flexibility to their customers, including through the measures set forth below; and

WHEREAS, the economic effects of the COVID-19 pandemic have led to loss of income for many in North Carolina, making it difficult for many to make timely rental housing payments, creating a risk of eviction; and

WHEREAS, evictions and disconnections of utility services would exacerbate public health and safety risks because of dislocated customers; and

WHEREAS, in orders issued on March 13 and March 19, 2020, the Chief Justice of the Supreme Court of North Carolina exercised her authority under N.C. Gen. Stat. § 7A-39(b)(2) to order most district court and superior court proceedings to be scheduled or rescheduled no sooner than April 17, 2020; and to order that pleadings, motions, notices, and other documents and papers that were or are due to be filed in any county of this state on or after March 16, 2020 and before the close of business on April 17, 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely filed if they are filed before the close of business on April 17, 2020; and to order that all other acts that were or are due to be done in any county of this state on or after March 16, 2020 and before the close of business on 17 April 2020 in civil actions, criminal actions, estates, and special proceedings shall be deemed to be timely done if they are done before the close of business on April 17, 2020; and

WHEREAS, the U.S. Department of Housing and Urban Development issued an order dated March 18, 2020, imposing a sixty (60) day moratorium on evictions and foreclosures for single family homeowners with FHA-insured mortgages; and

WHEREAS, the undersigned and the Attorney General wish to provide clear guidance to the public about the effect of the Chief Justice's order on evictions; and

WHEREAS, because of the economic effects of the COVID-19 pandemic, many North Carolinians are enduring financial hardship and financial insecurity; and

WHEREAS, the undersigned encourages North Carolina-licensed or North Carolina-regulated financial institutions, including but not limited to banks and mortgage servicers, to provide assistance and flexibility to their customers; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of political subdivisions, and their officers and personnel are required to cooperate with and extend such services and facilities to the undersigned upon request; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. §§ 75-14, 75-15, 114-2(2), and 114-2(8), the Attorney General has the authority to bring civil actions to enforce compliance with the State's Unfair or Deceptive Trade Practices Act, to represent State agencies in litigation, and to institute or intervene in proceedings before any courts and regulatory bodies on behalf of the State and the using and consuming public; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article"; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(3), the undersigned may take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(3), the undersigned, with the concurrence of the Council of State, may regulate and control the maintenance, extension, and operation of public utility services and facilities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a State agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30; and

WHEREAS, under the terms of N.C. Gen. Stat. § 166A-19.70(a), utilities are considered critical infrastructure for the State of North Carolina.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Assistance for North Carolina Utility Customers

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Definitions

1. In this Section of this Executive Order, "Utility Service Providers" means all political subdivisions, organizations, quasi-governmental entities, and businesses that provide directly to end-user residential customers electric, natural gas, water, or wastewater services, as well as all providers of a combination of these services.

2. This Section applies to all Utility Service Providers, regardless whether they are investor-owned public utilities, are private companies, are member-owned cooperatives, or are owned or operated by a political subdivision of the State or a quasi-governmental agency. This Section applies whether services are pre-paid or post-paid.

3. The restrictions placed on Utility Service Providers by this Section should, in cases of any ambiguity, be interpreted to be consistent with the restrictions imposed upon certain Utility Service Providers by the North Carolina Utilities Commission in its March 19, 2020 Order Suspending Utility Disconnections for Non-Payment, Allowing Reconnection, and Waiving Certain Fees, Docket M-2, Sub 158.

B. **Prohibiting utilities from terminating service.** No Utility Service Provider shall terminate the service of a residential customer for nonpayment. Utility Service Providers may terminate service of a customer when necessary as a matter of safety or when requested by the customer.

C. **Late fees and payment arrangements.** A Utility Service Provider shall not bill or collect any fee, charge, penalty, or interest for a late or otherwise untimely payment that becomes due from the date of this Executive Order. Customers shall be provided the opportunity to make reasonable payment arrangements to pay off over at least a six (6) month period any arrearages accumulated during the effective period of this Executive Order and any order extending this Executive Order and 180 days thereafter. The six (6) month payoff period shall be calculated from the date of termination of this Section of this Executive Order or, if other applicable Executive Orders extend the protections of this Section, from the date of termination of the last Order that extends such protections; provided, however, that Utility Service Providers subject to the Utilities Commission's March 19, 2020 Order shall remain subject to the terms of that order after this Executive Order expires. No interest or late fee shall be charged on arrearages. No provision in this Executive Order shall be construed as relieving a customer of their obligation to pay bills for receipt of any service covered by this Executive Order.

D. **Reconnection of service.** A Utility Service Provider is encouraged to reconnect previously disconnected service to the extent practicable and waive any penalties or reconnection fees, and any policies or ordinances that prevent re-connection of disconnected customers are suspended.

E. **Payment assistance.** NCDHHS and the North Carolina Department of Environmental Quality shall work with Utility Service Providers to publicize payment assistance programs to aid customers, particularly customers qualified for the Low Income Energy Assistance Program, in the payment of their utility bills.

F. **Notification.** Utility Service Providers shall reasonably inform their customers of the applicable provisions contained in this Executive Order through the means those providers most typically use to communicate urgent messages to customers, such as print, email, SMS text message, Internet, and phone calls. Utility Service Providers shall maintain reasonable records that show the notifications provided under this Section of this Executive Order and to whom those notifications were delivered.

G. **Duration.** This Section shall remain in effect for sixty (60) days, unless rescinded or superseded by another applicable Executive Order; provided, however, that after that date, the provisions of this Section shall continue to apply to arrearages that accumulated while this Executive Order was in effect.

H. **Limitations on this Section**

1. This Section applies to all ordinary monthly (or other periodically-issued) charges for service to residential customer locations in North Carolina by all Utility Service Providers, whether for their customers' business or personal use.

2. This Section does not apply to additional optional services ordered by customers above their usual periodic charges, including, by means of example, options or services that the customer added on or after the date of this Executive Order in addition to their normal services.

3. This Section does not apply to issuance or collection of special fees or penalties issued to customers for unusual use, such as fines or penalties for improper disposal or charges for extraordinary discharges of wastewater.

I. **Effect on regulations and ordinances.** The effect of any regulation, policy, or ordinance of a political subdivision or agency of the state inconsistent with this Section is hereby suspended.

J. **Implementation and enforcement.** The undersigned directs that the North Carolina Utilities Commission monitor responses and provide assistance and guidance to Utility Service Providers, including to the extent possible Utility Service Providers not under the Commission's regulatory jurisdiction, in implementing the provisions of this Section of this Executive Order. Utility Service Providers shall report implementation information weekly to the North Carolina Utilities Commission, including the following: (1) number of accounts by type (e.g., residential or business account) for which service termination was forborne, (2) number of reconnections by type of account, (3) amount of late fees and other penalties not collected, (4) number of accounts on an extended repayment plan, (5) customer notification information, and any other information determined by the Utilities Commission. The Utilities Commission and the Attorney General shall have the authority to enforce the provisions of this Executive Order through any methods provided by current law. The Utilities Commission, and to the extent necessary for any Utility Service Providers not within the Utilities Commission's jurisdiction, the Attorney General may waive provisions in their discretion and order an effective alternative. The Commission shall provide a weekly report to the Governor's Office on implementation of this Executive Order.

Section 2. Guidance on Cable, Telecommunications, and Related Services

A. Telecommunications, mobile telecommunications, cable, Internet, and wi-fi or wireless Internet service providers are urged to follow the guidelines outlined in Section 1 of this Executive Order, including the following measures:

1. Ceasing, for the duration of this State of Emergency, termination of customers' service for nonpayment; and

2. Waiving any fee, charge, penalty, or interest for a late or otherwise untimely payment that has come due or becomes due during the State of Emergency; and

3. Allowing customers to make reasonable payment arrangements to pay off, over at least a six (6) month period, any arrearages that accumulate during the effective period of this Executive Order, starting after the end of this State of Emergency; and

4. Reconnect, to the extent feasible, practicable and appropriate, any customers who wish to be re-connected during the duration of this State of Emergency, with penalties and reconnection fees waived.

B. In addition to the provisions included in this Section, all telecommunications service providers are urged to lift or greatly expand data caps where they have not done so already.

C. The undersigned requests that the Attorney General convene cable, telecommunications, and related service providers in the state to identify specific and effective measures they can take individually and collectively to ensure that necessary services continue to be provided to people in the State of North Carolina to the maximum extent practicable.

Section 3. Guidance Concerning Eviction Proceedings

As guidance to North Carolinians, the undersigned highlights and explains the effect on evictions of the March 13, 2020 and March 19, 2020 orders by the Chief Justice of the North Carolina Supreme Court. The Attorney General has consulted with the undersigned on this Section of this Executive Order and joins in this guidance.

Pursuant to the Chief Justice's orders referenced above, there should be no new eviction proceedings until the orders expire. The current expiration date is April 17, 2020, unless extended by further order of the Chief Justice.

During this time period, there should also be no new rental bonds due.

The Clerks of Superior Court may, in their discretion, delay, until regular court operations resume, issuing Writs of Possession for Real Property, which are the legal documents under which sheriffs perform evictions. The undersigned and the Attorney General strongly encourage all Clerks of Superior Court to follow the spirit of the Chief Justice's order and to hold the issuance of all Writs of Possession of Real Property until April 17 or any later date subsequently ordered.

Further, the undersigned and the Attorney General strongly encourage sheriffs to delay, until regular court operations resume, the execution of any Writs of Possession for Real Property that have already been issued, consistent with the spirit of the order and in support of public health and public safety.

Finally, the undersigned and the Attorney General strongly encourage all property owners to work with tenants to the best of their abilities to implement payment plans and avoid evictions, in light of the State of Emergency in North Carolina, including cancelling pending evictions by notifying the relevant Sheriff's Office. Similarly, the undersigned and the Attorney General strongly encourage all lenders to work with property owners to the best of their abilities to provide loan payment flexibility that enables property owners to avoid evictions of tenants, in light of the State of Emergency in North Carolina.

Section 4. Assistance for Bank and Mortgage Companies' Customers

For the reasons and pursuant to the authority set forth above:

A. The undersigned urges that all North Carolina-licensed or -regulated (i) banks, (ii) savings banks, (iii) savings and loan associations, (iv) trust companies, (v) mortgage-lenders, (vi) servicers, (vii) brokers and mortgage loan originators, (viii) consumer finance companies, (ix) check cashers, (x) money transmitters or prepaid card providers, (xi) tax refund anticipation loan facilitators, and (xii) credit unions operating in the State of North Carolina should immediately implement the following reasonable and prudent measures for individual and business customers who are North Carolina residents and can demonstrate financial hardship caused by COVID-19.

1. Waive overdraft fees.

2. Extend new credit to creditworthy borrowers on lenient terms, subject to safety and soundness considerations.

3. Waive late fees for credit card and other loan balances.

4. Waive automated teller machine (ATM) fees.

5. Increase daily ATM daily cash withdrawal limits.

6. Increase credit card limits for creditworthy customers.

7. Lower or waive fees on prepaid credit or debit cards.

8. Waive early withdrawal penalties on time deposits.

9. Offer payment accommodations, such as allowing loan customers to defer payments at no cost, extending the payment due dates or otherwise adjusting or altering terms of existing loans, which would avoid delinquencies, trigger events of default or similar adverse consequences.

10. Cease reporting derogatory information (e.g., late payments, but not including forbearances) to credit reporting agencies for a period of ninety (90) days.

11. Ensure that customers do not experience a disruption of service if financial institutions close their physical offices. This may include shifting call centers to teleworking, making services available through Internet chat, or other electronic avenues for customers to continue to manage their accounts and to make inquiries.

12. Alert customers to the heightened risk of scams and price gouging during the COVID-19 pandemic.

13. Notify customers by various means, including but not limited to the entity's website, apps, and (if authorized by the customer) texts or emails, to explain the above-listed assistance being offered to customers.

B. The undersigned urges that all entities covered by Subsection A of this Section that service mortgages ("mortgage servicing entities") shall voluntarily, but immediately take actions to alleviate the adverse impact caused by COVID-19 on those North Carolina resident mortgage borrowers ("mortgagors") who attest that they are not able to make timely payments. Mortgage servicing entities are urged to take the following reasonable and prudent actions to support those adversely impacted mortgagors:

1. Forbear mortgage payments for at least 180 days from their due dates and give mortgagors the option to extend loan terms by that number of days without a lump sum payment due at the end of the forbearance period.

2. Refrain from reporting late payments to credit reporting agencies for at least 180 days.

3. To the extent possible under existing law, offer mortgagors an additional ninety (90) day grace period to complete trial loan modifications, and ensure that late payments during the COVID-19 pandemic do not affect their ability to obtain permanent loan modifications.

4. Waive late payment fees and any online or telephonic payment fees for a period of ninety (90) days.

5. Postpone foreclosures and evictions for at least ninety (90) days.

6. Notify customers by various means, including but not limited to the entity's website, apps, and (if authorized by the customer) texts or emails, to explain the above-listed assistance being offered to customers.

Section 5. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 6. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 7. Effective Date

This Executive Order is effective immediately. This Executive Order shall remain in effect for sixty (60) days unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 31st day of March in the year of our Lord two thousand and twenty.

Roy Cooper

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox

Rodney S. Maddox
Chief Deputy Secretary of State

EXHIBIT 9

EXECUTIVE ORDER NO. 125

State of North Carolina

ROY COOPER

GOVERNOR

April 1, 2020

EXECUTIVE ORDER NO. 125

AUTHORIZING AND ENCOURAGING REMOTE SHAREHOLDER MEETINGS DURING THE COVID-19 STATE OF EMERGENCY

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq*. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117 – 122 and 124 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") has confirmed the number of cases of COVID-19 in North Carolina continues to rise and has lab documentation that community spread has occurred; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, to mitigate further community spread of COVID-19 and to reduce the burden on the state's health care providers and facilities, it is necessary to limit person-to-person contact in workplaces and communities; and

WHEREAS, such limitations on person-to-person contact are reasonably necessary to address the public health risk posed by COVID-19; and

WHEREAS, the North Carolina Business Corporation Act provides that annual and special meetings of a corporation's shareholders be held at a "place" stated in or fixed in accordance with a corporation's bylaws, N.C. Gen. Stat. § 55-7-01, and "shareholders of any class or series" may, upon the board of directors' authorization, "participate in any meeting of shareholders by means of remote communication" so long as the corporation has implemented certain "reasonable measures," N.C. Gen. Stat. § 55-7-09(b); and

WHEREAS, electronic devices or processes exist that allow shareholders to be in the same place that a separately located meeting is being conducted and to participate in the separately located meeting by sight and sound; and

WHEREAS, the undersigned has previously limited Mass Gatherings to ten or fewer people in certain circumstances in Executive Order 121 on March 27, 2020; and

WHEREAS, corporations may have shareholder meetings where ten or more shareholders seek to participate; and

WHEREAS, many other states, including the State of Delaware, permit annual shareholders' meetings to be held by remote participation; and

WHEREAS, corporations have sought guidance as to interactions between the Mass Gathering restrictions and the North Carolina Business Corporation Act; and

WHEREAS, for the protection of the public health, the undersigned encourages North Carolina corporations to hold shareholders' meetings by remote participation, to the maximum extent practicable, to prevent shareholders from having to gather in a place, and thereby to promote social distancing and the mitigation of the spread of COVID-19; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available State resources as reasonably necessary to cope with an emergency, including the direction of functions of State agencies for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the undersigned may take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(2), the undersigned may give to all participating State officers such directions as may be necessary to assure coordination among them; and

WHEREAS, pursuant to N.C. Gen. Stat. §§ 166A-19.30(c)(2) and 166A-19.31(b)(2), the undersigned may enact prohibitions and restrictions on the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Encouraging and Authorizing Shareholders' Meetings To Be Conducted by Means of Remote Communication

For the reasons and pursuant to the authority set forth above, the Governor states the following:

Corporations incorporated under the laws of the State of North Carolina that hold, commence or send formal notice to its shareholders of any meeting(s) of its shareholders pursuant to Section 55-7-01 et seq. of the North Carolina Business Corporation Act during the State of Emergency are permitted to conduct such meeting in accordance with the following conditions.

A. During the pendency of this State of Emergency, the board of directors of the corporation may, in its sole discretion, determine that all or any part of the shareholders' meeting may be held solely by means of remote communication, provided that the following conditions are met.

   1. Shareholders shall be given the opportunity to participate in, and vote at, such shareholders' meeting in accordance with the provisions of Section 55-7-09 of the North Carolina Business Corporation Act.

   2. The corporation's shareholders shall have the right to participate in such shareholders' meeting by means of remote communication, including with respect to the conduct of the business of such shareholders' meeting.

B. Further, for a meeting carried out pursuant to of this Executive Order:

   1. Any party authorized by the corporation's board of directors to preside at or otherwise carry out any responsibility at such shareholders' meeting shall be permitted to preside at or otherwise carry out such responsibility by means of remote communication.

   2. For purposes of Section 55-7-05 of the North Carolina Business Corporation Act, the place of the meeting of shareholders shall be deemed to include the method of remote communication through which shareholders may participate in a meeting held solely by means of remote communication.

   3. To the extent that any such shareholders' meeting, or any part thereof, is held at a physical location, the corporation's board of directors may limit the number of in-person attendees at any such shareholders' meeting in accordance with the restrictions on mass gatherings enacted by the undersigned during this State of Emergency.

C. The Secretary of State is directed that shareholder meetings held by remote communication in accordance with this Executive Order do not, for the reason that they were held by remote communication, fail to meet the requirements of the North Carolina Business Corporation Act.

D. This Executive Order shall not be construed or interpreted to mean that shareholder meetings held by remote communication would have failed to meet the requirements of the North Carolina Business Corporation Act in the absence of this Executive Order.

Section 2. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 3. Effective Date

This Executive Order is effective immediately. This Executive Order shall remain in effect for sixty (60) days unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 1st day of April in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXHIBIT 10

EXECUTIVE ORDER NO. 129

State of North Carolina

ROY COOPER

GOVERNOR

April 7, 2020

EXECUTIVE ORDER NO. 129

FLEXIBILITY REGARDING CERTAIN LAW ENFORCEMENT TRAINING COURSES

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the state's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq*. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117–122 and 124–125 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") has confirmed the number of cases of COVID-19 in North Carolina continues to rise and has lab documentation that community spread has occurred; and

WHEREAS, to mitigate further community spread of COVID-19 and to reduce the burden on the state's health care providers and facilities, it is necessary to limit person-to-person contact in workplaces and communities; and

WHEREAS, in this State of Emergency, it is critical that law enforcement officers be able to protect the public, perform or facilitate emergency services, and fulfill emergency directives from the government; and

WHEREAS, many law enforcement training courses have had to be suspended or postponed because of the restrictions on mass gatherings to slow the spread of COVID-19; and current administrative rules would cause progress to be lost in these courses; and

WHEREAS, this loss of progress could jeopardize law enforcement officers' certification and reduce the number of law enforcement officers available at a time of great need; and

WHEREAS, the undersigned has determined that the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission should have the flexibility to waive or modify the requirements that would cause progress to be lost; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the officers and personnel of the departments, offices, and agencies of the state and its political subdivisions are required to cooperate with the undersigned and extend their services to the undersigned so that they can be utilized upon request; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise other such functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Extending Time to Complete Criminal Justice Training Courses

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. **Basic Law Enforcement Training courses**. The North Carolina Criminal Justice Education and Training Standards Commission may, in its discretion, waive or modify the requirement under 12 N.C. Admin. Code 09B .0202(b)(2) that the Basic Law Enforcement Training (BLET) course be delivered "during consecutive calendar weeks, except that there may be as

many as three (3) one-week breaks until course requirements are completed." This authorization applies to any BLET course that was in progress or commenced during this State of Emergency.

B. **Instructor Training courses**. The North Carolina Criminal Justice Education and Training Standards Commission may, in its discretion, waive or modify the requirement under 12 N.C. Admin. Code 09B .0202(c)(1) that the Criminal Justice Instructor Training course be delivered "during consecutive calendar weeks until course requirements are completed." This authorization applies to any course that was in progress or commenced during this State of Emergency.

C. **Detention Officer Certification courses**. The North Carolina Sheriffs' Education and Training Standards Commission may, in its discretion, waive or modify the requirement under 12 N.C. Admin. Code 10B .0704(a)(1)(A) that the Detention Officer Certification course be delivered "during consecutive calendar weeks." This authorization applies to any course that was in progress or commenced during this State of Emergency.

Section 2. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 3. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 4. Effective Date

This Executive Order is effective immediately. This Executive Order shall remain in effect for thirty (30) days from today's date or unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 7th day of April in the year of our Lord two thousand and twenty.

Roy Cooper

Roy Cooper
Governor

ATTEST:

Rodney S. Maddox

Rodney S. Maddox
Chief Deputy Secretary of State

EXHIBIT 11

EXECUTIVE ORDER NO. 130

State of North Carolina

ROY COOPER

GOVERNOR

April 08, 2020

EXECUTIVE ORDER NO. 130

MEETING NORTH CAROLINA'S HEALTH AND HUMAN SERVICES NEEDS

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the state's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq*. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117-122, 124-25, and 129 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") has confirmed the number of cases of COVID-19 in North Carolina continues to rise and has identified widespread community transmission of the virus; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities and health care staff may be insufficient to care for those who become sick; and

WHEREAS, COVID-19 cases requiring inpatient hospitalization are expected to surge in the coming days; and

WHEREAS, a composite modeling forecast, constructed by experts from North Carolina universities and research organizations, estimates that by the end of May 2020, approximately 250,000 North Carolinians will be infected with the novel coronavirus, even if social distancing measures continue through that date; and

WHEREAS, statistical modeling by experts within and outside North Carolina predicts a significant risk that North Carolina will not have a sufficient number of hospital beds and medical equipment to meet the crisis; and

WHEREAS, North Carolina should take all reasonable actions to expand the capacity of its health care system, thereby lowering the chance that North Carolina will run out of capacity; and

WHEREAS, these efforts to expand capacity should include adding health care providers, putting to use equipment and other resources that otherwise would lie dormant, and transferring resources where they can be most effective and save the most lives; and

WHEREAS, in some cases, expanding health care capacity will require temporarily waiving or suspending legal and regulatory constraints; and

WHEREAS, in the coming days and weeks, decisions about adding and transferring resources will require real-time decision-making; and

WHEREAS, in the coming days and weeks, decisions about adding and transferring health care resources will need to be made in a time frame that cannot accommodate even emergency rulemaking; and

WHEREAS, to enable rapid decision-making, the undersigned has determined that it is in the best interest of the people of North Carolina to provide the Secretary of Health & Human Services with authority to waive the enforcement of certain legal and regulatory constraints in order to expand capacity and save lives; and

WHEREAS, to add health care providers to meet the coming surge in COVID-19 cases, the undersigned has determined that it is in the best interest of the people of North Carolina to provide the state's health care occupational licensing boards with authority to develop and implement tailored plans to add providers in each of their subject areas; and

WHEREAS, to expand capacity for COVID-19 treatment and handle the forecasted surge in cases, the undersigned has determined that the Secretary of Health and Human Services requires authority to waive the enforcement of legal and regulatory constraints limiting licensed bed capacity; and

WHEREAS, to expand capacity for COVID-19 treatment and handle the forecasted surge in cases, the undersigned has determined that the Secretary of Health and Human Services requires authority to waive the enforcement of any legal or regulatory constraints that would prevent or impair (a) temporarily increasing health care facilities' licensed bed capacity, (b) temporarily relocating beds to other facilities, (c) temporarily adding dialysis stations, (d) temporarily relocating dialysis stations, (e) temporarily acquiring medical imaging equipment, and (f) allowing an ambulatory surgical facility to operate as a temporary hospital; and

WHEREAS, the undersigned has considered, in light of the urgent needs for medical treatment during the COVID-19 pandemic, the criteria established in N.C. Gen. Stat. § 131E-183(a), including but not limited to the populations to be served by the proposed projects; the needs that those populations have for the services proposed; the extent to which all residents, and in particular, low-income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed; whether the proposed actions will result in unnecessary duplication of existing or approved health service capabilities or facilities; the availability of resources for the provision of the services proposed to be provided; the expected effects of the proposed services on competition in the proposed service area; and whether quality care has been provided in the past; and

WHEREAS, the undersigned has determined that for the actions contemplated in Section 1 of this Executive Order, the requirement to obtain a Certificate of Need should be interpreted in the circumstances of this State of Emergency and the urgent needs of North Carolinians for health care during the pandemic; and

WHEREAS, the undersigned has determined that the Division of Health Service Regulation may allow these relocations or increases in health care resources under certain conditions, stated herein; and

WHEREAS, child care is an essential service for those members of our work force who remain on the job during this State of Emergency; and

WHEREAS, to ensure that health care workers and other people performing essential jobs can continue to work, child care facilities must be available; and

WHEREAS, many child care facilities have closed, and it is difficult or impossible for any child care facility to remain open without changes in regulatory requirements to adapt to the circumstances of the COVID-19 pandemic; and

WHEREAS, the undersigned has determined that child care facilities must be available to the essential workers of the state, and enforcement of regulatory requirements should be modified or waived as necessary to allow these facilities to open or remain open; and

WHEREAS, to meet these critical needs, the undersigned has determined that the Secretary of Health and Human Services requires authority to issue emergency facility guidelines adapted to the circumstances of the COVID-19 pandemic; and

WHEREAS, to meet these critical needs, the undersigned has determined that the Secretary of Health and Human Services requires authority to modify or waive enforcement of regulatory requirements as necessary; and

WHEREAS, today, many persons with health care training wish to serve North Carolina in this crisis, but are barred from providing health care by licensing requirements; and

WHEREAS, the lives of North Carolinians will be saved if these trained persons provide care; and

WHEREAS, the circumstances of each profession are different, and the ability of trained persons to provide care during the COVID-19 pandemic may be different in each health care field; and

WHEREAS, for these reasons, the undersigned has determined that the occupational licensing boards established by the General Assembly should be empowered in their discretion to waive or modify enforcement of legal or regulatory constraints that would prevent or impair North Carolina from putting to work (i) health care professionals who are licensed in other states, but not licensed here, (ii) retired or inactive health care professionals, (iii) skilled, but unlicensed volunteers, and (iv) students in their professional fields; and

WHEREAS, the undersigned has determined that the occupational licensing boards should be empowered to impose conditions on any persons who are not yet licensed in North Carolina, but who will be authorized to provide care by the licensing boards as a result of this Executive Order; and

WHEREAS, all fifty states, the District of Columbia, U.S. Virgin Islands, Puerto Rico, Guam and Northern Mariana Islands are members of the Emergency Management Assistance Compact ("EMAC"), which requires North Carolina to provide assistance to any other EMAC member who has declared an emergency or disaster and requests such aid; and

WHEREAS, all EMAC member states have declared that emergencies exist as a result of the pandemic event and may under the provisions of EMAC request telehealth/telemedicine aid

from all fifty states, the District of Columbia, U.S. Virgin Islands, Puerto Rico, Guam and Northern Mariana Islands; and

WHEREAS, in order to respond to such telehealth/telemedicine requests it may be necessary to employ the resources of state, county and local government and the private sector; and

WHEREAS, the provisions of this Executive Order will help to ensure the coordinated delivery of telehealth/telemedicine assistance that will help to supplement the health, safety and resources of the residents of the state, while preserving the supply of essential materials and services; and

WHEREAS, many potential health care workers have raised concerns about a lack of malpractice insurance or potential liability if they were to serve North Carolinians during this pandemic; and

WHEREAS, N.C. Gen. Stat. § 166A-19.60 provides immunity from liability for emergency management workers, as defined in and provided in that statute, except in cases of willful misconduct, gross negligence, or bad faith; and

WHEREAS, the partial immunity provided by N.C. Gen. Stat. § 166A-19.60 applies to persons complying with any Executive Order promulgated under the Emergency Management Act; and

WHEREAS, the undersigned has determined to remove any doubt that persons providing health care services to treat COVID-19 are complying with this Executive Order; and

WHEREAS, emergency management workers, under N.C. Gen. Stat. § 166A-19.60(e), include persons performing emergency services pursuant to a request of the state government; and

WHEREAS, the undersigned intends to remove any doubt that persons providing health care services to treat COVID-19 are acting at the request of the state government; and

WHEREAS, the undersigned intends to provide insulation from liability to the maximum extent authorized by N.C. Gen. Stat. § 166A-19.60, except in cases of willful misconduct, gross negligence, or bad faith; and

WHEREAS, expiration dates of certain permits may need to be extended in order to allow certain restaurants to continue providing carry-out, delivery, and drive-through services; and

WHEREAS, expiration dates of certain permits may need to be extended in order to ensure that there are enough analysts to perform breath alcohol tests; and

WHEREAS, therefore, the undersigned has determined that the Secretary of Health and Human Services requires authority to extend these expiration dates by modifying or waiving regulatory requirements as necessary; and

WHEREAS, there continues to be a pressing need for mental health and substance use disorder treatment services and support services for individuals with intellectual and/or developmental disabilities ("MH/DD/SAS" services); and

WHEREAS, in the circumstances of the COVID-19 pandemic, many regulatory requirements for MH/DD/SAS programs cannot be met, and many MH/DD/SAS services may need to be provided in the form of telehealth; and

WHEREAS, the undersigned has determined that the Secretary of Health and Human Services requires authority to modify or waive enforcement of regulatory requirements so that providers can continue to perform MH/DD/SAS services; and

WHEREAS, the undersigned has determined that the Secretary of Health and Human Services requires authority to modify or waive enforcement of regulatory requirements to provide MH/DD/SAS services via telehealth; and

WHEREAS, during this State of Emergency, many participants in the Medicaid Programs of All-Inclusive Care for the Elderly ("PACE") are unable to congregate in PACE centers; and

WHEREAS, PACE participants are elderly and at high risk for severe illness or death from COVID-19; and

WHEREAS, the services provided by the PACE program to its participants remain necessary for life and health, so those services must be provided to participants at their homes; and

WHEREAS, because of the critical need for PACE participants to safely receive care, the undersigned has determined that the Secretary of Health and Human Services requires authority to modify or waive enforcement of any legal constraints or regulations that impair providing PACE services at participants' homes; and

WHEREAS, ordinarily, pursuant to N.C. Gen. Stat. § 131E-138(a), no person or governmental unit may operate a home care agency without a license obtained from NCDHHS; and

WHEREAS, because of the critical need for PACE participants to safely receive care, the undersigned has determined that this license requirement should be interpreted in the circumstances of this State of Emergency and the urgent needs of North Carolinians for health care during the pandemic; and

WHEREAS, the undersigned has determined that the Division of Health Service Regulation may allow PACE programs to provide care in homes under certain conditions, stated herein; and

WHEREAS, employees at adult care homes must have criminal history records checks and controlled-substances screens; and

WHEREAS, in the circumstances of the COVID-19 pandemic, there are substantial delays in obtaining these checks and screens; and

WHEREAS, adult care homes need to continue to be able to hire new health care workers; and

WHEREAS, because of the critical need for health care providers to continue to hire new workers, the undersigned has determined that the Secretary of Health and Human Services requires authority to treat record-check and screening requirements as satisfied if those checks were performed by the employee's current employer or a previous employer where the employee had been working within the last thirty (30) days; and

WHEREAS, during the COVID-19 pandemic, the work of in-home aides must continue; and

WHEREAS, certain regulations regarding in-home aides' initial assessments and supervisory visits would, in these circumstances, put assessors, supervisors, aides, and patients at risk of COVID-19 infection; and

WHEREAS, the regulations for many DHHS programs currently require in-person applications or in-person assessments; and

WHEREAS, these regulations would, in these circumstances, create risk of COVID-19 spread; and

WHEREAS, the undersigned has determined that the Secretary of Health and Human Services requires authority to modify or waive enforcement of these regulatory requirements in order to allow remote assessments; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of departments, offices, and agencies of the state in response to the emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article"; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. § 166A-19.30; and

WHEREAS, all the authority granted by this Executive Order is intended to be temporary, and the waivers and modifications of enforcement set out in this Executive Order are intended to extend only through the period where they are needed to address the COVID-19 pandemic.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Allowing Increases in Health Care Resources

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. **Authority to meet extraordinary health care needs**.

1. To meet the goal of providing health care and saving lives in response to the potential wave of illness brought on by the COVID-19 pandemic, and to meet the need for additional health care facility beds and technology to treat patients, the undersigned delegates to the Secretary of Health and Human Services authority to waive or modify

enforcement of any legal or regulatory constraints that would prevent or impair any of the following:

a. Increasing health care facilities' licensed bed capacity.

b. Relocating beds from a currently operating hospital, nursing home facility, or adult care home to another hospital, nursing home facility, adult care home, or other physical space.

c. Adding dialysis stations to an existing or approved kidney disease treatment center or hospital.

d. Relocating dialysis stations from a currently operating kidney disease treatment center to another physical space.

e. Acquisition by or on behalf of a hospital of Medical Imaging Equipment (as defined below).

f. Allowing an ambulatory surgical facility to operate as a temporary hospital.

2. Without limiting the foregoing, the undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of any of the following:

a. Any regulations on licensed bed capacity of adult care homes, including but not limited to 10A N.C. Admin. Code 13F .0206 and 13G .0206.

b. Any regulations on licensed bed capacity of mental health, developmental disabilities and substance abuse facilities, including but not limited to 10A N.C. Admin. Code 27G .0404(e).

c. Any regulations that are related to the provisions listed above.

3. These waivers or modifications must be consistent with the conditions established below. Facilities may increase, relocate, add, or acquire health care resources under this Section only after submitting a request to the Division of Health Service Regulation ("DHSR"), and receiving approval from DHSR under the process described below.

B. **Temporary nature of this Section**.

1. This Section allows only temporary increases, relocations, additions, acquisitions, or changes in status of health care resources. All increases, relocations, additions, or changes in status made under this Section's authority shall be allowed only through the duration of the State of Emergency, with an additional 30-day grace period following the State of Emergency. Any equipment acquired under this Section's authority must be returned no later than thirty (30) days following the end of the State of Emergency.

2. The undersigned delegates to the Secretary of Health and Human Services authority to reimpose, during the duration of this Executive Order, any legal or regulatory constraint for which the Secretary has waived or modified enforcement under this Section.

C. **Affirming temporary waiver of hospital and nursing home facility licensed bed capacity**. The undersigned hereby affirms the temporary waiver of limitations on hospital and nursing home facility licensed bed capacity granted by DHSR in its March 12, 2020 Memorandum and April 3, 2020 Memorandum. These memoranda allow hospitals and nursing home facilities to request a temporary increase in licensed bed capacity.

D. **Process for requests to temporarily increase bed capacity or relocate beds**. Before any increase in licensed bed capacity or relocation of beds under this Section, a request must have been submitted to, and approved by, DHSR. The request shall meet at least the following requirements.

1. The request must be submitted to DHSR in writing (including without limitation e-mail).

2. A request for a temporary increase in licensed bed capacity must specify the number of additional beds requested.

3. A request for a relocation of beds must specify (i) the facility from which the beds will be moved and (ii) the facility to which the beds will be relocated.

4. All requests must include a description of the space that will be utilized, how it will be utilized, and the anticipated duration.

5. All requests must include a certification by an authorized individual that:

    a. The request is necessary for the public health and safety in the geographic area served;

    b. The physical facilities to be used are adequate to safeguard the health and safety of the patients/residents; and

    c. The patients/residents will receive appropriate care and their health and safety will be safeguarded.

E. **Process for requests to add or relocate dialysis stations**. Before any increase in dialysis station capacity or relocation of dialysis stations under this Section, a request must have been submitted to, and approved by, DHSR. The request shall meet at least the following requirements.

1. The request must be submitted to DHSR in writing (including without limitation e-mail) by submitting a CMS Form 3427.

2. A request for a temporary increase in dialysis station capacity must specify the number of additional stations requested.

3. A request to temporarily relocate dialysis stations must specify (i) the facility from which the stations will be moved and (ii) the facility to which the stations will be relocated.

4. All requests must include a description of the space that will be utilized and the anticipated duration.

5. All requests must include a certification by an authorized individual that:

    a. The request is necessary for the public health and safety in the geographic area served;

    b. The physical facilities to be used are adequate to safeguard the health and safety of the clients; and

    c. The clients will receive appropriate care and their health and safety will be safeguarded.

F. **Process for requests to acquire Medical Imaging Equipment**. Before acquisition of any Medical Imaging Equipment under this Section, a request must have been submitted to, and approved by, DHSR. The request shall meet at least the following requirements.

1. The request must be submitted to DHSR in writing (including without limitation e-mail).

2. The request to temporarily acquire Medical Imaging Equipment must include information documenting the preparations made for the mobile site location.

3. The request must include a description of the space that will be utilized and the anticipated duration.

4. The request must include a certification by an authorized individual that:

    a. The request is necessary for the public health and safety in the geographic area served;

    b. The physical facilities to be used are adequate to safeguard the health and safety of the clients; and

    c. The clients will receive appropriate care and their health and safety will be safeguarded.

G. **Process for requests for an ambulatory surgical facility to operate as a temporary hospital**. Before an ambulatory surgical facility may operate as a temporary hospital, a request must have been submitted to, and approved by, DHSR. Upon approval, DHSR must issue a temporary hospital license and the ambulatory surgical facility operating as a hospital must follow the applicable hospital laws and rules as determined by DHSR. The request shall meet at least the following requirements.

1. The request must be submitted to DHSR in writing (including without limitation e-mail).

2. The request must include a description of the space that will be utilized and the anticipated duration.

3. The request must include an explanation that certifies that:

    a. The request is necessary for the public health and safety in the geographic area served;

    b. The physical facilities to be used are adequate to safeguard the health and safety of the clients; and

    c. The clients will receive appropriate care and their health and safety will be safeguarded.

H. **Relationship to Certificate of Need requirements**.

1. Relocating beds without an immediate Certificate of Need. The undersigned directs DHSR that it may allow a relocation of beds, consistent with the requirements set forth above and without the requirement to first obtain a Certificate of Need, and the undersigned temporarily waives enforcement and sanctions related to that Certificate of Need requirement, under the conditions stated in this Section.

2. Adding or relocating dialysis stations without an immediate Certificate of Need. The undersigned directs DHSR that it may allow the addition or relocation of dialysis stations, consistent with the requirements set forth above and without the requirement to first obtain a Certificate of Need, and the undersigned temporarily waives enforcement and sanctions related to that Certificate of Need requirement, under the conditions stated in this Section.

3. Temporary acquisition of medical imaging equipment without an immediate Certificate of Need. The undersigned directs DHSR that it may allow temporary acquisition by or on behalf of a hospital of Medical Imaging Equipment, consistent with the requirements set forth above and without the requirement to first obtain a Certificate of Need, and the undersigned temporarily waives enforcement and sanctions related to that Certificate of Need requirement, under the conditions stated in this Section.

4. Operation of an ambulatory surgical facility as a temporary hospital without an immediate Certificate of Need. The undersigned directs DHSR that it may allow operation of an ambulatory surgical facility as a temporary hospital, consistent with the requirements set forth above and without the requirement to first obtain a Certificate of Need, and the undersigned temporarily waives enforcement and sanctions related to that Certificate of Need requirement, under the conditions stated in this Section.

I. **Definition**. In this Section, "Medical Imaging Equipment" means a mobile Magnetic Resonance Imaging (MRI) Scanner or a mobile Computed Tomography (CT) Scanner.

Section 2. Child Care Facilities for Covered Children

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. **Waiver of enforcement of regulations**. To meet the goal of providing health care and protecting the public in response to the COVID-19 pandemic, the undersigned delegates to the Secretary of Health and Human Services authority:

1. To waive or modify enforcement of any regulations on child care facility requirements, activities, records, orientation, continuing education, food, and attendance, including without limitation 10A N.C. Admin. Code 09 .0201, .0508, .0510, .0703(c) and (d), .0901, .1101(a), .1401(a) and (f), .1402(b), .1709, .1718, .1721(a)(1) and (a)(2), .2318(6), .2504, .2508, .2830, .3003, and .3005.

2. To waive or modify, by adding additional required health or emergency elements, enforcement of any regulations on child care facility staff qualifications, health and safety training, and sanitation requirements, including without limitation 10A N.C. Admin. Code 09 .0701(a), .0703(c) and (d), .1102, .1720, .1725, and .2401 to .2411, and 15A N.C. Admin. Code 18A .2803, .2827, and .2836.

3. To waive or modify enforcement of any regulations that are related to the provisions listed above.

B. **Guidelines for child care facility operation during pandemic**. NCDHHS shall establish certain emergency health, safety and operational guidelines (the "Emergency Facility Guidelines") for child care facilities that wish to open or remain open. When establishing these guidelines, the Secretary of the Department of Health and Human Services may exercise the authority delegated to her in Executive Order No. 119, Section 1, related to child care regulations. NCDHHS shall issue an Emergency Child Care Provider Application that may be signed by child care facilities attesting to their adherence with the Emergency Facility Guidelines.

C. **Children that may be served**. Child Care Facilities approved by NCDHHS to operate under the Emergency Facility Guidelines shall provide child care only to:

1. Children of employees of COVID-19 Essential Businesses and Operations, as defined in Executive Order No. 121; or

2. Children who are receiving child welfare services; or

3. Children who are homeless or who are living in unstable or unsafe living arrangements.

Collectively, these children are referred to as "covered children" in this Section.

D. **Opening or reopening**. Child care facilities which have signed the Emergency Child Care Provider Application and which have been approved by DHHS may remain open to serve covered children. Child Care Facilities which are currently closed and wish to reopen to serve covered children shall submit the Emergency Child Care Provider Application prior to reopening.

E. **Requirement to operate only under this Section**. Child care facilities shall not remain open except as authorized by this Section.

F. **Implementation**. NCDHHS shall develop a detailed process to implement this Section and shall maintain a registry of available child care for covered children.

G. **Temporary nature of this Section**.

1. Waivers and modifications under authority of this Section are temporary and shall be effective only for the duration of this Executive Order.

2. The undersigned delegates to the Secretary of Health and Human Services authority to reimpose any regulations, policies, or guidance for which the Secretary has waived or modified enforcement under this Section.

H. **Relationship to Executive Order No. 119**. The provisions of this Section supplement, rather than restrict, the emergency authority provided in Section 1 of Executive Order No. 119.

Section 3. Increasing the Pool of Professional Health Care Workers

A. **Regulatory flexibility to expand the health care workforce**.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

1. Authority to meet extraordinary health care needs.

   a. To meet the goal of providing health care and saving lives in response to the wave of illness brought on by the COVID-19 pandemic, and to meet the need for additional health care workers to treat patients, the undersigned delegates to each professional health care licensure board the authority to waive or modify enforcement of any legal or regulatory constraints that would prevent or impair the following:

      i. Allowing persons to provide care if they are licensed in other states, territories, or the District of Columbia, but not licensed in North Carolina.

      ii. Allowing persons to provide care if they are retired or if their licenses are inactive.

      iii. Allowing skilled, but unlicensed volunteers to provide care.

      iv. Allowing students at an appropriately advanced stage of professional study to provide care.

   b. Without limiting the foregoing, the undersigned delegates to each professional health care licensure board the authority to accomplish the goals listed in Subdivision (a)(i)-(iv) above by waiving or modifying any of the following regulations:

      i. The regulations on admission and licensure for the practice of medicine, at 21 N.C. Admin. Code Chapter 32.

      ii. The regulations on admission and licensure for the practice of nursing, at 21 N.C. Admin. Code Chapter 36.

      iii. The regulations on admission and licensure for the practice of midwifery, at 21 N.C. Admin. Code Chapter 33.

      iv. The admission and licensure regulations for the social worker profession, at 21 N.C. Admin. Code Chapter 63.

      v. The regulations on admission and licensure for the practice of respiratory care, at 21 N.C. Admin. Code Chapter 61.

      vi. The admission and licensure regulations for the pharmacy profession, at 21 N.C. Admin. Code Chapter 46.

vii. The regulations on admission and licensure for the practice of speech language pathology/therapy, at 21 N.C. Admin. Code Chapter 64.

viii. The regulations on admission and licensure for the practice of psychology, at 21 N.C. Admin. Code Chapter 54.

ix. The regulations on admission and licensure for the practice of clinical mental health counseling, at 21 N.C. Admin. Code Chapter 53.

x. The admission and licensure regulations for substance use disorder professionals, at 21 N.C. Admin. Code Chapter 68.

xi. The regulations on admission and licensure for the practice of occupational therapy, at 21 N.C. Admin. Code Chapter 38.

xii. The regulations on admission and licensure for the practice of physical therapy, at 21 N.C. Admin. Code Chapter 48.

xiii. The regulations on admission and licensure for the practice of recreational therapy, at 21 N.C. Admin. Code Chapter 65.

xiv. The admission and licensure regulations for the profession of interpreters and transliterators, at 21 N.C. Admin. Code Chapter 25.

xv. The admission and licensure regulations for the profession of nursing home administrators, at 21 N.C. Admin. Code Chapter 37.

xvi. The admission and licensure regulations for the profession of assisted living administrators, at 10A N.C. Admin Code 13F .1701.

xvii. The admission and licensure regulations for the perfusionist profession, at 21 N.C. Admin. Code Subchapter 32V.

xviii. Any regulations that are related to the provisions listed above.

c. In each case, the professional health care licensure board shall have the authority to allow or not allow, in its discretion, these waivers or modifications, and the board shall have the authority to impose conditions on any persons authorized to provide care under this Subsection.

2. Posting waivers and modifications. Each professional health care licensure board shall document such waivers and modifications in writing and post them on their respective websites.

3. Guidance on training and qualifications. The professional health care licensure boards shall provide guidance on the training and qualifications necessary for their licensees to be ready to address workforce shortages in essential health care services needed to properly manage this State of Emergency.

4. No reduction in existing waiver authority. Nothing in this Subsection shall limit the existing statutory waiver authority of any board.

5. Temporary nature of this Subsection.

a. Waivers and modifications under authority of this Subsection are temporary and shall be effective only for the duration of this Executive Order.

b. The undersigned delegates to each professional health care licensure board the authority to reimpose, during the duration of this Executive Order, any legal or regulatory constraint for which the board has waived or modified enforcement under this Subsection.

6. This Subsection supersedes the first paragraph of Section 16 of Executive Order No. 116. Any persons licensed in other states, territories, or the District of Columbia who are providing health care services under the authority of the first paragraph of Section 16 of Executive Order No. 116 may continue to provide those services through April 15, 2020, unless otherwise authorized by a professional health care licensure board under the authority delegated in this Subsection.

B. **Utilizing the Emergency Management Assistance Compact ("EMAC")**.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

1. EMAC requests. The State Director of Emergency Management shall identify resources that are available for response to Emergency Management Assistance Compact ("EMAC") requests. EMAC requests shall be coordinated through the State Director of Emergency Management and shall be fulfilled once authorized by the State Director of Emergency Management.

2. Out-of-state licensees; telehealth. For the pendency of the State of Emergency: (i) a health provider licensed, registered, or certified in good standing in another United States jurisdiction (or reinstated pursuant to emergency action) may apply for an emergency license with the appropriate North Carolina licensing board and, if deemed eligible and licensed, may deliver services in North Carolina, including through any remote telecommunications technologies (telehealth), provided those services are within the provider's authorized scope of practice in such other jurisdiction; and (ii) any restrictions under North Carolina state law restricting the use of telecommunications technologies (telehealth) by a health provider licensed in North Carolina, whether through a standard license or emergency license, have their enforcement waived.

3. Deemed licensed. Pursuant to N.C. Gen. Stat. § 166A-45, when assistance is requested by North Carolina, any person who holds a license, certificate, or other permit issued by another United States jurisdiction evidencing the meeting of qualifications for professional, mechanical, or other skills shall be deemed licensed, certified, or permitted by this state to render aid involving skill to meet the declared State of Emergency, subject to any limitations and conditions the undersigned may prescribe by executive order or otherwise.

   Furthermore, any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any emergency management workers as defined in N. C. Gen. Stat. § 166A-19.60(e) who shall, in the course of performing the workers' duties as such, practice such professional, mechanical, or other skill during a state of emergency.

4. The provisions of this Subsection 3(B) supplement, rather than restrict, the persons and types of health care practice that are authorized under Subsection 3(A) above.

5. Limitation of liability.

   a. Pursuant to N.C. Gen. Stat. § 166A-46, officers and employees and emergency management workers as defined in N.C. Gen. Stat. § 166A-19.60(e) are considered agents of the State of North Carolina for tort liability and immunity purposes; and no officers, employees or emergency management workers rendering aid in North Carolina pursuant to the Compact shall be liable for any act or omission occurring as a result of a good faith attempt to render aid or as a result of the use of any equipment or supplies used in connection with an attempt to render aid. For the purposes of this Executive Order, "good faith" does not include willful misconduct, gross negligence, or recklessness.

   b. All persons participating in a response authorized by the State Director of Emergency Management to an EMAC request shall be considered state emergency management workers as defined in N.C. Gen. Stat. § 166A-19.60(e) for the purposes of EMAC.

6. Temporary nature of this Subsection.

    a. Actions under authority of this Subsection are temporary and shall be effective only for the duration of this Executive Order.

    b. The undersigned delegates to the State Director of Emergency Management the authority to reimpose, during the duration of this Executive Order, any legal or regulatory constraint for which the Director has waived or modified enforcement under this Subsection.

C. **Limitation of liability under N.C. Gen. Stat. § 166A-19.60**.

N.C. Gen. Stat. 166A-19.60(e) defines "emergency management workers" as follows:

> As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer, or auxiliary employee of this State or other states, territories, possessions, or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof, or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term "emergency management worker" under this section shall also include any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services under G.S. 90-12.2 [recodified as G.S. 90-12.5].

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

1. All persons who are licensed or otherwise authorized under this Executive Order to perform professional skills in the field of health care are hereby requested to provide emergency services to respond to the COVID-19 pandemic and, to the extent they are providing emergency services, therefore constitute "emergency management workers" to the extent allowed under N.C. Gen. Stat. § 166A-19.60(e).

2. Therefore, the undersigned intends that all such emergency management workers should be insulated from civil liability to the maximum extent authorized by N.C. Gen. Stat. § 166A-19.60, except in cases of willful misconduct, gross negligence, or bad faith.

Section 4. Public Health

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. **Waiver or modification of enforcement of regulations**. To meet the goal of providing human services during the COVID-19 pandemic, the undersigned delegates to the Secretary of Health and Human Services authority:

1. To waive or modify, in order to provide necessary relief to restaurants continuing to provide carry-out, delivery, and drive-through services, the expiration date of transitional food establishment permits under 15A N.C. Admin. Code 18A.2659(b) issued from January 1, 2020 to June 30, 2020 for 180 days.

2. To waive or modify, in order to ensure there are sufficient analysts permitted to conduct breath alcohol tests, the expiration date of analyst permits under 10A N.C. Admin. Code 41B .0302(a) otherwise set to expire from March 10, 2020 to June 30, 2020 for twelve (12) months.

3. To waive or modify enforcement of any regulations that are related to the provisions listed above.

B. **Temporary nature of this Section**.

1. Waivers and modifications under authority of this Section are temporary and shall be effective only for the periods listed above.

2. The undersigned delegates to the Secretary of Health and Human Services authority to reimpose any regulations, policies, or guidance for which the Secretary has waived or modified enforcement under this Section.

Section 5. Mental Health, Developmental Disabilities and Substance Abuse Services

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. **Waiver or modification of enforcement of regulations**. Health care remains an essential service during this State of Emergency, including mental health and substance use disorder treatment services and support services for individuals with intellectual and/or developmental disabilities ("MH/DD/SAS" services). In order to help protect the health and well-being of North Carolinians by allowing access to MH/DD/SAS services and MH/DD/SAS facilities during this State of Emergency:

1. The undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of any MH/DD/SAS regulatory constraints that would prevent or impair any of the following:

    a. Continued provision of MH/DD/SAS Services.

    b. Providing MH/DD/SAS Services via real-time, two-way audio and/or video teleconferencing ("Telehealth").

2. Without limiting the foregoing, the undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of any of the following:

    a. Regulations on minimum periodic retraining and demonstration of competence requirements for non-restrictive and restrictive interventions, including without limitation 10A N.C. Admin. Code 27E .0107, 27E .0108, 28D .0209, and 28D .0210.

    b. Regulations on minimum program teaching requirements for non-restrictive and restrictive interventions trainers, including but not limited to 10A N.C. Admin. Code 27E .0107(i)(7) and .0108(i)(10).

    c. Regulations on requiring that Associate Professionals must have individualized supervision plans upon hiring, including but not limited to 10A NCAC 27G .0203(f) and 10A NCAC 27G .0204(f).

    d. Regulations setting minimum hours per week for licensed professionals at Residential Treatment Staff Secure Facilities, including but not limited to 10A N.C. Admin. Code 27G .1705(a).

    e. Regulations setting requirements for the direct service ratio at Adult Developmental and Vocational Programs (ADVP) for Individuals with Developmental Disabilities, including but not limited to 10A N.C. Admin. Code 27G .2303(d).

    f. Regulations, including but not limited to N.C. Admin. Code 10A NCAC 28D .0102(c), setting requirements for annual exams to the extent that they require delivery of non-essential medical services.

    g. Regulations setting requirements for multiple staff members to be in the presence of the client at all times, including but not limited to 10A N.C. Admin. Code 27G .1402(b).

h. Regulations setting a maximum date after which an adolescent may not remain in a day treatment facility for children and adolescents with behavioral or emotional disturbances, including but not limited to 10A N.C. Admin. Code 27G .1403.

i. Regulations regarding factors for determining program compliance for purposes of take-home eligibility, including but not limited to 10A N.C. Admin. Code 27G .3602(6).

j. Regulations setting the ratio of certified drug abuse or substance abuse counselors to clients, including but not limited to 10A N.C. Admin. Code 27G .3603(a).

k. Regulations regarding conditions for determining levels of take-home eligibility, including but not limited to 10A N.C. Admin. Code 27G .3604(f)(1).

l. Regulations regarding the minimum frequency for the conduct, and program staff observation of, random testing for alcohol and other drugs on each active opioid treatment client, including but not limited to requirements set forth in 10A N.C. Admin. Code 27G .3604(h).

m. Regulations setting limitations on the class session schedule at drug education schools, including but not limited to 10A N.C. Admin. Code 27G .3903(e)(5).

n. Regulations on routine drug screens, staffing, minimum operational hours and days per week, and minimum service hours per week at Substance Abuse Intensive Outpatient Programs, including but not limited to 10A N.C. Admin. Code Subchapter 27G, Section 4400.

o. Regulations on routine drug screens, staffing, minimum operational hours and days per week, and minimum service hours per week at Substance Abuse Comprehensive Outpatient Programs, including but not limited to 10A N.C. Admin. Code Subchapter 27G, Section 4500.

p. Regulations limiting cumulative provision of private home respite services, including but not limited to 10A N.C. Admin. Code 27G .5101(b).

q. The requirement set forth in 10A N.C. Admin. Code 27G .5601(g) defining "F" designation facility as a facility in a private residence which serves no more than three adult clients whose primary diagnosis is mental illness, to the limited extent necessary to also allow for service of minor clients whose primary diagnosis is mental illness in this setting.

r. Regulations establishing specific time frame requirements for the steps of the non-Medicaid appeals process, including but not limited to 10A N.C. Admin. Code Subchapter 27I.

s. State MH/DD/SAS administrative rule provisions requiring that services, assessments, interviews, consultations, counseling, crisis or emergency responses, or other client contacts be provided in-person or face-to-face in connection with delivery of MH/DD/SAS Services, including but not limited to 10A N.C. Admin. Code 27G .1705(a), .3602(8), .3805(3), .3807(b), .4003(c)(2), .4403(a), .4503(f), .5703(c), and .6102(b).

t. State MH/DD/SAS administrative rule provisions requiring MH/DD/SAS Services to be furnished in a group setting, including but not limited to 10A N.C. Admin. Code 27B .0401(a), .3401, .3602(8), .3603, .3701(a), .4101, .4501, and .5401(a).

u. State MH/DD/SAS administrative rule provisions requiring day/night treatment facilities for substance use disorders to provide services at the facility or program site setting, including but not limited to 10A N.C. Admin. Code 27G .2301(d).

v. State MH/DD/SAS administrative rule provisions requiring substance abuse treatment programs to operate in a setting separate from the client's residence, including but not limited to 10A N.C. Admin. Code 27G .4403(a) and .4503(a).

w. State MH/DD/SAS administrative rule provisions that require adult developmental and vocational programs for individuals with developmental disabilities to provide a majority of services and activities on the program site premises, including but not limited to 10A N.C. Admin. Code 27G .2301(d).

x. Any regulations that are related to the provisions listed above.

3. These waivers or modifications must be to the extent clinically appropriate and in accordance with appropriate mitigation measures in effect during the COVID-19 pandemic.

B. **Temporary nature of this Section**.

1. Waivers and modifications under authority of this Section are temporary and shall be effective only for the duration of this Executive Order.

2. The undersigned delegates to the Secretary of Health and Human Services authority to reimpose any regulations, policies, or guidance for which the Secretary has waived or modified enforcement under this Section.

Section 6. Health Services Licensure

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Program of All-Inclusive Care for the Elderly ("PACE") entities to provide in-home care.

1. Allowing in-home care.

a. To meet the goals of providing all-inclusive care, preventing the spread of COVID-19 within a highly vulnerable population, and saving lives during the COVID-19 pandemic, the undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of any legal or regulatory constraints that would prevent or impair any of the following:

i. Providing in an in-home setting the services of the Program of All-Inclusive Care for the Elderly ("PACE").

b. Without limiting the foregoing, the undersigned delegates to the Secretary of Health and Human Services authority to accomplish the goal listed in Subdivision (a)(i) above by waiving or modifying any of the following regulations:

i. Any regulations on licensure of home care agencies, including but not limited to 10A N.C. Admin. Code Subchapter 13J.

ii. Any regulations that are related to the provisions listed above.

c. These waivers or modifications must be consistent with the conditions established below.

2. Duration of in-home PACE care. Any in-home PACE care authorized under this Subsection shall be allowed only for the period of March 25, 2020 through the expiration of this Executive Order.

B. **Waivers or modifications of enforcement of in-home aide rules**.

1. To meet the goal of providing health care and protecting the public in response to the COVID-19 pandemic, the undersigned delegates to the Secretary of Health and Human Services authority:

    a. To waive or modify enforcement of any regulations on initial assessment for agencies providing in-home aide services, including but not limited to 10A N.C. Admin. Code 13J .1107.

    b. To waive or modify enforcement of any regulations on supervisory visits for in-home caregivers, including but not limited to 10A N.C. Admin. Code 13J .1110.

    c. To waive or modify enforcement of any regulations that are related to the provisions listed above.

2. These waivers or modifications must be consistent with the conditions established below.

3. During the State of Emergency, initial assessments must be conducted, but may be conducted utilizing eligible technologies that allow the health care practitioner to remotely communicate and evaluate the client's functional status in the area of social, mental, physical health, environmental, economic, activities of daily living, and instrumental activities of daily living. Initial assessments can be delivered via any HIPAA-compliant, secure technology with audio and video capabilities including (but not limited to) smart phones, tablets and computers.

4. During the State of Emergency, supervisory visits must be conducted, but may be conducted utilizing eligible technologies that allow the supervising Registered Nurse to remotely communicate and evaluate services rendered. Supervisory visits can be delivered via any HIPAA-compliant, secure technology with audio and video capabilities including (but not limited to) smart phones, tablets and computers. If the provider is unable to conduct supervisory visits via the above method, the provider must develop and implement a procedure that details the method in which the Registered Nurse will monitor the client's care with review of the client's general condition, progress, and response to the services provided by the in-home caregiver.

C. **Additional time to screen new hires because of disruptions to fingerprinting**.

1. NCDHHS has informed the undersigned that because of the COVID-19 crisis, certain private health care facilities, including those facilities that serve the elderly and at-risk population, are facing extreme difficulty in maintaining their workforce.

2. In particular, the failure of some counties to offer fingerprinting has delayed completion of nationwide background checks, which require fingerprints. Therefore, national background checks cannot be performed, although state background checks can still be performed. National background checks are required for certain new hires. State background checks can and should continue.

3. Therefore, the Secretary of Health and Human Services may authorize health care facilities (other than child care providers) to accept a written verification from a potential new hire's current employer (or most recent employer within 30 days) as a temporary measure in lieu of the national portion of the Criminal History Records Check, so long as the following conditions are also satisfied:

    a. The state background check portions of the Criminal History Records Check must be completed as required by statute.

    b. This authorization is only provided in areas of North Carolina where fingerprinting is not available.

c. The national background check portions of the Criminal History Records Check must be completed for the new hire as soon as possible once fingerprinting becomes available. Moreover, under no circumstances may the national background check be completed later than within thirty (30) days following the end of the State of Emergency.

d. The current or previous employer's written verification must be in a form that meets guidelines to be established by DHSR. To be acceptable, the verification must show that the potential new hire passed both the national background check and state background check portions of a Criminal History Records Check while at the employer providing the verification.

4. Without limiting the foregoing, the undersigned delegates to the Secretary of Health and Human Services authority to accomplish the goal listed in Subdivision (1) above by modifying any of the following regulations:

   a. 10A N.C. Admin. Code 13F .0407(a)(7), on background checks for staff of an adult care home.

   b. 10A N.C. Admin. Code 13G .0406(a)(7), on background checks for staff of a family care home.

   c. Any regulations that are related to the provisions listed above.

   These waivers or modifications must be consistent with the conditions established above.

5. Nothing herein shall relieve any pre-existing obligation for any health care facility to run a criminal records check based on a job applicant's name prior to the date the applicant begins work.

D. **Temporary nature of this Section**.

1. Waivers and modifications under authority of this Section are temporary and shall be effective only for the duration of this Executive Order.

2. The undersigned delegates to the Secretary of Health and Human Services authority to reimpose any regulations, policies, or guidance for which the Secretary has waived or modified enforcement under this Section.

Section 7. Social Services Programs and Licensure

For the reasons and pursuant to the authority set forth above, and to meet the goal of providing human services during the COVID-19 pandemic, the undersigned orders as follows:

A. **Waiver or modification of enforcement of regulations**.

1. The undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of the requirement of 10A N.C. Admin. Code 71P .0601(6) that an applicant or his designated representative apply in person for the State/County Special Assistance Program at a county department of social services. Upon receipt of an application by mail or via electronic submission, the county department of social services shall make alternative arrangements with the applicant.

2. The undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of the requirement of 10A N.C. Admin. Code 71P .0701 that certain State/County Special Assistance Program eligibility factors be reviewed at least once every 12 months. Review of the required eligibility factors shall occur within ninety (90) days of the date this Executive Order terminates, or the Special Assistance payment for the first month following the month in which the ninety (90) days end shall not be issued.

3. The undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of the requirement of 10A N.C. Admin. Code 71P .0903(c)(1) that causes a loss of benefits upon leaving a Special Assistance-Adult Care Home facility for greater than thirty (30) calendar days. This authority shall apply only if benefit recipients leave the facility for their health and safety.

4. The undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of the in-person requirement for any visit or supervisory visit established in Subchapters 06A and 06X of Title 10A of the North Carolina Administrative Code. Visits and/or supervisory visits shall still occur in frequency and in scope as set forth in the agency's rules and policies. Visits or supervisory visits may be conducted by making other HIPAA-compliant arrangements including audio or visual means such as a telephone call or video meeting.

5. The undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of the in-person requirement for any assessment, reassessment, or quarterly visit in Subchapter 06D of Title 10A of the North Carolina Administrative Code. Assessments, reassessments or quarterly visits shall still occur in frequency and in scope as set forth in the agency's rules and policies. Assessments, reassessments or quarterly visits may be conducted by making other HIPAA-compliant arrangements including audio or visual means such as a telephone call or video meeting.

6. The undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of the in-person requirement for any visit or interview in Subchapters 70I and 70K of Title 10A of the North Carolina Administrative Code. Other requirements for that visit or interview are maintained.

7. The undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of the direct care service personnel standards for licensure of residential child-care facilities in 10A N.C. Admin. Code 70I .0405(f)(2)(B) and (C).

8. The undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of the requirements of 10A N.C. Admin. Code 70E .0704 and 10A N.C. Admin. Code 70E .1108 requiring a fire and building safety inspection prior to relicensure, so long as the foster home has had a satisfactory fire and building inspection completed within the previous 30 months and can attest to the standards set forth in 10A N.C. Admin. Code 70E .1108(b). Any foster home relicensed pursuant to this waiver shall obtain such required inspections within sixty (60) days of the date this Executive Order terminates, or such license shall immediately expire.

9. The undersigned delegates to the Secretary of Health and Human Services authority to waive or modify enforcement of any regulations that are related to the provisions listed above.

B. **Temporary nature of this Section**.

1. Waivers and modifications under authority of this Section are temporary and shall be effective only for the duration of this Executive Order.

2. The undersigned delegates to the Secretary of Health and Human Services authority to reimpose any regulations, policies, or guidance for which the Secretary has waived or modified enforcement under this Section.

Section 8. No Private Right of Action

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 9. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 10. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 11. Effective Date

Except where otherwise stated above, this Executive Order is effective immediately. This Executive Order shall remain in effect for sixty (60) days unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

Unless otherwise expressly stated in another Executive Order, Section 1(B)(1) of this Executive Order shall remain in effect for thirty (30) days following the termination of the remainder of this Executive Order, and the relief from permit expiration dates provided in Section 4(A) of this Executive Order shall remain in effect following the termination of the remainder of this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 8th day of April in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXHIBIT 12

EXECUTIVE ORDER NO. 131

State of North Carolina

ROY COOPER

GOVERNOR

April 9, 2020

EXECUTIVE ORDER NO. 131

ESTABLISHING ADDITIONAL POLICIES FOR RETAIL ESTABLISHMENTS, FURTHER RISK MITIGATION MEASURES AT LONG TERM CARE FACILITIES, AND NEW PROCESSES TO EXPEDITE PAYMENT OF UNEMPLOYMENT INSURANCE CLAIMS

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq*. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, the undersigned has issued Executive Order Nos. 117-122, 124-125, and 129-130 for the purposes of protecting the health, safety and welfare of the people of North Carolina; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 121, a Stay at Home Order covering the entire State of North Carolina; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") has confirmed the number of cases of COVID-19 in North Carolina continues to rise and has lab documentation that community spread has occurred; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, additional steps will reduce the spread of COVID-19 at places where people congregate, such as retail establishments; and

WHEREAS, such additional steps are reasonably necessary to address the public health risk posed by COVID-19; and

WHEREAS, some areas of the state have seen more rapid and significant spread of COVID-19 than others, and some but not all local authorities have taken steps to address community spread of the illness in their communities; and

WHEREAS, Executive Order No. 121 identified certain types of businesses as COVID-19 Essential Businesses and Operations, including certain retail businesses; and

WHEREAS, Executive Order No. 121 directed that social distancing should be practiced to the maximum extent practicable in all COVID-19 Essential Businesses and Operations, including retail businesses, and provided that certain businesses had to cease operations unless they could maintain specified Social Distancing Requirements; and

WHEREAS, recent evidence indicates that additional measures are required to ensure social distancing and prevent the spread of COVID-19 in retail businesses; and

WHEREAS, the undersigned has determined that, to prevent the spread of COVID-19, retail establishments must restrict their maximum occupancy during this emergency, must clearly mark spacing for social distancing, and must perform frequent and routine environmental cleaning and disinfection of high-touch areas; and

WHEREAS, in Executive Order No. 120, the undersigned placed additional restrictions on long term care facilities; and

WHEREAS, NCDHHS has now recommended that increased measures are required to control the spread of COVID-19 in long term care settings; and

WHEREAS, the undersigned has determined that additional mitigation measures, recommended by NCDHHS, should be required at all skilled nursing facilities; and

WHEREAS, due to the State of Emergency, many North Carolinians must stay home and many businesses have been ordered closed, to slow the spread of COVID-19; and

WHEREAS, COVID-19 has caused and will continue to cause substantial economic disruption in North Carolina, including disruption to employees and employers; and

WHEREAS, on March 17, 2020, with the concurrence of the Council of State, the undersigned issued Executive Order No. 118, which broadened unemployment insurance benefits availability in response to COVID-19; and

WHEREAS, since that date, the Division of Employment Security has received approximately five hundred thousand (500,000) claims; and

WHEREAS, to timely process this unprecedented volume of claims, the undersigned has determined that the Division of Employment Security must explore all measures available to expedite the claims process and get relief to North Carolinians; and

WHEREAS, the Division of Employment Security has hired new staff and engaged additional resources to address the increased number of unemployment benefits claims; and

WHEREAS, N.C. Gen. Stat. § 96-15(a1) provides a mechanism, in the case of partial unemployment, for employers to submit claims on behalf of their employees through the use of an automated process; and

WHEREAS, the automated process established under N.C. Gen. Stat. § 96-15(a1), known as the "attached claim" process, is ordinarily available only for six (6) weeks of benefits; and

WHEREAS, this attached claim process is ordinarily available for use with respect to an employee only once during a benefit year; and

WHEREAS, this attached claim process is ordinarily available only for an employer which has a positive credit balance in its account and immediately pays the Division of Employment Security an amount equal to the full cost of unemployment benefits payable to the employee at the time the claim is filed; and

WHEREAS, expanding availability of the attached claim process would allow more employers to submit claims for their employees, leading to faster automated processing and unemployment insurance checks arriving sooner in the hands of North Carolinians in need; and

WHEREAS, therefore, the undersigned has determined that the Division of Employment Security should expand availability of the attached claim process so that employers may submit claims through the use of automation independent of whether the employer has a positive credit balance in its account; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because needed control cannot be imposed locally because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses, and limiting person-to-person contact; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if issued, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, the President of the United States signed the Families First Coronavirus Response Act (Public Law 116-127) on March 18, 2020, which included the Emergency Unemployment Insurance Stabilization and Access Act of 2020 in Division D of the Act; and

WHEREAS, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 includes emergency flexibility for states to temporarily modify certain aspects of their unemployment compensation laws, a short-term waiver of interest on state trust fund advances, and full federal funding during extended benefit periods through December 31, 2020; and

WHEREAS, the U.S. Department of Labor issued an Unemployment Insurance Program Letter No. 13-20, Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020, on March 22, 2020, which provides direction for emergency flexibility to states administering unemployment insurance programs; and

WHEREAS, the President of the United States signed the CARES Act of 2020 (Public Law 116-36) on March 27, 2020, which provided increased unemployment insurance benefits under Title II, Subtitle A of the Act; and

WHEREAS, the U.S. Department of Labor issued Unemployment Insurance Program Letter No. 14-20, Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility, on April 2, 2020, which provides additional guidance for states in administering emergency state unemployment programs; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(4) gives the undersigned the authority to "cooperate and coordinate" with the President of the United States; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the undersigned may take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1) authorizes the undersigned to prohibit and restrict the movement of people in public places, including by: (a) imposing a curfew; (b) directing and compelling the voluntary or mandatory evacuation of people from an area; (c) prescribing routes, modes of transportation and destinations in connection with evacuation; (d) controlling the movement of persons within an emergency area; and (e) closing streets, roads, highways, and other areas ordinarily used for vehicular travel, except to the movement of persons necessary for recovery from the emergency; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments, and other places to and from which people may travel or at which they may congregate; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict activities which may be reasonably necessary to maintain order and protect lives and property during a state of emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(1), when the undersigned imposes any of the types of prohibitions and restrictions enumerated in N.C. Gen. Stat. § 166A-19.31(b), the undersigned may amend or rescind any prohibitions and restrictions imposed by local authorities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Gubernatorially declared State of Emergency, the undersigned has the power to "give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article."

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Required Policies for Retail Establishments

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

All retail establishments that are permitted to operate under Executive Order No. 121 or under any Order issued by a political subdivision of the State are required to take additional steps specified in this Section (the "Additional Social Distancing Requirements") to limit the risk of community transmission of COVID-19, and to ensure that employees and customers are able to maintain appropriate social distancing.

For purposes of this Executive Order, "retail establishments" include any business in which customers enter to purchase goods or services, including but not limited to grocery stores, convenience stores, large-format retail stores, pharmacies, banks, ABC stores, hardware stores, and vehicle dealerships. "Retail establishments" also includes retail establishments operated by the State, its political subdivisions, or agencies thereof.

A. **Emergency Maximum Occupancy**.

1. The occupancy of all operating retail establishments shall be limited to be no more than:

   - Twenty percent (20%) of the stated fire capacity; or
   - Five (5) customers for every one thousand (1000) square feet of the retail location's total square footage, including non-customer-facing portions.

   This limit is the "Emergency Maximum Occupancy" for that establishment.

2. If the retail establishment has reached Emergency Maximum Occupancy or expects to reach Emergency Maximum Occupancy, it must post sufficient staff at store entrances and exits to enforce the Emergency Maximum Occupancy limit.

3. The Emergency Maximum Occupancy shall be posted in a conspicuous place.

B. **Social Distance Markings**.

1. To encourage the minimum Social Distancing recommended by the Centers for Disease Control and Prevention ("CDC"), all operating retail establishments must clearly mark six (6) feet of spacing:

   a. In lines at cash registers; and
   b. In other high-traffic areas for customers, such as at deli counters and near high-volume products, inside the retail establishment.

   All operating retail establishments must enforce these limitations.

2. In addition, operating retail establishments which have reached or expect to reach Emergency Maximum Occupancy must clearly mark six (6) feet of spacing in a designated line outside the establishment.

C. **Cleaning and Disinfection**. All operating retail establishments shall perform frequent and routine environmental cleaning and disinfection of high-touch areas with a disinfectant approved by the Environmental Protection Agency ("EPA") for SARS-CoV-2 (the virus that causes COVID-19).

D. **Impact on Businesses Remaining Open**. Section 2(C)(1) of Executive Order No. 121 allowed some businesses and operations to remain open only if they could maintain specified Social Distancing Requirements. These businesses and operations must now also meet the Additional Social Distancing Requirements specified in this Section to remain open.

Businesses or operations that received letters from the North Carolina Department of Revenue stating that they could continue to operate only if they satisfied the Social Distancing Requirements in Executive Order No. 121 must also satisfy the Additional Social Distancing Requirements to remain open.

E. **No New Authority to Remain Open**. Nothing herein shall be deemed to authorize a business to operate which does not currently qualify as a COVID-19 Essential Business and Operation under Executive Order No. 121. Likewise, nothing herein shall be deemed to authorize a business to

operate if it has been deemed nonessential or otherwise has been ordered to be closed by a political subdivision.

F. **Effect on Local Orders.** In an effort to create uniformity across the state for retail businesses that may continue to operate, the undersigned amends all local prohibitions and restrictions imposed under any local state of emergency declarations to remove any language that sets a different standard for maximum occupancy in retail establishments or otherwise directly conflicts with this Section of this Executive Order. The undersigned also hereby prohibits during the pendency of this Executive Order the adoption of any prohibitions and restrictions under any local state of emergency declarations that set a different standard for maximum occupancy in retail establishments or otherwise directly conflict with this Section of this Executive Order.

G. **Effective Date and Duration**. This Section of this Executive Order is effective Monday, April 13, 2020, at 5:00 pm. This Section of this Executive Order shall remain in effect for thirty (30) days from that date or unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Section.

Section 2. Recommended Policies for Retail Establishments

All operating retail establishments are strongly encouraged to take the following additional steps to limit the risk of spreading COVID-19, and to ensure that employees and customers maintain appropriate social distancing.

A. **Reduce Transmission Among Employees**.

1. All retail establishments are encouraged to supply, provide education on proper use, and encourage the use of cloth face coverings for all employees in positions that do not allow them to consistently maintain a six(6)-foot distance from other employees or customers, subject to the availability of these products.

2. All retail establishments should instruct employees to stay home if they are sick.

3. To encourage the minimum social distancing recommended by the CDC, all retail establishments are encouraged to mark six (6) feet of spacing in high-traffic areas within the staff-only portions of the establishment's premises.

B. **Hand Hygiene**.

1. All retail establishments are encouraged to place hand sanitizer prominently at entry and exit points, subject to availability of this product and to have disinfecting wipes and/or sprays that are EPA approved against SARS-CoV-2 available for shopping carts and baskets.

2. All employers should have their employees wash hands or use hand sanitizer, subject to the availability of that product, between interactions with customers and other employees.

C. **Designated Shopping Times for Seniors and At-Risk Groups**. All retail establishments are encouraged to designate exclusive shopping times for seniors and other at-risk groups as defined by the CDC.

D. **Signage for Social Distancing**. All retail establishments are encouraged to post signage that reminds customers and employees about required social distancing (at least six (6) feet apart).

E. **Online Ordering, Curbside Pickup, and No-Contact Checkout**. All retail establishments are encouraged to develop and use systems that allow for online, email, or telephone ordering, no-contact curbside or drive-through pickup or home delivery, and contact-free checkout.

F. **Additional Recommendations for High-Volume Retail Establishments**. High-volume retail establishments, such as grocery stores and pharmacies, are strongly encouraged to take the following additional measures to promote social distancing (at least six (6) feet apart) of customers and prevent spread of respiratory droplets:

1. Use acrylic or plastic shields at cash registers.

2. Clearly mark designated entry and exit points.
3. Provide assistance with routing through aisles in the store.

Section 3. Long Term Care Risk Mitigation Measures

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. **Scope of this Section**. This Section of this Executive Order places mandatory requirements on skilled nursing facilities. This Section strongly encourages the same measures, to the extent possible given constraints on the availability of personal protective equipment, for other kinds of long term care facilities, including adult care homes, family care homes, mental health group homes, and intermediate care facilities for individuals with intellectual disabilities.

B. **Mitigation Measures**. Skilled nursing facilities shall:

1. Remind staff to stay home when they are ill and prevent any staff who are ill from coming to work and/or staying at work.

2. Screen all staff at the beginning of their shift for fever and respiratory symptoms. This shall include:

    a. Actively taking that staff member's temperature; and

    b. Documenting an absence of any shortness of breath, any new cough or changes in cough, and any sore throat.

    If the staff member is ill, the facility must have the staff member put on a facemask and leave the workplace.

3. Cancel communal dining and all group activities, including internal and external activities.

4. Implement universal use of facemasks for all staff while in the facility, assuming supplies are available.

5. Actively monitor all residents upon admission, and at least daily, for fever and respiratory symptoms (shortness of breath, new cough or change in cough, and sore throat), and shall continue to monitor residents.

6. Notify the local health department immediately about either of the following:

    a. Any resident with new, confirmed, or suspected COVID-19.

    b. A cluster of residents or staff with symptoms of respiratory illness. A "cluster" of residents or staff means three (3) or more people (residents or staff) with new-onset respiratory symptoms in a period of 72 hours.

C. **Other kinds of long term care facilities**. Adult care homes, family care homes, mental health group homes, and intermediate care facilities for individuals with intellectual disabilities are strongly encouraged to follow the mitigation measures listed in subdivisions (1) through (6) above, assuming supplies are available.

D. **Effective Date and Duration**. This Section of this Executive Order is effective tomorrow, Friday, April 10, 2020, at 5:00 pm. This Section of this Executive Order shall remain in effect unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Section.

Section 4. Expediting Processing of Unemployment Insurance Claims by Expanding Availability of the Attached Claim Process

For the reasons and pursuant to the authority set forth above and in Executive Order No. 118, the undersigned orders as follows:

A. If the North Carolina Department of Commerce determines that it will significantly speed the processing of unemployment insurance claims and ease the administrative burden upon the Division of Employment Security (the "Division"), the Division may choose not to enforce the requirements of N.C. Gen. Stat. § 96-15(a1) for the duration of this Section of this Executive Order, to the extent articulated in this Section, and to the extent necessary to expedite the distribution of unemployment insurance benefits mandated under Public Laws 116-36 and 116-127.

B. To the extent necessary for the immediate application and processing of unemployment insurance claims submitted by employers, the Division may choose not to enforce the requirements of N.C. Gen. Stat. § 96-15(a1) to the extent that:

1. The Division need not require an employer to pay to the Division an amount equal to the full cost of attached unemployment benefits payable to the employee at the time the claim is filed; and

2. The Division need not reject partial unemployment attached claims for claims exceeding six weeks; and

3. The Division need not reject partial unemployment attached claims submitted more than once during any benefit year with respect to an employee; and

4. The Division may accept claims by employers who do not have a positive credit balance at the time their application is filed.

C. To the extent, if any, that Subsection A of this Section cannot be fulfilled, the Division shall establish an automated process that allows employers to file attached claims for employees and that is consistent with Subsection A above.

D. Notwithstanding 2020 first-quarter unemployment payments remaining due and payable, the North Carolina Department of Commerce, Division of Employment Security, is further ordered to notify employers that, as under current law:

1. If employers decide to file attached claims for their employees, their 2020 first-quarter unemployment payments due to the Division need not be collected by the Division in advance of the employer submitting an attached claim.

E. **Effective Date and Duration**. This Section of this Executive Order is effective nunc pro tunc April 1, 2020, at 12:01 am. This Executive Order shall remain in effect for sixty (60) days unless repealed, replaced, or rescinded by another applicable Executive Order, or unless a Public Law is enacted that codifies this Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Section.

Section 5. No Private Right of Action

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 6. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 7. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed

with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 8. Enforcement

A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.

B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.

C. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

Section 9. Effective Date

Unless otherwise expressly stated in another Executive Order, Sections 1, 3, and 4 of this Executive Order shall be effective and remain in effect as stated in Sections 1(G), 3(D), and 4(E) above. The remainder of this Executive Order is effective immediately and shall remain in effect for sixty (60) days from that date or unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 9th day of April in the year of our Lord two thousand and twenty.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXHIBIT 13

13 APRIL 2020 LETTER FROM DIRECTOR PEG DORER TO SECRETARY ERIK A. HOOKS

NORTH CAROLINA
Conference of District Attorneys

Peg Dorer
Director

P.O. Box 3159
Cary, NC 27519

(919) 890-1500
(919) 890-1931 (fax)

April, 13, 2020

Secretary Erik A. Hooks
NC Department of Public Safety
512 North Salisbury Street
Raleigh, NC 27604

Secretary Hooks,

I write in response to a request by the Department of Justice regarding the actions District Attorneys are taking to address the impact of COVID-19 and defendants that are in custody. In addition to protecting the public and safeguarding the rights of victims, District Attorneys across North Carolina are working diligently to reduce the number of individuals in custody. Since the emergency directives of Chief Justice Beasley limiting court interactions and reducing operations, much focus has been placed on protecting inmates by managing the jail population, reserving beds to be used for violent offenders and supporting sheriffs and the Department of Adult Corrections as they limit visitation and test staff members to reduce COVID-19 exposure.

District Attorneys are working with law enforcement, clerks of court, victims and defense counsel to handle jail cases in a manner that is safe, expedient and protective of the defendant's rights. On a daily basis, District Attorneys are employing a wide variety of procedures to address criminal offenses and public health of both those people who are already in custody and those coming into the criminal justice system. Efforts by every District Attorney include:

- Constant review of those in custody in the local jail including review of bonds, pending charges and community threat assessments,
- Operating numerous courts per day/week specifically focused on in-custody defendants,
- Addressing probation violations of in-custody defendants,
- Assessing pending charges of in-custody defendants and making plea offers that result in the release of the defendant when appropriate,
- Conducting appearances and when appropriate requesting/consenting to unsecured bonds,
- Requesting/consenting to unsecured bonds on low level non-violent offenses,
- Utilizing electronic house arrest, curfews and other restrictions instead of secure custody when appropriate,
- Encouraging law enforcement to cite or use criminal summons instead of warrants, and
- Using remote audio visual proceedings to reduce physical contact between inmates and others.

There has been at least one Motion for Appropriate Relief, that we know of, filed in a district based on COVID-19. We do not know how many others may have been filed in prosecutorial districts.

EXECUTIVE COMMITTEE

Billy West
President

Jim O'Neill
President Elect

Scott Thomas
Past President

Ernie Lee

Lorrin Freeman

Mike Waters

Susan Doyle

Seth Banks

Andy Gregson

Mike Miller

District Attorneys are continuing to work with law enforcement, clerks of courts, victims and defense counsel to handle jail cases in a manner that is as safe, expedient, and protective of the defendant's rights. And they are doing so in a way that is protective of the rights of victims and attempts to ensure justice is done.

Sincerely,

Peg Dorer
Director

Cc: Leslie Cooley Dismukes, Criminal Bureau Chief
North Carolina Department of Justice

Jane Gilchrist, General Counsel
NC Department of Public Safety