

Disaster Evacuation and the Rights of Incarcerated People

A public policy speech on custodial duty during emergencies.

THE STATE HOLDS THE KEYS

Imagine that an evacuation order has reached every phone in your city. Roads are filling. Families are leaving. The storm is close enough to hear. But you cannot choose a route, call a taxi, or walk to higher ground. You are behind a locked door, and every decision about your safety belongs to the institution that put you there.

That was the position of thousands of people held in Orleans Parish Prison when Hurricane Katrina struck New Orleans. Accounts collected by the American Civil Liberties Union described people trapped for days in flooded cells, in some places with contaminated water rising to chest height, with little ventilation and inadequate food and drinking water. The report traced the chaos to weak planning, poor training, failed communication, and the difficulty of accounting for people after they were moved.[1]

Katrina was an extreme event, but it exposed an ordinary fact about incarceration. The government controls the door. Once the state takes away a person's ability to protect themselves, it assumes a duty that becomes more important during a disaster, not less.

CUSTODY CREATES DEPENDENCE

Public discussion often treats every person behind bars as if a court has imposed a long prison sentence. That is not how local jails work. At midyear 2023, local jails held about 664,200 people. Seventy percent were unconvicted. Many were awaiting court action or held for other reasons rather than serving a sentence after conviction.[2]

That distinction matters, but the duty of care does not depend on innocence or guilt. A person serving a sentence retains the right to basic safety. A person awaiting trial is presumed innocent. Neither can open the cell, retrieve medication from home, move a wheelchair down a dark stairwell, or decide that sheltering in place has become too dangerous. Custody converts a public emergency into a condition of confinement.

The constitutional framework reflects that responsibility. The Supreme Court has held that prison conditions may violate the Eighth Amendment when they involve the wanton and unnecessary infliction of pain or deny the minimal civilized measure of life's necessities. For general conditions of confinement, courts ask whether officials acted with deliberate indifference to a serious risk they knew about. The exact legal standard varies with custody status and the claim, but a foreseeable hurricane, flood, wildfire, or loss of power is not outside the government's responsibility simply because the people at risk are incarcerated.[3]

International standards express the principle more directly. The Nelson Mandela Rules state that every prisoner must be treated with respect for inherent dignity, that safety and security must be ensured, and that imprisonment should not aggravate the suffering inherent in the loss of liberty. Those rules are not a substitute for domestic law. They are a useful measure of what competent and humane custody requires.[7]

PREPAREDNESS IS AN OPERATIONAL STANDARD

A written emergency plan is necessary, but it is not evidence that a facility can carry it out. In 2022, the Government Accountability Office reviewed disaster preparedness in the Federal Bureau of Prisons. The Bureau required contingency plans and staff training, yet GAO found weaknesses in tracking disaster projects, sharing lessons from past events, and assessing each institution's vulnerability to disaster-related risks. GAO issued eight recommendations. By 2026, the Bureau had implemented measures that included a common disaster definition, improved project tracking, a system for sharing lessons, and disaster-risk items in annual facility assessments.[4]

That progress offers a practical lesson. Preparedness improves when institutions turn experience into repeatable requirements. Emergency planning cannot live in a binder that staff open after the water rises. It must shape budgets, maintenance, training, staffing, transport contracts, medical continuity, and the design of the buildings themselves.

Federal Emergency Management Agency guidance recognizes that secure correctional facilities present a distinct evacuation problem. Moving people requires coordination among corrections officials, law enforcement, emergency managers, transport providers, receiving institutions, and sometimes federal agencies. Security does not disappear during an evacuation. Neither does the duty to move people away from a facility that can no longer protect life.[5]

A CREDIBLE PLAN HAS SIX PARTS

First, every facility needs objective decision points for evacuation and shelter in place. The plan should identify who has authority to act, what information triggers the decision, and when delay is no longer acceptable. A general promise to monitor conditions is not enough.

Second, transport and receiving capacity must be secured in advance. A plan should identify vehicles, drivers, accessible transport, fuel, routes, backup routes, staging areas, and facilities able to receive people at each security and medical classification. Agreements must work across county and state lines when local capacity is threatened by the same disaster.

Third, the facility must preserve the systems that keep people alive while movement is delayed. That means backup power for ventilation and medical equipment, safe water, food, sanitation, temperature control, working locks and emergency keys, and enough trained staff to operate them. It also means continuity for prescription drugs, mental health treatment, dialysis, pregnancy care, and other time-sensitive services.

Fourth, officials must know who is in custody and where each person goes. Rosters, court status, release dates, medical information, disability accommodations, emergency contacts, and transfer destinations require redundant records that remain available when local servers fail. No one should serve extra days because a paper file was lost in a flood.

Fifth, planning must account for disability from the beginning. Justice Department guidance under the Americans with Disabilities Act calls for accessible warnings, transportation, shelters, medical support, and reasonable modifications. In a correctional setting, those obligations are especially important because people cannot arrange their own alternatives. A wheelchair user needs an accessible vehicle. A deaf person needs a warning they can perceive. A person who depends on oxygen or medication needs equipment and supplies to travel with them.[6]

Sixth, plans must be tested and reviewed outside the chain of command that wrote them. Facilities should run realistic exercises with emergency managers, fire departments, medical providers, transport partners, and representatives familiar with disability access. After an event or drill, an independent review should publish what failed, assign corrective actions, set deadlines, and verify completion. Accountability should begin before a disaster becomes a civil rights investigation.

RISK REDUCTION CAN BEGIN BEFORE EVACUATION

Not every solution requires a bus. Courts and correctional authorities can establish lawful procedures for reducing a facility's population before a forecast emergency. Depending on state law and individual circumstances, those procedures may include expedited review for people eligible for release, transfer to community supervision, medical furlough, or relocation to a safer institution. Decisions must be individualized and authorized. The point is to make the legal pathway clear before time, transport, and bed space become scarce.

Public reporting also matters. Families and lawyers need a reliable way to learn whether a person has been evacuated, where they were transferred, and how to contact the receiving institution. Aggregate information about injuries, deaths, delayed releases, medication interruptions, and use of force should be reported after the emergency. Security may justify limits on real-time details. It does not justify losing people in the system.

THE MEASURE OF CUSTODY

Disaster policy is often described as a contest between safety and security. In a well-designed system, they are not opposing goals. Accurate records improve security. Trained staff improve control. Accessible transport prevents delay. Agreements with receiving facilities reduce confusion. Drills reveal failures while there is still time to correct them.

The deeper question is what responsibility means when the state exercises total control over another person. A sentence authorizes confinement. It does not authorize abandonment. Pretrial detention does not transfer the risk of government unpreparedness to the person detained. And an emergency does not erase the distinction between losing liberty and losing every claim to care.

When the next storm approaches, officials will make choices under pressure. Whether those choices protect life will depend on work completed months and years beforehand: the routes mapped, contracts signed, generators maintained, medications packed, records backed up, drills conducted, and failures corrected. The public should demand evidence of that work from every institution that holds the keys.

The standard is simple to state and demanding to meet. If the government prevents a person from leaving danger, the government must be prepared to bring that person to safety.

SOURCES

Primary and institutional sources, accessed September 2026.

- [1] American Civil Liberties Union National Prison Project. 2006. Abandoned and Abused.
- [2] Bureau of Justice Statistics. 2025. Jail Inmates in 2023 Statistical Tables.
- [3] Congressional Research Service and Library of Congress. 2026. Constitution Annotated Conditions of Confinement.
- [4] United States Government Accountability Office. 2022 with recommendation updates through 2026. Bureau of Prisons Disaster Preparedness.
- [5] Federal Emergency Management Agency. 2019. Planning Considerations for Evacuation and Shelter in Place.
- [6] United States Department of Justice. 2026. Emergency Planning under the Americans with Disabilities Act.
- [7] United Nations General Assembly. 2015. United Nations Standard Minimum Rules for the Treatment of Prisoners.