

March 19, 2020

[Multiple Recipients]

RE: COVID-19 and the Criminal Justice System

Dear Texas Judges, Sheriffs, Prosecutors, and Police Chiefs:

As the COVID-19 strain of coronavirus continues to spread across Texas, and as more public and private actors take major steps to combat this pandemic, we are concerned about local correctional settings such as jails, court rooms, and police stations becoming infection hotspots.

We believe the current situation requires a large-scale response from criminal legal system stakeholders to reduce incarceration and nonessential contact with the criminal legal system. We are counting on you to help protect the health and safety of Texans.

Public health experts and groups such as [Dr. Gregg Gonsalves](#), [Dr. Marc Stern](#), [Dr. Oluwadamilola T. Oladeru](#) and [Adam Beckman](#), [Dr. Anne Spaulding](#), [Homer Venters](#), and [Josiah Rich](#) have all clearly stated that preventing the harm inflicted by SARS-CoV-2 and COVID-19 can become immensely more difficult for people involved in the criminal legal system. Being arrested and detained, incarcerated, or forced to appear in public spaces such as courts and supervision offices, can drastically limit a person's ability to exercise any of the basic health precautions or to access medical help.

That's why we are writing with recommendations for local criminal justice stakeholders that align with guidance from public health experts. If implemented, these recommendations will reduce harm to people – and their families and communities by extension – who come into contact with the criminal legal system, reduce harm to people who work in the criminal legal system, and reduce harm to the broader public.

These recommendations also align with a system of justice that better upholds the dignity and civil rights of Texans. We can better protect Texas communities and neighborhoods if more people are free from nonessential contact with the criminal legal system and fewer people are vulnerable to contagious illness due to unnecessary incarceration.

In accordance with recommendations from public health experts, the following actions will reduce the number of people who are coming into the criminal legal system over the next several months and reduce the number of people who are currently incarcerated, thereby reducing the overall burden on the system and ensuring that more people can adhere to recommended health practices and reduce their risk of being affected by COVID-19.

Police departments, sheriffs, and other arresting agencies should limit the number of people who are arrested and then detained, even if just for a short time, in close proximity to other people or in spaces where maintaining hygiene becomes difficult. Arresting agencies should cease arrests for low-level offenses or issue citations in lieu of arrest so

that people can return home when possible, balancing the need for arrest with the overwhelming public safety concerns presented by COVID-19 and thereby limiting the risk of bringing someone who may have the virus into a station or transport vehicle and potentially infecting other personnel and first responders. Arresting agencies should also limit traffic stops for non-hazardous conduct, such as stops for expired registration.

Prosecutors should use their discretion to limit the number of people who are held in jails or in other confined facilities by reducing their requests for pretrial detention and carceral-based sentences. Prosecutors should move for release in all but the very few cases where pretrial detention is the least restrictive means necessary to ensure community safety. With a special focus on populations who the CDC has identified as particularly vulnerable, prosecutors should also institute a review-and-release protocol in which bail was sought and imposed over the past thirty days.

When filing charges, recommending bail, seeking a plea, or requesting a sentence, prosecutors should also view incarceration into cramped and often un-hygienic facilities as a last resort. Additionally, prosecutors should exercise caution when seeking community supervision – such as curfews, geographic restrictions, or electronic monitoring – that limit a person’s ability to seek medical help or care for a loved one who has COVID-19. Finally, prosecutors should reject or dismiss cases involving nonviolent offenses, thereby limiting the amount of time a person must spend in court or jail.

Judges have the ultimate decision-making authority beyond what prosecutors may seek to achieve. We recommend that they consider the recommendations above and additionally seek to minimize nonessential contacts with the criminal legal system.

Judges and magistrates who set bail should consider granting pretrial release to detainees in all but the very few cases where detention is the least restrictive means necessary to ensure community safety. Judges should also consider adopting an Emergency General Order or standing order that releases categories of low-priority detainees, including (1) people being held in jail pretrial who are accused of nonviolent offenses; and (2) people awaiting revocation hearings for technical violations of community supervision. Importantly, no one should be needlessly exposed to COVID-19 simply because they do not have money to afford cash bail. Throughout this pandemic, judges and magistrates should be reminded to default to non-cash bail without conditions. Judges should also recall or temporarily suspend all non-priority warrants, such as warrants for nonviolent offenses, failure to appear, and Class C misdemeanors.

Judges have the additional responsibility of ensuring that courthouses remain both accessible and safe for people whose cases are currently pending. Judges should not issue a blanket suspension on all court activity as this will needlessly prolong people’s cases and exacerbate the stigma and harm associated with having an open case. For any cases that the court does prolong, judges should not impede defendants’ rights to a speedy trial. As an alternative, judges should consider allowing anyone with an open criminal case and upcoming hearing the chance to voluntarily waive that hearing or conduct that hearing via telephone or video conference. Where someone does not have access to either of those

technologies, judges should allow counsel to appear via telephone or video conference on behalf of a charged person.

Finally, judges should lift all holds under the OmniBase program. The OmniBase program puts holds on licenses when people miss a court date or a payment on their fines or costs. This traps them in a cycle of debt, and makes it likely that they will eventually end up arrested for driving with an invalid license. In addition, public transportation is currently very risky and has a high potential for community spread. People should have their license holds lifted so that they can safely get to the grocery store and the doctor during this crisis. We also urge judges to call on their County Commissioners Courts to end their counties' participation in this program.

Sheriffs should exercise their authority to protect the people who are, will soon become, and may remain incarcerated even after the recommendations discussed above are put into action. Most importantly, Sheriffs must ensure that facilities are as empty, safe, and clean as possible. This means sanitizing facilities and coordinating with local public health experts to ensure that all facilities have adequate supplies of soap, hand sanitizer, tissues, and other hygiene products. Each of these products should be made freely and constantly available to all staff and incarcerated people – even if prohibitions on alcohol need to be modified to accommodate for hand sanitizer distribution.

Sheriffs should implement procedures to care for those who become ill in their facilities. Those procedures should include, at a minimum: screening and testing of people for COVID-19, based on the most up to date information available; increased access to medical care and elimination of all copays; free access to the medication and equipment necessary to treat those who contract the virus; and, the ability to immediately transfer sick patients to outside facilities for care when necessary. In addition, sheriffs should implement non-punitive procedures for housing people who are exposed to the virus, who are at high risk of serious illness, or who screen or test positive for COVID-19. This should *not* result in prolonged, wide-spread lock downs.

Also, Sheriffs should assess detained and incarcerated populations and recommend release to judges and prosecutors – with a heightened focus on populations identified by the CDC as particularly vulnerable – for all people whose release would not create a serious threat to public safety. For anyone who is being released, consult with local health officials to ensure adequate screening and quarantine procedures are in place so that COVID-19 is not transmitted into a community from within the facility.

Sheriffs should ensure that volunteer programming and visitation will resume once state or local health officials allow it. Limitations on in-person visitation should be explicitly temporary, and free access to other forms of communication such as emails, voice calls, and video calls should be made. Legal visits should not be curtailed. Finally, Sheriffs should restructure staffing plans to ensure that facilities remain well-staffed even if staff are out sick, and should educate staff on proper hygiene procedures both in and out of work.

Community Supervision Officers should consider exercising their authority to limit the number of people who are incarcerated or who are forced to leave their homes. Officers should cease in-person check-ins to accommodate the need for social distancing, and should allow check-ins to occur by voice or video call. Where those technologies are not accessible to a person under supervision, we encourage officers to minimize or temporarily suspend check-in requirements. Additionally, agents should suspend or modify enforcement of any mobility-restricting supervision conditions that impede a person's ability to seek medical care or support loved ones who may have COVID-19. Finally, limit the number of people being incarcerated by suspending detainers and incarceration for technical rule violations.

In conclusion, it is essential to remember that actors within the criminal legal system have an immense amount of discretion and must coordinate with and defer to local public health experts to limit the risks presented by COVID-19 to people who come into contact with the system. Tonight, more than 65,000 people will sleep in a county jail, and there are an additional 140,000 people incarcerated in our state prison system. Health experts agree that these populations need to be a focus in our response to the COVID-19 pandemic, and there is an emerging and broad public consensus that supports these common sense steps to achieve the goal of protecting the most vulnerable populations during this pandemic.

The urgency of deliberate and thoughtful action cannot be overstated. We are eager to work with anyone in implementing the steps outlined above, and we are willing to be a resource for you throughout this process. We want to ensure implementation of policies that will limit the threats presented by this public health crisis.

Thank you.

Sincerely,

American Civil Liberties Union of Texas

Texas Fair Defense Project

The Afiya Center

Alliance for Safety and Justice

Grassroots Leadership

Next Generation Action Network

Texas Advocates for Justice

Texas Appleseed

Texas Civil Rights Project

Texas Criminal Justice Coalition

Texas Equal Access Fund

Texas Jail Project

Workers Defense Project

Restoring Justice

Faith in Texas

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