

Via Email

March 19, 2020

RE: COVID-19 and the Criminal Justice System

To Arizona State and Local Officials:

The coronavirus (COVID-19) has created a worldwide pandemic with cases spreading across the United States, including in Arizona. Now is the time to act to minimize the risks of this public health crisis. The American Civil Liberties Union of Arizona writes to urge you to take swift action to protect the health and welfare of an especially vulnerable segment of our communities: people who are or could be incarcerated in our state's jails, prisons, and other detention facilities.

As public officials, you have the authority to immediately develop and implement specific policies that align with guidance from public health experts and that will minimize the harm inflicted on people involved in Arizona's criminal legal system – and, by extension, the harm inflicted on broader communities. Like all other public agencies, all aspects of the system – from policing and pretrial through sentencing, confinement, and release – will come under intense scrutiny for how the system responds to this national public health crisis.

According to the Centers for Disease Control and the World Health Organization, older adults and people of any age with serious chronic medical conditions – such as heart disease, lung disease, or diabetes – or who are otherwise immuno-compromised are at higher risk for contracting and getting very sick from COVID-19.

With this in mind, public health experts and groups such as [Dr. Gregg Gonsalves from Yale's School of Public Health](#), [doctors working in New York City Hospitals](#), [Dr. Marc Stern from the School of Public Health at the University of Washington](#), [Dr. Oluwadamilola T. Oladeru and Adam Beckman](#), [Dr. Anne Spaulding with the Emory Center for the Health of Incarcerated Persons](#), [Homer Venters](#), and [Brown University epidemiologist 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, or having mobility limited even while home, can drastically limit a person's ability to exercise effective precautions or to seek medical help. The longer jurisdictions wait to act, the worse this will be.



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Therefore, we urge you to partner with local public health experts in developing informed, immediately actionable steps to ensure that public safety and public health are as protected as possible. This must include preventing people from unnecessarily entering the criminal legal system in the first place and ensuring that prisons do not needlessly keep people incarcerated who are especially vulnerable to COVID-19. The non-exhaustive list below includes recommended actions, and we implore you to remember that that no one system actor can be held singularly responsible for addressing this crisis. Partnership and transparency across the system are crucial.



Governor Ducey, you have a uniquely powerful role to play in stopping the spread of COVID-19 and limiting the harm it inflicts on communities by decreasing incarcerated populations and creating a culture in which transparency, safety, and the health of all people are the paramount concerns. First and foremost, you should immediately order the release of elderly persons, persons convicted of nonviolent offenses, and others who present little or no risk to the public. People in prisons are highly vulnerable to outbreaks of contagious illnesses. They are housed in close quarters and are often in poor health. Making matters worse, Arizona's prisons already suffer from inadequate medical staffing and treatment. As such, we urge you to prioritize releasing those who, because of age or medical condition, are at particularly high risk of severe illness or death if they were to become infected with COVID-19. Finally, you must hold the Arizona Department of Corrections, Rehabilitation, and Reentry accountable for its response to this global pandemic.

Police and County Sheriffs must drastically 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. To accomplish this goal, police should cease arrests for low-level offenses and issue citations and summons in lieu of arrests so that people can return home, balancing the need for arrest with the overwhelming public safety concerns presented by coronavirus and limiting the risk of bringing someone who may have the virus into a station and potentially infecting others including personnel or first responders.

County Sheriffs must also exercise their authority to protect the people who are, will soon become, and who 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 must be made freely and constantly available to all staff and incarcerated people – even if, for the latter, prohibitions on

alcohol need to be modified to accommodate for hand sanitizer distribution.

Sheriffs must implement procedures to care for those who become ill in their facilities. Those procedures must 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 removal of all copays; 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 must 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 the use of solitary confinement or prolonged, wide-spread lock downs.



Sheriffs should also suspend all practices of holding people in local jails and prisons for civil immigration purposes, i.e. pursuant to a detention agreement with Immigration and Customs Enforcement (ICE) or an ICE detainer.

County Attorneys and the Arizona Attorney General must use their immense discretion to limit the number of people who are held in jails or in other confined facilities by drastically reducing their requests for pretrial detention and carceral-based sentences. County Attorney Offices are undoubtedly receiving defense motions to amend release conditions in individual cases. However, reviewing such requests on a case-by-case basis is unnecessarily time consuming and will not get people out of jail quickly enough to help stop the spread of COVID-19. Prosecutors should move for release *in all but the very few cases* where pretrial detention is *absolutely necessary* to ensure the safety of the public. 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.

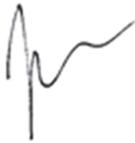
When seeking a plea or requesting a sentence, prosecutors must view incarceration into cramped and often un-hygienic facilities as a last resort, and must refrain from seeking community-based sentences – such as curfews, geographic restrictions, or electronic monitoring – that limit a person’s ability to seek medical help or care for a loved one who has COVID-19. In line with the 1983 *Bearden v. Georgia* case, prosecutors should also temporarily vacate all fines and fees so that people are not at risk of incarceration due to non-payment or are not required to come into court or wait in processing centers to remove those financial burdens.

Finally, prosecutors should dismiss cases involving minor offenses, thereby limiting the amount of time a person must spend in court. This will also help to relieve an overburdened court system that should be trying to limit in-person court appearances for the safety of judges, attorneys, and court staff.

It is essential to remember actors within the criminal legal system must coordinate with and defer to local public health experts in limiting the risks presented by coronavirus and COVID-19 to people who come into contact with the system. Currently, 5 million people cycle through jails every year, and there are nearly 7 million people incarcerated or under supervision across the country. Health experts agree that these populations need to be a focus in our national response to the COVID-19 pandemic, and there is an emerging and broad public consensus that supports 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 who is willing to take 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.

Sincerely,



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