



August 4, 2020

RE: Depopulating County Jails during COVID-19

Dear Stakeholder:

Since the start of the coronavirus (COVID-19) pandemic, the ACLU of Ohio has urged decision makers to develop and implement holistic policies in alignment with guidance from public health experts that minimize the harm inflicted on people involved in the criminal legal system. Fortunately, many at the county and municipal levels throughout Ohio recognized the severity of this public health crisis and its impact on incarcerated people and local communities and took action. According to media reports, it's estimated over one-third of counties across the state have taken steps to decrease their jail population as a result of COVID-19. News articles and publically available data released within the initial months of the pandemic highlight the collaborative effort that judges, prosecutors, defense attorneys, and law enforcement made to implement different strategies to reduce county jail populations. By taking a swift, coordinated response, counties have been able to depopulate their jails, reportedly up to around 60% in some instances, and undoubtedly save lives.<sup>1</sup>

While stay-at-home orders and restrictions may be lifting, COVID-19 remains a serious and deadly threat. Public health experts predict a second wave of the pandemic later this year; however, ongoing reports of new cases nationwide have raised continuous concern.<sup>2</sup> On June 25<sup>th</sup>, the United States reported a record high of new COVID-19 cases, and that number continued to climb through July. The previous national record was set roughly two months earlier on April 24<sup>th</sup> during what was considered to be the height of the pandemic. More troubling is that the numbers are most likely much higher, as the Centers for Disease Control and Prevention estimates that there are 10 other infections for every case that is reported.<sup>3</sup>

Ohio saw similar, unsettling trends. There were more than 50,000 positive COVID-19 cases statewide at the end of June, with daily reports of new cases exceeding the previous 21-day average. Hospitals across the state experienced a surge in COVID-19 patients for the first time in

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<sup>1</sup> Sabrina Harris, *Reducing Ohio Jail Populations Will Help Flatten the Curve, So What Are Counties Doing About It?*, ACLU of Ohio, <https://www.acluohio.org/archives/blog-posts/reducing-ohio-jail-populations-will-help-flatten-the-curve-so-what-are-counties-doing-about-it>.

<sup>2</sup> Len Strazewski. *Harvard Epidemiologist: Beware COVID-19's Second Wave This Fall*, American Medical Association, May 8, 2020, <https://www.ama-assn.org/delivering-care/public-health/harvard-epidemiologist-beware-covid-19-s-second-wave-fall>.

<sup>3</sup> Mark Katkov. *U.S. Sets Daily Record for New Coronavirus cases*. NPR, June 26, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/06/26/883799638/u-s-sets-daily-record-for-new-covid-19-cases>.

two months.<sup>4</sup> These developments confirm that the crisis is far from over. Our criminal legal system, from the courts to county jails, must not go back to business as usual.

We commend the efforts of local leaders in employing measures to limit the pandemic's impact in Ohio's jails during its onset. The quick, decisive actions to decarcerate county jails demonstrated that it is administratively possible and can yield positive outcomes. Depopulation tactics must continue to be implemented to mitigate the ongoing risks associated with COVID-19. However, not all strategies are beneficial, including mass plea deals and postponing sentences. Innocent people can feel coerced into taking a plea deal, to a lesser charge or for a smaller sentence, which then results in a record and often collateral consequences. This is especially true during a pandemic, when time in jail could be life threatening. The practice of postponing a person's sentence questions the need for incarceration at all, as the delay indicates that there is no public safety concern. It is crucial that counties adopt effective, harm-reducing measures to decrease jail populations.

**Ohioans remain in danger. The spread of COVID-19 in our jails and prisons impacts the broader community by increasing the risk of infection. We urge you to continue practicing or immediately implement the following decarceration strategies to prevent the spread of COVID-19 in Ohio's county jails.**

- **Eliminate or decrease money bonds that hold pretrial individuals in jail.** Recommendations from the Supreme Court of Ohio and Chief Justice O'Connor in March included the need for judges to reduce money bonds to decrease jail populations.<sup>5</sup> At least four counties implemented this practice.<sup>6</sup> Approximately two-thirds of people in Ohio's jails are legally innocent and held pretrial, which can be as many as 12,000 people on any given day. These individuals are in jail because they can't afford their freedom. Research shows many people face significant collateral damage even if they spend three days or less in jail.<sup>7</sup> Judges should remove money bonds as a condition of release; it is a quick way to effectively decrease jail populations across Ohio, and it also ends an unconstitutional practice.<sup>8</sup>
- **Release certain subsets of individuals to the greatest extent possible through a collaborative systems approach.** A national public opinion poll found that 66% percent of likely voters were in support of elected officials considering measures to reduce

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<sup>4</sup> Governor DeWine discusses surge of coronavirus in Ohio, WSYX/WTTE, June 29, 2020, <https://abc6onyourside.com/news/local/june-29-coronavirus-in-ohio-update>; Cornelius Frolik, *Local jail on 'code red' after inmate contracts coronavirus*, Dayton Daily News, June 10, 2020, <https://www.daytondailynews.com/news/local/local-jail-code-red-after-inmate-contracts-coronavirus/sqr1Dr5bqVBCiltowaq7QJ/>.

<sup>5</sup> *Guidance to Local Courts: COVID-19 Public Health Emergency*, The Supreme Court of Ohio, March 30, 2020, <http://www.supremecourt.ohio.gov/coronavirus/resources/localCourtGuidance03.20.20.pdf>.

<sup>6</sup> Counties employing this practice include: Butler, Cuyahoga, Hamilton, and Marion. Claire Chevrier, *There Are Good and Bad Ways to Decrease Jail Populations*, ACLU of Ohio, June 1, 2020, <https://www.acluohio.org/archives/blog-posts/there-are-good-and-bad-ways-to-decrease-jail-populations>.

<sup>7</sup> Wendy Sawyer and Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, Prison Policy Initiative, March 24, 2020, <https://www.prisonpolicy.org/reports/pie2020.html>.

<sup>8</sup> *O'Donnell v. Harris County*, 892 F.3d 147 (5th Cir. 2018) (Citing *Stack v. Boyle*, 342 U.S. 1, 5 (1951)).

overcrowding in prisons and jails as a response to COVID-19.<sup>9</sup> Many counties across the state had sheriffs, judges, prosecutors, and public defenders come together to review and determine those eligible for release as a way to reduce their jail populations. Now and moving forward, release should be prioritized for the following groups of incarcerated individuals:

- **People held on certain offenses** – A collaborative approach should be taken to review all people held in county jails for misdemeanor and certain other offenses (e.g., technical violations) for possible release. Most individuals would be better served through community-based services and supports, rather than incarceration. As many counties are working with law enforcement to limit jail intake through cite and release measures, it is only fitting that those who would not be arrested today in light of the pandemic be released from custody.
- **People who would be sentenced to probation** – People are often held in jail pretrial for offenses that will not lead to jail time. There is no rationale for keeping someone in jail whose offense will ultimately result in remaining in the community.
- **People who have six months or less remaining on their sentence** – Fifty-six percent (56%) of voters nationwide support releasing people who are within six months of completing their sentence in order to reduce the risk of transmitting COVID-19 within jails and prisons.<sup>10</sup> For those that have served a majority of their time, release is an effective way to depopulate.
- **Medically-vulnerable people** – COVID-19 creates an increased risk to people with underlying health conditions. This is especially so in a congregate care setting, such as in jails where social distancing is impossible and there is no access to quality health care. A few counties have released those who are medically-vulnerable, but all counties should follow suit.

People held in Ohio's jails and prisons remain at heightened risk of potentially fatal outcomes due to overcrowding, the lack of social distancing, and subpar conditions. We know that the spread of COVID-19 in jails and prisons does not stop at the gate. The ripple effect of COVID-19 is, and will continue to be, ongoing. Ohio cannot afford to return to the status quo.

There are effective ways to depopulate the system, and the first wave of COVID-19 showed us that the above-listed reforms are possible. Lives have been and continue to be on the line. As a local leader, you have the ability to make and influence policy changes that could save lives now and in the future.

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<sup>9</sup> *Fighting the Coronavirus with Decarceration: Policies and Polling*, Data for Progress, March 2020, <https://www.dataforprogress.org/memos/fighting-coronavirus-with-decarceration>.

<sup>10</sup> *Fighting the Coronavirus with Decarceration: Policies and Polling*, Data for Progress, March 2020, <https://www.dataforprogress.org/memos/fighting-coronavirus-with-decarceration>.

If you have any questions or would like to discuss further, please don't hesitate to contact us.

Sincerely,



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PS – The National ACLU recently released a report examining data on jail populations and crime rates from 29 of the largest cities in the country between March and May 2020. Research showed that reduction in jail populations did not result in an increase in rates of crime.

See, *Decarceration and Crime During COVID-19*, American Civil Liberties Union (ACLU), July 27, 2020, <https://www.aclu.org/news/smart-justice/decarceration-and-crime-during-covid-19/>.