

OPEN LETTER TO OHIO GOVERNMENT AND ELECTED OFFICIALS AND CRIMINAL JUSTICE STAKEHOLDERS

Last updated on March 18, 2020

With the effects of the coronavirus disease 2019 (COVID-19) pandemic being felt across Ohio, the ACLU of Ohio strives to be as helpful as possible, as quickly as possible, in identifying issues and proposing solutions. Our goal, like yours, is to limit COVID-19's effects on Ohioans impacted by our state's criminal justice system and numerous, pre-existing mass incarceration problems.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Ohio

4506 Chester Avenue
Cleveland, OH 44103
P: (614) 586-1959
F: (216) 472-2210

1108 City Park Avenue
Suite 203
Columbus, OH 43206
P: (614) 586-1959
F: (614) 586-1974

acluohio.org
contact@acluohio.org

Hasan Kwame Jeffries
President

J. Bennett Guess
Executive Director

As more public and private actors take drastic steps to combat this pandemic, we urge stakeholders and decision makers to develop and implement holistic policies that align with guidance from public health experts and that will minimize the harm inflicted on people involved in the 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.

Below are urgent, commonsense recommendations from the ACLU of Ohio for public entities and agencies across the state to consider and adopt as soon as possible. We hope it also serves as a guide for advocacy efforts.

Additional recommendations will be added to this document on an ongoing basis, as needed.

LAW ENFORCEMENT

- Drastically reduce the number of people arrested and detained, even if for just a short time, in close proximity to other people or in spaces where maintaining hygiene is difficult.
- Issue citation in lieu of arrest for the majority of misdemeanors and non-violent felonies so people can return home, balancing the need for immediate release of most people with public safety concerns.
- Release individuals with a warning who are driving on a suspended license. Alternatively, cite and release any person for driving on a suspended driver's license, when the underlying suspension is not related to public safety such as proof of insurance or financial reasons.

PROSECUTORS

- Limit the number of people held in jails and other confined facilities by drastically reducing requests for pretrial detention and incarceration.
- Move to release all persons being held in jail pretrial except for the very few cases where pretrial detention is absolutely the least restrictive means necessary to avoid flight risk.
- Where cash bail has already been sought and imposed over the past 30 days, institute a review-and-release protocol with a special focus on vulnerable populations.
- When seeking a plea or sentence, consider confinement in cramped and unhygienic facilities a last resort.
- Refrain from seeking community-based sentences – such as curfews, geographic restrictions, and electronic monitoring – that limit a person’s ability to seek medical care or care for a loved one.

JUDGES/COURTS

In line with *Bearden v. Georgia*, vacate all fines and fees so people are not at risk of incarceration due to non-payment and/or do not risk appearing in person to remove those financial burdens. If total discharge is not yet feasible, end all collection of fines, fees and court debt, and stop imposing penalties for late or missed payments.

- Immediately cease issuing and enforcing warrants for unpaid fines and fees or for failure to appear at a hearing addressing unpaid fines and fees.
- Stop issuing driver’s license suspensions for unpaid fines and fees or for not appearing in court.
 - Dismiss cases involving minor offenses in order to limit the number of people in courthouses.
 - Do not issue blanket suspensions on all court activity as this will needlessly prolong peoples’ cases and the negative consequences of having an open case.
- For any cases a court does prolong, do not waive defendants’ rights to a speedy trial. As an alternative, judges should allow 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, allow counsel to appear in person or via phone on behalf of a charged person without mandating that person’s appearance.

COUNTY AND CITY JAILS

- Assess detained and incarcerated populations and maximize the number of people – with a heightened focus on populations identified by the CDC as particularly vulnerable – who can be immediately released, including people due to be released within the next 60 days.

- 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.
- Ensure 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.
- Implement procedures to care for those who become ill while detained or incarcerated 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.
- Implement non-punitive procedures for housing people exposed to the COVID-19, 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.
- Allow programming to continue. In jurisdictions where local health officials have urged limiting volunteer access to jails and prisons, this may mean allowing staff or incarcerated people to run programs.
- If personal visitation is limited or eliminated, those limits should be explicitly temporary and other forms of communication such as emails, voice calls, and video calls must be made free for all incarcerated people. Also, legal visits must not be curtailed.
- Restructure staffing plans to ensure facilities remain well-staffed even if staff are out sick and educate staff on proper hygiene procedures both in and out of work.

PAROLE, PROBATION, POST-RELEASE CONTROL

- Suspend enforcement of any mobility-restricting supervision conditions that impede a person's ability to seek medical care or to support loved on who may have COVID-19.
- Suspend detainers and incarceration for technical rule violations.
- Cease in-person check-ins to accommodate the need for social distancing, and allow check-ins to occur by voice or video call. Where those technologies are not accessible to a person under supervision, minimize or temporarily suspend check-in requirements.
- Institute a presumption for release for all people who have a parole hearing scheduled in the next two years. For people whose parole hearings fall outside that time frame – with a focus on populations identified by the CDC as particularly vulnerable – evaluate and seize all opportunities to expedite that process to ensure

anyone who would be released from incarceration at any point has the opportunity to be screened for release immediately.

GOVERNOR'S POWERS

- Grant immediate commutations to anyone currently held on a technical (crimeless) supervision violation or who have been identified by the CDC as particularly vulnerable whose sentence would end in the next two years. Additionally, review on a case-by-case basis those whose sentence would end in the next year.
- Mandate law enforcement processing these releases are coordinating with local service providers and public health experts so people who may not be able to return home have a safe, accessible place to be that is also close to medical facilities and services.

In conclusion, 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 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. Health experts agree that these populations need to be a focus in our national response to the SARS-CoV-2 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,



Jocelyn Rosnick, Esq.
Policy Director



Gary Daniels
Chief Lobbyist

