

September 9, 2021

Sent via email

Judge Sheehan
Judge Earley

Sheriff Viland

Prosecuting Attorney O'Malley
Chief Public Defender Sweeney

RE: COVID-19 Containment in Cuyahoga County

Dear local leaders:

As the highly transmissible Delta variant of the coronavirus sweeps the nation, we urge you to undertake all possible measures to prevent the spread of COVID-19 within the Cuyahoga County Jail. An outbreak in the jail would present a deadly risk to the population of incarcerated individuals in the jail, the corrections staff, and the greater community of Cuyahoga County. Such an outbreak would dangerously tax Ohio's already strained public health resources. On Tuesday, August 24, Ohio reported over 4,117 new COVID cases and 277 new hospitalizations, the highest numbers the state has seen since mid-January.¹

Though preventative measures like masking and vaccination serve to reduce the risk of transmission of the coronavirus, the safest and most effective way to ensure that the jail does not become a vector for COVID-19's spread is to **reduce the number of people who are incarcerated pretrial**. To accomplish this, we ask you to fast-track for immediate release any individuals who are:

- Approved for release pending payment of money bail; and/or
- Charged with parole or probation violations.

Reducing the jail population is consistent with the guidance of correctional experts such as Dr. Marc Stern, who served as Health Services Director for Washington State's Department of Corrections, urged: "With a smaller population, prisons, jails, and detention centers can help

¹ News 5 Staff. (2021, August 24). *Ohio Reports Highest Daily COVID Cases, hospitalizations, and ICU Admissions in Months*. News 5 Cleveland.
<https://www.news5cleveland.com/news/continuing-coverage/coronavirus/ohio-reports-highest-daily-covid-cases-hospitalizations-icu-admissions-in-months>

diseases spread less quickly by allowing people to better maintain social distance.”² Over the course of the pandemic, states and municipalities throughout the country have engaged in initiatives to reduce incarcerated populations so that jail and prison populations could implement safety precautions effectively.³ These initiatives have included: in Kentucky, commuting sentences for people with medical vulnerabilities or with less than 6 months left of their sentence for nonviolent and nonsexual crimes;⁴ in Detroit, Michigan, releasing those that do not pose a risk to the community or were at the end of their sentence;⁵ and in Iowa, expediting the release for hundreds of inmates deemed eligible for parole.⁶

As we have learned over the past year and a half, COVID-19 is highly transmissible whenever people are in close physical proximity with others. The Delta variant is exponentially more dangerous: **up to 90% of the people close to the infected individuals who are not immune will also become infected.**⁷

Jails and prisons are areas of high transmission risk. Jails across the country worked to reduce jail populations to prevent the spread of COVID-19, but many of those have since gone back to their pre-pandemic numbers making social distancing and isolating positive cases to prevent the transmission of COVID-19 near impossible⁸. Cuyahoga County Jail’s inmate population rose beyond its maximum capacity of 1,436 in May 2021 to more than 1,500⁹. As Adam Chaloupka, an attorney for the Ohio Patrolmen’s Benevolent Association union, states, “In some ways, the

² *COVID-19 Threatens People Behind Bars* (2020, March 12). Human Rights Watch. <https://www.hrw.org/news/2020/03/12/us-covid-19-threatens-people-behind-bars#>

³ *The most significant criminal justice policy changes from the COVID-19 pandemic* (2021, May 18). Prison Policy Initiative. <https://www.prisonpolicy.org/virus/virusresponse.html>

⁴ WLKY Digital Team (2020, August 25). *646 more Kentucky inmates released from prison to prevent COVID-19 spread*. WLKY. <https://www.wlky.com/article/646-more-kentucky-inmates-released-from-prison-to-prevent-covid-19-spread/33798804#>

⁵ Ainsworth, A. (2020, April 1). *Hundreds of inmates released from Metro Detroit county jails amid coronavirus (COVID-19) outbreak*. Click On Detroit. <https://www.clickondetroit.com/news/local/2020/04/02/hundreds-of-inmates-released-from-metro-detroit-county-jails-amid-coronavirus-covid-19-outbreak/>

⁶ Ta, L. (2020, March 23). *Iowa’s prisons will accelerate release of approved inmates to mitigate COVID-19*. Times-Republican. <https://www.timesrepublican.com/news/todays-news/2020/03/iowas-prisons-will-accelerate-release-of-approved-inmates-to-mitigate-covid-19/>

⁷ Mandavilli, A. (2021, August 1). *C.D.C. Internal Report Calls Delta Variant as Contagious as Chickenpox*. New York Times. <https://www.nytimes.com/2021/07/30/health/covid-cdc-delta-masks.html>; *Chickenpox Transmission* (2021, April 18). U.S. Centers for Disease Control and Prevention. <https://www.cdc.gov/chickenpox/about/transmission.html>

⁸ Kang-Brown, J., Montagnet, C., Heiss, J. (2021). *People in Jail and Prison in Spring 2021*. Vera Institute of Justice. <https://www.vera.org/downloads/publications/people-in-jail-and-prison-in-spring-2021.pdf>

⁹ Ferrise, A. (2021, May 28). *As Cuyahoga County Jail Staff Dwindles and Inmate Population Increases, Assaults Against Officers Rise*. Cleveland.com. <https://www.google.com/url?q=https://www.cleveland.com/metro/2021/05/as-cuyahoga-county-jail-staff-dwindles-and-inmate-population-increases-assaults-against-officers-rise.html&sa=D&source=editors&ust=1630515994831000&usq=AOvVaw1837VGQ298IcMlxYiSgm4E>

jail is worse than it's ever been.¹⁰ Not only do jails force people into close physical proximity, but the underlying health conditions that make COVID-19 more severe are prevalent among incarcerated people.¹¹ This has contributed to the rampant spread of COVID-19 both in our communities and inside jails and prisons, threatening everyone incarcerated, along with their loved ones, jail staff, and the state's public health infrastructure at large.

Furthermore, the constant population turnover inherent in pretrial detention facilities will compromise any effort to contain COVID-19. In pretrial detention, those incarcerated are usually detained for a relatively short period of time before returning to the community. New people enter into jail on a daily basis as law enforcement continues making arrests and jail employees necessarily come and go everyday. The constant flow of individuals into and out of the Cuyahoga County Jail presents a severe risk to the community, especially since people may be infected and contagious but not show symptoms.

Each time the county introduces an additional person to the jail environment, it is increasing the risk of spreading COVID-19 among the incarcerated population, jail staff, and the broader community. We urge you to undertake all possible avenues for limiting that peril, including:

1. **Prioritize immediate release for people who are most vulnerable.** Given that as of August, **fewer than 50% of individuals in your county have been fully vaccinated**,¹² release is crucial for those who are at the highest risk of harm if they contract COVID-19.¹³ This includes, but is not limited to, older adults, pregnant women, people with respiratory conditions, people who are immunocompromised (including people who are HIV+), people with severe mental health conditions, and people with other chronic health conditions that make them particularly vulnerable to infection. Releasing these vulnerable groups from the jail immediately will avoid the need to provide complex medical care within the jail or transfer people to hospitals that are still recovering.
2. **Release people incarcerated pretrial who cannot afford their bond.** When making pretrial release decisions, judicial officers consider what conditions would assure the safety of the community. Exposing people to potential infection because they cannot afford a cash bond threatens the safety of the community by exacerbating the pandemic. Unless a judge determines that a person poses a substantial risk of serious harm to a

¹⁰ Ibid.

¹¹ Wagner, P. Widra, E. (2020, March 6). *No need to wait for pandemics: The public health case for criminal justice reform*. Prison Policy Initiative.
<https://www.prisonpolicy.org/blog/2020/03/06/pandemic/?fbclid=IwAR3cZM1oOONBiEEo366kkyMk6WVCgKIhi503mFhydY5AVR69Ft-5xdWw2oY>

¹²COVID-19 Dashboard (2021, August 26). Ohio Department of Health.
<https://coronavirus.ohio.gov/wps/portal/gov/covid-19/dashboards/covid-19-vaccine/covid-19-vaccination-dashboard>

¹³*People with Certain Medical Conditions* (2021, March 13). U.S. Centers for Disease Control and Prevention.
<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

reasonably identifiable person if released, judges should release people on their own recognizance so they do not risk infection inside the jail.

3. **Cite and release people charged with misdemeanors and certain felonies.** To preserve resources and prevent infection, sheriff's deputies should expand the use of citations and a notice to appear instead of booking people on all misdemeanor and certain felony arrests. Nine (9) counties in Ohio, including Columbiana¹⁴, Franklin¹⁵, Portage¹⁶, and Marion County, adopted this policy for both misdemeanors and non-violent offenses during the pandemic.¹⁷ Additionally, it is recommended that the jail implement earlier policies discouraging the admittance of people on new misdemeanor charges (unless they are domestic violence charges), to reduce the jail population in the face of growing COVID-19 infection rates.

4. **Release people with 6 months or less of their sentence to serve and those whose offense does not involve a serious safety risk to the community.** Twelve (12) counties in Ohio have implemented such policies to manage jail populations including Franklin, Washington, and Montgomery County.¹⁸ For example, Montgomery County has released jail inmates charged with nonviolent crimes¹⁹. Additionally, the Governor's office recommended that those incarcerated in minimum security prisons with 90 days or less remaining on their sentences be released²⁰. It is recommended that jail administrators reassess every person with six months or less remaining on a sentence to determine if service of that remaining time could be accomplished by non-custodial alternatives rather than in detention. It is also recommended that a similar review be conducted for those whose offense does not pose a serious safety risk to the community.

¹⁴ Giamboni, T. (2020, April 13). *Jail keeps coronavirus out of cells*. Morning Journal. <https://www.morningjournalnews.com/news/local-news/2020/04/jail-keeps-coronavirus-out-of-cells/>

¹⁵ Fuddy, J. (2020, March 19). *Police, judges weigh arrests and jail time amid coronavirus outbreak*. Columbus Dispatch. <https://www.dispatch.com/news/20200319/police-judges-weigh-arrests-and-jail-time-amid-coronavirus-outbreak>

¹⁶ McClory, E. (2020, March 25). *Portage County Police adjust to enforcing the law in a pandemic*. Record Courier. <https://www.record-courier.com/news/20200325/portage-county-police-adjust-to-enforcing-law-in-pandemic>

¹⁷ Chevrier, C. (2020, June 1). There are good and bad ways to decrease jail populations. *ACLU Ohio*. <https://www.acluohio.org/en/news/there-are-good-and-bad-ways-decrease-jail-populations>

¹⁸ Ibid.

¹⁹ Perry, P. (March 25, 2020). *Coronavirus: More than 300 inmates released from Montgomery County Jail*. Dayton Daily News. <https://www.daytondailynews.com/news/crime--law/coronavirus-more-than-300-inmates-released-from-montgomery-county-jail/3l9U2siBpdY5NYPjCeyckO/>

²⁰ Balmert, J. (2020, April 7). *Coronavirus in Ohio: Gov. Mike DeWine plans to release some prison inmates due to COVID-19*. Cincinnati.com. <https://www.cincinnati.com/story/news/2020/04/07/coronavirus-ohio-gov-mike-dewine-give-update-covid-19-response-prison-population/2961390001/>

5. **Reduce release conditions and restrictions.** Judicial officers should ensure that pretrial release conditions reduce the risk of danger to the community. In line with that requirement, courts must consider whether a release will interfere with people's ability to seek necessary medical screening and treatment as well as the ability to protect and care for any loved ones who may be impacted or vulnerable. No one should be forced to choose between violating a release condition or protecting their health and the health of others.
6. **Ensure care and hygiene for people who remain incarcerated.** The jail must follow changing public health protocols and coordinate with public health experts to communicate with staff and people in custody about preventative measures including masking, social distancing, and quarantining sick inmates when required; provide adequate access to hygiene; and provide immediate testing and treatment to those who exhibit signs of infection. Access to care and hygiene must be made free, without commissary spending, fees, or any other costs, which could discourage prevention and treatment.
7. **Continue to offer and incentivize vaccines.** We applaud efforts undertaken by jail administrators to encourage vaccination among inmates and support the continuation of these efforts.

These sensible steps will protect the public from outbreaks, while continued mass detention will not. We know this pandemic presents a range of challenges, and we share your commitment to ensuring the community's safety and health. We know from our experience that reducing the jail population to protect public health will be safe, lawful, and just. We urge you to take necessary action to save lives.

Sincerely,

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