



March 18, 2020

**RE: COVID-19 and the Criminal Legal System**

Dear Criminal Law Stakeholders,

During this pandemic outbreak, we recognize that individual rights may need to be balanced against that of the larger community. Nevertheless, any response to the coronavirus pandemic must be grounded in science and public health.

As Georgia prepares for the likely escalation of COVID-19 within its borders, we hope that you will consider the ACLU of Georgia as a resource in your work to develop a response plan that protects the health and safety of all people inside of our state while preserving the liberties that are the foundation of American ideals and our democratic system of government.

**CORONAVIRUS and the CRIMINAL LEGAL SYSTEM**

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. Health experts agree that these populations need to be a focus in our national response to the coronavirus 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.

As the SARS-CoV-2 strain of coronavirus continues to spread across the United States, and as more public and private actors take drastic steps to combat this pandemic, we urge you 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.

With this in mind, public health experts and groups such as [Dr. Gregg Gonsalves](#), [doctors working in New York City Hospitals](#), [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 COVID-19 can become immensely more difficult for people involved in the criminal legal system.

**SOCIAL DISTANCING IN GEORGIA'S PRISONS and JAILS**

The Centers for Disease Control and Prevention (CDC) urges everyone to engage in social

distancing. “The virus is thought to spread mainly from person-to-person [b]etween people who are in close contact with one another (within about 6 feet).”<sup>1</sup>

Georgia’s law enforcement officers must drastically limit the number of people they arrest and detain – even if just for a short time. Law enforcement should avoid detaining people in close proximity to other people or in spaces where maintaining hygiene becomes difficult. Keeping people from gathering in groups, particularly in prisons and jails where hygiene is limited, would make the most effective coronavirus response.

Being detained, incarcerated, forced to appear in public spaces like courts and supervision offices, and/or forced to comply with mobility-restricting supervision conditions, can drastically limit a person’s ability to exercise any of the recommended precautions or to seek medical help. The longer jurisdictions wait to act, the worse this pandemic will be for our families and communities, state and nation. 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 and
- ensuring that jails and prisons do not needlessly keep people detained or incarcerated who are especially vulnerable to COVID-19.

**In accordance with recommendations from public health experts, the following actions will reduce the number of people who are currently incarcerated or supervised and will limit burdens people face due to incarceration or supervision that place them at elevated risk of being affected by the COVID-19 pandemic.**

We implore you to remember that no one system actor can be held singularly responsible for addressing this crisis. Partnership and transparency across the system are crucial. The non-exhaustive list below includes recommended actions.

### **THE GOVERNOR**

**The Governor** obviously has a uniquely powerful role to play in stopping the spread of COVID-19 and limiting the harm it inflicts on individuals, families, and communities by reducing the number of individuals incarcerated and creating a culture in which transparency, safety, and the health of all people are the paramount concerns.

### **Press Georgia State Board of Pardons and Paroles to Commute Sentences**

First and foremost, the Governor should press the Georgia State Board of Pardons and Paroles to grant immediate commutations to the following groups of individuals:

- anyone whose sentence would end in the next year currently being held on a technical (crimeless) supervision violation, and

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<sup>1</sup> “How to Protect Yourself” by [Centers for Disease and Prevention](#) website accessed on March 18, 2020.

- anyone identified by the CDC as particularly vulnerable whose sentence would end in the next two years.

**Mandate Sheriffs Coordinate with Local Service Providers and Public Health Experts for Those Individuals Unable to Return Home**

The Governor can mandate that Sheriffs who are processing these releases are coordinating with local service providers and public health experts so that 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.

**Mandate Data Collection and Distribution**

Additionally, the Governor needs to mandate data collection and distribution from all criminal legal system agencies and actors who are part of the state’s coronavirus response, as sharing information about this virus is essential in limiting the damage it will cause. Finally, the Governor must consider issuing Executive Orders that seek to achieve the goals and remedies outlined above and below, particularly where local system actors are awaiting that guidance.

**SHERIFFS**

**Sheriffs** must exercise their authority to protect the people who are, will soon become, and who may remain detained or incarcerated even after the recommendations discussed above are put into action.

**Facilities must be as empty, safe, and clean as possible.**

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 those individuals in the Sheriff’s custody; 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. At a minimum, those procedures must include the following:

- 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;
- the ability to immediately transfer sick patients to outside facilities for care when necessary; and
- 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.**

**Identify individuals to release from custody.**

Sheriffs should assess those individuals who are detained and incarcerated and maximize the number of people who can be immediately released, including people who would be released within the next sixty days, anyway, with a heightened focus on populations identified by the CDC as particularly vulnerable.

About 20.77 percent of incarcerated individuals in Georgia are age 50 and older, a population considered to pose a negligible risk to public safety, yet most vulnerable to the virus.<sup>2</sup> 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.

**Facilities must continue programming.**

Sheriffs must implement procedures to 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.

**Visitation must remain unless public health experts urge otherwise.**

Similarly, visitations by family must not be limited unless public health experts urge that measure to be taken. If and when that does happen, limitations 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.

**Facilities must be well-staffed.**

Sheriffs must 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.

**PROBATION and PAROLE AGENTS and PAROLE BOARDS**

**Probation and Parole Agents and Parole Boards** must exercise their authority to limit the number of people who are incarcerated or who are forced into public spaces.

**Adhere to social distancing:**

**Cease in-person check-ins, suspend mobility-restricting supervision**

Agents 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, minimize or temporarily suspend check-in requirements.

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<sup>2</sup> Georgia Department of Corrections, Friday Report, March 13, 2020

Additionally, agents should suspend enforcement of any mobility-restricting supervision conditions that impede a person's ability to seek medical care or to support loved ones who may have COVID-19. Finally, limit the number of people being incarcerated by suspending detainers and incarceration for technical (crimeless) rule violations.

### **Expedite and expand release opportunities for incarcerated people.**

Parole boards should expedite and expand release opportunities for incarcerated people, reducing the populations in prisons as is recommended by health experts. Boards should 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 – boards should evaluate and seize all opportunities to expedite that process to ensure that anyone who would be released from incarceration at any point has the opportunity to be screened for release immediately.

## **REDUCING THE NUMBER OF PEOPLE COMING INTO THE CRIMINAL LEGAL SYSTEM**

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, thereby reducing the overall burden on the system and ensuring that people can adhere to recommended health practices.

### **POLICE**

**Police** must drastically limit the number of people they arrest and detain, even if just for a short time, in close proximity to other people or in spaces where maintaining hygiene becomes difficult. Keeping people from gathering in groups, particularly in prisons and jails where hygiene is limited, would make the most effective coronavirus response.

In instances of low-level offenses, law enforcement officers have discretion over whether to turn a warn-and-reprimand encounter into an arrest or formal charge.

**Police should issue citations or desk-tickets in lieu of arrest** 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 other personnel or first responders.

### **PROSECUTORS**

**Prosecutors** must use their immense discretion to limit the number of people who are held in jails or in other confined facilities by doing the following.

- Drastically reduce their requests for pretrial detention and carceral-based sentences.

- Move for release in all but the very few cases where pretrial detention is absolutely the least restrictive means necessary to ensure a person's return to court.
- At the very least, be doubly sure to comply with recent legal precedents in setting cash bail, with a person's ability to pay as a paramount consideration.
- With a special focus on populations whom the CDC has identified as particularly vulnerable, institute a review-and-release protocol in which bail was sought and imposed over the past thirty days.

As of March 13, 2020, about 24,0097, or 64.1 percent of incarcerated individuals in Georgia's city and county jails were unsentenced and awaiting trial. Historically, around 27% of individuals who are convicted and incarcerated are serving time for a drug or property offense, and currently 12.6% are incarcerated for a first-time, non-violent offense.<sup>3</sup> These individuals should not be needlessly incarcerated at this time, and prosecutors should do their part to seek alternative sentencing or continuance of the cases.

**Prosecutors must view incarceration as the option of last resort.**

When seeking a plea or requesting a sentence, prosecutors must view incarceration in cramped and often un-hygienic facilities as a last resort, and must refrain from seeking community-based sentences that limit a person's ability to seek medical help or care for a loved one who has COVID-19, such as curfews, geographic restrictions, or electronic monitoring.

**Prosecutors should temporarily vacate certain fines and fees.**

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.

**Prosecutors should dismiss cases involving minor offenses.**

Prosecutors should dismiss cases involving minor offenses, thereby limiting the amount of time a person must spend in court.

**JUDGES**

**Judges** have the ultimate decision-making authority beyond what prosecutors may seek to achieve and must also follow the recommendations highlighted above in order to limit the number of people who are coming into and forced to remain in carceral facilities.

Judges also have the additional responsibility of ensuring that courthouses remain both accessible and safe for people whose cases are currently pending.

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<sup>3</sup> Georgia Department of Corrections, Friday Report, March 13, 2020.

**Judges must refrain from issuing blanket suspension of all court activity.**

Judges must refrain from issuing 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 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.

**CONCLUSION**

The urgency of deliberate and thoughtful action is imperative. The ACLU of Georgia is 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 public policies that will limit the threats presented by this public health crisis while remaining faithful to the constitutional rights of all within our state.

For Justice,



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