

# THE BAIL PROJECT

The Bail Project  
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Sent via email

Mayor Woodward  
Superior Court Presiding Judge Clarke  
District Court Presiding Judge Smith  
Municipal Court Presiding Judge Antush  
Prosecuting Attorney Haskell  
County Commissioners Kerns, Kuney, and French  
City Council President Beggs  
Dr. Bob Lutz  
Regional Law and Justice Administrator Yates  
Sheriff Knezovich  
Jail Director Sparber

RE: COVID-19 Containment in Spokane County

Dear local leaders:

As the coronavirus pandemic continues to spread across Washington, we urge you to undertake all possible measures to prevent the spread of infection within the Spokane County Jail. An outbreak of COVID-19 in the jail would be swift and deadly, and now is the time for decisive preventative measures.

COVID-19 poses severe infection risks whenever people are in close physical proximity with others, regardless of whether an individual shows symptoms. People in jail are unable to distance themselves from others and take other necessary preventative measures. The risk of spreading infection is especially severe in light of the Spokane County Jail's chronic overcrowding. Jails will not have the capacity to contain the spread of infection if they are filled near or beyond capacity. This threatens everyone incarcerated in a jail, along with their loved ones, jail staff, and the state's public health infrastructure at large.

Not only do jails force people into close physical proximity, the underlying health conditions that can cause infection or exacerbate harm tend to be very prevalent among incarcerated people. Last week, the state Department of Public Health warned about these very risks, noting that jail populations are "likely to include individuals who have chronic health conditions which weaken

their immune systems” and are at “risk because respiratory pathogens may be more easily transmitted in an institutional environment.”<sup>1</sup>

The safest 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. This is particularly imperative for anyone who a judge has already approved for release pending payment of money bail or anyone who would be released but for a technical parole, probation, or warrant violation. Release is also crucial for those who are elderly, immunocompromised, pregnant, medically fragile, or otherwise particularly vulnerable to COVID-19.

In contrast to reducing jail populations, restrictive measures such as segregation and lockdowns cannot be expected to contain infection. In 2019, people held at the Spokane County Jail spent an average of 16 days incarcerated there before returning to the outside community, and every month thousands of new people are booked into the facility. This constant population turnover will compromise any effort to contain COVID-19, especially since everyone who is infected and contagious might not show symptoms. Restrictive measures could also discourage incarcerated people from reporting symptoms or seeking care.

Reducing the jail population is consistent with the guidance of correctional experts. Dr. Marc Stern, who has served as Health Services Director for the state Department of Corrections, recently urged: “With a smaller population, prisons, jails, and detention centers can help diseases spread less quickly by allowing people to better maintain social distance.”<sup>2</sup> Dr. Stern also explained that reducing the jail population will ease staffing burdens: “If staff cannot come to work because they are infected, a smaller population poses less of a security risk for remaining staff.” Along the same lines, a list of “suggestions to jails for managing the impacts of COVID-19” published last week by the Washington Association of Sheriffs and Police Chiefs proposes “downsizing” jail populations, including by examining who a jail “can release on their own recognizance,” as well as pursuing “alternatives to arrest for certain crimes” and designating “crimes for which your patrol division will not arrest.”<sup>3</sup>

The Bail Project has worked since December 2018 to provide free bail assistance to people detained pretrial in the Spokane County Jail. We have posted bail for hundreds of people who then returned to court without any need for detention, even though their bail amount would otherwise have kept them incarcerated. We know from this experience that reducing the jail population to protect public health will be safe, lawful, and just.

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<sup>1</sup> Washington State Department of Health, [Novel Coronavirus \(COVID-19\) Guidance for Correctional Facilities](#) (March 4, 2020).

<sup>2</sup> Human Rights Watch, [COVID-19 Threatens People Behind Bars](#) (March 12, 2020).

<sup>3</sup> Washington Association of Sheriffs and Police Chiefs, [Washington State Jails Coronavirus Management Suggestions](#) (March 5, 2020).

Every time the county introduces another 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. **Release people on personal recognizance.** Pretrial release decisions are governed by Superior Court Criminal Rule 3.2, which requires judges to impose cash bonds only “if no less restrictive condition or combination of conditions would reasonably 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 a growing pandemic. Going forward, judges should consider that factor release on personal recognizance all people charged with misdemeanors and low-level felonies. Pursuant to Superior Court Criminal Rule 3.2(j)(i), judges should also reconsider custody status for anyone whose incarceration will make them vulnerable to infection.
2. **Cite and release people charged with misdemeanors and gross misdemeanors.** Washington State Criminal Rule 2.1(b) authorizes law enforcement officials to issue a citation and notice to appear in court “[w]henver a person is arrested . . . for a violation of law which is punishable as a misdemeanor or gross misdemeanor.” The Spokane County Sheriff’s Office Policy Manual likewise requires the office to “consider its resources and its mission of protecting the community when exercising any discretion to release suspected offenders on a citation and notice to appear in court.” To preserve resources and prevent infection, sheriff’s deputies should issue citations and a notice to appear for everyone charged with misdemeanors or gross misdemeanors.
3. **Prioritize immediate release for people who are most vulnerable.** Older adults and those with serious medical conditions and fragility face a higher risk for infection. The conditions that can increase one’s risk of infection include diabetes, heart disease, asthma, lung disease, and HIV.<sup>4</sup> These conditions are more common among those who are incarcerated than the general population.<sup>5</sup> 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 where capacity may be stretched thin.
4. **Reduce release conditions and restrictions.** Superior Court Criminal Rule 3.2 requires courts to ensure that any conditions of release “reduce danger to others or 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

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<sup>4</sup> U.S. Centers for Disease Control and Prevention, [“People at Risk for Serious Illness from COVID-19”](#) (March 10, 2020).

<sup>5</sup> Prison Policy Initiative, [“No need to wait for pandemics: The public health case for criminal justice reform”](#) (March 6, 2020).

their health and the health of others. Judges should also ensure that people released are not required to appear in person for check-ins and non-essential court proceedings where infection could spread.

5. **Protect meaningful access to legal counsel and other pretrial support.** Jails must avoid any restrictive measures that interfere with a person's ability to obtain legal and other support to advance their case. For example, The Bail Project's staff conduct interviews of people detained in the jail before providing bail assistance in their case. Restricting this access will mean that more people will remain detained on unnecessary cash bail, increasing their risk of infection. If visitor and legal access to the jail is in any way restricted or endangered, the jail should take steps to release people who cannot afford their bail amount.
  
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; 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, co-pays, fees, or any other costs that could discourage prevention and treatment.

These sensible steps will protect the public from outbreaks, while continued mass detention will not. The Bail Project is coordinating with other local advocates on additional proposals for protecting the community, and we expect to communicate these to you soon. We know this pandemic presents a range of challenges, and we share your commitment to ensuring the community's safety and health. We urge you to take necessary action to save lives.

Sincerely,

The Bail Project

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