

March 20, 2020

Sent via email

Sheriff Paul Penzone
550 West Jackson
Phoenix Arizona 85003

RE: COVID-19 in Maricopa County jails

Dear Sheriff Penzone:

As the coronavirus pandemic continues to spread across the country, we urge you to prevent the spread of infection within Maricopa County's jails by taking all available measures to reduce the jail population. With thirty-four confirmed cases in Maricopa County (latest as of 3/20/2020), it has become increasingly clear that the region will face serious harm from this deadly threat.¹ An outbreak of COVID-19 in the jails 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 the preventative measures that are necessary to fight infection.

Not only do jails force people into close physical proximity, the underlying health conditions that can cause infection or exacerbate harm are prevalent among incarcerated people.² This will make the spread of COVID-19 inside jails fast and lethal, threatening everyone incarcerated in a jail, along with their loved ones, jail staff, and the state's public health infrastructure at large.

Despite this threat, law enforcement officers continue to book about 75 people per day into Maricopa County jails. The only safe way to ensure that the jails do 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 and anyone charged with low-level offenses; failure to appear; or parole/probation violations. Release is also crucial for those who are elderly or have medical conditions that make them particularly vulnerable.

¹ Meg O'Connor, "[Every Arizona Coronavirus case confirmed so far](#)" (March 20, 2020).

² Prison Policy Initiative, "[No need to wait for pandemics: The public health case for criminal justice reform](#)" (March 6, 2020).

In contrast to reducing jail populations, restrictive measures such as lockdowns and limiting visitors cannot be expected to contain infection. While people often think of jails as closed environments, they are not. In a county jail, people are incarcerated for relatively short periods of time before returning to the outside community, and every day new people are booked into the facility as law enforcement continue making arrests. Jail staff and medical staff necessarily come and go everyday. This constant population turnover will compromise any effort to contain COVID-19, especially since people may be infected and contagious but not show symptoms for up to 14 days.

Reducing the jail population is consistent with the Sheriff's obligation to safely manage jail populations and the guidance of correctional experts. Dr. Marc Stern, who served as Health Services Director for Washington State's 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."³ 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." Jurisdictions across the country are taking steps for the immediate, mass release of people from their county jails.⁴

The Bail Project has worked since late October 2019 to provide free bail assistance to people detained pretrial in the Maricopa County jails. We have posted bail for over 150 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.

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 recommend you undertake the following actions to limit that peril:

1. **Prioritize immediate release for people who are most vulnerable.** The county should release people who are at the highest risk of harm and death if they contract COVID-19.⁵ 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

³ Human Rights Watch, [COVID-19 Threatens People Behind Bars](#) (March 12, 2020).

⁴ Jurisdictions include [New York City](#), [Los Angeles](#), [Oakland](#), and [Cleveland](#). Prosecutors from across the country [issued a joint statement](#) urging reduction of detention and incarcerated populations.

⁵ U.S. Centers for Disease Control and Prevention, "[People at Risk for Serious Illness from COVID-19](#)" (March 10, 2020).

medical care within the jail or transfer people to hospitals where capacity may be stretched thin and bedspace will likely be insufficient.

2. **Cite and release people charged with misdemeanors and petty offenses.** Arizona Statutes § 13-3903 authorizes law enforcement officials to issue a citation in lieu of taking the person to custody whenever a person is charged with a misdemeanor or petty offense. To preserve resources and prevent infection, law enforcement should issue citations and a notice to appear instead of booking people on all eligible arrests.
3. **Halt arrests and booking for technical parole and probation violations.** Technical violations punish behaviors that would not warrant incarceration for a person unless they were on parole or probation. Reducing this unnecessary incarceration will reduce the risk of spreading infection between jails and the community.
4. **Halt transfers to ICE custody.** Though people are no longer held in Maricopa County jails due to ICE holds, the Sheriff's Office continues to transfer people to ICE custody. This practice puts immigrants accused of crimes at greater risk because of the high potential for outbreaks in immigration detention centers. Moreover, transfers between different detention systems are likely to contribute to the spread of COVID-19 among detained populations.
5. **Protect meaningful access to legal counsel, pretrial support, and community and family support.** Incarcerated people already experience prolonged isolation from their families and communities. Jails must take steps to ensure they do not further isolate incarcerated people, and they must avoid any restrictive measures that interfere with a person's ability to obtain legal and other support to advance their case. Maricopa County should provide safe and accessible no-contact visitation options to families and defense council, such as no-cost virtual visitation and visitation behind glass, access to mail, and free phone calls to provide reassurance to families worried about their loved ones inside and increase access to defense counsel. Incarcerated people must also continue to have meaningful access to their court proceedings.
6. **Ensure care and hygiene for people who remain incarcerated.** The jail should 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, which could discourage prevention and treatment.

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 urge you to take necessary action to save lives.

Sincerely,

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