



March 15, 2020

Sent via email

Judge Beaumont
Judge Lindsay
Judge Martin
Judge Storey Bryan
Judge Taylor
Judge Threet
Judge Zimmerman

Judge Jones
Judge Harper
Judge Nations
Judge Storey

Sheriff Helder
Chief Deputy Cantrell
Major Denzer

Prosecuting Attorney Durrett
Chief Public Defender Hyslip

RE: COVID-19 Containment in Washington County

Dear local leaders:

As the coronavirus pandemic continues to spread across the country, we urge you to undertake all possible measures to prevent the spread of infection within the Washington 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 the preventative measures that are necessary to fight infection. The danger is especially severe in light of the Washington County Jail's chronic overcrowding, where people have routinely been forced to sleep on floors due to lack of bed space.

Not only do jails force people into close physical proximity, the underlying health conditions that can cause infection or exacerbate harm are very prevalent among incarcerated people.¹ 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.

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; anyone detained under the 287(g) program; and anyone charged with 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.

In contrast to reducing jail populations, restrictive measures such as segregation and lockdowns cannot be expected to contain infection. In a county jail, people are incarcerated for a relatively short period 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 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. Restrictive measures could also discourage incarcerated people from reporting symptoms or seeking care.

Reducing the jail population is consistent with the county sheriff's obligation to safely manage county jail populations and the guidance of correctional experts. When "necessary to limit prisoner population" sheriffs "may determine if a convicted person sentenced to the county jail shall serve his or her sentence . . . by any other lawful alternative to continual detention."² 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."

Other jurisdictions, including Pulaski County, are taking proactive steps both to reduce local jail populations and to plan for the fact that many community members who are not incarcerated may have difficulty attending court appearances in the following weeks.

The Bail Project has worked since late August 2019 to provide free bail assistance to people detained pretrial in the Washington County Jail. We have posted bail for over 200 people who then returned to court without any need for detention, even though their bail amount would

¹ Prison Policy Initiative, "[No need to wait for pandemics: The public health case for criminal justice reform](#)" (March 6, 2020).

² Ark. Code 12-41-503 Management of local jail populations

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

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 urge you to undertake all possible avenues for limiting that peril, including:

1. **Prioritize immediate release for people who are most vulnerable.** Judges must release people who are at the highest risk of harm if they contract COVID-19.⁴ 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 where capacity may be stretched thin.
2. **Release people on personal recognizance.** When making pretrial release decisions, judicial officers are required to 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 a growing pandemic. Going forward, judges should consider that factor to release on personal recognizance all people charged with misdemeanors and low-level felonies. We also support the recommendation from Washington County's Jail Ombudsman to conduct de novo bond hearings for everyone being held on bond, pursuant to Arkansas Rules of Criminal Procedure Rule 9.2(e)(i).
3. **Cite and release people charged with misdemeanors.** Arkansas Rules of Criminal Procedure Rule 5.2 authorizes law enforcement officials to "issue a citation in lieu of continued custody" whenever a person is charged with an eligible misdemeanor. To preserve resources and prevent infection, sheriff's deputies should issue citations and a notice to appear instead of booking people on misdemeanor arrests.
4. **Stop detaining people for ICE after they would otherwise be released.** Everyday, people are held in the Washington County Jail after they would otherwise be released due to ICE detainers, which give ICE time to investigate whether a person should be arrested for immigration proceedings. This prolonged detention after an individual was cleared to return to our community presents not only potential constitutional violations but also an increasing public health risk. Enforcement of ICE detainers has always been

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

voluntary and should be suspended immediately, as many jurisdictions across the country have done.

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. 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.
6. **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.
7. **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, 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,

THE BAIL PROJECT

ARKANSAS JUSTICE REFORM COALITION

THE ARKANSAS POOR PEOPLE'S CAMPAIGN

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