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April 2, 2020

The Honorable Mary Ellen Barbera
Court of Appeals of Maryland
361 Rowe Boulevard
Annapolis, Maryland 21401

Via email and U.S. mail

Dear Chief Judge Barbera:

We write to respectfully urge the Judiciary to adopt several emergency measures that will reduce the number of people incarcerated and thereby lower the serious risk COVID-19 poses to the health and lives of those individuals, those who remain incarcerated, correctional officers and staff, and the public at large.

As this Court has recognized, the COVID-19 pandemic is an unprecedented public health emergency that threatens the lives of Marylanders. In his March 5, 2020, Proclamation Declaring a State of Emergency and the Existence of a Catastrophic Health Emergency due to the outbreak of disease caused by the COVID-19 novel coronavirus, Governor Lawrence J. Hogan, Jr. noted that the Center for Disease Control and Prevention ("CDC") has issued guidance to all state and local governments recommending preparedness to prevent community spread of the COVID-19 pandemic. The CDC has identified older adults and people of any age who have serious underlying medical conditions as having the highest risk of serious illness and death from COVID-19.

In the early days of this pandemic, it is evident that the rapid spread of this virus cannot be contained in places where people are confined in close quarters, such as nursing homes, cruise ships, or aircraft carriers. The largest population of individuals domiciled together reside in Maryland's jails and prisons. Many of those who are confined in or work in these facilities are in one or more of the high-risk categories identified by the CDC. The need for staff to enter and exit multiple times per day, and the lack of widespread rapid testing to identify asymptomatic individuals who may enter the facility and spread the disease, makes it inevitable that COVID-19 will spread in these facilities very fast and very soon. New York's Riker's Island, for example, is experiencing infections at a rate far exceeding the world's hardest hit cities and

countries.¹ If more is not done, Maryland's jails and prisons will be next. Indeed, just this week, it was reported that one inmate and two contractual employees of the Department of Public Safety and Correctional Services tested positive for the virus.²

Physicians, public health experts, and legal professionals have issued clear warnings about the profound danger this pandemic poses to incarcerated persons and correctional staff, and the urgent need to reduce the jail and prison population to combat the spread of this illness in the institutions and the surrounding communities.³ Correctional officers have sounded the alarm about the inadequacy of efforts to protect them and those incarcerated in these facilities from the spread of coronavirus.⁴ As this crisis worsens in the coming weeks, the confinement in close quarters of large numbers of individuals in our jails and prisons may violate the prohibition against cruel and unusual punishment of the Eighth Amendment to the Constitution of the United States and Article 25 of the Maryland Declaration of Rights. *See Estelle v. Gamble*, 429 U.S. 97, 97 S. Ct. 285 (1976).

In response to the extreme danger posed by the pandemic to those in our detention centers and prisons, we urge the Judiciary's leadership, by administrative order, emergency rule change, Judicial Council resolution, or otherwise, to immediately take the following steps and continue them through the conclusion of the state of emergency:

Persons incarcerated post-trial

- Direct or advise judges, insofar as does not unreasonably jeopardize public safety, to release individuals pending sentencing or appeal;
- Direct judges to expeditiously schedule hearings (with participants permitted to appear by phone, video or other electronic means) on pending motions for modification or reduction of sentence when requested by incarcerated individuals, and to consider, among other relevant factors, the need to reduce the incarcerated population in response to the pandemic;
- Through administrative order or an emergency rule change, waive the time limits in Rule 4-345(e) to permit modification of sentences after a

¹ See Legal Aid Society, COVID-19 Infection Tracking in NYC Jails, <https://www.legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (visited April 2, 2020). (Printout attached as Ex. 1.)

² Justin Fenton & Phillip Jackson, *Maryland prison system confirms first coronavirus cases*, Balt. Sun (Mar. 30, 2020).

³ See Letter from 199 faculty members of Johns Hopkins Bloomberg School of Public Health, School of Nursing and School of Medicine to Governor Hogan (Mar. 25, 2020), and Letter from the Maryland State Medical Society to Maryland's District & Circuit Court Judges (Mar. 19, 2020). The Office of the Public Defender has also compiled a list of news articles citing State's Attorneys and medical professionals who have recognized the need to reduce jail or prison populations to slow this pandemic. (These documents are attached as Ex. 2.)

⁴ See AFSCME, *Overview of COVID-19 Response at State Agencies and USM Schools*, at pp. 2-3 (Mar. 27, 2020); Danielle E. Gaines, *With COVID-19 Diagnoses in State Prison, Advocates Intensify Calls for Inmate Releases*, Maryland Matters (Mar. 31, 2020); Mike Hellgren, *'I'm Terrified': Correctional Officer Fears More Coronavirus Cases In Maryland Prisons*, WJZ CBS Baltimore (Mar. 31, 2020). (Attached as Ex. 3.)

hearing (with participants permitted to appear by phone, video or other electronic means) for inmates who are 60 years of age or older, who have one or more conditions identified by the Centers for Disease Control as placing them at elevated risk of death or serious complications from Covid-19, or who are within 90 days of their current release date, regardless of whether they filed a motion within 90 days after sentencing, whether such a motion was previously ruled upon, or whether it has been more than five years since sentencing;

- Authorize judges to grant motions for modification of sentence for incarcerated individuals without a hearing where the parties agree to the modification and no victim notification request has been filed in the case;
- Create a presumption in favor of granting a motion for modification of sentence to release individuals who are within ninety (90) days of release.

Pretrial (and pre-VOP)

- Cease detentions based on risk of non-appearance for court proceedings, and cease detentions based on dangerousness unless the judicial officer determines that the danger posed by the releasing the defendant outweighs the danger to the defendant and others of incarcerating them during the pandemic;
- Direct each administrative judge, pursuant to Maryland Rule 4-216.3(c),⁵ to work proactively with the State's Attorney's Office and the Office of the Public Defender "to eliminate unnecessary detention" as expeditiously as possible; and direct each administrative judge to immediately establish a process for expeditious (within three days or less) review of (a) requests for release or home detention by individuals who are incarcerated pending trial or a violation of probation hearing, and (b) habeas petitions challenging such incarceration.

Warrants

- Suspend or rescind any warrants issued for failure to appear or technical violations of probation; and suspend or rescind any warrants issued for non-technical violations of probation unless the judge determines that any danger posed by the probationer remaining at liberty outweighs the

⁵ Rule 4-216.3(c) provides: "In order to eliminate unnecessary detention, the court shall exercise supervision over the detention of defendants pending trial. It shall require from the sheriff, warden, or other custodial officer a weekly report listing each defendant within its jurisdiction who has been held in custody in excess of seven days pending preliminary hearing, trial, sentencing, or appeal. The report shall give the reason for the detention of each defendant."

danger to the probationer and others of incarcerating them during the pandemic.

If adopted, these measures will save lives and protect public health in this extraordinary time.⁶

We acknowledge and deeply appreciate the proactive efforts by certain judges and prosecutors in some Maryland jurisdictions to reduce the number of people incarcerated. Unfortunately, this approach is not uniform around the state, with some refusing to reconsider prior detention decisions or expressing the dangerously misinformed view that people are safer inside a jail or prison. By adopting the measures described above, the Judiciary's leadership will provide critical guidance and direction, and eliminate barriers to courts releasing individuals.

In making these proposals, we are mindful of the recent words of a federal judge, explaining his decision to order the release of several detainees. He spoke to the need for heroic action by the judiciary in the face of this pandemic:

In times such as these, we must acknowledge that the *status quo* of a mere few weeks ago no longer applies. Our world has been altered with lightning speed, and the results are both unprecedented and ghastly. We now face a global pandemic in which the actions of each individual can have a drastic impact on an entire community. The choices we now make must reflect this new reality.

Respondents' Facilities are plainly not equipped to protect Petitioners from a potentially fatal exposure to COVID-19. While this deficiency is neither intentional nor malicious, should we fail to afford relief to Petitioners we will be a party to an unconscionable and possibly barbaric result. Our Constitution and laws apply equally to the most vulnerable among us, particularly when matters of public health are at issue. This is true even for those who have lost a measure of their freedom. If we are to remain the civilized society we hold ourselves out to be, it would be heartless and inhumane not to recognize Petitioners' plight. And so we will act.⁷

Thank you in advance for your consideration of these proposals, and please let us know how we may support your efforts to safeguard the rights, health and safety of the people of Maryland in this challenging time.

⁶ Many of these measures were included in the report and recommendation prepared by a special master appointed by the Supreme Judicial Court of Massachusetts. (Attached as Ex. 4.) For another example of efforts by a state court to reduce jail populations in response to the pandemic, see Consent Order & Amended Order, *In the Matter of the Request to Commute or Suspend County Jail Sentences*, No. 084230 (N.J. March 22, 2020). (Attached as Ex. 5.)

⁷ Mem. & Order (issued 3/31/2020), *Thakker v. Doll*, Case No. Case 1:20-cv-00480-JEJ, at p.24 (M.D. Pa.).

Sincerely,



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Cc: Brian Frosh, Attorney General

EXHIBIT 1



Need Help?

Call 212-577-3300

COVID-19 Infection Tracking in NYC Jails

The Legal Aid Society is tracking and publishing regular updates on the spread of COVID-19 on Rikers Island and other NYC jails. Our latest analysis comparing the rate of infection on Rikers Island to other communities hard-hit by the virus is included as downloadable files at the bottom of this page.

“COVID-19 is spreading rapidly at Rikers Island and other local jails, endangering our clients, correction staff and all of New York City,” said Tina Luongo, Attorney-in-Charge of the Criminal Defense Practice at The Legal Aid Society. “Based on this analysis, New York City jails have become the epicenter of COVID-19. It is imperative that Albany, City Hall, our local District Attorneys and the NYPD take swift and bold action to mitigate the spread of this deadly virus. Stop sending people to Rikers and let these New Yorkers out immediately. Anything else is too little, too late.”

Coronavirus Infection Rates as of April 1, 2020

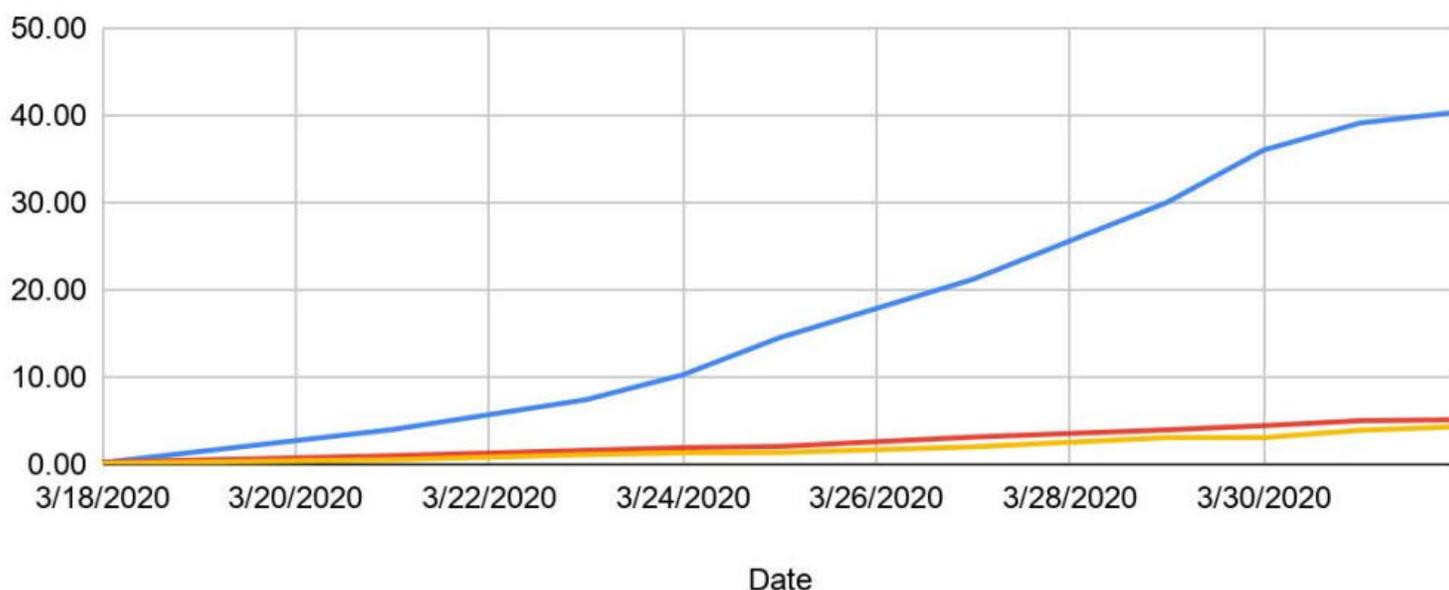
Locations	Cases	Population	Infection Rate	Infections/ 1,000 people
NYC Jails (Rikers)**	184	4,563	4.03%	40.32
New York City	41,771	8,175,133	0.51%	5.11
New York State	83,760	19,440,469	0.43%	4.31
United States	205,438	331,002,651	0.06%	0.62
Hubei Province (Wuhan)	67,802	59,020,000	0.12%	1.15
China	81,554	1,439,323,776	0.01%	0.06

Lombardy, Italy	43,208	10,040,000	0.43%	4.3
Italy	110,574	60,461,826	0.18%	1.83

**This is not the cumulative number of cases of people who have contracted COVID-19 while detained in NYC jails. NYC DOC is releasing the daily number of people currently in NYC Jails who have tested positive for COVID-19, which does not include those who contracted COVID-19 in DOC custody who have been released. It may also not reflect the number of those in DOC custody who are hospitalized. [The Legal Aid Society is seeking clarity from the Department of Correction to get accurate and cumulative data.](#)

NYC Jails (Rikers) Infections/ 1,000 people, NYC Infections/ 1,000 people and NYS Infections/ 1,000 people

— NYC Jails (Rikers) Infections/ 1,000 people
 — NYC Infections/ 1,000 people
— NYS Infections/ 1,000 people



Daily Data Updates

04/01/20 – [Charts and Graphs / Raw Data and Citations](#)

03/31/20 – [Charts and Graphs / Raw Data and Citations](#)

03/30/20 – [Charts and Graphs / Raw Data and Citations](#)

03/29/20 – [Charts and Graphs / Raw Data and Citations](#)

03/28/20 – [Charts and Graphs](#) / [Raw Data and Citations](#)

03/27/20 – [Charts and Graphs](#) / [Raw Data and Citations](#)

03/25/20 – [Charts and Graphs](#) / [Raw Data and Citations](#)

Additional Resources

As COVID-19 spreads across the country, we've put together a [template](#) and [step-by-step guide](#) for analyzing the data and making charts and graphs on the spread of the virus in other jails, prisons, and immigration detention facilities.

Contact Information

For questions or further information please email [Molly Griffard](#) and [Vincent Ciaccio](#).

EXHIBIT 2

March 25, 2020

Hon. Larry Hogan
Governor of Maryland
Annapolis, MD

Dear Governor Hogan:

We are writing as faculty members of the Johns Hopkins Bloomberg School of Public Health, School of Nursing and School of Medicine to express our urgent concern about the spread of COVID-19 in Maryland's prisons, jails, and juvenile detention centers. As you know, COVID-19 is highly contagious, difficult to prevent except through social distancing, and especially dangerous to individuals over age 60 or with a chronic disease. Moreover, recent data suggest that the virus can remain on surfaces for up to 72 hours, thus rendering social distancing less effective in circumstances where the virus is present.

Jails, prisons, detention facilities and other closed settings have long been known to be associated with high transmission probabilities for infectious diseases, including tuberculosis, multi-drug resistant tuberculosis, influenza, MRSA (methicillin resistant staph aureus), and viral hepatitis. Several deaths were reported in the US in immigration detention facilities associated with ARDS (acute respiratory distress syndrome) following influenza A, including a 16 year old immigrant child who died of untreated ARDS in custody in May 2019. ARDS is the life-threatening complication of COVID-19 disease and has a 30% mortality given ideal care. A correctional officer in New York has also died of the disease.

The close quarters of jails and prisons, the inability to employ effective social distancing measures, and the many high-contact surfaces within facilities, make transmission of COVID-19 more likely. Soap and hand sanitizers are not freely available in some facilities. Hand sanitizers like Purell, are banned in many facilities, because they contain alcohol. Further, for incarcerated individuals who are infected or very sick, the ability properly to treat them and save their lives is very limited. Testing kits are in short supply, and prisons and jails have limited options for proper respiratory isolation.

A number of features of these facilities can heighten risks for exposure, acquisition, transmission, and clinical complications of COVID-19 and other infectious diseases. These include physical/mechanical risks such as overcrowding, population density in close confinement, insufficient ventilation, shared toilets, showers, and eating environments and limited availability of hygiene and personal protective equipment such as masks and gloves in some facilities. The high rate of turnover and population mixing of staff and detainees also increases likelihoods of exposure. This has led to prison outbreaks of COVID-19 in multiple detention facilities in China, associated with introduction into facilities by staff.

These populations are also at additional risk, due to high rates of chronic health conditions; substance use; mental health issues; and, particularly in prisons, aging and chronically ill populations who may be vulnerable to more severe illnesses after COVID-19 infection, and to death. Given that Maryland prisons, jails, and juvenile detention centers incarcerate high

numbers of marginalized populations and African Americans will be disproportionately affected by these risks.

Prison, jail, and detention center staff may bring the virus into the facility and are also at risk of acquisition from infected incarcerated individuals. Once infected, staff may also transmit the virus back into the communities and to their families. As jail, prison, and detention center health care staff themselves get sick with COVID-19, workforce shortages will make it even more difficult to adequately address all the health care needs in facilities.

Every effort should be made to reduce exposure in jails and other detention facilities, and we appreciate the efforts thus far of administrators toward this goal. To ensure that there are no impediments for inmates to come forward when sick, health care must be available to inmates without co-pays. But there should also be efforts to reduce the state prison population as well. It may be extremely difficult, however, to achieve and sustain prevention of transmission in these closed settings and given the design feature of the facilities. Moreover, lockdowns and use of solitary confinement should not be used as a public health measure, both because they have limited effectiveness and because they are a severe infringement of the rights of incarcerated people. It is therefore an urgent priority in this time of national public health emergency to reduce the number of persons in detention as quickly as possible.

Treatment needs of infected incarcerated individuals also need to be met, including expanded arrangements with local hospitals. It is essential that these facilities, which are public institutions, be transparent about their plans for addressing COVID-19. Such transparency will help public health officials and families of incarcerated people know what facilities are doing, and it also can help jurisdictions across the state share information and best practices. Other counties across the country have shared their action plans with the public and Maryland should follow these examples.

We therefore urge you to take the following steps:

1. Require correctional facility administrators to make their plans for prevention and management of COVID-19 in their institutions publicly available, as the San Francisco Sheriff's Department has done. Protocols should be in line with national CDC guidance. Frequently updated recommendations and model protocols are available from the National Commission on Correctional Health Care (<https://www.ncchc.org/blog/covid-19-coronavirus-what-you-need-to-know-in-corrections>)
2. Ensure that intake screening protocols are updated to include COVID-specific questions.
3. Ensure the availability of sufficient soap and hand sanitizer for incarcerated individuals without charge; restrictions on alcohol (in hand sanitizers) should be suspended.
4. Implement other precautions to limit transmission within prisons and jails without relying on widespread use of lockdowns and solitary confinement. Additional precautions jointly issued by the Vera Institute of Justice and Community Oriented

- Correctional Health Services are available at <https://cochs.org/files/covid-19/covid-19-jails-prison-immigration.pdf>
5. Consider pre-trial detention only in genuine cases of security concerns. Persons held for non-payment of fees and fines, or because of insufficient funds to pay bail, or parole or probation violations, should be prioritized for release. No one in these categories should be sent to jail
 6. Expedite consideration of all older incarcerated individuals and those with chronic conditions predisposing to severe COVID-19 disease (heart disease, lung disease, diabetes, immune-compromise) for parole or other form of release from prison, with alternative forms of supervision and with supports in the community once released. Clemency power and expanded authority in Maryland law for administrative parole should be employed.
 7. Invest in increased resources for discharge planning and re-entry transitions to facilitate prison release of people under these revised policies.
 8. Arrange for COVID-19 testing of incarcerated individuals and correctional facility workers who become ill.
 9. Cease any collection of fees or co-pays or medical care.
 10. Seek a Medicaid 1135 waiver to enable hospitals to provide an appropriate level of care to incarcerated individuals who are sick. See <https://cochs.org/files/medicaid/COVID-19-Justice-Involved-1135-Waiver.pdf>

This pandemic is shedding a bright light on the extent of the connection between all members of society: jails, prisons and other detention facilities are not separate, but are fully integrated with our community. As public health experts, we believe these steps are essential to support the health of incarcerated individuals, who are some of the most vulnerable people in our society; the vital personnel who work in prisons and jail; and all people in the state of Maryland. Our compassion for and treatment of these populations impact us all.

Thank you very much.

This letter represents the views of the following signatories, and do not necessarily reflect the views of The Johns Hopkins University

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March 19, 2020

RE: COVID-19 Risks for Detained Populations in Maryland from a group of concerned scientists, physicians, and public health experts

To the Honorable Judges of the Maryland District and Circuit Courts, state and local corrections departments:

We write as a group of concerned physicians and public health experts strongly urging the Maryland court system to address the ongoing global health pandemic by swiftly implementing the following recommendations:

- 1) Immediately implement community-based alternatives to detention to alleviate potential exposure to COVID-19 in jails and prisons; and**
- 2) Incarcerate as few people as possible in order to mitigate the harm from a COVID-19 outbreak. Detained populations are at high risk to contract a virus like COVID-19 which spreads through respiratory droplets.**

I. Coronavirus Pandemic

In light of the rapid global outbreak of the novel coronavirus disease 2019 (COVID-19), we want to bring attention to the serious harms facing individuals in detention facilities in Maryland. The United States Department of Health and Human Services Secretary Alex Azar declared a public health emergency on January 31, 2020, and Governor Larry Hogan declared a public health emergency in Maryland on March 5, 2020. The state of Maryland has since closed all schools, restaurants and other places of public gathering. The courts have halted regular judicial activity with the exception of emergency matters.

As of March 18, 2020, there have been over 210,000 confirmed cases worldwide with over 8,900 deaths. The US has over 7,500 confirmed cases with 117 deaths. Maryland has 85 confirmed cases and one death. **Public health experts expect the number of confirmed cases to rise exponentially and warn that the situation in the U.S. will get worse before improving.**

II. Public Health Conditions in Detention Facilities Already Poor

Detention facilities are designed to maximize control of the incarcerated population, not to minimize disease transmission or to efficiently deliver health care. For these reasons, transmission of infectious diseases in jails and prisons is incredibly common, especially those transmitted by respiratory droplets. It is estimated that up to a quarter of the US prison population has been infected with tuberculosis[1], with a rate of active TB infection that is 6-10 times higher than the general population.[2] **Flu outbreaks are regular occurrences in jails and prisons across the United States.[3],[4] With a mortality rate 10 times greater than the seasonal flu and a higher R0 (the average number of individuals who can contract the disease from a single infected person)[5] than Ebola, an outbreak of COVID-19 in detention facilities would be devastating.**

III. Risks of a COVID-19 Outbreak in Detention

Emerging evidence about COVID-19 indicates that spread is mostly via respiratory droplets among close contacts[6] and through contact with contaminated surfaces or objects. Reports that the virus may be viable for hours in the air and on surfaces are particularly concerning.[7] Though people are most contagious when they are symptomatic, transmission has been documented in the absence of symptoms. We have reached the point where community spread is occurring in the U.S. The number of cases is growing exponentially, and health systems are already being strained.

Social distancing measures recommended by the Centers for Disease Control (CDC)[8] are nearly impossible in detention facilities and testing remains largely unavailable. In facilities that are already at maximum capacity large-scale quarantines may not be feasible. Isolation may be misused and place individuals at higher risk of neglect and death. COVID-19 threatens the well-being of detained

individuals, as well as the corrections staff who shuttle between the community and detention facilities.

Given these facts, it is only a matter of time before we become aware of COVID-19 cases in a detention setting in which inmates live in close quarters, with subpar infection control measures in place, and whose population represents some of the most vulnerable. **In this setting, we can expect spread of COVID-19 in a manner similar to that at the Life Care Center of Kirkland, Washington, at which over 50% of residents have tested positive for the virus and over 20% have died in the past month.** Such an outbreak would further strain the community's health care system.

In about 16% of cases of COVID-19, illness is severe including pneumonia with respiratory failure, septic shock, multi-organ failure, and even death. Some people are at higher risk of getting severely sick from this illness. This includes people who have serious chronic medical conditions like asthma, lung disease, diabetes, and those who are immunocompromised. There are currently no antiviral drugs licensed by the U.S. Food and Drug Administration (FDA) to treat COVID-19, or post-exposure prophylaxis to prevent infection once exposed.

IV. Maryland Jails are No Exception

Like many states, Maryland has moved into the community transmission phase of this pandemic, and has seen a spike in cases in just over a few days. As courts continue to hear bond hearings and other emergency matters, it is critical that the population of detained people be reduced as much as possible and that extra steps are taken to protect those who are or will remain incarcerated.

Public defenders report that in one jurisdiction, people are brought to bond review hearings in shackles, chained together in close proximity. In other jurisdictions, detained people are crammed into small spaces as they await their bond hearings. Jails and courts should immediately put an end to these practices. Public defenders have also reported that judges are detaining some people on cash bonds that they cannot afford even in cases where there is no public safety threat. Where there is no public safety threat, courts must prioritize public health, and release low-income people

without financial conditions. In addition, in some facilities across the state, detained people must pay a fee to make medical calls—this, in addition to limiting access to soap and hand sanitizer, are practices that jeopardize the individual and collective health of those in jail, including staff. While we are encouraged to hear that some jails are working with the prosecutor and public defender offices to identify vulnerable populations, including the elderly and those with pre-existing conditions, we urge all jurisdictions to take these steps and act swiftly.

This public health crisis requires each and every one of us to re-evaluate how we conduct our lives and care for one and other. Institutions responsible for the care and custody of incarcerated individuals must take unique steps to “flatten the curve” and slow the spread of this virus. We strongly recommend that the courts implement community-based alternatives to detention to alleviate potential exposure in jails. Incarcerating as few people as possible will help mitigate the harm from a COVID-19 outbreak.

Sincerely,

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[1] Hammett TM, Harmon MP, Rhodes W. The burden of infectious disease among inmates of and releases from US correctional facilities, 1997, *Am J Public Health*, 2002, vol. 92 (pg. 1789-94)

[2] Centers for Disease Control Prevention (CDC). Prevention and control of tuberculosis in correctional and detention facilities: recommendations from CDC, *MMWR Morb Mortal Wkly Rep*, 2006, vol. 55 (pg. 1-48)

[3] Dober, G. Influenza Season Hits Nation's Prisons and Jails. *Prison Legal News*, June, 2018 (pg. 36)

<https://www.prisonlegalnews.org/news/2018/jun/5/influenza-season-hits-nations-prisons-and-jails/>

[4] Pandemic influenza and jail facilities and populations, Laura Maruschak, et. al., American Journal of Public Health, September 2009

[5] The R0 is the reproduction number, defined as the expected number of cases directly generated by one case in a population where all individuals are susceptible to infection.

[6] Close contact is defined as—

a) being within approximately 6 feet (2 meters) of a COVID-19 case for a prolonged period of time; close contact can occur while caring for, living with, visiting, or sharing a health care waiting area or room with a COVID-19 case

b) having direct contact with infectious secretions of a COVID-19 case (e.g., being coughed on)

[7] <https://www.medrxiv.org/content/10.1101/2020.03.09.20033217v1.full.pdf>

[8] <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>

RECENT NEWS ARTICLES ON NEED TO REDUCE JAIL/PRISON POPULATION TO COMBAT SPREAD OF COVID-19

Maryland Prosecutors Agreeing to Reduce Jail Population

- PRINCE GEORGE'S COUNTY: https://www.washingtonpost.com/local/legal-issues/prosecutors-press-to-release-inmates-drop-charges-and-thin-prison-population-in-response-to-the-coronavirus/2020/03/19/13005ee6-6948-11ea-b313-df458622c2cc_story.html

Quoting Dr. Ross MacDonald, Chief Physician at Rikers Island:

“We cannot socially distance dozens of elderly men living in a dorm, sharing a bathroom. Think of a cruise ship recklessly boarding more passengers each day. A storm is coming and I know what I’ll be doing when it claims my first patient. What will you be doing? What will you have done? We have told you who is at risk. Please let as many out as you possibly can.”

- ANNE ARUNDEL COUNTY: <https://www.baltimoresun.com/coronavirus/ac-cn-jail-population-reduction-20200320-fy4rdzrhfbf5m5msg77tjbya-story.html>
- BALTIMORE CITY: <https://www.baltimoresun.com/coronavirus/bs-md-ci-cr-mosby-prisoner-release-20200318-u7knneb6o5gqvnqmtpejftavia-story.html>

Articles Citing Need To Reduce Prison & Jail Populations

- *When Purell is contraband, how do you contain coronavirus?* The Marshall Project (March 6, 2020) https://www.themarshallproject.org/2020/03/06/when-purell-is-contraband-how-do-you-contain-coronavirus?utm_medium=social&utm_campaign=share-tools&utm_source=twitter&utm_content=post-top

“Jails and prisons are often dirty and have really very little in the way of infection control. There are lots of people using a small number of bathrooms. Many of the sinks are broken or not in use. You may have access to water, but nothing to wipe your hands off with, or no access to soap.” Dr. Homer Venters, former Chief Medical Officer of New York City jail system.

“That’s a gauntlet for the U.S. Really? Iran’s going to do it better than we are?” [On Iran temporarily releasing 54,000 prisoners.] Jody Rich, Professor of Medicine and Epidemiology at Brown University.

- *We must release prisoners to lessen the spread of coronavirus*, The Washington Post (March 17, 2020) <https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus/>

Authored by Dr. Josiah Rich, Professor of Medicine and Epidemiology at Brown University, and Dr. Scott Allen, Professor of Medicine Emeritus at University of California at Riverside.

- *Maryland jails are incubators for the coronavirus and precautions must be taken to avoid an outbreak, experts say*, The Baltimore Sun (March 13, 2020) <https://www.baltimoresun.com/coronavirus/bs-md-ci-coronavirus-maryland-jails-20200313-zn4k2knuujgvnhqmpm63jib3la-story.html>

“Jails and prisons promote spread. Generally these are filthy, dirty places. One of the simplest tools to combat an outbreak is hand washing. Many people in prisons and jails don’t have access. Many sinks are broken or don’t have soap or paper towels. Often there are no sinks. Think of intake areas, teeming pens of 30 to 40 to 50 people in a room with a concrete floor that people lie on and no place to wash. If people develop symptoms, they will be housed in isolation. If they are diagnosed they have to go to a third place for quarantine. If they become ill there will have to be taken to the hospital. This requires the ability to move people around, a difficult process ordinarily and harder when they are infectious.” Dr. Homer Venters, former Chief Medical Officer of New York City jail system.

- *New coronavirus cases in US jails heighten concerns about an unprepared system*, CNN (March 18, 2020) <https://www.cnn.com/2020/03/18/politics/coronavirus-in-us-jails-heighten-concerns/index.html>
- *The Coronavirus Could Spark a Humanitarian Disaster in Jails and Prisons*, Slate.com (March 11, 2020) https://slate.com/news-and-politics/2020/03/coronavirus-civil-rights-jails-and-prisons.amp?_twitter_impression=true
- *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, The New York Times (March 16, 2020) <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>

“We should recall that we have 5,000 jails and prisons full of people with high rates of health problems, and where health services are often inadequate and disconnected from the community systems directing the coronavirus response. Coronavirus in these settings will dramatically increase the epidemic curve, not flatten it, and disproportionately for people of color.” Dr. Homer Venters, former Chief Medical Officer of New York City jail system.

“We are trying to absorb information from countries who have experienced the Covid-19 pandemic before us. But since the United States has the highest incarceration rate in the world, it is difficult to extrapolate the potential impact.” Dr. Alysse Wurcel,

Infectious Diseases physician at Tufts Medical Center and at six county jails in eastern Massachusetts.

- *Why some Canadian prisoners should be released during the coronavirus pandemic*, The Conversation (March 17, 2020) <http://theconversation.com/why-some-canadian-prisoners-should-be-released-during-the-coronavirus-pandemic-133661>
- *'We Are Not A Hospital': A Prison Braces for the Coronavirus*, The New York Times (March 17, 2020) <https://www.nytimes.com/2020/03/17/us/coronavirus-prisons-jails.html>
- *Prosecutors across U.S. call for action to mitigate spread of coronavirus in jails and prisons*, The Appeal (March 17, 2020) <https://theappeal.org/prosecutors-across-u-s-call-for-action-to-mitigate-spread-of-coronavirus-in-jails-and-prisons/?fbclid=IwAR36yYmbrqcY4Gg2fUNymd81oXF1gGBM9SfmyDSWRvfXzYPEm5pDAn9vk6s>
- *L.A. County releasing some inmates from jail to combat coronavirus*, Los Angeles Times (March 16, 2020) <https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>

“Nobody should be being detained for not paying a parking fee or because they are poor and can’t make bail. We need to be releasing those people yesterday.” Dr. Chris Beyrer, Professor of Epidemiology at Johns Hopkins University.

- *What Happens To People’s Legal Cases As Coronavirus Shuts Down Courts?* NPR (March 14, 2020) <https://www.npr.org/2020/03/14/815778399/what-happens-to-peoples-legal-cases-as-coronavirus-shuts-down-court>
- *To contain coronavirus, release people from prison*, The CT Mirror (March 14, 2020) <https://ctmirror.org/category/ct-viewpoints/joseph-gaylin-noora-reffat-and-arvind-venkataraman/>
- *Inmates in Ohio being released due to concern of coronavirus spread*, News Channel 11 WJHL (March 14, 2020) https://www.wjhl.com/coronavirus/inmates-in-ohio-being-released-due-to-concern-of-coronavirus-spread/?utm_medium=social&utm_source=facebook_WJHL&fbclid=IwAR3xUd18Sv3t4GZpardvik28xcz3FU_I3gaAdk7zsKkWoLolZbkM9Qwmoms
- *China says more than 500 cases of the new coronavirus stemmed from prisons*, CNBC (February 20, 2020) <https://www.cnbc.com/2020/02/21/coronavirus-china-says-two-prisons-reported-nearly-250-cases.html>
- *Coronavirus Has Arrived at Rikers Island: Inside New York City Jails, Where the Pandemic is Set to Explode*. The Intercept (March 18, 2020) <https://theintercept.com/2020/03/18/coronavirus-rikers-island-jail/>

- *US jails begin releasing prisoners to stem Covid-19 infections*, BBC News (March 19, 2020) <https://www.bbc.com/news/world-us-canada-51947802>
- *The Korean clusters: How coronavirus cases exploded in South Korea churches and hospitals*, Reuters (March 20, 2020) <https://graphics.reuters.com/CHINA-HEALTH-SOUTHKOREA-CLUSTERS/0100B5G33SB/index.html>

EXHIBIT 3



Overview of COVID-19 Response at State Agencies and USM Schools
March 27, 2020

COVID 19 Response at State Agencies and USM Schools

We are two weeks into the COVID-19 crisis here in Maryland. We are proud of the work AFSCME Council 3 members are doing during this unprecedented health crisis. We are also appreciative of the speed with which elected leaders in Maryland have moved in response to this crisis. Maryland is doing well in the face of incredible adversity.

However, there are areas where we need to sharpen and improve our response. Below, we lay out four vital areas where we need to focus in all workplaces, and below that are specifics by agency and workplace. We recognize:

- We have a responsibility to make sure the public we serve is as safe as possible and our members are working in as safe an environment as possible. For many of our members their jobs are simply incompatible with standard CDC social distancing guidelines for dealing with COVID-19.
- AFSCME Council 3 members are truly at the forefront of battling COVID-19. As we can see from other nations, the work that our members provide in hospitals, prisons, juvenile detention facilities, in the field, or in offices providing assistance to Marylanders during this vulnerable time, is crucial to ensuring the quality of Maryland's response. Our state operations need to be a fortress against - and not a breeding ground for - the coronavirus.

For all state operations, including higher education institutions; we need:

- 1. An immediate dialogue with solutions as to operations during the inevitable next phase of a sharp spike in COVID-19 cases.** Governor Hogan and the General Assembly are planning for it. We need to have a dialogue NOW on the plans for operations in the next phase. Emergency plans work when they're discussed and drilled before the event happens. We post the location of fire exits before a fire breaks out. In no agency or workplace have we had a productive discussion as to how operations will continue during the next phase. Employees who are confident and informed are more likely to come to work and effectively perform their duties.

We share the incredulity of Del. Debra Davis, who has no other option but to pursue an MPIA now with the DPSCS if she wants to see their emergency plan after they abruptly rejected her request.¹ Now is the time for transparency, not bureaucratic infighting and closed-door meetings.

¹ <https://twitter.com/DDavisCharlesCo/status/1242845976798339074?s=20>



Overview of COVID-19 Response at State Agencies and USM Schools
March 27, 2020

2. **A tighter review and transparency of who is “essential” and required to come into work.**
Most USM institutions, for example, are unable or unwilling to provide a list of who they are requiring to come into work. Across all agencies, there are people who can telework but are required to come into the worksite. There are also people whose work is by no means “essential” but who are required to come in. This is contrary to the direction of our elected leaders and contrary to the advice of health professionals. We should be doing everything possible to limit exposure.
3. **To recognize that many state employees are doing hazardous work and should be compensated appropriately.** As referenced above, there are state employees who will come in contact with COVID-19 individuals and will not be able to conform to CDC guidelines. Additional compensation for their risks is wise and fair.
4. **To ensure employees have access to personal protective equipment** like gloves, masks, alcohol-based sanitizer, gowns and others where it is recommended.

Below are the specific observations and recommendations for agencies and USM schools:

Parole and Probation

Execute Basic Office Hygiene and Procedure: Agents are concerned that it’s difficult to maintain a safe distance with the number of offenders that are coming into the main entrances of field offices. Visitors are sharing pens and paper forms with staff and other offenders. Finally, agents argue that they have the tools (especially phones) to monitor these offenders remotely, and that staff and offenders are being placed at risk unnecessarily. The interview rooms are not set up for six feet of social distancing—they are usually far less. Agents have no protections during these close conversations. There is no cleaning in between interviews. Agents and Bailiffs have received no training on how to continue carrying out their duties during the crisis.

Corrections

Standardize screening procedures: Every entrance needs to be screening everyone who enters uniformly, but this is only happening at the employee entrance. Every screening needs to be done by medical staff, which is only happening intermittently. More “touch” thermometers are needed so there is less use of the “under the tongue” thermometers. People who are screened out but asymptomatic should be sent home on administrative leave, not their own leave.

Start social distancing in the prison: Limit the number of inmates in recreation areas to no more than ten at a time. While institutions are staggering more activities, they need to do more to try to promote social distancing. Right now, there are still recreation halls with thirty-plus inmates, chow lines with over a hundred, prison yards with over one hundred, and weight pits with up to fifty at a time. Telework needs to be vigorously implemented for non-correctional officer staff like case management. Presently, only supervisors can telework.



Overview of COVID-19 Response at State Agencies and USM Schools March 27, 2020

Mirror restrictions among the general public: Gym, religious services, barbershop and direct intakes should be cancelled. Visits should remain suspended and opportunities for video chats and extra phone time for inmates should be expanded. All contact sports should be suspended if they haven't already.

Provide proper PPE's: There are not enough gloves for everyone, and there are not enough respirators available if there is an actual identified COVID-19 victim the institution. The non-alcohol hand sanitizer being used needs to be stopped and replaced with an alcohol-based sanitizer immediately.

Create contingency plans to limit outbreaks inside the institution: There is a plan for transporting an inmate if they test positive for COVID-19, but there is no plan as to how staff will be notified, who should be quarantined under these circumstances, or how the facility will be cleaned.

Department of Human Services

Execute engineering controls to prevent the spread of the virus: Provide appropriate PPE for those engaging with the public, including gloves, alcohol-based hand sanitizer and other relevant equipment. Clean and disinfect all buildings and implement daily and frequent cleaning for high traffic doors, telephones, keyboards, water coolers, elevators, etc. Ventilation in offices needs improvement.

Provide clear guidance on leave policies, contingency planning, and pay: DHS needs to be more proactive about providing system-wide communications: the game of telephone tag that is currently being used to filter information through 24 state jurisdictions, multiple programs and supervisors is not effective.

Assess all available options for limiting exposure to clients while promoting normalcy: Appropriate equipment needs to be provided to facilitate tele-contact with clients. The agency needs to explore video conferencing and teletherapy equipment for those who don't already have it: for example, there could be video visits with parents and continuation of peer groups (life skills groups, youth advisory board) virtually. In addition, funding should be provided for individualized "hobby packs" for youth stuck at home to stay occupied.

Institute Court Restrictions: No children (aged 0-21) should be in court currently. Video conferencing needs to be enabled for court so out-of-home stays and shelter periods are not unnecessarily extended.

Department of Health

Implement Basic Health and Safety Protocols in State Hospitals: Social distancing needs to be rigorously enforced, especially at the Potomac Center. Screening procedures need to be standardized, and staff trained in conducting screening to ensure accurate temperature taking. No plan has been posted or discussed as to what will happen if or when a patient tests positive for COVID-19. Hospitals also need to provide guidance on how they are tracking inventory on PPEs and need to develop contingency plans should they exhaust their supplies. Staff need to be trained on how to properly put on and take off PPE's for re-use to prevent contamination. To limit exposure, teleworking and/or teletherapy options, as well as coverage rotations, should be immediately explored and implemented for clinical staff and non-direct care positions.



Overview of COVID-19 Response at State Agencies and USM Schools March 27, 2020

Planning Needs to Come from the Office of Chief Medical Examiner: A specific discussion needs to take place regarding current capacity to handle increased caseloads. Precautions need to be trained for and implemented while collecting post-mortem specimens. Staff needs to be protected with appropriate PPEs.

Provide Local Health Departments with Needed Guidance: Clear guidance on employee roles and assessment of using all available options for conducting applications over the phone need to be developed and implemented.

Department of Juvenile Services

Provide Proper PPE to All Facilities: Lower Eastern Shore Children's Center completely ran out of cleaning and sanitizing supplies this week.

Standardize Screening Procedures at BCJJC: Judges and Supervisors are entering the premises through back doors and not being screened.

Facilitate Teletherapy: Psychologists are still doing in-person meetings and need an option for phone conferencing.

Plan for If or When a Juvenile or Staff Member Tests Positive: No plan has been posted or discussed as to what would happen if a child tests positive for COVID-19.

Judiciary

Business As Usual Is Not Acceptable: The courts are being run exactly the way they were before the crisis. While they may be closed to the public, there are no screenings happening for staff. There have been no trainings or re-assessments for how to limit exposure to staff still reporting daily to the courts.

Department of Labor

Provide and Clarify Office Hygiene and Safety Procedures: UI currently has a backlog of 55,000 Unemployment Claims. Employees are working six days a week in the on-line claim centers in College Park and Towson in an attempt to mitigate backlog. Yet basic protocols are not being adequately followed.

Provide More Support for Telework: Few Job Service Specialists have the necessary tools to do their work remotely and have made requests of management to provide laptops so they can access forms, waivers, etc. A cell phone doesn't provide the tools necessary to effectively perform their duties.

Provide Better Supervision: Some staff are finding it difficult to perform the tasks that supervisors are giving them, as some of these tasks are outside the scope of their normal duties.

Department of General Services

Provide and Execute Proper Training: Housekeeping staff are proceeding as "business as usual" despite specific CDC guidelines existing on how to properly clean and disinfect surfaces. No additional training has been conducted. Maintenance staff have received no training on limiting their exposure, despite daily physical contact with surfaces that can spread the coronavirus. The provision of proper PPEs for staff is an ongoing issue.



Overview of COVID-19 Response at State Agencies and USM Schools
March 27, 2020

Observe recommended quarantine periods: Management is advising housekeeping staff who are identified as having been potentially exposed that the 14-day quarantine period does not apply to them.

University System of Maryland

Demonstrate Urgency: They have consistently been more than a week behind the state in addressing issues. All campuses are still “open” with staff, faculty, and students still onsite.

Improve Staff Communications: Communication with staff has been poor, late, and sometimes altogether absent.

Provide Who is Still Working on Campus and Why: Despite numerous requests, the union cannot obtain what jobs are being done and how employees are being protected.

Adopt Appropriate Protective Measures and Protocols: The most basic protocols of screening, training, deep cleaning, signage and distribution of cleaning supplies has been limited or non-existent.

Ensure Proper PPE Distribution: Distribution of essential personal protection equipment has been inconsistent and, in some places, inadequate.

Ensure Only Essential/Mission Critical Staff are on Campus: Because of a lack of clarity or mandate, staff including but not limited to groundskeepers, library workers, agriculture workers, administrative assistants and admissions office personnel are still reporting to work.

Develop Plans for Future Campus Functioning and Operations: Now that live cases of COVID-19 infection have been documented, “what’s next” plans need to be developed, trained on, and executed.

Clarify Telework Policy: There has been poor or inconsistent direction, a lack of necessary resources and unreasonable expectations. Some staff are being overworked.

With COVID-19 Diagnoses in State Advocates Intensify Calls for Inmate

By **Danielle E. Gaines** - March 31, 2020



Photo from pexels.com.

Attorneys and advocates in Maryland renewed calls for a reduction in the number of inmates at the state prison system on Monday, after the first confirmed cases of COVID-19 at a state prison were announced.

An inmate at Jessup Correctional Institution tested positive for the novel coronavirus, state officials said. Two contract employees with the Department of Public Safety and Correctional Services, who work at the institution, also tested positive for the virus, Department of Public Safety and Correctional Services spokesman Mark Veitch said.

In the state's maximum-security psychiatric hospital, the Clifton T. Perkins Hospital Center, eight inmates tested positive for COVID-19, according to the Howard County Health Department. There are three more pending tests for patients and one staff member has also tested positive.

State and local health officials said they are following safety protocols at the facilities to stem the spread of the virus. Unions were sounding alarms on Monday, calling for increased protections and efforts to reduce inmate numbers.

The Maryland ACLU and other organizations have called for a decrease in new admissions to state prisons, as well as reductions for low-level offenders and the early release of elderly inmates and others whose sentences are nearing expiration.

"Being in places that have poor access to medical care, that are not sanitary, and that are crowded

risk,” a plea from the Maryland ACLU to Gov. Lawrence J. Hogan Jr. (R) reads. “By making the choice to sacrifice their health and their lives. That is unacceptable.”

Michael Ricci, a spokesman for Hogan, said the administration is “confident in the steps we are taking. State correctional facilities have instituted enhanced hygiene and sanitation practices consistent with the Maryland Department of Health and Centers for Disease Control, he said.

Vernarelli said state prisons have started temperature checks and administering health questionnaires at each shift change. COVID-19 response teams are working to determine whether any other staff or inmates who tested positive and the department has been deep-cleaning its facilities for days.

Charlie Gischlar, a spokesman for the Maryland Department of Health, said all staff at Perkins are taking their temperatures twice a day. Units at the facility are following isolation precautions and staff are wearing gloves and masks to minimize exposure.

But advocates say Hogan should do more to exercise his broad commutation powers and issue an order to reduce the carceral population in Maryland.

Continued incarceration of low-level offenders at local correctional facilities is particularly problematic in Maryland’s state courts for all non-emergency hearings, including jury trials, said Maryland’s Department of Public Safety.

Maryland Court of Appeals Chief Judge Mary Ellen Barbera late last week extended the court closure through the end of the year.

Courts in some counties are now holding dockets of guilty plea hearings, in which defendants can plead guilty without a trial, Feldman said.

“But that’s a very concerning practice we need to be very wary of,” she said. “Because basically they can give up all of your constitutional rights and you’ll be released today. Or you can demand your constitutional rights and you’ll be in jail for a long time. We don’t know when the courts will be back open.”

Feldman said correctional facilities could be breeding grounds for the virus, with hundreds of inmates congregating in shared spaces without adequate social-distancing or sanitizing protection.

“We’ve been raising the red flag for weeks now saying we need to reduce the population, not only the inmate population, but for the correctional officers, and the other personnel who work there every day,” Feldman said. “It’s a public health issue. And it’s going to become a security issue when you have mass amounts of people who are sick and they have to come to work because they don’t want to get sick.”

American Federation of State, County and Municipal Employees Council 3 President Patrick Moran said he is asking for emergency labor-management meetings to discuss the need for more protective equipment and practices for workers.

“We are asking people to put themselves in very dangerous and scary positions right now that have nothing to do with the health of the people they serve and their families’ health,” Moran said. “The least that can be done here is to provide the resources they need in order to do their job in a safe and healthy environment.”

The union has decried the discontinuation of hazard pay for state employees still reporting to work.

By way of example, Moran said more hand sanitizer has been provided in prisons, but it doesn’t cover all areas.

necessary to kill germs. And Oluwadamilola Olaniyan, a union member and correctional officer at Jessup, said the facility's hand sanitizer supply isn't being regularly refilled, along with other protective gear.

Ricci said the public safety department has been monitoring supplies daily and has provided free disinfectant to inmates. The department has undertaken other efforts to reduce transmission as well, including limiting inmate movement.

“Total social distancing is impossible in a prison setting. However, by canceling visits, eliminating inmate activities, and modifying movement the Department is working to keep infection from entering the facility,” Ricci said.

Olaniyan said Monday that more can still be done to curtail movement within the Jessup facility, including limiting inmate movement and providing more hours to control the virus spread.

AFSCME signed on to a [letter from the Maryland Prisoners' Rights Coalition urging an executive order](#) to reduce the inmate population last week.

Feldman said Hogan has broad commutation powers in Maryland law and could release large swaths of inmates if she is concerned about the virus. She said her office hopes to have a conversation with the administration in the coming weeks about the inmate population.

Other states have been moving to reduce inmate populations. In New Jersey, state officials last week announced they would release [inmates](#) for low-level crimes at county jails that should be released. Montana's chief justice [asked](#) for the release of inmates on bond, as many prisoners as you are able, especially those being held for nonviolent offenses.” In California, the state [issued an executive order](#) last week aimed at reducing the state's inmate population by directing local sheriffs to reduce arrests and [issued an executive order](#) last week aimed at reducing the state's new admissions to state prisons.

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A NOTE TO OUR READERS

In these uncertain times, we're here for you. We have a [page dedicated to our reporting on COVID-19](#) with an eye toward the humanity of our sources and a commitment to public accountability.

Stay informed by [signing up](#) for the *Maryland Matters Memo* — our daily morning news roundup, comments, and more.

And if you are able, [please consider a tax-deductible contribution to support our nonprofit newsroom](#).

We're burning the candle at both ends — doing all we can to keep ourselves, and everyone else, as informed as possible.

Please take care!

Danielle E. Gaines

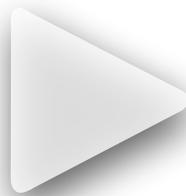
Danielle Gaines most recently worked for *Bethesda Beat* covering Montgomery County. Previously, she spent six years as a government and politics reporter for half that time, covering courts and legal affairs before that. She also reported for *Business in Maryland* and previously worked as a county government and education reporter at the *Merced Sun-Star*.



'I'm Terrified': Correctional Officer Fears More Coronavirus Cases In Maryland Prisons

By [Mike Hellgren](#) March 31, 2020 at 10:59 pm

Filed Under: [Baltimore](#), [Baltimore News](#), [Coronavirus Outbreak In Maryland: WJZ Complete Coverage](#), [COVID-19](#), [Jessup Correctional Institution](#), [Local TV](#), [Talkers](#)



JESSUP, Md. (WJZ) — A correctional officer based in the Jessup Correctional Institution is voicing concerns that the coronavirus may spread wildly behind bars.

The officer, who asked to remain anonymous, spoke to WJZ Investigator Mike Hellgren about the dangers of the job.

"My fear is that it's already spread through the prison, and it's just going to continue to spread like wildfire. And then it's going to be a disaster, and I'm terrified," the officer said. "We will take care of the inmates. They need to take care of this coronavirus and keep their people protected."

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MOST VIEWED



Coronavirus Latest: Here's How Maryland State Police Will Enforce Gov. Hogan's Executive Orders



Coronavirus Latest: 1,660 Maryland COVID-19 Cases, 24 Deaths Reported

- [Coronavirus Latest: Mosby Continues Push For Release Of Non-Violent Inmates As First Cases Of COVID-19 Reported In Correctional Facilities](#)
- [Hogan, Mosby At Odds Over Plan To Release Non-Violent Offenders To Protect Them From Coronavirus](#)
- [Coronavirus Resources: How To Get Help In Maryland](#)
- [Coronavirus In Maryland: What We Know](#)
- [Coronavirus-Related Closings](#)
- [Latest coronavirus stories from WJZ](#)

Cases of the novel coronavirus in Maryland surged to at least 1,660 Tuesday and the number of deaths rose more than 25 percent to at least 23.

A union representing some state employees has been critical of how Maryland has handled the situation at prisons and at the Clifton T. Perkins Hospital, where there are confirmed coronavirus cases.

Three coronavirus cases are tied to Maryland correctional facilities, including two workers and an inmate.



Mike Hellgren
@HellgrenWJZ

Patrick Moran with AFSCME, the state's largest employee union, on the positive #COVID19 cases reported at Clifton T. Perkins Hospital Center. He says there are dangerous conditions for his members statewide including a lack of personal protective equipment. @wjz

7 12:13 AM - Mar 30, 2020

[See Mike Hellgren's other Tweets](#)



Coronavirus Latest: Amazon Fulfillment Center Employee In Baltimore Area Tests Positive For COVID-19



Coronavirus Latest: What Does 'Essential' Mean In Maryland Per Gov. Hogan's Stay-At-Home Executive Order?



Coronavirus Latest: 'Stay At Home' Order Due To COVID-19 In Effect In Maryland, DC



Coronavirus Latest: Md. Police Respond To Hundreds Of Calls Of People Not Following Emergency Social Distance Order



WANTED: Woman Allegedly Fled From Baltimore Accident, Stole Other Driver's Phone After They Took Pictures



Coronavirus Latest: 1,985 COVID-19 Cases Reported In Maryland, 31 Deaths



Murder Suspects Arrested For March 16 Shooting In Southeast Baltimore

Corrections officials said in a news release Monday the safety of its employees and inmates is their top priority:

“The Department has been in proactive emergency mode since day one, working with state and federal health authorities and following approved COVID-19 protocols. DPSCS has been deep-cleaning its facilities—including the ones affected—for days. The Department has identified locations and spaces within its facilities for isolation and quarantine. To the extent possible, social distancing is being practiced. Correctional facility visits were canceled. Modified movements, curtailed programming, and grab-and-go meals with no congregation in the dining halls have been implemented....”

Mike Hellgren
@HellgrenWJZ

3 people at correctional facilities in Baltimore and Jessup have tested positive for #COVID19 @wjz

COVID-19 Response Teams working to determine whether any other staff or inmates may have had contact with the three individuals who tested positive.

The Department has been in proactive emergency mode since day one, working with state and federal health authorities and following approved COVID-19 protocols.

DPSICS has been deep-cleaning its facilities—including the ones affected—for days. The Department has identified locations and spaces within its facilities for isolation and quarantine.

The Department's top priority is the health and safety of its employees and the men and women in its custody.

1 1:17 PM - Mar 30, 2020

[See Mike Hellgren's other Tweets](#)

The officer WJZ spoke to claims they have been asked not to wear masks and says other protective gear is hard to come by.

“My main thing is being protected. I’d feel a lot better if I could wear a mask at the very least. I’m already dreading going in a very dangerous place, and this makes it even worse to go in,” the officer said “We are just a person on a piece of paper, and they don’t care what happens as long as we work. You’re in a petri dish and you’re just waiting to get it.”

Baltimore City State’s Attorney Marilyn Mosby has repeatedly pushed for the release of non-violent inmates statewide amid the pandemic, a proposal that hasn’t gotten a warm response from Gov. Larry Hogan.

For the latest information on coronavirus go to the [Maryland Health Department’s website](#) or call 211. You can find all of WJZ’s coverage on [coronavirus in Maryland here](#).

EXHIBIT 4

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

SUFFOLK, ss.

SJC-12926

COMMITTEE FOR PUBLIC COUNSEL SERVICES AND
MASSACHUSETTS ASSOCIATION OF CRIMINAL DEFENSE LAWYERS,
Petitioners,

v.

CHIEF JUSTICE OF THE TRIAL COURT, ET AL.,
Respondents

SPECIAL MASTER'S REPORT AND RECOMMENDATION

In responding to the worsening COVID-19 pandemic, the Commonwealth and its citizens have been called on to take unprecedented actions, resulting in significant disruption to every aspect of our community. The Special Master commends the Trial Court, Department of Correction, Probation Department, each of the county Sheriffs' offices, and District Attorneys' offices for taking prompt actions to reduce the risk of infection among inmates, including: a stepping up of vigorous cleanings of facilities and spaces; increasing supplies of hygienic products; restricting visitor access; quarantining individuals displaying symptoms of COVID-19; suspending third-party programming; facilitating inmate telecommunications with counsel, families and loved ones; and working cooperatively and expeditiously in response to individual petitions for release for non-violent offenders, as warranted.

The Court seeks to support the existing efforts of law enforcement, corrections officials, and the defense bar to reduce the population of non-violent, low risk prisoners in this unique circumstance. Public health experts and federal, state and local government officials have issued numerous advisories about the importance of continued social distancing for an extended period of time, and that the risk of spread of COVID-19 within our communities may continue to threaten the health and safety of our citizens for an indeterminate period of time. Concern for the public health, including that of the public at large, and the inmates and the staff of our corrections and court system, warrants, as numerous other jurisdictions across the country have recognized, that any and all reasonable actions be taken to reduce the potential spread of COVID-19 in a manner consistent with ensuring public safety.

WHEREFORE, the Special Master hereby reports and recommends that, pursuant to the superintendence powers granted to the Court under G.L. c. 211, § 3, the Court order as follows:

I. **GUIDANCE FOR PRETRIAL PROCEEDINGS**

1. In probation detention and violation hearings, pre-trial detention hearings, and bail hearings, the Trial Courts shall consider the risk that a defendant or probationer may either contract COVID-19 or infect others as a factor to be considered in any decisions regarding detention. In addition, given the high risk posed by COVID-19 for people who are more than 60 years old or who suffer from a high-risk condition as defined by the Center for Disease Control (“CDC”) that renders them more vulnerable to COVID-19, the age and health of any defendants who fall in the aforementioned categories should be factored into decisions regarding detention.
2. Any existing warrants or warrants issued after the date of this Order for non-violent probation violations; failure to appear; failures to pay outstanding fees and fines; and for alleged commission of new offenses other than “Excluded Offenses,” as defined in **Appendix A**, are suspended until 10 calendar days after the COVID-19 state of emergency declared by Governor Charles Baker on March 10, 2020 (the “COVID-19 State of Emergency”) is lifted in the Commonwealth. This subsection shall NOT apply to any warrant issued for a defendant who has violated a condition of release or probation term pertaining to a stay-away order or other no contact order involving GPS monitoring.
3. All existing conditions of release and/or terms of probation that are inconsistent with the principles of social distancing as outlined by the CDC and/or Department of Public Health (“DPH”)¹ shall either (i) not be enforced, (ii) converted by the Probation Department to a condition consistent with social distancing, (iii) or shall be suspended until 10 calendar days after the COVID-19 State of Emergency is lifted in the Commonwealth (*e.g.*, in person check-in requirements shall be done by video or telephone and drug testing that cannot be completed with adherence to social distancing guidelines shall be suspended). All stay-away and no-contact orders issued as part of any conditions of release or terms of probation are to remain in effect and are not impacted by this Order.

¹ See United States Center for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (March 23, 2020) at 4. (Online at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>); Massachusetts Department of Public Health, *DPH Public Health Advisory: Stay-at-Home Advisory for Individuals over 70 and for those with underlying health conditions; and Safe Practices for the General Public*, (March 24, 2020) at 1. (Online at <https://www.mass.gov/news/dph-public-health-advisory-stay-at-home-advisory-for-individuals-over-70-and-for-those-with>).

II. REVIEW PROCESS FOR CONSIDERING THE RELEASE OF CERTAIN INMATES

The following procedures (the “Release Review Process”) shall be expeditiously implemented to determine whether individuals shall be released from custody, and to do so in a manner that balances and preserves the safety of the public and the safety of those in the Commonwealth’s detention and correctional facilities:

A. Creation of Release Review Committees

In each county there shall be created a committee (the “Release Review Committee”) comprised of representative(s) from the District Attorney’s Office, representative(s) from the defense bar,² and representative(s) of the clerk’s office of the Trial Courts. Where appropriate, the District Attorney shall confer with a representative of the Probation Department, representative(s) from the county Sheriff, a public health advisor, and representative(s) of the Department of Correction. **These committees shall be created within 24 hours of the issuance of this Order and the District Attorney representative(s) in each county shall report the composition of this committee to the Special Master within that 24 hour time period.** Promptly upon issuance of this Order, the Chief Justices of the Superior Court, District Court, Boston Municipal Court (where applicable), and Juvenile Court shall designate a “Primary Trial Court Judge(s)”, a first back-up, and a second back-up at each level, in each county, to hear cases from each county’s Release Review Committee.

B. Identification of pre-trial detainees and probationers eligible for the Release Review Process

1. Pre-trial detainees and probationers meeting any of the following criteria shall be placed into the Release Review Process and shall be presumed to be released from detention, subject to the individualized assessment set forth in the Release Review Process described herein:
 - a. Any person who has not been determined to be dangerous under G.L. c. 276, § 58A and is charged with an offense other than (i) an Excluded Offense, or (ii) a violation of a stay-away or no-contact order issued as a condition of probation;
 - b. Any person who is currently detained awaiting trial on a cash bail of \$5,000 or less, has not been determined to be dangerous under G.L. c. 276, § 58A, who would be otherwise eligible for release if they could post the bail imposed in their case, and has not been incarcerated for an Excluded Offense in the last 5 years;
 - c. Any person who is currently detained awaiting a probation violation hearing, unless (i) the person has been incarcerated for an Excluded Offense in the last

² The Petitioners shall be responsible for convening a team of attorneys to represent the defense bar in the Release Review Committees and shall assist with creating release plans for inmates released pursuant to this Order.

5 years, (ii) the violation involved an alleged commission of an Excluded Offense, or (iii) the violation involved failure to comply with a stay-away or no contact order;

- d. Any person currently detained only for civil contempt; and
- e. Any person being held in pre-trial detention who is not being detained on dangerousness grounds pursuant to G.L. c. 276, § 58A and who is either (a) age 60 or older as of the date of this Order or (b) suffers from a high-risk condition as defined by the CDC³ that renders them more vulnerable to the COVID-19 virus.

- 2. For the avoidance of doubt, nothing in this Order shall prohibit any pre-trial detainee or probationer from seeking any individual relief not available to such person under this Order, nor shall such person's ineligibility for relief under this Order be considered as a factor in a court's decision to award relief outside of this Order.

C. Release Review Committee Process

- 1. **The representative(s) from the Trial Court and the District Attorney's office, with assistance from the representatives of the county Sheriff's office, Probation Department, and Department of Correction as necessary to further the interests of justice, shall identify inmates who meet the criteria set forth in this Order and place them into the Release Preview Process within 48 hours or less of the entry of this Order.** The list shall be provided to the representative(s) of the defense bar as soon as it is compiled.
- 2. Notice shall be given to all inmates identified by the Release Review Committee as eligible for review. The representative(s) of the defense bar shall promptly be permitted to convene video or teleconferences with any inmates identified by the Release Review Committee. The county Sheriff's offices and Department of Correction will coordinate with the representative(s) of the defense bar to facilitate such communications.
- 3. **No later than 72 hours after the entry of the Order, the representative(s) from the District Attorney's office, in consultation with the representatives of, where appropriate, the county Sheriff, Probation Department, and Department of Correction, shall identify those inmates whose release the Commonwealth will oppose, and those whose release it will not oppose.**
 - a. The District Attorney's office shall promptly notify the appropriate Primary Trial Court Judge(s) for that county and the representative(s) of the defense

³ People with high-risk conditions are those with chronic lung disease or moderate to severe asthma, serious heart conditions, are immunocompromised (including from cancer treatment), severe obesity, or certain underlying medical conditions such as diabetes, renal failure, and liver disease. *Coronavirus Disease 2019 (COVID-19): People who are at higher risk for severe illness*, CDC (Mar. 26, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

bar as to any objections, and provide the representative(s) of the defense bar and the Primary Trial Court Judge(s) with any materials the District Attorney relied upon in reviewing the files of all inmates whose release the Primary Trial Court Judge(s) will be asked to consider.⁴ The Primary Trial Court Judge(s) may request additional materials to aid in their decision making.

- b. With respect to any inmates for whom the parties agree release is appropriate in a specific county, the parties shall provide the Primary Trial Court Judge(s) with a short statement in support of the release of the agreed upon group of inmates. The Primary Trial Court Judge(s) shall expeditiously act on the recommendation of the District Attorney's Office without further hearing, unless the Primary Trial Court Judge(s) deems a hearing to be necessary.
 - c. For those inmates whose release it will oppose, the District Attorney's office shall provide to the representative(s) from the defense bar and the Primary Trial Court Judge(s) a brief written opposition stating the grounds for objection⁵.
 - d. In the event that release of an individual may compromise an on-going law enforcement investigation for an Excluded Crime, the District Attorney shall present such information *ex parte* to the Primary Trial Court Judge(s) for *in-camera* review.
4. **Within five (5) calendar days of the entry of this Order, the Primary Trial Court Judge(s) will convene an expedited, short-form video or telephonic conference hearing regarding the release of any inmates that the Primary Trial Court Judge(s) has not already ordered released.** The Primary Trial Court Judge(s) shall implement any necessary procedures to give effect to the terms of this Order and shall hear as many cases in each session as is practicable. Evidence shall consist of the case file and testimony to be presented in the form of affidavits to the extent practicable, to obviate the need for live testimony. If necessary to resolve all objections on a particular category of inmates, such hearings may take place over multiple days, including weekends. Inmates' presence at this hearing shall be waived. The Primary Trial Court Judge(s) is encouraged to place a priority on cases in which there is no objection.
- a. The Primary Trial Court Judge(s) shall order an inmate's release (subject to the limitations set forth below) if the judge determines by a preponderance of the evidence, applying the presumptions concerning release described above,

⁴ The case file reviewed by the Primary Trial Court Judge(s) shall include, but is not limited to, the charging documents (criminal complaints or indictments), police report or brief statement of facts, CARI Report, and reasons for bail issued by the judge who presided over arraignment. Counsel for the defendant shall also provide any available information regarding a release plan if the defendant is released.

⁵ In the interest of expediency, the statement need not be lengthy or a formal brief. It need only provide sufficient information to identify the bases of the objection (*e.g.*, inmate has multiple violent prior offenses or inmate cannot return to his community because his wife/partner has an active abuse prevention order against him).

that an inmate's release is appropriate in order to further the public health goals of limiting density, improving opportunities for social distancing, and managing care, and does not otherwise pose an unreasonable risk to public safety in the circumstances. In making this determination, the Primary Trial Court Judge(s) shall consider whether there exists any credible concern of domestic violence, and shall weigh any such concern against release.

- b. The Probation Department, with input and assistance from counsel for the inmate, shall recommend appropriate conditions of release for any inmates released through the Release Review Process and shall oversee compliance with any conditions of release. The Primary Trial Court Judge(s) shall adopt or modify the conditions recommended by the Probation Department.
 - c. The period during which a person is released pursuant to the Release Review Process is considered an excluded period under Mass. R. Crim. P. 36.
5. If an inmate, who is released through the Review Release Process violates the conditions of their release, it will be treated as an Abuse of Furlough under 103 CMR § 463.17 and the matter will be referred to Probation who will take such action and make such recommendation to the Primary Trial Court Judge(s) as they deem appropriate.
 6. Within 14 calendar days after the COVID-19 State of Emergency has been lifted in the Commonwealth, the Primary Trial Court Judge(s) will hold a hearing for further review of any inmate released.

D. Appeals of Release Review Committee Decisions

1. The order of the Designated Primary Trial Court Judge(s) may be appealed on an emergency basis in a summary manner to a Single Justice of the Supreme Judicial Court. A notice of appeal in any such case must be filed within two business days of the entry of the order with the clerk of the trial court issuing the order, with a copy filed with the clerk of the Supreme Judicial Court for Suffolk County.
 - a. Should a release order be appealed, the release order shall be stayed pending expedited review by the Single Justice of the Supreme Judicial Court.
2. The record on appeal shall consist of any materials and information reviewed by the Primary Trial Court Judge(s) in issuing the order.

E. Exceptions to Release

1. In the following circumstances, an inmate subject to this Order shall not be released, absent further instructions from the Primary Trial Court Judge(s) for that county:
 - a. For any inmate subject to this Order who has tested positive for COVID-19 or has been identified as presumptively positive for COVID-19, the facility in which the

inmate is housed shall immediately notify the parties, and the county health department of the inmate's medical condition, and shall not release the inmate without further instructions from the Primary Trial Court Judge(s) for that county. In such cases, the parties shall immediately confer with the assigned infectious disease expert to ensure an appropriate plan is in place for isolating the inmate and ensuring the inmate's medical treatment and/or mandatory self-quarantine.

- b. For any inmate subject to this Order who notifies the superintendent of the facility where he or she is being detained that he or she does not wish to be released from detention pursuant to this Order because of housing, health, or safety concerns, the superintendent shall immediately notify the Committee of the inmate's wishes, provide a written statement from the inmate to that effect, and provide an opportunity for the inmate to confer with the defense bar representative on the Release Review Committee. If the inmate maintains that he or she does not want to be released, the superintendent shall not release the inmate without further instructions from the Primary Trial Court Judge(s) for that county.

F. Release Review Process Evaluation

- 1. The Special Master, within seven (7) calendar days after the entry of this Order, shall convene a working group to assess the Release Review Process and make any necessary adjustments to ensure the process is meeting the stated goals of responding to the COVID-19 State of Emergency.**

III. CONVICTED AND SENTENCED INMATES AND PROBATIONERS

1. While the COVID-19 State of Emergency remains in effect, Mass. R. Crim. P. 29 is hereby modified to allow the following categories of convicted and sentenced inmates to seek emergency relief regarding revision or revocation of their sentences, regardless of the time restrictions set forth in Rule 29, on an expedited basis from the Trial Courts:
 - a. Pre-release inmates at "minimum security facilities" with release plans in place;
 - i. For the purposes of this Order, "minimum security facilities" are those defined by the Massachusetts Department of Correction as facilities that contain inmates "who do not pose a significant risk to security and have demonstrated a willingness to comply with the rules and are afforded greater autonomy."⁶
 - b. Inmates who have been approved for parole, but have not yet been released;
 - c. Inmates who are within 60 calendar days of their release date excluding inmates who are serving minimum mandatory sentences; and

⁶ See Massachusetts Department of Correction, *Prison Security Levels* (Online at <https://www.mass.gov/service-details/prison-security-levels>).

- d. Inmates who were convicted for an offense other than an Excluded Offense; provided that inmates who are serving a minimum mandatory sentence shall not be eligible to seek emergency relief under this provision.
2. The Primary Trial Court Judge(s) in each county who are dedicated to the Release Review Process pursuant to Section II.A above shall hear such emergency Rule 29 motions on an expedited basis, and such motions shall be considered “emergency matters” under District Court Standing Order 2-20, Superior Court Standing Order 3-20, and Juvenile Court Standing Order 1-20.
3. In evaluating whether to grant relief pursuant to an expedited Rule 29 motion, the Primary Trial Court Judge may consider, in weighing the interests of justice, the risk that an inmate may either contract COVID-19 or infect others as a factor in determining if the release is appropriate.
4. The Primary Trial Court Judge(s) shall order an inmate’s release if the judge determines by a preponderance of the evidence that an inmate’s release is appropriate in order to further the public health goals of limiting density, improving opportunities for social distancing, and managing care, and does not otherwise pose an unreasonable risk to public safety in the circumstances. If the Primary Trial Court Judge determines release is appropriate, the judge shall order relief consistent with addressing the current public health crisis, such as a stay of the inmate’s sentence until fourteen (14) days after the COVID-19 State of Emergency is lifted in the Commonwealth. If an inmate has more than 180 calendar days left on his sentence, the Primary Court Trial Judge shall order that the inmate return to custody within fourteen (14) days after the COVID-19 State of Emergency is lifted in the Commonwealth. In making this determination, the Primary Trial Court Judge(s) shall consider whether there exists any credible concern of domestic violence, and shall weigh any such concern against release.
5. For the avoidance of doubt, nothing in this Order shall prohibit any convicted or sentenced inmate from seeking any individual relief not available to such person under this Order, nor shall such person’s ineligibility for relief under this Order be considered as a factor in a court’s decision to award relief outside of this Order.

IV. RIGHTS OF VICTIMS

1. Nothing in this order suspends the obligations of District Attorneys and other law enforcement agencies to share information with crime victims pursuant to G.L. c. 258B. Each county’s District Attorney’s office, in connection with local law enforcement, shall, to the fullest extent practicable under the circumstances, provide notice to victims of the accelerated release of inmates under this order.
 - a. When contact with a victim cannot be made for any reason, to help ensure the victim’s safety, the prosecutor shall notify the police department in the town of the victim’s last known residence of the inmate’s accelerated release.

2. However, especially in light of the public health emergency posed by COVID-19, the inability of the Commonwealth to provide the type of notice called for by the statute shall not be grounds for the continued detention of an inmate otherwise entitled to release under this Order.⁷

V. REPORTING BY PRISONS AND JAILS

1. In order to effectuate the purposes of this Order and the underlying public health goals, this Court requests that while the COVID-19 State of Emergency remains in effect, each institution in Massachusetts holding detained, committed, or imprisoned persons provide to the Attorney General's Office and the Special Master on each Tuesday and Friday by 5PM:
 - a. Overall inmate population;
 - b. Number of COVID-19 tests and number of positive results for all inmates, correctional officers, or other staff members, including contactors;
 - c. Measures being taken to treat and isolate persons who have either tested positive or are symptomatic;
 - d. Other measures being taken to prevent the spread of COVID-19;
 - e. Availability of COVID-19 test kits, nasal swabs, thermometers, masks and gloves; and
 - f. Number of inmates released pursuant to the procedures set forth in this Order.
2. The Court recommends that each correctional facility consult with an infectious disease and/or public health expert to evaluate the facility's ability to abide by the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities⁸ and make recommendations, as necessary.

/s/ Brien T. O'Connor
Special Master Brien T. O'Connor
Ropes & Gray LLP

⁷ Cf. *In the Matter of Chapman*, 482 Mass. 1012, 1017 (2019) (“Nothing in G.L. c. 258B suggests that the remedy for a failure to provide any of the various types of notice called for by the statute is to keep an individual in custody who is otherwise entitled to release.”).

⁸ *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CDC (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

APPENDIX A

For purposes of this Order, the following are considered an “Excluded Offense”:

i) Violent crimes as defined in G. L. c. 140, § 121:

- a. “Any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult, that: (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that presents a serious risk of physical injury to another.”

ii) Sexual offenses defined as any offense for which a convicted individual would have to register as a sex offender in accordance with G.L. c. 6, § 178C-Q or for which the individual is subject to civil commitment as a sexually dangerous person under G.L. c. 123A:

- a. G.L. c. 6, § 178C defines “Sex offender”, in relevant part, as a person who resides, has secondary addresses, works or attends an institution of higher learning in the commonwealth and who has been convicted of a sex offense or who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense or a person released from incarceration or parole or probation supervision or custody with the department of youth services for such a conviction or adjudication or a person who has been adjudicated a sexually dangerous person under section 14 of chapter 123A, as in force at the time of adjudication, or a person released from civil commitment pursuant to section 9 of said chapter 123A, whichever last occurs, on or after August 1, 1981.
- b. “Sex offense” includes:
1. an indecent assault and battery on a child under 14 under G.L. c. 265, § 13B;
 2. aggravated indecent assault and battery on a child under the age of 14 under G.L. c. 265, § 13B ½;
 3. a repeat offense under G.L. c. 265, § 13B ¾;
 4. indecent assault and battery on a mentally retarded person under G.L. c. 265, § 13F;
 5. indecent assault and battery on a person age 14 or over under G.L. c. 265, § 13H;
 6. rape under G.L. c. 265, § 22;
 7. rape of a child under 16 with force under G.L. c. 265, § 22A;
 8. aggravated rape of a child under 16 with force under G.L. c. 265, § 22B;
 9. a repeat offense under G.L. c. 265, § 22C;
 10. rape and abuse of a child under G.L. c. 265, § 23;
 11. aggravated rape and abuse of a child under G.L. c. 265, § 23A;
 12. a repeat offense under G.L. c. 265, § 23B;
 13. assault with intent to commit rape under G.L. c. 265, § 24;

14. assault of a child with intent to commit rape under G.L. c. 265, § 24B;
 15. kidnapping of a child under G.L. c. 265, § 26;
 16. enticing a child under the age of 16 for the purposes of committing a crime under G.L. c. 265, § 26C;
 17. enticing a child under 18 via electronic communication to engage in prostitution, human trafficking or commercial sexual activity under G.L. c. 265, § 26D;
 18. trafficking of persons for sexual servitude under G.L. c. 265, § 50;
 19. a second or subsequent violation of human trafficking for sexual servitude under G.L. c. 265, § 52;
 20. enticing away a person for prostitution or sexual intercourse under G.L. c. 272, § 2;
 21. drugging persons for sexual intercourse under G.L. c. 272, § 3;
 22. inducing a minor into prostitution under G.L. c. 272, § 4A;
 23. living off or sharing earnings of a minor prostitute under G.L. c. 272, § 4B;
 24. second and subsequent adjudication or conviction for open and gross lewdness and lascivious behavior under G.L. c. 272, § 16, but excluding a first or single adjudication as a delinquent juvenile before August 1, 1992;
 25. incestuous marriage or intercourse under G.L. c. 272, § 17;
 26. disseminating to a minor matter harmful to a minor under G.L. c. 272, § 28;
 27. posing or exhibiting a child in a state of nudity under G.L. c. 272, § 29A;
 28. dissemination of visual material of a child in a state of nudity or sexual conduct under G.L. c. 272, § 29B;
 29. possession of child pornography under G.L. c. 272, § 29C;
 30. unnatural and lascivious acts with a child under 16 under G.L. c. 272, § 35A;
 31. engaging in sexual contact with an animal under G.L. c. 272, § 77C;
 32. aggravated rape under G.L. c. 277, § 39; and
 33. any attempt to commit a violation of any of the aforementioned sections pursuant to G.L. c. 274, § 6 or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority.
- c. G.L. c. 123A § 12 provides that the Commonwealth may petition the court to have a “sexually dangerous person” civilly committed.
- d. G.L. c. 123A § 1 defines a “Sexually dangerous person” as any person who has been:
1. convicted of or adjudicated as a delinquent juvenile or youthful offender by reason of a sexual offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexual offenses if not confined to a secure facility;
 2. charged with a sexual offense and was determined to be incompetent to stand trial and who suffers from a mental abnormality or personality

disorder which makes such person likely to engage in sexual offenses if not confined to a secure facility; or

3. (iii) previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires.

iii) All offenses involving a firearm.

iv) All violations of abuse prevention orders issued pursuant to G.L. c. 209A.

v) All violations of harassment prevention orders issued pursuant to G.L. c. 258E.

vi) **Any offense listed in G.L. c. 276, § 58A:**

a. The following offenses are considered predicate offenses under G.L. c. 276, § 58A:

1. A felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another;
2. Violation of an order protecting the personal liberty of a spouse or an order for a spouse to vacate the marital home (G.L. c. 208, §§ 18, 34B, 34C; G.L. c. 209, § 3);
3. Violation of an abuse prevention order pursuant to G.L. c. 209A, §§ 3, 4, 5 or an order related to the protection of children under G.L. c. 209C, §§ 15, 20;
4. Individuals who were arrested and charged with a misdemeanor or felony involving abuse as defined in G.L. c. 209A, § 1 or while an order of protection issued under said chapter 209A was in effect against such person
 - (1) G.L. c. 209A, § 1 defines “Abuse” as “the occurrence of one or more of the following acts between family or household members: (a) attempting to cause or causing physical harm; (b) placing another in fear of imminent serious physical harm; (c) causing another to engage involuntarily in sexual relations by force, threat or duress.”;
5. An offense for which a mandatory minimum term of 3 years or more is prescribed in the Controlled Substances Act (G.L. c. 94C);
6. Individuals who were arrested and charged with the intimidation of witnesses, jurors or persons furnishing information in connection with criminal proceedings (G.L. c. 268, § 13B);

7. Individuals who were arrested and charged with a third or subsequent violation of driving under the influence (G.L. c. 90, § 24) within 10 years of the previous conviction for such violation;
8. Individuals who were convicted of a violent crime as defined in G.L. c. 140, § 121 for which a term of imprisonment was served and subsequently arrested and charged with a second or subsequent offense of felony possession of a weapon or machine gun as defined in G.L. c. 140, § 121;
9. Individuals who were arrested and charged with a violation of certain provisions of G.L. c. 269, § 10 (carrying a dangerous weapon);
10. Individuals who were arrested and charged with the willful and malicious killing, maiming, disfigurement, or poisoning of animals of another (G.L. c. 266, § 112);
11. Individuals who were arrested and charged with cruelty to animals or animal fighting (G.L. c. 272, §§ 77, 94).

vii) Any felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another.

viii) Any offense pursuant to G.L. c. 265, § 13M:

- a. G.L. c. 265, § 13M prohibits the assault or assault and battery on a family or household member.

ix) Homicide or manslaughter by motor vehicle:

- a. G.L. c. 90, § 24G prohibits homicide by motor vehicle;
- b. G.L. c. 265 § 13 ½ prohibits manslaughter by motor vehicle.

x) All attempts, conspiracies, or accessories after the fact of the aforementioned offenses.

EXHIBIT 5

**SUPREME COURT OF NEW JERSEY
DOCKET NO. 084230**

FILED

MAR 22 2020

Heather J. Bales
CLERK

**In the Matter of the Request to
Commute or Suspend County Jail
Sentences**

CRIMINAL ACTION

CONSENT ORDER

This matter having come before the Court on the request for relief by the Office of the Public Defender (see attached letter dated March 19, 2020), seeking the Court's consideration of a proposed Order to Show Cause (see attached) designed to commute or suspend county jail sentences currently being served by county jail inmates either as a condition of probation for an indictable offense or because of a municipal court conviction; and

The Court, on its own motion, having relaxed the Rules of Court to permit the filing of the request for relief directly with the Supreme Court, based on the dangers posed by Coronavirus disease 19 ("COVID-19"), and the statewide impact of the nature of the request in light of the Public Health Emergency and State of Emergency declared by the Governor. *See* Executive Order No. 103 (2020) (Mar. 9, 2020); and

The Office of the Attorney General, the County Prosecutors Association, the Office of the Public Defender, the American Civil Liberties Union of New Jersey having engaged in mediation before the Honorable Philip S. Carchman, P.J.A.D. (ret.); and

The parties having reviewed certifications from healthcare professionals regarding the profound risk posed to people in correctional facilities arising from the spread of COVID-19; and

The parties agreeing that the reduction of county jail populations, under appropriate conditions, is in the public interest to mitigate risks imposed by COVID-19; and

It being agreed to by all parties as evidenced by the attached duly executed consent form;

IT IS HEREBY ORDERED, that

- A. No later than 6:00 a.m. on Tuesday, March 24, 2020, except as provided in paragraph C, any inmate currently serving a county jail sentence (1) as a condition of probation, or (2) as a result of a municipal court conviction, shall be ordered released. The Court's order of release shall include, at a minimum, the name of each inmate to be released, the inmate's State Bureau of Identification (SBI) number, and the county jail where the inmate is being detained, as well as any standard or

specific conditions of release. Jails shall process the release of inmates as efficiently as possible, understanding that neither immediate nor simultaneous release is feasible.

1. For inmates serving a county jail sentence as a condition of probation, the custodial portion of the sentence shall either be served at the conclusion of the probationary portion of the sentence or converted into a “time served” condition, at the discretion of the sentencing judge, after input from counsel.
2. For inmates serving a county jail sentence as a result of a municipal court conviction, the custodial portion of the sentence shall be suspended until further order of this Court upon the rescission of the Public Health Emergency declared Executive Order No. 103, or deemed satisfied, at the discretion of the sentencing judge, after input from counsel.

B. No later than noon on Thursday, March 26, 2020, except as provided in paragraph C, any inmate serving a county jail sentence for any reason other than those described in paragraph A shall be ordered released. These sentences include, but are not limited to (1) a resentencing following a finding of a violation of probation in any Superior Court or municipal court, and (2) a county jail sentence not tethered to a

probationary sentence for a fourth-degree crime, disorderly persons offense, or petty disorderly persons offense in Superior Court. The custodial portion of the sentence shall be suspended until further order of this Court upon the rescission of the Public Health Emergency declared Executive Order No. 103, or deemed satisfied, at the discretion of the sentencing judge, after input from counsel. Jails shall process the release of inmates as efficiently as possible, understanding that neither immediate nor simultaneous release is feasible.

C. Where the County Prosecutor or Attorney General objects to the release of an inmate described in Paragraph A, they shall file a written objection no later than 5:00 p.m. on Monday, March 23, 2020. Where the County Prosecutor or Attorney General objects to the release of an inmate described in Paragraph B, they shall file a written objection no later than 8:00 a.m. on Thursday, March 26, 2020.

1. The objection shall delay the order of release of the inmate and shall explain why the release of the inmate would pose a significant risk to the safety of the inmate or the public.
2. Written objections shall be filed by email to the Supreme Court Emergent Matter inbox with a copy to the Office of the Public Defender.

3. The Office of the Public Defender shall provide provisional representation to all inmates against whom an objection has been lodged under this Paragraph.
4. The Office of the Public Defender shall, no later than 5:00 p.m. on Tuesday, March 24, 2020, provide responses to any objections to release associated with inmates described in Paragraph A, as it deems appropriate. The Office of the Public Defender shall, no later than 5:00 p.m. on Thursday, March 26, 2020, provide responses to any objections to release associated with inmates described in Paragraph B, as it deems appropriate.
5. The Court shall appoint judge(s) or Special Master(s) to address the cases in which an objection to release has been raised.
 - a. On or before Wednesday, March 25, 2020, the judge(s) or Special Master(s) will begin considering disputed cases arising from Paragraph A; on or before Friday, March 27, 2020, the judge(s) or Special Master(s) will consider disputed cases arising from Paragraph B.
 - i. The judge(s) or Special Master(s) shall conduct summary proceedings, which shall be determined on the papers. In the event the judge(s) or Special

Master(s) conduct a hearing of any sort, inmates' presence shall be waived.

- ii. Release shall be presumed, unless the presumption is overcome by a finding by a preponderance of the evidence that the release of the inmate would pose a significant risk to the safety of the inmate or the public.
- iii. At any point, the Prosecutor may withdraw its objection by providing notice to the judge(s) or Special Master(s) with a copy to the Office of the Public Defender. In that case, inmates shall be released subject to the provisions of Paragraphs D-I.
- iv. If the judge(s) or Special Master(s) determine by a preponderance of the evidence that the risk to the safety of the inmate or the public can be effectively managed, the judge(s) or Special Master(s) shall order the inmate's immediate release, subject to the provisions of paragraphs D-I.

1. The Order of the judge(s) or Special Master(s) may be appealed on an emergent basis, in a summary manner to the Appellate Division.
 2. Should a release Order be appealed, the release Order shall be stayed pending expedited review by the Appellate Division.
 3. The record on appeal shall consist of the objection and response filed pursuant to this Paragraph.
- v. If the judge(s) or Special Master(s) determine by a preponderance of the evidence that risks to the safety of the inmate or the public cannot be effectively managed, the judge(s) or Special Master(s) shall order the inmate to serve the balance of the original sentence.
1. The Order of the judge(s) or Special Master(s) may be appealed on an emergent basis, in a summary manner to the Appellate Division.

2. Should an Order requiring an inmate to serve the balance of his sentence be appealed, the Appellate Division shall conduct expedited review.

3. The record on appeal shall consist of the objection and response filed pursuant to this Paragraph.

b. The judge(s) or Special Master(s) should endeavor to address all objections no later than Friday, March 27, 2020.

D. Any warrants associated with an inmate subject to release under this order, other than those associated with first-degree or second-degree crimes, shall be suspended. Warrants suspended under this Order shall remain suspended until ten days after the rescission of the Public Health Emergency associated with COVID-19. *See* Executive Order No. 103 (2020) (Mar. 9, 2020).

E. In the following circumstances, the county jail shall not release an inmate subject to release pursuant to Paragraphs A, B, or C(5)(a)(iii) or (iv), absent additional instructions from the judge(s) or Special Master(s):

1. For any inmate who has tested positive for COVID-19 or has been identified by the county jail as presumptively positive for COVID-19, the county jail shall immediately notify the parties and the County Health Department of the inmate's medical condition, and shall not release the inmate without further instructions from the judge(s) or Special Master(s). In such cases, the parties shall immediately confer with the judge(s) or Special Master(s) to determine a plan for isolating the inmate and ensuring the inmate's medical treatment and/or mandatory self-quarantine.
2. For any inmate who notifies the county jail that he or she does not wish, based on safety, health, or housing concerns, to be released from detention pursuant to this Consent Order, the county jail shall immediately notify the parties of the inmate's wishes, and shall not release the inmate without further instructions from the judge(s) or Special Master(s). In such cases, the parties shall immediately confer with the judge(s) or Special Master(s) to determine whether to release the inmate over the inmate's objection.

F. Where an inmate is released pursuant to Paragraphs A, B, or C(5)(a)(iii) or (iv), conditions, other than in-person reporting, originally imposed by the trial court shall remain in full force and effect. County jails shall inform all inmates, prior to their release, of their continuing obligation to abide by conditions of probation designed to promote public safety.

Specifically:

1. No-contact orders shall remain in force.
2. Driver's license suspensions remain in force.
3. Obligations to report to probation officers in-person shall be converted to telephone or video reporting until further order of this Court.
4. All inmates being released from county jails shall comply with any Federal, State, and local laws, directives, orders, rules, and regulations regarding conduct during the declared emergency. Among other obligations, inmates being released from county jails shall comply with Executive Order No. 107 (2020) (Mar. 21, 2020), which limits travel from people's homes and mandates "social distancing," as well as any additional Executive Orders issued by the Governor during the Public Health Emergency associated with COVID-19.

5. All inmates being released from county jails are encouraged to self-quarantine for a period of fourteen (14) days.
 6. Unless otherwise ordered by the judge(s) or Special Master(s), any inmate being released from a county jail who appears to be symptomatic for COVID-19 is ordered to self-quarantine for a period of fourteen (14) days and follow all applicable New Jersey Department of Health protocols for testing, treatment, and quarantine or isolation.
- G. County Prosecutors and other law enforcement agencies shall, to the extent practicable, provide notice to victims of the accelerated release of inmates.
1. In cases involving domestic violence, notification shall be made. N.J.S.A. 2C:25-26.1. Law enforcement shall contact the victim using the information provided on the “Victim Notification Form.” Attorney General Law Enforcement Directive No. 2005-5.
 - a. Where the information provided on the “Victim Notification Form” does not allow for victim contact, the Prosecutor shall notify the Attorney General.

b. If the Attorney General, or his designee, is convinced that law enforcement has exhausted all reasonable efforts to contact the victim, he may relax the obligations under N.J.S.A. 2C:25-26.1.

2. In other cases with a known victim, law enforcement shall make all reasonable efforts to notify victims of the inmate's accelerated release.

3. To the extent permitted by law, the Attorney General agrees to relax limitations on benefits under the Violent Crimes Compensation Act (N.J.S.A. 52:4B-1, *et seq.*) to better provide victims who encounter the need for safety, health, financial, mental health or legal assistance from the State Victims of Crime Compensation Office.

H. The Office of the Public Defender agrees to provide the jails information to be distributed to each inmate prior to release that includes:

1. Information about the social distancing practices and stay-at-home guidelines set forth by Executive Order No. 107, as well as other sanitary and hygiene practices that limit the spread of COVID-19;

2. Information about the terms and conditions of release pursuant to this consent Order;
 3. Guidance about how to contact the Office of the Public Defender with any questions about how to obtain services from social service organizations, including mental health and drug treatment services or any other questions pertinent to release under this consent Order.
- I. Any inmate released pursuant to this Order shall receive a copy of this Order, as well as a copy of any other Order that orders their release from county jail, prior to their release.
 - J. Relief pursuant to this Order is limited to the temporary suspension of custodial jail sentences; any further relief requires an application to the sentencing court.

SUPREME COURT OF NEW JERSEY
DOCKET NO. 084230

FILED

MAR 23 2020

Heather J. Baker
CLERK

**In the Matter of the Request to
Commute or Suspend County Jail
Sentences**

CRIMINAL ACTION

AMENDED CONSENT ORDER

The parties agreeing to amend and supplement the Consent Order entered by the Court on March 22, 2020 (the "March 22 Consent Order"); and

It being agreed to by all parties as evidenced by the attached duly executed consent form;

IT IS HEREBY ORDERED that paragraph E 3 is added to the March 22 Consent Order as follows:

- E. In the following circumstances, the county jail shall not release an inmate subject to release pursuant to Paragraphs A, B, or C(5)(a)(iii) or (iv), absent additional instructions from the judge(s) or Special Master(s):

.....

3. For any inmate who self-identifies or whom the jail identifies as unable to obtain safe housing or photo identification upon release, the county jail shall immediately notify the parties of the issue, and shall not release the inmate without further instructions from the judge(s) or Special Master(s). In such cases, the parties shall immediately confer with the judge(s) or Special Master(s) and, to the extent possible, representatives of the Department of Human Services, the Department of Health, and social services agencies or organizations, including the New Jersey Reentry Corporation and Volunteers of America, to determine a plan for providing housing, photo identification, and any other necessary services for the inmate.

3/23/2020
Date

/s/Stuart Rabner
Chief Justice Stuart Rabner, for the Court

The undersigned hereby consents to the form and entry of the foregoing Order.

3/23/2020
Date

/s/Gurbir S. Grewal
Office of the Attorney General

3/23/2020
Date

/s/Angelo J. Onofri
County Prosecutors Association of New Jersey

3/23/2020
Date

/s/Joseph E. Krakora
Office of the Public Defender

3/23/2020
Date

/s/Alexander Shalom
American Civil Liberties Union of New Jersey