

March 20, 2020

*Via email*

Dr. Rachel Levine  
Secretary of Health, Commonwealth of Pennsylvania

**Dear Secretary Levine:**

As COVID-19 spreads rapidly across Pennsylvania, we urge you to take immediate action to encourage the release of people held in jails and prisons, to develop and implement policies that align with guidance from public health experts, and to minimize the harm inflicted on incarcerated people, correctional officers, and the broader community before it is too late.

Public health experts, including Dr. Joseph Amon, Director of the Office of Global Health at Drexel University, are sounding the alarm, warning courts and prisons that they must **“act now”** to avert a dire public health crisis. All individuals who work within the system should be “fully prepared now and *not* wait until after there is an explosive number of cases,” because by then it will be too late. Dr. Amon recommends that no one should be put into prison or jail who could be safely diverted and the courts should release whomever they can safely release and have contingency plans for how they will ensure proper medical treatment for the cases that will appear.

The window to act is rapidly closing. Failure to take immediate and decisive action to release individuals from custody will almost certainly mean a death sentence for older adults and community members with medical conditions that put them at risk of serious COVID-19 infection.

**Public health experts warn prisons and jails pose a severe threat to public safety.**

Leading experts in the field warn that the [“epicenter of the pandemic will be jails and prisons.”](#)<sup>1</sup> In a correctional setting, the only known measures to prevent the spread of the virus are strict screening of all individuals entering the facility, social distancing, improved hygiene, and isolation (and often hospitalization) of people who test positive for the virus. It will be difficult and likely impossible to screen all staff, new detainees and prisoners who enter facilities daily, or even everyone who displays symptoms. There simply are not enough test kits or qualified staff to perform the screens. Moreover, as individuals in jail have no ability to practice social distancing and limited ability to ensure proper hygiene,



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preventing infection spread once the virus is inside a correctional facility is virtually impossible. Moreover, jails are disproportionately filled with people who suffer from health conditions that put them at a [higher risk than the general population](#).<sup>2</sup> Because most jails are at or near capacity, there simply is insufficient space to establish quarantine and isolation units, absent release of a significant number of people. Transmission in jails will also endanger the broader community, as staff enter and leave daily, and will carry the virus with them, [putting exponentially more people at risk of severe illness and death](#).<sup>3</sup>

Across the country, we are seeing the harms that will come to pass if Pennsylvania does not take immediate action. The President just recently declared a national emergency and already some [individuals held in detention have tested positive](#) for the virus and others [are being monitored after manifesting symptoms](#).<sup>4</sup> Guards and staff have tested positive as well.<sup>5</sup> In [Allegheny County](#), fifteen sheriffs' deputies are already in self-quarantine for possible exposure.<sup>6</sup> Because infected individuals can take [days and even over a week to become symptomatic](#),<sup>7</sup> by the time someone displays symptoms sufficient to trigger testing, they have already spread the illness to those with whom they come into contact. This recently occurred at [Rikers Island](#),<sup>8</sup> where individuals exposed to a person who tested positive are now symptomatic. When these individuals are ill, infirm, or elderly, these most vulnerable people are at a grave risk of serious health complications, including death. When those infected are prison and jail staff, this contact means the kinds of broader contagion that we are seeing in other jurisdictions. For rural communities, where jails and prisons may be the county's largest employer, when an outbreak arrives, a greater proportion of people may, through their own work or the work of a loved one, come into contact with the virus—the impact will be devastating. Moreover, given the dearth of testing kits, current numbers of contagion and infection underestimate the gravity of the situation.

In these dire circumstances, every decision to send a person into jail or prison, or to deny requests for release, will thus increase the risk of an outbreak. Releasing those prisoners now protects entire communities. Reduced jail populations will allow for increased cleanliness, ability to socially distance, and room to establish quarantine and isolation units for people who cannot be released. Moreover, if we take action, when the outbreaks do occur inside a jail, they will necessarily be smaller in scope. The impacts on staffing levels, resulting from required self-quarantines, will not be as severe. Everyone will be safer.

### **A majority of people incarcerated in Pennsylvania's jails are pretrial detainees.**

An overwhelming proportion of our state's incarcerated population are pretrial detainees. According to the most recent statistics compiled by the Vera Institute of Justice, pretrial detainees constitute 62% of Pennsylvania's total jail population. In other words, tens of thousands of people are behind bars, despite having not been convicted of any crime. In Philadelphia, that figure is a staggering 77%. However, pretrial detention exists not just in big cities like Philadelphia, but also in rural counties as well. In Westmoreland County, for example, pretrial detainees make up 72% of the total jail population. Pretrial detention is prevalent across the state, in counties large and small, urban and rural.<sup>9</sup>

One of the primary drivers of pretrial incarceration is unaffordable cash bail. All too often, judges set bail on the order of tens of thousands of dollars, even though [most Americans can barely come up with \\$400 for an emergency](#).<sup>10</sup> As a result, people languish in jail not because they are dangerous, or because pose flight risk, but simply because they are too poor to purchase their freedom.

Responding to COVID-19 demands that we release the thousands of people, many of whom are pretrial detainees who pose little risk to the community, from county jails across the state. On the other hand, their ongoing detention increases the public health risks both inside and outside the correctional facility.

### **Counties are not taking the necessary action.**

We have learned that most counties are not taking meaningful steps to mitigate this looming crisis. There has already been an instance of a correctional employee testing positive for COVID19 in **Delaware County**. There are currently over 1,400 people incarcerated in George W. Hill Correctional Facility located in Delaware County. An analysis of publicly available dockets suggests that, since the pandemic was declared, magisterial district judges have continued to assign cash bail in over 60% of initial bail hearings, ensuring that the jail population continues to rise. Yesterday, the President Judge in Delaware County issued an emergency order authorizing the Adult Probation and Parole Department (APPD) to undertake a case-by-case review of defendants currently serving a county sentence for the possibility of seeking to parole such defendants 1-3 to weeks before the expiration of their minimum sentences of confinement. Although such proactive actions are laudable, the case-by-case approach is dependent on the approval by APPD and the minimal relief contemplated by the order is woefully inadequate in the face of the impending public health catastrophe. In fact, the window for action to avert a mass outbreak in the Delaware County jail, is rapidly closing, [if not already closed](#).<sup>11</sup>

**Montgomery County** is the [epicenter](#) of the coronavirus outbreak in Pennsylvania.<sup>12</sup> As a result, public officials in Montgomery County have taken swift and decisive action to reduce the spread in the greater community. However, this coordinated action has not yet focused on reducing on the jail population. In fact, an analysis of publicly available docket data indicates that magisterial district judges have continued to assign cash bail to indigent defendants since the outbreak in Montgomery County. The ACLU of PA has also received reports that judges are not quickly resolving bail modification requests filed on behalf of clients in custody.

**Allegheny County's** criminal justice system has made strides to release prisoners, but much more needs to be done. Allegheny County Jail's recent population was about 2,200. As of yesterday, [Allegheny County had released 189 people](#) held pre-trial on a mix of detainers and cash bonds.<sup>13</sup> That number is expected to rise above 200 today, but there are many more people detained in these pre-trial categories, and many more are elderly and medically infirm. The handful of parole motions that the overworked public defender has managed to file have not been adjudicated. In addition, furloughs for persons serving short sentences (by law people cannot serve sentences in county jail unless the sentence is shorter than 23 ½ months) have not yet been considered. Allegheny County should take steps to facilitate review of all remaining detained people without forcing the public defender to file separate motions.

**Philadelphia County** may present the state's greatest threat as the county currently holds approximately 4,500 people in its jails. We understand that in Philadelphia, despite the ongoing emergency, the Supervising Judge of the First Judicial District is currently refusing to hear parole petitions, which means that no one will be released from the county jails until courts resume their normal operations. Moreover, Philadelphia arraignment court magistrates continue to impose unaffordable cash bail on indigent defendants, ensuring that the jail population will rise. An analysis of publicly available docket data indicates that arraignment court magistrates have set monetary bail in 37% of initial bail assignments since the World Health Organization declared the coronavirus a pandemic on March 11, 2020. As of 7:30 a.m., on March 18, 2020, 68% of defendants who were initially assigned cash bail during this period have not yet been able to pay their bail. For example, two days ago, arraignment court magistrate Francis Bernard imposed \$20,000 on an indigent defendant charged with drug crimes and the defendant remains in custody.

### **Our Request**

In light of the looming crisis, we urge you to issue statewide guidance that stresses the public health urgency for immediate action, by all criminal justice stakeholders, to expedite and facilitate the release of as many detained people as possible, consistent with public safety. We suggest that you advise courts, pre-trial service systems, and district attorneys to work with public defenders and other criminal defense lawyers to do the following:

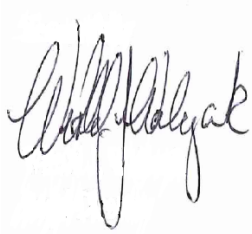
- Establish processes to expeditiously review the status of every detained person to consider their release. These processes should not place the burden on public defenders to file motions that prompt reconsideration, as they simply do not have the resources to do so. Instead, courts should initiate these reviews. The most likely candidates for release should be, at a minimum:
  - People on cash bail, who, by virtue of being determined bond-eligible, are not considered a public-safety threat;
  - People held on probation detainers based either on technical violations or because of non-violent new charges; and
  - All people serving county sentences, which is limited to people serving time for relatively minor offenses.
- For people who are not subject to release according to the above reasons, establish a process for expedited review of all remaining people in medically vulnerable situations, i.e., people over 60 and/or those who have medical conditions that place them at a higher risk, such as those with respiratory illnesses, those who are immunocompromised, and those who may be pregnant, to determine suitability for furlough.
- Establish procedures for courts to hear new bail modification and detainer motions on a daily basis.

We also ask that you entreat courts and law enforcement agencies to help stem the influx of new people into jails. Exceedingly few cases should warrant incarceration at this precarious time. We would encourage you to ask that:

- Police and other law enforcement officials stop making arrests for minor offenses and instead issue summons whenever possible;
- Courts stop enforcing probation violations (if there is a serious new charge the person is likely to be detained for that reason);
- Courts suspend enforcement of outstanding bench warrants;
- Courts stop assigning cash bail – only people who pose a significant public safety risk should be held on detention orders; and
- Courts decline to issue new bench warrants.

Due to the magnitude of the public health crisis, every moment of inaction will likely come at a grave human cost. We thus urge you to issue the aforementioned guidance immediately. Implementing even some of the measures we suggest is likely to save lives. We would be happy to work with you and others to help fashion suitable guidance. Thank you for considering this request. We will continue to monitor the situation as it unfolds.

Sincerely,



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Nyssa Taylor, Criminal Justice Policy Counsel  
Hayden Nelson-Major, Independence Foundation Fellow  
Erika Nyborg-Burch, Staff Attorney  
American Civil Liberties Union of Pennsylvania

Cc: Hon. Justice Thomas Saylor (via email)  
Geoff Moulton, Administrative Office of Pennsylvania Courts (via email)

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<sup>1</sup> Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, The New York Times, Mar. 12, 2020, <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

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<sup>2</sup> Jennifer Gonnerman, *How Prisons and Jails Can Respond to the Coronavirus*, The New Yorker, Mar. 16, 2020, <https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus>.

<sup>3</sup> Josiah Rich, Scott Allen and Mavis Nimoh, *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/>.

<sup>4</sup> Mark Sundstrom, *Inmate at Nassau County Jail Tests Positive for Coronavirus*, PIX11.com, March 16, 2020, <https://www.pix11.com/news/coronavirus/inmate-at-nassau-county-jail-long-island-tests-positive-for-coronavirus-officials>; Brian Amaral, *ACI Facility on Lockdown as 3 Show Flu-like Symptoms*, The Providence Journal, March 18, 2020, <https://www.providencejournal.com/news/20200318/aci-facility-on-lockdown-as-3-show-flu-like-symptoms>.

<sup>5</sup> See.g., *NJ Guard Tests Positive for Coronavirus*, Fox 29 News, March 19, 2020 <https://www.fox29.com/news/nj-jail-guard-tests-positive-for-coronavirus>; Stephen Frye, *Two Prison Employees Diagnosed with COVID-19 in Michigan*, The Oakland Press, March 18, 2020, [https://www.theoaklandpress.com/news/two-prison-employees-diagnosed-with-covid--in-michigan/article\\_599ec29c-691c-11ea-91ab-c7e5dd4708c3.html](https://www.theoaklandpress.com/news/two-prison-employees-diagnosed-with-covid--in-michigan/article_599ec29c-691c-11ea-91ab-c7e5dd4708c3.html).

<sup>6</sup> *Allegheny County Sheriff's Deputy Tested for COVID 19 while 15 Others Self-Isolate*, Pittsburgh's Action News, March 20, 2020, <https://www.wtae.com/article/allegheny-county-sheriffs-deputy-tested-covid-19-coronavirus/31765286>.

<sup>7</sup> Jonathan Eichberger, *Coronavirus Symptoms Start About Five Days After Exposure Johns Hopkins Study Finds*, John Hopkins Magazine, The HUB, March 9, 2020, <https://hub.jhu.edu/2020/03/09/coronavirus-incubation-period/>.

<sup>8</sup> Jeffrey Martin, *Shortly After First Rikers Island Prisoner Confirmed with Coronavirus, 8 More Showing Symptoms*, Newsweek, March 19, 2020, <https://www.newsweek.com/shortly-after-first-rikers-island-prisoner-confirmed-coronavirus-8-more-showing-symptoms-1493351>.

<sup>9</sup> Pretrial Jail Incarceration Rate, Vera Institute, <http://trends.vera.org/incarceration-rates?data=pretrial>.

<sup>10</sup> Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2018*, May 2019, <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf>.

<sup>11</sup> Kathleen E. Carey, *Prison Inmates and Employees Exposed To a Positive COVID-19 Case Are Asymptomatic After Eight Days*, Delco Times, March 15, 2020, [https://www.delcotimes.com/news/local/delco-prison-employee-tests-positive-for-covid--inmates-quarantined/article\\_2c0154a4-658d-11ea-a497-2f59407a187c.html](https://www.delcotimes.com/news/local/delco-prison-employee-tests-positive-for-covid--inmates-quarantined/article_2c0154a4-658d-11ea-a497-2f59407a187c.html).

<sup>12</sup> Peter Hall, *In Montgomery County, Pennsylvania's Coronavirus Epicenter Families Band Together From a Distance*, The Morning Call, March 19, 2020, <https://www.mcall.com/coronavirus/mc-ews-coronavirus-montgomery-county-lockdown-20200319-i4ukzpmqjaltkrofdxaj4zq4q-story.html>.

<sup>13</sup> Ryan Deto and Ollie Gratzinger, *Allegheny County Jail Plans to Release Some Medically Vulnerable Inmates, but Advocacy Groups Say It's Not Enough*, Pittsburgh City Paper, March 19, 2020

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<https://www.pghcitypaper.com/pittsburgh/allegheeny-county-jail-plans-to-release-some-medically-vulnerable-inmates-but-advocacy-groups-say-its-not-enough/Content?oid=16978582>.