



April 21, 2020

Chief Justice John D. Minton, Jr.
Supreme Court of Kentucky
700 Capital Ave., Room 231
Frankfort, KY 40601
johnminton@KYCOURTS.NET

Sent via email

Chief Justice Minton:

325 W. Main St.
Suite 2210
Louisville, KY 40202

(502) 581-9746
aclu-ky.org

Erin Kennedy Startzman
President

Michael Aldridge
Executive Director

Corey Shapiro
Legal Director

Heather Gatnarek
Staff Attorney

Mashayla Hays
Legal Fellow

Aaron Tucek
Legal Fellow

Frank Bencomo Suarez
Legal Assistant

We write to you from the American Civil Liberties Union of Kentucky. Our organization works to protect and expand Kentuckians' civil rights and liberties, and we are made up of thousands of members statewide. We work in the courts, the legislature, and communities around the state to defend the individual rights and liberties guaranteed to all people by the Constitutions of the United States and the Commonwealth of Kentucky. Our organization has a particular interest in the criminal legal system, and we work with a diverse range of partners across the political spectrum to advocate for common sense justice reforms that enhance public safety, strengthen communities, and promote cost effective sentencing alternatives.

We are grateful that you and your colleagues acted quickly at the beginning of the current state of emergency to take precautionary and protective action. We appreciate your continued efforts in this unprecedented time to protect the tens of thousands of Kentuckians that come in contact with our court system, including the court staff and administrators, attorneys, community members, and those who are charged with criminal offenses. We read with interest and optimism about your order dated April 14, 2020 (Order 2020-25), which looked poised to help alleviate the chronic overcrowding and unsafe conditions in our state's local county jails. We all know that people incarcerated in overcrowded jails, many of whom have medical conditions that make them especially vulnerable to illness, are unable to take the appropriate and recommended precautions to protect themselves against the spread of the novel coronavirus. It is clear from your orders closing courts, limiting in-person appearances, and expanding the use of remote or electronic filing and payment options that you and your colleagues understand quite well the danger that this virus poses to all of us, and especially to those with certain pre-existing conditions or those who are unable to exercise proper precautions such as physical distancing and increased use of alcohol-based hand sanitizer.



We were deeply disappointed, then, to realize that Order 2020-25 is only intended to apply to individuals who are charged with offenses from April 14 onward,¹ and therefore will have no effect on the thousands of Kentuckians who currently find themselves in overcrowded jails, unable to properly protect themselves from COVID-19 exposure—including those Kentuckians who otherwise *would* be eligible for release under Order 2020-25, if only their charge came after April 14.

We now ask you to please consider issuing an additional order from the Kentucky Supreme Court, extending the release provisions from Order 2020-25 to apply to individuals who are *currently* incarcerated in Kentucky jails. This important step will help to relieve the chronic overcrowding in our state's jails, which is caused, in part, by the practice of holding certain individuals serving sentences on low-level felony offenses in local county jails, rather than state correctional facilities. It is also consistent with recommendations from human rights experts on how best to respond to the COVID-19 crisis in correctional settings.²

A mandate such as this is clearly necessary; notwithstanding your previous directives to officials to release those pre-trial inmates who could safely wait for their trial dates at home,³ or other organizations' attempts to encourage relief from other state correctional entities,⁴ our state's jails remain perpetually

¹ Karla Ward, *People arrested for these crimes can skip jail under new Kentucky COVID-19 rules*, LEXINGTON HERALD-LEADER, (Apr. 14, 2020, 9:57 PM), <https://www.kentucky.com/news/coronavirus/article242017831.html>.

² See *Summary of Recommendations to the U.N. Universal Periodic Review (UPR) of the United States of America on COVID-19 and U.S. Prisons, Jails, and Immigration Detention*, ACLU et. al (April 17, 2020), <https://www.aclu.org/other/summary-recommendations-un-covid-19-and-us-prisons-jails-and-immigration-detention>.

³ John Cheves, *Chief justice pleads for Kentucky inmate releases ahead of COVID-19, but progress slow*, LEXINGTON HERALD-LEADER <https://www.kentucky.com/news/coronavirus/article241428266.html>.

⁴ See, e.g., Letter from Damon Preston, Public Advocate, Department of Public Advocacy, to Mary Noble, Secretary, Justice & Public Safety Cabinet, and Leila A. VanHoose, Chair, Kentucky Parole Board (Mar. 26, 2020), available at [https://dpa.ky.gov/News-and-Public-Information/Documents/DPA%20COVID-19%20Letter%20to%20Justice%20Cabinet%20and%20Parole%20Board%20\(FINAL\).pdf](https://dpa.ky.gov/News-and-Public-Information/Documents/DPA%20COVID-19%20Letter%20to%20Justice%20Cabinet%20and%20Parole%20Board%20(FINAL).pdf) (seeking action from the Dept. of Corrections and the Kentucky Parole Board to begin releasing certain medically vulnerable



overcrowded. Forty-nine of our local county jails are still at or over capacity.⁵ This crisis has been brewing for some time, and you have been outspoken about the need for action.⁶ That need is more acute now than ever, and it is clear that only direct orders from our state's highest court will bring about the type of relief needed. Simply expanding Order 2020-25 to apply to individuals already in local county jails will go far to alleviate the overcrowding and unsafe conditions at the jails throughout the state.

For families of incarcerated people, this is a matter of life and death. Since this crisis began, we at the ACLU of Kentucky have regularly heard from incarcerated people and their loved ones about the inadequate and dangerous conditions in county jails: people forced to eat off the floor because there is not enough room at the tables; people sleeping on bunks just a couple feet from other inmates; people denied access to masks or alcohol-based hand sanitizer or hot water to wash their hands. While the rest of Kentucky stays healthy at home, incarcerated people nervously await the start of the coughing and the fevers, and wonder whether their time in jail will become a death sentence. Expanding Order 2020-25 will allow many of these people to return to their homes, greatly reducing the likelihood that they will become infected with COVID-19—and consequently reducing the risk for the incarcerated people who remain and the correctional officers and medical staff who attend to them.

We urge you to take this much-needed step. We already know that COVID-19 is in our prisons,⁷ and it is only a matter of time before an outbreak occurs in our overcrowded jails. When that happens, the experiences of correctional facilities elsewhere in the United States demonstrate that tragedy and death will follow. Please consider taking this necessary action to protect Kentuckians from this virulent and indiscriminate illness.

individuals and those serving certain Class C or D felony sentences in local county jails).

⁵ *04-02-20 Weekly Jail Statistics*, KY. DEP'T OF CORR. (last accessed Apr. 20, 2020),

<https://corrections.ky.gov/About/researchandstats/Documents/Weekly%20Jail/2020/04/04-02-20.pdf>

⁶ Hillary Thornton, Chief Justice weighs in on jail overcrowding, WKYT (Sept. 13, 2019, 7:47 PM), <https://www.wkyt.com/content/news/Kentucky-Chief-Justice-weighs-in-on-jail-overcrowding-560282101.html>.

⁷ John Cheves, *'They are terrified.'* *A month into COVID-19 pandemic, state inmates plead for help.*, LEXINGTON HERALD-LEADER (Apr. 14, 2020, 4:46 PM),

<https://www.kentucky.com/news/coronavirus/article242004691.html>.



Sincerely,

A handwritten signature in black ink that reads "Corey Shapiro". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Corey Shapiro