



COVID-19 Response & Meeting the Needs of People in the Criminal Justice System

March 30, 2020

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

(502) 581-9746
ACLU-KY.org

Erin Kennedy Startzman
President

Michael Aldridge
Executive Director

Kate Miller
Advocacy Director

Amanda Hall
Field Organizer

Keturah Herron
Field Organizer

Jackie McGranahan
Field Organizer

Andy Beshear, Governor of Kentucky
Justice Mary C. Noble, Secretary of Kentucky Justice and Public Safety Cabinet
Renee McDaniel, Kentucky Jailers Association
J. Michael Brown, Secretary of Kentucky Executive Cabinet
LaTasha Buckner, Kentucky Chief of Staff and General Counsel
Dewayne Clark, Director of Louisville Metro Corrections

Thank you for the important steps many of you have already taken to slow the spread of the deadly and highly transmissible novel coronavirus (COVID-19). The number of confirmed COVID-19 cases in Kentucky is rising and will continue to affect every corner of the Commonwealth. This pandemic will have particularly harsh consequences on the most vulnerable among us, including those who are incarcerated. The state should enact serious precautions to protect incarcerated people and those around them.

The Centers for Disease Control and Prevention, the Kentucky Department of Public Advocacy, and the Bail Project have published various recommendations that would maintain public safety while also protecting the health of incarcerated people. We support these recommendations and ask that stakeholders implement the following changes: decreased arrests, release of pretrial detainees, expedited compassionate releases, waiving of fines and fees for incarceration and supervision, waiving of fees for phone calls during suspended visitation, access to hygiene and sanitization products, and reduction of incarceration for technical violations for people on probation and parole. Consistent with Governor Beshear's efforts to keep the public fully informed as this pandemic continues to spread, we also ask the Commonwealth to publish data on COVID-19 testing and isolation in Kentucky's prisons and jails.

From policing, prosecution, and pretrial hearings, to sentencing, confinement, and release, every aspect of the system must come under intense scrutiny for its response to this national public health crisis. We are calling on law enforcement agencies to balance their enforcement priorities with the realities of this



pandemic. State and local governments could reduce viral exposure for members of the public and their employees if they limit arrests to offenses that pose a risk to public safety and reduce the population in already overcrowded detention facilities.

We have created recommendations for people who are incarcerated, people who continue to interact with the justice system, and the staff and other personnel who work within the justice system. Those stakeholders responsible for operating Kentucky's prisons and jails should note that failure to take adequate measures to protect incarcerated people from risk of infection may result in constitutional violations¹. We urge you to adopt the following measures to minimize the spread of COVID-19 and protect those who are extremely vulnerable in the face of this pandemic.

Decrease Arrests

Sheriffs and police departments across the Commonwealth—and particularly in densely populated areas in Jefferson County, Fayette County, and Northern Kentucky—should immediately adjust their enforcement activities to minimize risks to both community members and officers. Considering a balance of public safety and the overwhelming public health concerns of COVID-19, we urge law enforcement agencies to expand criteria for citation and release, expedite papering decisions, and only arrest individuals in situations that present a continued and serious risk to public safety.

Pretrial Release

People who are incarcerated only because they cannot afford to pay bail should be released. This urgent, precautionary measure will alleviate our already dangerously overpopulated jails and prisons, offering those who remain incarcerated a better chance to practice health safety measures, like social-distancing. This would provide some relief to the likely spread of COVID-19 within the criminal justice system.

¹ See *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996) (“correctional officials have an affirmative obligation to protect inmates from infectious disease”).



Waive Fines & Fees

During this pandemic, individuals should not be incarcerated due to fines, fees, or other financial obligations. Furthermore, we ask that individuals who are incarcerated only because of an inability to pay fines and fees be released immediately. During these trying times, individuals who do not pose a risk to public safety should not be incarcerated due to inability to meet financial obligations.

Compassionate Release

Officials should release incarcerated people who are elderly, immunocompromised, or otherwise meet the requirements for compassionate release. These populations are likely to face high-risk complications if infected with COVID-19. Releasing this population will reduce the need for complex medical care and reduce the burden on healthcare providers. We urge you to consider alternatives to confinement in jails and prisons.

Consideration of Release

Individuals who are serving short sentences for misdemeanor offenses or low-level felony offenses should be considered for release. Additionally, individuals with a year or less of their sentence remaining should also be considered for release when they do not pose a risk to public safety.

Waive Phone Call Fees During Suspension of In-Person Visitation

In-person visitation has been suspended in most facilities as a social-distancing measure to reduce the spread of COVID-19. All fees should be suspended for phone calls during this time so people can stay connected with their communities. Lack of contact with support systems leads to increased psychological distress and could lead to increased violence among those who are confined and to those who work in these systems.

Proper Hygiene & Sanitization Procedures

Proper hygiene and sanitization must be ensured for people who are incarcerated and those who work within the system. Free hygiene and sanitization products should be provided to each individual. Additionally, the frequency of sanitization of facilities and common spaces should be increased to prevent the spread of



illness. Last, free testing and treatment should be provided immediately to those who exhibit symptoms of COVID-19.

Reduction in Incarceration for Probation & Parole Supervision

We urge stakeholders to reduce the number of individuals that are incarcerated due to crimeless technical violations while under community supervision. Alternatives to incarceration should be put in place for simple technical violations. In addition, we suggest that more individuals should be placed on administrative supervision, or have their supervision terminated, as appropriate. Moreover, all fees and fines for incarceration and supervision should be waived during this time of widespread economic distress.

Publication of COVID-19 Testing and Isolation Data in Prisons and Jails

Governor Beshear has made providing the public with accurate information a priority in this time of crisis. To ensure public access to vital information regarding the potential spread of COVID-19 in Kentucky's criminal justice system, the Commonwealth should publish daily:

- 1) The number of incarcerated people in Kentucky's prisons and jails tested for COVID-19;
- 2) The number of tests that returned positive, negative, or remain outstanding; and,
- 3) The number of people in each prison or jail placed in medical isolation, segregation, or quarantine.

States such as Ohio have already taken such measures². Ensuring transparency in this manner will help families, advocates, and state and local leaders quickly identify and respond to COVID-19 outbreaks in the justice system.

In times of uncertainty and distress, strength is derived from coming together as a community, as a state, and as a nation. We ask that the Governor mandate that jailers and various stakeholders that are processing these releases coordinate with local service providers and public health experts so that people have a successful reentry during this time and have access

² See Ohio Department of Rehabilitation and Correction, COVID-19 Information (2020), <https://www.drc.ohio.gov/Organization/Research/Reports/COVID-19-Information>.



to the appropriate support services. Many local jurisdictions have already implemented some of these suggestions and guidelines. We urge the entire Commonwealth of Kentucky to create policies and procedures that protect those who are incarcerated and those who work within the criminal justice system. This is a public health issue and we hope to see swift action taken to protect all members of our communities.

Thank you for your time and consideration. We hope you and your staff are safe and healthy.

Sincerely,

A handwritten signature in black ink that reads "Amanda Hall". The signature is written in a cursive, flowing style.

Amanda Hall
Field Organizer, Smart Justice
American Civil Liberties Union of Kentucky