

Via Email

April 9, 2020

Sheriff Jim Driscoll, President
Arizona Sheriffs Association
1910 W Jefferson Street
Phoenix, AZ 85009
info@azsheriffs.org

Dear Sheriff Driscoll:

The spread of COVID-19 is a national emergency that threatens thousands of lives across our country. According to the latest estimates, the death toll from this virus could range anywhere from 100,000 to 200,000 people across the United States in the coming months. There is no reason to think Arizona will be spared from this devastation. Responding to this crisis will require all of us to take immediate and unprecedented action. As leaders in our community, it is your duty to keep safe those who live and work in the state's jails, as well as the communities to which they return.

As you know, despite being physically secure, jails and detention centers are not isolated from the community. Indeed, many people spend only a few days in the jail before returning to their families, jobs, and communities. And those who work in the jail—staff, officers, vendors, for example—also return home each day to loved ones and neighbors. The arrival of the virus into the jail will mean not only that it spreads rapidly and widely inside, but also that the likelihood of community spread outside of the jail will rise considerably. That is why any efforts to protect Arizona from the devastating impact of this pandemic must include serious protection and mitigation efforts in our local jails.

While much of the country turns to social distancing and enhanced hygiene practices to slow the spread of the virus, most of Arizona's local jails have remained largely unchanged. These facilities contain high concentrations of people in close proximity and are breeding grounds for the rapid transmission of COVID-19. The conditions in jails present significant health risks to the people housed in them; the correctional officers, health care professionals, and vendors who work in them; and to the community as a whole. Once an outbreak occurs, it will be too late for under-resourced jails to prevent the spread of the virus in the jails and the larger community.

We know what will work—and what will not work—to abate this impending threat. Depopulation of our jails is a critical and necessary preventive action. Reducing the number of people in jail will: (1) allow for better “social distancing” within the

facility; (2) accommodate short-staffing due to the spread of the virus within the community; and (3) help ensure medical staff inside jails and in the community are not overburdened by exponentially rising cases within the jails. Without significant reductions in jail populations, we can expect to see widespread infection and likely fatalities. Disturbingly, we see such outcomes taking shape at a quickening pace.

It is imperative that our sheriffs use whatever power they have to reduce jail populations during this public health emergency. [State law](#) bestows authority on sheriffs, with coordination from other system actors, to effectively handle a crisis like this one:

When a pestilence or contagious disease occurs in or near a jail and the physician in attendance certifies that it is liable to endanger the health of the prisoners, the judge of the superior court may, by an order in writing, designate a safe and convenient place in the county, or the jail in a contiguous county, as the place of confinement. The order shall be filed in the office of the clerk of the superior court, and the sheriff shall thereupon remove the prisoners to the place or jail designated, and there confine them until they can be safely returned to the jail from which they were taken. [Ariz. Rev. Stat. § 31-106 \(2017\)](#).

By utilizing this provision to release individuals to home detention, sheriffs can facilitate the depopulation of jails, which will allow room for more social distancing and decrease the number of people who require care and oversight by staff.

Sheriffs can also divert people from jails, reducing the amount of “jail churn” and preventing further community spread of the virus. We have already seen this happening in [Cococino County](#) and in [many other states](#) across the country. It should be happening across the state. There is no need to risk bringing the virus into the jail if that person can be safely returned to the community to await their future court dates.

In sum, sheriffs have the power to mitigate the harm that is rapidly unfolding. We ask that you urge your members to use their power and authority accordingly. Doing so will produce immeasurable public-health benefits to those both inside and outside local jails.

Sheriffs should take the following actions:

- Immediately seek the certification of the physician in attendance of the local jail that the COVID-19 pandemic “is liable to endanger the health of the prisoners.” Such a certification will allow the judge of the Superior Court to act to reduce the local jail population.

- Reduce the local jail population by releasing anyone who is held pretrial and who does not pose an unreasonable safety risk to a specific person or persons. If a sheriff does not possess the legal authority to do this unilaterally, they should affirmatively commit to working with legal system partners—judges, prosecutors, defenders—to make this happen.
- Reduce the local jail population by placing all people serving a misdemeanor sentence who are within six months of their release date on home detention with a system of telephone monitoring in accordance with A.R.S. § 11-459. If a sheriff does not possess the legal authority to place any particular person on home detention, they should affirmatively commit to working with legal system partners—judges, prosecutors, defenders—to make this happen.
- Reduce the jail populations by placing all people held on probation and parole, technical violations, detainers or sentences on home detention with a system of telephone monitoring in accordance with A.R.S. § 11-459. If a sheriff does not possess the legal authority to place any particular person on home detention, they should affirmatively commit to working with legal system partners—judges, prosecutors, defenders—to make this happen.
- Reduce local jail populations by placing all elderly, immunocompromised, or pregnant individuals who do not pose an unreasonable safety risk to a specific person or persons on home detention with a system of telephone monitoring in accordance with A.R.S. § 11-459. If a sheriff does not possess the legal authority to place any particular person on home detention, they should affirmatively commit to working with legal system partners—judges, prosecutors, defenders—to make this happen.
- Reduce the jail population by not making new custodial arrests for any crimes that do not pose an unreasonable safety risk to a specific person or persons.
- Make transparent a policy, vetted by state or county public health officials, for handling COVID-19 within each facility to include: screening and testing of persons who may be infected, including people in custody, staff and support personnel; the treatment and housing of persons who are exhibiting symptoms or who have tested positive for COVID 19; and collaboration with community hospitals that serve detained persons.
- Provide daily information about the number of confirmed and suspected cases of COVID-19 in each jail, as well as the number of persons quarantined because of a COVID-19 diagnosis, or related symptoms.

We ask that you immediately direct your members to reduce their jail populations and divert future arrestees who do not pose an imminent risk to public safety. The health and safety of the people in our state depend on it.

Respectfully,

ACLU of Arizona
Adams & Associates
African-American Christian Clergy Coalition (AACCC)
American Friends Service Committee (AFSC)
Arizona Attorneys for Criminal Justice (AACJ)
Arizona Justice Alliance
Episcopal Diocese of AZ - Prison Ministry
FAMM
Grand Canyon Synod of Evangelical Lutheran Church in America
Mass Liberation
Southwest Conference of the United Church of Christ
S.T.A.R.T. Project

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