

March 26, 2020

Muriel Bowser, Mayor

Kevin Donahue, Deputy Mayor for Public Safety and Justice

Phil Mendelson, Chairman, D.C. Council

Charles Allen, Councilmember, D.C. Council, Chairman, Committee on the Judiciary and Public Safety

Peter Newsham, Chief, Metropolitan Police Department

Robert Morin, Chief Judge, D.C. Superior Court

Congresswoman Eleanor Holmes Norton

Karl Racine, Attorney General for the District of Columbia

Quincy Booth, Director, Department of Corrections

Timothy Shea, U.S. Attorney for the District of Columbia

LaQuandra Nesbitt, Director, Department of Health

Patricia Cushwa, Chairperson, United States Parole Commission

Michael Carvajal, Director, Federal Bureau of Prisons

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). We recognize the challenges and appreciate the legislative and policy initiatives to reduce the number of people detained by law enforcement and held in custody and to address conditions of confinement.

However, the unprecedented crisis of this global pandemic—along with the now-confirmed case of a 20-year-old held at the D.C. jail—calls for additional urgent action. We write today with specific policy recommendations and to urge further actions to protect all individuals impacted by the criminal legal system during the COVID-19 pandemic. We cannot spare any measure that will save lives and reduce the burden on our health care system. Our full list of detailed recommendations is attached, and include:

**Decreasing arrests:** The Metropolitan Police Department has a key role to play by shifting its enforcement activities to minimize risks to both community members and officers. While custodial arrests have decreased since MPD's modification of the citation release criteria on March 17, 2020, they must be decreased further to adequately reduce entry into the system. Balancing the public safety justifications for enforcement and arrest against the overwhelming public health concerns raised by COVID-19, MPD must take steps 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.

**Decreasing the populations of the D.C. Jail and Bureau of Prisons facilities:** Our criminal legal institutions are not equipped to keep their populations and staff safe during this crisis. Facilities are unhygienic, medical care systems are understaffed and unequipped, and the social

distancing mandated by public health experts is impossible in these settings. Not only are they unsafe, these facilities serve as accelerators for the spread of viruses and illness both inside the facilities and into the community via staff. It is therefore imperative that their populations be decreased immediately and significantly. This should be accomplished by:

1. Reducing the population of those held in pretrial detention who do not pose significant risk to public safety;
2. Creating a presumption of release for those who are age 60 or older or have a pre-existing medical condition or other factor identified as creating a risk for severe COVID-19 complications;
3. Releasing those who are serving misdemeanor sentences or who are held pretrial on misdemeanors;
4. Enacting legislation to allow individuals serving D.C. Code sentences to request compassionate release from their sentencing judge and expanding criteria for compassionate release to include “vulnerability to COVID-19”;
5. Transferring individuals out of halfway houses and into home confinement;
6. Suspending the issuance of any new United States Parole Commission warrants and holding in abeyance any pending warrants except for those that relate to a specific threat to public safety;
7. Speeding up the processing of motions and release of vulnerable individuals by Superior Court judges.

**Minimizing health risks inside facilities:** The Department of Corrections, Bureau of Prisons, and D.C. Courts must all work closely with the D.C. Department of Health to create comprehensive plans to reduce the risk of virus transmission in the D.C. Jail, in halfway houses, and in the courts. This includes ensuring that all staff and detained individuals have consistent and proper access to personal protective equipment, hygiene, and sanitation supplies. In addition, detailed coordinated plans with area hospitals and service providers are needed to ensure safe placements and access to necessary services in the community for those who are released but require isolation, quarantine, or medical care as a result of exposure or increased vulnerability to COVID-19, according to CDC guidelines.

**Providing reentry support for those released:** As individuals are released into the community, they should be connected with the Mayor’s Office on Returning Citizen Affairs for assistance with housing, benefits, employment, and mental health services. In addition, policies should be implemented to allow and encourage those with families and loved ones who can house them to return directly to their families. The District also should consider renting space to provide housing for returning citizens who otherwise would be homeless.

Many of the reforms suggested in the attached recommendations have already been implemented in jurisdictions around the country.<sup>1</sup> These reforms are also consistent with those supported by more than 30 district attorneys, (including Attorney General Karl Racine and three from counties in Northern Virginia), who signed a letter urging immediate action to stop the spread of COVID-19 in jails and prisons.<sup>2</sup> They are also consistent with the recommendations of public health experts.<sup>3</sup>

We request an immediate meeting to discuss these proposals. For any questions relating to this letter and to schedule a meeting, please reach out to Emily Gunston, Deputy Legal Director at the Washington Lawyers' Committee for Civil Rights and Urban Affairs, at [Emily\\_Gunston@washlaw.org](mailto:Emily_Gunston@washlaw.org).

Sincerely,

ACLU of the District of Columbia

Campaign for Fair Sentencing of Youth

Campaign for Youth Justice

John Copacino

Director, Criminal Justice Clinic

Co-Director, E. Barrett Prettyman Fellowship Program

Professor of Law, Georgetown University Law Center

Defender Impact Initiative

Families Against Mandatory Minimums

Eduardo R. Ferrer

Visiting Professor, Georgetown Juvenile Justice Clinic

Policy Director, Georgetown Juvenile Justice Initiative

Free Minds Book Club & Writing Workshop

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<sup>1</sup> Consistent with our recommendations, we have provided a list of jurisdictions and the measures they have implemented in the Appendix.

<sup>2</sup> The letter is available at: <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf>

<sup>3</sup> Rich, J., Allen S., and Nimoh, M. (March 17, 2020). "We must release prisoners to lessen the spread of coronavirus." Washington Post. Online. Available: <https://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus/>

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Public Defender Service for the District of Columbia

School Justice Project

Second Look Project

The Sentencing Project

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Washington Lawyers' Committee for Civil Rights and Urban Affairs

Enclosures: Covid-19 Recommendations, Appendix

cc:

Leslie Cooper, Director, Pretrial Services Agency

Richard Tischner, Director, Court Services and Offender Supervision Agency

The following list of comprehensive recommendations should be enacted immediately to protect the lives and health of D.C. residents impacted by the criminal legal system during the Covid-19 pandemic:

## **Mayor and Council: Legislative Action and Implementation**

### 1) Decreasing Pretrial Detention in Misdemeanor and Felony Cases

The stark reality is that the effective closure of Superior Court for the District of Columbia (Superior Court) to nearly all criminal matters except emergencies, bond review, and new arrests, will drive the population of the D.C. Jail upwards. The lack of jury and bench trials in Superior Court and in United States District Court for the District of Columbia means that there will be no acquittals or dismissed cases on the eve of trial. While individuals will keep being sent into custody, fewer will be leaving. This will leave the Department of Corrections (DOC) and incarcerated individuals even more vulnerable to crowding, shortages in medical care, and insufficient staffing as individuals call out sick to take care of themselves and family members.

**For misdemeanor offenses, we recommend that the population of individuals held pretrial on misdemeanors be significantly, if not entirely, decreased.** There are about 60 people held in DOC custody for pretrial misdemeanors. For women, the average length of stay is 23 days and for men it is almost 30 days.<sup>1</sup> These individuals can be safely released to the community but are usually incarcerated pretrial because they have failed to comply with conditions of release, for instance, by using drugs, failing to appear for court, or being arrested on a new misdemeanor offense. Typically, the conduct does not pose a risk to public safety and amounts to a technical violation. Their continued pretrial detention, and their inability to go to trial as a result of the public health emergency, will mean that many individuals will remain in pretrial custody for significantly longer than they would have if they had been found guilty and sentenced for the offense. These individuals should all be released.

**We recommend that the Council immediately amend D.C. Code § 23-1322 by adding the following provision which would allow judges to appropriately reconsider the pretrial detention of individuals charged with misdemeanors:**

During the continuation of the public health emergency caused by the global pandemic of Covid-19, the presumption that individuals charged with misdemeanor offenses shall be released pretrial shall not be defeated by concerns about whether the defendant will subsequently appear in court or by the defendant's prior non-compliance with his or her conditions of release. The presumption of release may be overcome only by clear and convincing evidence that release poses a serious threat to the safety of persons. This standard shall apply to initial detention decisions and to judicial review of pretrial detention.

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<sup>1</sup> See Department of Corrections [data](#).

**We also recommend the release of individuals who are held at St. Elizabeths Hospital for competency examination and competency restoration. We propose the following amendment as D.C. Code 24-531.05a:**

During the continuation of the public health emergency caused by the global pandemic of Covid-19, individuals who are held pursuant to D.C. Code § 24.531.03 and D.C. Code 24-531.05 shall be released to the community to participate in out-patient competency evaluation and out-patient competency restoration, unless there is clear and convincing evidence that release poses a serious threat to the safety of persons.

**In felony cases, we recommend that pretrial detention be reviewed in light of the serious risks to the lives of vulnerable individuals at the D.C. Jail.** As such, we propose the following additional language to D.C. § Code 23-1322:

During the continuation of the public health emergency caused by the global pandemic of Covid-19, defendants charged with any offense may petition the court for reconsideration of detention on the grounds that detention poses a serious threat to their life or health. The court shall release individuals who are age 60 or older or who have asthma, heart disease, diabetes, cancer, HIV/AIDS, or other medical condition or factor identified as creating a risk for severe Covid-19 complications, unless the court finds by clear and convincing evidence that the person poses a serious threat to the physical safety of persons. For all others, the court shall consider release and shall order release unless the government presents clear and convincing evidence that such release would pose a serious threat to the physical safety of persons. This standard shall apply to initial detention decisions and to judicial review of pretrial detention.

## 2) Releasing Individuals Serving Misdemeanor Sentences

Approximately 100 people are in the custody of DOC because they are serving a misdemeanor sentence. Many of these individuals have short periods of incarceration to serve and will be in the community within months or weeks of their sentencing hearing. A sentence of a short period of incarceration is indicative of a judicial determination that the individual does not pose a serious threat to community safety. **We recommend that, rather than continuing this incarceration and risking their lives and the lives of others, this group of individuals be released.**

In the COVID-19 Response Emergency Amendment Act of 2020, D.C. Act 23-246, § 313 which was signed into law on March 17, 2020, the Council granted DOC the discretion to provide good time, without limitation, to effectuate the immediate release of individuals in its custody. Thus far, in response to that grant of authority, DOC has promulgated a policy that increases the days of good time for good conduct from 3 to 6 and increases from 7 to 14 the days of good time for program participation, allowing for a new total of 20 days of credit, rather than just 10, for every 30 days of incarceration. These increases do not create a policy that would allow immediate release consistent with the intent of the law.

While well intentioned, the enhanced credit for programming is not impactful since most programming has been suspended as a result of the pandemic. DOC has only granted good time credit for March, but has not yet made the application of good time credit retroactive, which was the intent of the emergency Covid-19 law, to effectuate the immediate release of individuals. **Through your oversight and direct authority over DOC, we urge you to direct DOC to release all individuals serving misdemeanor sentences by immediately granting them expanded good time.**

A similar action was undertaken cooperatively in New Jersey. There should be no barrier to accomplishing the same thing in the District and it makes imminent sense from a health and public safety perspective. We further urge the Council to direct DOC to track the length of detention for persons charged only with misdemeanors and to apply good time credit to their pretrial detention. DOC should monitor whether the pretrial detention is exceeding the statutory maximum for the offense less earned good time credit.

### 3) Releasing Individuals Serving Felony Sentences

**We recommend that the District enact compassionate release legislation to enable judicial review of sentences during the public health emergency.** Individuals with D.C. Code offenses were excluded from Congress's much lauded reforms to the compassionate release law that were part of the First Step Act. While most individuals serving federal sentences can ask their sentencing judge for compassionate release, individuals sentenced on D.C. Code offenses have no such remedy. This exclusion leaves District residents uniquely vulnerable to dying in prison or being in grave danger in prison while endlessly waiting for the Bureau of Prisons (BOP) to take action in their cases. To begin to remedy this, the Council should establish compassionate release that at a minimum provides individuals sentenced on D.C. Code offenses with the same rights as people serving federal sentences.

**During the Covid-19 pandemic, we recommend a more targeted approach by adding the following new provision to D.C. Code § 24-403.04:**

During the time of the public health emergency caused by Covid-19, individuals detained on felony offenses can petition the court to reduce their sentence or suspend the execution of their sentence on the grounds that incarceration poses a risk to their health or safety or to the health or safety of other incarcerated individuals or staff. There shall be a presumption that the court shall release the individual if the individual is age 60 or older or has asthma, heart disease, diabetes, cancer, HIV/AIDS, or other medical condition or factor identified as creating a risk for severe Covid-19 complications unless the court finds by clear and convincing evidence that release poses a serious, specific threat to the physical safety of persons. Motions filed under this section may be decided on the papers.

**We recommend that a compassionate release statute that builds on the rights won for individuals serving federal sentences should also be added to the D.C. Code as follows:<sup>2</sup>**

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<sup>2</sup> The proposal substantially mirrors what is available through the federal system at 18 U.S.C. § 3582 but also provides amendments that reduce the age of compassionate release to 60 and address that release in the context of the global pandemic of COVID-19.

The court may reduce a prisoner's sentence if:

- (A) The prisoner has a terminal illness, defined as a disease or condition with an end-of-life trajectory;
- (B) The prisoner is 60 years or older and has served 25 years in prison, and the Court determines the prisoner is not a danger to the community;
- (C) Extraordinary and compelling reasons warrant such a reduction, including but not limited to:
  - (1) A debilitating medical condition, involving an incurable, progressive illness or a debilitating injury from which the prisoner will not recover;
  - (2) elderly age, defined as prisoners age 60 or older who suffer from chronic or serious conditions and have served at least 20 years in prison, or have served the greater of 10 years or 75% of their sentence;
  - (3) death or incapacitation of the family member caregiver of the prisoner's biological or legally adopted minor or incapacitated children; or
  - (4) incapacitation of a spouse or a registered partner where the prisoner would be the only available caregiver for the spouse or registered partner.

#### 4) Decreasing Arrests

Custodial arrests have decreased since the Metropolitan Police Department's (MPD) modification of the citation release criteria on March 17, 2020. Nonetheless, arrests for misdemeanor intrafamily offenses remain high, and at times they have amounted to 30% of custodial arrests. Custodial arrest presents a grave risk for the spread of Covid-19 stemming from detention in close quarters, crowded transportation, and the use of shared handcuffs and bathrooms. Custodial arrests for intrafamily offenses are one reason that arrests remain high.<sup>3</sup> While there are important public safety goals in preventing intrafamily violence, there is often minor conduct that falls under the broad ambit of the mandatory arrest provisions of D.C. Code § 16-1031 and that therefore subjects individuals to potentially life-threatening conditions of confinement without increasing public safety.

**To curtail this, we recommend that, during the course of the public health emergency, D.C. Code § 16-1013 should be amended as follows:**

- a) A law enforcement officer shall arrest a person if the law enforcement officer has probable cause to believe that the person:

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<sup>3</sup> For example, D.C. Code § 16-1031 requires custodial arrest if an officer has probable cause to believe that an individual committed an intrafamily offense that resulted in physical injury including physical pain or illness or committed an intrafamily offense that caused or was intended to cause reasonable fear of imminent serious physical injury or death.

(1) Committed an intrafamily offense that resulted in physical injury, including physical pain or illness, and there is probable cause to believe that the issuance of a citation would create a risk of physical harm to the complainant, regardless of whether or not the intrafamily offense was committed in the presence of the law enforcement officer; or

(2) Committed an intrafamily offense that caused or was intended to cause reasonable fear of imminent serious physical injury or death.

**We also recommend that MPD work with United States Attorney Office (USAO) and Office of the Attorney General (OAG) to set up 24-hour hotlines.** Another way that MPD could dramatically decrease risk to individuals is by ensuring that papering decisions are made at the earliest point possible. By setting up 24-hour hotlines with USAO and OAG, MPD can have almost instantaneous information about whether prosecutors will pursue a case. MPD can then release people within hours or minutes of arrest without subjecting them to multiple crowded cell blocks and shared transportation. Finally, we urge MPD, USAO, and OAG to continue expanding the criteria for citation and release and only arrest individuals in situations that present a continued and serious risk to public safety.

#### 5) Providing Reentry Support

Our shared goals are to provide safe standards for releasing people from incarceration that both protect the person being released and the community into which they are being released from possible infection. As individuals are released into the community, they should be connected with the Mayor's Office on Returning Citizen's Affairs for assistance, if necessary, with housing, benefits, and employment. In addition, policies should be implemented to allow and encourage those with families and loved ones who can house them to return directly to their families, without requiring a stay in transitional housing. Any housing bans for people with convictions who are being released from custody including any restrictions on living with family members in public housing should be relaxed. Resources should be provided for re-entry services such as mental health and substance use support, and housing services. For those services that are not open for physical visits, use of teleservices should be encouraged. The District also should consider whether housing voucher programs could be expanded or existing housing space could be rented by the District to provide housing for returning citizens who otherwise would be homeless.

### **Bureau of Prisons (BOP): Discretionary Action**

#### 1) Release of residents in halfway houses

**We recommend that the Federal Bureau of Prisons (BOP) immediately release all eligible individuals who are currently held at an RRM (halfway house).** District residents are often held at Hope Village, Volunteers of America in Baltimore, and Fairview halfway houses to prepare for release by, for example, securing employment and participating in programming or counseling. However, employment opportunities and the opportunity to engage in meaningful programming are all but non-existent at this time as a result of the crisis. Residents report that

they are not allowed to leave the halfway house for any purpose. While currently providing limited, if any, benefits to residents, halfway houses present the same risk factors for the spread of Covid-19 as jails and prisons. Individuals live in crowded settings, share bathrooms and common spaces with hundreds of people, and have little control over their own space. The social distancing that is urged by health experts is impossible in halfway houses.

Individuals are typically at halfway houses because they are nearing the end of their sentences or have been granted parole and are awaiting their parole effective date. BOP has the discretion to allow individuals who are serving the remainder of their sentence in a halfway house to be released to home confinement to be better protected from this pandemic.<sup>4</sup> BOP also has the discretion to suspend contact requirements during home confinement. **We urge BOP to exercise its authority to allow people in the hallway houses to serve their sentences in home confinement.**

**We further urge BOP to use its discretion pursuant to 34 U.S.C. § 60541(h) to place elderly incarcerated individuals on home confinement.** Pursuant to 34 U.S.C. § 60541(e), BOP may waive the limitation that home confinement be used only for the last 10 percent or 6 months of a sentence for elderly prisoners who were convicted of federal rather than D.C. Code offenses. Using this discretion to allow elderly individuals to leave incarceration for home confinement will likely save the lives of individuals who are most vulnerable to complications and death from Covid-19 and who are unlikely to get the care they need while incarcerated.<sup>5</sup>

**For individuals who are detained on federal offenses and who have the opportunity to file for compassionate release, we recommend that BOP utilize its authority under the First Step Act and Second Chance Act to maximize use of community corrections and compassionate release.** For compassionate release specifically, we recommend that BOP expand its criteria for “extraordinary and compelling reasons” in BOP Program Statement 5050.50 to include “vulnerability to Covid-19.” **We recommend that the administrative exhaustion requirement be lifted for Covid-19-related compassionate release requests.**

## 2) Decreasing risks of Covid-19 spread inside halfway houses

**For residents who cannot be released and placed on home confinement, we recommend that BOP take steps to decrease the likelihood of the spread of Covid-19.** These steps are the same as those that must be taken by DOC to protect individuals in its custody. They include supplying all residents—without cost to them—with enough cleaning supplies to allow them to clean their rooms and common areas several times a day, hand sanitizer, soap, and information, in English and Spanish, on steps that individuals can take to try to mitigate their risk of infection and the symptoms that signal the need to seek urgent medical help. Sick residents should be given masks.

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<sup>4</sup> Under 18 U.S.C. § 3624, BOP has the authority to place an individual “in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months...”

<sup>5</sup> Audits of the federal Bureau of Prisons have found “chronic medical staffing shortages,” problems that are particularly acute for those aging in prison. See: U.S. Dep’t of Justice Office of the Inspector General, Review of the Federal Bureau of Prisons’ Medical Staffing Challenges (Mar. 2016), <https://oig.justice.gov/reports/2016/e1602are.pdf> and U.S. Dep’t of Justice Office of the Inspector General, The Impact of an Aging Inmate Population on the Federal Bureau of Prisons (Rev. Feb. 2016), <https://oig.justice.gov/reports/2015/e1505.pdf>.

## **United States Parole Commission (USPC): Discretionary Action**

The USPC has taken several positive steps to decrease the population of individuals who are subject to incarceration for an allegation of a violation of parole or supervised release. These steps are encouraging and will prevent many individuals from being detained in situations where infection may be very likely and could be deadly.

**We recommend that, for the duration of the public health emergency, the USPC do the following:**

- Suspend the issuance of any new warrants, save for urgent, specific threats to public safety;
- Direct the U.S. Marshals Service to hold in abeyance the execution of any already issued USPC warrants, save for urgent, specific threats to public safety;
- Release all people currently held on technical violations, misdemeanor arrests, arrests that do not involve allegations of serious physical harm or serious attempted physical harm to a person, or any criminal arrests that have been no papered, dismissed, or acquitted in court;
- Release all individuals who have been granted parole but who are currently held at halfway houses or in the BOP with a future release date or who are pending a release date;
- Release all people currently held who are 60 years old or older;
- Release all people currently held who have medical conditions or disabilities that impact their immune systems, respiratory functioning, heart functioning, mobility or that otherwise make them susceptible to severe cases of Covid-19, including mental health issues;
- Continue to hold parole grant hearings through video conferencing to ensure that the public health emergency does not result in longer periods of incarceration for individuals who should be granted parole and released to the community;
- In future parole hearings, consider an individual's age, health conditions, and the threat posed to that individuals by Covid-19 and if parole is granted, set an immediate release date; and
- Conduct record reviews for all District residents currently incarcerated in the BOP or another form of custody under the Parole Commission's purview to determine if they may be released to the community.

## **Department of Corrections (DOC) and Department of Health (DOH): Discretionary Action and Implementation of Legislation**

1) Implementing Good Time Credit discretion granted by D.C. Council

**We strongly recommend that DOC actually use the discretion the D.C. Council has granted through the Good Time Credit portion of the COVID-19 emergency legislation “to**

**effectuate the IMMEDIATE RELEASE of persons sentenced for misdemeanors[.]”<sup>6</sup>** DOC has not used this discretion, which the Council clearly intended to be used widely to blunt the effects of a catastrophic public health emergency. Instead, DOC has implemented a policy with extremely limited scope and no retroactive effect, resulting in the release of very few, if any, persons sentenced for misdemeanors.<sup>7</sup> DOC’s narrow focus on a minimal increase in good time credits based on programming will not meaningfully reduce the danger to employees and residents in DOC facilities, especially given that programming is suspended in these institutions. DOC should use this discretion to actually “effectuate . . . immediate release” of a significant number of people.

## 2) Decreasing risks of Covid-19 spread inside D.C. Jail facilities

**We recommend that, in addition to working quickly to release as many people into the community as possible, DOC work closely with the Department of Health (DOH) to put in place a comprehensive plan with actionable steps that can minimize the risks to individuals in DOC custody.** This includes typical health measures, such as ensuring that all staff and detained individuals have consistent and proper access to cleaning and sanitation supplies, as well as detailed coordinated plans with area hospitals and service providers to ensure safe placements and access to necessary services in the community for those who are released and those who require isolation, quarantine, or medical care as a result of exposure or increased vulnerability to Covid-19 according to CDC guidelines.

This plan should be developed immediately, shared publicly, and address the following:

- **Education:** In what ways, by whom, and how often are staff and detainees being updated about Covid-19, including how to minimize risk to themselves and others, and how to recognize and report symptoms?
- **Provision of hygiene supplies:** The most basic aspect of infection control is hygiene. Is DOC ensuring that there is ready access to warm water, antibacterial soap, hand-sanitizer, and other cleaning supplies for both detainees and staff?
- **Disinfecting of facility:** How has DOC updated its cleaning protocols to ensure that all horizontal surfaces, door handles, and anything else that is readily touched are disinfected daily? Cleaning plans should also include washing of clothing and linens more frequently.
- **Staffing Plans:** Does DOC have updated contingency staffing plans in place that will allow it to continue with necessary functions if large numbers of staff are unable to work, and do these include directives to staff that encourage them to stay home without fear of reprisal or job loss if they feel unwell?
- **Screening and Testing:** Has DOC developed a screening tool and trained all health care staff on using that tool? Does the agency have access to adequate tests for Covid-19, either in house or through arrangements with area hospitals? What are the guidelines for deciding who will be tested?

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<sup>6</sup> COVID-19 Response Emergency Amendment Act of 2020, D.C. Act 23-246, § 313.

<sup>7</sup> See D.C. Department of Corrections, Change Notice #20-002: Good Time Credits – 4341.1B (March 18, 2020).

- **Housing for vulnerable populations and those exposed to the virus:** Detainees who are in a high-risk category (such as individuals age 60 and older, or individuals with asthma, heart disease, diabetes, cancer, HIV/AIDS, or other medical condition or factor identified as creating a risk for severe Covid-19 complications), as well as those who have been exposed to Covid-19 and require isolation or quarantine must be moved to an appropriate setting outside of the jail. It is imperative that all housing solutions in response to Covid-19 be non-punitive. Measures seen as punitive, like putting someone in a solitary cell, are not only inhumane and ineffective, but may also discourage people who are incarcerated from reporting symptoms of Covid-19. DOC should work closely with the Department of Health to identify safe placements in the community that can be used for these purposes. Under no circumstances should DOC use extended solitary confinement as a substitution for providing those who are confined at the jail with proper medical care and appropriate, safe housing during this pandemic.
- **Treatment:** What are DOC's plans to treat patients diagnosed with Covid-19? Do medical staff have access to sufficient personal protective equipment (PPE) at the facility? Does the agency have arrangements in place with area hospitals to immediately transfer someone who needs care? DOC should have a plan for how to safely transfer a detainee in need of medical care and work with the Mayor and DOH to ensure that any healthcare costs to those incarcerated are eliminated in seeking treatment.
- **Attorney access:** What plans are in place to continue to facilitate attorney visitation, including expanded availability of legal phone calls on confidential/unmonitored lines?

### **United States Attorney's Office (USAO) and Office of the Attorney General (OAG): Discretionary Action**

**We recommend that many of the reforms outlined above be immediately implemented where the USAO and OAG consent.** For instance, individuals serving misdemeanor sentences could be immediately released if prosecutors joined defense motions to reduce those sentences under Rule 35. Prosecutors could consent to the filing of Rule 35 motions more than 120 days after sentencing or the issuance of the mandate by the Court of Appeals so that judges could decide whether continued detention is safe or appropriate in light of the pandemic. Prosecutors could agree to sentence reductions on felonies and to release in pretrial cases. Prosecutors could expand their efforts to decrease arrests during the pandemic by committing to only prosecuting offenses and individuals who pose a serious risk to public safety, and by authorizing cite-and-release in nearly all cases. For individuals who are processed through the court system, prosecutors should decline to seek detention of individuals at their initial appearance in court.

### **Superior Court for the District of Columbia: Discretionary Action**

- 1) Suspending imposition of misdemeanor sentences and processing release of vulnerable individuals

**We recommend immediate action by Superior Court to speed the processing of motions and the release of vulnerable individuals.** We ask that the Chief Judge, as was done in New

Jersey,<sup>8</sup> suspend the imposition of all misdemeanor sentences imposed for currently incarcerated individuals. Further, the Chief Judge should issue an order to show cause why any individual charged with a misdemeanor offense and currently detained pretrial should continue to be detained given that trial dates have been suspended. Without their release, individuals held pretrial on misdemeanors may serve more time in pretrial detention than the statutory maximum and some will certainly remain detained pretrial for longer than they would if they were found guilty of the offense and sentenced.

The Court and prosecutors should defer the execution of all bench warrants in all misdemeanor cases and defer all bench warrants that stem from a failure to appear in any case. In bond review motions, attorneys should be permitted to waive the appearance of all clients in order to prevent clients from being subjected to unsafe conditions that could expose them to the virus. The Court should immediately waive any requirement that a defendant appear in person in order to sign release paperwork and instead create a method to inform individuals of their release conditions by phone. The Court should additionally rescind and remove all pretrial or supervision conditions that require in person attendance.

## 2) Decreasing risks of Covid-19 spread inside court facilities

**We recommend that, to maintain the safety of the individuals who appear in court, including defendants, counsel, prosecutors, court staff and judges, marshals, and court security officers, the court take steps to increase sanitation and hygiene practices.** This means regularly disinfecting all spaces within the courthouse, providing CDC-recommended personal protective equipment to all staff, hand sanitizer and soap to all inside the building as they need it, including to people in custody, and providing gloves, tissues and paper towels as needed. The Court should also order the U.S. Marshals Service to take measures that allow for detained defendants to be at least six feet away from one another during court hearings and in cell blocks.

## **All Agencies: Data Collection and Transparency**

The collection of data regarding Covid-19 will be part of the public health response. As with any contagious disease, data collection is critical to understanding and fighting the virus. Prisons, jails, and halfway houses must be part of this process. This data must be shared with relevant public health agencies in real time to inform the response going forward. Data about numbers of cases and population demographics should also be shared with the public and legislators for transparency and accountability purposes.

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<sup>8</sup> The consent order of the New Jersey Supreme Court is linked here: [https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22\\_-\\_Consent\\_Order\\_Filed\\_Stamped\\_Copy-1.pdf](https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf)

## **SUMMARY OF ACTIONS TAKEN BY LOCAL JURISDICTIONS TO PREVENT THE SPREAD OF COVID-19 IN PRISONS AND JAILS**

Local jurisdictions around the country have taken measures to reduce the spread of Covid-19 in prisons and jails and to mitigate the health risks to incarcerated people, corrections officers, police officers, court staff, and health care workers. Local responses to the pandemic are constantly evolving. For example, every state has amended the visitation policies in its prison system and many have made changes to their court operations. An up-to-date summary of these changes can be found [here](#). Summaries of additional actions by local jurisdictions can be found [here](#), [here](#), and [here](#). The following is a sample of actions local jurisdictions have taken that mirror the steps we recommend to reduce the spread of Covid-19 in Washington, D.C.

### **I. Decreasing Arrests**

**Los Angeles, CA:** The Los Angeles County Sheriff's Department is releasing inmates from its jails and cutting down on how many people it books into custody. Deputies and police officers across the county have been directed to cite and release people whenever possible, instead of arresting them, and to seek medical clearance before booking anyone who shows symptoms. Countywide, he said, arrests have dropped from a daily average of 300 to 60, while the jail population was reduced by more than 600 inmates.

**Maine:** vacated all outstanding bench warrants (for over 12,000 people) for unpaid court fines and fees and for failure to appear for hearings in an effort to reduce jail admissions.

**Nevada City, NV:** The Nevada City Police Chief has implemented cite and release procedures for those suspected of non-violent misdemeanor offenses.

**Portland, OR:** The Portland Police Bureau is providing citations for misdemeanors as opposed to arresting, excluding serious charges such as domestic violence, sex crimes, and violent person crimes.

**Philadelphia, PA:** The Philadelphia Police Department is delaying arrests for nonviolent offenses. Those who would be arrested will be detained and processed for identification purposes and re-arrested at a later date.

### **II. Releasing People from Jail**

**Alameda County, CA:** Alameda County authorities announced that 314 inmates at its jail facility have been approved for sentence modification and early release during the current coronavirus crisis.

**Sacramento, CA:** The Sacramento County Superior Court has issued an order authorizing the sheriff to release people who are serving sentences with 30 days or less remaining.

**San Francisco, CA:** District Attorney Chesa Boudin has directed all prosecutors to not oppose pre-trial releases for detainees facing misdemeanor or drug related felony charges, so long as there is no public safety concern. Public Defenders are filing motions for release of all pre-trial

clients who are at risk of covid-19, including those who are over 60 and those who have medical conditions.

**Boulder, CO:** The district attorney's office has filed motions recommending release of inmates whose immune systems are compromised or have serious health conditions. The office also is recommending the release of some inmates who have less than 45 days left in their sentence and some inmates being held pre-trial because they can't afford to post bond.

**Hillsborough County, FL:** over 160 people were released from county jail following authorization via administrative order for people accused of ordinance violations, misdemeanors, traffic offenses, and third degree felonies.

**Volusia, Flagler, St. Johns, and Putnam counties, FL:** 7th Circuit Judge issued emergency orders granting early release of 88 people being held at the Volusia County Branch Jail on a variety of misdemeanor and felony charges.

**Chicago, IL:** Cook County judges will be reviewing the cases of people in the Cook County Jail with the goal of reducing the jail's population.

**Baltimore, MD:** Baltimore State's Attorney Marilyn Mosby has ordered the dismissal of pending criminal charges for drug possession and distribution, prostitution, trespassing, traffic violations, open container, and urinating in public.

**New Jersey:** The Public Defender's Office and ACLU-NJ negotiated an agreement with the attorney general and county prosecutors to create an immediate presumption of release for *every* person serving a county jail sentence, in light of COVID-19. The agreement was issued by the Court as a [Consent Order](#).

**New York, NY:** Mayor De Blasio announced that he will be moving for the immediate release from jail of approximately 300 people with misdemeanors and non-violent felonies. For those that fall outside of his jurisdiction, he is alerting the State and District Attorneys of his concerns.

**Cleveland, OH:** The Cuyahoga County Jail released approximately 600 people. It has begun screening all incoming inmates and reviewing the cases of people accused and convicted of low level offenses, reducing population from around 1,900 to just over 1,300.

**Erie County, OH:** Judges in Erie County authorized the release of 30 inmates at the jail due to concerns about the possible spread of COVID-19.

**Pittsburgh, PA:** Approximately 400 people are listed for release from the Allegheny County Jail as part of health precautions to prevent the spread of COVID-19.

**Houston, TX:** The Harris county jail has stopped admitting people arrested for certain low-level crimes. Daily population average decreased by 6.5 percent.

**Waco, TX:** Sheriff officials announced the McLennan County Jail is in the process of releasing as many misdemeanor inmates out of the jail as possible and making additional change.

### **III. Reducing Prison Populations**

**Illinois**: the governor signed an executive order that eases the restrictions on early prison releases for “good behavior” by waiving the required 14-day notification to the State Attorney’s office. The executive order explicitly states that this is an effort to reduce the prison population, which is particularly vulnerable to the COVID-19 outbreak.

**Iowa**: The director of the Iowa Department of Corrections reported the planned, expedited release of about 700 incarcerated people who have been determined eligible for release by the Iowa Board of Parole.

**North Dakota**: The North Dakota parole board granted early release dates to 56 people (out of 60 people who applied for consideration) held in state prison with expected release dates later in March and early April.

#### **Additional resources:**

[Coronavirus Guidance for the Criminal and Immigration Legal Systems](#)

[The Justice Collaborative](#)

[CDC Guidance](#)