



Northern  
California

March 18, 2020

Governor Gavin Newsom  
Chief Justice Tani Cantil-Sakauye  
Ralph Diaz, Secretary of California Department of Corrections and Rehabilitation  
Jennifer Shaffer, Board of Parole Hearings Executive Officer  
Jeffrey Green, Director of Adult Parole  
California Police Chiefs  
California Probation Chiefs  
California District Attorneys  
California Sheriffs

**RE: COVID-19 and California's Criminal Justice System**

Dear Stakeholders,

As the SARS-CoV-2 strain of coronavirus continues to spread across California, and as more public and private actors take drastic steps to combat this pandemic, the ACLU of Northern California urges you to develop and implement holistic policies that align with guidance from public health experts and that will minimize the harm inflicted on people involved in the criminal legal system – and, by extension, the harm inflicted on broader communities. All aspects of the system – from policing and pretrial through sentencing, incarceration, and release – will come under intense scrutiny for how the system responds to this national public health crisis.

According to the Centers for Disease Control and the World Health Organization, older adults and people of any age with serious chronic medical conditions – such as heart disease, lung disease, or diabetes – or who are otherwise immuno-compromised are at higher risk for contracting and getting seriously ill from COVID-19.

The most effective tools to combat the spread of the virus are social distancing and meticulous personal hygienic practices. This means staying at least six feet away from others, avoiding or limiting all physical contact, washing hands regularly with soap and water, and using alcohol-based hand sanitizer to clean hands after coughing, sneezing, or coming into contact with potentially exposed surfaces, objects, or people.

With these precautions in mind, public health experts and groups such as [Dr. Gregg Gonsalves](#), [doctors working in New York City Hospitals](#), [Dr. Marc Stern](#), [Dr. Oluwadamilola T. Oladeru and Adam Beckman](#), [Dr. Anne Spaulding](#), [Homer Venters](#), and [Josiah Rich](#) have all clearly stated that preventing the harm inflicted by SARS-CoV-2 and COVID-19 can become immensely more difficult for people involved in the criminal legal system. Being arrested and detained, incarcerated, or forced to appear in public spaces such as courts and supervision offices, or having mobility

**American Civil Liberties Union of Northern California**

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Farah Brelvi

SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111

FRESNO OFFICE: PO Box 188 Fresno, CA 93707 • SACRAMENTO METRO OFFICE: PO Box 189070 Sacramento, CA 95818  
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

limited even while home, can drastically limit a person's ability to exercise any of the above measures or to seek medical help. The longer jurisdictions wait to act, the worse this will be.

Therefore, we urge you to partner with local public health experts in developing informed, immediately actionable steps to ensure that public safety and public health are as protected as possible. This must include preventing as many people as reasonably possible from entering the criminal legal system, and ensuring that prisons and jails do not needlessly keep people incarcerated who are especially vulnerable to COVID-19. The non-exhaustive list below includes recommended actions, and we implore you to remember that no one system actor can be held singularly responsible for addressing this crisis. Partnership and transparency across the system are crucial.

**In accordance with recommendations from public health experts, the following actions will reduce the number of people who are coming into the criminal legal system over the next several months, thereby reducing the overall burden on the system and ensuring that people can adhere to recommended health practices.**

**Police** must drastically limit the number of people who are arrested and then detained, even if just for a short time, in close proximity to other people or in spaces where maintaining hygiene becomes difficult. Police should cease custodial arrests for any offenses that do not pose an unreasonable safety risk to a specific person or persons and adopt cite-and-release policies for all eligible offenses so that people can return home. The discretion to arrest and book an individual must be balanced with the overwhelming public health concerns presented by coronavirus, and the need to minimize the risk of exposure to other individuals in the station and the jail, including first responders and anyone who may be detained.

**Prosecutors** must use their immense discretion to limit the number of people who are held in jails or in other confined facilities by drastically reducing their requests for pretrial detention, high bail, and carceral-based sentences. Prosecutors should decline to pursue charges that do not impact public safety and move for pretrial release in all but the very few cases where pretrial detention is permitted under the state and federal constitutions, and, if requesting money bail, must comply with recent legal precedents in setting bail with a person's ability to pay as a paramount consideration. With a special focus on populations who the CDC has identified as particularly vulnerable, prosecutors should also review cases in which bail was sought and imposed over the past thirty days and resulted in an individual's detention due to the individual's inability to afford the amount of bail sought and imposed.

When seeking a plea or requesting a sentence, prosecutors must factor in COVID-19 in any sentencing recommendation, and view incarceration in cramped and often unhygienic facilities as a last resort. Likewise, they must refrain from seeking conditions on community-based sentences – such as curfews, geographic restrictions, or electronic monitoring – that limit a person's ability to seek medical help or care for a loved one who has COVID-19. Finally, prosecutors should dismiss cases involving minor offenses, thereby limiting the amount of time a person must spend in court.

**American Civil Liberties Union of Northern California**

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Farah Breivi

SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111

FRESNO OFFICE: PO Box 188 Fresno, CA 93707 • SACRAMENTO METRO OFFICE: PO Box 189070 Sacramento, CA 95818  
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

**Judges** have the ultimate decision-making authority and must also follow the recommendations highlighted above in order to limit the number of people who are coming into and forced to remain in carceral facilities.

Judges have the additional responsibility of ensuring that courthouses remain both accessible and safe for people whose cases are currently pending. Judges must not issue a blanket suspension on all court activity as this will needlessly prolong people's cases and exacerbate the stigma and harm associated with having an open case. For any cases that the court does prolong, judges should not waive defendants' rights to a speedy trial. As an alternative, judges should allow anyone with an open criminal case and upcoming hearing the chance to voluntarily waive that hearing. Although we have concerns about conducting hearings remotely – due to unequal access, inadequate technology, and lack of clear statewide standards – in these extraordinary circumstances, judges should allow counsel to appear in person or via phone on behalf of a charged person without mandating that person's appearance. As a last resort, courts should conduct these hearing via telephone or video conference.

**In accordance with recommendations from public health experts, the following actions will reduce the number of people who are currently incarcerated or supervised and will limit burdens people face due to incarceration or supervision that place them at elevated risk of being affected by the SARS-CoV-2 pandemic.**

**Sheriffs** must exercise their authority to protect the people who are, will soon become, and who may remain incarcerated even after the recommendations discussed above are put into action. Sheriffs must ensure that facilities are as empty, safe, and clean as possible. Critically, Sheriffs must work to reduce their jail populations by immediately releasing sentenced individuals who are particularly vulnerable to COVID-19, unless there is clear evidence that release would present an unreasonable risk to the physical safety of the community, along with anyone who is already scheduled for release within the next 30 days. Sheriffs should also suspend all practices of notifying or transferring people to immigration authorities. For anyone who is being released, Sheriffs should consult with local health officials to ensure adequate screening and quarantine procedures are in place so that COVID-19 is not transmitted into a community from within the facility.

Sheriffs must sanitize facilities and coordinate with local public health experts to ensure that all facilities have adequate supplies of soap, hand sanitizer, tissues, and other hygiene products. Each of these products must be made freely and constantly available to all staff and incarcerated people – even if, for the latter, prohibitions on alcohol need to be modified to accommodate for hand sanitizer distribution.

Sheriffs must implement procedures to care for those who become ill in their facilities. Those procedures must include, at a minimum: screening and testing of people for COVID-19, based on the most up to date information available; increased access to medical care and removal of all copays; access to the medication and equipment necessary to treat those who contract the virus; and, the ability to immediately transfer sick patients to outside facilities for care when necessary. In addition, sheriffs must implement non-punitive procedures for housing people who are exposed to

**American Civil Liberties Union of Northern California**

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Farah Breivi

SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111

FRESNO OFFICE: PO Box 188 Fresno, CA 93707 • SACRAMENTO METRO OFFICE: PO Box 189070 Sacramento, CA 95818

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

the virus, who are at high risk of serious illness, or who screen or test positive for COVID-19. This should *not* result in prolonged, wide-spread lock downs.

Sheriffs must implement procedures to allow programming to continue; in jurisdictions where local health officials have urged limiting volunteer access to jails and prisons, this may mean allowing staff or incarcerated people to run programs. Similarly, visitations by family must not be limited unless public health experts urge that measure to be taken. If that does happen, limitations should be explicitly temporary and other forms of communication such as emails, voice calls, and video calls must be made free for all incarcerated people. Legal visits must not be curtailed. Finally, Sheriffs must restructure staffing plans to ensure that facilities remain well-staffed even if staff are out sick, and should educate staff on proper hygiene procedures both in and out of work.

**Probation and Parole Agents and Parole Boards** must also exercise their authority to limit the number of people who are incarcerated or who are forced into public spaces. Agents should cease in-person check-ins to accommodate the need for social distancing, and should allow check-ins to occur by voice or video call. Where those technologies are not accessible to a person under supervision, they must minimize or temporarily suspend check-in requirements. Additionally, agents should suspend enforcement of any mobility-restricting supervision conditions that impede a person's ability to seek medical care or to support loved ones who may have COVID-19. Finally, limit the number of people being incarcerated by suspending detainers and incarceration for technical violations.

Parole boards should expedite and expand release opportunities for incarcerated people, reducing the populations in prisons as is recommended by health experts. Boards should institute a presumption for release for all people who have a parole hearing scheduled in the next two years. For people whose parole hearings fall outside that time frame – with a focus on populations identified by the CDC as particularly vulnerable – evaluate and seize all opportunities to expedite that process to ensure that anyone who would be released from incarceration at any point has the opportunity to be screened for release immediately.

**Governor Gavin Newsom** has a uniquely powerful role to play in stopping the spread of COVID-19 and limiting the harm it inflicts on communities by decreasing incarcerated populations and creating a culture in which transparency, safety, and the health of all people are the paramount concerns. As we and dozens of other justice organizations called for [in a letter](#) sent on March 13, Governor Newsom should release all medically fragile adults and adults over the age of 60, release all people who have anticipated release dates in 2020 and 2021, expedite all review processes for people already found suitable for release, lift holds, and expedite the commutation process, immediately suspend all unnecessary parole meetings, and eliminate parole revocations for technical violations.

Further, Governor Newsom should mandate these releases are coordinated with local service providers and public health experts so that people who may not be able to return home have a safe, accessible place to be that is also close to medical facilities and services. Governor Newsom should mandate data collection and distribution from all criminal legal system agencies and actors who are part of the state's coronavirus response, as sharing information about this virus is essential in

**American Civil Liberties Union of Northern California**

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Farah Brelvi

SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111

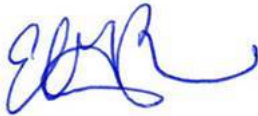
FRESNO OFFICE: PO Box 188 Fresno, CA 93707 • SACRAMENTO METRO OFFICE: PO Box 189070 Sacramento, CA 95818  
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

limiting the damage it will cause. Finally, Governor Newsom must consider issuing Executive Orders that seek to achieve the goals and remedies outlined above, particularly where local system actors are awaiting that guidance.

**In conclusion**, it is essential to remember that actors within the criminal legal system must coordinate with and defer to local public health experts in limiting the risks presented by coronavirus and COVID-19 to people who come into contact with the system. Currently, there are nearly 200,000 people incarcerated and more than 400,000 people under supervision in California. Health experts agree that these populations need to be a focus in our national response to the SARS-CoV-2 pandemic, and there is an emerging and broad public consensus that supports common sense steps to achieve the goal of protecting the most vulnerable populations during this pandemic.

The urgency of deliberate and thoughtful action cannot be overstated. We are eager to work with anyone who is willing to take the steps outlined above, and we are willing to be a resource for you throughout this process. We want to ensure implementation of policies that will limit the threats presented by this public health crisis.

Sincerely,



Lizzie Buchen  
Criminal Justice Project Director  
ACLU of Northern California