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How Ohio's jails, courts and law enforcement can minimize harm and save lives during the COVID-19 pandemic

Ohio's leaders took swift action to contain the spread of the new coronavirus. Large gatherings are prohibited, bars and restaurants are closed, and many of us are working from home (including the OJPC team). But there is more that needs to be done to protect the nearly 80,000 Ohioans who are incarcerated and the 250,000 more who are under state criminal supervision.

Our state and local response to COVID-19 must not overlook these particularly vulnerable people. The U.S. Centers for Disease Control warns that people whose health is already compromised are more susceptible to the disease and more likely to develop complications related to COVID-19. What's more, holding people in close quarters to one another creates the ideal conditions for an infectious disease like this one to spread rapidly, which means that our jails and prisons are an outbreak epicenter waiting to happen. It is not a matter of if COVID-19 will find its way into our prisons and jails—it's a matter of when. Prisoners and employees alike are at unnecessary risk without proactive measures.

The safest way for state and local governments to address the pandemic is to spread people out through distancing. While social distancing is nearly impossible inside a jail or prison, there are ways to mitigate the spread of the virus inside these state institutions. We have identified measures to (1) safely and drastically cut the size of the prison and jail populations; (2) halt the rapid flow of new people entering the criminal legal system; and (3) relieve citizens, judges, and court personnel of unnecessary obligations to show up in-person to court.

We commend the many courts, police, sheriff's departments, prosecutors, public defenders, jails, and prisons that have already taken proactive steps to respond to the pandemic. Some measures are becoming more common, like restricting visits to institutions, postponing court dates, and changing law-enforcement practices. Many jurisdictions, meanwhile, are still looking for ways to adapt and improve practices, especially as Chief Justice Maureen O'Connor announced yesterday that the Ohio Supreme Court will release \$4 million in grants for court-related responses to COVID-19.

As people around the state seek uniform best practices for responding, OJPC is offering the following simple recommendations for institutional actors at both the state and local levels. The following steps should be taken immediately to keep our communities healthy and safe—and, as noted above, some are already being implemented in parts of the state. There is no time to waste: if we wait to find the virus inside our jails and prisons first, we are too late.

Here are our recommendations to “flatten the curve” in the criminal legal system while ensuring health, safety, and justice:

What should COURTS do?

1. Decrease the pretrial jail population. Courts should take the following steps to ensure that people accused of crimes are jailed while awaiting trial only when strictly necessary:

- For people accused of traffic offenses, misdemeanors, and fourth- or fifth-degree felonies, pretrial release should be presumptive, and personal-recognizance bond should be the norm. Courts can also set local rules or policies enumerating that, to overcome this presumption, the police and/or prosecutor must present certain information, in accordance with Crim. Rule 46 and R.C. 2937.222, in writing (for example, records of violent or sexual offenses within



5 years, current supervision status, injury to victims or eminent threat of injury, active warrants, known mental/medical/substance-abuse issues).

- For all other cases, pretrial release or other alternatives to pretrial detention (such as electronic monitoring) should be preferred wherever safety permits, and where safety is at issue, courts should follow the procedures in R.C. 2937.222.
- For the same reasons, financial conditions of release (such as secured money bonds) should be avoided, particularly in light of people's increased financial limitations during this crisis. Non-financial conditions of release should always take into account the defendant's ability to comply in light of the pandemic (e.g., inability to pay for a drug program).
- Where defendants are already being held from past arraignments, courts should reevaluate, reduce, or eliminate existing bonds. Acting together, judges should create emergency local rules allowing large-scale bond reductions and personal-recognizance releases, while also welcoming such motions from prosecutors and defense attorneys. They should also take collective action to grant authority to local sheriffs to release pretrial detainees who have not otherwise been found to be a danger to the public in the interests of protecting detainees, guards, and others from risk of COVID-19 infection.
- In light of the pandemic, courts should additionally be conscious about opportunities to redirect cases and defendants that can safely be kept out of the criminal legal system. Courts may choose to appropriately dismiss or decline some criminal charges, and to divert to public health, community, and civil court solutions with return date 6 months out.

Finally, it is important to note that, regardless of this pandemic, people should never be jailed pretrial because a court failed to consider their ability to pay for a secured money bond or pay for other conditions of release.

2. Refrain from issuing bench warrants. During this crisis, people's ability to come to court may be particularly disrupted, whether by employment issues, childcare needs, or their own health concerns. Moreover, during this time of social-distancing and widespread closures, people may be confused about whether their presence is still required, and arresting them for non-appearances will only put more people at risk. Courts should waive defendants' appearances or grant continuances as much as possible. Additionally, given the many reasons people may miss a court date during the pandemic, courts should offer alternate methods of future appearance, like audiovisual technologies.

3. Reduce or eliminate court-ordered financial obligations wherever possible. Amid this pandemic and the resulting economic stress, people will be even more hard-pressed to come up with fines, fees, and courts that they may owe to courts. Accordingly, courts should:

- Subject to R.C. 2949.092, courts should enter orders waiving court fees and costs wherever possible, especially for indigent people and those who are struggling during the pandemic. Costs are technically civil, not criminal, matters, *State v. Moore*, 135 Ohio St.3d 151, 2012-Ohio-5479, 985 N.E.2d 432, ¶ 11, and trial courts retain jurisdiction to waive, suspend, or modify the payment of costs at sentencing or at any time thereafter, R.C. 2947.23(C). If at any time the court finds that an amount owed to the court is due and uncollectible, in whole or in part, the court may direct the clerk of court to cancel all or part of the claim. See R.C. 1901.263; R.C. 1905.38; R.C. 1907.251; R.C. 1925.151; R.C. 2101.165; R.C. 2151.542; R.C. 2303.23.
- In addition to judges taking these steps individually, courts collectively should reduce or waive costs and fees on a broader basis (or set up procedures for doing so) by amending their local rules or issuing emergency administrative orders.
- Grant motions to mitigate (whether from defendants themselves or from the prosecution) fines and other penalties wherever reasonable and do so without converting those obligations to community service, as we do not know when community service can be safely completed.



4. Meanwhile, if any court-ordered debt, community service, or similar sanction must remain, **courts should postpone collection, performance, and any driver’s-license suspensions for at least 6 months.** Courts should direct local clerk of court’s offices to do the same, and to waive as many costs as possible. Drivers’ license suspensions should not be issued for at least 6 months, based on unpaid fines, fees, or costs, incomplete community service, or incomplete drivers’ intervention programs.

5. Reduce incarceration by mitigating or remitting jail sentences and granting judicial release from prison. Much as they should seek to reduce the jail population by incarcerating fewer defendants pretrial, courts should also look to make sure that people are incarcerated only when strictly necessary. For example:

- For people serving jail sentences, judges should grant “motions to mitigate” from defendants and issue orders resetting sentences.
- Working together, local judges should issue emergency local rules or administrative orders facilitating this strategy on a court-wide level.
- As discussed above for pretrial defendants, courts should also authorize sheriffs to release people whose jail sentences are ending soon (e.g. within 90 days), meet COVID-19-risk criteria (e.g., age, health conditions), or who the sheriff believes should be released to maintain health and safety during the crisis.
- Sentencing judges should limit the use of incarceration as a response to pending probation violations. For individuals who remain incarcerated, courts and community corrections should work to resolve the violations and allow release as soon as possible with least restrictive means.
- Similarly, wherever possible, courts should grant motions for judicial release from prison under R.C. 2929.20.

6. Cancel, modify, or postpone probation, parole, and pretrial meetings, court-ordered classes, and in-person drug testing. Courts should modify conditions of supervision, whether at the discretion of individual judges or, ideally, on behalf of the court as a whole. Most importantly, courts should modify all reporting conditions to phone- or video-reporting, keeping in mind that not all people will be able to access or use all possible technologies. It is possible to ensure access to justice and speedy closure of cases, remove requirements that are impractical or unwise during a health crisis, and refrain from in-person meetings – all at once.

7. Work to resolve cases without physical appearances as much as possible. During this time of social distancing, it is important that people be in the courthouse only when strictly necessary. Meanwhile, continuances are not always ideal: in addition to piling up work for the courts, they also keep pending matters that can hold people back from employment, housing, and other opportunities, all of which may be especially urgent in this time of upheaval. Accordingly, courts should:

- Allow for speedy trials through technology, authorizing audiovisual devices for all proceedings. For open criminal cases, judges should allow defendants to voluntarily waive in-person hearings and continue the process through phone or video options. If parties do not have access to the necessary audiovisual technology, and with the consent of the defendant, courts should allow counsel to appear in person or via phone on behalf of a defendant. Courts should also waive appearances for status conferences and updates (for people both in and out of custody).
- Resolve issues that do not require an appearance at all. For example, if a person is eligible for record-sealing, courts should grant the application without any appearance, or with an appearance by phone if necessary.

8. Continue non-essential pending criminal cases. Where matters cannot be resolved more quickly or through audiovisual technology, courts should continue all but the most time-sensitive prosecutions while protecting defendants’ rights to a speedy



trial. As Chief Justice O'Connor noted in her press conference yesterday, courts may extend the time for a hearing or trial for "the period of any reasonable continuance granted other than upon the accused's own motion." R.C. 2945.72(H).

9. Defer sentences where possible. Subject to R.C. 2949.01-.05 and on application, courts should suspend sentences wherever possible for any potential appeals.

What should LAW ENFORCEMENT (police & prosecutors) do?

1. Police should exercise discretion to reduce arrests and citations, and they should cite-and-release, rather than arrest, wherever possible. As with personal-recognizance bonds, people accused of traffic offenses, misdemeanors, and fourth- or fifth-degree felonies should be presumptively cited rather than arrested. For other cases, police should use their discretion, preferring citation wherever doing so would not unreasonably endanger the public safety.

2. Prosecutors should exercise discretion to limit the number of pending cases and people held in jails (whether pretrial and or after a conviction). Prosecutors should work with courts and jails to ensure health, safety, and justice by ensuring that the court, jail, and prison system is being used only when justice and public safety demand it. Accordingly, we recommend that prosecutors:

- Set up a process to review all incoming, pending, and recently closed cases and ask courts to take many of the actions listed above (such as mitigating bonds, jail sentences, or financial obligations).
- Decline to prosecute and request that courts dismiss criminal charges whenever possible. Where that is not an option, prosecutors should seek community-based alternatives to incarceration wherever possible.

What should JAILS do?

1. Wherever authorized and reasonable, release people held in jails (whether pretrial or serving a sentence). Jails in general are overcrowded, undersanitized places, which makes them a particular risk to public health in the midst of this crisis. For that reason, jails should do whatever they can to keep their populations as low as reasonably possible while this crisis continues. For example:

- As noted above, sheriffs can work with courts and prosecutors to release inmates in the interest of public health and safety. Jails should also release people wherever over-crowding conditions threaten public health and safety, seeking emergency authorizations where necessary.
- Release people in jails who are within three months of completing their sentences. Early release is already common practice in some of Ohio's largest counties, where people are released to keep the jail under a certain capacity. As above, jails should work with prosecutors and courts where needed.

2. Limit admission of new inmates and create a process to screen for COVID-19. Sheriffs should ensure that they are following best practices and work with public-health experts to ensure that they are regularly screening guards, new admits, and existing inmates for symptoms of COVID-19 (such as fevers). Where anyone shows symptoms, jail staff should involve public-health authorities as soon as possible.

3. Provide safe conditions and healthcare to prisoners at no charge and with no medical co-pays. Preventative healthcare in jails can save many lives, especially under current conditions. Jails should provide hand sanitizer, soap, tissues, cleaning products, and hygiene items in abundance. To the extent needed during this health crisis, jails should change policies that limit such products. They should also ensure that there is adequate space, processes, and resources to care for anyone who is



incarcerated who begins to exhibit symptoms, in light of the “the government’s obligation to provide medical care for those whom it is punishing by incarceration.” *Estelle v. Gamble*, 429 U.S. 97, 103, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).

4. Create opportunities for safe communication with people outside the jail. Understandably and commendably, jails have limited in-person visitation. At the same time, connection to one’s children, parents, family, and community is key, especially during a crisis. Jails must therefore find other means to facilitate this communication safely. For example, jails should temporarily make calls free, increase capacity for telecommunication, and modify rules about telecommunication times/hours/access.

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We emphasize that these recommendations focus only on the criminal legal system, which is OJPC’s organizational focus. There are many other ways that the legal system should also respond to the crisis to ensure that the needs of vulnerable people are protected (for example, ensuring housing stability).

We also note that we are encouraged to see state and local leaders modeling many of these recommendations already. We offer these suggestions in the hope that they will become more uniform across the state, and quickly. After all, our core message is simple: if leaders wait until guards or inmates test positive for COVID-19 before taking action, they are too late.