



Sent to the following recipients via email:

Governor Lamont
Chief Justice Robinson
Chief Court Administrator Carroll
Chief State's Attorney Colangelo
Department of Correction Commissioner Cook
Board of Pardons and Paroles Chairperson Giles
DESPP Commissioner Rovella
Connecticut Police Chief Association President Mello
Connecticut States Attorneys

March 12, 2020

Re: Release of incarcerated people, court operations, and limiting arrests during COVID-19 outbreak

765 Asylum Avenue
Hartford, CT 06105
T/860.523.9146
F/860.586.8900
www.acluct.org

Dear Stakeholders:

The ACLU of Connecticut takes seriously the coronavirus/COVID-19 threat and appreciates state and local officials' careful consideration of the civil liberties implications associated with response options. We write to highlight a few measures that might avoid constitutional injuries and reduce government officials' exposure to the pathogen. Our recommendations are based on existing powers currently available to government officials.

Limit arrests to only most serious offenses

State and local governments could reduce viral exposure for members of the public and their employees if they were to make clear that custodial arrests should be limited to the most serious offenses. Included in that, we recommend police exercise the same prudence as Miami-Dade law enforcement by suspending eviction and foreclosure enforcement during the outbreak. Connecticut criminal procedure permits police to choose infractions and summonsed misdemeanors as an alternative to weightier charges and arrest, and we believe that flexibility would be wisely exercised in the face of the outbreak.

To accomplish these public health goals, we recommend that local police departments, the State Police, and the Division of Criminal Justice issue guidance regarding the need for arrest reductions to

minimize confinement of people in close proximity, in light of the threat such confinement could pose to public health.

Release people being held pre-trial based on inability to pay bail

With respect to the court system, we are concerned that existing bail practices will increase the danger to the public and create monumental backlogs. At present, the bails set by the court continue to keep approximately 3,000 people in Connecticut prisons each day. Those people are at high risk for infection with coronavirus given the confined spaces, lack of cleanliness, and lack of medical care in Connecticut prisons and jails. It makes all the sense in the world – for minimizing exposure risk to incarcerated people, minimizing exposure risk to Department of Correction (DOC) employees, and reducing expense to the DOC medical budget – to keep as many people out of prisons as possible.

Prosecutors can help achieve that end by greatly reducing their insistence on punitive bond amounts, and by reconsidering whether bond is necessary. The courts, in turn, may reduce the pre-trial population by considering whether pre-trial confinement for lack of bail is necessary in the environment of the coming weeks.

To accomplish these goals, we recommend the Division of Criminal Justice and State's Attorneys issue guidance to all prosecutors directing them not to pursue bond for people who are at high risk of serious illness from COVID-19.

We further recommend the Department of Correction Commissioner use his discretion under Connecticut General Statutes § 18-100f to release all people being held on less than \$25,000 bail, others who are being held solely based on inability to make bail, and all who are at high risk of serious illness from COVID-19 and do not pose risk to the public. Failing that, we recommend that Governor Lamont instruct Commissioner Cook to take these actions.

Institute furloughs, compassionate release, and expedited parole for incarcerated people who are at high risk of serious illness from COVID-19

Under Connecticut General Statutes §18-101a, the DOC Commissioner has the authority to issue a 45-day furlough, renewable at the Commissioner's discretion, for any incarcerated person for "the obtaining of medical services not otherwise available" or "for any compelling reason consistent with rehabilitation." The latest CDC guidance states that "older adults" and people with "serious chronic

medical conditions” are at higher risk of becoming seriously ill from COVID-19. To protect the health of high-risk prisoners who meet these criteria and minimize exposure for other incarcerated people and DOC staff, we urge the Commissioner to use his discretionary furlough authority to release incarcerated people who are at high risk of serious illness from COVID-19 and who pose no flight risk or threat to public safety. We submit that furloughing incarcerated people who are at high risk if confined in close quarters constitutes preventive medical care that would not be otherwise available to them.

In addition, we urge the Board of Pardons and Paroles (BOPP) to exercise its discretion under Connecticut General Statutes §54-131K and institute compassionate release, under whatever terms BOPP sees fit, for any incarcerated people who are at high risk of becoming seriously ill from COVID-19.

In all cases, we urge both the DOC Commissioner and BOPP to continuously assess and re-assess COVID-19-related compassionate release and furlough criteria amid mounting scientific evidence.

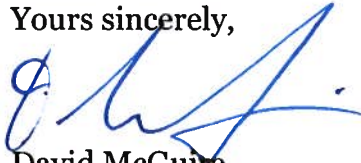
Take measures to avoid backlog in court dockets

Moreover, the courts can reduce the risk to their staff and the general public by reducing criminal defendants’ need to appear in person. Generally, the Court Support Services Division’s bail recommendations include a standard condition that a criminal defendant attend all future court proceedings. In practice, many criminal hearings are status conferences or motion hearings at which the person facing a charge realistically need not be present unless they wish. It would make sense for bail commissioners and superior judges not to order mandatory attendance at all hearings, at least until viral exposure concerns abate. Of course, consistent with Practice Book §§ 44-8 and -10, a person charged with a crime who wishes to be present at any proceeding should continue to be guaranteed the ability to do so.

Finally, we urge the judiciary to only limit operations if those operations would confine large numbers of people in close proximity. We would expect that to comprise jury selection and jury trials only. The civil and appellate business of the court should be unaffected, as would motion practice in criminal cases. We are concerned that a near-complete halt to the court’s business will incur exponential backlogs on dockets and effectively deny court access for months to come. While the Judicial Branch has issued guidance limiting proceedings to “Priority 1 Business” functions, we urge the Branch to continually assess and re-assess this guidance in light of evolving scientific evidence.

The ACLU of Connecticut recognizes the danger posed by the COVID-19 outbreak and the difficulty government officials face in responding to it. We would be happy to work with you and your office on responses that ensure public health, safety, and civil rights and liberties are protected for all, including our state's most vulnerable populations.

Yours sincerely,



David McGuire
Executive director
dmcguire@acluct.org