



Disability Rights  
WASHINGTON



Urban League of  
Metropolitan Seattle



NORTHWEST  
COMMUNITY  
BAIL FUND

March 20, 2020

King County Sheriff Mitzi Johankecht  
King County Prosecuting Attorney Dan Satterberg  
King County Superior Court Presiding Judge Jim Rogers  
King County District Court Presiding Judge Donna Tucker  
King County Executive Dow Constantine  
King County Councilmembers  
Seattle Police Chief Carmen Best  
Seattle City Attorney Pete Holmes  
Seattle Municipal Court Presiding Judge Ed McKenna  
Seattle Mayor Jenny Durkan  
Seattle City Council Councilmembers  
Director of Jail Health Services Sean Moody  
Director of the Department of Adult and Juvenile Detention John Diaz

**RE: Mitigating COVID-19 Pandemic Risks in both King County Jails  
Early Release & Reduced Custody as Public Health Protection**

Dear King County & Seattle City Officials,

As you are aware, the COVID-19 public health emergency continues to escalate throughout Washington State. We understand that you are all working hard to respond to the ever-evolving needs that this health crisis is creating, and we thank you for your efforts. We are reaching out to you as King County and Seattle City officials, including executives, judges, prosecutors, law enforcement officers, and correctional administrators, to urge you to take immediate steps to prevent the introduction of COVID-19 into both jails in King County<sup>1</sup>, and to mitigate the risk of exposure to as many individuals in correctional custody as possible during this crisis. We care deeply for the members of our community who are currently housed in both jails, and we are writing to you out of concern for their safety and well-being.

The danger that COVID-19 poses to the people living under the county's care and custody cannot be overstated. Current projections of the spread of this virus indicate that as many as 50% of people living in the United States could become infected, with roughly 20% of that number requiring intensive hospital care.<sup>2</sup>

Jails are particularly ill-suited to address the current pandemic. Indeed, according to state and federal centers for disease control, correctional institutions pose special risks and considerations due to the nature of their unique environment and were a leading source of

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<sup>1</sup> We note that the County has officially acknowledged that one corrections officer who works at the Seattle jail (KCCF) has already tested positive for the COVID-19 virus.

<sup>2</sup> See Joel Achenbach, "Coronavirus forecasts are grim: 'It's going to get worse,'" Washington Post (March 11, 2020) [https://www.washingtonpost.com/health/coronavirus-forecasts-are-grim-its-going-to-get-worse/2020/03/11/2a177e0a-63b4-11ea-acca-80c22bbee96f\\_story.html](https://www.washingtonpost.com/health/coronavirus-forecasts-are-grim-its-going-to-get-worse/2020/03/11/2a177e0a-63b4-11ea-acca-80c22bbee96f_story.html).

uncontrollable outbreaks during the Spanish Flu of 1918.<sup>3</sup> People who are incarcerated are an extremely vulnerable demographic when it comes to communicable disease, particularly COVID-19. Both jails in King County are near capacity and occasionally over capacity, forcing those in custody to be housed in extreme proximity. Double celling exists throughout much of the downtown jail. Congregate living areas house as many as 84 inmates in Kent and 160 inmates in Seattle. Dormitory housing with up to 20 inmates in a single dorm and 8 closely located dorms in a single jail “wing,” with a capacity of 160, is part of the design and operation of this facility, even under the settlement agreement between the ACLU-WA and King County, pursuant to *Hammer vs. King County*.

While we commend the efforts that jail staff are making to train residents on handwashing etiquette to prevent the spread of COVID-19, the efficacy of such measures are entirely dependent upon access to soap, hot water, single-use towels, or alcohol-based hand-sanitizer, items which are notoriously hard to access (or prohibited) for those in custody. Universal compliance among the inmate population is desirable, but this is an unrealistic goal or expectation, as corrections officials and Jail Health Services staff know. Residents have limited access to medical care that is not equipped to deal with the virus. Further, many of the individuals who are in custody in King County have underlying health conditions, or are over the age of 50, which place them at a higher risk of serious illness or death if exposed to COVID-19.

Our understanding is there are still over 1,700 residents in custody between the two jails.

#### **I. Immediate Releases of Jail Residents is Necessary to Prevent Uncontrollable Outbreaks at the Downtown Jail and Regional Justice Center (RJC)**

With all trial dates in criminal cases being continued to late April and into May, the pretrial detention period will be extended a minimum of 6 to 7 weeks for all defendants, and likely much longer. Without action, the jail population will soar beyond capacity, as the criminal justice system “backs up.” In many cases, this will place significant pressure on defendants to plead guilty to get out of jail. In some cases, if defendants are not released from custody to await their new trial dates, they may serve more time in jail than allowed by the standard range sentence. CrR/CrRLJ 3.2 allows bail to be imposed only “if no less restrictive condition or combination of conditions would reasonably assure the safety of the community.” The extraordinary circumstances of this pandemic outbreak warrant broad review of pretrial detention and the amount of bail imposed in hundreds of cases.

Further, condemning the individuals housed at the downtown jail and RJC to possible serious illness or death as a result of this pandemic unconscionably disregards a risk involving serious medical needs and adverse outcomes of morbidity and mortality. It is critical to act swiftly to reduce the likelihood of a massive outbreak of COVID-19 in both jails. We have identified **seven**

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<sup>3</sup> See Don Chaddock, “1918 flu pandemic puts prison medical staff to test,” California Department of Corrections and Rehabilitation (October 18, 2018) <https://www.cdcr.ca.gov/insidecdcr/2018/10/18/1918-flu-pandemic-puts-prison-medical-staff-to-test/>; Centers for Disease Control and Prevention, Interim Guidance for Correctional and Detention Facilities on Novel Influenza A (H1N1) Virus (May 24, 2009) [https://www.cdc.gov/h1n1flu/guidance/correctional\\_facilities.htm](https://www.cdc.gov/h1n1flu/guidance/correctional_facilities.htm)

**immediate actions** that should be taken to significantly reduce the population of people housed at the downtown jail and RJC, and as a result, dramatically mitigate the risk of exposure to COVID-19 for this vulnerable group:

- 1) Immediately release all individuals being held in jail pretrial due to their inability to post monetary bail of \$50,000 or less to appropriate conditions of release or other alternatives to jail;**
- 2) Promptly identify and release individuals who are at-risk and most vulnerable to infection, including individuals who are over the age of 50 years or who have a serious medical condition (e.g., heart disease, lung disease, diabetes, or immunocompromised) to appropriate conditions of release or other alternatives to jail.<sup>4</sup> Jail Health Services' electronic medical records system should be a useful tool to rapidly identify all such inmate-patients;**
- 3) Enact an immediate prohibition on arresting or jailing individuals for failure to appear (FTA), legal financial obligations (LFO), or contempt of court matters;**
- 4) Enact an immediate prohibition on the imposition of monetary bail for any but the most serious felonies;**
- 5) Immediately quash all warrants for misdemeanors, violations of release conditions, unpaid fines or fees, and failure to appear (FTA) in all cases but the most serious felonies;**
- 6) Adopt booking criteria to prohibit the incarceration of anyone arrested for any offense but the most serious felonies;**
- 7) Release individuals convicted and serving local jail time with remaining sentences of 6 months or less, either outright or to all available alternatives to jail.**

By setting up emergency bond calendars and taking swift action to reduce the population of both jails in King County, you will greatly increase the health and safety of King County staff, people incarcerated by the County, and the wider general public. This is a necessary response to this emergent health crisis. For example, releasing a significant percentage of the pre-trial population alone (which is routinely 70-80%<sup>5</sup> of the total jail population) would dramatically

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<sup>4</sup> The Washington Supreme Court issued an order on March 18, 2020 with a finding “for those identified as part of a vulnerable or at-risk population by the Centers for Disease Control, COVID-19 is presumed to be a material change in circumstances, and the parties do not need to supply additional briefing on COVID-19 to the court”, <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supreme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf>; See Centers for Disease Control and Prevention, [People at Risk for Serious Illness from COVID-19](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html), (last accessed March 13, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>.

<sup>5</sup> See the King County Department of Adult and Juvenile Detention, [Detention and Alternatives Report](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en) (February 2020) [https://www.kingcounty.gov/~media/courts/detention/documents/2020-02 - KC DAR.ashx?la=en](https://www.kingcounty.gov/~media/courts/detention/documents/2020-02_-_KC_DAR.ashx?la=en).

increase the space and resources available. The current population of the jail makes social distancing a physical and logistical impossibility. As a result, those housed at the jail are particularly vulnerable to a massive outbreak if/when an exposure to COVID-19 occurs. Dr. Marc Stern, who teaches at University of Washington School of Public Health and formerly served as the WA DOC assistant secretary for health care, warns that jails and prisons are like nursing homes and cruise ships and urges jails and prisons to downsize.<sup>6</sup> He says the coronavirus would spread rapidly through the inmate population and result in many being hospitalized with complications.

Taking these steps is especially critical to protect elderly individuals and those with underlying health conditions. The CDC has identified that risks associated with COVID-19 are more severe for these groups, often resulting in the need for significant medical intervention. Even with extraordinary measures, there is an exponentially higher risk of death for these vulnerable individuals. Not only will release remove this population from the extreme risk of infection they face in jail but reducing the overall population will provide more flexibility to jail custody and medical staff in relation to housing placements and other exigencies that both jails will undoubtedly have to implement in the coming months. Further, a major outbreak in the jail would exacerbate the stress on Harborview Medical Center, the facility that is frequently used by Jail Health Services staff to treat inmates whose serious medical needs exceed the capacity of Jail Health Services.

## **II. Steps Necessary to Protect Those Released from Custody**

In order to promote the health and safety of the individuals released from the jails in response to the COVID-19 crisis, it is imperative to ensure that individuals are given meaningful connection and access to community services. These releases should be coordinated with local and state public health agencies and social service providers to ensure that medically fragile people leaving the jails' custody receive an appropriate continuum of care. Coordinated care will ensure that the most vulnerable members of our communities are protected and reduce the likelihood of unnecessary spread of the virus.

**In order to ensure this, city and county officials should coordinate with local health care and service providers to ensure that people with pre-existing conditions who are particularly at risk, and any individuals who may have been exposed to COVID-19, are immediately connected with appropriate medical support, as well as other essential services and housing upon their release from jail custody. (We are aware that the jail already engages release planning to connect releasees with community health services.)**

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<sup>6</sup> Austin Jenkins, "It's not just nursing homes. Threat of coronavirus outbreak looms in other communal settings," NW News Network (March 19, 2020) <https://www.nwnewsnetwork.org/post/it-s-not-just-nursing-homes-threat-coronavirus-outbreak-looms-other-communal-settings>.

### III. Steps Necessary to Protect Those Who Remain in Custody

For those who cannot or will not be released from custody, the following measures should be put into place immediately:

**1) South Dorm population in the downtown jail should be reduced to original design capacity, i.e. from 160 down to 92.**

All double celling in the North and East wings of the jail should be reduced to single cells, again consistent with the original design capacity of the jail. (The downtown jail capacity would thus be restored to its design capacity of 848 on floors 7 through 11; this is exclusive of approximately 30+ additional beds in the Infirmary).

**2) Implement social distancing measures to the extent possible.**

Releasing as many people as possible is the most likely strategy to mitigate risks to the most vulnerable people in custody. Both jails should also implement social distancing, one of the most effective measures to prevent the spread of COVID-19. To that end, both jails should cease transfer of residents between institutions unless medically necessary. Additionally, the jails should immediately assess resident schedules (e.g., programming, dining, yard, movement, etc.) to assess what measures can be taken to limit large gatherings within the facility. ***However, these efforts should not result in prolonged, widespread lockdowns.*** Any lockdowns or interruptions in regular activities, such as exercise or visits and phone calls with families or attorneys, should be based solely on the best science available and should be as limited as possible in scope and duration. Releasing many people will likely relieve much of the need for long-term isolation or lockdowns.

**3) End costs/copays for phone and video visitation.**

Regardless of the current public health crisis, the exorbitant costs associated with phone, email, and video visitation in jail facilities is unacceptable. However, at this time of great social disruption and widespread fear, when the jails have ceased in-person visitation, denying people access to family and loved ones because they are unable to afford these charges is particularly unconscionable. There should be no cost or obstacles to maintaining family contact, despite the prohibition placed on in-person visitation. Both jails must accordingly take all necessary steps during this public health crisis to ensure that people can maintain contact with their spouses, children and other family members without being forced to pay for that right.

**4) Ensure that every person in jail, staff, residents, visitors, and volunteers alike, has uninhibited access to soap, running water, single-use towels, and alcohol-based hand sanitizer to minimize the spread of COVID-19 throughout the facility.**

We want to underscore how important these steps are to effectively address this crisis. To this end, jails should ensure that all people, including those in segregation, suicide watch, and infirmaries, have access to hot water and soap. It should also immediately suspend any prohibition on the possession of alcohol-based hand sanitizer and provide

all people living in the jail with an adequate supply of essential hygiene products at no cost.

**5) Enhanced facility cleaning with appropriate disinfectants is essential.**

Jails are full of metal surfaces. A very recent letter published this week in the New England Journal of Medicine reports that the virus remains live on metal surfaces for three days. “Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1,” available at <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>.

**6) Adopt a standard of care for individuals in jail custody that meets or exceeds the recommendations for care in the community.**

People living in both jails in King County must be provided at least the same level of medical care that people living outside jails receive. In order to ensure that people are seeking medical care when appropriate, the jails should immediately suspend all medical co-pays, not only those associated with COVID-19. The jails must issue clear standards that meet current best practices regarding testing for the virus and follow-up medical care; it must also train staff to implement these measures effectively. To the extent the jails will continue to hold people facing serious medical crises in custody, it must be able to meet their needs. There must be adequate medical services, supplies, and practitioners available. Both jails must ensure that they have enough personal protective equipment for staff and people in custody. Those who require ventilators, intensive care beds, negative pressure rooms, respiratory therapy or medical isolation areas, and practitioners who are skilled in treating extremely sick people, should continue to be referred to outside medical facilities, whether Harborview or other appropriate medical facilities.<sup>7</sup>

**7) Ensure that people in custody and their families receive updated, comprehensive, timely and thorough information.**

Many people living in both jails in King County lack basic information about how to protect themselves, or what to expect should they become infected. The jails must issue appropriate, thorough, regularly updated, and accessible instructions and directives to all people under their care, as well as their family members. They must take steps to ensure that this information is accessible to people for whom English is not their primary language, those who lack literacy skills, those in segregation, and people with cognitive or sensory disabilities who may require assistance in accessing this crucial information.

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<sup>7</sup> National Commission on Correctional Health Care, [Infection Disease Prevention and Control \(P-B-01\)](https://www.ncchc.org/filebin/news/Infection_Prevention_and_Control.pdf), (2014), [https://www.ncchc.org/filebin/news/Infection\\_Prevention\\_and\\_Control.pdf](https://www.ncchc.org/filebin/news/Infection_Prevention_and_Control.pdf); See Centers for Disease Control and Prevention, [Preparing for COVID-19: Long-term Care Facilities, Nursing Homes](https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/prevent-spread-in-long-term-care-facilities.html), (last accessed March 17, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/prevent-spread-in-long-term-care-facilities.html>.

#### IV. Request for a Meeting

We look forward to a timely response to this urgent request. We understand that we are all struggling to keep up with this rapidly changing situation, and we believe that the above steps are needed promptly. We would like to find a time for us to meet, remotely, within the next few days to address these requests and share information. Please provide relevant updates to Jaime Hawk at [jhawk@aclu-wa.org](mailto:jhawk@aclu-wa.org), Nick Straley at [Nick.Straley@columbialegal.org](mailto:Nick.Straley@columbialegal.org), and Ethan Frenchman at [ethanf@dr-wa.org](mailto:ethanf@dr-wa.org), or have your staff contact Medha Raman at [mraman@aclu-wa.org](mailto:mraman@aclu-wa.org) to schedule a meeting as soon as possible.

Sincerely,

*s/ Merf Ehman*

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*s/ Michelle Merriweather*

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*s/ Michele Storms*

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