

[SCHR sent the following letter to all 159 sheriffs in Georgia]

March 23, 2020

Dear Sheriff _____:

We write regarding the anticipated spread of Coronavirus Disease 2019 (COVID-19) to people incarcerated in jails in Georgia. Georgia's jails house large numbers of people with serious medical conditions and many older people. If infected with COVID-19, these individuals are more vulnerable to becoming seriously ill and dying. Moreover, incarcerated people and jail staff are at greater risk for becoming infected, as social distancing is virtually impossible in these crowded and confined environments. If COVID-19 gains a foothold in Georgia's jails, there is a risk of widespread infection and death.

Public officials at the state, national, and international levels recognize the gravity of this crisis and are taking action. On March 11, 2020, the World Health Organization designated COVID-19 a global pandemic.¹ On March 13, the President of the United States declared a national state of emergency in response to the outbreak.² Most recently, on March 14, the Governor of Georgia declared a public health emergency.³

Jail officials across the country recognize the imminent need to reduce jail populations before infections spread and systems are overwhelmed.⁴ As starkly illustrated by the recent eruption of COVID-19 cases at New York's Riker's Island jail complex, once an infection is detected, it is too late to prevent a significant number of detention officers and inmates from becoming ill.⁵ The COVID-19 virus has now reached the Fulton County Jail, and you are likely to see outbreaks in your respective jurisdictions. Many sheriffs, in cooperation with other government officials, have taken steps to release people from jail, reduce jail admissions, and

¹ World Health Organization, *Rolling updates on coronavirus disease (COVID-19)* (Mar. 11, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

² President Donald J. Trump, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak>.

³ Office of the Governor, Brian P. Kemp, *Kemp: Public Health Emergency in Georgia Effective March 14, 2020* (Mar. 16, 2020), <https://gov.georgia.gov/press-releases/2020-03-16/kemp-public-health-emergency-georgia-effective-march-14-2020>.

⁴ Courts have also recognized that, in certain circumstances, releasing incarcerated people is the only way to ensure the delivery of adequate medical care required by the Eighth and Fourteenth Amendments. See *Brown v. Plata*, 563 U.S. 493, 510-30 (2011).

⁵ See Jay Ransom and Alan Feuer, 'A Storm Is Coming': Fears of an Inmate Epidemic as the Virus Spreads in the Jails, N.Y. Times, Mar. 20, 2020, <https://www.nytimes.com/2020/03/20/nyregion/nyc-coronavirus-rikers-island.html>.

prepare for an outbreak of COVID-19 in their facilities.⁶ **The most critical step you can take at this moment is to work with government officials in your jurisdiction to identify ways to reduce your jail population, consistent with public safety.** We ask your office to join the other jurisdictions taking action to reduce the spread of the virus and potential loss of life by implementing the measures below.

A. Recommendations Regarding Release of Certain People

- 1. Grant Earned Time Credit to Qualifying People:** Under O.C.G.A. § 42-4-7(b)-(c), you have the authority to “award earned time allowances” to incarcerated people who have been sentenced and to release them on good time. If you do not already do so, we encourage you to exercise that authority to the fullest extent in this public health crisis.
- 2. Help Your Criminal Justice Partners Identify People Appropriate for Release:** Help local prosecutors, community supervision officers, and public defenders identify people who can be released from jail immediately—through recognizance bonds, sentence reductions, home monitoring, and similar means—without a significant risk to public safety. In particular, the following groups of people may be appropriate for immediate release:
 - a. Individuals the Centers for Disease Control and Prevention (CDC) have classified as vulnerable, including older adults, pregnant women, and people with underlying medical conditions like HIV, asthma, cancer, heart disease, lung disease, and diabetes;⁷
 - b. Individuals being detained solely because they cannot afford cash bail;
 - c. Individuals incarcerated due to technical violations of probation or parole;
 - d. Individuals incarcerated for low-level, non-violent offenses, including drug, property, theft, and prostitution crimes.
- 3. Assign Qualifying People to a Home Arrest Program:** Under O.C.G.A. § 42-1-8, sheriffs can admit qualifying people to home arrest programs, even after they are

⁶ See, e.g., Christian Boone, *Fulton Jail begins releasing nonviolent pre-trial detainees*, Atlanta Journal Constitution, Mar. 20, 2020, <https://www.ajc.com/news/crime--law/fulton-jail-beings-releasing-nonviolent-pre-trial-detainees/WyaJFEJUQ1Lgkb9Qn7WCXN>; Courtney Friedman, *Bexar County Sheriff announces COVID-19 prevention plan for jail inmates, deputies*, KSAT, Mar. 14, 2020, <https://www.ksat.com/news/local/2020/03/15/bexar-county-sheriff-announces-covid-19-prevention-plan-for-jail-inmates-deputies>.

⁷ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Are you at Higher Risk for Severe Illness?* (Mar. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>.

sentenced, or while they await adjudication on an alleged probation violation. The statute permits electronic monitoring of qualifying persons at an approved residence, in lieu of incarceration.

B. Recommendations to Reduce Jail Admissions

- 1. Use Citations Instead of Arrest Where Possible Under State Law:** Encourage your deputies and other law enforcement agencies in your area to use citation and release,⁸ instead of arrest and booking, where possible under state law. Encourage law enforcement officers in your jurisdiction to limit non-essential arrests, for their own safety and the safety of those working or incarcerated in jails.
- 2. Suspend Placement of Low-Risk People in Custody:** Work with the courts and other criminal justice partners in your jurisdiction to suspend temporarily the enforcement of bench warrants for low-level and non-violent offenses and to cease taking people into custody, where possible under law, for certain parole, probation, and immigration violations.

C. Recommendations to Reduce the Spread of COVID-19 Within Jails

- 1. Comply with Expert Guidelines:** We urge your jail staff and medical providers to be in regular contact with experts at the CDC, the Department of Public Health, and/or the National Commission on Correctional Health Care (NCCHC). In particular, we encourage jails to follow guidelines issued by the NCCHC and its partners at Emory University, accessible at <https://www.ncchc.org/blog/covid-19-coronavirus-what-you-need-to-know-in-corrections>, and the CDC's guidance for law enforcement officers, accessible at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-law-enforcement.html>.⁹
- 2. Screen for Symptoms Upon Admission:** Use a CDC-approved screening tool to evaluate anyone booked into a jail, with an eye toward identifying people with possible exposure and people at higher risk of infection. A similar tool should be used for jail staff.
- 3. Develop a Plan to Separate Symptomatic Detainees:** In consultation with experts, implement a policy and training to isolate detainees showing symptoms and to maximize the distance between people at higher risk of infection and people who

⁸ This could take the form of releasing people with a citation, ticket, or summons. Under Georgia law, arrest decisions are committed to law enforcement officers' discretion. *See, e.g., Touchton v. Bramble*, 284 Ga. App. 164, 167 (2007) ("Under Georgia law, an officer's decision to effectuate a warrantless arrest generally is a discretionary act." (quoting *Reed v. DeKalb Cty.*, 264 Ga. App. 83, 86 (2003))).

⁹ Additional resources can be found here: <https://www.americanjail.org/content.asp?admin=Y&contentid=282>.

may be infected but asymptomatic. This policy should provide procedures for *targeted quarantines*, not widespread lockdowns or solitary confinement.

4. **Develop a Plan to Respond to Confirmed Cases of COVID-19:** Implement a policy and training to address COVID-19 cases where hospital transport is necessary. This policy should identify the closest hospitals; list best practices for working with first responders to safely transport infected individuals; and outline steps to take during and after interactions with infected people. Note that the Department of Public Health shall “provide a guide for appropriate precautions” during transport of incarcerated people with communicable diseases. O.C.G.A. § 42-1-7(b). Track all suspected and confirmed cases of COVID-19 in jail facilities and communicate information about those cases to your local health department.
5. **Institute Emergency Staffing Plans:** Educate your employees about COVID-19 and the measures they should take to minimize the risk of infection. Limit contact between sheriff’s office staff by using videoconferencing, email, and other technologies to provide updates and briefings. Provide paid sick leave to all sheriff’s office employees to encourage them to stay home if they are ill. Create a plan for staffing reinforcements to ensure that all jail facilities, and specifically all medical units, are adequately staffed throughout this public health crisis.
6. **Eliminate Medical Co-Pays:** To the extent that your jail has a co-pay policy, it should be suspended while the pandemic is ongoing. Elimination of co-pays on a temporary basis will encourage people who may be infected to seek care and could avoid further spread of the virus.¹⁰
7. **Ensure that People Who Are Quarantined Have Positive Ways to Spend Time:** Continue to guarantee access to reading materials, correspondence, electronic programming, and other positive ways for incarcerated people to spend their time. This will reduce tensions for incarcerated people and staff during an otherwise stressful time.
8. **Ensure Access to Soap, Tissue, Sanitizing Products, and Clean Laundry:** People in jail should be given increased supplies of soap, tissue/toilet paper, feminine hygiene products, cleaning/sanitizing products, and paper towels. All sinks should be functional. Incarcerated people should be given clean laundry on a regular basis, and towels, bedsheets, and clothes should be washed with increased frequency. All these products and services should be provided at no cost to incarcerated people or their families.

¹⁰ See Nat’l Comm’n on Corr. Health Care, *Position Statement: Charging Inmates a Fee for Health Services* (2017), <https://www.ncchc.org/charging-inmates-a-fee-for-health-care-services> (stating that, even in facilities that charge fees for medical services, “[n]o charges should be made for the . . . diagnosis and treatment of contagious disease”).

- 9. Ensure that Incarcerated People Can Meaningfully Contribute to their Legal Cases:** While we understand that limiting close contact helps avoid the spread of COVID-19, facilities must ensure that incarcerated people have reasonable access to their lawyers. At a minimum, jails must provide legal phone calls and/or legal videoconferencing to all detainees. These calls must be confidential.
- 10. Provide Free Phone/Video Calls to Incarcerated People and their Families:** Sustained and meaningful contact between incarcerated people and their families reduces misconduct in jail facilities and recidivism after people are released from jail. While restrictions on in-person visitation may be necessary, it is vital that incarcerated people be able to communicate with their loved ones. We ask that you work with your vendors to provide free phone calls and video communication between incarcerated people and their loved ones. This policy has been recommended by many prosecutors nationwide¹¹ and implemented by other jurisdictions.¹²
- 11. Ensure Transparency:** Policies adopted in response to COVID-19 should be transparent and clearly communicated to incarcerated people and the public. This includes providing regular updates, via press releases and/or online, about the spread of the virus and the measures being taken to address it.

Because of the growing number of inquiries we are receiving from incarcerated people and their loved ones, we are sharing this letter publicly. We appreciate the steps your office is taking to respond to COVID-19. We urge you to consider and, if you have not already done so, adopt the measures listed in this letter for the protection of people in jail, sheriff's office employees, and the public at large.

¹¹ See *Joint Statement From Elected Prosecutors On COVID-19 and Addressing the Rights and Needs of Those in Custody* (Mar. 28, 2020), <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf>.

¹² See, e.g., WMC Action News Staff, *Shelby County cancels non-essential government meetings, jail visitations*, WMC Action News, Mar. 12, 2020, <https://www.wmcactionnews5.com/2020/03/13/shelby-county-cancels-non-essential-government-meetings-jail-visitations/>.

We wish you and your staff well in this challenging time. Please do not hesitate to call on us if we can be of assistance, or if you would like to discuss any of the suggestions in this letter.

Sincerely,

A handwritten signature in purple ink, appearing to read "Sara Totonchi".

Sara Totonchi
Executive Director

A handwritten signature in purple ink, appearing to read "Sarah Geraghty".

Sarah Geraghty
Managing Attorney