TO: Joint Committee on Coronavirus Response
DA: March 17, 2020
RE: COVID-19 Response in Our Prisons and jails

Co-Chairs Roblan and Holvey, and Members of the Committee,

The response to the global pandemic COVID-19 requires careful consideration of the public health and economic impacts on the people of Oregon and the institutions that provide critical services for our state. This is no different for our state's prisons and jails, or for victim services agencies. We urge the government in its response to prioritize saving human lives, public safety, and reducing new infections to partner with our organizations and law enforcement agencies across the state and take swift action to prevent the outbreak of COVID-19 in our prisons and jails.

An ideal response is one that brings partners together in shared and diverse expertise; that in this scenario would be coordinated between public safety, public health and victims services professionals. A collaborative response will also take into account the unique risks and dangers to those experiencing stalking, domestic and sexual violence during this time and their need for adequate protections while we call for only the most essential hearings to be held. The process should also involve hearing from people directly impacted, including incarcerated people, formerly incarcerated people and crime victims as do how these policy and practice changes are working. Their voices are critical to informing how we move forward.

People in prisons and jails are highly vulnerable to outbreaks of contagious illnesses. Once a contagious illness enters, conditions in correctional facilities are highly conducive to it spreading. People in prisons and jails live in close proximity to each other. Many are housed in large dormitories, sharing the same space. People in prisons and jails do not have access to adequate soap and cleaning supplies, making infection control nearly impossible.

Many people in prisons and jails are in relatively poor health and suffer from serious chronic conditions due to lack of access to healthcare in the community, or limited healthcare provided in the correctional system. Medical staff are generally stretched thin even in the best of times. Though incarcerated people have a constitutional right to adequate medical and mental health care, the reality is they too often do not have access to it.

All this means that prison and jail populations are extremely vulnerable to a contagious illness like COVID-19. Moreover, prisoners have fewer options for protecting themselves and others. They don't have the option to stay away from other people when they are sick. They can ask for medical attention, but prisons and jails have few infirmary beds and fewer rooms for medical isolation.

From policing, prosecution and pretrial hearings, to sentencing, confinement, and release, every aspect of the system must come under intense scrutiny for how it responds to this national public health crisis.

While our organizations strongly recommend additional actions[1], we are encouraged by recent actions taken by Chief Justice Martha Walter that limit nonessential court operations statewide to limit traffic in and out of courthouses and stem the spread of the coronavirus. Similar to actions taken in other states like Ohio, the Washington County Sheriff has also announced he will be taking steps to reduce the jail population by considering early release for individuals meeting certain criteria.[2] We encourage other Sheriffs to take similar actions.

Our organizations have reached out to several law enforcement offices and associations to share our concerns and offer suggested actions they can take to protect prison and jail populations as well as those on active supervision and uphold public safety in our state. Those letters are attached and suggested actions include:

- Transparency with incarcerated individuals and their families, and the public regarding actions being taken by law enforcement agencies is paramount throughout this public health emergency. It is equally important for jail and prison staff and incarcerated individuals to receive the same information and education about how to best combat COVID-19 and how to recognize the symptoms. The information provided should be accessible regardless of a person's disability or primary language.
- Law enforcement officers need to balance their enforcement priorities with the realities of the pandemic. Police agencies need to rethink how arrests can be avoided or deprioritized to reduce the public health risks of unnecessary jailing. The Oregon Department of Corrections and Oregon jails should also refrain from transferring people to ICE custody, providing information to ICE that allows for their re-arrest upon release, or delaying anyone's release as a result of an ICE request.
- Prosecutors should use their immense discretion to reduce the number of people who are held pretrial or who are sentenced to a confined facility. This includes making full use of available diversion programs or alternatives that don't involve confinement and offering non-confinement sentences in plea bargaining.
- The Parole Board should expand release opportunities and expedite release decisions for incarcerated people.
- The Governor should utilize her clemency powers to decrease incarcerated populations and create a culture in which transparency, safety, and the health of all people are paramount concerns.

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[1] Letter to Chief Justice Martha Walters and State Court Administrator Nancy Cozine

[2] Oregon courts, jails respond to coronavirus: Washington County jail to release 60 inmates; court hearings see widespread delays
https://www.oregonlive.com/coronavirus/2020/03/oregon-courts-jails-respond-to-coronavirus-washington-county-jail-to-release-60-inmates-court-hearings-see-widespread-delays.html

- Prisons, jails, and detention centers must be developing plans to protect people. They must provide soap, hand sanitizer, and cleaning supplies.
- Parole and Probation departments should relax reporting requirements, decrease the use of custodial sanctions, waive monthly reporting fees and look for ways to support the people they are supervising so they do not lose their employment and housing during this crisis.

We request that the Joint Committee on Coronavirus Response address this critical issue by doing the following:

- Appropriate emergency funding to reentry and treatment programs across the state so that individuals can be diverted away or released back into the community fully supported, resourced and educated.
- Appropriate emergency funding to the Oregon Department of Corrections so it may adequately address the needs of this current crisis and mitigate the harms that will be caused by this crisis.
- Appropriate emergency funding to the Board of Parole and the Governor's office to support the expedited release of individuals through the clemency and parole process.

People in custody, including in prisons, jails, and civil detention, are often forgotten in emergencies. This creates unnecessary suffering and loss of life. We have the opportunity to take steps now to limit the spread of the virus in prisons, jails, and detention centers. But the time to act for the health of those incarcerated, and for the broader community, is now.

Thank you for your time and consideration.

Sincerely,

ACLU Oregon

DRO Disability Rights Oregon

OCDLA Oregon Criminal Defense Lawyers Association

Oregon Justice Resource Center Advocate. Educate. Engage.

Partnership for Safety & Justice

Sponsors Justice Reimagined

March 17, 2020

SENT VIA EMAIL

Tim Colahan, Executive Director
Oregon District Attorneys Association
8 N State Street, Suite 8
Lake Oswego, OR 97034
tim.colahan@co.harney.or.us

Paige Clarkson, President
Oregon District Attorneys Association
555 Court Street NE, Suite 3250
Salem, OR 97301
pclarkson@co.marion.or.us

Dear Oregon District Attorneys:

We are reaching out because we share your concerns in addressing the needs of the most vulnerable during the spread of COVID-19. As partners in public safety reform, we are writing to urge you to immediately develop and support proactive plans, as advised by public health professionals, for the prevention and management of COVID-19 in your county, especially when it comes to court appearance, hearings and trials and the role of incarceration in the potential spread of pandemics. Effectively responding to the current health crisis to protect *everyone* within the justice system from this immense threat demands a fundamentally health-based approach.

Our recommendations are tailored to your role in the legal system, but include policies in which you would be a necessary partner. We would like to meet with you this week to discuss how you are protecting the health of the people who work in the criminal justice and juvenile justice community, victims of crime, the health of people in your custody and the health of the people who work in the jail.

Victims of crime, particularly those living in domestic violence or experiencing stalking, domestic or sexual violence situation, may be experiencing unique risks and also be less able to access safety in this time. Most of our recommendations are focused on people confined to prison and jail due to the increased risk for an outbreak. Still, we know the impact of needing to be home could be particularly dangerous for victims of domestic violence.

People in jails and prisons are highly vulnerable to outbreaks of contagious illnesses, particularly given that they are housed in close quarters and are often in poor health. Without the active engagement of the jail and prison administration, they have little ability to inform themselves about preventive measures, or to take such measures if they do manage to learn of them.

Given the urgent and rapidly-developing nature of the COVID-19 outbreak, we ask that if you have not done so already, you immediately reach out to the County Health Departments, County Sheriffs and County Courts to develop coordinated plans to address the virus in the jail, prisons, and criminal and juvenile legal environments. Not having an appropriate, evidence-based plan in place may cost lives of court and jail and prison staff, victims of crime, attorneys representing the accused as well as your staff, persons in custody and defendants that may be put in custody.

While the plan should be developed collaboratively by your office and public health professionals together, some of the critical issues that must be addressed immediately are:

- **Reducing jail and prison populations:** In the vulnerable jail setting, many Oregonians could be unnecessarily exposed to COVID-19. We strongly urge the DA's office and Sheriff's office to work together to allow release of those in custody who are not a danger to the community, including the elderly and those with already compromised health.[1] We also strongly urge the DA's office to direct its deputies to not oppose motions for pre-trial release when a judge has not found an accused person to be a danger to the community. Relatedly, we strongly urge that the DA's office work with defendants to secure non-custodial sentences where possible. Where these releases are possible, victims should be notified by District Attorney-based victim advocates who will work collaboratively with community-based victim advocates in a manner that both works to reduce re-traumatization to the victim and that is culturally specific.[2]

- **Collaborate with community-based victim services remotely as needed:** To the extent possible, victims of crime should continue to receive support and shelter as needed. Victim advocates should be given the tools and support needed to work remotely and communicate efficiently with community-based partners.

[1] People over 60 years of age have heightened vulnerability to mortality. Pre-existing conditions including diabetes, high blood pressure, chronic cardiovascular conditions, pulmonary conditions (e.g. asthma, cystic fibrosis, COPD, etc.), chronic renal conditions, and pregnancy all create heightened vulnerability to mortality as a result of COVID-19.

[2] SB 1008 laid out this approach and there are model guidelines for the approach that should be available at the Department of Justice Crime Victim and Survivor Services Division.

- **Change case intake and prosecution practices to account for COVID-19 risk, including practices meant to reduce spreading of COVID-19, including:**

    - Decline criminal charges whenever possible and divert to public health, community, and civil court solutions with return date 6 months out.
    - For charges not declined, reduce as many as possible to citations or non-warrant, non-arrest charges, and make return date 6 months out.
    - Refuse to ask the court to issue "failure to appear" warrants or, "bench warrants" and agree to jointly waive the appearance of people who are out-of-custody.
    - Work with defense attorneys and courts to ensure that people in custody receive a constitutionally-mandated speedy trial.
    - Default to noncustodial sentences wherever possible, including resolutions that avoid immigration detention.
    - Direct any failures to comply with local quarantine orders to the civil court system, not the criminal court system.

- **Education of all parties in the system:** Consult with the sheriff and court personnel, about posting signage advising individuals of the CDC's identified risk factors (e.g. recent travel to risk countries, close contact with or having a fever, etc.).

- **Staffing plans:** We realize that regardless of how many staff stay home because they are sick, the district attorney's office and justice related offices will have to continue functioning. To ensure the health and safety of everyone involved, we urge you to extend paid sick leave to all employees, including those with temporary/part-time employment status. However, there must be a plan for how necessary functions and services will continue if large numbers of staff are absent because of the virus. **All efforts should be undertaken to ensure people in custody can maintain their rights to counsel and access to courts as necessary via access to telephone appearance or video links.**

- **Access to Treatment:** Consistent with CDC and OHA guidelines, plans should be developed to provide urgent health care in case of an outbreak in prisons and jails. A plan should be developed to ensure that anyone, particularly those in custody, who need testing for COVID-19 receive it in a speedy fashion, that results be determined quickly and appropriate treatment, including quarantine be provided immediately.

- **Vulnerable Populations:** The plan must provide for additional precautions for those who are at high risk of serious illness if they are infected, such as pregnant women and people with chronic illnesses, compromised immune systems, or disabilities, and people whose housing placements restrict their access to medical care and limit the staff's ability to observe them.

- **Data collection:** The collection of data regarding COVID-19 will be part of the public health response. As with any contagious disease, data collection is critical to

understanding and fighting the virus. Oregon's legal systems must be part of this process where possible.

- **Cultural Specificity:** People being charged with crimes and victims of crime speak many languages. Especially during a time of crisis, it's imperative that all information is provided in a person's first language and that there is an opportunity for questions and answers in that language to ensure comprehension and mitigate misunderstanding and panic.

Consistent with the above requests, we have attached a letter from the Washington Association of Sheriffs and Police Chiefs. The author of that letter, Dr. Marc Stern, is a professor at the University of Washington, School of Public Health and a corrections healthcare expert. We are also attaching a statement from Fair and Just Prosecution.

Finally, the public should be informed of how county law enforcement is acting to protect the health and safety of their loved ones. We ask that the DA's office keep the public regularly informed about its decisions and how those decisions are made, including their foundation in public health science. That information should be provided in the languages represented in each of your counties.

Please let us know when you will be available to discuss your plans with us. We would appreciate a prompt response acknowledging receipt of this letter and proposing times to talk by March 18, 2020. In the meantime, you can reach us by contacting the members of our coalition listed below.

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Sincerely,

Kelly Simon
Interim Legal Director
ACLU of Oregon
503-564-8511
ksimon@aclu-or.org

Tom Stenson
Deputy Legal Director
Disability Rights Oregon
tstenson@dro.org

Shaun McCrea
Executive Director
Oregon Criminal Defense Lawyers Association
541-6868-8716
smccrea@ocdla.org

Juan Chavez
Civil Rights Project Director & Attorney
Oregon Justice Resource Center
503-944-2270 ext. 212
jchavez@ojrc.info

Andy Ko
Executive Director
Partnership for Safety & Justice
503-335-8449
andy@safetyandjustice.org

Paul Solomon
Executive Director
Sponsors, Inc.
541-485-8341
pjsolomon@sponsorsinc.org

ATTACHMENTS: "Attachment - WA Sheriffs & Police Chiefs Guidance.pdf"; "Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody"

/ /

/ /

CC:

John Foote, Clackamas County
Ron Brown, Clatsop County
Jeff Auxier, Columbia County
Paul Frasier, Coos County
Wade L. Whiting, Crook County
John Hummel, Deschutes County
Rick Wesenberg, Douglas County
Marion Weatherford, Gilliam County
Jim Carpenter, Grant County
Joseph W. Lucas, Harney County

Doug Marteeny, Linn County
David M. Goldthorpe, Malheur County
Rod Underhill, Multnomah County
Beth Heckert, Jackson County
Patty Perlow, Lane County
Paige Clarkson, Marion County
Aaron Felton, Polk County
William B. Porter, Tillamook County
Kelsie McDaniel, Union County
Daniel Primus, Umatilla County
Kevin Barton, Washington County
Brad Berry, Yamhill County
Tina Kotek, Speaker of the House
Peter Courtney, President of the Senate
Nik Blosser, Chief of Staff, Office of the Governor
Constantin Severe, Public Safety and Military Policy Advisor, Office of the Governor
Dustin Buhler, General Counsel, Office of the Governor
Paige Clarkson, President, Oregon District Attorney Association
Sheriff Terry Rowan, President, Oregon State Sheriff's Association
Lane Borg, Executive Director, Office of Public Defense Services
Justice Walters, Chief Justice, Oregon Supreme Court
Nancy Cozine, State Court Administrator
Joe O'Leary, Director, Oregon Youth Authority
Dawn Jagger, Senior Health Policy Advisor, Officer of Governor Brown
Steve Allen, Director, Oregon Health Authority

March 16, 2020

SENT VIA EMAIL

Justice Walters
Chief Justice, Oregon Supreme Court
Oregon Supreme Court
1163 State Street
Salem, OR 97301

Nancy Cozine
State Court Administrator
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

Dear Chief Justice Walters and State Court Administrator Cozine,

Governor Brown issued Executive Order 20-03 and declared a State of Emergency on March 8, 2020 under ORS 401.165 *et seq* due to the public health threat posed by the novel infectious coronavirus (COVID 19).

In light of this measure and to protect the health and safety of court employees, elected officials, and the general public, and under ORS 1.002(1)(i), the Oregon Supreme Court should order the following measures to be implemented from Tuesday, March 17, to Friday, April 10, 2020[1]:

1. With the exception of emergency and time-sensitive matters, including but not limited to, stalking, domestic and sexual violence hearings, emergency custody hearings,

[1] These recommendations are based off of the order issued by the Chief Justice of Supreme Court of Kentucky in response to COVID 19 https://kycourts.gov/courts/supreme/Rules_Procedures/202009.pdf

evidentiary hearings in criminal cases, in-custody arraignments, in-custody preliminary hearings, in-custody release and bail motions, and in-custody probation violation hearings, all in-person appearances for civil and criminal dockets should be canceled. Judges are encouraged to use telephonic or video technology for all necessary hearings.

1. A clear and expedited process should be identified for those who are currently incarcerated and may exhibit symptoms of COVID 19 or test positive for COVID 19, and are therefore seeking legal remedies for release, treatment, a change in conditions, or anything related to their treatment and COVID 19.
2. The courts should prioritize and expedite release hearings, releasing individuals from jail who are not a threat to public safety.

All civil trials, hearings, and motions should be postponed and rescheduled for a later date or judges are encouraged to use telephonic or video technology for a hearings . Any civil trial or hearing currently in progress shall be set over or completed at the discretion of the presiding judge. Exceptions are civil petitions for an order of protection in cases of stalking, sexual and domestic violence.

3. Reasonable attempts should be made to reschedule all criminal trials, subject to a defendant's right to a speedy trial.

4. With the exception of emergency matters and hearings statutorily required to be held, small claims, eviction, juvenile, probate, traffic, and guardianship cases should be set over.

5. Courtroom attendance should be limited to attorneys, parties, district attorney-based and/or community-based victim advocates, and necessary witnesses.

6. A case involving an attorney or party who is ill or in a high-risk category should be rescheduled.

7. Judges should issue citations in lieu of bench warrants or notices of failure to appear.

8. All show cause dockets for payment of fines and court costs scheduled within this timeframe should be continued for 60 days.

9. The 30-day preliminary hearing requirement for out-of-custody defendants under ORS 135.070 should be waived during this time period.

10. Jurors who are ill, caring for someone who is ill, or in a high-risk category should have their jury service postponed to a later date.

11. New juror orientations should be suspended.

12. Existing jury panels maybe extended at the discretion of the court.

13. Signage should be posted at all public entry points advising individuals not to enter the building if they have:

    1. In the previous 14 days, visited China, Iran, South Korea, any European countries, or any other high-risk countries identified by the CDC;
    2. Resided with or been in close contact with someone who has been in any of those countries within the previous 14 days;
    3. Traveled domestically within the United States where COVID-19 has sustained widespread community transmission;
    4. Been asked to self-quarantine by any doctor, hospital, or health agency;
    5. Been diagnosed with or have had contact with anyone who has been diagnosed with COVID-19; or
    6. A fever, cough or shortness of breath.

14. Individuals attempting to enter in violation of these protocols should be denied entrance by a bailiff or court security officer.

15. Bailiffs should discourage congregating outside courtroom doors and encourage social distancing inside the courtroom.

16. Individuals with legitimate court business who are ill, caring for someone who is ill or in a high-risk category are advised to stay home and request a continuance by calling the local Office of Circuit Court Clerk.

17. Courts should default to noncustodial sentences where possible, including avoiding resolutions that could lead to immigration detention.

18. Cancel probation, parole, and pretrial meetings; court-ordered classes, in-person drug testing; and modify all reporting conditions to phone reporting.

19. Courts should waive all overdue court fees, fines, or penalties and order that no fees, fines, or penalties should be assessed during this crisis.

Nothing shall preclude the presiding judges in each circuit from implementing additional local restrictions as needed.

Sincerely,

Kelly Simon
Interim Legal Director
ACLU of Oregon
503-564-8511
ksimon@aclu-or.org

Tom Stenson
Deputy Legal Director
Disability Rights Oregon
tstenson@droregon.org

Shaun McCrea
Executive Director
Oregon Criminal Defense Lawyers Association
541-6868-8716
smccrea@ocdla.org

Bobbin Singh
Executive Director
Oregon Justice Resource Center
503-944-2270 ext. 205
bsingh@ojrc.info

Andy Ko
Executive Director
Partnership for Safety & Justice
503-335-8449
andy@safetyandjustice.org

Paul Solomon
Executive Director
Sponsors, Inc.
541-485-8341
pjsolomon@sponsorsinc.org

CC:

Tina Kotek, Speaker of the House
Peter Courtney, President of the Senate
Nik Blosser, Chief of Staff, Office of the Governor
Constantin Severe, Public Safety and Military Policy Advisor, Office of the Governor

Dustin Buhler, General Counsel, Office of the Governor
Paige Clarkson, President, Oregon District Attorney Association
Sheriff Terry Rowan, President, Oregon State Sheriff's Association

Enclosed:

OCDLA Pond Responses (3/16/2020)
Federal Court Order, District of Oregon (3/13/2020)

March 17, 2020

SENT VIA EMAIL

Sheriff Terry Rowan, President
Sheriff Jason Myers (Ret.), Executive Director
Oregon State Sheriffs Association
330 Hood Street NE
Salem, OR 97301

RE: Preparation and Precautions for COVID-19 in Jail Detention Settings

Dear Sheriff Rowan and Sheriff Myers:

As you know, the current outbreak of a novel strain of the coronavirus, COVID-19, has caused widespread concern. Its effects can be fatal, especially among older people, people with respiratory illness, people who are immunocompromised, and people who have diabetes. It spreads easily among people in close contact and from contact with contaminated surfaces. Local jails are a potential hotbed for communication of this illness. In China, coronavirus spread rapidly throughout multiple jails earlier this year.

The undersigned represent a coalition of community organizations interested in the operation of the criminal justice system. We ask you to encourage your member organizations, the sheriffs of Oregon who administer county jails, to adopt the following protective steps:

1) **Reduce jail population.** Just as people outside jails are being encouraged to remain home, reducing the overall number of people in a small enclosed jail should be a major goal. Coordinate with the local district attorney, the local court, and other agencies to reduce intake of new detainees and to encourage release of any inmates that can be properly released, especially those who are particularly vulnerable to the coronavirus.

This includes individuals being held for an aid and assist evaluation or transfer to the state hospital for restoration services.

2) **Adequate cell and personal hygiene for inmates and staff**. Please ensure that both inmates and staff have adequate soap and running water to wash their hands routinely. Inmates also need regular access to supplies for cleaning their cells or common areas.

3) **Consider reserving a quarantine unit for vulnerable inmates.** Inmates who meet the criteria for high vulnerability to coronavirus may need to be separated from the general population, with a dedicated on-duty staff without floaters.

4) **Conduct routine screening of staff before and after each shift begins**. Staff and any outside contractors should have their temperatures taken at the beginning and end of each shift and otherwise have their health assessed to ensure that no one carrying the coronavirus begins work.

5) **Engage in planning with your local hospital.** Jails in Oregon are not well-equipped to address active coronavirus infections. Please identify the local community hospital that would receive any inmates with suspected symptoms and determine the process for ensuring that inmates who become infected can obtain appropriate and rapid screening, testing, and care.

6) **Expand routine medical intake to evaluate new detainees for possible coronavirus.** Brief screening questions about travel, illness in the family, and any current symptoms, as well as checking detainee temperatures, might help identify at-risk detainees.

7) **Avoid using large, communal detention cells, overfull cells, and dormitories.** Some facilities make use of a large, communal intake or holding cell. To the extent possible, facilities should avoid pooling large numbers of detainees in a single holding cell. Ongoing overfilling of cells, like triple-celling/triple-bunking in double-cells should halt until this pandemic is under control.

8) **Minimize transportation to court.** Communicate with your local court to reduce the need to transport large numbers of detainees together for court appearances. Consider video or telephonic appearances for non-substantive proceedings.

9) **Educate staff and inmates about the importance of good hygiene.** The outbreak of the virus has been accompanied by an outbreak of myths and false reporting about the virus. Remind staff and inmates why hygiene is important, what degree of separation is important, and how best to prevent the spread of the virus.

10) **Ensure routine assessment of inmate condition.** Inmates who are developing fevers and feeling badly may not be able to report changes in their conditions, either because of physical weakness or changed mental state from the fever. While staff may be used to disregarding an inmate who appears to be sleeping a lot or who is not responsive, it is

especially important now to assess whether an inmate is nonresponsive as a result of an illness or for some other reason. Health care staff must be readily available to assess any concerns raised by other staff.

11) **Eliminate medical co-pays and fees for medical communications**: Fees and costs should not be a barrier to care. Those in custody should have clear communication about how they can access care and health information free of charge.

12) **Ask for and make public medical contractor plans related to COVID-19:** We understand that a number of your members may work with private contractors to provide healthcare in their facilities. These contractors must also have plans in place to respond to the needs of their staff and those in their care. Medical policies and plans should be made available to the public.

13) **Collect data:** The collection of data regarding COVID-19 will be part of the public health response. As with any contagious disease, data collection is critical to understanding and fighting the virus. Oregon's jail and prison systems must be part of this process. The same information that is tracked in the community must be tracked in the jails.

14) **Cultural Specificity:** Jails house many people whose first language is not English. Especially during a time of crisis, it's imperative that all information is provided in a person's first language and that there are Q&A sessions in that language to ensure comprehension and mitigate misunderstanding and panic.

Consistent with the above recommendations, we have attached a letter from the Washington Association of Sheriffs and Police Chiefs that provides further guidance. The author of that letter, Dr. Marc Stern, is a professor at the University of Washington, School of Public Health and a corrections healthcare expert.

We hope that your members will consider these recommendations in their role of keeping inmates and staff safe. Please let us know if you have any difficulty accessing testing or related services from your local hospital or public health officials. We understand that you have a unique challenge to combating this virus, and we want to be a partner if we can.

Sincerely,

Kelly Simon
Interim Legal Director
ACLU of Oregon
503-564-8511
ksimon@aclu-or.org

Tom Stenson
Deputy Legal Director
Disability Rights Oregon
tstenson@droregon.org

Shaun McCrea
Executive Director
Oregon Criminal Defense Lawyers Association
541-6868-8716
smccrea@ocdla.org

Bobbin Singh
Executive Director
Oregon Justice Resource Center
503-944-2270 ext. 205
bsingh@ojrc.info

Andy Ko
Executive Director
Partnership for Safety & Justice
503-335-8449
andy@safetyandjustice.org

Paul Solomon
Executive Director
Sponsors, Inc.
541-485-8341
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Lane Borg, Executive Director, Office of Public Defense Services
Justice Walters, Chief Justice, Oregon Supreme Court
Nancy Cozine, State Court Administrator
Colette Peter, Director, Oregon Department of Corrections

Joe O'Leary, Director, Oregon Youth Authority
Pat Allen, Director, Oregon Health Authority
Dawn Jagger, Health Policy Advisory, Office of the Governor

March 16, 2020
SENT VIA EMAIL

Colette Peters, Director
Oregon Department of Corrections
2575 Center Street NE
Salem, OR 97301-4667

Dear Director Peters,

We write regarding the anticipated spread of Coronavirus Disease 2019 (COVID-19) to people incarcerated in Oregon prisons. We appreciate that the Oregon Department of Corrections (ODOC) has taken steps to prepare for the spread of the virus, including the issuance of a March 13, 2020 notice to Adults in Custody outlining risk-reduction precautions. While there are no known cases of COVID-19 within ODOC facilities, that is likely to change. Given the mortality rate associated with the virus, we are concerned about the virus's spread to at-risk people, particularly the elderly, within the closed confines of a prison setting. This letter is not intended to alarm or stigmatize anybody, but rather to demand action and transparency rooted in facts and work collaboratively to protect community health. We would like to meet with you next week to discuss how you are protecting the health of the people in your custody and the people who work in the prison. Additionally, we ask the Oregon Department of Corrections (ODOC) to implement the following measures to reduce virus transmission and potential loss of life.

Recommendations to Oregon Department of Corrections

TREATMENT

Comply with CDC, Oregon Health Authority, and NCCHC Guidelines: We urge the ODOC to be in regular contact with experts at the CDC, Oregon Health Authority, and National Commission on Correctional Health Care (NCCHC). In particular, we ask the ODOC to follow guidelines issued by NCCHC and its partners at Emory University, accessible here:

https://www.ncchc.org/blog/covid-19- coronavirus-what-you-need-to-know-in-corrections. We understand that prison-specific, COVID-19 guidelines are likely forthcoming from the CDC.

We ask that you immediately share your plan to address the virus in the prison environment. This is an urgent matter. Having an appropriate, evidence-based plan in place can help prevent an outbreak and minimize its impact if one does occur. Not having one may cost lives of both those in custody and staff.

Vulnerable Populations: ODOC's plan must provide for additional precautions for those who are at high risk of serious illness if they are infected, such as the elderly, pregnant women, people with chronic illnesses, compromised immune systems, or disabilities, and people whose housing placements restrict their access to medical care and limit the staff's ability to observe them.

Ensure Access to Soap, Tissue, Cleaning/Sanitizing Products, and Clean Laundry: The most basic aspect of infection control is hygiene. There must be ready access to warm water and adequate hygiene and cleaning supplies, both for handwashing and for cleaning. People in prison should be given increased supplies of and easy access to soap, tissue (or toilet paper), and cleaning/sanitizing products. Additional steps should be taken to ensure that people have clean laundry on a regular basis. Cleaning and sanitizing products should be provided and available at no cost to adults in custody. This is critical because the virus can live on plastic and metal surfaces for as long as 2 to 3 days.

Eliminate Co-Pays: The ODOC should eliminate all medical co-pays (if they exist) while the pandemic is ongoing. Alternatively, the ODOC should eliminate all co-pays for medical visits from persons with reported respiratory illness, fever, shortness of breath, or other virus-related symptoms. Co-pays may discourage people from reporting symptoms and seeking care. People in prison should also be adequately notified that there will be no cost to them for seeking and receiving such care. Elimination of co-pays on a temporary basis and adequate notice of this will encourage people who may be infected to seek care and could avoid further spread of the virus

Screening and Testing of the People in Your Custody: The plan must include guidance, based on the best science available, on how and when to screen and test people in your facilities for the virus.

Testing: ODOC should quickly test anyone exhibiting symptoms that suggest they may have coronavirus or who may have been in contact with someone who has or is suspected to have the disease. The process to request testing should be easy, quick, and transparent. The response to such requests should be rapid.

Treatment: Courses of treatment must be evidence-based, available immediately, and in compliance with scientifically-based public health protocols.

Treatment at a Hospital: Consistent with best practices, when an individual tests positive for the coronavirus and quarantined, ODOC should seek to send that individual as soon as possible for treatment and further quarantine, rather than prolonged treatment and isolation at the prison.

Housing of persons exposed to the virus: The plan must describe how and where people in the prison will be housed if they are exposed to the virus, are at high risk of serious illness if they become infected, or become sick with it. *This should not result in prolonged, widespread lock-downs.* Any lock-downs 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. When lock-downs do occur, people should have positive ways to spend their time, including reading materials, tablet access, electronic programming, and the like.

Implement Medical Quarantine Where Appropriate: In consultation with experts at the CDC and/or the Oregon Health Authority, prison medical providers should develop a medical quarantine plan for people who have been exposed to COVID-19. This plan should consider how to isolate people with the virus; how long to quarantine those who are exposed; what personal protective equipment is needed, and for whom; and when isolation can safely be lifted. Any plans for quarantine should be nonpunitive and limited in scope and duration based on the best science available.

Take Steps to Mitigate Effects of Medical Quarantine: Periods of medical quarantine may be stressful for both incarcerated people and staff. We urge the ODOC to ensure that those who are quarantined have positive ways to spend time, including reading materials, tablet access, electronic programming, crossword puzzles, and the like. Access to time on the prison yard is particularly important. These measures will help to keep tensions and anxiety levels down.

Treatment at a Hospital: Consistent with best practices, when an individual tests positive for the coronavirus and quarantined, ODOC should seek to send that individual as soon as possible for treatment and further quarantine, rather than prolonged treatment and isolation at the prison.

STAFFING

Staffing plans: Regardless of how many staff stay home because they are sick, the prison will have to continue functioning. There must be a plan for how necessary functions and services will continue if large numbers of staff are out with the virus.

Implement Emergency Staffing Plan: The ODOC and its medical providers should develop a plan to reinforce staffing and provide for effective care in the event of a mass outbreak. If not already in place, the ODOC should implement paid sick leave to encourage staff members not to come to work if they are ill.

Screening of Staff: ODOC should implement procedures to screen employees prior to any shift, entering the prison, and exiting the prison.

Staffing plans for services provided by prisoners: Many tasks in prisons, such as food preparation and basic sanitation, are performed by people in custody. The plans for an outbreak must also address how necessary tasks performed by people in custody will continue if large numbers of them are ill.

FOOD

Meals: ODOC should ensure that all adults in custody have access to healthy and nutritionally adequate meals. For those adults in custody requiring religious or dietary accommodations, those must be continued to be met. ODOC should implement protocols that ensure safe preparation of meals and schedule meal service that encourages social distancing to the extent possible, such as staggered mealtimes.

EDUCATION

Education of the people in your custody: People housed in prisons need to be informed about the virus, its seriousness, and the measures they can take to minimize their risk of contracting or spreading the virus. They must be educated on the importance of proper handwashing, coughing into their elbows, and social distancing to the extent they can. Information about the spread of the virus, the risks associated with it, and prevention and treatment measures must be based on the best available science. To our knowledge, it is clear that the Adults in Custody do not fully appreciate the severity of the COVID 19 crisis and the public health risk this is for our state.

Education of the staff: Correctional, administrative, and medical staff all must be educated about the virus to protect themselves and their families, as well as the people in their custody. It should be emphasized that an outbreak in a prison will directly impact them, their families, and communities. Additionally, that the current health care system is not equipped to deal with the high numbers individuals who may be infected with COVID-19. ODOC should make public explicit directives being provided to staff about measures they must take to minimize their risk of contracting of spreading the virus.

COMMUNICATIONS AND ACCESS TO THE COURTS

Access to Legal Services Must be Protected: All efforts should be undertaken to ensure people in custody can maintain their rights to counsel and access to courts. People who are in prison should have access, with minimum restrictions, to regular communication with their legal team, and access to court proceedings.

Facilitate Communication with Family for People Who Can't Pay: We understand that in-person family visitation is suspended. Incarcerated people who can pay can communicate with family through their electronic devices. We ask the ODOC to make available both telephonic and video calls to all adults in custody at no charge to the adult in custody or their family.

POPULATION MANAGEMENT

Create a Plan for Transfers of People Whose Care Cannot Be Safely Managed in Prison: We urge the ODOC and its medical providers to plan now for how they will accommodate a possible need to transfer a large number of people to hospitals or elsewhere, for advanced levels of care.

Preparing Individuals for Reentry: ODOC should ensure that individuals who are releasing are properly screened, educated, supported, and resourced to return the community in the midst of COVID-19 crisis. Considerations should include appropriate education about hygiene and public health, how to access their medical benefits and care in the community, safely plan their transportation, and how to engage with their PO. Every individual should be released with a hygiene kit.

Detainers: ODOC and the State of Oregon should suspend coordination with ICE to take individuals who are releasing to an immigration detention facility. Additionally, ODOC should work with county partners to ensure those individuals who are releasing and have a "jail tail" – a consecutive jail term after DOC custody term – can have the opportunity to do that sentence in the community under supervision.

Create a List of People to Prioritize for Possible Release: It may become necessary to manage the COVID-19 crisis, in part, by reducing the prison population. We respectfully ask the ODOC's medical providers to create a list of persons to prioritize for release if required by the demands of the pandemic. In distributing such a list to others, healthcare workers should not disclose personal health information, but rather should list the persons identified as being at higher risk for becoming ill based upon their underlying condition.

TRANSPARENCY

Ensure Transparency in Communications with Family Members and the Public: Policies adopted in response to COVID-19 should be transparent and clearly communicated to the public and to people in prison. This includes providing regular updates, via press releases and on the ODOC website, about the spread of the virus and the measures being taken to address it. Prison officials should have a plan to address an anticipated increase in the number of calls from family members seeking information.

Data Collection: The collection of data regarding COVID-19 will be part of the public health response. As with any contagious disease, data collection is critical to understanding and

fighting the virus. Oregon's prison systems must be part of this process. The same information that is tracked in the community must be tracked in the prisons.

Public Information Requests: ODOC should comply with all public information requests made by the media and community organizations as it relates to ODOC's policy and practices related to the COVID-19 crisis. This includes working with the Governor's office and the Department of Justice to ensure that all requests are processed and expedited.

The public has a right to know how ODOC is acting to protect the health and safety of their loved ones. We ask that ODOC keep the public regularly informed about its decisions and how those decisions are made, including their foundation in public health science.

**

Because of the growing number of inquiries that we are receiving from incarcerated persons and their loved ones, we are sharing this letter publicly. We appreciate the steps that your agencies are taking to respond to COVID-19. We urge you to adopt any additional measures listed in this letter that you have not already implemented, for the protection of people in prison, correctional staff, and the public at large.

Please let us know when you will be available to discuss your plans with us. **We would appreciate a prompt response acknowledging receipt of this letter and proposing times to talk by March 18, 2020.** In the meantime, you can reach us by contacting the members of our coalition listed below.

Sincerely,

Kelly Simon
Interim Legal Director
ACLU of Oregon
503-564-8511
ksimon@aclu-or.org

Shaun McCrea
Executive Director
Oregon Criminal Defense Lawyers Association
541-6868-8716
smccrea@ocdla.org

Bobbin Singh
Executive Director
Oregon Justice Resource Center
503-944-2270 ext. 205
bsingh@ojrc.info

Andy Ko
Executive Director
Partnership for Safety & Justice
503-335-8449
andy@safetyandjustice.org

Paul Solomon
Executive Director
Sponsors, Inc.
541-485-8341
pjsolomon@sponsorsinc.org

cc

Tina Kotek, Speaker of the House
Peter Courtney, President of the Senate
Nik Blosser, Chief of Staff, Office of the Governor
Constantin Severe, Public Safety and Military Policy Advisor, Office of the Governor
Dustin Buhler, General Counsel, Office of the Governor
Paige Clarkson, President, Oregon District Attorney Association
Sheriff Terry Rowan, President, Oregon State Sheriff's Association
Lane Borg, Executive Director, Office of Public Defense Services
Justice Walters, Chief Justice, Oregon Supreme Court
Nancy Cozine, State Court Administrator
Joe O'Leary, Director, Oregon Youth Authority

An Open Letter to the Portland Immigration Court and all ICE offices in Oregon and Tacoma

In the midst of one of the most pressing public health challenges, the undersigned organizations call on the Executive Office of Immigration Review and the Department of Homeland Security to take comprehensive measures to put the health and well-being of our communities at the forefront. Oregon is operating under a National, State, and several City Declarations of Emergency.[1] We believe that now is the time to demonstrate leadership.

We call on you to immediately:

- **Cease *all* ICE field operations and publicly state that ICE will not conduct enforcement activities in and around medical facilities.** Conducting ICE field operations at this critical time would sow fear and create community distrust. Requiring individuals to transit the state and appear in person at ICE offices is unwise. GPS monitoring devices should be removed because they may impede public health social distancing practices. Oregonians -- every single one of us -- must be able to work together to develop effective responses to the public health

[1] *See 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/ (finding that the "spread of COVID-19 within our Nation's communities threatens to strain our Nation's healthcare systems"); Office of the Governor of Oregon, *Declaration of Emergency Due to Coronavirus (COVID-19) Outbreak in Oregon*, Executive Order 20-03 (Mar. 8, 2020), https://www.oregon.gov/gov/Documents/executive_orders/eo_20-03.pdf (finding that the "high" potential public health threat requires immediate action); City of Portland, Declaration of Emergency (Mar. 12, 2020), https://assets.documentcloud.org/documents/6809106/Portland-State-of-Emergency-March-2020.pdf ("The COVID-19 virus continues to spread, vulnerable populations are most at risk from the virus, personal protective equipment for first responders is depleted, workforce may become depleted resulting in reduced services…"); Office of the Governor of Oregon, *Prohibiting Large Gatherings Due to Coronavirus (COVID-19) Outbreak in Oregon*, Executive Order 20-05 (Mar. 12, 2020) (ordering social distancing measures to "slow the spread of the disease, and to protect the Oregonians who are at highest risk for contracting the disease[.]" & requiring distancing between people of at least 3 feet). The Cities of Beaverton, Hillsboro and Sherwood have also declared states of emergencies. *See Washington County cities issue state of emergency declarations*, OregonLive (Mar. 13, 2020), https://www.oregonlive.com/coronavirus/2020/03/beaverton-sherwood-issue-state-of-emergency-declarations.html.

challenge of the coronavirus without fear of ICE intrusions, arrests, and detentions.

- **Release all Persons at the Northwest Detention Center in Tacoma.** Their continued detention is dangerous, especially in light of the severity of the outbreak in Washington State and Pierce County. As of March 13, 2020, there are at least 19 confirmed cases of COVID-19 in Pierce County.[2] Moreover, detention center conditions make persons in detention inherently vulnerable to contamination, infection, and outbreak. ICE is not prepared to contain or adequately treat those in custody.

- **Close the Portland Immigration Court, extend all deadlines, and continue all cases without penalty toward the individuals appearing in court.** On a case-by-case basis, the Portland Immigration Court should hear urgent cases when the parties so request.

- **Prioritize transparency in all processes.** DHS and the Immigration Court should build plans alongside the Oregon Health Authority and county health departments. There should be transparency in the planning and executing of all plans.

The Oregon community declares that these actions are imperatives. The Federal government's failure to adequately respond to the coronavirus has caused a pandemic in Oregon and throughout the Nation. Without immediate aggressive leadership, the pandemic will exponentially increase and cause wide-ranging, long-lasting harm to Oregon. We fear that the lack of response by DHS will lead to further inundation of our health care system, exhausting healthcare workers, endangering patients, and harming the wider community. The mathematics of the pandemic's anticipated spread are inexorable; the only way to prevent it is aggressive social distancing starting right immediately.[3] We need to get and keep as many Oregonians

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[2] Tacoma-Pierce County Health Dep't, COVID-19 resources, https://www.tpchd.org/healthy-people/human-coronavirus (last visited Mar. 13, 2020).

[3] Tomas Pueyo, *Coronavirus: Why You Must Act Now for Politicians, Community Leaders and Business Leaders: What Should You Do and When?* (Updated Mar. 13, 2020), https://medium.com/@tomaspueyo/coronavirus-act-today-or-people-will-die-f4d3d9cd99ca; Nicholas Kristoff and Stuart A. Thompson, *How Much Worse the Coronavirus Could Get, in Charts*, NY Times (Mar. 13, 2020), https://www.nytimes.com/interactive/2020/03/13/opinion/coronavirus-trump-response.html.

at home as possible--starting now--and Oregonians must be able to access healthcare and care for others in the community without fear of ICE arrests, ICE surveillance, or deportations.

As public servants in Oregon, you have the power and the responsibility to prevent this harm. Not only is the suspension of all ICE field operations critical to ending the fear within the community, it also serves to mitigate ICE officers from being spreaders of COVID-19. For example, the Portland Police Bureau has limited operations to only emergency situations to prevent the civic authorities from becoming vectors that "spread the virus to people at higher risk for a severe bout of the disease."[4]

Our communities have witnessed the devastating effects of mass detention on people held in ICE facilities. Under the Trump administration, we have seen a notable increase in reported deaths in detention; an alarming trend that is tied to fatal medical neglect, unsanitary conditions, and inadequate resources for people detained. This global pandemic demands immediate action to minimize the propagation of the coronavirus. ICE has repeatedly proven to be incapable, under normal circumstances, of adequately providing the proper care for people in its custody.[5] On behalf of the Oregonians in detention at the Northwest Detention Center in Tacoma, we call on ICE to release all people from detention. ICE should not force persons in its custody in Tacoma to risk exposure to coronavirus. Persons in detention should be released so they may reunite with their families and communities at home in Oregon.

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[4] *Portland police will stop responding in person to some calls, citing coronavirus concerns,* OregonLive (Mar. 13, 2020), https://www.oregonlive.com/coronavirus/2020/03/portland-police-will-stop-responding-in-person-to-calls-that-arent-life-threatening-citing-coronavirus-concerns.html

[5] *See, e.g., Fraihat v. U.S. Immigration & Customs Enforcement*, 19-cv-01546, Dkt. No. 1 (C.D. Cal. filed Aug. 19, 2019) (complaint setting forth detailed allegations of ICE medical misconduct, mistreatment, and neglect in detention facilities throughout the United States); *Fatal Neglect: How ICE Ignores Deaths in Detention* (Feb. 2016) (describing inadequate medical care); Letter of Senator Maria Cantwell and Rep. Adam Smith to Joseph V. Cuffari, Office of Inspector General (Oct. 23, 2019), https://www.cantwell.senate.gov/imo/media/doc/10.23.19%20NWDC%20Letter%20To%20DHS%20Inspector%20General.pdf (identifying allegations of abuse against GEO Group, the private contractor operating the NWDC); Seattle U. Sch. Of Law Int'l Human Rights Clinic, *Voices From Detention: A Report on Human Rights Violations at the Northwest Detention Center in Tacoma, Washington* (July 2008).

The Portland Immigration Courts is a place of congregation.[6] It is common for the court to schedule large hearing dockets that require people to travel from all across the state under penalty of deportation.[7] The Portland Immigration Court requires people to sit on packed benches, often for hours at a time. That makes the Portland Immigration Court a potential vector for community spread of the virus. And it is not just about the people who have to go to court; it is about all those who work there and with everyone they come in contact. EOIR announced on March 14 that it will be postponing all non-detained master calendar hearings in Boston, Los Angeles, Newark, New York, Sacramento, and San Francisco[8]; there is no reason that the same policy should not apply to Portland's large non-detained docket At this moment, the Portland Immigration Court should be making every effort to minimize risk — and to send a signal that this is *not* a time for business as usual.[9]

March 14, 2020

Innovation Law Lab
ACLU of Oregon
AFSC Oregon
Beyond Toxics
CASA of Oregon
Causa Oregon
Central Pacific Conference United Church of Christ
Centro Cultural de Washington County
Centro Latino Americano
Doctors for Camp Closure- Oregon Chapter

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[6] See Letter of Ashley Tabaddor, President, NAIJ to James McHenry, Director, EOIR (Mar. 12, 2020), https://www.naij-usa.org/images/uploads/newsroom/NAIJ_Letter_to_EOIR_Director_Re_Coronavirus.pdf (explaining "[y]esterday, the World Health Organization declared the COVID-19outbreak a pandemic, and National Institute of Allergy and Infectious Diseases Director Dr. Anthony Fauci testified before the House Committee on Oversight and Reform that "things will get worse than they are right now.")

[7] *Id.* (stating that "non-detained master calendar dockets typically bring 50 or more respondents into each courtroom; on busy days, some of our Immigration Courts schedule 13 or more master calendar dockets per day[.]" and "master calendar dockets bring hundreds of people into close and extended contact with each other and with the Immigration Judges, interpreters, and court staff.")

[8] *See* DOJ EOIR, Twitter post, March 13, 2020, 8:13 PM, https://twitter.com/DOJ_EOIR/status/1238664636188237824.

[9] *See, e.g.*, Sarah Jarvis, *Coronavirus: The Latest Court Closures and Restrictions* (Mar. 12, 2020) (identifying nearly 40 federal courts and court systems that have closed or issued rules to limit the spread of COVID-19), https://www.law360.com/articles/1252836/coronavirus-the-latest-court-closures-and-restrictions

Ecumenical Ministries of Oregon
First Congregational UCC
Immigrant Refugee Community Organization (IRCO)
Latino Network
Mano a Mano
NAACP of Lane County
Oregon Justice Resource Center
Oregon Physicians for Social Responsibility
Partners for a Hunger-free Oregon
Public Defender Services of Lane County
Pueblo Unido PDX
Rural Organizing Project
The Oregon Interfaith Movement for Immigrant Justice
VIVA Inclusive Migrant Network
Voz Workers' Rights Education Project