



New Jersey

P.O. Box 32159  
Newark, NJ 07102  
Tel: 973-642-2086  
Fax: 973-642-6523  
info@aclu-nj.org  
www.aclu-nj.org

JEANNE LOCICERO, ESQ.  
Legal Director  
jlocicero@aclu-nj.org  
973-854-1715

VIA E-MAIL

March 16, 2020

Kenneth McCarthy, Warden  
Warren County Correctional Facility  
175 County Road, Route 519 South  
Belvidere, NJ 07823

***RE: Coronavirus Response Planning***

Dear Warden McCarthy:

The ACLU of New Jersey writes to voice our concern about the spread of the novel coronavirus (“COVID-19”) within county correctional facilities. It is our hope that you will consider the ACLU of New Jersey a resource and partner as you develop a response plan that protects the health, safety, and civil liberties of all New Jerseyans.

As you know, people in jails are housed in close quarters and often have significant medical diagnoses and healthcare needs that are greater than the average population. This makes them more vulnerable to infection generally, and even more so during the COVID-19 pandemic. Without proactive measures, people who are confined will have little ability to inform themselves about preventive measures, or to take such measures, should they manage to learn of them.

First and foremost, your facility should take immediate steps to prevent the introduction of COVID-19. We urge you to use the fullest extent of your power to reduce the population of the jail. In anticipation of likely staff shortages due to illness, we also urge you to take all available steps to reduce the population of people detained in the jail, including releasing detainees whenever possible.

We urge you to collaborate with other criminal justice stakeholders, including county prosecutors and public defenders, to consider the release of pretrial and sentenced detainees who will not pose a physical risk to the community. In particular, you and your staff play a critical role in identifying medically fragile, chronically ill, and elderly detainees who face higher risks of death if they contract the virus.

In order to protect the health of people in custody, staff, and the wider community during the COVID-19 pandemic, county jail administrators also need to actively engage with people confined in their facilities. We encourage you and your colleagues across the state to follow protocols for preparedness and to work with the New Jersey Department of Health (“NJDOH”) and local public health officials to develop advanced plans to address the virus. Having an

evidence-based plan in place can help prevent an outbreak and minimize its impact if one does occur, both to the people in county jails, to their families, and to the staff. Not having one will cost lives.

While the plan should be developed collaboratively with NJDOH and local public health officials, some of the issues most critical to address are:

- **Access to accurate, up-to-date information for people in your custody:** People housed in county jails need to be informed about the virus 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 and risks of the virus, as well as prevention and treatment measures, must be based on the best available science.
- **Right to Counsel:** Each jail must have contingency plans, such as readily available video-conference systems, to ensure that detained people are able to consult with their attorneys if contact visits are not possible due to the jail's mitigation/containment procedures. Those detained in county jails by ICE must be able to meaningfully participate in their proceedings.
- **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. We recognize outbreaks of disease can be stressful and cause fear and anxiety, which, in turn, can lead to social stigma and discrimination. Knowing the facts around transmission and treatment can not only stop stigma, but can contribute to making communities and community members more resilient.
- **Staffing plans:** Regardless of how many staff or contractors stay home because they are sick, the jail has a duty to protect the health and safety of people detained or incarcerated in the facility, including by providing medical, dental, and mental healthcare. There must be a plan for how necessary functions and services will continue if large numbers of staff or contractors are out with the virus.
- **Staffing plans for services provided by detainees:** Many tasks in jails, such as food preparation and basic sanitation, are performed by people detained at the facility. The plans for an outbreak must also address how necessary tasks performed by detained people will continue if large numbers of detained people are ill.
- **Provision of hygiene and sanitation supplies:** The most basic aspect of infection control is hygiene and sanitation. There must be ready access to warm water, adequate hygiene and sanitation supplies, both for handwashing and for cleaning and disinfecting other surfaces. To the extent your facility considers disinfectants and hand sanitizers contraband, we ask you to reconsider your policy during the pandemic so that people in custody have sufficient resources to follow public health recommendations.
- **Screening and testing of the people in your custody:** Once testing is widely available, any 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.

- **Housing of persons exposed to the virus:** The plan must describe how and where people in the jail system will be housed if they are exposed to the virus, or at high risk of serious illness if they become infected or 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.
- **Expanded and No-Cost Calls & Video Visitation:** It is vital for people in detention to remain connected with family and loved ones, especially during a time of significant stress and uncertainty. In the event that the facility has already halted in-person visits, the jail should take immediate steps to provide calls and video visitation at no cost for the duration of the pandemic. The facility should also lift any existing limits on the amount of time people can spend on the phone or video call.
- **Treatment:** Courses of treatment for any individual diagnosed with COVID-19 must be evidence-based, available immediately, and in compliance with scientifically-based public health protocols.
- **Vulnerable Populations:** The plan must provide for additional precautions to prevent infections among those who are at high risk of serious illness if they are infected, such as pregnant women and people with chronic illnesses, geriatric individuals, those with 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. The county jail system must be part of this process. The same information that is tracked in the community must be tracked in the jails.

We fully recognize that during a disease outbreak individual rights may give way to the greater good and that the health needs of employees must be prioritized as a means of keeping us all safe; however, balance is fundamental, even under the current circumstances. Accordingly, during the ongoing pandemic, we urge you and your staff to prioritize the civil and human rights of people in your custody, alongside the rights of employees.

We deeply appreciate your hard work during this difficult time. Please feel free to contact me if the ACLU of New Jersey can be a resource for you.

Sincerely,



Jeanne LoCicero  
Legal Director