



March 17, 2020

Don Barnes, Orange County Sheriff's Department
 Hon. Kirk Nakamura, Orange County Superior Court
 Hon. Erick Larsh, Orange County Superior Court
 Todd Spitzer, District Attorney
 Sharon L. Petrosino, Public Defender
 Frank Davis, Alternate Public Defender
 Richard Sanchez, Orange County Health Care Agency
 Erin Winger, Orange County Health Care Agency-Correctional Health Services

Orange County Board of Supervisors:
 Supervisor Andrew Do
 Supervisor Michelle Steel
 Supervisor Donald P. Wagner
 Supervisor Doug Chaffee
 Supervisor Lisa A. Bartlett

Sent via Email

RE: COVID-19 Containment in Orange County Jails and Courthouses

Dear Orange County Leadership,

Heightened concern over the [COVID-19 pandemic](#) has gripped our communities. Just this month, a [state of emergency was declared](#) in response to California's first COVID-19 death. Each day, the number of people infected with the virus in Orange County [continues to rise](#). Our major universities have suspended classes, employees are being encouraged to telecommute, and consumers are stocking their homes with enough food, water, and medical supplies to survive a multi-week quarantine. However, insufficient preparation has been taken to protect against the spread of COVID-19 through one of the largest and most vulnerable institutions in our community: the Orange County jail system.

Our county jails are the 9th largest populated in the country, with a daily average population of 5,400 people.¹ Roughly 55% of people in OC jails have not been convicted but remain in jail because they are unable to afford bail. In 2019, OCSD booked approximately 4,700 people per month. On average 8,300 people were seen at sick call each month and an average of 7,000 doctors' appointments took place in jail facilities monthly. The individuals in our jails are medically vulnerable and held in close contact with each other, without frequent and adequate access to water and soap. In a context where medical care is deficient, housing conditions are squalid and individual needs are neglected, this is a recipe for the rapid spread of disease.

[Reports](#) have revealed insufficient hygiene and unhealthy living conditions in Orange County's jails. Recently released individuals report these conditions are only worsening with new classification and housing policies. Several [lawsuits allege insufficient medical care in the Orange County jails](#). Already in 2020, three people have died in custody of the Orange County Sheriff's Department.

This inhumane situation puts our entire county at risk. Between 55,000 and 60,000 people are booked into Orange County's jails each year. Each day, jails, unlike prisons, see a large number of people arrested and confined, while many others are released back to their community. [About 70% of people booked into Orange County jail custody are released within 30 days](#). People incarcerated for under 30 days are most likely to inadvertently contribute to transmission, but generally represent a population that the court does not consider to be a danger to the public. The revolving door of incarcerated individuals, coupled with the daily influx of jail staff, vendors and medical professionals who return home, provides multiple avenues for COVID-19 to enter the jail and exit back into our neighborhoods and homes.

COVID-19 poses the greatest risk to the elderly and those who are immunocompromised because of preexisting medical conditions. Many incarcerated people are high risk due to their age or preexisting health conditions. People in older age groups are at the greatest risk for COVID-19, yet pose the [least public safety risk](#) to our communities. By keeping vulnerable individuals behind bars, we are increasing the likelihood that COVID-19 will not only spread "[like wildfire](#)" throughout the jail system, but that the virus will be routinely transmitted to even larger populations outside jail facilities.

Finally, when vulnerable individuals are released from county jail facilities, it is imperative that we ensure that they are not forced into houselessness. One in five people incarcerated in Orange County's jails are experiencing homelessness, and incarceration puts people at an even higher

¹ Board of State and Community Corrections, retrieved from <https://app.bscc.ca.gov/joq//jps/QuerySelection.asp>

risk of being unhoused upon release. Our houseless community is at [heightened risk](#) of not only contracting COVID-19, but of dying from the virus.

Given the urgency of this situation, we are calling on the Orange County Sheriff's Department, the Orange County Health Care Agency, the Health Care Agency's Correctional Health Services, the District Attorney's Office, the Orange County Superior Court, the Orange County Housing Authority and the Board of Supervisors to act immediately to protect the lives of the people impacted by our county's jail system. This includes individuals in custody *and* jail staff, as well as their family members and communities. With COVID-19 threatening the health and lives of untold numbers of OC residents, confinement in a jail facility for even a few hours, could turn into a [death sentence for many](#).

To this end, we urge the County Sheriff-Coroner, the Health Care Agency Director, Correctional Health Services Deputy Director, the District Attorney, the Orange County Superior Court Judges, and the Board of Supervisors to act in accordance with the recommendations below:

Orange County Sheriff's Department

1. **Early Release:** Eliminate overcrowding to create the space and infrastructure that will be needed to care for the sick by immediately releasing (1) any and all individuals whose release will not pose a serious physical safety risk to the community and (2) any and all individuals with 30 days or less of their sentence remaining. In addition, immediately accelerate the release of all remaining individuals by 90 days and increase AB109 early release credits. Each jail facility should be under capacity to allow for proper adherence to the [Center for Disease Control's \(CDC\) recommendations](#) regarding social distancing, sanitation, cleaning, and disinfecting.
2. **Cite and Release:** Cite and release all those who are eligible pursuant to Penal Code Section 853.6, rather than booking them and potentially introducing COVID-19 into the jail system. Reducing these unnecessary incarcerations would reduce the risk of transmitting a virus between the facilities -- jails -- and the community, and vice versa.
3. **Immediately suspend arrests and/or booking** of individuals suspected of technical parole or probation violation. Technical violations are behaviors that would not warrant incarceration for people not on parole or probation. Again, reducing these unnecessary incarcerations would reduce the risk of transmitting a virus between the facilities -- jails - - and the community, and vice versa.
4. **The Sheriff's Department, Health Care Agency, and Correctional Health Services need to address care inside:** In addition to taking steps to immediately address overcrowding, all people who remain in custody should be cared for. As was noted by the [ACLU of Southern California's letter to Sheriff-Coroner Don Barnes on March 12, 2020](#), information released by the OCSD thus far does not provide the exact steps that will be taken to prevent infections, nor the steps being planned to care for those who become sick. A more thorough preparation plan that addresses the eight concerns identified by the ACLU of Southern California needs to be developed and made available to the public. This preparation plan should include the frequent and deeper cleaning of transportation vehicles, facilities, clothing, and bedding in all shared and private spaces, as well as the use of more effective disinfectants. Additionally, there should be an increase in transportation vehicles to allow for appropriate social distancing.

5. ***The Sheriff's Department, Health Care Agency, and Correctional Health Services need to immediately develop and implement testing protocols for all people who live, work and visit inside jails:*** There is currently no accurate reporting on whether or not COVID-19 is present inside OC jails. In order to accurately assess the presence of COVID-19 and prevent infection, OCSD must immediately develop protocols for screening / testing of staff, people in custody and visitors. OCSD must publish departmental COVID-19 protocols and provide regular online updates for the public, officials and media on the impact of COVID-19 on people inside the jails, including data on both incarcerated people and staff. OCSD should allocate funding from its current budget to implement this protocol and supply sufficient testing kits.
6. ***The Sheriff's Department should work with the Health Care Agency's Correctional Health Services to immediately identify medically vulnerable people in the general population and specifically in the pre-trial population, then coordinate with the District Attorney's Office to petition the court for their immediate release.*** This includes, but is not limited to, people age 55 and older, pregnant people, people with chronic lung conditions such as COPD, hepatitis C, HIV, diabetes mellitus, hypertension, and/or cardiac disease who will be most vulnerable to COVID-19 infection.
7. ***Reinstate access to safe visiting and guarantee access to phone calls, mail, court hearings, and attorney visits:*** Incarcerated people already experience prolonged isolation from their families and communities. Fear of exposure should not be justification to further isolate incarcerated people, nor keep them from their right to due process. OCSD should reinstate visitation access, continue to provide access to mail, and institute free phone calls to provide reassurance to families worried about their loved ones inside and increase access to defense council. In the interest of justice, incarcerated people should continue to have access to their court hearings.
8. ***Extend paid sick leave to all employees,*** including those with temporary/part-time employment status.
9. ***Eliminate*** any and all medical co-pays.

Orange County District Attorney's Office

1. ***Decline criminal charges whenever possible and divert to the Health Care Agency,*** community, and civil court solutions with return date six months from date of alleged incident. For charges not declined, reduce as many as possible to citations or non-warrant, non-arrest charges, with return date six months from date of alleged incident.
2. ***Advocate for the release of all medically fragile adults and adults over the age of 55*** in the interest of justice, pursuant to [Penal Code Section 1170\(d\)\(1\)](#). [Jails](#) house large numbers of people with chronic illnesses and complex medical needs, who are [more vulnerable](#) to becoming seriously ill and requiring more medical care with COVID-19. And the growing number of older adults in county jails are at [higher risk](#) for serious complications from a viral infection like COVID-19. Releasing these vulnerable groups from jail will reduce the need to provide complex medical care or transfers to hospitals when staff will be stretched thin.
3. ***Advocate for the immediate release of anyone within six months of completing their sentence and all individuals charged with an offense that does not involve a serious physical safety risk to the community*** in the interest of justice, pursuant to [Penal Code Section 1170\(d\)\(1\)](#). This includes technical violations of parole or probation regardless of

the underlying offense. This will reduce overcrowding as well as the risk of transmitting a virus between the facilities -- jails -- and the community, and vice versa.

4. ***Immediately implement a pretrial policy that requires all prosecutors to advocate for the pretrial release*** of all individuals, unless there is clear evidence that release would present an unreasonable risk to the physical safety of the community. As was noted in the [ACLU of Southern California's letter to the Superior Court and the District Attorney and Public Defender Offices, on March 12, 2020](#), the vast majority of people facing pretrial detention should be allowed to remain in the community. If held, they will be at substantially higher risk of exposure and serious health consequences, including death.
5. ***Require prosecutors to provide a public health/COVID-19-informed justification*** for any actions/requests that would bring folks into courthouses, jails, and prisons. Ensure those justifications are on the record for public scrutiny.
6. ***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.
7. ***Work with defense attorneys*** and courts to ensure that people in custody receive constitutionally-mandated speedy trial.
8. ***Default to noncustodial sentences wherever possible***, including resolutions that avoid immigration detention where outbreak potential is highest.
9. ***Extend paid sick leave to all employees***, including those with temporary/part-time employment status.

Orange County Superior Court

1. ***Default to noncustodial sentences*** wherever possible, including resolutions that avoid immigration detention where outbreak potential is highest.
2. ***Reduce number of in-person court appearances*** for non-essential issues and low-level cases. If requested by defense counsel, agree to waive clients' appearance for status court dates (for people both in and out of custody).
3. ***Decline to issue "failure to appear" warrants*** or "bench warrants."
4. ***Cancel all probation, parole, and pretrial meetings***; court-ordered classes; in-person drug testing; collection of court debt; and modify all reporting conditions to phone-reporting.
5. ***Cancel probation or parole revocation hearings*** based on technical violations upon request of defense counsel and release those held in custody pending hearings on signature bonds.
6. ***Require that prosecutors provide public health/COVID-19-informed justification*** for any actions/requests that would bring people into courthouses, jails, and prisons. Ensure those justifications are on the record for public scrutiny.
7. ***Heavily consider the significant risk of mortality*** and spread of the COVID-19 inside custodial facilities and follow [these guidelines](#) for keeping the community safe, both in and out of jail, when considering bail applications and post-conviction motions to modify sentences.
8. ***Extend paid sick leave to all employees***, including those with temporary/part-time employment status.

The Board of Supervisors

1. ***Issue an urgent statement*** explaining why adherence to community demands for immediate COVID-19 related changes to the arrest and detention practices of the Sheriff's Department and District Attorney's Office is vital for the health and safety of the entire community of Orange County.
2. ***Require the development of COVID-19 related protocol plans*** from all relevant county departments and review the efficacy and adequacy of each plan, and provide daily updates on how county officials are taking measures in providing support to individuals inside.
3. ***Commit to providing vulnerable houseless people and recently released individuals with safe and sanitary community-based housing alternatives*** to protect against the spread of COVID-19.
4. ***Give emergency funding*** to the Orange County Public Defenders and Alternate Public Defenders Offices to support getting people out of custody and into housing and support services.
5. ***Institute a moratorium on any housing and services restrictions*** for people with a history of justice involvement.
6. ***Direct the Office of the CEO to do the following:***
 1. Work with all relevant county departments to identify where emergency testing centers and emergency housing can be established.
 2. Immediately identify and remove barriers to community-based organizations accessing county funding to be able to expand their capacity to deliver services.
 3. Allocate emergency funding to provide immediate health and human services to address the crisis and support individuals released from custody. Funding should be allocated to implement the following services:
 1. Sufficient testing kits to all lock-down facilities, community-based treatment and transitional housing centers and county hospitals.
 2. Drive-through testing locations throughout the county, with particular attention to areas with the highest concentration of houseless, formerly incarcerated and low-income people.
 3. Emergency housing for individuals who have tested positive for COVID-19 or are at high risk of contraction.
 4. In-patient and out-patient drug treatment and mental health services.
 5. Expansion of services to support the transition of vulnerable incarcerated people out of custody and into community-based treatment, as well as pretrial individuals with mental health and behavioral health needs.

We cannot wait for confirmation that COVID-19 has entered our jails before making the decision to act. We urge the Sheriff-Coroner, the Health Care Agency - Correctional Health Services, the District Attorney, the Orange County Superior Court, the Orange County Housing Authority and the Board of Supervisors take immediate and decisive steps now to save lives. We also urge each county entity to work with corresponding city law enforcement partners to ensure that the same plans and protocols are being implemented in each city within Orange County. We will support you in taking the bold, but necessary, action to protect the health of every Orange County community member, including the most vulnerable.

Sincerely,

Transforming Justice Orange County

Young Women's Freedom Center-Sister Warriors Freedom Coalition
California Families Against Solitary Confinement
Resilience Orange County
Project Rebound, Cal State Fullerton
Arthur Carmona Center for the Wrongfully Convicted
Chicanx Unidos
Orange County Congregation Community Organization (OCCCO)
VietRISE
PEOPLES Coalition
Court Watch
Santa Ana Building Healthy Communities
Orange County Environmental Justice
Orange County Civic Engagement Table (OCCET)
Clergy & Laity United for Economic Justice (CLUE)
Root and Rebound
OC Racial Justice Collaborative
Together We Will Orange County
Indivisible California 39
Yalla Indivisible
Orange County Poor People's Campaign
Orange County Equality Coalition
ACLU of Southern California
Mona Lynch, Department Chair, Law, Criminology, & Society, UC Irvine
Elizabeth Schroeder, Assistant Dean for Student Services, UCI School of Law
Keramet Reiter, Professor of Law, Criminology, & Society, UC Irvine
Katie Tinto, Director, Criminal Justice Clinic, UC Irvine School of Law
Annie Lai, Director, Immigrant Rights Clinic, UC Irvine School of Law
Caitlin Bellis, Immigrant Rights Clinic, UC Irvine School of Law
Paul Hoffman, International Human Rights Clinic, UC Irvine School of Law