

April 20, 2020

Hon. Janet T. Mills  
Governor of Maine  
c/o Jeremy Kennedy, Chief of Staff

Randall Liberty  
Commissioner, Maine Department of Corrections

via email only

Dear Governor Mills and Commissioner Liberty:

We are writing to request action to reduce the threat of COVID-19 in Maine's prisons, jails, and youth detention facility through significant reduction of the incarcerated population, as well as support for people after release, and protection for those who remain incarcerated. Our collective vulnerability to COVID-19 is defined by that of our most vulnerable community members--including the 3,000 people who are incarcerated in this state. If we fail to protect them, we fail to protect ourselves.

The reality of a COVID-19 outbreak in Maine's jails and prisons is not a question of "if," but "when."<sup>1</sup> As explained in a joint statement by sheriffs from across the country, "It is, quite plainly, nearly impossible to follow the CDC recommendation for 'social distancing' in our jails. As a result, jails are a unique danger to staff, inmates, and communities alike."<sup>2</sup> The closed, confined nature of correctional facilities – in which people eat meals side by side, share bathrooms with dozens of others, sleep multiple people in a room, and come in frequent, close contact with staff – makes them especially susceptible to the rapid spread of the COVID-19 virus.<sup>3</sup>

Furthermore, people incarcerated in Maine are more likely than the general population to suffer from chronic health conditions that increase the risk of serious illness or death as a result of COVID-19. Across the country, COVID-19 has disproportionately harmed poor people and people of color, both of whom are also overrepresented in our prisons and jails. Additionally, the

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<sup>1</sup>A recent study by researchers at the University of Texas estimated that the likelihood of a COVID-19 epidemic in Cumberland and York counties is 100 percent. That likelihood is 98 percent for Penobscot and Kennebec counties, 96 percent for Androscoggin, and 95 percent for Sagadahoc.

[https://bangordailynews.com/2020/04/10/mainefocus/the-maine-counties-most-likely-to-see-sustained-spread-of-the-coronavirus/?mc\\_cid=6c31853839&mc\\_eid=9579286a44](https://bangordailynews.com/2020/04/10/mainefocus/the-maine-counties-most-likely-to-see-sustained-spread-of-the-coronavirus/?mc_cid=6c31853839&mc_eid=9579286a44)

<sup>2</sup> <https://lawenforcementactionpartnership.org/national-sheriffs-covid-19/>

<sup>3</sup> See, e.g., Zak Cheney-Rice, Rikers Reports Its First COVID-Related Prisoner Death, *New York Magazine* (Apr. 6, 2020), <https://nymag.com/intelligencer/2020/04/rikers-island-reports-its-first-covid-related-prisoner-death.html>, *A Rikers inmates has died of complications from the virus*, *New York Times*, (Apr. 5, 2020), <https://www.nytimes.com/2020/04/05/nyregion/coronavirus-new-york-update.html#link-3236f5ee>; *A jail in Chicago is now the largest-known source of U.S. infections*, *New York Times*, (Apr. 8, 2020), available at <https://www.nytimes.com/2020/04/08/us/coronavirus-live-updates.html#link-7634e187> (noting at least 387 cases can be linked to Cook County jail in Chicago, more than other high-profile outbreaks in closed congregate settings).

highly contagious nature of COVID-19 and the risk of infection from asymptomatic carriers make it virtually impossible to contain an outbreak in the prisons and jails. Waiting to respond until the first diagnosed case will already be too late.<sup>4</sup>

Failure to take immediate and meaningful action risks imposing a death sentence for hundreds of incarcerated people in Maine, as well as corrections officers and their family members and the broader community. Yet despite other governors taking steps to reduce jail and prison populations,<sup>5</sup> Governor Mills has indicated she will “not be issuing commutations widely.”<sup>6</sup> Although we have already seen most Maine sheriffs, judges, and prosecutors make important initial strides towards reducing the population of county jails, the scale of the crisis we are facing demands more extensive intervention from all of the key actors in our criminal justice system.

To protect our community from the potentially devastating consequences of COVID-19, immediate action is necessary to mitigate risk in Maine’s prisons and jails, specifically: **(1)** reducing the incarcerated population in prisons, jails, and the youth detention center, **(2)** supporting and resourcing people who are released, and **(3)** protecting those who remain incarcerated. Proposed methods to accomplish these goals are listed in detail below.

## **1. Reducing the Incarcerated Population**

Decision-makers in the criminal justice arena should release a significant proportion of the state’s incarcerated population—whether through the Governor’s authority to grant commutations or reprieves, or the Sheriffs’ and DOC’s authority to grant medical furlough and community release. Notably, these are scary times for many members of our community, including victims of domestic violence for whom the statewide stay-at-home order dramatically reduces options for escape from their abusers. Decision-makers should continue to engage in individualized review to ensure that release is appropriate and safe.

### **A. Reducing the Number of People in Prison**

The Governor and/or the Department of Corrections should exercise their authority to release enough people so that those left inside can adhere to CDC guidelines for safe physical distancing.<sup>7</sup> The following groups of people should be considered for immediate release:

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<sup>4</sup> There has already been a positive case of a corrections officer reported at the Bolduc facility in Warren.

<sup>5</sup> See, e.g., Order of the Governor of the Commonwealth of Pennsylvania Regarding Individuals Incarcerated in State Correctional Institutions, available at <https://www.governor.pa.gov/wp-content/uploads/2020/04/20200410-GOV-DOC-reprieve-release-order-COVID-19.pdf>; Gov. Stitt approves hundreds of prison commutations to mitigate coronavirus spread, Oklahoma’s News 4 (Apr. 10, 2020), available at <https://kfor.com/health/coronavirus/gov-stitt-approves-hundreds-of-prison-commutations-to-mitigate-coronavirus-spread/>; State of New Mexico Executive Order 2020-021, *Commuting the Sentences of Incarcerated Individuals Who Meet Certain Criteria and Instructing the Department of Corrections to Release Those Individuals From Its Facilities*, available at [https://www.governor.state.nm.us/wp-content/uploads/2020/04/EO\\_2020\\_021.pdf](https://www.governor.state.nm.us/wp-content/uploads/2020/04/EO_2020_021.pdf).

<sup>6</sup> Maine CDC COVID-19 Briefings, Apr. 14, 2020, at 53:34-54:24, available at <https://www.newscentermaine.com/article/news/health/coronavirus/real-time-maine-coronavirus-covid-19-updates-tuesday-april-14-2020-morning-edition/97-de5f5e32-f5d5-4041-8993-f5c0a281e330>.

<sup>7</sup> The Department of Corrections has authority to grant furloughs (temporary release) for “the obtaining of medical services for a period longer than 10 days if medically required.” 34-A M.R.S. 3035(2)(C). DOC also implements

- People who are at especially low risk to the general public, including those with less than two years left in their sentence:
  - People already authorized for work release
  - People who are primary caretakers of a child or elderly person
- People who are at especially high risk of becoming seriously ill or dying from the virus:
  - Individuals over the age of 50
  - Medically compromised individuals, especially those diagnosed with a chronic disease, such as heart disease or asthma
  - Pregnant people

## **B. Reducing the Number of People in County Jails**

Since the outbreak of the pandemic, judges, prosecutors, and defense attorneys across the state have been working to release low-risk pre-trial detainees, resulting in an almost-40 percent reduction in the county jail population. This important work must continue. Additionally, sheriffs and jail administrators should exercise their authority to provide early release to the community and medical furlough for at-risk prisoners.<sup>8</sup>

- Sheriffs should release anyone post-conviction who has served one third of their sentence and is not a serious and imminent safety risk to the community or family and household members.
- Bail commissioners should grant release on personal recognizance, setting cash bail only when there is an immediate risk to a specific person or persons, including family and household members.
- Prosecutors, bail commissioners, and judges should take into account the pandemic as a factor in determining whether or not an individual is a threat to a specific person or persons, including family and household members, when considering releasing or incarcerating an individual.
- Sheriffs and jail administrators should reduce populations so that individuals left inside facilities may adhere to CDC guidelines for physical distancing:
  - Jail administrators and staff should maximize space as needed by spreading individuals out across pods rather than closing pods when the population of the jail decreases.
- Emergency Case Managers should be established in the county jails—modeled after case managers in Department of Correction prisons—to facilitate access to resources at the time of release.

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Supervised Community Confinement under 34-A M.R.S. 3036-A. Governor Mills, in turn, has authority to commute sentences and grant reprieves under the Maine Constitution, Article V, section 11. Pursuant to this authority, Governor Mills has created a clemency board to review petitions. *See* Executive Order 6 FY 19/20, available at [https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline-files/eo\\_2019-20no06.pdf](https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline-files/eo_2019-20no06.pdf).

<sup>8</sup> Sheriffs have authority to release prisoners to on community supervision, 30-A M.R.S. § 1659-A, as well as to issue a furlough of longer than three days (without any limitation) “to provide treatment for a physical or mental condition[.]” 30-A M.R.S. § 1556(1).

### **C. Reducing Youth Incarceration**

Special attention must also be paid to the approximately thirty youth remaining in Department of Corrections custody, who must be released quickly with transition plans that guarantee their housing, healthcare, and access to basic resources. To protect these youth, State actors should take the following actions:

- Juvenile Community Corrections Officers must stop recommending that juveniles be detained at Long Creek Youth Detention Center.
- Prosecutors must cease asking for the commitment of young people at Long Creek Youth Detention Center.
- Judges must immediately stop committing children to Department of Corrections custody.
- Maine Department of Corrections must:
  - Utilize all pre- and post-adjudication release processes and mechanisms available.
  - Undertake comprehensive release planning with transition plans for each youth released.
  - Remove youth who have COVID-19 symptoms.
  - Remove youth who have chronic illnesses such as asthma or diabetes, have other serious illnesses, or are in need of medical care.

### **2. Protecting People Who Are Released and Their Communities**

A crucial part of protecting the community during this pandemic is supporting people in their transition back to the community and taking steps to ensure community safety. This support is necessary to reduce recidivism, to ensure appropriate treatment and care (coronavirus-related and otherwise), and to promote self-sufficiency during an economic downturn. Necessary supports upon release include emergency shelter. DHHS and MEMA are already working in concert to contract with motels to provide emergency non-congregate shelter for those experiencing homelessness. The same programs must be made available to individuals recently released from incarceration. Specifically, the State should take the following steps to support people after release:

- Ensure that persons reentering from incarceration are included in the State's effort to contract with motels and hotels for shelter, ensuring no new persons entering homelessness to increase the risk of infection.
- Mandate that General Assistance can be utilized to pay for motels, hotels, or other housing for persons reentering to avoid reentry into homelessness:
  - Enact a state-level authorization process of Emergency General Assistance eligibility, rather than through individual municipalities.
  - Direct hotel and motel establishments statewide to accept Emergency General Assistance funds as payment for extended stays by those experiencing and/or facing imminent homelessness.
  - Prioritize arranging hotel and motel stays for individuals in close proximity to their existing family and social support networks.

- Mandate that all individuals being released from DOC facilities and county jails who will face homelessness upon release be given ample opportunity to complete an emergency application for General Assistance at least 24 hours prior to their release date.
- Ensuring that the emergency funds be allocated to provide case management support to persons reentering from incarceration during COVID-19:
  - These individuals should also be given adequate support in navigating the process with an outside community advocate reachable via phone or computer.
- Following the recommendations in a letter to the Maine Prosecutors sent by the Maine Coalition to End Domestic Violence to ensure efforts to stem COVID-19 do not do more harm than good:
  - Review and improve procedures for victim notification.
  - For cases that involve domestic violence or sexual harassment, sheriffs and prosecutors should give as much advance notice directly to an impacted victim as possible when release is being requested and/or considered.
  - Sheriffs, jail and prison administrators, and prosecutors should contact Domestic Violence Resource Centers prior to the release of someone whose case involved a crime against a family or household member or sexual harassment.
  - Make it easier for survivors to file Protection from Abuse complaints, including by seeking and implementing input from organizations that advocate for survivors.

### **3. Protecting People who Remain in Prisons and County Jails**

Sheriffs and the DOC must take appropriate precautions to protect those individuals who remain in the prisons and jails, as well as the prison staff who interact with them. This includes ensuring that prisoners have ongoing access to loved ones in the community. Necessary precautions include the following:

- Appropriate gloves, masks, and other personal protective equipment (PPE) for all incarcerated people and staff.
- Hand sanitizer and cleaning products in areas outside of bathrooms.
- Frequent cleaning of all surfaces, not limited to “common” ones.
- No “shakedowns” of cells.
- The opportunity for each incarcerated person to choose one person outside of the facility (a loved one, a friend, etc.) who will be contacted if there is suspicion of a COVID-19 infection. If requested, this person will be given a daily update.
- The designation of incarcerated people and staff as “Tier 1” individuals per CDC testing guidelines to ensure expedient testing, notification of test results, and access to PPE.
- Access to unlimited free phone calls with community members and attorneys.
- Opportunities for incarcerated people to connect with virtual recovery support groups being led in the community.
- Intensive Case Managers in DOC and county jails to facilitate access to resources at the time of release.

\* \* \* \* \*

Thank you for your consideration. Together, we can ensure a safe and effective response to COVID-19 that protects all members of our community.

Sincerely,

American Civil Liberties Union of Maine  
GLBTQ Legal Advocates & Defenders (Portland, Boston)  
Health Equity Alliance  
JAM: Jewish Action Maine  
Maine Access Points  
Maine Association of Criminal Defense Lawyers  
Maine Democratic Socialists of America  
Maine Drug Policy Lab at Colby College  
Maine Family Planning  
Maine Inside Out  
Maine People's Alliance  
Maine Prisoner Advocacy Coalition  
Maine Youth Court  
Maine Youth Justice  
Martin Luther King, Jr. Fellows  
Mindbridge  
NAACP Prison Branch  
No Penobscot County Jail Expansion  
Portland Overdose Prevention Society  
Portland Outright  
Recovery Advocacy Project - Maine  
Resources for Organizing and Social Change  
Restorative Justice Institute of Maine  
Restorative Justice Project Maine  
Survivor Speak USA  
The Church of Safe Injection