

March 19, 2020

The Honorable Ken Paxton  
Office of the Attorney General  
300 W 15th Street  
Austin, TX 78701

Mass incarceration in Texas is a severe public health risk. Our county jails are densely populated, with inmates often in close quarters, making them particularly susceptible to the rapid spread of contagious illnesses like COVID-19. In addition to the compact spaces our jails represent, as facilities, they are often chronically under-resourced, lacking in sufficient soaps and cleaning supplies.<sup>1</sup> These combined circumstances can make infection control nearly impossible.

Several community organizations in Texas have advocated for grassroots level policy changes like cite and release programs, aimed at reducing jail populations, understanding that the phenomenon of mass incarceration can be addressed by local policymakers.

Before the coronavirus, 3 out of 4 inmates in Texas' county jails were being held pretrial.<sup>2</sup> These individuals, who have been charged but not convicted of a crime, and are still presumed innocent — now occupy more beds in Texas' county jails than any other group, simply because many of them can not afford to purchase their freedom. These legally innocent people make up the majority of Texas' jail population and they deserve to be free while they await their day in court, especially during these dire times.

The pay-or-stay system of wealth-based detention in Texas -- whereby people who can afford bail get to await their trial in the comfort of their home, and those who can't stay locked up -- may soon have even more fatal consequences.

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<sup>1</sup> Oluwadamilola, Oladeru T., et al. "What COVID-19 Means For America's Incarcerated Population - And How To Ensure It's Not Left Behind." <https://www.healthaffairs.org/>, 10 Mar. 2020, [www.healthaffairs.org/doi/10.1377/hblog20200310.290180/full/](http://www.healthaffairs.org/doi/10.1377/hblog20200310.290180/full/).

<sup>2</sup> Barajas, Michael. "In Texas, 3 Out of 4 County Jail Inmates Haven't Been Convicted of a Crime." The Texas Observer, 25 July 2018, [www.texasobserver.org/in-texas-3-out-of-4-county-jail-inmates-havent-been-convicted-of-a-crime/](http://www.texasobserver.org/in-texas-3-out-of-4-county-jail-inmates-havent-been-convicted-of-a-crime/).

The Center for Disease Control has released several recommendations intended to slow the spread of COVID-19, including a recommendation not to hold events larger than 50 people, and to engage in “socially distancing” from one another. Because of their design, county jails in Texas forfeit inmates’ and staff’s ability to adhere to the best medical advice.<sup>3</sup>

As this extremely contagious virus passes through facilities, confined individuals are likely to contract it from staff who enter and exit daily such as: arresting officers, guards, secretaries, medical staff, management, contractors and others. As jail staff become even more concerned about catching the virus, and as childcare becomes less accessible for primary caretakers, staffing a jail will be made even more difficult. Those not yet infected will then be at greater risk of becoming ill due to widespread understaffing issues. Considering a recent study from the journal of hospital infection suggests COVID-19 may stay on metal up to 9 days, equipment used in processing arrestees must be meticulously cleaned: law enforcement vehicles, thumbprint scanners, handcuffs, bathroom facilities, etc.<sup>4</sup>

Recognizing the potential crisis facing our county jails, local officials have begun calling for a suspension of arrests for minor, non-violent offenses.<sup>5</sup> Harris County Sheriff Ed Gonzales recently wrote “law enforcement should stop making low level arrests for violations and misdemeanors, in order to prevent the spread of the virus through our jails, courts, and stations. Current times call for us to act immediately and boldly.”<sup>6</sup> In Bexar, County Judge Nelson Wolff issued an order suspending arrests for minor offenses so as to not crowd jail during a public health emergency.

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<sup>3</sup> Spencer, Terry, and Teresa Crawford. “US Moves Nearer to Shutdown amid Coronavirus Fears.” *AP NEWS*, Associated Press, 16 Mar. 2020, [apnews.com/1510caddee80ea2d73363fab76d55967](https://apnews.com/1510caddee80ea2d73363fab76d55967).

<sup>4</sup> Kampf, G., et al. “Persistence of Coronaviruses on Inanimate Surfaces and Their Inactivation with Biocidal Agents.” *https://www.journalofhospitalinfection.com/*, Elsevier Inc., 6 Feb. 2020, [www.journalofhospitalinfection.com/article/S0195-6701\(20\)30046-3/fulltext](https://www.journalofhospitalinfection.com/article/S0195-6701(20)30046-3/fulltext).

<sup>5</sup> Barajas, Michael. “Some Officials Want to Divert People from Jail Amid Coronavirus Scare.” *The Texas Observer*, The Texas Observer, 16 Mar. 2020, [www.texasobserver.org/some-texas-officials-want-to-divert-people-from-jail-amid-coronavirus-scare/](https://www.texasobserver.org/some-texas-officials-want-to-divert-people-from-jail-amid-coronavirus-scare/).

<sup>6</sup> Gonzalez, Ed. *Twitter*, Twitter, 13 Mar. 2020, [twitter.com/SheriffEd\\_HCSO/status/1238470530761666561](https://twitter.com/SheriffEd_HCSO/status/1238470530761666561).

Ceasing arrests based on the recognition that our jails are dangerous places during an outbreak demands policy measures that also address current jail populations.<sup>7</sup>

Our tendency to forget incarcerated people in crisis times leads to unjustifiable and unnecessary suffering. Many local officials have, in recent days, shown their capacity to act swiftly, using policy measures to mitigate harms as COVID-19 worsens. We have seen county and city officials move to prevent utility shut-offs for unpaid water and electricity bills.<sup>8</sup> We have seen county and city officials move to suspend evictions in public housing and suspend the operation of courts that preside over evictions on private property.<sup>9</sup>

We call for the same responsible, public-health motivated actions be taken by state officials and ask them to direct the Texas Board of Criminal Justice, Texas Commission on Jail Standards, Texas Health and Human Services Commission, Texas Division of Emergency Management, and the offices of Attorney General Ken Paxton and Governor Greg Abbott to act in coordination for the immediate release of all detainees who do not pose an imminent threat to public safety, currently held in pretrial detention in the state of Texas.

Upon release, detained individuals should be informed of their voting rights, and be offered an opportunity to register to vote. Additionally, everyone released from custody should be briefed on the Center for Disease Control's most up to date recommendations to prevent the spread of COVID-19 in Texas communities.

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<sup>7</sup> "Mitigating Disaster: Urgent and Just Responses to COVID-19 in the Texas Justice System."

<https://www.texascjc.org/>, 16 Mar. 2020,

[www.texascjc.org/blog/mitigating-disaster-urgent-and-just-responses-covid-19-texas-justice-syssem](http://www.texascjc.org/blog/mitigating-disaster-urgent-and-just-responses-covid-19-texas-justice-syssem).

<sup>8</sup> "City of Austin Utilities Suspends Disconnects amid COVID-19." *Austin Energy*,

[austinenergy.com/ae/about/news/news-releases/2020/city-of-austin-suspends-utility-disconnects-amid-covid-19](http://austinenergy.com/ae/about/news/news-releases/2020/city-of-austin-suspends-utility-disconnects-amid-covid-19).

<sup>9</sup> Riker, Marina Starleaf. "Bexar County to Halt Evictions during Coronavirus Outbreak." *ExpressNews.com*, Express-News, 16 Mar. 2020,

[www.expressnews.com/news/local/article/Bexar-County-to-halt-evictions-during-coronavirus-15135909.php](http://www.expressnews.com/news/local/article/Bexar-County-to-halt-evictions-during-coronavirus-15135909.php).

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Sincerely,

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MOVE Texas Action Fund

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Texas Rising

PODER: The Social Justice Caucus of the San Antonio Alliance

Texas Criminal Justice Coalition

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