

Louisiana must overhaul its justice system practices to respond to COVID-19

April 9, 2020

Louisiana is emerging as a hot spot at the center of the global COVID-19 pandemic. On March 22, Governor John Bel Edwards issued a statewide stay-at-home order. People are forbidden from leaving their homes except for the absolute essentials and are instructed to maintain at least six feet distance from others.¹ As of April 9, 2020, there were 18,283 confirmed cases of COVID-19 in Louisiana with 702 reported deaths.² By the time this goes to print, already these numbers will be outdated. New Orleans's hospitals are already stretched to capacity.

The challenges to effective prevention and containment of this deadly virus are only compounded by the criminal justice system in the state. Louisiana has long been known as the incarceration capital of the world because, for nearly every year for more than two decades, it has had the highest incarceration rate in the country.³ As of December 31, 2019, there were 31,609 people incarcerated in the state's jails and prisons—more than 7,354 of those aged 50 and above.⁴ Although many everyday practices throughout the criminal justice system can be deadly in the face of COVID-19, the conditions in jails and prisons are perhaps the most dangerous, serving as veritable petri dishes for infection, with people incarcerated in proximity to each other and hundreds of officers and staff coming and going from the facilities daily. An outbreak inside a jail or prison spreads like wildfire among incarcerated people, officers, and staff, who in turn bring the virus back to their families and communities.

Already, a federal prison in Louisiana has seen an explosion of cases, resulting in five deaths as of April 6.⁵ At least 14 workers in the state's Department of Corrections system, at least seven children incarcerated at the Bridge City Center for Youth, and workers and people in custody in local jails in Orleans and surrounding parishes have all tested positive.⁶

Already, some critical steps have been taken to shrink the number of people held in jail in New Orleans—the jail population is down 22.3 percent, from 1,056 people on March 7, 2020, to 820 people as of April 7, 2020.⁷ Other parishes, like Ascension Parish and East Baton Rouge Parish, are reducing arrests and releasing some people from jail amid public health concerns.⁸

However, officials and system actors must do much more, and quickly.⁹ This guidance brief offers Louisiana parishes a blueprint for a coordinated, urgent response in the face of COVID-19 with

recommendations for law enforcement, prosecutors, courts, corrections system actors, and the governor. With the actions below, Louisiana can slow the spread of COVID-19 and promote public health. In order to truly flatten the curve in the state, system actors must take immediate action to safeguard the well-being of all residents, including those in the criminal legal system.

Louisiana needs to coordinate bold, decisive action in five areas

1. Recognize that public health is public safety during a pandemic

In keeping with the statewide recommendations to reduce the spread of COVID-19, all local justice systems across Louisiana should immediately implement the following specific guidelines:

- **Safeguard against infection and spread.** Issue protective equipment like face masks and gloves for corrections officers, police officers, jail and prison staff, and anyone performing a criminal legal system function to be worn in the course of their duties while interacting with people. People in custody should be issued the same protective equipment for their own health and the sake of those who work in the system.
- **Educate people to prevent COVID-19 spread.** Provide people leaving jail with informational pamphlets and a COVID-19 hygiene kit. People reentering the community from jail should have adequate information about government restrictions on public life and how to protect themselves and others from COVID-19, including directions on what to do if they are experiencing symptoms and guidance on seeking medical treatment.
- **Create a staffing plan to manage COVID-19.** Make a plan for staffing so that officers and staff have scheduled time off to prevent burnout and allow for managing caretaking responsibilities. COVID-19 will inevitably result in staff out sick or unable to come to work because of family and other responsibilities. Additional paid administrative leave should be provided to all staff so they are able to appropriately quarantine in case of exposure to the virus or illness.

2. Limit physical contact between police and the people they encounter

Louisiana must drastically reduce the number of people arrested and booked to limit the potential for spread of the virus, whether that be from people transported in police cars, brought into local courts, or admitted to jail. Each arrest creates an enhanced risk of transmission of COVID-19 because of the close and prolonged physical contact during handcuffing and transport. Booking exacerbates the likelihood of exposure among officers and detained people. Law enforcement should minimize interactions with people and reserve resources for the most serious cases. Local police departments, parish sheriff's offices, and the Louisiana Department of Public Safety and Corrections Division of Probation should adopt the following policies:

- **Limit arrests to only the most necessary.** Local law enforcement should place a moratorium on arrests for offenses that do not involve physical harm or direct threats to a person. In 2016,

of the 204,158 total reported arrests in the state, more than three-quarters, or 158,398, were for low-level offenses.¹⁰ Suspending enforcement of low-risk incidents (e.g., traffic stops, quality-of-life offenses, and possession or sale of controlled substances) helps police maintain capacity to respond to critical incidents and community health needs. Instead, officers can give warnings, issue summonses in lieu of arrests, and make referrals to services.

- **Suspend all arrests for supervision-related violations.** The Louisiana Department of Corrections Probation and Parole Department should place a moratorium on arrests and incarceration for supervision violations, especially technical violations.¹¹ As of December 31, 2019, the department supervised 58,686 people. If someone under supervision has a new arrest, the criteria below regarding jail admissions and releases should be used to determine release.

3. Implement safety and expediency protocols in jails and courts

Louisiana must limit the number of people who appear in court and are admitted to jail. Parish sheriffs currently have the authority to refuse to admit any person into their jail who is presenting symptoms, unless otherwise authorized by a licensed physician.¹² However, the governor should grant additional authority and discretion under the Louisiana Disaster Act to the parish sheriffs until 11:59 p.m. on the date the Louisiana State of Emergency declaration ends to refuse to accept into custody in any parish jail system any person who presents with COVID-19-related symptoms and whose detention may thus threaten the health of people incarcerated, employees, or contractors.¹³ Jails and courts are fertile ground for the spread of COVID-19, but prosecutors, defenders, and judges hold tremendous power to decrease the jail population, prioritize cases to place on court calendars, and ultimately protect people in the community and courts from unnecessary exposure. Each entity should create broad directives with minimal exceptions to support release and limit case-by-case decision making to only the most serious cases involving immediate and identifiable risks of physical harm to another person. All system actors should work together to identify groups of people for release and coordinate safe transitions. Louisiana system actors should consider starting with the following:

- **Immediately release all medically vulnerable and older people in jail pretrial.** Release all people who are being held pretrial and fall into a high-risk category due to their age and underlying health conditions, making them more susceptible to COVID-19. Correctional health providers and defenders should identify the medically vulnerable so that they can be released immediately. Judges may immediately review individual cases and order release. Parish sheriffs may order the release of people in this category who are charged with municipal offenses during a state of emergency.¹⁴ This authority should be expanded by the governor to include all vulnerable people regardless of charge as well as the people falling into the categories below.¹⁵
- **Reduce the use of bail and increase pretrial release.** Release people who have bail set at \$25,000 or less. In New Orleans, a family would pay \$3,000 to a bail bondsman to underwrite a \$25,000 bond, and the only reason people are sitting in jail on bail amounts in that range is because of poverty. No one should be held in jail pretrial simply because they cannot afford to buy their way out in normal times, and that is especially true during a pandemic.

- **Do not incarcerate if the offense will not end in a prison sentence.** Release all people detained pretrial for a crime that, under Louisiana law, would not require a mandatory prison sentence. These are people who could potentially receive a non-incarcerative sentence at the ends of their cases. Release all people who are arrested for nonviolent crimes for which they would not be mandated to serve prison sentences if convicted and who are currently complying with probation for any previous sentences.
- **Reduce traffic in the courts.** Suspend all non-essential hearings for at least six months for any pending cases in which people are released pretrial or pending adjudication and notify them of postponement. The courts should provide videoconference or remote appearances for people who need speedy resolution of their cases, for example for employment or immigration purposes; for essential court appearances for those who remain incarcerated; or for emergency proceedings, such as people seeking orders of protection.

4. Provide COVID-19-related information and resources for people returning home from jail or prison

People reentering the community from jail or prison should have adequate information about government restrictions on public life and how to protect themselves and others from coronavirus. It is also important for system actors and the community—including loved ones cohabitating with people released from jail, service providers, and the public at large—to feel confident that people released from jail are not immediately spreading coronavirus. This will require coordination amongst sheriffs, wardens, and public health officials.

- **Immediately institute a medical process to support release,** including implementing daily temperature checks, asking a set of short questions to ascertain whether the person had or has any symptoms consistent with COVID-19, and requiring written documentation of this process to be given to the person on final review at release. This protocol should be made public to assure the community that people released are being screened for COVID-19.
- **Create a release plan protocol** that includes information on coronavirus and social distancing orders from government officials; guidance on medical insurance; details on how to access emergency care and hospitals, including for people without valid immigration status; and a plan for transportation—ideally in a cab—and housing, etc. Test everyone at release by asking about symptoms and taking temperatures. Provide a mask, hand sanitizer, and educational material about coronavirus to every person.
- **Set up relationships with hospitals** in case someone is in urgent need of medical attention on release.
- **Develop protocols with community-based residential service providers** to ensure timely and safe placement for people leaving jail. Louisiana should devote resources to ensure community-based service providers have resources and equipment.

5. Decrease the number of people held in Louisiana's prisons

Like jails and courts, prisons are fertile ground for the spread of COVID-19. However, Louisiana can protect the prison population and the general population from unnecessary exposure to coronavirus by reducing the number of people currently held in its state prisons. Prosecutors, prison system actors, and Governor Bel Edwards should implement the following recommendations immediately:

- **Expedite pending releases and commutations.** The governor should sign the commutations already provided to him and release those people immediately. Pardon and parole proceedings should be expedited and held via videoconferencing in order to reduce potential exposure to people in prison and to staff.
- **Decrease the number of people held in state prisons.** The governor should use his authority to expand compassionate release and expedite proceedings for all people particularly vulnerable to COVID-19.¹⁶ The Department of Corrections should identify anyone with an underlying health issue who is eligible for expanded compassionate release, including but not limited to those with respiratory illnesses or diabetes, as well as those who are immunocompromised, anyone over the age of 55, anyone with less than one year remaining on his or her sentence, and anyone on work release.

Endnotes

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For more information

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