

Guidance for preventive and responsive measures to coronavirus for prosecutors, defenders, and courts

March 18, 2020

The coronavirus, or COVID-19, has been declared by the World Health Organization to be a global pandemic. As the number of people infected in the United States grows exponentially, we must focus on prevention and containment in the criminal and immigration legal systems.

Actors in the criminal and immigration legal systems have a unique and critical role to play. The importance of this role is underscored by how vast these systems are—almost 10.5 million arrests a year,² 2.2 million people in jail and prison at any given time,³ 50,000 in immigration detention,⁴ and another 4.5 million under some form of supervision on probation or parole.⁵

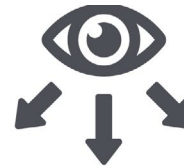
Footprint of U.S. corrections, detention, and supervision systems



10.5 million
people arrested
every year



2.3 million
people behind bars



4.5 million
people under
community supervision

The Vera Institute of Justice (Vera) and Community Oriented Correctional Health Services (COCHS) have created the guidance in this document to protect people who interact with and work in these systems. For other system guidance, see Vera's COVID-19 Response [page](#).

Prosecutors, defenders, and court system actors, including magistrates and judges, can:

Prioritize prevention first and foremost. To reduce contact between people:

1. Prosecutors should *decline to prosecute low-level offenses, such as so-called “quality of life” violations, drug possession, theft, and municipal violations* during the pandemic, reducing the number of people who appear in court every day.

2. Prosecutors and courts should convert as many other charges as possible to non-arrest charges.
3. Prosecutors should not seek and courts should not issue bench warrants or failure to appear warrants.
4. Courts should *automatically reschedule the next court appearance* for at least six months for any pending cases where a person is released pretrial or pending adjudication. For people who need speedy resolution of a case, for example for employment or immigration purposes, courts should provide a videoconference appearance.
5. Courts should create a website where cases can be resolved remotely for pending municipal cases, ordinance violations, traffic tickets, or other criminal offenses.

Contain the possibility of spread. To protect especially people who are at high risk—those who are 55 years and older, pregnant, or have serious chronic medical conditions:

1. Prosecutors should *consent to release and not request bail* on all offenses except in cases where there is a specific and immediate risk to the physical safety of another person. Such exceptions should require the sign-off of a supervisor. There should be a presumption of release for anyone considered at high risk of infection.
2. Defense attorneys should *incorporate arguments about the risk of the spread of coronavirus in their bail hearings*.
3. Where magistrates hear bail arguments without extensive input from prosecutors or defense attorneys, courts should create a policy to guide magistrates on how to maximize pretrial release.
4. Judges should *immediately identify people on their detained dockets to be released*, including those detained pretrial and especially those who are considered at high risk of infection.

Respond swiftly to active cases while preserving due process. To help infected people and prevent transmission from or to the local community, prosecutors, defenders, and courts should:

1. Use a CDC-informed *screening tool* for anyone who is brought to or from court with the aim of identifying people with possible exposure and people at higher risk of infection.
2. Develop a *written policy and training for court staff* to separate people who are symptomatic from others, and to maximize the distance between people at higher risk of infection from people who may be infected but asymptomatic. The protocol should include guidance on how to work with first responders to safely transport someone to the hospital, identify hospitals closest to the court, and outline steps to take during and after interactions with an infected person.
3. *Put in place procedures to continue the case through videoconference and remote communication* of any person who remains incarcerated and is suspected of having coronavirus, including access to defense counsel outside of court appearances.

4. Develop a comprehensive policy that provides paid sick leave and a plan for staffing substitutions and triage when personnel test positive for coronavirus.

Additional resources

- [Fair and Just Prosecution: Joint statement from elected prosecutors on COVID-19 and addressing the rights and needs of those in custody](#)
- National Center for State Courts: [Round up of State Court Responses](#)
- National Association of Criminal Defense Lawyers: [Template for a motion to challenge the continued pre-trial confinement of at-risk clients](#)

Endnotes

- 1 World Health Organization, “Rolling Updates on Coronavirus Disease (COVID-19),” updated March 11, 2020, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.
- 2 Vera Institute of Justice, “Every Three Seconds: Unlocking Police Data on Arrests,” January 2019 (database), <https://www.vera.org/publications/arrest-trends-every-three-seconds-landing/arrest-trends-every-three-seconds/findings>.
- 3 Wendy Sawyer and Peter Wagner, “Mass Incarceration: The Whole Pie 2019,” Prison Policy Institute, March 19, 2019, <https://www.prisonpolicy.org/reports/pie2019.html>.
- 4 The Marshall Project, “Detained: How the United States Created the Largest Immigration Detention System in the World,” September 24, 2019, <https://www.themarshallproject.org/2019/09/24/detained>.
- 5 Danielle Kaeble, Probation and Parole in the United States, 2016 (Washington, DC: Bureau of Justice Statistics, 2018), <https://www.bjs.gov/content/pub/pdf/ppus16.pdf>.

For more information

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The Vera Institute of Justice is a justice reform change agent. Vera produces ideas, analysis, and research that inspire change in the systems people rely on for safety and justice and works in close partnership with government and civic leaders to implement it. Vera is currently pursuing core priorities of ending the misuse of jails, transforming conditions of confinement, and ensuring that justice systems more effectively serve America’s increasingly diverse communities. For more information, visit www.vera.org.

Community Oriented Correctional Health Services (COCHS) works to bridge the gap between correctional and community systems. COCHS’ major emphasis has been to reframe jail health care not as a place separate from the rest of the community but as another health care delivery site within the community. COCHS provides [technical assistance](#) to assist communities in finding ways to improve health care in local correctional facilities, as well as providing expertise on [health information technology](#) to create connectivity and data sharing.