

# COVID-19

## FACT SHEET: PRACTICES FOR PROSECUTORS

In order to prevent the rapid growth of COVID-19 from overburdening our health-care system and claiming lives, it is the responsibility of decision makers at every level to prevent and contain the spread of the virus by implementing the most effective measure in abating the pandemic: **social distancing**. Prosecutors, as one of the most powerful actors in the criminal justice system, should use their discretionary powers to help limit the spread of COVID-19 as bringing one person with it into our courts, parole or probation offices, jails, or prisons, can lead to it quickly impacting entire communities.

### **LIMIT THE NEED FOR PEOPLE TO COME TO COURT OR PROBATION/ PAROLE OFFICES:**

On any given day there are thousands of people coming in and out of courthouses, proceeding through security, in shared elevators and hallways and sitting in cramped courtrooms on shared benches awaiting case determination and using public restrooms. Requiring non-essential court appearances encourages individuals who may have been exposed to COVID-19 and be asymptomatic to leave their homes in order to interact with attorneys, judges, court staff, and other members of the public in confined spaces. Such interactions increase the transmission rate of the virus and threaten adherence to the Center of Disease Control's (CDC) recommendation that individuals stay **6-feet** from anyone who is sick. Courts across the country are evaluating whether it is safe to have people gather for court appearances. On March 12, 2020, the U.S. Supreme Court announced that it would be "**closed to the public**" until further notice. Other courts are severely restricting visitors, staff and other personnel. Probation and parole offices have crowded lobbies where people often wait for hours. Prosecutors can also advocate for teleworking and increased work-related medical benefits for themselves and their colleagues, so that sick employees stay away from courthouses.

### **LIMIT THE NUMBER OF PEOPLE ENTERING OUR JAILS AND PRISONS AND TAKE REASONABLE STEPS TO REDUCE CURRENT JAIL AND PRISON POPULATIONS TO LOWER THE BURDEN ON MEDICAL STAFF:**

Our **prisons and jails** are overcrowded and trying to institute social distancing there is simply not possible. The overcrowding in jails and prisons means that COVID-19 could spread like **wildfire**. Because the very nature of jails and prisons means people are in **close proximity** to others at virtually all times, one person with COVID-19 on the inside could lead to it spreading quickly throughout. Also, more than half of the people in jail are only in there for **two to three days**. So, if there is an outbreak in a jail, there would be people coming in from the outside community, being exposed, and returning to the community—**potentially exposing** many more people. Given the number of people **entering and exiting** jails and prisons on any given day—staff arriving for work and leaving, people being released, or people being transported to court appearances—COVID-19 can very easily spread from inside a jail or prison out into the surrounding communities.

Accordingly, taking steps to reduce the risk of COVID-19 in our courts, jails, and prisons will not only help keep everyone inside safe but is critical in our attempts to keep our entire communities safe. As one of the most powerful actors in the criminal justice system, prosecutors can help use their discretionary powers to help limit the risk of the spread of COVID-19 by reducing the burden on our courts, jails, and prisons.

By declining offenses, utilizing diversion opportunities, and advocating for release for those who do not pose a public safety, prosecutors can help protect both themselves, those in local jails, and our communities by not placing vulnerable people in custody.

## **PROSECUTORS SHOULD TAKE THE FOLLOWING MEASURES TO LIMIT THE NUMBER OF PEOPLE IN PRISONS, JAILS, COURTHOUSES:**

- Encourage local law enforcement to minimize arrests not directly related to public safety and take full advantage of all cite and release opportunities,
- Decline to pursue charges that do not impact public safety or divert cases, setting next court appearances six months out;
- Advocate for people not be detained and either be released on their own recognizance or with conditions that limit the need for the person to interact with other communities that could risk spread of COVID-19 (such as drug testing and in-person check-ins at pretrial services).
- Work with local defense attorneys and public defenders to consent to bail review hearings for those detained pending trial that are either members of a population particularly vulnerable to COVID-19 or who do not pose a risk to public safety if released.
- Factor in COVID-19 in any sentencing recommendation if a person is to be sentenced, .
- Limit the need for people to make in-person appearances in courts and parole/probation offices.
- Default to noncustodial sentences wherever possible, including resolutions that avoid immigration detention where outbreak potential is highest.
- Direct any failures to comply with local quarantine orders to the civil court system, not the criminal court system.
- 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.
- Extend paid sick leave to all employees, including those with temporary/part-time employment status.

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