



Criminal Justice and COVID-19

Coronavirus has brought forth significant changes to our everyday lives. Mitigating the effects of this pandemic will continue to require timely and targeted measures from government, business, educational institutions, and our communities that place public health and safety first.

Actions to slow the spread of the virus are imperative for our criminal justice system. Prisons and jails are uniquely susceptible to the most damaging effects of communicable diseases for a variety of reasons.

First, these facilities are generally near, at, or above capacity, making social distancing measures difficult if not impossible to comply with. Second, prisons and jails are notoriously unsanitary and often lack proper cleaning and hygienic practices that would help minimize the chances of infection for those detained or the employees of the facility. Third, prisons and jails hold an ever-increasing elderly population and have significantly higher rates of individuals with underlying medical conditions than the general public, two categories of people more susceptible to infection and severe illness or death caused by coronavirus.

Not only are current practices in our criminal justice system, from arrest to reentry, putting justice-involved individuals at a higher-risk of contracting coronavirus, they ultimately put law enforcement and the general public in harm's way. For the benefit of public health and public safety during this period of uncertainty, Americans for Prosperity recommends reducing the spread of the coronavirus by putting measures in place to:

- *Empower police to uphold the law and protect public safety, by de-prioritizing lower-level offenses.*
- *Ensure those incarcerated, correctional officers and staff are in clean facilities.*
- *Keep public safety in mind by strategically reducing jail and prison populations by using alternatives to incarceration such as home confinement and GPS monitoring.*
- *Decrease use of technical violations of probation and parole and use alternative video methods for meetings as a tool to prevent spread of COVID19.*

We appreciate the gravity of the decisions policymakers and community members must make during this time of uncertainty. Americans for Prosperity is offering the included recommendations a resource for any questions or concerns you may have.

Sincerely,

Mark V. Holden

Board Member, Americans for Prosperity



AFP RECOMMENDATIONS FOR LOCAL, STATE, & FEDERAL ACTORS TO MITIGATE THE EFFECTS OF COVID-19 ON THE CRIMINAL JUSTICE SYSTEM

Empower police to uphold the law and protect public safety, by de-prioritizing lower-level offenses

It is imperative that even in a time of crisis, police continue to uphold and enforce the law. However, there are many instances in which local and state police can use discretion to prioritize enforcement of serious offenses and modify booking procedures. We recommend:

1. De-prioritize intervention on certain lower-level offenses when public safety would not be compromised.
2. When police intervention is required, maximize the practice of “cite and release” when public safety would not be compromised.

Ensure those incarcerated and staff are in clean facilities

For those who must be in prison or jail, including staff and law enforcement, the Department of Corrections need to ensure Centers for Disease Control and Prevention guidelines are abided by as much as is feasible.

1. Allow hand sanitizer and require routine showers with soap for each incarcerated individual. Soap and hand sanitizer should be free of charge during COVID19.
2. Distancing measures between those incarcerated should be established when possible. Releasing individuals as outlined below will help make this possible.
3. Face-to-face visitation has been discontinued in many places. Non-face-to-face visitation, such as phone calls and video conferencing, should be increased, without cost.

Safely reduce jail populations

Jails are even more susceptible to the spread of communicable diseases than prisons because of limited screening intake processes and quick turnover. As more local courts close or delay proceedings and as more prisons deny the transfer of individuals from jails to their facilities, local jails will become increasingly crowded. It is critical that police, prosecutors, judges, and sheriffs work together to limit pretrial detention when flight and public safety would not be seriously compromised. Financial conditions of pretrial release should not prevent the release of an otherwise low-risk defendant. The risk of spreading coronavirus in a crowded cell — for those housed as well as correctional officers and staff — must be balanced with the need to maintain public safety. We recommend:

1. An increased use of alternatives to incarceration such as house arrest and GPS monitoring. This can include expanding eligibility and funding for these programs.
2. Arraignments and pretrial decisions should be conducted as safely and quickly as possible.
3. Limit face-to-face interactions to increase containment of COVID-19. For example, Texas is implementing remote court proceedings via Zoom and YouTube. All costs for local jurisdictions are covered and the proceedings abide with open-meetings laws.



4. Governors, lawmakers, and local governments should look into an increased use of technology for GPS monitoring and house arrest to ensure more individuals do not unnecessarily remain incarcerated because they are unable to afford bail or fees associated with monitoring devices.
5. Courts should work with prosecutors and sheriffs to review defendants awaiting trial in detention for possible release with or without conditions, when public safety would not be significantly compromised.
6. Sheriffs, prosecutors, judges, and other law enforcement actors should work together to identify those in jail who were convicted of low-level offenses, have a minimal criminal history, and are near their release date for possible release out of a facility and move toward an alternative form of supervision such as home confinement or probation. In some cases, commutations may be required, depending on statutory constraints.

Safely reduce prison populations

Positive COVID19 tests for incarcerated individuals and prison staff are increasing by the day. While prisons can take some measures to reduce the negative effects of the coronavirus, these institutions are woefully ill-equipped to prevent widespread contamination without reducing populations. A variety of options are available to judges, prosecutors, and other law enforcement actors to safely reduce prison populations, which will minimize the impact of coronavirus on those incarcerated, the staff, and the public at large. We recommend:

1. In cases when public safety would not be significantly impacted, prosecutors should modify charging and sentencing practices that increase the opportunities for judges to sentence individuals to alternative sanctions, including community supervision and home confinement. Judges should also utilize alternatives to prison whenever feasible and where public safety would not be significantly affected.
2. Governors should work with prosecutors and their departments of corrections to develop recommendations of individuals who are nearing release, convicted of lower-level offenses carrying minimal prison time, and individuals who are elderly or immunocompromised. These recommendations should be utilized to evaluate which persons may safely be released. Similar to provisions in the bipartisan First Step Act, an alternative could include conversion to post-release supervision or house arrest. The federal CARES Act will allow for expanded use of home confinement. Attorney General Barr has already asked federal prison officials for lists of individuals that could be considered as appropriate candidates for early release for possible early release to home confinement.
3. Courts should be increasingly mindful of the significant economic impact of coronavirus and should limit imposition of fines, fees, and other costs. Many financial obligations are required to be imposed by courts. To ease the burden of these costs, collection should cease or be greatly reduced.
4. Educational and vocational programming are often used as a method for individuals to achieve “earned time credits,” which reduce sentences. While programming might be suspended in response to COVID-19, earned credit should still be captured for an individual if programming is modified.



Decrease use of technical violations of probation and parole and use non-face-to-face alternatives for meetings as a tool to prevent spread of COVID19

Probation and parole have contributed significantly to the rise in prison population. In many cases, returning to prison and jail might be necessary, especially when an individual has committed a new offense, has absconded, or has repeatedly violated other terms of their supervision. However, it's critical that individuals are not unnecessarily incarcerated during the pandemic for minor, infrequent technical violations of supervision. We recommend:

1. Face-to-face interactions with supervising officers should be greatly reduced, if not eliminated. Phone calls, video conferencing, and other alternatives should be implemented.
2. Steps should be taken to continue to safely deliver programming such as treatment, education, and vocational training, virtually when feasible.
3. Clarify through executive order or legislative action that any earned time (steps that individuals take to better themselves and that results in reduced time-served) is still awarded even if programming that is required for accrual of such time is modified.
4. Individuals near the end of their supervision period should be fast-tracked for consideration of administrative parole or termination of supervision.
5. The use of jail, prison, or other facilities as a sanction for technical violations of supervision should be greatly reduced. This should extend to certain low-level misdemeanors as well, if public safety would not be significantly affected.
6. Collection of supervision fees should be eliminated or greatly reduced. For example, Arkansas discontinued the imposition of its \$35 monthly supervision fee via emergency order.