

March 20, 2020

*Via e-mail*

Judith Dulcich, Presiding Judge, Kern County Superior Court  
Cynthia Zimmer, District Attorney, Kern County  
Donny Youngblood, Sheriff, Kern County  
TR Merickel, Chief Probation Officer, Kern County  
Greg Terry, Interim Chief of Police, Bakersfield  
Scot E. Kimble Chief of Police, Arvin  
Jon Walker, Chief of Police, California City  
Robert A. Nevárez, Chief of Police, Delano  
Janet Davis, Interim Chief of Police, McFarland  
Jed McLaughlin, Chief of Police, Ridgecrest  
Kevin Zimmermann, Chief of Police, Shafter  
Gary Crowell, Chief of Police, Stallion Springs  
Damon McMinn, Chief of Police, Taft  
Kent Kroeger, Chief of Police, Tehachapi

**Re: Preventive Measures to Combat the Spread of COVID-19**

Dear Officials in Kern County:

We write to ask each of you to do your part to mitigate the spread of COVID-19 in Kern County. Given the grave threat that COVID-19 poses, leaders across California are taking drastic steps to combat this pandemic. We urge you to develop and implement holistic policies that align with guidance from public health experts and that will minimize the harm inflicted on people involved in the legal system—and, by extension, the harm inflicted on Kern residents broadly.

Excellent personal hygienic practices and social distancing are the most effective tools to combat the spread of the virus. This means staying several feet away from someone who coughs or sneezes, avoiding or limiting all physical contact, washing your hands regularly with soap and water, and using alcohol-based hand sanitizer to clean your hands after coughing, sneezing, or coming into contact with potentially exposed surfaces, objects, or people. With this in mind, there is broad consensus among public health experts that preventing the harm inflicted by COVID-19 can become immensely more difficult for people involved in the criminal legal system. Being detained, incarcerated, or forced to appear in public spaces such as courts and supervision offices, or having mobility limited even while home, can drastically limit a person's ability to exercise the above precautions or to seek medical help. And a revolving door of incarcerated individuals, jail staff, vendors, and medical professionals provides multiple avenues

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\*deceased

for COVID-19 to enter Kern County jails and exit back into our neighborhoods and homes, threatening incarcerated people as well as the entire Kern community.

We therefore urge each of you to take immediate steps to protect public health as much as possible. In addition to ensuring that employees are given sick leave as necessary and are not allowed to work while sick, these steps must focus on minimizing people unnecessarily entering the legal system, especially those vulnerable to COVID-19. They also must involve adopting best public health practices when interacting with the public and inside of jails. The longer officials in Kern County wait to act, the worse this will be.

**KCSO and Police Departments** must drastically limit the number of people they detain, even briefly. Toward that end, we make the following recommendations:

- 1) Discontinue ticketing, detaining, and arresting people for low-level offenses and “quality of life” crimes, except in extraordinary circumstances. Such minor offenses pose at most minimal threats to public safety, which are far outweighed by the serious health risks to both the individuals and the larger community created by jailing people or requiring them to appear at crowded courthouses in the next several weeks, potentially during the height of the pandemic’s effect in Kern County.
- 2) If officers do take enforcement action, limit the number of people arrested, booked, and detained in close proximity to other people by:
  - a. Issuing citations instead of arresting and booking people accused of misdemeanors;
  - b. Default to charging a misdemeanor for all “wobbler” offenses, pursuant to Penal Code Section 17(b), in order to allow citation and release pursuant to Penal Code Section 853.6, absent a known risk of serious physical harm to another person;
  - c. Issuing citations instead of arresting and booking people for warrants related to any crime that are not serious or violent felonies, absent a known risk of serious physical harm to another person;
  - d. Issuing citations instead of arresting and booking people for technical violations of probation or parole that do not involve allegations of serious physical harm to another person;
  - e. Immediately releasing people held in police station jails with a citation to appear in court, unless they are accused of a serious or violent felony and there is a known risk of serious physical harm to another person.

Law enforcement agencies across the country, informed by public health experts, have adopted this approach. For example, the Los Angeles Police Department and County Sheriff’s Department recently began dramatically reducing the number of arrests they make, in part by citing and releasing people as often as possible. *See Arrests by LAPD and Sheriff’s Department drop amid coronavirus outbreak*, L.A. Times (Mar. 18, 2020), [latimes.com/california/story/2020-03-18/lapd-arrests-crime-coronavirus-03182020](https://www.latimes.com/california/story/2020-03-18/lapd-arrests-crime-coronavirus-03182020).

- 3) Halt the criminalization of homelessness. Do not tow RVs or other vehicles that people are using for shelter for debt collection, unpaid registration, minor parking violations, or in other cases where there is no immediate public safety need. People experiencing homelessness currently struggle with the increased risk of disease spread and potential for increased severity of symptoms of the disease itself. They should be allowed to mitigate

these risks without being subject to criminal law enforcement. Crowding people into carceral settings or temporary shelters subverts social distancing.

- 4) Beyond the minimum requirements of California's sanctuary laws, immediately cease the transfer of anyone into the custody of ICE to avoid crowding more people in Mesa Verde, where medical care is notoriously deficient.
- 5) Provide quality healthcare to all persons in your custody, including transferring to a hospital any person who is too ill for jail medical staff to effectively treat.
- 6) Ensure that all holding cells enable adequate social distancing. Perform regular and thorough cleaning of all lock-up facilities, police vehicles, and items that are used for arrest or booking. Ensure that all persons in custody have access to adequate sanitary equipment and hygiene supplies and are instructed on proper cleaning habits.

The **Kern County Sheriff** must exercise his authority to protect the people who are, will soon become, and may remain incarcerated. Indeed, under Section 26602 of the Government Code, it is the Sheriff's duty "to execute all orders of the local health officer issued for the purpose of preventing the spread of any contagious or communicable disease."

People in jail are highly vulnerable to outbreaks of contagious illnesses. They have little ability to inform themselves about preventive measures, or to take such measures if they do manage to learn of them. They are housed in close quarters, have little control over their daily interaction with others, and are often in poor health. Coronavirus inevitably will reach the incarcerated population, and given inherent space and resource constraints, Lerdo will be overburdened in trying to treat the disease and prevent its spread to all those inside. KCSO must make it a top priority to ensure that Lerdo and the County's receiving facilities are as empty, safe, and clean as possible. Toward that end, we make several recommendations:

- 1) The KCSO Law Enforcement Bureau should follow the recommendations above in order to limit the number of people who are detained in the first place. In addition, KCSO should postpone the execution of writs of possession or other lockouts that are not directly related to a protective order (e.g. TRO issued by a court related to domestic violence or elder/dependent abuse).
- 2) KCSO must continuously assess the jail population and maximize the number of people who can be immediately released. While we are encouraged by the news that KCSO released 38 individuals this week in response to COVID-19, that represents a tiny percentage of the jail's population, proportionally much less than the reduction the Los Angeles County Sheriff has undertaken in the past three weeks. *See More L.A. County jail inmates released over fears of coronavirus outbreak*, L.A. Times (Mar. 19, 2020), [latimes.com/california/story/2020-03-19/la-jails-coronavirus-sheriffs-department](https://www.latimes.com/california/story/2020-03-19/la-jails-coronavirus-sheriffs-department).

Government Code Section 8658 provides the Sheriff with protection from civil or criminal liability for the act of removing individuals from KCSO custody in the case of an emergency. On the other hand, Kern County is liable for any decision by the Sheriff reflecting indifference to the grave risks COVID-19 poses to County residents and individuals in the jail. The Sheriff should grant accelerated release to any inmate with 30 days or less on their sentence pursuant to authority granted under Section 4024.1 of the Penal Code, or apply to the Kern County Superior Court Presiding Judge for such authority if he does not already have it. For anyone who is being released, KCSO should

consult with Kern County Public Health Services officials to ensure adequate screening and quarantine procedures are in place.

- 3) KCSO must sanitize Lerdo and receiving facilities and ensure these facilities have adequate supplies of soap, hand sanitizer, tissues, and other hygiene products. KCSO must make these products freely and constantly available to staff and incarcerated people.
- 4) KCSO must implement procedures to care for those who become ill in its facilities. Those procedures must include, at a minimum: screening and testing of people for COVID-19, based on the most up-to-date information available; increased access to medical care; access to the medication and equipment necessary to treat those who contract the virus; and the ability to immediately transfer sick patients to outside facilities for care when necessary.
- 5) KCSO must implement non-punitive procedures for housing people who are exposed to the virus, who are at high risk of serious illness, or who screen or test positive for COVID-19. This should not result in prolonged lockdowns. Any lockdown or interruption in regular activities, such as exercise or visits and phone calls with families or attorneys, should be based solely on the best science available and should be limited in scope and duration.
- 6) Given the suspension on visitation KCSO has imposed, it should make other forms of communication, such as e-mail and voice/video calls, available free to all people in jail.
- 7) The Sheriff, in consultation with Kern County Public Health, should implement additional plans to address several critical issues:
  - **Education of people in KCSO custody on COVID-19 Risks and Prevention:** People in Lerdo need to be informed about the virus and the measures they can take to minimize their risk of contracting or spreading the virus. They must be educated on the importance of proper handwashing, coughing into their elbows, and social distancing to the extent they can. Information about the spread of the virus, the risks associated with it, and prevention and treatment measures must be based on the best available science.
  - **Education of KCSO staff on COVID-19 Risks and Prevention:** Sheriff's deputies as well as administrative and medical staff all must be educated about the virus to protect themselves and their families, as well as the people in KCSO's custody.
  - **Staffing:** Regardless of how many staff stay home or people in jail become unavailable because they are having symptoms or how many people inside the jail become ill, the jail will have to continue functioning. There must be a plan for how necessary functions and services will continue in that situation.
  - **Screening and testing of the people in KCSO custody:** The plan must include science-informed guidance on how and when to screen and test people in KCSO facilities.
  - **Vulnerable Populations:** The plan must provide for additional precautions for those who are at high risk of serious illness if they are infected, such as pregnant women and people with chronic illnesses, compromised immune systems, or disabilities, and people whose housing placements restrict their access to medical care and limit the staff's ability to observe them.

The **Kern County Probation Department** must exercise its authority to limit the number of people who are incarcerated or forced into public spaces. Probation officers should cease in-person check-ins to accommodate the need for social distancing and should allow check-ins to occur by voice or video call. Where those technologies are not accessible to a person under supervision, officers should temporarily suspend check-in requirements. Additionally, Chief Merickel should suspend enforcement of any mobility-restricting supervision conditions that impede a person's ability to seek medical care or to support loved on who may have COVID-19 and instruct officers to waive enforcement of probation violations that do not involve allegations of serious physical harm to another person.

The **Kern County District Attorney** must limit the number of people who are held in jail. Toward that end, we make the following recommendations:

- 1) Move for release of all accused people without bail, absent a determination that the person poses a threat of serious bodily injury to another identifiable person if released. The District Attorney also should institute a review-and-release protocol for cases in which bail was sought and imposed over the past two months.
- 2) Decline criminal charges whenever possible and dismiss cases involving minor offenses. Where charges are not declined, reduce as many as possible to citations or non-warrant, non-arrest charges, with return dates that are at least 6 months from the date of alleged incident. Do not seek bench warrants calling for arrests in response to failures to appear in court during this time.
- 3) When seeking a plea or requesting a sentence, treat incarceration as a last resort. Decline to request jail time as a sentence for people convicted of crimes, absent a compelling public safety rationale that outweighs the potential health consequences of keeping someone in jail. Require prosecutors to articulate in court the potential health consequences of a jail sentence. Agree to delays in surrender dates for jail sentences.
- 4) Refrain from seeking community supervision that limits a person's ability to seek medical help or care for a loved one who has COVID-19. Move to suspend all fines and fees and move to dismiss any cases where payment or completion of programs or community labor are the only matters pending, so that people are not at risk of incarceration due to nonpayment and are not required to come to court or otherwise leave home to address those burdens.
- 5) Use all means available to advocate for the release of all medically fragile people and anyone over the age of 50 in the interest of justice, absent some compelling contrary reason. Our jail complex houses people with chronic illnesses and complex medical needs, who are more vulnerable to becoming ill and requiring more medical care with COVID-19. Releasing these vulnerable groups from jail soon will reduce the need to provide complex medical care or transfers to hospitals when staff may be stretched thin.

**Kern County Judges** have the ultimate decision-making authority, beyond what prosecutors may do. Judges therefore should be encouraged to consider the above recommendations. In particular, Section 1275 of the Penal Code requires considering "the protection of the public" and instructs that "public safety shall be the primary consideration." Here, public safety requires that as few individuals as possible enter or remain in the jail system.

In addition, we ask the Presiding Judge to consider the following measures:

- 1) Reconsider and rescind certain aspects of the General Order issued on Tuesday, March 17 ([https://www.kern.courts.ca.gov/documents/court\\_action\\_covid\\_19](https://www.kern.courts.ca.gov/documents/court_action_covid_19)). While we appreciate the Court's attention to COVID-19, we were alarmed to learn that the Order includes measures that could exacerbate the pandemic and infringe civil liberties. Several items in the Order substantially increase periods of permissible pretrial detention, at a time when there is a consensus among public health experts that government officials should be working to reduce detention levels. Pursuant to the Order, police officers are empowered to detain anyone they arrest for a felony for up to seven days before bringing the person before a neutral magistrate—more than triple the constitutionally informed default of 48 hours. Under normal circumstances, this would be an affront to a core Fourth Amendment protection, but most salient now, this change is anathema to the broadly shared objective of decreasing incarceration in service of public health. Similarly, the Order extends the time from arraignment to preliminary examination by five days and extends the time for holding a criminal trial by thirty days. These and any other measures that increase the duration of pretrial detention endanger defendants and the public at large, while placing concomitant pressure on those defendants to accept unfair pleas to avoid risking exposure to COVID-19. We respectfully ask the Presiding Judge to reconsider these measures forthwith.
- 2) Encourage judges to allow anyone with an open criminal case and upcoming hearing the chance to waive that hearing voluntarily or conduct that hearing via telephone or video conference. Where someone does not have access to either of those technologies, judges should permit counsel to appear in person or via phone on behalf of a charged person without mandating that person's appearance.
- 3) Encourage judges to require prosecutors to articulate, on the record, public health-informed justifications for any action that would bring people into courts, jails, or prisons.
- 4) Evictions carry the severe potential consequences of causing homelessness and forcing families into overcrowded conditions. Courts should relieve the pressure for vulnerable tenants to appear in court for their hearings and forestall the impacts of potential displacement—including losing access to basic hygiene, being forced into unsafe situations on the streets or in crowded shelters, and having decreased ability to attend to medical needs. Unlawful detainer actions, foreclosure actions, and applications for writs of execution proceed could subject the public to increased risk and frustrate Kern County residents' ability to take recommended protective measures. Thus, we ask the Court to request permission from Chief Justice Cantil-Sakauye to take the following steps:
  - a. Cancel scheduled hearings or provide the maximum extension for all pending unlawful detainer and foreclosure cases until a date that is at least thirty days after the terminations of state and local declarations of emergency.
  - b. Grant automatic extensions on any court-signed unlawful detainer stipulation that would require actions by tenants that would violate a shelter-in-place order until a date that is at least thirty days after the terminations of state and local declarations of emergency, or until thirty days after the court reopens, whichever is later.
  - c. Declare a moratorium on new unlawful detainer filings, foreclosure filings, and on entry of default in these matters until a date that is at least thirty days after the terminations of state and local declarations of emergency; and

- d. Declare a moratorium on the issuance and execution of writs of possession and execution until a date that is at least thirty days after the termination of state and local declarations of emergency.

The ACLU of Southern California's Kern County Office wants to ensure that officials in Kern County implement policies that will limit the threats presented by this public health crisis. We are available to consult with you as you work toward this common goal, so please do not hesitate to contact us.

Sincerely,

Jordan Wells  
Stephanie Padilla  
Rosa Lopez

ACLU of Southern California – Kern County Office

- c: Leticia Perez, Chair, Kern County Board of Supervisors  
Ryan Alsop, Chief Administrative Officer, Kern County  
Matthew Constantine, Director of Public Health Services, Kern County