



MISSOURI STATE PUBLIC DEFENDER

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March 26, 2020

Hon. George W. Draper, III, Chief Justice, and
Hon. Laura Denvir Stith,
Hon. Mary R. Russell,
Hon. Patricia Breckenridge
Hon. Zel M. Fischer
Hon. Paul C. Wilson
Hon. W. Brent Powell
Members of the Court
207 W. High St.
Jefferson City, MO 65101

Dear Chief Justice Draper and Judges of the Court:

“People refer to cruise ships as petri dishes, but nobody has invented a more effective vector for transmitting disease than a city jail,” a former city corrections commissioner told ABC News a few days ago.¹ Those who will be affected by COVID-19’s inevitable entry into Missouri’s city and county jails include not only inmates, but corrections workers, health care workers, police officers, judicial department employees, attorneys, and the families of many of these people.

We are writing to request that the Supreme Court of Missouri, pursuant to its authority to superintend and supervise Missouri’s judicial system under Article V, Section 4 of the Missouri Constitution, order judges to immediately release from confinement the following groups of inmates during the pendency of the COVID-19 pandemic: (i) those currently serving sentences in any city or county jail in Missouri pursuant to a conviction for a misdemeanor offense; (ii) those currently serving sentences in any city or county jail in Missouri pursuant to a conviction for a municipal ordinance violation; (iii) those confined pretrial on nonviolent misdemeanor, municipal ordinance violation, or nonviolent C, D, and E felony charges; (iv) those confined on technical probation violations or probation violations based on allegations of a municipal ordinance violation, nonviolent misdemeanor, or nonviolent felony; and (v) those in high-risk categories likely to face serious illness or death. This action is necessary to combat the spread of COVID-19 to protect the health and safety of inmates, corrections workers, nurses, and all those involved in Missouri’s justice system.

¹ Chris Francescani and Luke Barr, “Fearing outbreaks and riots, nation’s prison and jail wardens scramble to respond to coronavirus threat,” ABC News (March 19, 2020), available at <https://abcnews.go.com/Health/fearing-outbreaks-riots-nations-prison-jail-wardens-scramble/story?id=69676840>.

We are requesting certain narrowly-tailored relief appropriate to address the current emergency circumstances. As the Court has acknowledged through its two recent orders regarding COVID-19, the threat of the virus is not speculative. The inmates covered by this request can be safely and swiftly released without unduly affecting the administration of justice or endangering the safety of the community.

Positive tests for COVID-19 by inmates have already been reported at jails across the country – including, for example, Rikers Island in New York (with fifty-two confirmed cases as of the date of this letter), Cook County Jail in Illinois, and Santa Clara County Jail in California.² The first positive test in a Missouri correctional facility was reported this week, as well as a confirmed case of an infected juvenile in a Division of Youth Services facility.³ The number of infected individuals in Missouri may look low now, but that undoubtedly is a function of how few tests are being performed. Even any ongoing screening of inmates for symptoms upon admission would not identify individuals who carry the virus but only later become symptomatic after entering the general population, which is a real risk with COVID-19.⁴ With the virus rapidly spreading across Missouri and the rest of the country, and people cycling in and out of city and county jails daily, it is a matter of when – not if – the virus will infiltrate Missouri’s jails.

On March 22, 2020, the Supreme Court of New Jersey granted relief similar to that requested in this letter.⁵ Like New Jersey, Missouri is currently under a state of emergency due to COVID-19.⁶ Like New Jersey’s Supreme Court, this Court has previously acted to alleviate the effects of COVID-19 on the judicial system, exercising its broad supervisory authority to suspend certain normal operations during the pandemic.⁷ And, like New Jersey’s inmates, Missouri’s inmates are at an elevated risk of serious and potentially deadly infection, and will remain so while the risk of transmission of COVID-19 persists. Similar requests will be made to state Supreme Courts across the country, and relief will be granted. Just this week, a circuit judge responded to a release request from a terrified inmate in a county jail who was newly-confined only for the charge of passing a bad check by saying that he would be okay and the judge would see him again in a week. This attitude cannot be Missouri’s answer to this health emergency.

Places of incarceration are considered “ticking time bombs” during a pandemic, as “[m]any people crowded together, often suffering from diseases that weaken their immune systems, form a potential breeding ground and reservoir for diseases.”⁸ To make matters worse, it is also practically impossible for those in Missouri’s jails to comply with many of the precautionary measures recommended by the Centers for Disease Control and Prevention, such as avoiding close contact with other people, using alcohol-based hand sanitizers,

² See Julia Craven, “Rikers Island Has 52 Confirmed COVID-19 Cases,” Slate (March 25, 2020); David Struett, “6 detainees at Cook County Jail contract COVID-19, doubling count from previous day,” Chicago Sun-Times (March 25, 2020); Fiona Kelliher, “Santa Clara County jail inmate tests positive for COVID-19,” San Mateo County Times (March 23, 2020).

³ See “First Missouri DOC prisoner tests positive for COVID-19,” St. Louis Post-Dispatch (March 23, 2020); see also “Youth at State Facility in St. Louis tests positive for COVID-19,” St. Louis Post-Dispatch (March 24, 2020).

⁴ See Kenji Mizumoto, Kayaya Katsushi, Alexander Zarebski, Gerardo Chowll, “Estimating the asymptomatic proportion of coronavirus disease 2019 (COVID-19) cases on board the Diamond Princess cruise ship, Yokohama, Japan, 2020,” Eurosurveillance (March 12, 2020).

⁵ See In the Matter of the Request to Commute or Suspend County Jail Sentences (N.J. March 22, 2020). Similar relief has been sought in, among other places, the Circuit Court of Cook County, Illinois, in the matter styled In re State and National Emergency and the Protection of the Life and Health of Detainees in the County Jail and Those Who Interact With and Massachusetts in the matter styled Committee for Public Counsel Services and Massachusetts Association of Criminal Defense Lawyers v. Chief Justice of the Trial Court. In addition, the Chief Justice of the Supreme Court of Montana recently wrote judges throughout the state requesting that they “review [their] jail rosters and release, without bond, as many prisoners as [they] are able, especially those being held for non-violent offenses.” See Letter from Montana Chief Justice Mike McGrath to Montana Courts of Limited Jurisdiction, dated March 20, 2020, available at <https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333>. These efforts are part of a nationwide push from judges, the defense bar, prosecutors, and other law enforcement officials to reduce the incarcerated population during the pandemic. See also Fair and Just Prosecution, “Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of Those in Custody,” (last updated March 23, 2020), at <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf>.

⁶ See Executive Order 2 (March 13, 2020).

⁷ See In re: Response to the Coronavirus Disease (COVID-19) Pandemic (Mo. banc March 16, 22 2020).

⁸ Saint Louis University, “Ticking Time Bomb: Prisons Unprepared For Flu Pandemic,” ScienceDaily (2006).

and frequently cleaning and disinfecting surfaces.⁹ In short, jails contain many of the factors which aid the spread of disease and lack – at least at a sufficient level – the factors that can slow that spread.

When COVID-19 enters Missouri jails, the results will be devastating. There is no known cure for COVID-19 or any vaccine for the virus which causes it. *Id.* Medical services in Missouri’s jails, strained and often ineffective in the best of times, are simply not up to the task of treating such a novel, highly-transmissible, and deadly disease. When medical services inside of Missouri’s jails inevitably fail to adequately treat inmates or stop the spread of the disease, large-scale releases of inmates will become necessary. It is in the Court’s authority to order appropriate releases now and avoid future death and suffering by those in jail and increased risk to the rest of the population.

We note that the Court’s March 22 order halts (subject to certain exceptions) in-person proceedings in Missouri’s courts through April 17, 2020, in order to prevent the spread of the disease and protect public health. While Missouri’s judicial officers, judicial staff, attorneys, jurors, and parties to litigation certainly are entitled to such protection, the treatment of Missouri’s incarcerated population and those who care for them directly in jails represents a blind spot in the current precautionary plan. While all other relevant parties are subject to an order to enforce social distancing for their health, those inside of Missouri’s jails are forced to live and work each day in close quarters under often unsanitary conditions.

It is manifestly unjust that this population, which is exposed to one of the highest risks of exposure in the state, currently finds no relief even as the wheels of judicial administration slow to protect all other involved parties. Furthermore, as no jail is completely isolated from the rest of the community given the myriad people who visit jails each day, failure to address the grave risk in our jails threatens to undermine all of the Court’s other efforts to protect public health. It is well within this Court’s authority to correct this injustice and prevent Missouri’s jails from contributing to the present crisis.

Piecemeal litigation on the part of zealous attorneys to win the release of individual inmates or to require implementation of heightened health screenings or cleanliness procedures cannot effectively address a problem of this magnitude growing with this swiftness, particularly because many of the inmates whose release is requested by this letter are unlikely to be currently represented by counsel. The Court, pursuant to its authority to supervise the administration of justice in Missouri, can provide the quick and decisive relief necessary to protect many of those currently in Missouri’s jails who have no practical means of petitioning the Court.

There is no precedent for the current crisis. The number of known cases in Missouri – over three hundred and fifty at the time of this writing – will grow. Action to address the public health risk inside of our jails is inevitable, and the only question is when such action will be taken. Action now can avoid death, suffering, and the creation of hundreds more contagious individuals desperately looking for beds in an overburdened healthcare system. We applaud the Court’s attention to the risk of COVID-19 to date, and strongly urge the granting of the relief requested in this letter to address the special risk posed to an often overlooked, marginalized, and unrepresented population.

We have enclosed with this letter a proposed form of order and a letter regarding the risk posed to jail populations by COVID-19 from Dr. Fred Rottnek, Professor and Director of Community Medicine at Saint Louis

⁹ See “How to Protect Yourself,” Centers for Disease Control and Prevention (March 18, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

University School of Medicine and Medical Director of the Physician Assistant Program. We appreciate your time and your continued consideration of the health of Missourians.

Sincerely,

Mary Fox
Director, Missouri State Public Defender

Blake Strobe
Executive Director, ArchCity Defenders

Amy Breihan
Executive Director, Roderick and Solange MacArthur Justice Center

Nimrod Chapel
Missouri NAACP

Adolphus M. Pruitt, II
President, St. Louis City Branch of NAACP

Luz Henriquez,
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Michael A. Wolff
Judge, retired; Dean, retired
Professor *Emeritus*
Former Senior Advisor to St. Louis County Prosecuting Attorney

J. Miles Sweeney
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Professor Karen Tokarz
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Professor Kimberly Norwood
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Missouri Catholic Conference

Metropolitan Congregations United

Reverend Darryl Gray,
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Reverend Linden Bowie
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National Council of Jewish Women

Missouri Faith Voices

The Bail Project

Missouri Appleseed

Empower Missouri

Women's Voices Raised for Social Justice

Heartland Center for Jobs and Freedom

Generate Health

Behavioral Health Response

Behavioral Health Network of Greater St. Louis