



JUSTICE
ACTION NETWORK

FEDERAL EMERGENCY RELIEF FOR STATE AND LOCAL JUSTICE SYSTEMS

**FIVE ACTIONS PUBLIC SAFETY AUTHORITIES FROM ACROSS
THE COUNTRY SAY CONGRESS MUST TAKE... BEFORE IT'S TOO LATE**

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EXECUTIVE SUMMARY

As COVID-19 rips through the country's criminal justice systems, federal lawmakers continue to debate aid to state and local jurisdictions. To better inform the House and Senate on what is happening in justice systems in their own backyards, the Justice Action Network, the nation's largest bipartisan organization dedicated to criminal justice reform at the state and federal levels, gathered well-respected public safety authorities from across the nation who are struggling to keep their communities safe and healthy during this unprecedented global health crisis. These national, state, and local leaders urge the House and Senate to come together to provide emergency relief to state and local justice systems that are acting in the best interests of public health and public safety, and warn that the failure to act will have dire consequences.

In March of 2020, the Justice Action Network convened the COVID-19 Emergency Justice Task Force, a diverse group of criminal justice first responders with credible records as prosecutors, law enforcement, public defenders, corrections officials, sheriffs, judges, and elected policymakers. These leaders, hailing from different states and backgrounds, are united around a public policy platform for the House and Senate to work together and swiftly adopt that would support their efforts to make tough, necessary public health decisions while managing their daily public safety responsibilities with severely diminished resources.

Officials from 15 states, including Arizona, Arkansas, California, Georgia, Iowa, Kentucky, Louisiana, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, and Washington, have incorporated their experiences and ideas into this platform, which details what public safety leaders need from both chambers of the legislative branch in order to keep operations afloat during this pandemic.

While the House and Senate continue to negotiate relief packages, these state and local leaders have already acted to safely reduce prison and jail overcrowding, protect the medically vulnerable, increase the number of tests for public safety officials and the incarcerated population, and adapt to technologies that will allow essential services to continue, consistent with social distancing requirements and advice from public health experts.

Examples of state and local leadership abound: in Kentucky, officials in Kenton County reduced the jail population by 55 percent and worked with the local nonprofit organization Life Learning Center to provide reentry support services; in Ohio, Governor Mike DeWine was ahead of the curve in testing for COVID-19, which revealed that jails and prisons were the nation's top hotspots for the spread of the virus, and enabled other states to act accordingly; in Allegheny County, Pennsylvania, local administrators acted quickly when one jail employee and three incarcerated individuals tested positive, safely releasing hundreds of people and prioritizing the medically vulnerable in the process.

States from Arkansas to Oklahoma, South Carolina to Washington have taken smart and safe steps to reduce prison and jail overcrowding to curtail the spread of COVID-19.¹ State and local officials

are working overtime to “flatten the curve,” and protect public health and public safety. They are doing more with less. But chronic understaffing due to sickness and quarantining, shuttered or severely limited treatment and rehabilitation efforts, and deficient technology to continue essential services are taking a toll, and with major budget shortfalls on the horizon, federal emergency relief has become a matter of life or death.

Federal support is critical to ensure law enforcement, courts, prosecutors, public defenders, reentry service providers, correctional officers, and mental health and addiction treatment programs can confront the virus and meet their legal and constitutional obligations. A failure to provide support to state and local jurisdictions will put countless lives in jeopardy, inside and outside of prisons and jails.

This report presents the recommendations of the Justice Action Network COVID-19 Emergency Justice Task Force to federal lawmakers, based on information gleaned from experiences, innovations, and policy proposals shared by Task Force Members in large and small group discussions.

The House and Senate must come together to immediately support state and local efforts to:

- 1 Safely reduce prison and jail overcrowding to slow the spread of COVID-19;
- 2 Preserve and expand alternatives to incarceration, addiction and mental health treatment, and reentry programs;
- 3 Improve medical care, testing, and treatment;
- 4 Bolster access to technology for essential services and data collection to better prepare for future emergencies; and
- 5 Expand and encourage second chance workforce participation.

We urge federal lawmakers to listen to those on the front lines of justice systems across the country, including their own constituents, on the emergency relief they desperately need to meet the challenges of this public health crisis, while continuing to maintain public safety.

FEDERAL EMERGENCY RELIEF FOR STATE AND LOCAL JUSTICE SYSTEMS

FIVE STEPS FOR CONGRESS TO TAKE IMMEDIATELY:

- 1 **Safely** reduce prison and jail overcrowding to slow the spread of COVID-19;
- 2 **Preserve** and expand alternatives to incarceration, addiction and mental health treatment, and reentry programs;
- 3 **Improve** medical care, testing, and treatment;
- 4 **Bolster** access to technology for essential services and data collection to better prepare for future emergencies; and
- 5 **Expand** and encourage second chance workforce participation.

I. RECOMMENDATIONS FOR EMERGENCY RELIEF

Safely Reduce Prison and Jail Overcrowding to Slow the Spread of COVID-19

- Support for states and local jurisdictions that are taking emergency action to safely reduce dangerous jail and prison overcrowding, starting with vulnerable populations based on Centers for Disease Control (CDC) guidelines, low-risk individuals, individuals nearing release, individuals convicted of misdemeanor offenses, pregnant women, individuals housed for technical probation or parole violations, pretrial populations, and those serving sentences as juveniles.
- Support to increase the use of citations in lieu of arrests for individuals who do not pose a public safety risk to minimize contact between law enforcement officers and pretrial detainees and to reduce the number of new jail admissions.

Preserve and Expand Alternatives to Incarceration, Addiction and Mental Health Treatment, and Reentry Programs

- Funding that provides additional assistance to divert individuals to alternatives to incarceration, such as for addiction and mental health treatment services, many of which have been limited or shuttered altogether during this crisis. Because jails and prisons have been identified as the nation's most significant hot spots for the spread of COVID-19, the jurisdictions that are reducing incarcerated populations will help stop the spread of this disease, but will require assistance with maintaining access to these much-needed resources, including by providing virtual services.
- Funding for reentry programs and organizations providing crucial reentry services (virtually and in-person) in communities, including but not limited to: halfway houses, sober-home living facilities, other housing, nonprofits providing a variety of care during the transition, and more. These programs and organizations are essential in allowing more low-risk incarcerated individuals and pretrial populations to be safely transferred from facilities, therefore fostering safer social distancing for remaining populations and staff within correctional facilities.

Improve Medical Care, Testing, and Treatment to Respond to the Pandemic

- Resources to provide: COVID-19 testing to all incarcerated individuals, justice system personnel, and those working in and around jails and prisons; resources to address chronic understaffing in state and local justice systems during this crisis due to sickness and/or quarantining; and personal protective equipment and other cleaning and sanitation products and services needed to stop the spread of the disease.
- Resources to create or improve custodial health care and other emergency medical services to respond to COVID-19, and custodial or non-custodial mental health or substance abuse treatment.

Bolster Access to Technology For Essential Services and Data Collection to Better Prepare for Future Emergencies

- Resources for court and correctional institution communications technology and information technology staff. COVID-19 has made in-person services and proceedings impossible or extremely limited, and court proceedings are either halted or negatively impacted without video conferencing technology that can connect incarcerated or detained individuals in jails and prisons with courts and legal counsel. Additionally, for states and local jurisdictions to be eligible to access these emergency funds, they must waive all fees on electronic and telephonic communication between detained and incarcerated individuals and their legal counsel when in-person contact is impossible or dangerous due to public health concerns.
- Resources for remote check-in and monitoring technologies to facilitate collaboration and communication among case workers, courts, and the individuals they supervise (e.g., web-based portals to facilitate real time communication and case management). Other technologies, such as low-cost GPS monitoring and mobile phone-based video conferencing will ensure the appropriate monitoring is taking place either through home confinement or contactless community supervision. These tools should be either provided to jurisdictions or funding should be given to develop new or purchase existing technologies.
- Funding for states and local jurisdictions to collect case-level data and implement reporting processes that can be used to follow cases and individuals across jurisdictions. Any local jurisdiction or state drawing from these emergency relief funds must share a standardized set of metrics and put in place a plan of collecting and reporting individual level and case data. Data collection is also critical for identifying objective criteria to determine what emergency response served the best interests of public health and public safety, and what did not.

Expand and Encourage Second Chance Workforce Participation

- Funding for jurisdictions that waive state regulations and restrictions on employment, including occupational licensing board restrictions on licenses for individuals with criminal records that are unrelated to the underlying occupation for which the license is sought.
- Removal of administrative restrictions for small business owners with criminal records to access federal stimulus funds, specifically the Small Business Administration's Paycheck Protection Program.
- Funding for employers acting in the best interest of public safety by hiring or employing individuals with criminal records or those returning from incarceration, as well as employers' public-private partnership with prisons and jails that provide employment and occupational training.

II. COVID-19 EMERGENCY JUSTICE TASK FORCE MEMBERS

- **Hon. Jeff Bivins, Chief Justice**, Supreme Court, Tennessee
- **Jeff Bledsoe, Sheriff**, Dickson County, Tennessee
- **Stephanie Groen, Director of State-Federal Relations**, Office of the Governor, Iowa
- **Hon. Christine Horwart, Judge**, 19th Judicial District West, Arkansas
- **Hon. Matt Huffman, State Senator**, Ohio
- **Stephen Ross Johnson, Criminal Defense Attorney**, Board of Directors, National Association of Criminal Defense Lawyers, Ritchie Dillard Davies & Johnson PC, Knoxville, Tennessee
- **Steven Paré, Commissioner, Department of Public Safety**, Providence, Rhode Island
- **David Patton, Executive Director**, Federal Defenders, New York
- **Hon. Phil Plummer, State Representative**, Ohio
- **Hon. Roger Rogoff, Judge**, King County Superior Court, Washington
- **Rachel Rossi, Former Assistant Federal Public Defender** for the Central District of California
- **Rob Sanders, Commonwealth Attorney**, 16th Judicial Circuit, Kentucky
- **Hon. Scott Schlegel, Judge**, 24th Judicial District Court, Jefferson Parish, Louisiana
- **Hon. Bill Seitz, House Majority Leader and State Representative**, Ohio
- **Tim Svenson, Sheriff**, Yamhill County, Oregon
- **Jeremy Travis, Executive Vice President of Criminal Justice**, Arnold Ventures
(*Honorary Chair of Task Force*)
- **Brett Tolman, Former U.S. Attorney**, Utah
- **Kent Volkmer, Pinal County Attorney**, Arizona
- **John Wetzel, Secretary**, Department of Corrections, Pennsylvania
- **Stephanie Woodard, Solicitor General**, Hall County, Georgia

Justice Action Network staff facilitated all meetings.²

III. MEETING HIGHLIGHTS

The Task Force convened in a series of virtual meetings with Justice Action Network staff over the month of April. An introductory meeting was held with the full Task Force on April 10, 2020. Each member spoke about their experiences working in the justice system during the current crisis, and specific challenges they are facing due to social distancing protocols and COVID-19 response. Based on these individual narratives, it was determined that federal support should address four main areas within the justice system: Reducing Prison and Jail Populations, Technology and Data Collection, Treatment and Services, and Employment and Workforce Development. The Task Force members were divided into four Working Groups based on their roles in the justice system and their areas of interest and expertise. Justice Action Network staff facilitated meetings with each Working Group. The full Task Force then reconvened for a second virtual meeting, during which a representative from each Working Group gave a report on his/her group's discussion. The sections below provide highlights from each of these meetings.

Task Force First Meeting, April 10, 2020

Members of the Task Force expressed that there is a need to safely reduce incarcerated populations in some capacity in response to the COVID-19 crisis. At least one member emphasized that judges are the main system actors who are able to address this challenge, and that judges across the country are deciding to do so through increased release and monitoring, or through reduced pretrial detention, but that there is a need for consistency. Members also voiced that, to respond to social distancing requirements, many courts have had to switch to virtual proceedings, which has been particularly difficult for courts in rural areas with limited access to technology or sufficient broadband connectivity. Broad and universal electronic filing capabilities present an additional challenge. Task Force members also expressed concerns for confidentiality in and access to virtual consultations between lawyers and clients.

Sheriffs and corrections officials working to safely reduce incarcerated populations noted that they are struggling to find housing for returning individuals. There is also a challenge in pairing individuals with reentry services while community partners are themselves struggling with staffing shortages and operating under stay-at-home orders. At least one Task Force member expressed the need for creative solutions to reentry housing, such as partnerships with local hospitality businesses.

Members added that resources are needed to support essential community services shuttered or limited during this crisis, including those that address addiction, mental health issues, housing, and health care needs for those returning to society. At least one prosecutor reported overdose tragedies due to limited access to drug treatment during the pandemic. They also noted that funds are needed for technology that will allow for more efficient management of caseloads, which

are in unprecedented backups due to shutdowns, as well as technology that will better allow for attorney-client confidentiality and consults between attorneys and their clients during virtual court proceedings.

Given the long-term implications of this crisis, members of the Task Force expressed a need for policies that would encourage longer-term reductions in populations, including “earned credit” opportunities for incarcerated populations, and reforms to how justice systems deal with technical probation or parole violations.

Finally, members expressed that lockdown situations in prisons are not sustainable long-term solutions. Programming in prisons cannot be suspended forever, and states should be taking steps to improve accessibility for virtual programming across facilities so that a single teacher can provide the same virtual classes to several prisons simultaneously and participants are able to safely distance from one another.

Reducing Prison and Jail Populations Working Group Meeting, April 17, 2020

Members:

- **Hon. Jeff Bivins, Chief Justice**, Supreme Court, Tennessee
- **Jeff Bledsoe, Sheriff**, Dickson County, Tennessee
- **Rachel Rossi, Former Assistant Federal Public Defender** for the Central District of California
- **Hon. Bill Seitz, House Majority Leader and State Representative**, Ohio
- **Kent Volkmer, Pinal County Attorney**, Arizona
- **John Wetzel, Secretary**, Department of Corrections, Pennsylvania

This Working Group discussed the varied challenges around reducing jail and prison populations, which the participants agreed is necessary to adhere to social distancing recommendations of public health experts, and stymie the spread of COVID-19 in locations that have been determined to be one of the most significant hot spots for spread of the novel coronavirus: jails and prisons.

The primary issue the group discussed was the need for any federal emergency relief to support states that are reducing incarceration in the best interests of public health by focusing releases on vulnerable populations based on CDC guidelines, individuals who are not a public safety threat, individuals nearing release, individuals convicted of misdemeanor offenses, pretrial populations, individuals housed for technical probation or parole violations, and those serving sentences as juveniles.

The Working Group noted how different jurisdictions will vary in the percentage of their populations that fall into the aforementioned categories, which will impact how many individuals they can release. The group discussed how this should be taken into consideration by the entity distributing funds.

It was also noted that many jurisdictions have broad discretion to release individuals pretrial, but not all jurisdictions have the ability to monitor individuals in the community or employ an intermediate option between being released on recognizance and detention (e.g., intermediate pretrial supervision).

The group discussed how some jurisdictions are encouraging law enforcement to utilize civil citations, and only bring individuals into jail if they pose a true public safety threat. It is also helpful for jurisdictions and authorities to have a coordination point: in Tennessee, per the Tennessee Supreme Court's order, county jails have coordinated their plans to reduce pretrial incarceration, incorporating input from public defenders, courts, and prosecutors.

Additionally, the group discussed how many jurisdictions are experiencing staffing shortages due to sickness and quarantining, and the loss of even one staff member can cripple a local law enforcement or public safety office. COVID-19 testing for staff and incarcerated individuals is limited or non-existent in many jurisdictions, and testing is critical to returning justice systems to pre-crisis capabilities.

Finally, the group talked about the importance of collecting data based on objective criteria to measure the impact of reductions in incarcerated populations, as well as technology to adequately track the progress of individuals who are released. To prepare for another crisis of this magnitude, leaders must know what worked in the best interests of public health and public safety, and what did not.

Data Collection and Technology Working Group Meeting, April 17, 2020

Members:

- **Hon. Christine Horwart, Judge**, 19th Judicial District West, Benton County, Arkansas
- **Hon. Scott Schlegel, Judge**, 24th Judicial District Court, Jefferson Parish, Louisiana
- **David Patton, Executive Director**, Federal Defenders, New York
- **Stephen Ross Johnson, Criminal Defense Attorney**, Board of Directors, National Association of Criminal Defense Lawyers, Ritchie Dillard Davies & Johnson PC, Knoxville, Tennessee

This Working Group identified challenges with access to communication technologies required to continue court proceedings and other essential functions and services during the COVID-19 crisis. In particular, many jails and prisons are unable to conduct virtual meetings between attorneys and their clients, and also lack the digital infrastructure that would allow detained or incarcerated people to remotely participate in court proceedings. The group recommended that federal funding be used to build out infrastructure in jails and prisons that would allow for digital communication in place of in-person meetings.

III. MEETING HIGHLIGHTS

The group stated that resources for remote check-in and monitoring technologies to facilitate collaboration and communication among case workers, courts, and the individuals they supervise (e.g., web-based portals to facilitate real time communication and case management) would be especially helpful, and further recommended that other technologies, such as low-cost GPS monitoring and mobile-phone-based video conferencing, could ensure that the appropriate monitoring is taking place, either through home confinement or contactless community supervision.

Furthermore, electronic and telephonic communications often require payment, which is not feasible for detained and incarcerated people and their public defenders. The group recommended that states and local jurisdictions waive all fees on electronic and telephonic communication between detained and incarcerated individuals and their legal counsel when in-person contact is impossible or dangerous due to public health concerns, if they are to receive any federal funding.

Another major obstacle for justice systems around the country is the lack of digitized forms and ability to electronically sign documents, which would allow courts to continue proceedings without endangering individuals with in-person meetings. As courts across the country work to establish social distancing and limit the number of individuals who are entering courtrooms, court documents must be able to be signed electronically. The group recognized that as these electronic services are increasingly relied upon, there is an even greater need to ensure confidentiality. Communications coming in and leaving detention facilities are often heavily monitored, and the Working Group recommended that the increased use of email and digital forms be accompanied by proper security assurances for attorney/client communication.

The group recommended additional specialty court (e.g., drug court) support, such as facilitating collaboration and communication among case workers, courts, and supervisees. Additionally, the group agreed that low-cost electronic monitoring and check-in capabilities would be helpful to jurisdictions that are struggling with monitoring individuals on community supervision.

The last need discussed was for funding for local jurisdictions and states to collect data and implement reporting processes that can be used to follow cases and individuals across jurisdictions. It was recommended that any jurisdiction or state drawing down these funds would be required to put in place a plan of collecting and reporting individual level and case data. Sheriffs, jailers, and courts would be able to streamline the warrant and release process with uniform data collection, which would help states cut costs, reduce unnecessary detentions, and better identify individuals detained pretrial who may be eligible for release.

Treatment and Services Working Group Meeting, April 21, 2020

Members:

- **Hon. Phil Plummer, State Representative**, Ohio
- **Hon. Roger Rogoff, Judge**, King County Superior Court, Washington
- **Rob Sanders, Commonwealth Attorney**, 16th Judicial Circuit, Kentucky
- **Tim Svenson, Sheriff**, Yamhill County, Oregon

This Working Group identified many challenges that states and local jurisdictions are facing as it relates to connecting justice-involved individuals with treatment and services to address addiction and mental health issues. The group reported chronic staffing shortages to manage the COVID-related backlog of cases. And with stay-at-home orders in effect, many service providers are limited or are experiencing staffing shortages, and do not have adequate technology to manage their caseload in a manner consistent with social distancing.

Leaders are concerned that limited access to mental health and substance abuse treatment will have an adverse impact on public health and public safety. One member noted overdoses that could have been avoided if the individuals had access to regular treatment providers, which are overwhelmed and have limited capabilities during this crisis. Another member noted that evaluations for competency hearings are also limited during this crisis, leaving individuals with mental illness behind bars for months, and further complicating the work of already overburdened corrections officers.

Members also noted that keeping incarcerated populations on lockdown is not sustainable in the long-term. Some states are allowing online programming, which allows teachers to conduct classes in several facilities simultaneously without having to physically enter them. Online engagement also helps with staffing shortages. It was agreed that additional funding to enable virtual programming in jurisdictions that do not have these capabilities would be extremely critical to maintaining public safety during this crisis and beyond.

Additionally, the group highlighted that community resources are needed to better facilitate partnerships that offer alternatives to incarceration, especially when jurisdictions are working hard to reduce their incarcerated populations. To that end, the group emphasized that these funds should also be directly accessible to nonprofit reentry service providers that provide alternatives to incarceration, which would help streamline funding and eliminate delays in distribution of funds.

Employment and Workforce Development Working Group Meeting, April 16, 2020

Members:

- **Stephanie Groen, Director of State-Federal Relations**, Office of the Governor, Iowa
- **Hon. Matt Huffman, State Senator**, Ohio
- **Steven Paré, Commissioner**, Department of Public Safety, Providence, Rhode Island
- **Brett Tolman, Former U.S. Attorney**, Utah
- **Stephanie Woodard, Solicitor General**, Hall County, Georgia

This Working Group acknowledged that employment for those with a criminal record was already a challenge before the advent of COVID-19, and the dearth of opportunities is even worse now. Particularly challenging is the restriction on small business loans and unemployment assistance for those with criminal records, as well as licensing and regulations that serve as a barrier to employment for those with records unrelated to the profession for which a license is sought.

The group stated that federal relief would be particularly helpful for jurisdictions that are waiving state regulations and restrictions on employment, including occupational licensing board restrictions on individuals with criminal records that are unrelated to the underlying occupations. The group also discussed the option of a graduated licensing track; i.e., a probationary or provisional initial period that paves the way to a full unrestricted license.

The group also agreed that any negotiated relief package should include the removal of administrative restrictions for small business owners with criminal records to access federal stimulus funds, specifically the Small Business Administration's Paycheck Protection Program. Additionally, the members agreed that the House and Senate should work together to open access to emergency funds to employers that hire or employ individuals with records or those returning from prison, and that the entity distributing the funds should take into consideration the percentage of employees that fall into this category. Finally, the group suggested opening access to emergency funds to states and local jurisdictions that have prioritized or are prioritizing record sealing or expungement policies. The group discussed the different forms that this emergency relief could take, such as tax credits or lump sum funds.

Task Force Second Meeting, April 24, 2020

On April 24, 2020, the full Task Force reconvened, and a representative from each Working Group shared the above reports from their separate meetings. House and Senate staff and advisory groups also participated in the virtual meeting to observe the reports.

Members were notified that a report, including the recommendations for federal support, will be presented to House and Senate leadership for inclusion in the next federal relief package.

CONCLUSION

The recommendations laid out in this report are guided by the first-hand experiences of the nation's justice system first responders. It is imperative that the House and Senate work together to address the urgent needs stated by the people on the front lines of this crisis, and provide the emergency resources necessary to maintain public safety and public health.

Without emergency resources to address overburdened justice systems and massive budget shortfalls, states and local jurisdictions will struggle to manage the spread of COVID-19 in the nation's top hot spots, overcrowded jails and prisons, which will inevitably lead to outsized infection rates in surrounding communities. Congress must come together to immediately support state and local efforts to: safely reduce prison and jail overcrowding to slow the spread of COVID-19; preserve and expand alternatives to incarceration, addiction and mental health treatment, and reentry programs; improve medical care, testing, and treatment; bolster access to technology for essential services and data collection to better prepare for future emergencies; and expand and encourage second chance workforce participation.

We urge the House and Senate to heed the warnings of the people on the front lines of this crisis, and act swiftly to provide the emergency resources needed to protect the health and safety of all Americans.

1. *How to "Flatten the Curve" in the Justice System*. Justice Action Network. <https://www.justiceactionnetwork.org/covid19>
2. Full biographies of Task Force Members can be found here <https://www.justiceactionnetwork.org/task-force>