

March 11, 2020

Mike Smith
Secretary
Vermont Agency of Human Services

Re: Vermont Response to COVID-19

Dear Secretary Smith,



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acluvt.org

Julie Kalish
President

James Lyall
Executive Director

As Vermont plans a response to COVID-19, we hope you will consider the ACLU as a resource in the Agency of Human Services' work to protect the health, safety, and civil liberties of all Vermonters. We recognize that during a disease outbreak individual rights may give way to the greater good. But the use of any measures that deprive individuals of their liberty must be scientifically supported and proportional. And, individuals' due process rights must always be respected, including the ability to challenge government actions impacting civil rights and liberties.

As you may know, last week a group of over 800 public health experts and organizations signed a public letter warning that widespread transmission of Covid-19 within the United States is "inevitable."¹ This letter includes recommendations to federal, state, and local leaders on achieving a fair and effective response to the coronavirus outbreak. The recommendations stress the need to protect vulnerable populations.

In particular, we urge the Agency of Human Services to develop and implement an **evidence-based, coordinated response for the prevention and management of COVID-19 in Vermont Department of Corrections facilities—as well as out-of-state facilities in which Vermonters are currently incarcerated.**²

People in prisons are highly vulnerable to outbreaks of contagious illnesses. They are housed in close quarters and are often in poor health. Without the active engagement of the prison administration, they have little ability to inform themselves about preventive measures, or to take such measures if they do manage to learn of them. Having an appropriate, coordinated, and evidence-based plan in place can help prevent an outbreak and minimize its impact if one does occur. Not having one may cost lives.

¹ Gregg S. Gonsalves, et al., *Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State and Local Leaders from Public Health and Legal Experts in the United States*, Mar. 2, 2020, available at https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf.

² The Agency should ensure similar efforts are undertaken in any state or non-state facility where Vermonters are held involuntarily, including the Vermont Psychiatric Care Hospital, Woodside Juvenile Rehabilitation Center, etc.

We understand that best practices for preventing and managing a potential COVID-19 outbreak in prison settings include the following:

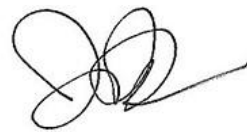
- **Education of people in custody:** People housed in the prisons need to be informed about the virus and the measures they can take to minimize their risk of contracting or spreading the virus. They should receive information on the importance of proper handwashing, coughing into their elbows, and 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 the staff:** Correctional, administrative, and medical staff all need to be educated about the virus to protect themselves and their families, as well as the people in their custody.
- **Staffing plans:** Regardless of how many staff stay home because they are sick, the prisons will have to continue functioning. There should be a plan for how necessary functions and services will continue if large numbers of staff are out with the virus.
- **Staffing plans for work provided by prisoners:** Many operational tasks in prisons, such as food preparation and basic sanitation, are performed by prisoners. Our prisons also provide inmate labor in a number of different capacities. The plans for an outbreak should address how such work performed by prisoners will continue if large numbers of prisoners are ill.
- **Provision of hygiene supplies:** The most basic aspect of infection control is hygiene. There must be ready access to warm water and adequate hygiene supplies, both for handwashing and for cleaning.
- **Screening and testing of the people in your custody:** The plan should include guidance, based on the best science available, on how and when to screen and test people in your facilities for the virus.
- **Housing of persons exposed to the virus:** The plan should describe how and where people in the prison system will be housed if they are exposed to the virus, are at high risk of serious illness if they become infected, or become sick with it. *This should not result in prolonged, widespread lockdowns.* Any lockdowns or interruptions 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 as limited as possible in scope and duration.
- **Treatment:** Courses of treatment must be evidence-based, available immediately, and in compliance with science-based public health protocols.
- **Vulnerable Populations:** The plan should 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.
- **Data collection:** The collection of data regarding COVID-19 needs to be part of the public health response. As with any contagious disease, data collection is critical to understanding and fighting the virus. The prison system must be part

of this process, and the same information that is tracked in the community should be tracked in the prisons.

We would also refer you to the recommendations of the Prison Policy Initiative, which include **the release of medically fragile and older adults, a reduction in prison admissions, and a reduction in unnecessary parole and probation meetings.**³

Please let us know if you have questions. We want to keep an open line of communication with the Agency of Human Services and hope you will not hesitate to contact us as any civil liberties-related concerns arise.

Sincerely,



James Lyall
Executive Director
ACLU of Vermont

Cc: Jaye Johnson
Legal Counsel
Office of Governor Phil Scott

Mark Levine
Commissioner
Vermont Department of Health

Jim Baker
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³ Peter Wagner and Emily Widra, *No need to wait for pandemics: the public health case for criminal justice reform*, March 6, 2020, available at <https://www.prisonpolicy.org/blog/2020/03/06/pandemic/>