

July 27, 2020



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Steve Sisolak, Governor of  
the State of Nevada

Aaron Ford, Nevada  
Attorney General

Joseph Lombardo, Clark  
County Sheriff

Kenneth Elgan, Esmeralda  
County Sheriff

Hon. J. Russell, First  
Judicial District Court

Hon. Nancy Porter, Fourth  
Judicial District Court

Hon. Steve L. Dobrescu,  
Seventh Judicial District  
Court

Hon. Thomas L. Stockard,  
Tenth Judicial District  
Court

Robin Sweet, Nevada  
Supreme Court  
Administrator

Charles Daniels, Director  
of the Nevada Department  
of Corrections

Chris Hicks, Washoe  
County District Attorney

Darin Balaam, Washoe  
County Sheriff

Hon. Scott N. Freeman,  
Second Judicial District  
Court

Hon. Kimberly Wanker,  
Fifth Judicial District Court

Steven D. Grierson Judicial  
Executive Court  
Administrator, Eighth  
Judicial District Court

Hon. Jim C. Shirley,  
Eleventh Judicial District  
Court

Kristina Pickering, Chief  
Justice of the Nevada  
Supreme Court

Steven B. Wolfson, Clark  
County District Attorney

Ken Furlong, Carson City  
Sheriff

Sharon Wehrly, Nye  
County Sheriff

Hon. John Schlegelmilch,  
Third Judicial District  
Court

Hon. Michael R. Montero,  
Sixth Judicial District  
Court

Hon. Nathan Young, Ninth  
Judicial District Court

Assemblywoman Rochelle  
Nguyen, Chair, Advisory  
Commission on the  
Administration of Justice

Nevada Parole Board

## **RE: COVID-19 and the Criminal Justice System**

Dear State Leaders,

On March 26, 2020, we wrote to ask you to prepare for and mitigate the harmful effects that COVID-19 would inevitably have on our criminal justice system. We urged you to develop and implement holistic policies that align with guidance from public health experts. We set out nine practices that you and your organizations could adopt to reduce



the number of people entering into and remaining in the criminal legal system, thereby reducing the overall burden on the system and ensuring that people can adhere to recommended health practices. We warned that, if these measures were not taken swiftly, we would see an outbreak of COVID-19 in our jails and prisons that would threaten the health of every individual in the criminal legal system and our community as a whole.

COVID-19 has continued to spread exponentially across the country and across the state of Nevada. The first case in Nevada was reported on March 5, 2020. By March 26, the date of our first letter, the number of people who had tested positive for COVID-19 in Nevada was 420, and 10 people had died from the disease.<sup>1</sup> As of the date of this letter, 43,831 Nevadans have contracted COVID-19 and 739 people have died.<sup>2</sup> Each day, hundreds of Nevadans test positive for the virus. Hundreds more occupy beds in our state's hospitals and intensive care units.

There remains no vaccine and no cure to COVID-19. The only way to slow the spread of the novel coronavirus is to follow the advice of public health officials: engage in social distancing and increased hygiene practices, wear a mask, avoid large groups of people, and stay home whenever possible. On our review, these practices have not been sufficiently implemented in many of the prisons, jails, and courthouses in the state.

Our first letter was a plea for action based on existing law to avoid injuries, to protect vulnerable populations, and to reduce the COVID-19 exposure of government officials, those in the care of our prisons and jails, and the entire state. **This letter is an acknowledgment that our plea was not heard. Simply stated, Nevada's failure to adequately respond has put thousands of lives—both inside and outside of detention facilities—at risk.**

### CURRENT STATUS AT NEVADA FACILITIES

As of the date of this letter, the state has reported confirmed cases of COVID-19 among staff and/or inmates in 9 of its state correctional facilities, including:

- Casa Grande Transitional Housing Facility
- Ely State Prison
- Florence McClure Women's Correction Center
- High Desert State Prison
- Indian Springs Southern Training Center
- Lovelock Correctional Center
- Northern Nevada Correctional Center
- Southern Desert Correctional Center
- Tonopah Conservation Camp

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<sup>1</sup> <https://www.rgj.com/story/news/2020/03/26/nevada-coronavirus-cases-by-county-timeline-map/5082421002/>

<sup>2</sup> <https://thenevadaindependent.com/coronavirus-data-nevada>

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This adds up to a total of 86 unique confirmed cases in state-run correctional facilities, including 38 cases in High Desert State Prison alone. We have also learned that more than two-thirds of the Nevada inmates housed in the Saguaro Correctional Facility in Eloy, Arizona have contracted the virus.<sup>3</sup>

The situation is not better in local jails and detention centers. While many facilities are failing to share updated or any information about the incidence of COVID-19 among their residents and staff, our review of the available data and our conversations with inmates and their families indicate that the virus is even more prevalent in these facilities. To date, we have learned the following:

- There have been at least 152 confirmed cases at the Clark County Detention Center, an increase of 60 cases since July 9.<sup>4</sup>
- There are 37 confirmed cases in the Nye County Detention Center.<sup>5</sup>
- There are 7 confirmed cases in the Tonopah Detention Center. This facility currently only houses 21 inmates, meaning that one-third of the inmates currently incarcerated have COVID-19.<sup>6</sup>
- There are 30 cases in the Pahrump Detention Center.<sup>7</sup>

These are just the numbers that are publicly available. We have reason to believe that there are positive cases in other facilities, but the lack of transparency exhibited by many of our local authorities has made obtaining this information extremely difficult, if not impossible.

Another disturbing trend we are currently witnessing is an increase in COVID-19 cases in our local courthouses and among the attorneys that serve our criminal legal system. As of July 9, at least 14 employees at the Regional Justice Center in Las Vegas have tested positive for the virus.<sup>8</sup> Las Vegas Justice Court has reported 5 cases and the Eighth Judicial District Court has reported 3 cases. The Clark County Public Defender's office has reported 3 cases among its staff; the Clark County District Attorney's office has reported 5 cases.

## FAILED SAFETY MEASURES

Since the COVID-19 pandemic arrived in Nevada, we have observed a failure on the part of leadership to implement and properly enforce evidence-based safety measures

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<sup>3</sup> <https://www.rgj.com/story/news/local/mason-valley/2020/07/19/coronavirus-nevada-covid-19-updates-arizona-prison-cases/5468224002/>

<sup>4</sup> <https://www.reviewjournal.com/crime/clark-county-jail-sees-covid-19-case-numbers-rise-2079217/>

<sup>5</sup> <https://pvtimes.com/news/covid-19-outbreak-reaches-nye-county-detention-centers-87217/>

<sup>6</sup> <https://pvtimes.com/news/covid-19-outbreak-reaches-nye-county-detention-centers-87217/>

<sup>7</sup> <https://pvtimes.com/news/covid-19-outbreak-reaches-nye-county-detention-centers-87217/>

<sup>8</sup> <https://www.reviewjournal.com/crime/courts/at-least-14-covid-19-cases-at-las-vegas-courthouse-since-june-2071083/>

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in our prisons and jails. Inmates in multiple facilities, their families, and their attorneys have reported:

- Practicing increased hygiene is nearly impossible. Many facilities have limited hygiene supplies, or inmates are required to purchase the supplies with their own money.
- While staff members seem to have adequate access to personal protective equipment, many do not wear it consistently or correctly.
- Social distancing is impossible in many facilities. Bunks are still close together. Inmates still dine near one another.
- Sanitization of surfaces, including in common areas and bathroom facilities, does not occur frequently enough.
- To be transported to court or for video appearances, inmates are shackled together, making social distancing impossible.
- While inmates in some facilities have access to masks, they are not encouraged or required to wear them properly.

While we are pleased that widespread COVID-19 testing has occurred or is occurring in some places, including in every facility in the Nevada Department of Corrections, testing needs to occur frequently and in every correctional facility. Early identification and isolation of positive inmates and staff, especially those who are asymptomatic, is essential to preventing a major outbreak.

### **FAILED COMMUNICATION AND TRANSPARENCY**

The ACLU of Nevada, along with private practitioners and defense organizations, including Nevada Attorneys for Criminal Justice (NACJ), have issued public records requests demanding information related to COVID-19 protocols and statistics in detention facilities. Many of those requests have been met with silence.

Given the information we have received from persons residing inside the Clark County Detention Center (CCDC) over a period of many months, and the frequency with which arrestees miss court appearances, this silence suggests concealment of problematic circumstances. Unfortunately, our grave concerns are corroborated by recent news reporting a **65% increase in COVID-19 cases over a period of two (2) weeks at CCDC.**<sup>9</sup>

The Las Vegas Metropolitan Police Department boasts transparency ad nauseam in press conferences, interviews, presentations, and on its own website.<sup>10</sup> We are left to wonder why this transparency has not translated to regular reporting on COVID-19 cases in the jail. Reporting, including information on COVID-19 protocols and adjustments thereto, must be frequent and consistent.

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<sup>9</sup> <https://www.reviewjournal.com/crime/clark-county-jail-sees-covid-19-case-numbers-rise-2079217/>

<sup>10</sup> <https://www.lvmpd.com/en-us/Pages/Transparency.aspx>



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## LACK OF OVERSIGHT AND ACCOUNTABILITY

The absence of oversight perpetuates and exacerbates the foregoing problems. The State Board of Health, for example, is charged with adopting and enforcing compliance with “regulations governing the sanitation, healthfulness, cleanliness and safety” of local jails statewide. NRS 211.240(7); NRS 444.335.

Over a period of months, we have attempted to contact this agency to ascertain its efforts to enforce proper health and sanitation measures in local detention facilities. The State Board of Health is “closed until further notice.” This is the case despite an unprecedented health crisis and the Board of Health’s obligation to monitor health, safety, and sanitation standards in Nevada’s jails.

## ACCESS TO JUSTICE AND COUNSEL

The failure of jails to implement adequate health and safety protocols has defeated incarcerated persons’ access to attorneys, case information, and court proceedings. Quarantine policies, for example, significantly delay prompt, individualized custody determinations, unconstitutionally depriving arrestees of their liberty and unnecessarily exposing them to a deadly virus. COVID-19 protocols that engender outright constitutional violations must be adjusted.

Among other things, quarantine policies also delay preliminary and other evidentiary hearings. Attorneys regularly appear in court only to be informed that their clients are in medical isolation. Making matters worse, transport officers are, more often than not, unable to tell the parties or the court when an inmate will be released from quarantine. Because attorneys and courts cannot ascertain an incarcerated person’s release from quarantine, critical hearings cannot be reset to the earliest possible date.

Attorney communication with incarcerated persons is also limited. Certainly, jails cannot, at this point, safely facilitate contact visits between attorneys and their clients. This protects incarcerated persons. However, alternatives such as telephone calls and video visits must facilitate confidential conversations. Telephones and video booths are located in common areas, and so eliminate the confidentiality to which incarcerated persons are undoubtedly entitled. Where contact visits are not an option, jails must augment alternative communication measures to guarantee confidentiality.

All Nevadans are adjusting to necessary inconveniences to protect one another from the spread of COVID-19. In the pretrial carceral context, these protections are not mere inconveniences—they can amount to constitutional violations. Because the pandemic has not suspended constitutional protections for pretrial detainees, jail protocols must respect bedrock constitutional principles and facilitate access to justice.



AMERICAN CIVIL LIBERTIES UNION

Nevada

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## IN CLOSING

The time to act to prevent further harm to our community and the criminal legal system has passed. However, there are recommendations that we described in our initial letter that can still be implemented now. The ACLU of Nevada is willing to be a resource for you throughout this process, however we will also take steps to protect our community and prevent further harm and injustice.

If you have questions or would like to discuss this further, please contact Sherrie Royster, ACLU of Nevada legal director, at [royster@aclunv.org](mailto:royster@aclunv.org).

Sincerely,

Sherrie Royster  
Legal Director  
ACLU of Nevada

### Signatories

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