

MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



Response to Chief Judge Barbera

April 17, 2020

WHY MARYLAND COURTS' RESPONSE TO COVID-19 IN PRISONS AND JAIL ISN'T ENOUGH

Two days ago, news media reported Maryland's Chief Judge has taken [action to "protect" our state's adult prison population](#). The headline, unfortunately is greatly overstated.

The threat to Marylanders in state prisons and jails continues to be an extreme one because these facilities inherently require keeping large populations close together: shared bathrooms, cafeterias, side-by-side multi-person cells. Unless prison populations are reduced, "social distance" isn't possible. And, medical facilities behind the wall are tragically inadequate, even though corrections administrators and staff are doing their best. The results are ominous: Since April 1, reported COVID-19 infections in Maryland prisons have risen from 3 cases to 136 cases– including inmates, correctional officers and other staff.

To understand the problems, we consider the numbers and the processes involved. Here are the numbers:

- 6,072 (22%) – population awaiting trial in Md.'s local detention centers, eff. 1/31/20
- 2,303 (8%)- sentenced pop. in Md.'s local detention centers, eff. 1/31/20
- 19,151(70%)- sentenced pop. in Md. state prisons – latest statistics (FY 2018)
- 27,526 (100%)- combined population held in custody

[Chief Judge Barbera's order](#) focuses primarily on the 30% awaiting trial or sentencing, but devotes only one brief reference to the more than 21,000 inmates or 70% now serving sentences. That reference states:

“Judges are to continue to act expeditiously to issue a ruling or schedule a remote hearing upon motion of any party to modify a sentence in light of the considerations related to the COVID-19 emergency.”

In other words, there is no change to Md. Rules or court process for the 70% at risk in state prisons and local detention centers. Maryland Courts are, systemically, not well-suited to dealing with populations who, as a group, are subject to collective public health risks because courts' rules and processes require that individuals are examined one case at a time, with advance notice, and opportunity for opposing parties to respond. Each individual case, at best, normally requires either many days or weeks to process.

By contrast, the Governor, his Secretary in charge of prisons, and their local government counterparts are extremely well-suited to respond to collective health problems in state prisons and local

jails: They keep records of inmates sorted by their offense category—for example, nonviolent and violent. (The Courts do not keep such pre-sorted records.) They keep records of inmates sorted by age and health status. (The Courts do not keep such pre-sorted records.) They have a built-in Parole Commission and house-arrest system. (The Courts must depend on the state and local corrections officers for their management.). Finally, the Governor and County Executives have unique executive powers to set and revise rules that can affect with Maryland residents in groups — not on a case-by-case basis.

Under these circumstances, those concerned about their fellow Marylanders behind bars and at risk for infection and, possibly, death from COVID-19 should continue to ask the Governor to take prompt action to furlough, commute sentences, or otherwise release inmates held only for nonviolent offenses, as well as the elderly and medically-at-risk who would be able to shelter more safely outside of our state's prisons.

A letter to Maryland legislators — asking them to join with Johns Hopkins medical faculty, most of Maryland's delegation to Congress, the Archbishop and many others— in this request to the Governor is attached. MAJR members are encouraged to contact their legislators with this request!