



STATE OF HAWAII  
OFFICE OF THE PUBLIC DEFENDER



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**RE: Urgent action needed to manage COVID-19 risk in correctional facilities**

Dear Public Officials,

We write to ask your help in averting and mitigating the threat the coronavirus pandemic poses to one of the most vulnerable populations in Hawai'i, the men and women in our correctional facilities. Public health experts throughout the United States are warning of a disaster looming in overcrowded correctional facilities (See: "[We Must Release Prisoners to Lessen the Spread of Coronavirus](#)", *The Washington Post*). Hawai'i is no different. We know that everyone in the criminal justice system – police, judges, prosecutors, correctional facility administrators, public defenders, and the Parole Board – shares our concerns. We hope to coordinate and streamline efforts to reduce the population and the risk to public health as well as to reduce the burden on all concerned.

We cannot stress too heavily the need for urgent action, for dispensing with business as usual. With exponential growth of the infected population, a delay of even a few days could dramatically increase the risk to the people held at the correctional centers, to correctional officers and to the public. Our facilities are the ideal breeding grounds for the COVID-19 – hundreds of people packed together, often in poor health, with limited ability to follow the hygiene and social distance guidance that the rest of us are trying to observe and enforce. If one

person becomes infected, there is a very high likelihood of spread to other people, including staff and correctional officers, and in turn to the community. If a single person becomes infected, release of any other people from the same facility will become extremely challenging. Moreover, commitment of new individuals to that facility might become impossible. Every release of a detained person reduces the risk of an outbreak.

We should start with four steps. First, we should stop arrests for petty offenses. Unfortunately, the data for Oahu suggests that HPD is conducting business as usual, arresting individuals for minor offenses such as illegal smoking. There is simply no justification at this point for bringing people into custody, and exposing all concerned to unnecessary risk, even for a short time.

Second, we should restrict the inflow of people into our already overcrowded facilities by not holding anyone on cash bail they cannot afford. This means people should not be held for cash bail at all and instead alternatives to arrest, cash bail, pressing charges, and detention should strongly be favored.<sup>1</sup>

Third, the Hawai'i Paroling Authority just suspended hearing cases. While we recognize that this is necessary, instead of shutting down, the Board should dramatically accelerate its review of case files, and release people held for technical parole violations to ensure the number of people in jail can be reduced to a manageable and safe number.

Fourth, and most important, we should work together to find a way to expeditiously review the cases of hundreds of detained men and women awaiting trial on misdemeanor or nonviolent felony charges, who presently cannot afford cash bail, with a goal of beginning to release people within a week. Filing individual motions in individual cases seeking relief is simply not workable for our legal, correctional or medical systems. We should start with people who are over 60 or who have medical conditions that make them especially vulnerable to the virus. For the vast majority of pretrial detainees, the real and immediate threat to public health that flows from continued incarceration far outweighs any possible threat to public safety that would flow from release.

The phrase "time is of the essence" is overused to the point that its edge has been dulled. Now, however, more than ever, time is of the essence. The four signatories to this letter know that other individuals and entities have been deeply engaged in the issues raised in this letter, and that there are other important measures not addressed here that deserve urgent attention. Because time is of the essence, we are reaching out to you now on the issues that we think can be resolved the most quickly, with the greatest impact. We look forward to working with all of you in the challenging hours and days to come.

Respectfully,

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<sup>1</sup> If someone must be detained, this should be done pursuant to Haw. Rev. Stat. Section 804-3.