

The Honorable J. Kevin Stitt
Governor, State of Oklahoma
Oklahoma State Capitol
2300 N Lincoln Blvd.
Oklahoma City, OK 73105

Director Scott Crow
Oklahoma Department of Corrections
3400 Martin Luther King Avenue
Oklahoma City, OK 73111

May 26, 2020



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Oklahoma City, OK 73113
(405) 524-8511

acluok.org

Ryan Kiesel
Executive Director

Michael C. Redman
Interim Legal Director

Nicole McAfee
**Director of Policy and
Advocacy**

Dear Governor Stitt and Director Crow,

In order to effectively combat the ongoing SARS-CoV-2 pandemic, we are writing to ask that you and appropriate state and local agencies immediately commit to: (1) full testing¹ for COVID-19 in all state correctional facilities; (2) creating a framework for full testing in all local detention facilities, and (3) providing fresh personal protective equipment to all staff working in these facilities.

This pandemic continues to cause immense harm across the country, particularly in carceral facilities. Seven of the top 11 largest clusters of cases in the U.S. are in prisons or jails, with a growing number of people infected at Hinton threatening to join that list.² The recent outbreak at the Comanche County Detention Center underscores the speed with which this disease can be transmitted. Therefore, no response to SARS-CoV-2 can be meaningful or effective without across-the-board testing identifying staff and people imprisoned who are infected with the virus.

We have seen over the initial weeks of this virus that many who carry it are asymptomatic, and we cannot adequately identify the breadth of the problem or effective solutions without a clear count. You've rightly made it a priority to test nursing home facilities from top to bottom. Jails, prisons, and other detention facilities in the state face similar barriers to social distancing and have large numbers of people especially vulnerable to the virus. We have to test with the same urgency and thoroughness in our custodial facilities.

¹ **"Full testing" means** testing by medical personnel of all staff and currently incarcerated people and any newly admitted people, including any necessary follow-up testing recommended by medical staff. Additionally, the testing process should be overseen by health staff and reported to public health authorities, and the public, with appropriate HIPAA protections in place.

² *Coronavirus in the U.S.: Latest Map and Case Count*. New York Times. Updated daily. Retrieved May 13, 2020. <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

Because COVID-19 can be transmitted by asymptomatic persons, we ask that you commit to full-testing in all state and county correctional facilities in Oklahoma **within one week** of your receipt of this letter.

As public health experts have made clear,³ testing all people imprisoned and staff in jails and prisons is necessary before states can fully resume normal activity. And as an epidemiological model created by public health experts demonstrates, these facilities exacerbate the spread of COVID-19.⁴ Universal testing is necessary to arrest the spread of the virus inside these facilities, and just as importantly, to prevent the continued spread of the virus from jails and prisons back into the community over the upcoming months.

Recognizing that testing is one of the few proven ways to track and slow the spread of the virus absent a vaccine or effective treatment, Governors like Bill Lee in Tennessee⁵ and Phil Murphy in New Jersey⁶ have already implemented universal testing in all state correctional facilities.

The urgency is further reaffirmed by the statistics we've already seen, even before universal testing across all jails and prisons is in place:

- Over 25,000 people imprisoned have tested positive, and the observed rate of infection is not slowing down.⁷
- Over 6,000 prison staff have also tested positive,⁸ even while corrections leaders have been vocal about the situation they face.⁹
- The ACLU and the UCLA School of Law are tracking new infections and deaths among both staff and people who are



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³ Firth, Shannon. *COVID-19 Testing Lags in Prisons and Jails*. MedPage Today. May 8, 2020. <https://www.medpagetoday.com/infectiousdisease/covid19/86391>; Infectious Diseases Society of America, HIV Medicine Association. *IDSA, HIVMA Call for Strengthened Detention Facility Responses to COVID-19*. IDSA official site. May 1, 2020. <https://www.idsociety.org/globalassets/idsa/public-health/covid-19/covid-19-in-correctional-facilities.pdf>; see also Parrish, David. *We need to stem the spread of COVID-19 among inmates*. Tampa Bay Times. May 11, 2020. <https://www.tampabay.com/opinion/2020/05/11/we-need-to-stem-the-spread-of-covid-19-among-inmates-column/>

⁴ Multiple Authors. *COVID-19 Model Finds Nearly 100,000 More Deaths Than Current Estimates, Due to Failures to Reduce Jails*. ACLU. April 2020. <https://www.aclu.org/report/flattening-curve-why-reducing-jail-populations-key-beating-covid-19>

⁵ Allison, Natalie; Timms, Mariah. *Tennessee to test all inmates, prison staff after massive COVID-19 outbreak at Trousdale Turner*. Tennessean. May 1, 2020. <https://www.tennessean.com/story/news/politics/2020/05/01/tennessee-testing-all-inmates-prison-staff-after-multiple-outbreaks/3067388001/>

⁶ Office of Governor Phil Murphy. *New Jersey Department of Corrections to Begin Universal COVID-19 Testing and Launches Non-Congregate Housing Program for First Responders*. NJ.gov. May 1, 2020. <https://www.nj.gov/governor/news/news/562020/approved/20200501a.shtml>

⁷ *Death by Incarceration*. ACLU and UCLA Prison Law and Policy Program. Updated frequently. Retrieved May 13, 2020. https://docs.google.com/spreadsheets/d/1bTMdmt2IG2UrRDcDhKK2ws_ZS-sXqDsPMVC_2Sdb3Lw/edit#gid=634242190

⁸ *A State-by-State Look at Coronavirus in Prisons*. The Marshall Project. Updated frequently. Retrieved May 13, 2020. <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>

⁹ *ACLU and Council of Prison Locals Call for Mass Testing of all Employees and incarcerated People as Over 5,000 Correctional Officers*. ACLU. May 7, 2020. <https://www.aclu.org/press-releases/aclu-and-council-prison-locals-call-mass-testing-all-employees-and-incarcerated>

incarcerated, which continue to rise.¹⁰ So far, 310 incarcerated people and 37 staff have died in custodial facilities.¹¹

As bad as these numbers already are, they will grow worse. Immediate and universal testing in state and local correctional facilities is a necessary, threshold step to understand the true scope of the problem and to take action that will be effective in protecting the lives of staff, people who are incarcerated, and those living in surrounding communities. This includes full transparency by providing the public information on testing and confirmed cases for all facilities in Oklahoma, including jails and privately-run facilities, as we've seen on the ODOC website.



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Additionally, all jails and county detention facilities should be required to adopt the Department of Corrections' COVID-19 response guidelines as stated in their Pandemic Planning Guide, as recommended by the Oklahoma State Department of Health. We have seen what harm can be done with the outbreak in Comanche County, and we know ODOC does not have the capacity or staff to take over every county detention facility in the state. Therefore, we must ask sheriffs and county commissioners to proactively adopt the ODOC response guidelines and implement them with urgency, to avoid 76 more versions of the Comanche County outbreak. A consistent and comprehensive approach among all facilities will help limit the spread of the disease. Reporting those numbers on publicly available websites, as ODOC has consistently done, for all custodial facilities in Oklahoma, is critical for accountability and public safety.

Finally, all county and municipal governments and any businesses contracted to operate custodial facilities should be directed to take immediate steps to significantly reduce the population in local custodial facilities. Local jurisdictions should take whatever steps possible, including:

1. Reducing intake into local custodial facilities by primarily responding to legal violations through warnings, summons, and citations. Local jurisdictions should cease making custodial arrests unless absolutely necessary to prevent an imminent and serious threat to public health and safety. Accordingly, arrests for misdemeanor offenses should be prohibited for a period of time and arrests for felony offenses should be limited

¹⁰ *A State-by-State Look at Coronavirus in Prisons*. The Marshall Project. Updated frequently. Retrieved May 13, 2020. <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>

¹¹ *Death by Incarceration*. ACLU and UCLA Prison Law and Policy Program. Updated frequently. Retrieved May 13, 2020. https://docs.google.com/spreadsheets/d/1bTMdmt2IG2UeRDcDhKK2ws_ZS-sXqDsPMVC_2Sdb3Lw/edit#gid=634242190

to those persons who pose a threat to public health and safety. Officers should be directed to follow cite and release protocol when interaction is necessary, and to only bring a person into custody if they pose a reasonable threat of harm to an identifiable person(s).

2. Reducing the population of local custodial facilities by releasing all individuals held only on cash bail, individuals held pre-trial on misdemeanor charges, individuals held pretrial on non-capital felony charges that do not pose a reasonable threat of harm to identifiable person(s), individuals held on immigration or other agency's detainers, individuals within 6 months of completing a post-conviction sentence, and releasing or granting temporary release to all vulnerable populations.



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As always, the response to this virus must be based in the science of what best protects the interest of public health. We believe there is a unique intersection between that interest and the public health crises of prisons and jails that, without urgent action, will overwhelm our medical facilities, exacerbate risk for corrections officers and their families, and will ultimately result in loss of life that could be mitigated.

We hope to work with you in this effort and look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan Kiesel". The signature is fluid and cursive, written on a light-colored background.

Ryan Kiesel
Executive Director