



LETTER TO ALAMEDA COUNTY PUBLIC OFFICIALS

PROTECT PRISONERS IN SANTA RITA JAIL FROM COVID-19

Dr. Chuck McKetney, Healthcare Services Agency Director
Dr. Nicholas Moss, Interim Health Officer, Alameda County Public Health Department
Tara Desautels, Presiding Judge, Alameda County Superior Court
Magistrate Judge Joseph Spero, U.S. District Court of the Northern District of California.
Magistrate Judge Nathaniel Cousins, U.S. District Court of the Northern District of California
Nancy O'Malley, Alameda County District Attorney
Richard Valle, President, Alameda County Board of Supervisors, District 2
Keith Carson, Vice President, Alameda County Board of Supervisors, District
Wilma Chan, Member, Alameda County Board of Supervisors, District 3
Nate Miley, Member, Alameda County Board of Supervisors, District 4
Scott Haggerty, Member, Alameda County Board of Supervisors, District 1
Wendy Still, Alameda County Probation Department
Jess Waldura, Santa Rita Jail Medical Director
David L Anderson, US Attorney, Northern District

CC:

Magistrate Judge Jacqueline Scott Corley, U.S. District Court of the Northern District of California
Senator Nancy Skinner, 9th State Senate District
Assemblymember Rob Bonta, 18th State Assembly District
Brendon Woods, Alameda County Chief Public Defender

WE ARE A GROUP OF CIVIL RIGHTS ATTORNEYS AND LEGAL WORKERS WHO HAVE EACH TAKEN HUNDREDS, IF NOT THOUSANDS OF CALLS FROM CLIENTS IN SANTA RITA JAIL. CLIENTS HAVE CONSISTENTLY DESCRIBED CONDITIONS THAT ARE UNSAFE, UNCLEAN, AND WHICH VIOLATE THEIR STATUTORY AND CONSTITUTIONAL RIGHTS. WE HAVE IDENTIFIED NUMEROUS CONCRETE WAYS THAT COUNTY OFFICIALS MAY ACT ACCORDING TO THEIR POWERS AND THEIR INDIVIDUAL EXPERTISE.

Since April, 263 people in the custody of the Alameda County Sheriff's Office (ACSO) have tested positive for COVID-19. ACSO's approach to the COVID-19 pandemic is keeping neither prisoners nor our community safe. Sheriff Ahern has been unable to prevent the virus from spreading to prisoners in his custody: compare 263 COVID-19 cases in Santa Rita to 4 in San Francisco. The Sheriff has also failed to prevent transmission from the jail to the community. There are at least two cases where someone released from Santa Rita was COVID-19 positive. In one instance,

upon release, a COVID-19 positive individual transmitted COVID-19 to his father, who subsequently fell ill and required hospitalization.

While the Sheriff proclaims his success by claiming that no one has died, many of those who have contracted COVID-19 while incarcerated at Santa Rita Jail suffered from extremely painful and debilitating symptoms while their treatment has amounted to merely having vital signs checked twice a day while locked in solitary confinement. Sick prisoners have

been provided with little to no information about their treatment outcome, leading to a climate of fear and anxiety. Many who have “recovered” are still experiencing serious, post COVID-19 health problems, including headaches, difficulty breathing, continual coughs, chest pains, and body pains, and continued loss of smells or unusual smells.

The vast majority of prisoners in SRJ are pre-trial; and all pretrial detainees are presumed innocent. And under the 14th Amendment of the United States Constitution, pretrial detainees can be detained, but they cannot be subjected to punishment. That’s the law. We believe that the negligent medical care and the unsanitary conditions experienced by clients who have caught COVID-19 amounts to punishment in and of itself.

WE URGE DR. NICHOLAS MOSS, INTERIM HEALTH OFFICER AND DR. CHUCK MCKETNEY, DIRECTOR, HEALTHCARE SERVICES AGENCY TO TAKE THE FOLLOWING ACTIONS:

- 1. Declare a state of emergency, assume direct control of healthcare at Santa Rita Jail, and order further releases.** ACPHD cannot rely on ACSO and Wellpath to provide adequate mental and physical healthcare for prisoners.
- 2. Utilize Health & Safety Code Section 120175,** which provides the statutory power to demand that the Sheriff reduce the Santa Rita Jail population to prevent further COVID-19 transmission.
- 3. Order unannounced inspections** to investigate jail conditions; to investigate the jail’s symptoms classifications; to correctly identify symptomatic cases; and, to identify deputies who are failing to wear personal protective equipment or who fail to wear it properly.
- 4. Create higher standards for review of symptoms.**
- 5. Ensure that all prisoners receive medical care and comfort care** for their symptoms, and connections to other needed social services.
- 6. Create higher standards for testing at Santa Rita Jail.**
 - a. Within 24 hours of a new COVID-19 case, offer testing to all incarcerated persons who share air space with the person who tested positive;

- b. Within 1 week of a new COVID-19 case, offer testing to all other incarcerated persons;
- c. Offer testing to all individuals in quarantined housing units/pods on day 1 of quarantine and 1-3 days prior to release from quarantine;
- d. Report the percentages of individuals in quarantined housing units/pods tested on day 1 of quarantine and tested 1-3 days prior to release from quarantine;
- e. Offer testing to all incarcerated persons at least once a month.
- f. Order ACSO to report the number of tests offered and the number of tests refused each day on the Sheriff’s COVID-19 dashboard.

- 7. Ensure entry into housing programs** so that COVID-19 positive prisoners exiting the jail may safely isolate, rather than spreading COVID-19 to their family and the community.
- 8. Redistribute resources in the name of public health;** oppose further funding increases for the Alameda County Sheriff’s Office.

WE URGE DR. JESS WALDURA, SANTA RITA JAIL MEDICAL DIRECTOR FOR ALL PRISONERS, TO TAKE THE FOLLOWING ACTIONS UNTIL ACPHD IS ABLE TO ASSUME CONTROL OF MEDICAL CARE AT SANTA RITA JAIL. WE URGE MAGISTRATE JUDGES JOSEPH SPERO AND NATHANAEL COUSINS TO ENSURE THAT THE ABOVE-DESCRIBED PROTOCOLS ARE ADHERED TO IN SANTA RITA JAIL; INCLUDING FOR ALL FEDERAL PRISONERS:

- 1. Provide adequate and timely medical care to patients.** Every prisoner must receive:
 - Adequate hydration: Providing 2 ounces of gatorade is not sufficient.
 - Adequate assistance with breathing and cough, including the use of rescue inhalers on request.
 - Comfort care for body aches, fevers, headaches, coughs and breathing difficulties
 - Sufficient blankets and warmth for fever and chills
 - A clean and sanitary environment in which to recover, including regular showers and laundry exchange.

2. **Provide information so that prisoners are informed of their medical status, prognosis and possible outcomes.**
3. **Enforce the release of prisoners to a hospital** when they are in need of immediate care.
4. **Honor prisoners' need for disability accommodations and medical devices**, such as inhalers, wheelchairs, and CPAP machines. ACSO must honor 4011.5 motions by state detainees.

WE URGE THE ALAMEDA COUNTY BOARD OF SUPERVISORS TO TAKE THE FOLLOWING ACTIONS. WE URGE MAGISTRATE JUDGES JOSEPH SPERO AND NATHANAEL COUSINS TO ENSURE THAT THE ABOVE-DESCRIBED PROTOCOLS ARE ADHERED TO IN SANTA RITA JAIL.

1. **Stop the for profit operations at the Jail:** phones, commissary, health care, and jail food. Put ACPHD in direct control of healthcare at Santa Rita Jail. ACSO and Wellpath cannot and should not be relied upon to provide adequate mental and physical healthcare for prisoners.
 - End the contract with Wellpath. The contract is a flat rate based on population, creating an incentive for the jail and Wellpath to deny care or provide only the bare minimum. Not only is ending the contract the humane choice, but continued work with Wellpath will undoubtedly open the county up to further liability for inadequate medical care.
 - End the contract with GTL. Subsidize the cost of phone calls to facilitate communication between prisoners and their support systems -- from their legal teams to their families.
2. **Order ACSO to honor 4011.5 motions or have their funding cut.** In many cases, attorneys have obtained 4011.5 orders on behalf of their clients for critical medical procedures and devices - such as inhalers, wheelchairs, and CPAP machines. ACSO must honor these orders. The jail and Wellpath should bear the cost while a prisoner is in their custody.

3. **Order the jail to provide sufficient cleaning and sanitizing supplies.** The County should be willing to shoulder an additional cost to prevent further outbreaks and further liability for the spread of COVID-19.
 - Each POD should receive its own individual mop bucket, rather than sharing mop water between 6 PODs.
 - Prisoners should be provided with the appropriate cleaning supplies for each task.
 - Prisoners in each POD should receive gloves to clean their cells and common areas.
4. **Order the jail to provide sufficient PPE to prisoner workers.** The County should be willing to shoulder an additional cost to prevent further outbreaks and further liability for the spread of COVID-19.
 - Provide POD workers and kitchen workers with N95 masks.
 - Require the jail to verify that they are distributing PPE.
 - Make all commissary hygiene items free for all Santa Rita Jail prisoners.

WE URGE TARA DESAUTELS, PRESIDING JUDGE FOR THE ALAMEDA COUNTY SUPERIOR COURT TO DIRECT ALL JUDGES TO TAKE THE FOLLOWING ACTIONS:

1. **Issue further judicial orders for the release of prisoners from Santa Rita**, due to their conditions of confinement and the continued violation of their constitutional and statutory rights;
2. **Follow the new Supreme Court ruling *In Re Humphrey***, and reduce existing bails so people can be released.
3. **Provide individuals serving prison sentences at SRJ based on unforeseen circumstances with credits** at the same rate they would receive in CDCR custody.
4. **Grant additional credits** to account for the hardship of incarceration during a pandemic as well as the urgency of reducing the overall prison population.
5. **Release all prisoners with six months or less on their term.**

WE URGE NANCY O'MALLEY, DISTRICT ATTORNEY OF ALAMEDA COUNTY, TO TAKE THE FOLLOWING ACTIONS:

1. **Follow the new Supreme Court ruling *In Re Humphrey***, and stop having deputy district attorneys request excessive bail. Assist in releasing people from jail.
2. Make a greater, concerted effort to resolve criminal cases utilizing alternatives to incarceration.
3. **Provide individuals serving prison sentences at SRJ based on unforeseen circumstances with credits** at the same rate they would receive in CDCR custody.
4. **Grant additional credits** to account for the hardship of incarceration during a pandemic as well as the urgency of reducing the overall prison population.
5. **Release all prisoners with six months or less on their term.**

WE URGE SHERIFF GREGORY AHERN AND CAPTAIN LUCKETT-FAHIMI TO TAKE THE FOLLOWING ACTIONS:

1. **Send home and sanction deputies** who fail to wear personal protective equipment or fail to wear it properly;
2. **Reassign to the County courthouses** deputies who will protect the lives of prisoners, attorneys, and courthouse staff by adhering to proper PPE usage.
3. Provide individuals serving prison sentences at SRJ based on unforeseen circumstances with **credits** at the same rate they would receive in CDCR custody.
4. **Grant additional credits** to account for the hardship of incarceration during a pandemic as well as the urgency of reducing the overall prison population.
5. **Release all prisoners with six months or less on their term**

WE URGE DAVID L ANDERSON, US ATTORNEY, NORTHERN DISTRICT, TO TAKE THE FOLLOWING ACTIONS:

1. Make a greater effort to release federal prisoners.
2. Make a genuine effort to implement alternatives to pretrial incarceration
3. Release all prisoners with six months or less on their term.

WE URGE ALL JUDGES AND JUSTICE PARTNERS TO TAKE THE FOLLOWING ACTIONS:

1. Apply the Humphrey Decision going forward;
2. Provide all current prisoners with bail reviews;
3. Agree to OR release with appropriate conditions in a higher percentage of cases;
4. Make a genuine effort to implement alternatives to pretrial incarceration
5. Immediately implement the following recommendations from AMEND at UCSF¹
 - Immediately release people to create the space and resources needed to safeguard those remaining. The best way to keep residents, staff and the community safe from an ongoing, uncontrolled outbreak in the jail is to release as many people as practicable in order to improve the facilities ability to cohort, quarantine and medically isolate those who remain.
 - House the remaining population in cohorts that practice absolute social distancing from other cohorts. SRJ currently allows deputies to move between quarantined and non-quarantined housing units.
 - Greatly enhance communication with friends and family outside of jail by subsidizing the cost of phone calls and video visits.

1 https://amend.us/wp-content/uploads/2020/05/Cohorting-Guidance.Amend_UCB_.pdf

BASED ON NUMEROUS CONVERSATIONS AND VISITS WITH CLIENTS WHO ARE INCARCERATED, WE HAVE IDENTIFIED EIGHT MAJOR ISSUES THAT MUST BE CHANGED IMMEDIATELY.

1 THE JAIL MUST ACCURATELY IDENTIFY AND REPORT SYMPTOMATIC CASES.

ACSO is downplaying and minimizing the consequences of COVID-19 in Santa Rita Jail. ACSO inaccurately reports COVID-19 cases, in order to minimize and downplay the harms and continued long term damage suffered by prisoners inside Santa Rita Jail. The ACSO website classifies most of the prisoners as "asymptomatic." Yet, our communications with prisoners demonstrate that the vast majority have COVID-19 symptoms ranging from moderate to severe. These cases are not reflected in the ACSO website. Prisoners' symptoms include body pains, headaches, fever, chills, coughs, difficulty breathing, loss of smell, diarrhea, among other symptoms. One prisoner described these headaches as "lightning strikes in his head."

There have been three significant outbreaks of COVID-19 in Santa Rita Jail in the past two months:

- **Between July 15-17**, COVID-19 cases increased from 7 to 103, peaking at 110 on July 24. On July 25, 26 people were reported "recovered" overnight even though the outbreak had only lasted 10 days. The following day, only 11 days into the outbreak, another 50 people were reported "recovered" overnight.
- **On August 16**, COVID-19 cases increased from 5 to 18 cases, peaking at 25 cases on August 25. On August 26, only 10 days into the outbreak, 16 people were reported "recovered" overnight.
- **On September 21**, COVID-19 cases at Santa Rita Jail increased by 250 percent overnight after a new outbreak began on September 17. By September 24, there were 14 new confirmed cases, 16 additional symptomatic persons, and five housing units had been placed under quarantine.

Another client reports that he was one of the first group of people who tested positive in Housing Unit 32.² The client was tested on May 6, and was moved to Housing Unit 8C - designated for positive cases - on May 8. The client was quarantined in 8C for only 10 days before being moved out again. As a result, the client still had symptoms when he was removed. He reported on August 11 that he still gets chills, he is still cold, his head still hurts, and his body aches. He reports that when he asked to be re-tested, he was reported to be asymptomatic.

There was another client who, prior to his incarceration, had an appointment to have some nodules on his lungs evaluated for lung cancer. Once incarcerated, he contracted COVID-19 and despite his pre-existing medical condition and appointment as well as his contraction of COVID-19 while in-custody, was denied release.

Another client tested positive for COVID-19 on or around July 20. Upon learning this from his family members, his attorney called jail medical staff to learn more about his condition. Jail medical staff informed his attorney that the totality of his symptoms listed in the medical records was a sore throat on one occasion, and that he was considered "asymptomatic." The next day, the attorney spoke to the client, who informed her that he felt very sick. He said he was dizzy and had a hard time focusing, and that he was experiencing fever and chills. A few days later he called again and reported that he had lost consciousness the night before and was nearly transported to the hospital. He said that in response to this episode he received Tylenol but no other treatment or care.

² There are up to 35 housing units in Santa Rita, some of which are empty. Men prisoners have been consolidated into specific parts of the jail. Single-digit units are higher security, and double-digit units are minimum or medium security. Housing Unit 8C houses prisoners who have tested positive for Covid-19. According to the Outbreak Control Plan, "prisoners displaying symptoms consistent with COVID-19 will be housed in the OPHU, or isolated in cells around the base."

2 THE COUNTY MUST PROVIDE ADEQUATE MEDICAL CARE TO ALL PRISONERS, INCLUDING EVERY PRISONER WHO CONTRACTS COVID-19.

The Alameda County Sheriff's Office is not providing necessary and needed medical care. Penal Code section 4011.5 was enacted to assure that prisoners in need of medical attention actually receive it.³ We are concerned that as a result of the Jail's desire to downplay the negative impacts of Covid-19, the jail is simultaneously failing to provide necessary and appropriate medical care. We are aware of situations in which individuals in ACSO's custody have felt so sick from COVID-19 that they have requested hospitalization, but the nurses have insisted on keeping them at the nurse's station rather than sending them to the hospital.

Wellpath's Outbreak Control Plan states that "prisoners who are in a RED housing unit are monitored at a minimum of twice a day by nursing staff for a temperature and symptoms check and seen daily by a provider." However, many clients have reported that when they have experienced respiratory distress, deputies take hours to arrive. Everyone who is sick should receive medical care - simply taking vitals is insufficient. Two cough drops a day for a COVID-19 cough is not sufficient medical care.

1. A client developed a fever of 107 degrees: Client was one of around fifty people in Housing Unit 22 to catch Covid-19 in July, and one of the only people to be hospitalized. The illness began as a soreness in his throat which didn't go away, and started to get worse. Then, he started getting cramps in his stomach. After a while, it felt like he couldn't breathe and was hyperventilating - "like only having one lung." Eventually, these symptoms got so bad that he brought it to the attention of deputies, and he was reclassified to Housing Unit 8. He estimates that a couple hours later, deputies woke him up and told him that he was going to an outside hospital. The client was placed in a wheelchair and took him to an ambulance.

At this point, the client developed a temperature of 107 degrees. He reports that he was soaked with sweat, and couldn't hold any food down. His throat felt so swollen that he couldn't breathe, and he felt like he had been kicked in the chest. He was taken to a hospital in Dublin, where his temperature went down to 104, but he was still delirious. The client was kept in the hospital for 24 hours, after which he was declared "stabilized" and he was taken directly to the Outpatient Housing Unit (OPHU) and left there for a week.

Going to OPHU was a shock for the client. While he was in the hospital, he was given ice water, and there was a nurse and/or doctor present to explain the situation to him and to monitor his oxygen levels. This did not happen in OPHU. He still had cramps, diarrhea, and difficulty breathing when he was returned to the jail. The jail provided him no information about his prognosis, nor his temperature readings. He was provided with cough drops for only 1 day, and cough syrup for 4 days. The client was told that his treatment was discontinued because it masks the symptoms of the virus.

3 THE ALAMEDA COUNTY PUBLIC HEALTH DEPARTMENT MUST USE THE POWER THEY HAVE DURING THIS PUBLIC HEALTH STATE OF EMERGENCY TO TAKE IMMEDIATE CONTROL OF HEALTHCARE IN SANTA RITA JAIL AND IMPLEMENT AN EFFECTIVE TESTING AND QUARANTINE PROTOCOL.

Santa Rita's failure to offer testing in response to outbreaks precludes effective infection control. Despite multiple documented outbreaks in SRJ, the testing rate remains inadequate for effective infection control and provides no basis to support the infection rates reported by ACSO. On twelve separate occasions, active cases in

³ (People v. Armstrong 188 Cal.App.2d 745 (1991): If an prisoner is in need of immediate medical or hospital care and failure to remove that prisoner to a hospital will negatively impact that prisoner, the Sheriff is authorized under Penal Code section 4011.5 to remove that prisoner to a hospital.

SRJ have increased by at least 100% in a single day.⁴ In response to each major outbreak, ACSO has neglected to test the jail population, rendering it impossible to know where the outbreak has spread and if it has been contained.

For example, active cases increased by 1583% between July 15 and July 17. However, only 6% of the jail population was tested in the week following the outbreak. Similarly, 141 people tested positive in the 31 days between July and August. And yet, during that same period of time, testing dropped from 36 to 25 tests per day.

By failing to test people during the last outbreak in August, ACSO has led Santa Rita Jail into its current outbreak: between September 18 and September 22, active cases increased by more than 450%, and at least five housing units were exposed and quarantined. And yet, in the week after the outbreak was first discovered, ACSO tested only 13% of the jail.

Contrast these practices with the CDC guidelines for COVID-19 in nursing homes — facilities that, like Santa Rita Jail, house many medically vulnerable people in close quarters. The CDC's guidelines dictate that every person should be tested as soon as a new case is detected in the facility.⁵ After everyone has been tested once, the CDC advises facilities to implement "repeat viral testing of all previously negative residents, generally every 3 days to 7 days, until the testing identifies no new cases."⁶ By comparison, less than 10% of the population in SRJ is typically tested within seven days of an outbreak.⁷ Because of this, there is no way to know where the infection has spread. And without knowing where the infection has spread, there is no way to do effective infection control.

ACSO invariably cites the low infection rate in SRJ as evidence that their safety protocols have been effective. *But infection rates will stay low anywhere one does not test.* In order for ACSO, Alameda County government officials, and the public to have any measure of confidence in SRJ's COVID-19 safety protocols, the County must:

- a. Within 24 hours of a new COVID-19 case, offer testing to all incarcerated persons who share same air space with the person who tested positive;
- b. Within 1 week of a new COVID-19 case, offer testing to all other incarcerated persons;
- c. Offer testing to all individuals in quarantined housing units/pods on day 1 of quarantine and 1-3 days prior to release from quarantine;
- d. Report the percentages of individuals in quarantined housing units/pods tested on day 1 of quarantine and tested 1-3 days prior to release from quarantine;
- e. Offer testing to all incarcerated persons at least once a month.

There have also been concerning disparities between what ACSO's COVID-19 website lists as quarantined units and what ACSO lists on the whiteboard in the lobby of SRJ. Further, there have been concerning disparities between what ACSO's COVID-19 website list as quarantined and what ACSO represents to the court: many times, clients who are not housed in units listed as quarantined are apparently on individual quarantine, and therefore deprived of their court appearances and access to counsel.

Santa Rita Jail may also be spreading COVID-19 inside the jail by the multiple transfers of COVID-19-positive prisoners from housing unit to housing unit. We have

4 April 7 - April 8: 267% increase;
May 7 - May 8: 100% increase;
May 8 - May 9: 175% increase;
June 13 - June 14: 100% increase;
July 7 - July 8: ~100% increase (0 to 1);
July 9 - July 10: 100% increase;
July 12 - July 13: 150% increase;
July 15 - July 16: 667% increase;
July 16 - July 17: 120% increase;
August 15 - August 16: 260% increase;
September 16 - September 17: ~300% increase (0 to 3);
September 20 - September 21: 250% increase.

5 <https://www.cdc.gov/coronavirus/2019-ncov/hcp/nursing-homes-testing.html>

6 *Id.*

7 Where outbreaks are defined as instances when active cases increased by at least 100% in one day.

received multiple communications from prisoners who tested positive for COVID-19 and were then returned to general population while still symptomatic and without being retested to confirm negativity:

1. A prisoner was removed from quarantine early, infecting others: A prisoner tested positive on July 23, and was placed in a cell in Housing Unit 8C. While the prisoner was in 8C, he received 1 Tylenol per day, insufficient to address his back pain, muscle pains, and difficulty breathing ("like drowning or like someone was sitting on my chest"). He was told that he would be moving back to Housing Unit 33C after only 8 days in 8C. When he told medical staff that he didn't feel recovered or ready to leave, a nurse suggested that he was suffering from anxiety attacks, rather than Covid-19, and offered him a psychiatrist visit but no test.

The prisoner was then moved from Housing Unit 8C to Housing Unit 33C on or around July 31. On Monday, August 10, the prisoner reported that even though no one had moved into 33C since his arrival, at least 10 other prisoners had begun to develop symptoms. The prisoner also noted on August 10 that several people with symptoms left for federal custody. The prisoner was then moved to Housing Unit 3E, where prisoners are housed to be released from quarantine on an individual basis. The prisoner requested a COVID-19 test, but he was told that "we don't retest if you've already tested positive," so he was categorized as a "refusal to test."

2. A COVID-19-negative prisoner was infected when a sick person was mistakenly placed in his cell: A prisoner has been housed in Housing Unit 22B since October 2019. He called to report that he tested positive due to an incorrect transfer. Deputies moved a COVID-19 positive person into his cell, when the unit was not yellow-tagged. The deputy admitted afterward that the prisoner was accidentally brought into his cell, and was supposed to go to Housing Unit 34. The prisoner caller began experiencing Covid-19 symptoms on July 8, and was tested on July 15. He became very sick: experiencing body aches, fatigue, loss of taste and appetite, and lost 20 pounds.

3. Groups of prisoners are transferred between housing units before their quarantines have ended: A prisoner reported on August 5 that 20 people were transferred into his unit, 33B, which was un-quarantined with no Covid cases. The 20 prisoners were transferred

into his unit before their 14-day intake quarantine was over, in units 35 and 34. After this transfer, Housing Unit 33 was quarantined and yellow tagged. The prisoner reported that he only receives 3 or 4 Purell wipes each week, which was insufficient to clean and sanitize surfaces.

On August 20, the prisoner reported that he tested positive for Covid-19 on August 16, and was placed in Housing Unit 8C. The prisoner reported that in 8C, the ventilation is poor, the toilet barely flushes, and that there is trash building up everywhere because it is only picked up every 2-3 days. When he arrived, the cell still contained another person's belongings. The sink was dirty and there was toothpaste smeared on the wall.

In 8C, the prisoner reported, his temperature and heart rate were checked everyday, but he was not provided with Tylenol or any other medication, despite reporting headaches that were painful enough to wake him up in the middle of the night, and which rose to the level of 8 on a scale of 1-10 throughout the day. He felt dizzy, could not smell or taste, and his fever reached 106 degrees. The prisoner was concerned because deputies told him they would not re-testing anyone, they would just move people when the quarantine period ends without checking again.

4 SHERIFF AHERN AND SANTA RITA JAIL MUST RESPECT THE PRISONERS' CONSTITUTIONAL AND STATUTORY RIGHTS.

Santa Rita Jail's punitive approach to incarceration makes matters worse. Sheriff Ahern publicly stated that anyone arrested is a criminal deserving of punishment, ignoring the presumption of innocence. The manner in which the jail is run permits arbitrary, irrational actions, and makes the Jail's approach to COVID-19 worse. As a result, prisoners' constitutional rights are violated on a regular basis, including unnecessary and unreasonable cancellation of court hearings due to Santa Rita's procedures.

The Board of State and Community Corrections states that 85% of SRJ's prisoners are in the pretrial group. Under the 14th amendment of the United States Constitution pretrial detainees can be detained, but they cannot be subjected to punishment.

There have been many situations where **clients' court hearings have been continued** because they are in quarantine and therefore not brought to court, regardless of whether the particular individual has tested positive or negative for COVID-19. Sometimes this happens multiple times over the course of weeks and even months. This undermines and obviates the rights of prisoners. Being in custody during a pandemic is harsher than being in custody on a normal day. It is also harder on the prisoners and their loved ones, who must bear the costs of expensive phone calls and video visits while their loved one is awaiting trial.

Many people in ACSO custody also have **no confidential access to their attorneys** for multiple weeks at a time because their units have been quarantined, whether or not the particular individual has tested positive or negative for COVID-19. Video interviews and non-contact legal visits—which are currently the primary means to conduct attorney-client meetings -- are unavailable if someone is housed in a quarantined unit. Thus, these individuals are deprived of their right to counsel, let alone effective counsel. It also results in deprivation of other fundamental rights like **speedy probable cause determinations, trials, sentencing, and also results in unnecessary loss of liberty in cases that would ordinarily resolve much sooner but for the delays in access to counsel and court.** The repeated and lengthy quarantines also mean these people do not have access to social workers, investigators, interpreters, and other members of their legal team. This is at a time when statutory rights to speedy arraignments, probable cause determinations and even trials have been re-defined to our client's determinant (all time limits have been extended significantly).

There was a situation in which an in-custody client had his preliminary hearing continued multiple times because of quarantines in his housing unit. Someone was finally able to bail him out, but it was while his housing unit was still in quarantine. When he was on his way to show up for court for his preliminary hearing the following day, he was exhibiting COVID symptoms and believed he had contracted the virus. The attorney informed the DA and the judge of this, but the DA asked for a warrant. The judge ordered a bench warrant issued, but held and demanded that the client bring proof of the virus to court four days later, or that he would be remanded.

5 ALL COUNTY PARTNERS MUST COLLABORATE TO KEEP THE JAIL POPULATION LOW.

Since the beginning of September, the overall population at Santa Rita Jail has increased by 68, to nearly 2000 people. The jail has now seen a total of 263 Covid-19 infections since March. The jail population is currently: **1,949**, and the in custody numbers keep increasing. There is no way to social distance as the incarceration numbers increase. In many cases, deputy district attorneys are no longer applying the emergency bail schedule, ignoring *In Re Humphrey*, and have requested excessive bail.

Back in March, April, and May, the District Attorney's Office was cooperating and collaborating in a version of early release: in-custody defendants with fewer than 60 days were being released forthwith. However, that effort was abandoned after May even though June, July, and August all saw spikes in COVID-19.

Now, in light of the Supreme Court's decision *in re Humphrey*⁸, bail in many cases should be recalculated, and there needs to be a coordinated effort among all County partners to reduce bail, and release prisoners from Santa Rita Jail.

6 ALL COUNTY PARTNERS MUST HONOR GOOD CONDUCT CREDIT RULES AND ALLOW EARLY RELEASE.

People housed at SRJ who were sentenced to state prison are seeing the actual length of their incarceration extended, solely because CDCR has suspended the transfer of county jail prisoners to state prison in the wake of COVID-19. They are being sentenced to state prison, but are not being transported to state prison. They are suffering many of the consequences of a state prison sentence, without receiving the few meaningful benefits of a prison sentence. In terms of the penalties associated with a prison sentence, they have a prison prior on their record; this can change their future bail eligibility, and is regarded negatively on criminal history for job prospects, benefit eligibility, and future plea negotiations, among other things. With all of the penalties they face as a result of a prison sentence, clients certainly should be receiving the credits

8 Courts *must* make an individualized determination that is commensurate with the defendant's ability to pay and can be no more than what is *necessary* to ensure his or her future court appearance. 2020 WL 5269846 (restoring the precedential effect of Part III of *People v. Humphrey* (2018) 19 Cal.App.5th 1006)

associated with a prison term as governed by Section 3043.3 of Title 15 of the California Code of Regulations (CCR).⁹

Generally, a half-time eligible offense is calculated by CDC at 33%, an 80% offense is calculated at 66%, and an 85% offense is calculated at 80%. However, ACSO and the judges are simply calculating the credits as poorly as possible.

The Good Conduct Credit rules apply to people serving California prison sentences in out-of-state prisons, federal prisons, and even state hospitals. Therefore, we should be applying it to people stuck at Santa Rita Jail, too. Similarly, in July of this year, CDCR announced an emergency credit and release policy, including a one-time 12-week Positive Programming Credit and a 180-day early release policy, which are both designed to combat the spread of COVID-19 by decreasing prison populations and to offset the loss of credit-earning programming caused by pandemic-related safety measures.¹⁰

People stuck at SRJ who have already been sentenced to state prison but have had their transfers delayed indefinitely are unfairly deprived of these significant credits.

In addition to good conduct credits, there are milestone completion credits, rehabilitative achievement credits, educational merit credits, and extraordinary conduct credits. These extra credits are earned through participation in approved programs, activities, education, and assistance. Not only are people in custody at SRJ prevented from participating in these things, but they are denied the benefit of the improved credits associated with their completion.

Finally, CDCR has been releasing people from prison with fewer than 6 months remaining on their sentences. However, people who are in ACSO custody who have had their transfer to prison indefinitely postponed are not

getting the benefit of this early release even though they too are experiencing the hardship of incarceration during a lethal pandemic. This further exacerbates the unfairness of being deprived of better custody credits, which would make many of these individuals eligible for the early release.

7 SHERIFF DEPUTIES MUST BE HELD ACCOUNTABLE FOR FAILING TO WEAR MASKS AND FOR FAILING TO OBSERVE GOOD COVID-19 PRACTICES.

Prisoners are incarcerated for failing to follow social rules and laws; yet Sheriff's Deputies regularly demonstrate that they believe deputies are above the rules. It is frequently observed that Sheriff Deputies do not properly wear face masks. Deputies have been observed wearing face masks on their chin, pulling their mask below their nose, or even pulling the mask 2 to 3 inches away from their face when they speak. Attorneys have commented that even during recorded court hearings, Sheriff Deputies are not wearing face masks, potentially endangering legal clients.

Additionally, many clients have observed that Deputies do not change their gloves when moving between Housing Units, including between quarantined and un-quarantined Housing Units.

Another client reported on July 24 that she observed a nurse administering insulin moving between patients without washing her hands or using gloves. Another client reported as late as August — after an outbreak which infected 106 prisoners — that he frequently reminds Deputies to wear masks and gloves, but they ignore his reminders.

9 Cal. Code Regs. tit. 15 § 3043 Section 3043 - Credit Earning (a) General: Unless otherwise precluded by this article, all prisoners who participate in approved rehabilitative programs and activities, including prisoners housed in administrative segregation housing units, in security housing units, in psychiatric services units, or in other segregated housing placement units, shall be eligible to earn Milestone Completion Credit, Rehabilitative Achievement Credit, and Educational Merit Credit as set forth in sections 3043.3, 3043.4, and 3043.5 of this article. The award of these credits, as well as Extraordinary Conduct Credit as set forth in section 3043.6 of this article, shall advance an prisoner's release date if sentenced to a determinate term or advance an prisoner's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole.

10 <https://www.cdcr.ca.gov/news/2020/07/10/cdcr-announces-additional-actions-to-reduce-population-and-maximize-space-system-wide-to-address-covid-19/>

8 THE COUNTY AND ACSO MUST PROVIDE SUFFICIENT CLEANING SUPPLIES AND PERSONAL PROTECTIVE EQUIPMENT TO PRISONERS, AND ADDRESS THE ONGOING RODENT INFESTATION IN SANTA RITA JAIL.

Conditions inside Santa Rita Jail are unsafe and unsanitary. Prisoners are not provided with sufficient PPE. They are not provided with any gloves to clean their housing units, and are punished for having extra gloves in their possession. One client was written up -- losing all food, phone time, tablet, and video visiting privileges for 60 days -- for holding on to extra gloves to use for exercising and cleaning his POD. We were also informed of instances in which ACSO sheriff's deputies raided units and confiscated all sanitary and safety supplies—including masks and cleaning products—without any explanation.

Additionally, sanitary supplies provided to prisoners are of a lower quality than those provided to deputies. Clients have consistently reported cleaning fluid that is dirty and watered down, because it is shared between many PODs within the same housing unit. Clients have also reported that they are provided with alcohol-free benzalkonium chloride wipes¹¹ to clean the surfaces in their Housing Units. These wipes are intended to clean wounds, not to sanitize surfaces. When prisoners are provided with higher-quality Purell wipes which contain alcohol, they are provided so infrequently as to make them useless in maintaining personal and environmental hygiene. One client reported on August 5 that she received only 4 small wipes in 1 week, and was forced to use the same wipe to clean many surfaces. The client also reported that rather than provide prisoners with real disinfectant, the jail provided them with diluted window cleaner to clean all surfaces.

11 "Dynarex - BZK Antiseptic Towelettes are alcohol-free, will not sting, and are made for antiseptic cleansing. Contains benzalkonium chloride 0.13% v/v solution. Dynarex Towelettes are used in first aid to help prevent skin infection in minor cuts, scrapes, and burns. BZK towelettes are a good all-purpose antiseptic for skin cleaning, perineal use, or maternity care."