

MMHPI COVID-19 Response Briefings

Planning Guide for County Officials Seeking to Reduce Jail Demand During Pandemic – Ten Principles to Guide Planning and Decision Making

April 7, 2020 Version

For questions or help implementing measures to reduce jail demand in your county, please contact the MMHPI Justice Policy Team: Dr. Tony Fabelo, Senior Fellow; and Jessy Tyler, Senior Director for Justice Research.

Introduction

The COVID-19 virus continues to spread, requiring major changes to standard operating protocols by both governmental entities and private agencies. For counties, a “hotspot” is the county jail; the spread of the virus in a county jail would have huge, negative implications for jail operations, as well as jail staff and the jail population.

In response to numerous requests for guidance on the operation of jails during a pandemic, the Justice Policy Team at the Meadows Mental Health Policy Institute (MMHPI) developed the March 24, 2020, briefing, [Planning Guide for County Officials Seeking to Reduce Jail Demand During Pandemic – Diversion Prioritization and Admission Protocol Considerations](#). That briefing was widely circulated to justice leaders across Texas and was intended to inform the efforts of county officials to prioritize jail bed use and admissions protocols in order to promote public safety by reducing the demand for jail space during this continuing crisis. In addition, MMHPI’s Justice Policy Team has been able to offer no-cost technical assistance thanks to our partnership with and support from The Pew Charitable Trusts and our ongoing support from The Meadows Foundation, Lyda Hill Philanthropies, and The Hackett Center for Mental Health.

Since then, Dr. Fabelo and Ms. Tyler have been providing technical assistance to numerous counties across Texas and gaining information from these conversations and experiences. On March 29, 2020, Governor Greg Abbott issued Executive Order No. GA-13 relating to the release of arrested and jailed individuals in county and municipal jails during the continuing COVID-19 disaster.¹ Thus, we are issuing this updated version of the briefing, which specifies 10 principles to guide local conversations and our technical assistance. This version addresses and is fully aligned with Governor Abbott’s March 29, 2020, executive order.

¹ Tex. Exec. Order No. GA-13 (Mar. 29, 2020), <https://gov.texas.gov/news/post/governor-abbott-prohibits-release-of-individuals-in-custody-with-history-of-offenses-involving-physical-violence>

Goals of Emergency County Planning

The primary goal of emergency planning related to jail populations during this pandemic should be to prepare Texas jails to have more space to continue operations by better controlling potential spread of the virus within the jail and, just as importantly, have the ability to protect jail staff who need to stay healthy for the jails to operate efficiently. In formulating jail population reduction guidelines, public officials will have many difficult decisions to make. These officials must balance the reduction of the jail population with their duty to ensure both broader public safety and that decisions regarding release be based on individualized determinations.

The secondary goal is to prepare jails to have enough capacity over the coming months to detain a higher rate of violent and serious offenders, under the assumption that violent crime and domestic abuse crimes (including child abuse), among others, seem to already be increasing² due to both the pandemic and the dramatic economic consequences of suppression efforts.³

Finally, counties should be planning for the enhancement of certain offenses during the emergency under Section 12.50, Texas Penal Code, which alone may increase the influx of more severe offenders.⁴

Public safety, defined as making jail space available in the future for violent and severe offenders and maintaining a healthy jail staff to operate jails effectively in the near future, has to be the immediate and clear goal at this time of crisis. However, conditions on the ground in each county – including the rate of community transmission of the illness, the local economic consequences of the suppression measures, the community’s broader public safety priorities, and the availability of post-release services – all need to be taken into account by local leaders. For counties that determine they need to lower their jail population to promote public safety, the 10 principles in this briefing provide a guide for minimizing the public safety risks to communities as enhanced diversion and release procedures are implemented.

² Lopez, R. (2020, March 20). *Domestic violence calls increase as people shelter in place during COVID-19 outbreak*. KVUE-TV. <https://bit.ly/33JEQg7>

Clarridge, E. (2020, March 20). *Adults stressed by coronavirus assaulted six children, Fort Worth hospital says*. Star Telegram. <https://www.star-telegram.com/news/coronavirus/article241382431.html>

³ MMHPI will be releasing a COVID-19 Briefing Paper later in April with projections on expected increases in violence related to the pandemic and the economic consequences of suppression efforts. We will update this footnote with a reference, once it is released.

⁴ These offenses include Assault, Arson, Robbery, Burglary of a Coin Operated Machine, Burglary, Burglary of Vehicles, Criminal Trespass, and Theft.

Executive Order No. GA-13

On March 29, 2020, Texas Governor Greg Abbott issued Executive Order No. GA-13 relating to the release of arrested and jailed individuals in county and municipal jails during the COVID-19 disaster.⁵ This order has different sections, but in essence Governor Abbott suspended, to “the extent necessary,” statutes and rules relating to personal bonds “to preclude the release on personal bond of any person previously convicted of a crime that involves physical violence or the threat of physical violence, or of any person currently arrested for such a crime that is supported by probable cause.” Governor Abbott suspended these provisions to “prevent any person’s automatic release on personal bond because the State is not ready for trial” and restricted the granting of good time or industry credit to persons serving sentences for or previously convicted of crimes involving physical violence or the threat of physical violence. The Executive Order also provides that “nothing herein shall prevent the lawful exercise of authority by a county criminal court judge, district judge, or appellate judge in considering release on an individualized basis for health or medical reasons, provided that proper notice is given to the district attorney and an opportunity for hearing is given.”

Both MMHPI’s March 24, 2020 briefing and this updated briefing are fully aligned with the Governor’s Order, and neither briefing assumes or promotes the release of persons on bond or granting good time without the scrutiny of local judicial officials based on an individualized evaluation of each person’s records. As noted below, local officials should meet to get consensus on protocols to reduce the jail population in a manner that provides for public safety and plans for future capacity needs to house persons arrested on or sentenced for offenses involving threats or acts of physical violence, while assuring that persons can be released as appropriate to ensure health in the jail, consistent with the Governor’s Executive Order.

Ten Principles to Guide Planning and Decision Making

PRINCIPLE ONE: CONVENE KEY LOCAL LEADERS TO CREATE COUNTY CONSENSUS ON JAIL POPULATION MANAGEMENT STRATEGIES

- The county judge, a designated county or judicial official, or the chair of a local justice coordinating council should call a meeting of key officials to review options and Governor Abbott’s March 29 Executive Order to form consensus on a local plan to address issues related to the management of the jail population.
- At a minimum, the main officials should include the county judge, the district and / or county attorney, the sheriff, presiding judges, director of the county or district health agency, probation and pretrial directors, criminal defense attorney representatives, the

⁵ Tex. Exec. Order No. GA-13 (Mar. 29, 2020), <https://gov.texas.gov/news/post/governor-abbott-prohibits-release-of-individuals-in-custody-with-history-of-offenses-involving-physical-violence>

local mental health authority, the jail health care provider, and chief law enforcement officer of the largest police agency in the county. This group should review these 10 principles in the context of local priorities. This is important so each official can be informed of best practice options and create a cohesive plan for the county and courts. It is imperative to have a coordinated response, not an ad hoc response by each official.

- Local leaders must take into account conditions on the ground in the county including the rate of community transmission of COVID-19, the local economic consequences of suppression measures, the community's broader public safety priorities, and the availability of post-release services.
- County officials should also appoint a local official or senior staff member to represent the county's interests with the Texas Department of Criminal Justice (TDCJ). TDCJ can assist, in many respects, if they have the right information from a county. For example, TDCJ may speed up the admission of offenders already sentenced to a TDCJ facility or help with parole violators in jail awaiting a parole violation hearing.

PRINCIPLE TWO: AGREE WITH THE DISTRICT ATTORNEY ON THE USE OF PERSONAL BOND OFFICE / PRETRIAL AGENCY TO EXPEDITE REVIEW OF CASES

- The personal bond office or pretrial agency should be used to help review and assess the jail population to identify potential defendants with indicators suggesting possible bond release in light of the COVID-19 crisis. This review should account for the prohibitions in Governor Abbott's March 29, 2020, Emergency Order.
- The personal bond office or pretrial agency should quickly review the records of specific people in the jail and court databases to identify appropriate releases.
- The results of each review should be shared in a timely fashion with the sheriff, district and / or county attorney, appropriate courts, and defense attorneys.
- Alternatively, the district and county attorney can lead the review with the assistance of the personal bond office or pretrial agency.
- The meeting of the key officials described under Principle One is critical to gaining consensus on how these responsibilities will be handled, while maximizing limited resources during this emergency.

PRINCIPLE THREE: SHERIFF'S OFFICE REVIEW OF ON-HAND JAIL POPULATION CASES

- The sheriff should review the records of the jail population to apply statutory and discretionary "good time" to inmates, where appropriate. The review should account for the prohibitions in Governor Abbott's March 29, 2020, Emergency Order, while recording credits to apply at the end of the emergency as directed by the order.
- Inmates on "Blue Warrants" for administrative parole violations should be identified for evaluation of release on bond. These warrants are required to state if an inmate is bond eligible.

- The personal bond office should check with the parole office to determine what to do with parolees who have already had their revocation hearings and to inform the parole office of bond-eligible parolees found during the review; their input is critical.
- The sheriff should work in coordination with the district and / or county attorney and designate judges to create a list of parolees who could be considered for personal bond after appropriate review.
- Any private attorneys of record representing these parolees should be notified of these reviews on a timely basis.
- The sheriff, working with the jail health care provider, should identify medically vulnerable inmates for release and appropriate medical follow up in the community. The review should account for the prohibitions in Governor Abbott's March 29, 2020, Emergency Order.
- Jail protocols for handling COVID-19 inmates should be developed based on Texas Commission of Jail Standards guidelines, if the sheriff has not already done so.
- County officials should agree on a plan, with the local health agency or district, to determine quarantine policies for COVID-19 inmates who are released from jail.

PRINCIPLE FOUR: REVIEW INMATES ON PROBATION UNDER ORDERS TO BE TRANSFERRED TO OTHER FACILITIES AND EXPEDITE TRANSFER

- The probation department should identify inmates on probation awaiting transfer to other state or private facilities and inform the sheriff of actions they are taking to accelerate transfers.
- If prompt transfer is not possible, the probation department and the district and / or county attorney should discuss the merits of releasing these inmates and ask the appropriate judge to review the recommendation. The review should account for the prohibitions in Governor Abbott's March 29, 2020, Emergency Order.

PRINCIPLE FIVE: EXAMINE PROTOCOLS TO REDUCE THE FILING OF MOTIONS TO REVOKE PROBATION FOR TECHNICAL VIOLATIONS

- Attempts should be made to reduce the filing of motions to revoke probation for technical violations, other than absconders. Probationers arrested on Class A, B, and C misdemeanors, who have bonded out on their charge, should be reviewed by the probation office and the district and / or county attorney to determine if a motion to revoke and warrant request can be postponed to prevent the probationer's re-arrest by law enforcement. The review should account for the prohibitions in Governor Abbott's March 29, 2020, Emergency Order.
- During the period of emergency, there should be *no misdemeanor defendants* in a county jail on motions to revoke of any type unless the probationer is in jail based on prohibitions in Governor Abbott's March 29, 2020, Emergency Order.

PRINCIPLE SIX: ENCOURAGE LAW ENFORCEMENT TO CITE RATHER THAN ARREST FOR AUTHORIZED OFFENSES SET FORTH IN THE CODE OF CRIMINAL PROCEDURE

- This principle should only be applied to cases that do not adversely affect public safety.
- Determine if the county needs to adopt a cite-and-release policy for persons living in the county and include the offenses for which this is applicable, as allowed by law. The sheriff should review the policy with the law enforcement agencies in the county.
- Develop a policy for scheduling when persons cited and released on eligible offense are to appear for magistration, so peace officers can issue a citation with a time and place for magistration and record that a citation was issued.
- Train the magistrates on their duty to magistrate just as they would if the person had been arrested; a magistrate may release a person on personal bond unless good cause is shown and can issue a warrant if the person does not appear in court.

PRINCIPLE SEVEN: ADOPT PROTOCOLS TO ENSURE THAT ARTICLE 17.032, CODE OF CRIMINAL PROCEDURE, MENTAL HEALTH BOND HEARINGS ARE CONDUCTED IN A TIMELY MANNER

- Any jail inmate screened as potentially mentally ill at jail admission should have the required “written assessment” performed within 24 hours during the emergency period.
- Mentally ill inmates who have been in jail 96 hours must have a review under Article 17.032, Code of Criminal Procedure, and be considered for a mental health personal bond. The review should account for the prohibitions in Governor Abbott’s March 29, 2020, Emergency Order.
- If the county has a mental health court, the presiding judges should issue an order to consolidate hearings under Article 17.032, Code of Criminal Procedure, in the mental health court. The mental health court should prioritize these hearings.
- Keep in mind that aftercare services are likely to be less available during the crisis and ensure that release plans are consistent with current service availability. All releases of inmates with mental illness, under Article 17.032 or otherwise, should include medications for a longer duration than usual to maintain continuity of care as prescribed and encourage adherence to “social distancing” practices necessary to minimize transmission of COVID-19.

PRINCIPLE EIGHT: ADOPT PROTOCOLS TO ENSURE THAT ATTORNEYS REPRESENTING JAIL INMATES WILL BE READILY AVAILABLE AT ALL CRITICAL STAGES (ARTICLE 15.17, CODE OF CRIMINAL PROCEDURE, AND BOND REVIEW HEARINGS) TO GUARANTEE THAT DEFENDANTS ARE PROPERLY REPRESENTED AND REVIEWED FOR EXPEDITED BOND RELEASE

- Create and maintain a schedule at magistration and bond review hearings for defense lawyers to be present.
- Review the technology infrastructure recommendations under Principle Ten to draft contingency plans to have defense counsel join from a remote location, if necessary (note the Technical Assistance Memorandum issued by the Texas Commission on Jail Standards regarding the transmission of criminal history information for magistration – a link to this document is provided below).
- Discuss options for additional work for defense counsel to expedite processes. For the jurisdictions where lawyers are paid hourly to be present for work in the jail but not filling a full hour with representation, defense counsel can do work that can expedite processes. For example, defense counsel can review Blue Warrants for bond eligibility, represent defendants that have been screened as mentally ill to secure a mental health bond release or expedite the Article 17.032, Code of Criminal Procedure, process if that process is in place in the county, or write habeas writs for persons with municipal holds from other jurisdictions.
- Attorneys representing defendants should be familiar with Governor Abbott’s March 29, 2020, Emergency Order and represent their clients on any issues arising from the order.

PRINCIPLE NINE: DEVELOP PROTOCOLS FOR THE DISTRICT AND/OR COUNTY ATTORNEY TO CONTINUE TO REVIEW ALL PENDING MISDEMEANOR AND FELONY CASES FOR EXPEDITIOUS PLEA NEGOTIATIONS

- The district and / or county attorney should continue an expedited review of all pending misdemeanor and felony cases where the defendant is currently incarcerated in the county jail. The review should account for the prohibitions in Governor Abbott’s March 29, 2020, Emergency Order.
- The district and / or county attorney should attempt to negotiate pleas daily, in the interest of justice, that will resolve cases through plea agreements and reduce the jail population.

PRINCIPLE TEN: CONDUCT A SYSTEMATIC AND COORDINATED REVIEW OF THE TECHNOLOGY INFRASTRUCTURE TO FACILITATE EMERGENCY PROTOCOLS

- Review available technology infrastructure as new protocols will require the identification of gaps in internet video capabilities that must be addressed to support the above processes. Among these needs:
 - Protocols for key staff to work from home but continue to interact with other members of their offices;
 - Acquisition and distribution of appropriate technology to key staff, protocols on how to use hardware and software, and department policies on appropriate use;
 - Identification of video links and terminals to allow for jail defendants to access their attorneys and participate in required hearings, as well as ways to sanitize these terminals between each use;
 - Protocols regarding the use and validation of electronic signatures in lieu of wet signatures;
 - Identification of an internet-based reporting system that will allow defendants on pretrial or probation supervision to report to their officers and for courts to notify defendants of hearings and appearances;
 - Processes for training people (judge, defendants, and attorneys) to use these resources and providing technical support for issues with the technology; and
 - Consideration of the possibility that the county will need to provide kiosk reporting locations for indigent defendants with no access to technology, and a strategy for kiosk locations to comply with COVID-19 social distancing protocols.
- Review the [April 3, 2020 Technical Assistance Memorandum](#) issued by the Texas Commission on Jail Standards (TCJS) on April 3, 2020, which requires a magistrate to be provided with a copy of the Texas Department of Public Safety's Current Criminal History (CCH) in order for them to make a decision regarding bond. The memorandum provides guidelines for the use, distribution, handling and protection of sensitive information.