



# THE LOCAL GOVERNMENT LIABILITY BEAT

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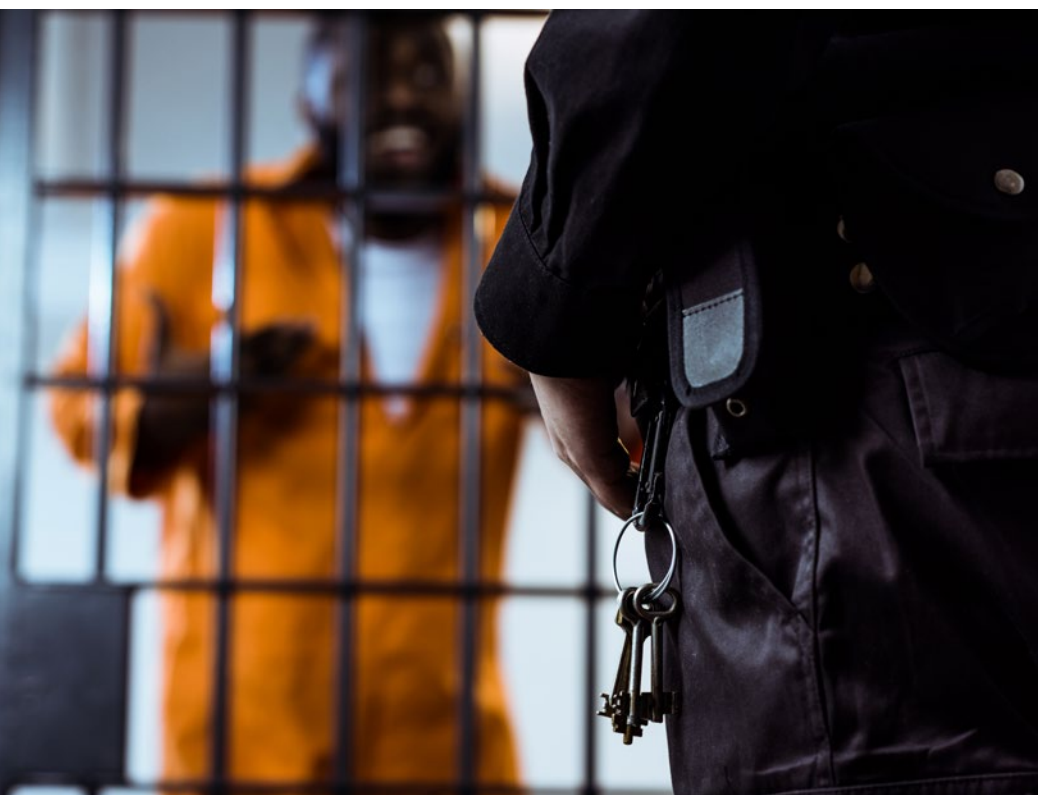
## Lawsuits Being Filed Against Jail and Correctional Facilities Related to the Coronavirus

*By John Ryan, Attorney, Legal and Liability Risk Management Institute*

The impact of Coronavirus or COVID-19 has been seen throughout the United States and around the world. Correctional facilities have been especially susceptible to the COVID-19 outbreak and as a result there have been a number of legal actions which have been filed in recent weeks. This article will provide an overview of some of the lawsuits which have been filed thus far.

In *Banks v. Booth*, the American Civil Liberties Union filed a class action lawsuit on behalf of prisoners in the D.C. Jail which alleged violations of the Fifth and

Eighth Amendments. Specifically, the complaint includes allegations that there has been delay of medical treatment for those who have displayed COVID-19 symptoms and a denial of COVID-19 tests for inmates with symptoms. The complaint further alleges that there has been a failure to provide hand soap or sanitizer for inmates to clean their hands, and a failure to provide cleaning supplies and personal protective equipment (PPE). Additionally, the complaint alleges that 65 inmates were not quarantined properly after coming in contact with a law enforcement officer who had tested positive for COVID-19. The complaint asserts that this quarantine was not



effective in that inmates were housed two to a cell and the corrections officers assigned to the unit were not provided with PPE.

On April 19, 2020, the federal court judge who is presiding over the case ordered the D.C. Department of Corrections to improve conditions at the D.C. Jail. Among other things, the Court ordered expedited responses to sick call requests, appropriate and consistent implementation of social distancing policies, and improvements to conditions for inmates on isolation status such as access to legal and personal calls, daily showers, clean clothing, and clean linens. The Court also ordered the defendants to conduct additional staff training on the use of non-touch, infrared thermometers. The Court further ordered the defendants to communicate clear written expectations to correctional staff about the type of PPE that is required to perform various supervisory and operational functions throughout the facility. In addition, the Court ordered the defendants to ensure that all PPE is properly fitted and that all staff receive instructions on how to properly dispose of PPE. The Court further noted a critical need to strengthen environmental health and safety programs and recommended that the defendants immediately engage a registered sanitarian to oversee the health and safety programs at the facility. The Court also ordered that all inmates, including those in isolation,

have access to confidential legal calls of sufficient length to discuss their legal matters.

In the Superior Court of the District of Columbia, the F.O.P. for the Department of Corrections, on behalf of correctional staff, has also filed a class action complaint and a writ of mandamus against the District of Columbia and the director of the D.C. Department of Corrections. Count one of the correctional officers' complaint is a claim for statutory penalties under OSHA. This claim alleges that COVID-19 has created a public health emergency which has resulted in hazardous and unsafe working conditions in the D.C. Jail. Further, the claim alleges that the Department of Corrections did not take sufficient actions to mitigate the known risks of COVID-19 within the D.C. Jail, and failed to bargain with the union to implement changes and improvements to the unsafe conditions. This claim also asserts that the defendants failed to respond to requests for PPE for jail employees. Under this claim, the plaintiffs are seeking \$10,000 for each violation per each day the violations occur and continue.

In the second claim, the correctional officers are seeking an order from the court that the defendants furnish the employees in the jail with conditions of employment that are free from recognized hazards which may cause death or physical injury to the employees. Specifically, these conditions would

include the following: sanitizing the jail per CDC guidance; isolation of infected and exposed inmates at an off-site hospital; return of infected/symptomatic inmates to the general population only after two negative COVID-19 tests; identification of all members and inmates who have tested positive for COVID-19, and identification of those who are reporting symptoms for COVID-19 or who have been tested for COVID-19; providing contact tracing for members and inmates who have tested positive for COVID-19; providing surgical masks, N95 masks, gloves and eye protection at all entrances and



posts; providing hand sanitizer at every post and for every inmate cell; and providing on-site testing for members and their family members upon request.

In Michigan, the ACLU and other groups have filed a lawsuit on behalf of pre-trial detainees and convicted detainees at the Oakland County Jail. Since the filing of this suit, *Cameron v. Bouchard*, the District Court has granted the pre-trial detainees' motion for a temporary restraining order which requires the jail to improve hygiene and safety at the jail.

In agreeing with portions of the pre-trial detainees' claims, the Court has ordered the following: 1) that detainees receive an individual supply of hand soap and paper towels, and an adequate supply of disinfectant wipes; 2) that all detainees have access to hand sanitizer with at least 60% alcohol where permissible based on security restrictions; 3) access to showers and clean laundry; 4) that all jail staff wear PPE to the fullest extent possible when interacting with others and when touching surfaces in cells and common areas; 5) that all jail staff wash their hands or use hand sanitizer before and after touching any person, or surface area in cells and common areas; 6) that the jail establish a protocol for detainees to self-report COVID-19 symptoms; 7) performance of immediate testing for anyone displaying COVID-19 symptoms; 8) provision of adequate spacing of 6 feet or more between people incarcerated to the maximum extent possible; 9) ensure that individuals who have COVID-19, symptoms of COVID-19, or exposure to COVID-19 receive adequate medical care and are quarantined in a non-punitive setting with continued access to showers, mental health services, reading materials, phone calls, and communications with counsel; 10) response to all COVID-19 emergencies within an hour; 11) provision of sufficient disinfectant supplies, without cost, so detainees can clean high touch areas and items; 12) effective communication to all detainees of information related to COVID-19; 13) training of all staff regarding measures to identify inmates with COVID-19 and training with respect to measures to reduce transmission; and lastly, a cease and desist of all punitive transfers or threats of transfers to areas of the jail with higher infection rates, and a cease and desist of any retaliation against inmates who raise concerns about the health and safety conditions at the jail.



In another new case, the ACLU has also filed a lawsuit on behalf of prisoners in Weld County, Colorado. In *Carranza v. Reams*, inmates have alleged that the Weld County Sheriff has failed to take steps to protect jail inmates at the Weld County Jail from COVID-19. The complaint includes allegations that inmates are being held with three to four individuals to a cell, and in some cases there are up to nine individuals in a cell. The complaint states that this arrangement means that inmates cannot maintain adequate physical distance between each other. There are also allegations that inmates are not being removed from communal pods unless they have at least four symptoms. The complaint also asserts that kitchen inmate workers have been displaying COVID-19 symptoms and are not being provided masks. Additionally, the complaint alleges that the jail has failed to provide education and updates to inmates regarding COVID-19. Moreover, the complaint alleges that the jail is not taking adequate precautions to protect vulnerable people or quarantine those with symptoms.

COVID-19 will continue to present complex issues in correctional facilities for the foreseeable future. The cases discussed above have only been filed in recent weeks and are still in the beginning stages of litigation, but these cases illustrate some of the common allegations and claims that will likely be set forth as more lawsuits are filed in different parts of the country.

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Local Government  
Risk Management Services  
3500 Parkway Lane . Suite 110  
Norcross, Georgia 30092

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*This Issue...*

# COVID-19 Issues for Correctional Facilities

