

April 7, 2020

**Warden Mike Mattson**  
Minnehaha County Jail  
500 N. Minnesota Ave.  
Sioux Falls, SD 57104

**The Honorable Crystal Johnson**  
Minnehaha County State's Attorney  
415 N. Dakota Ave.  
Sioux Falls, SD 57104

Dear Warden Mattson and State's Attorney Johnson:

The American Civil Liberties Union of South Dakota (ACLU of SD) is concerned about possible unsanitary conditions and the lack of adequate preventative measures in the Minnehaha County Jail during the COVID-19 pandemic.

The ACLU has a long history of protecting the civil rights of Americans. During the current pandemic, we believe increased sanitary conditions are critical to avoid the spread of the virus such as the Cook County jail recently saw with over 150 prisoners testing positive for COVID-19. To that end, the ACLU of SD is concerned about certain policies in place at the Minnehaha County Jail regarding hygiene supplies and cleaning equipment.

First, according to the Jail's website, upon being admitted to the facility an inmate is provided with a hygiene kit. This kit contains "soap, shampoo, toothbrush, toothpaste, and a comb." However, once these initial supplies are exhausted, inmates are "required to purchase additional hygiene items."<sup>1</sup> The Jail's Inmate Guidebook notes that "inmates without money available to purchase hygiene supplies, may be able to purchase indigent supplies through the [commissary] kiosk."<sup>2</sup> However, during these exceptional times we do not believe that this system is adequate.

To prevent the spread of the coronavirus, the top recommendation by the Center for Disease Control (CDC) is to regularly wash one's hands with soap and water. Therefore, we urge the Minnehaha County Jail to ensure that hygiene supplies—especially soap—are made available to all inmates free of charge in both common areas as well as in their cells. Also, under current rules, inmates are not authorized to possess cleaning materials such as paper towels and sanitizing wipes in their cells.<sup>3</sup> Because of the importance of such supplies during this time, we request that you provide these items to inmates and authorize them to be kept supplies in their cells for the remainder of the pandemic.

Additionally, the ACLU of SD requests that the Minnehaha County Jail waives any out-of-pocket fees inmates would usually be charged for seeking medical assistance for COVID-19 related symptoms. This includes fees for visits with medical personnel as well as the cost of purchasing over-the-counter medications such as ibuprofen and antacids.<sup>4</sup> These fees can discourage inmates with coronavirus-type symptoms from seeking appropriate treatment from the facility's medical staff. Therefore, in order to

<sup>1</sup> <https://www.minnehahacounty.org/dept/so/divisions/jail/information/jailInformation.php>

<sup>2</sup> Minnehaha County Sheriff's Office Jail Inmate Guidebook (Inmate Guidebook) Section 6: Indigent Status. Available at <https://www.minnehahacounty.org/dept/so/divisions/jail/JailInmateGuidebook.pdf>

<sup>3</sup> Inmate Guidebook Section 5: Authorized Possessions.

<sup>4</sup> Inmate Guidebook Section 4: Access Health Services, Over the Counter Medications.



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more efficiently identify and isolate potential COVID-19 infected inmates, the ACLU of SD requests that these charges be waived for the remainder of the pandemic.

Finally, The ACLU of SD has made numerous recommendations regarding the release of prisoners who are being held on pre-trial detention or are close to the end of their sentence and who pose no threat to society. Please find attached the ACLU of SD's letter that was previously sent to officials. It is crucial that people have a safety net and are not released into Minnehaha County without adequate resources to provide for themselves. We urge you to not detain people who are not a threat to society, or themselves and who are able to provide themselves with suitable socially distancing circumstances.



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Making these changes will not only protect the inmates and staff at the Minnehaha County Jail, but will also help ensure that your facility is operating in accordance with Constitutional standards.<sup>5</sup> Detention facilities have a constitutional right to supply “adequate sanitation” and to provide materials required for inmates to maintain their “personal hygiene.”<sup>6</sup> When considering whether a detention facility has violated this right, the courts consider, inter alia, whether the conditions of an inmate’s confinement “posed a substantial risk of serious harm[.]”<sup>7</sup> In light of the increased health risks posed by the current pandemic, failure to provide inmates adequate soap and cleaning supplies for their cells could result in a violation of this constitutional right.

At this unprecedented time, the ACLU of SD believes resources are best spent solving and addressing problems collaboratively. However, as you also know, the ACLU has a long history of defending the civil rights and liberties of those who are unable to defend themselves.

If you would like to discuss any of these issues, please don't hesitate to call me.

Sincerely,

A handwritten signature in black ink that reads "Kimberly Craven". The signature is written in a cursive, flowing style.

Kimberly Craven  
Legal Director,  
American Civil Liberties Union of South Dakota  
C: 303-494-1974

Enclosures

cc: Minnehaha County Commissioners  
Traci Smith, Public Defender

<sup>5</sup> Minnehaha County Jail's Mission Statement begins with an assurance that the facility will “operate in accordance with the US Constitution[.]” Available at <https://www.minnehahacounty.org/dept/so/divisions/jail/jail.php>.

<sup>6</sup> See *Beaulieu v. Ludeman*, 690 F.3d 1017, 1045 (8th Cir. 2012); see also *Myers v. Hundley*, 101 F.3d 542, 544 (8th Cir. 1996) (stating that “deprivation of adequate hygiene supplies violates inmates’ Eighth Amendment rights[.]”).

<sup>7</sup> *Beaulieu*, 690 F.3d at 1045.