

April 3, 2020

The Honorable Mark Vargo
Pennington County State's Attorney
130 Kansas City St., Suite 300
Rapid City, SD 57701

Dear Mr. Vargo:



The American Civil Liberties Union of South Dakota (ACLU of SD) is concerned about recent reports published in the March 28, 2020 edition of the Rapid City Journal¹ regarding unsanitary conditions and the lack of preventative measures in the Pennington County Jail during the COVID-19 pandemic.

According to the newspaper story, prisoner complaints include:

- the lack of soap in individual cells;
- soap costing \$6 per bar if a prisoner has the resources to buy their own soap;
- the inability to socially distance from other inmates;
- a fear that jail workers are not being monitored for high temperatures indicating illness when they enter the jail;
- jail workers are not provided masks or gloves to prevent the spread of the virus; and
- a lack of paper towels and disinfectant wipes to clean surfaces.

These reports are troubling because detention facilities have a constitutional right to supply “adequate sanitation” and to provide materials required for inmates to maintain their “personal hygiene.”² 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[.]”³ 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.

In addition to the potential constitutional violations, depriving these inmates of adequate hygiene and cleaning supplies also violates Pennington County Jail’s own policies. These policies require inmates to “maintain their personal hygiene” and ensures that they “are given the opportunity and necessary supplies to do so.”⁴ Similarly, the jail’s policies also guarantee that inmates will receive appropriate supplies to maintain their own “sanitary living area conditions.”⁵ As such, in order to comply with the U.S. Constitution, as well as the facility’s own policies, the ACLU of SD asks that the Pennington County Jail ensure that every cell is provided with a consistent supply of soap and sanitizing wipes during this

¹ https://rapidcityjournal.com/news/local/inmates-want-more-covid-precautions-at-pennington-county-jail/article_82a545ca-c6ed-52b3-bbfe-27f5d3b806eb.html

² 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[.]”).

³ *Beaulieu*, 690 F.3d at 1045.

⁴ Pennington County Jail Policy (PCJ) 430.06: Inmate Hygiene.

⁵ PCJ 430.04: Housekeeping.

unique and unprecedented pandemic. These small changes will allow inmates to better comply with the Center for Disease Control's guidelines to prevent the spread of the virus.⁶

The ACLU of SD also requests that the Pennington County Jail alter its existing policies regarding out of pocket expenses for inmates seeking medical assistance for COVID-19 related symptoms. Under the current policy, inmates are charged five dollars per visit with a medical professional.⁷ Additionally, inmates are billed for some over-the-counter medications such as ibuprofen and antacids. These fees can discourage inmates with coronavirus-type symptoms from seeking appropriate treatment from the facility's medical staff. Therefore, in order to 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 to the Rapid City streets 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.

Thank you for the consideration of these requests. If you would like to discuss any issue that has been raised, please contact our office.

Sincerely,



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

Enclosures

cc: Pennington County Commissioners
Commander Rob Yantis

⁶ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/index.html>

⁷ PCJ 440.04: Sick Call/Non-Emergency Medical Assistance.



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