

## Utah jailers say they're proud of their coronavirus response, reject lawsuit

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[updated version with ACLU of Utah quote]

<https://www.sltrib.com/news/2020/04/27/utah-jailers-say-theyre/>

Utah jailers are defending their response to the coronavirus pandemic and arguing the high court shouldn't force them to release more inmates, despite the lawsuit filed by the American Civil Liberties Union of Utah and others.

The ACLU jointly filed a petition on April 1 with the Utah Disability Law Center and the Utah Association of Criminal Defense Lawyers, asking the Utah Supreme Court to step in, particularly in cases where inmates are awaiting trial or are more vulnerable to the virus.

In a flurry of filings over the weekend, state and local officials say the number of people incarcerated in Utah jails and prison are at historic lows. They say they've increased cleanings, promoted social distancing and created space to quarantine inmates who have been in contact with someone who tested positive for COVID-19.

"The counties should be lauded, not sued, for their heroic actions," wrote attorney Frank Mylar, who represents 21 counties that are named defendants in the lawsuit.

He called the ACLU-led lawsuit "offensive" and said it was filed with "profound recklessness in that they failed to conduct even the most basic investigation into what the jails are doing throughout this state." Mylar asserts that county jails in Utah have gone "above and beyond" what other states are doing to keep inmates from contracting the coronavirus and suggested that those who filed the lawsuit should be sanctioned and the legal action be dismissed. He noted that four of the counties named in the lawsuit do not have jail facilities.

"Petitioners have recklessly filed this case, taking up valuable Utah Supreme Court resources, but also have taxed the counties at a time they can ill afford the divergence from their pressing duties of preventing the spread of COVID-19," he wrote.

The three groups who are suing the state said in a statement Monday evening that they'll continue their lawsuit "because we believe that people's lives are at risk." They noted that they've asked the high court to dismiss from the lawsuit those counties that they believe have shown they are taking effective measures.

"Evidence shows that institutional living is inherently dangerous during a pandemic. Even with preventive efforts, additional outbreaks will likely occur in more Utah correctional facilities to threaten prisoners, staff, and the surrounding communities," the statement reads. "We seek only the swift release of prisoners when doing so is safe, and health and safety measures are created for those who remain incarcerated."

So far, Salt Lake County jail is the only jail in Utah that has had inmates test positive for the virus. Attorneys for the county wrote in its response that its facility is now free of COVID-19, but has had 15 cases involving current or former inmates. They say the virus was traceable back to one housing unit and the laundry area of the county's Oxbow facility.

Matt Dumont, Salt Lake County Correctional chief deputy, wrote in an affidavit that the first inmate to test positive was released March 26, and was hospitalized the following day after a "possible overdose." He didn't show symptoms while at the jail, Dumont wrote, but tested positive for the coronavirus at the hospital.

By March 31, another inmate had a fever and cough and he was taken to a medical unit. He later tested positive. From there, more positive test results trickled in — nine men and six women total.

Eighteen staff members have also tested positive, Dumont wrote, but added that most have returned to work. Those inmates who did test positive have been released from quarantine, and the jail has not had a positive test result since April 15.

Darcy Goddard, an attorney with the Salt Lake County district attorney's office, wrote in response to the ACLU lawsuit that while they have had cases of the coronavirus in their jail, they've limited the spread by reducing the jail population and quarantining those who were possibly exposed. She wrote that this shows Salt Lake County as a "success story" proving that county jails can manage an outbreak. Sheriff Rosie Rivera said in a Monday statement that their efforts to limit the spread of the coronavirus began more than two months ago, before they had their first confirmed case. She said the ACLU lawsuit "added an unnecessary burden."

"Through quick quarantine protocols, contact tracing, and medical treatment, our dedicated employees were able to take us from being the first Utah jail with COVID-19 positive inmates to being free of the virus in our inmate population within about three weeks," she said.

Goddard noted that the Salt Lake County jail is at its lowest inmate count since 1983. Other counties, too, say they've reduced the number of people in jails — with some counties like Emery, Millard and Wasatch reporting single-digit numbers of people who are incarcerated there.

Utah prison officials are similarly working to release more offenders, state attorneys wrote in response to the ACLU lawsuit. They currently have just shy of 6,100 people in prison — the lowest the population has been since 2015.

Erin Middleton, an attorney with the Utah attorney general's office, said the prison and Board of Pardons have worked to release 873 inmates early, a mix of those who were near their parole dates and some who had applied for a "special attention" review or compassionate release.

But Middleton noted that 70% of those who are currently at the prison are there for crimes she describes as "direct acts of violence against people," like murder or sex offenses.

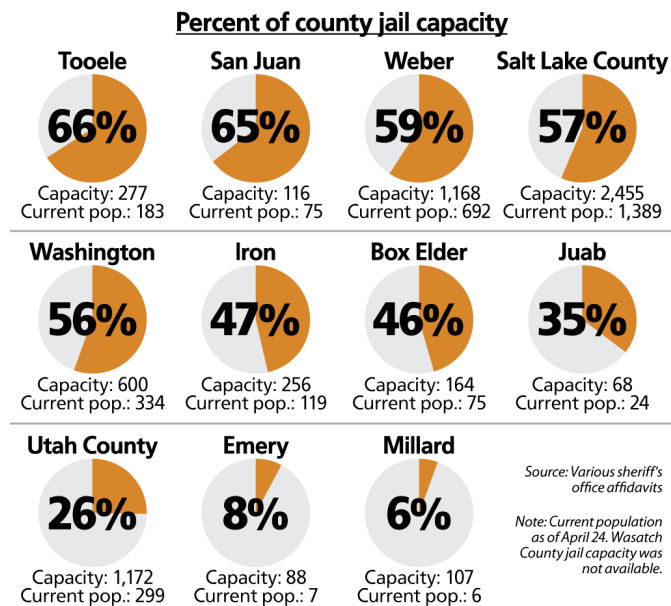
She argued that the decision on who should be released should remain with the parole board, and that the ACLU's lawsuit should be dismissed.

Prison officials have already taken multiple steps in response to the pandemic, Middleton argued, including canceling visitation, waiving medical copays for COVID-19-related care and giving inmates soap, cleaning supplies and masks.

"So far, [these] efforts have proven remarkably effective — there are no known COVID-19 cases among inmates in either the Draper or Gunnison prison facilities," she wrote.

## Reducing Utah's jail populations

Amid the coronavirus pandemic, local officials have tried to limit how many people are in their jails.



GRAPHIC BY CHRISTOPHER CHERRINGTON | The Salt Lake Tribune

Attorneys for victims of crime are also asking for the ACLU lawsuit to be dismissed, saying it is improperly asking the Utah Supreme Court to make sweeping release decisions. They argue that those decisions are best left to local authorities who can better inform victims of what's happening. "When release issues are handled in local courts, local prosecutor's offices are involved," wrote Paul Cassell, a victims' rights attorney and University of Utah law professor, "and ensure that crime victims in their communities are notified and have their rights protected."

The ACLU's petition for extraordinary relief asks the high court to order Utah officials to take "immediate steps" to release those who are incarcerated but have not yet been convicted, those who have been convicted but have less than 180 days left on their sentence and all of those who have a high risk for complications if they contract COVID-19. The three groups argue that it is appropriate for the state's highest court to step in because it is imperative that quick action is taken before the coronavirus spreads within jail walls.

"The dangerous spread of COVID-19 throughout Utah correctional facilities is nearly inevitable without immediate action from respondents," the petition reads, "and no other legal remedy would provide a plain, speedy, or adequate response needed to avert a medical crisis in Utah's correctional facilities." The Utah Supreme Court will now decide how the case moves forward, either through a ruling based on the latest legal filings or scheduling a time for oral arguments.

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#### Comments (4)

The ACLU really should have done their homework before filing this. I, for one, have lost a lot of respect for them. This petition is a complete joke.

**Qvcnut**

**WELL SAID**

The ACLU is so ridiculous exploiting this pandemic. Salt Lake County moved quickly to release low risk inmates at the start of the outbreak. Of course all about the criminals and not a thought to the correction staff that is infected doing their jobs. Hopefully the court issues a quick order dismissing this nonsense.

**pwconners**

**WELL SAID**

I love people or groups who sit on the sidelines and critique everyone else about how they are not doing their jobs properly, especially during these times when we are all learning as we navigate these uncharted waters.

2



**Scotsman Hosie**

**WELL SAID**

The **coronavirus** shouldn't be a get-out-of-jail *Free Card*. And, at this point, who's safer? An inmate or people out mixing in public.

As I've said before, I see no reason these inmates can't be made just as safe — *quarantined* right where they're at — than anywhere else.

Possibly *safer* — since their ability to attend an *Ammon Bundy* Hootenanny & Whine Rally — to tell lies 'n swap spit with strangers — isn't going to happen.

And, unless you're going to advocate that nursing homes, assisted care facilities, and homeless shelters, are putting peoples lives in danger — and should be emptied out — this suit doesn't appear to have legs to stand on.