

Gideon at Sixty:

How the Cuyahoga County Jail Stifles the Right to Counsel

THE WREN COLLECTIVE

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Executive Summary

Everyone knows that to have a fair chance in the legal system, an accused must communicate regularly with their attorney. It is just as critical, however, that the accused has the ability to talk with their loved ones and rely on them throughout the life of the case. Indeed, across the country, there is a growing recognition that family and loved ones play a central role in ensuring robust representation. They provide critical information for bond hearings, assist in investigations of the case and identification of witnesses, and help the accused decide whether to take a plea or go to trial—one of the most difficult decisions they will make. If the case ends with a plea or guilty verdict, loved ones help the lawyer and accused prepare for the sentencing hearing, which often involves a serious investigation into the accused’s background and life history. Even in places with well-resourced public defender offices, attorneys know that loved ones play an active role in resolving the case.

Jails must respect and facilitate both attorneys’ and family’s access to the accused to ensure that the right to counsel is fully realized and protected for those who are incarcerated

But too often, the visitation and communication policies of local jails severely limit people’s access to their most important support system. Bans on in-person visitation, shifts to digital mail, and unregulated prosecutorial access to recorded conversations hinder both the accused and the defense attorney’s ability to make informed decisions about how to proceed. That is certainly the case in Cuyahoga County.

Jails must respect and facilitate both the attorney’s and family’s access to the accused to ensure that the right to counsel is fully realized and protected for those who are incarcerated pending trial. In our second Cuyahoga County report, we explore how the jail’s visitation policies and practices have undermined that right.

To understand the scope of this concern and identify potential solutions, we interviewed defense attorneys across the state. We issued public record requests to prosecutor offices and county jails. We discussed the impact of these bans and the unmitigated prosecutorial monitoring of jail-based communications with community members and county stakeholders. And we spoke with Cuyahoga County jail officials and staff about past and current policies.

We found that there is a critical need in Cuyahoga County and across Ohio to both bring back in-person visitation and to curtail the access prosecutors have to the growing database of jail-based communications that Securus, Global Tel Link, and ICSolutions have facilitated. Otherwise, an accused’s right to a fair trial and effective assistance of counsel will never be fully realized.

The Jail

The Cuyahoga County Corrections Center (“Cuyahoga County Jail”) gained national attention in 2018 for its inhumane conditions and abusive practices.¹ Eight people had died in the jail over the course of six months.² Fifty-five people held in the jail attempted suicide in one year.³

The Department of Justice issued a “scathing”⁴ report in response to these deaths, detailing abhorrent conditions within the jail.⁵ The report described significant overcrowding; lax security protocols; and poor food, medical care, and hygienic practices. U.S. Marshal Pete Elliott reported that his team “found the Cuyahoga County Jail to be ‘one of the worst in the country.’”⁶

Though county officials have heralded progress in improving the jail, significant problems remain. Recent reports, lawsuits, and news articles have described a pervasive lack of mental and physical healthcare, unlawful use of solitary confinement, inedible food, and corrupt practices.⁷ “Detainees have also accused staff members of continued abuse and mistreatment, sexual assault, and drug smuggling.”⁸

On March 12, 2024, Cuyahoga settled a lawsuit stemming from the 2019 conditions. The county agreed to implement key reforms to reduce reliance on isolation, address mental health needs, and revamp the jail’s use-of-force policies.⁹ It also agreed to revise the jail’s visitation policies, employ a full-time person to coordinate legal visits and access to counsel, and document any visitation attempts by attorneys that were unable to be completed.¹⁰ According to the settlement, Cuyahoga must adopt new public and attorney visitation policies by June 28, 2024.¹¹

The jail adopted new visitation policies on March 25, 2024.¹² Though the updated public visitation policy includes the ability to request special contact visits, those appear limited to clergy and next-of-kin.¹³ The policy also allows for non-attorney “criminal justice stakeholders” to visit detainees in-person, though those visits “may be recorded by audio and video.”¹⁴

Visitation at the Jail

On February 3, 2020, the Cuyahoga County Jail ended in-person visitation with family and loved ones.¹⁵ The county replaced in-person visitation with a highly profitable video visitation system offered by Securus Technologies, one of the most frequently used jail communications providers.¹⁶

Reporting by Cleveland.com about the decision prompted significant backlash. A Cuyahoga County councilmember called the shift from in-person visitation, which was free, to expensive video visitation “morally bankrupt.”¹⁷ The jail quickly changed course.

Former Jail Director Ronda Gibson pledged to restart in-person visitation by March 20, 2020.¹⁸ But on March 13, 2020, Governor Mike DeWine halted in-person visitation in jails and prisons across Ohio to prevent the spread of COVID-19.¹⁹ And though Ohio’s prisons began allowing visitors back into the facilities in July 2020,²⁰ the Cuyahoga County Jail never fulfilled its promise to reinstate general in-person visitation.²¹

Findings

I. Communicating with loved ones is a critical part of effective legal representation.

To effectively exercise one’s right to counsel, a person must be able to communicate freely with their attorney and help prepare their defense.²² They must have enough information and understanding about their case to make informed decisions. And they need to be able to discuss that information with their support system to decide how to proceed before making the final decision with their attorney.

A person should have the opportunity to speak with their family about something as important and life-changing as a criminal conviction and prison sentence

As Cuyahoga County Deputy Public Defender Ashley Stebbins explains, a person should have the opportunity to speak with their family about something as important and life-changing as a criminal conviction and prison sentence.²³ Someone accused of a crime needs to be able to consider all the ramifications of a plea, including the impact it will have on their loved ones, before they decide whether to take it.²⁴ When clients cannot have those key conversations, their ability to work with their lawyer to achieve the best outcome is severely hindered and the resolution of their case may be delayed.²⁵ Russell Tye, Chief Trial Counsel for the Cuyahoga County Public Defender, for example, recalls many instances where a client would not accept a plea until they had a chance to talk it over with their family.²⁶ He encourages his clients to “speak with their family or significant others before resolving their circumstances via trial or accepting responsibility by way of a plea.”²⁷

People need to be able to talk candidly with family about their plans for when they get out of jail

And it isn't just pleas that people need to talk about with their support system. Communicating with loved ones can be critical to arranging bonds, identifying witnesses, and developing possible defenses. Loved ones help collect mitigation material for sentencing, like records of abuse or trauma; evidence of mental illness or substance use; and letters of support from family members, friends, neighbors, and employers.²⁸ Hope Demer, an assistant public defender in Richland County, South Carolina, and the author of *Can You Hear Me Now: The Impacts of Prosecutorial Call Monitoring on Defendants' Access to Justice*, notes that these conversations are essential to sentencing advocacy. People also need to be able to talk candidly with family about their plans for when they get out of jail—and if there are any limitations on those plans—to help their lawyer advocate for their release.²⁹

Participatory defense practices, which are growing across the country and have been used by the Hamilton County Public Defender's Office, also illustrate the importance and role of community. Instead of leaving the case entirely in the hands of the attorney, community members work alongside defense counsel. "They can participate in their loved one's defense, contributing to the efforts of the often overworked, underresourced, and overburdened public defense counsel. Family and community members also learn how to read police reports, identify witnesses, and gather evidence."³⁰ They also can help with gathering mitigation material, and can "address concerns that a judicial officer might have about a person's return to court or behavior while on pretrial release."³¹ Of course, communicating with the accused throughout the case is essential to this kind of supportive advocacy. As Angela Chang, Director of the Hamilton County Public Defender's Youth Defense Division explains, "All of those things are part of what an attorney should look at because all of those things matter for sentencing. It is key to holistic defense."³²

Communication with loved ones may also be the only way to resolve an issue with an attorney, find new representation, or effectively report mistreatment at the jail.³³ For example, if the accused is having ongoing problems working with their attorney, they may need their family to look for other legal representation. And if correctional officers are denying them food, medication, or access to the law library, they may prefer—and reasonably so—to share that information with someone outside of the jail.

The Cuyahoga County Jail has severely burdened this kind of critical communication by eliminating in-person visitation and granting prosecutors unfettered access to the remaining methods of communication.

II. Cuyahoga’s elimination of in-person visitation makes critical communication with loved ones difficult or even impossible.

Cuyahoga removed one of the primary ways people had been communicating with their loved ones and replaced it with video visitation, which is not an adequate alternative.

\$4 /25 minutes

It costs \$4.00 for 25 minutes of video visitation with someone in the Cuyahoga County Jail

Off-site video visitation is expensive and can be cost-prohibitive.

It costs \$4.00 for 25 minutes of video visitation (tax not included) with someone in the Cuyahoga County Jail, which currently amounts to the same cost as a jail phone call.³⁴ But this is not cheap.³⁵ Indeed, a phone call to the jail is eight times more expensive than a call to an Ohio prison, according to reporting from the Marshall Project, which also found that Cuyahoga's disparity between jail and prison calls was one of the highest in the country.³⁶

Jail officials contend that they have offered a free alternative: on-site kiosks for those who cannot afford to use the remote option. But that on-site option is not necessarily cost-free. People must still pay for transportation or parking and take the time to travel downtown. Those costs might have been worth it when coming to the jail meant actually seeing one's partner, child, or friend, but now those trips culminate in 20 minutes in front of one of 32 video screens mounted on the wall of the visitation lobby.³⁷ (Ohio requires jails to provide the opportunity for 30 minutes of visitation each week.³⁸)

Those who can afford to pay for a remote video visit report that they sometimes end up paying for time they don't even get.³⁹ Bekky Baker, Program Director at Ignite Peace, for example, recalled an instance where video visitation on Securus's platform took almost ten minutes to fully connect. Those ten minutes were counted against the total time for the visit, and she was not refunded for the time lost during the unstable connection.⁴⁰ Kareem Henton, a member of the Cuyahoga County Jail Coalition, has heard from incarcerated people that when they are put at the wrong kiosk for a video visit, their loved one is still forced to pay for the missed visit.⁴¹ Henton also learned that correctional officers have cut video visits short, but Securus does not refund money for visits that end early due to facility interference.⁴²

The technology is inaccessible for many.

Remote video visitation technology is also not accessible to everyone. It requires devices capable of audio and video communication and a broadband connection that is strong enough to carry both.⁴³ Securus's platform, for example, requires a 256KB minimum upstream and downstream speed.⁴⁴ But many people in Cuyahoga County do not have adequate internet access to use remote video visitation—in early 2024, 30,000 Cleveland households lacked any kind of broadband access at all.⁴⁵

Further, the poor quality of video visitation discourages people from using it. The technology often lags, the video is grainy, and it can be difficult to hear the incarcerated person.⁴⁶

Correctional officers report that the system can be hard for people to set up, especially for those who are elderly or unfamiliar with the technology.⁴⁷ Officers do try to help people who come to the jail for on-site video visits, but their assistance is limited by language barriers and absent assistive technology.⁴⁸

Chris Julian, an assistant public defender at the Cuyahoga County Public Defender's Office, shared that clients who are struggling with mental illness are often wary of cameras.⁴⁹ They will place paper over the webcam, for example, when she conducts Zoom visits with them. In other words, the jail has funneled visitation into a technology that triggers symptoms of their mental illness.

Correctional officers and jail administrators across the country have celebrated video visitation as an expansion of access and an increase in convenience—which is true. More people can spend more time (for a price) speaking with their loved ones while they are incarcerated. But video visitation is an inadequate *replacement* for in-person visitation—and for some, it is not a viable substitute at all.

III. The jail undermines the right to counsel by recording every communication made into the jail and letting prosecutors listen to them.

Even if the video visitation technology worked consistently or effectively, it would still not be an adequate alternative to in-person visitation because the prosecutor can listen to every word each person says. This does not happen with in-person visitation,⁵⁰ and it does not happen to those who can afford to be released pending trial.⁵¹

Cuyahoga's elimination of in-person visitation has left pretrial detainees with no way to communicate privately with their loved ones about their case.

Every non-attorney communication into the jail is recorded now.⁵² If a person wants to talk to their loved one, they can do so by phone (recorded), a video visit (recorded whether on-site or remote), or by "digital mail,"⁵³ which is yet another way the jail has replaced meaningful communication with an inferior technological substitute. (Instead of receiving handwritten cards or letters from their loved ones, incarcerated people get an image of the mail instead—after it has been sent to and processed by a Securus Digital Mail Center.⁵⁴)

Securus stores every single one of those recordings in a “Secure Call Platform”⁵⁵ and makes all of them available to the Cuyahoga County Sheriff.⁵⁶ The sheriff, in turn, has granted the prosecutor’s office access to that platform and the recordings stored on it.⁵⁷ Functionally, this means prosecutors have unfettered access to every communication a person makes or receives.⁵⁸

Ordinarily, a prosecutor would never be able to engage in this kind of blanket communications surveillance. But for people held pretrial, prosecutors can routinely retrieve any communication made to them for any reason (or no reason at all).⁵⁹ They don’t have to ask for specific recordings or provide a justification for reviewing them.⁶⁰ They don’t have to disclose whether they have listened to them or used them. In other words, there is very little oversight of an exponentially growing tool that fundamentally alters the right to counsel and one’s ability to mount a defense.

The Cuyahoga County Public Defender has challenged this practice under the First and Fourth Amendments, and as an Equal Protection violation.⁶¹ During a suppression hearing last year where they litigated those arguments, a Cuyahoga County Common Pleas judge posited that the prosecutor’s ability to listen to all of the jail phone calls would make it difficult for an individual to assist in their own defense.⁶² To illustrate, the court noted that a person might call a friend and ask them to help locate a witness, or call a family member and ask them to go by a house and get an address to give to their attorney.⁶³ In both instances, the prosecutor would be privy to the work that person is doing to build their own defense.

The court also raised the concern that prosecutorial monitoring of defense-related communications only happens to people who are incarcerated pending trial,⁶⁴ illustrating that this practice primarily harms those without the means to afford a bond. Wealthier individuals, on the other hand, retain their ability to communicate privately with friends and family, absent a search warrant. Paul Kuzmins, Director of Training at the Cuyahoga County Public Defender’s Office, explains, “Our clients can’t have these important conversations around the dinner table. They have to do it over the phone. And then the prosecutor knows exactly what they are thinking about and considering.”⁶⁵

The prosecutor’s access to this extensive database of recordings is the result of poverty, not individualized suspicion or dangerousness.⁶⁶ And that unfettered access means that “potentially innocent people, all presumed innocent,...cannot effectively defend themselves because they can’t communicate their defenses without divulging their defenses to the prosecutors.”⁶⁷

Pretrial detainees must choose between communicating with loved ones and sharing sensitive case information with prosecutors.

Because of Cuyahoga's elimination of in-person visitation and blanket recording of every other means of communication, those who are trapped in the jail face the choice of simply not speaking to their loved ones about important case matters or doing so while knowing prosecutors can exploit the communication to gain an upper hand in the case.⁶⁸ As family members and loved ones are critical to an attorney's ability to help their client resolve a case or prepare for trial, this presents an unacceptable choice.

"You have to go through Securus. There's no way around it."

Incarcerated people who do not want to share critical defense information with the prosecutor are stripped of the opportunity to receive guidance, counsel, and support from their loved ones as it pertains to their case. They cannot disclose problems with an attorney or concerns about the work being done on their case without also disclosing it to the prosecutor. They cannot talk about the strength of their defense as they consider whether to take a plea without also making the prosecutor privy to their assessment. If they want to explain to their family why their case has been continued yet again (for example, the defense attorney is having trouble tracking down a key witness), the prosecutor will learn about the reasons for the delay, too.

Even matters not directly related to the case have the potential to be used as leverage or strategy by prosecutors. This reality was illustrated in *U.S. v. Carter*. In that case, the prosecutor had listened to (but lied in court about doing so) numerous jail calls between the accused and her attorneys.⁶⁹ She learned the accused was primarily concerned about gaining custody of her child. With that in mind, the prosecutor offered her a binding plea deal, "with the assurance that if she was sentenced to the negotiated prison term, she would finish her sentence before her husband finished his sentence."⁷⁰ The prosecutor also promised that the woman's husband, who was also facing charges, would receive a lengthier sentence. The accused entered into the binding plea agreement, motivated by the belief that it would allow her to gain custody of her son.⁷¹ However, the same prosecutor subsequently offered a time-served plea deal to the husband, which allowed him to seek custody first.⁷²

Nearly all cases are resolved with a plea, and it is critical that people be able to talk freely about pleading guilty with their family before deciding to do so.⁷³

But speaking candidly on a recorded line about financial struggles, personal illnesses, or family crises can give prosecutors insight into how the accused could be pressured into accepting a plea. In deciding whether to take a plea, the accused may want to talk through considerations like the strength of their defense, their concerns about the representation they are receiving, and the

impact a conviction will have on their lives and their family.⁷⁴ Under the current practices of the Cuyahoga County Jail, the prosecutor will have access to all of this information and can use it against them—even if they ultimately decide to go to trial. And if they do decide to plead guilty, prosecutors may learn of the decision before their own attorney does.

IV. The prosecutor’s unfettered access to the jail’s blanket surveillance chills critical communication between attorneys and their clients.

While this report is largely about the ways that the jail limits an accused’s ability to rely on family members and loved ones when preparing for trial, the surveillance that occurs also deeply impedes communication between the attorney and their client.

"When it comes to these big decisions people make for their lives, no one makes them without consulting their family. And it's all recorded."

Defense attorneys are aware that communications coming into the jail are recorded and that prosecutors have access to those recordings. In fact, Cuyahoga County assistant public defender Rachelle Summers notes that this is one of the first things they warn incarcerated clients: do not talk about your case to anyone over the phone.⁷⁵ But defense attorneys recognize that there is a likelihood clients will still speak over the phone to their loved ones about their case.⁷⁶ Facing criminal charges while locked inside a jail cell is an isolating experience, and people struggle with the reality of forfeiting the support and guidance of their loved ones during this time.

A small 2021 study revealed a few other reasons why people communicate about private matters on recorded lines, despite warnings about doing so. One is that they misunderstand what information could be obtained by law enforcement or prosecutors. While study participants understood that the calls were recorded, half believed “that police needed a warrant or a court order to access communication records.”⁷⁷ This is not an unreasonable assumption: the recording that is played once a call or video begins does not notify the person the recording will be provided to the prosecutor or used against them in their case.⁷⁸

People also assumed that law enforcement or prosecutors would not have the capacity to monitor all communications all the time and the selectivity would provide some layer of privacy.⁷⁹ But with the introduction of advanced artificial intelligence technology, it has become incredibly easy for prosecutors to review a large amount of communications by quickly searching transcripts for key words or phrases, like “plea” or “attorney.”⁸⁰ It is likely only a matter of time before AI programs are widely available to review the transcripts autonomously and pull out any statements that might provide prosecutors with a strategic advantage in the case.⁸¹ As the certainty that a prosecutor will review every single conversation a client has increases, the risk calculus will likely also change.⁸²

Attorneys therefore must take into consideration how much information to share with their clients, knowing that this information may ultimately make its way to the prosecuting attorney on the case. The prosecutor's unchecked access presents a "catch-22: either comply with the ethical obligations to keep clients apprised of the circumstances and strategies of their cases, or withhold that information from clients for fear that prosecutorial monitoring will subvert their defenses."⁸³

Because of the jail's surveillance and dissemination of these recordings, attorneys must constantly weigh the duty to keep clients informed against the blanket surveillance their incarcerated clients are under—a problem they do not have when the person has been released pending trial.

Recommendations

I. Cuyahoga County should reinstate in-person visitation for loved ones at the jail.

Cuyahoga County's decision to end in-person visitation has undermined the right to counsel of those incarcerated in its jail. As explained throughout this report, an attorney's ability to effectively represent their client is hindered when that client cannot consult with family members and loved ones throughout the case. People in the jail right now cannot communicate meaningfully with their loved ones because of the burdens the jail has placed on access and privacy. Cuyahoga should reinstate in-person visitation.

We anticipate resistance to this recommendation. One possible reason for such resistance may be a lack of adequate staffing.⁸⁴ That has been the explanation for the ongoing cancellations of scheduled attorney visits and inability to consistently accommodate walk-in attorney visits.⁸⁵ But both attorney visitation and family visitation are critically important to those who are awaiting their day in court.

Cuyahoga County's decision to end in-person visitation has undermined the right to counsel of those incarcerated in its jail

If the jail cannot ensure that detainees have meaningful access to in-person visits with their family and loved ones at current staffing levels, it should reduce the jail population to ensure that all services and functions can be performed. The Bail Project, an organization that has bailed out and supported the post-release needs of almost 1,600 individuals in Cuyahoga County, believes that the county could safely reduce the jail population by hundreds of people by simply expanding the use of personal recognizance bonds and increasing access to supportive services that include free court notifications, travel assistance, and voluntary referrals to in-community providers.⁸⁶

Another possible reason for continuing the ban might be the risk of contraband entering the jail. But, this risk is minimal. When the jail allowed in-person visitation, it took place between a glass partition.⁸⁷ There was no way for a visitor to pass anything to the person they were visiting.

In short, Cuyahoga County does not have a reasonable basis for continuing to deny the public in-person visitation with loved ones. The county promised to reinstate in-person visitation on a limited basis in March 2020. It recently agreed, as part of the March 2024 jail-conditions settlement, to allow in-person visitation by non-attorney criminal justice stakeholders and members of the clergy.⁸⁸ While it may be difficult, restoring in-person visitation at the jail is both possible and critically important.

II. The Cuyahoga County Sheriff should terminate the prosecutor’s access to Securus’s surveillance.

Because of Cuyahoga County’s elimination of in-person visitation and the switch to digital mail, every conversation with a loved one is now recorded and shared with the prosecutor. Improved technology and artificial intelligence has made it far easier to review the exponentially growing number of communications made into and out of a jail.⁸⁹ These two shifts have resulted in a serious imbalance in the adversarial process. The only way to correct course is by terminating the prosecutor’s access to Securus’s database.

Jails monitor and record detainee communications for “safety and security reasons.”⁹⁰ But prosecutor access turns a security tool into an investigative one.⁹¹ Further, it is a tool routinely wielded by prosecutors without any formal guardrails or oversight.⁹² As a Cuyahoga County Common Pleas judge noted during the suppression hearing challenging the use of jail recordings, a prosecutor could potentially listen to hours of these calls, “trying to thwart a defense in a receiving stolen property case.”⁹³ Nothing would stop them, and evolving technology only makes it easier to do so.

Defense attorneys across the state have shared numerous examples of prosecutors using the information they glean from jail-based communications not to prevent harm or protect witnesses, but to gain a strategic advantage in the pending case.⁹⁴ Others weaponize these recordings in advance of trial.⁹⁵ They need not seek to introduce a jail call at trial or have identified anything actually relevant to the pending case in order to dump hundreds of hours of recordings onto a defense attorney’s lap on the eve of trial. Nothing in the current system prevents them from doing so, and some prosecutors routinely take advantage of their unregulated surveillance tool.

Cuyahoga can end its infringement on the right to counsel by terminating the inter-agency agreement between the Sheriff and the Cuyahoga County Prosecutor’s Office. If a prosecutor wants to hear what a person is saying (and is entitled to do so), they can get a search warrant.⁹⁶

Cuyahoga County prosecutors have unfettered access to Securus’s database and all of the recorded communications that it contains

III. The Ohio Department of Rehabilitation and Correction should require county jails to provide in-person visitation to loved ones and prohibit prosecutor access agreements.

Cuyahoga County is not an outlier. Jails across Ohio have transitioned away from in-person visitation and now rely entirely on video visitation.⁹⁷ In fact, 11 out of the 12 largest jails in Ohio have eliminated in-person visitation,⁹⁸ which means that the majority pretrial detainees in Ohio have suffered a blow to their Sixth Amendment rights.

The Ohio Department of Rehabilitation and Correction (DRC) should act to ensure that in-person visitation occurs in Cuyahoga—and the rest of the state.

Jails across Ohio have transitioned away from in-person visitation and now rely entirely on video visitation

The director of DRC is tasked with establishing the state standards with which local jails must comply.⁹⁹ The current visitation standard requires jails to provide 30 minutes of weekly visitation to those they incarcerate.¹⁰⁰ Officials from the bureau have noted that this requirement can be met with either in-person or video visitation.¹⁰¹

We recommend that the visitation standard be updated to require that jails provide a meaningful opportunity for in-person visitation in addition to any video visitation that is available. We recommend that the standard also ensure the entirety of the 30-minute requirement is free to use (instead, for example, of providing only 20 minutes of free on-site visitation, as Cuyahoga County currently does).

Presently, no standards appear to govern how jails handle the surveillance or dissemination of jail-based communications. We recommend that, at a minimum, DRC prohibit counties, sheriffs, and jail administrators from entering into sweeping data-sharing agreements with prosecutor offices.

Conclusion

Ohio jails have fundamentally changed the way people communicate with those incarcerated inside. They have done so with little public input or discussion. COVID-19 facilitated this shift, but it cannot be used as an excuse to maintain it. Allowing the status quo to continue would ignore the severe impact these changes have had on the right to counsel in Ohio.

It is time to correct course. Cuyahoga County can set an example for Ohio by bringing back in-person visitation and cutting off the prosecutor's access to Securus's surveillance. Both reforms would meaningfully improve the right to counsel for people who cannot afford to get out of jail while they await trial.

Appendix A

Jail-Based Communications in Ohio's Most Populous Jails

Jail	Beds	In-Person Visitation?	On-Site Video Visitation?	Remote Video Visitation?	Digital Mail?	Prosecutor Access?
Cuyahoga ¹⁰²	1880	No	Yes	Yes	Yes	Yes
Hamilton ¹⁰³	1600	No	Yes	Yes	Yes	Yes
Franklin II ¹⁰⁴	1442	No	No	Yes	Yes	n/a
Montgomery ¹⁰⁵	903	No	Yes	Yes	Yes	Yes
Franklin (JAK) ¹⁰⁶	864	No	Yes	Yes	Yes	n/a
Butler ¹⁰⁷	848	No	Yes	No	No	Yes
Corrections Center of Northwest Ohio ¹⁰⁸	688	No	Yes	Yes	Yes	Varies
Summit ¹⁰⁹	671	No	Yes	Yes	Yes	Yes
Mahoning ¹¹⁰	578	Yes	Yes	n/a	No	No
Stark ¹¹¹	526	No	Yes	Yes	No	n/a
Lorain ¹¹²	422	No	Yes	Yes	No	Yes
Lucas ¹¹³	403	No	Yes	Yes	No	Yes

Appendix B

Timeline of Cuyahoga's Increasing Surveillance of Communications with Loved Ones

Jan. 2015	Prison Policy Initiative issues report finding that 74 percent of approximately 500 facilities that had video visitation capabilities chose to eliminate in-person visitation. ¹¹⁴
May 18, 2015	Cuyahoga issues a Request for Proposals for "inmate Communication Systems and Inmate Financial Management Systems." ¹¹⁵
May 2015	Securus agrees to no longer "explicitly require county jails and state prisons to replace traditional family visits with video visits." ¹¹⁶
Oct. 2016	Cuyahoga ends contract with Global Tel Link Corp.; signs new 8-year contract with Securus Technologies Inc. that increases cost of phone calls by 42% and adds video visitation at the jail. ¹¹⁷
2016	Cuyahoga County begins to move toward phasing out in-person visitation. ¹¹⁸
Feb. 3, 2020	Cuyahoga ends in-person visitation at the jail; provides on-site video visitation (no remote video visitation at this time.) ¹¹⁹
Mar. 6, 2020	Cuyahoga agrees to bring back in-person visitation at the jail by March 20, 2020. ¹²⁰
Mar. 13, 2020	Ohio Governor Mike DeWine issues order ending visitation in county jails. ¹²¹
Mar. 19, 2020	Cuyahoga begins off-site video visitation. ¹²²
Mar. 20, 2020	Day on which Cuyahoga agreed to bring back in-person visitation; was unable to do so because of the statewide prohibition against it to curb the spread of COVID-19. ¹²³
2021	The prohibition on in-person visitation at county jails expired. ¹²⁴
Aug. 1, 2023	Cuyahoga County Jail's website states that "Visits through glass will be delayed until the ban on visitor visitation is lifted by the Ohio Department of Corrections." ¹²⁵
Sept. 1, 2023	Cuyahoga prohibits physical mail from being sent to the jail; all mail must now be sent to the Securus Digital Mail Center in Missouri. ¹²⁶

Endnotes

- ¹ Karen Zraick, *Cleveland Judge Refuses to Send Low-Level Defendants to Jail After Inmate Deaths*, N.Y. TIMES, Oct. 5, 2018, <https://www.nytimes.com/2018/10/05/us/cleveland-jail-inmate-deaths.html>; Mihir Zaveri and Sandra E. Garcia, *Amid Deaths and Violations at Cleveland Jail, Ohio Governor Plans to Increase Oversight*, N.Y. TIMES, June 8, 2019, <https://www.nytimes.com/2019/06/08/us/ohio-governor-jail-inspections.html>.
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²² See *Faretta v. California*, 422 U.S. 806, 820 (1975) ("The counsel provision...speaks of the 'assistance' of counsel, and an assistant, however expert, is still an assistant.).

²³ Zoom interview with Ashley Stebbins, Deputy Public Defender, Cuyahoga County Public Defender (July 24, 2023).

²⁴ *Id.*

²⁵ Defense attorneys in Cuyahoga County will sometimes request additional time before or after court appearances for their clients to meet with their family. But whether the client gets that time depends on the judge, the court schedule, and available space.

²⁶ Zoom interview with Russell Tye, Chief Trial Counsel, Cuyahoga County Public Defender (July 24, 2023).

²⁷ *Id.*

²⁸ Telephone interview with Hope Demer, Assistant Public Defender, Richland County Public Defender (Apr. 30, 2024).

²⁹ *Id.*

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³² Zoom interview with Angela Chang, Director, Hamilton County Public Defender Youth Defense Division (June 20, 2024).

³³ Interview by Robbie Seaton-Todd with person recently released from Cuyahoga County Jail (May 29, 2024) ("Like sending kites in on a CO beating you up, well it's the CO collecting the kites, so the warden never hears about it.").

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- ⁴² *Id.*
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- ⁴⁹ Zoom interview with Chris Julian, Assistant State Public Defender, Cuyahoga County Public Defender's Office (June 25, 2024).
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⁶³ *Id.*

⁶⁴ *Id.* at 61, 68.

⁶⁵ Zoom interview with Paul Kuzmins, Director of Training, Cuyahoga County Public Defender's Office (June 25, 2024).

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⁶⁷ *Id.* at 74 (statement from the court).

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⁷⁴ Telephone interview with Hope Demer, Assistant Public Defender, Richland County Public Defender (Apr. 30, 2024) ("When it comes to these big decisions people make for their lives, no one makes them without consulting their family. And it's all recorded").

⁷⁵ Telephone interview with Rachelle Summers, Assistant Public Defender, Cuyahoga County Public Defender's Office (June 18, 2024).

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