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March 17, 2020

Sent to the following recipients via e-mail:

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Robert Small, MN County Attorneys Association, rsmall@mcaa-mn.org
William Hutton, MN Sheriffs' Association, bhutton@mnsheriffs.org
Andy Skoogman, MN Chiefs of Police, andy@mnchiefs.org

Re: Important considerations in responding to COVID-19

We believe that each of you recognizes that the COVID-19 pandemic threatens all of us, but particularly the most vulnerable, impoverished, and marginalized Minnesotans. Without creative and thoughtful action from you, this crisis will only exacerbate the long-standing race-based and wealth-based inequalities Minnesotans already suffer from.

This crisis has the potential to threaten civil liberties, the rule of law, and the Minnesota and United States Constitutions. This letter is an urgent plea for measures based on existing law to avoid constitutional injuries, to protect vulnerable populations, and to reduce the COVID-19 exposure of government officials, those in the care of our prisons and jails, and the entire state.

American Civil Liberties Union of Minnesota
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Implementing the following suggestions will help protect the health, safety and rights of all Minnesotans. While every suggestion listed may not apply to all of you, each of you has an opportunity to lead by encouraging adoption of this entire set of recommendations.

1. Limit arrests to only the most serious offenses.

State and local governments could reduce COVID-19 exposure for their employees and the public by aggressively limiting custodial arrests to the most serious offenses. Police departments would be wise to follow the lead of Miami-Dade County law enforcement by suspending eviction and foreclosure enforcement during the outbreak.

The Minnesota Rules of Criminal Procedure already require peace officers to cite and release most people charged with misdemeanors, but, as to those who do not fall into that category, peace officers have a lot of discretion in their decision whether to book them into jail. We ask you to encourage all peace officers to slash the number of people they take to jails. In particular, the associations of police chiefs and sheriffs should issue written guidance discouraging officers from taking people to jail, where they will end up endangering themselves, jail personnel, other prisoners, and (after they are released) the general public. As Chief Public Defender Bill Ward said a day or two ago, "It's a petri dish in there."

2. People should not be in jail because they cannot afford bail.

Existing bail practices will increase the danger to the public and create monumental backlogs. About 6,000 people sit in Minnesota jails each day; 66 percent of them are awaiting trial and have not been convicted of any crime. They are sitting in jail because they cannot afford bail that is sometimes less than \$100. Confined spaces and the difficulty of providing for hygiene and medical care for those who are locked up will cause many of them to become infected and to infect others. We need to reduce jail populations to the absolute minimum.

We urge the Chief Justice and Chief District Judges to issue guidance to Minnesota judges to ensure that no individuals remain in jail simply because they are unable to pay bail. Minnesota prosecutors and sheriffs should take all steps in their power, including procedures available under Minn. R. Crim. P. 4 and 6, to release all people who are being held based solely on their inability to make bail.

Prosecutors can help by not arguing for punitive bond amounts, by reconsidering whether bond is even necessary, and by ordering the release of individuals arrested without a warrant pursuant to Minn. R. Crim. P. 4.02, Subd. 4.

Judges can help the situation by recognizing that the risk-benefit analysis used in setting bail needs to change drastically: The risks of incarcerating people have skyrocketed for everyone. The vast majority of people should be released unless they have been accused

of a violent felony or there is a substantial likelihood that they will hurt somebody if they are released.

3. Scheduling problems must not infringe on people's rights.

It is essential to speed up both probable-cause determinations and first appearances of individuals in pretrial detention. Problems in scheduling or conducting jury trials in criminal cases should not have the effect of extending the time that people spend behind bars. To state the obvious, logistical and scheduling problems must not infringe on the constitutional right to a speedy trial.

4. At-risk people should not be in jail, absent extraordinary circumstances.

People who are at high risk of serious illness from COVID-19 are more likely to get sick and die, and more likely to infect others. The Minnesota County Attorneys Association should issue guidance to all prosecutors urging them not to pursue bail for at-risk individuals unless it is absolutely necessary. We urge the Chief Justice and Chief District Judges to issue similar guidance to Minnesota judges.

Judges, prosecutors, and sheriffs should take any steps in their power, including those under Minn. R. Crim. P. 4 and 6, to release nearly all people who are at high risk of serious illness from COVID-19.

5. Institute furloughs, conditional medical releases, and sentence commutations for high-risk people.

The Commissioner of Corrections has the authority to grant up to three five-day furloughs to assist inmates with family needs, personal health needs, or reintegration into the community. The Commissioner may also grant furloughs "necessary to provide appropriate noninstitutional or extrajudicial health care." Minn. Stat. §244.07, Subd. 2. And state law grants the Commissioner the authority to authorize conditional medical release for individuals who suffer "from a grave illness or medical condition and the release poses no threat to the public." Minn. Stat. §244.05, Subd. 8. The Minnesota Board of Pardons has the authority to commute sentences based on individual circumstances.

The Centers for Disease Control and Prevention warns us that older adults and people with serious chronic medical conditions are at higher risk of becoming seriously ill from COVID-19. To protect the health of incarcerated people who are high-risk and to minimize exposure for other incarcerated people and DOC staff, we urge the Commissioner to use his discretionary authority to release incarcerated people who are at high risk of serious illness from COVID-19 and who pose no flight risk or threat to public safety. Furloughing incarcerated people who are at high risk if confined in close quarters is "necessary to provide appropriate . . . health care" to these individuals, within the meaning of Minn. Stat. §244.07, Subd. 2.

We urge the Board of Pardons to hold an emergency meeting to consider sentence commutations, under whatever terms the Board sees fit, for incarcerated people who are at high risk of becoming seriously ill from COVID-19.

In all cases, we urge both the Commissioner of Corrections and the Board of Pardons to frequently assess and re-assess COVID-19-related commutations and furlough criteria amid mounting scientific evidence.

6. Suspend revocations of probation and supervised release that are based on technical violations, and release all individuals who are being detained based on pending revocation proceedings.

In 2017 about 3,000 people (36.4% of returns) were returned to prison for violations that did not involve a new charge. In 2016 two-thirds of the state's prison admissions were for technical violations. Adding to our prison population because someone failed to show up for a check-in or couldn't afford restitution does not make sense even when we are not in the midst of a pandemic. It makes even less sense now.

7. Take additional measures to avoid docket backlogs.

Courts can reduce transmission of the COVID-19 virus by reducing criminal defendants' need to appear in court in person. Generally, bail and release recommendations include a standard condition that a criminal defendant attend all future court proceedings. In practice, many criminal hearings are status conferences or motion hearings at which there is no need to require the person facing a charge to be present in person. We urge the courts to consider not ordering mandatory attendance at all hearings, at least until we understand better what risks we are creating by being around each other. Of course, a person charged with a crime must always have the right to appear at any proceeding.

8. Provide free phone calls, video calls, and email.

While in-person visits are currently banned and while our entire country is in turmoil, it is important that people who are incarcerated can easily and regularly communicate with loved ones who are out in the community. Current phone and video conferencing systems can be expensive and unreliable. The Department of Corrections website states that communications may be free or reduced. We ask that you follow through and suspend charging people for phone, video, and email communications, even if the government has to absorb the cost. Prisoners on the inside and families on the outside are worried about each other. We owe it to them and to ourselves as a society to help them stay connected with one another.

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The ACLU of Minnesota joins you in your concern for the welfare, not only of those you are responsible for within the criminal justice system, but also of our community at

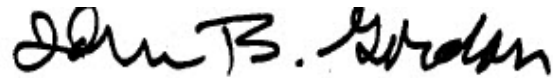
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large. Respecting the humanity of all Minnesotans and protecting their constitutional rights will help protect all of us from COVID-19. Pursuing all of these recommendations will support our shared values and make us proud to be Minnesotans. We would be pleased to help in any way we can.

Very truly yours,

A handwritten signature in black ink that reads "John B. Gordon". The signature is written in a cursive, slightly slanted style.

John B. Gordon