

Executive Order No. _____

Controlling COVID-19 Transmission and Mortality by Reducing Certain Populations in State and Local Custodial Facilities

WHEREAS on March 13, 2020, pursuant to Minnesota Statutes 2019, Sections 12.02 and 12.31, Subdivision 2, I proclaimed a peacetime state of emergency in Minnesota as a result of the infectious disease known as COVID-19 (“virus”); and

WHEREAS the virus remains an urgent threat to the lives, health, public safety, and welfare of Minnesotans, and immediate efforts to control the spread of the virus, reduce the impacts of infection, and otherwise mitigate the effects of the virus are needed; and

WHEREAS 78 individuals incarcerated at Minnesota Correctional Facility-Moose Lake and Minnesota Correctional Facility-Willow River have tested positive for the virus, and another 38 individuals are presumed to have the virus; and

WHEREAS an outbreak of the virus in Minnesota’s jails, prisons, juvenile detention facilities, private detention facilities contracted with the State, and all other correctional facilities (“custodial facilities”) would significantly prolong the time needed to bring the virus under control, would overwhelm existing medical capacity inside custodial facilities, would put additional strain on outside medical facilities surrounding the custodial facilities, and would be potentially catastrophic for the people detained in custodial facilities who disproportionately include populations the Centers for Disease Control has identified at increased risk of morbidity and mortality from the virus and;

WHEREAS Minnesota’s dedicated law enforcement and correctional officers and other staff protecting our communities and working in custodial facilities deserve the utmost protection from exposure to the virus; and

WHEREAS the continued detention of people in custodial facilities undermines the prior Orders of my office for people to engage in social distancing, self-isolation, and individual quarantine; and

WHEREAS close coordination and alignment between the many various law enforcement and correctional agencies of this State are essential to ensure an effective system-wide response that controls the spread of the virus; and

WHEREAS local jurisdictions may determine that they need to take actions to control the transmission of the virus in custodial facilities in a manner they believe would be contrary to existing state law or procedure; and

WHEREAS a local jurisdiction's failure to take immediate steps to reduce local jail populations would undermine the State's ability to protect its citizens and would thwart the State's efforts to control the spread of the virus, including in State correctional facilities that receive individuals transferred directly from local custodial facilities and in the surrounding communities themselves;

NOW THEREFORE I, Tim Walz, Governor of the State of Minnesota, in accordance with the authority vested in me by the Constitution and the laws of Minnesota, and in particular Minnesota Statutes 2019, Sections 12.21, Subdivisions 1 and 3, and 12.32, do hereby issue the following order to become effective immediately.

IT IS HEREBY ORDERED:

1. MINNESOTA DEPARTMENT OF CORRECTIONS

- A. Pursuant to my emergency powers under Minnesota Statutes 2019, Section 12.01 *et seq.*, as well as the power of the Commissioner of Corrections under Minnesota Statute 2019, Section 241.01, subdivision 3a(b), the Commissioner of Corrections is hereby ordered to modify the location of confinement for those individuals incarcerated in state custodial facilities, as further described in the following paragraphs, to serve their sentences on home confinement until at least the end of the peacetime emergency.
- B. The Minnesota Department of Corrections shall immediately identify for my office all persons currently held in a state correctional facility who meet one or more of the following conditions: (1) 55 years of age or older; (2) chronic respiratory disease; (3) cancer; (4) heart disease; (5) lung disease; (6) diabetes; (7)

HIV/AIDS; (8) asthma; or (9) who are otherwise immuno-compromised (“vulnerable populations”), and who have shelter available upon release such that the conditions of home confinement can be immediately established, for purposes of granting immediate modification of the location of their confinement to home confinement for the remainder of the peacetime emergency, unless it is determined that a particular individual would pose an immediate and direct threat to public safety.

- C. The Minnesota Department of Corrections shall also immediately identify for my office all persons held in a state correctional facility who have less than one year remaining on their sentence, and who have shelter available upon release such that the conditions of home confinement can be immediately established, for purposes of granting immediate modification of the location of their confinement to home confinement for the remainder of the peacetime emergency, or their release date, whichever comes first, unless it is determined that a particular individual would pose an immediate and direct threat to public safety.
- D. The Minnesota Department of Corrections shall immediately identify for my office all persons held in a state correctional facility who are incarcerated solely for violations of the terms of their supervised release or probation that did not involve the commission of a new crime (technical violations), all persons held in a state correctional facility for revocation of their supervised release or probation due to technical violations, and all persons held in a state or local jail or correctional facility pending proceedings for an alleged technical violation of probation or supervised release, for purposes of granting their immediate release, unless it is determined that a particular individual would pose an immediate and direct threat to public safety.
- E. For each individual released by modification of their confinement location or identified for such release by the Commission of Corrections pursuant to subsections 1(A)–(D) of this Order, I will issue a legally binding modification order in their name, separate from this Order, to ensure effectuation of their immediate release.
- F. Individuals released pursuant to this Order will be subject to whatever conditions the Commissioner of Corrections deems appropriate for home confinement to ensure public safety and their return to custody no later than ten days after the end of the peacetime emergency, provided such conditions shall comply with Section 1(G), below.

- G. The Commissioner of Corrections shall undertake all efforts to ensure adequate, orderly, and normal discharge planning and support for individuals subject to this Order, provided that exceptions may be made to normal procedures consistent with the guiding imperative of this Order to release vulnerable populations from the states' custodial facilities and reduce overall populations as rapidly and safely as possible.
- H. For all individuals currently serving terms of supervised release and all individuals subject to home confinement pursuant to this order, the Minnesota Department of Corrections shall (1) cease all in-person check-ins, suspend check-in requirements, or allow check-ins to occur by voice or video call; (2) suspend enforcement of any mobility-restricting supervision conditions that impede a person's ability to seek medical care or to support a dependent; and (3) suspend all issuance of detainers or other revocations that would result in incarceration for technical violations.

2. STATE LAW ENFORCEMENT AGENCIES

- A. Until [DATE], the Minnesota Department of Natural Resources Law Enforcement Division and the Minnesota Department of Public Safety (collectively, the "State Law Enforcement Agencies") shall respond to legal violations through warnings, summonses, and citations. Officers shall cease making custodial arrests unless necessary to prevent an imminent and serious risk of bodily harm to another person. Arrests for misdemeanor offenses are prohibited for the duration of this Order, and arrests for felony offenses must be individually approved by a supervisory official.
- B. Until [DATE], the State Law Enforcement Agencies shall be prohibited from making any custodial arrests of any person on an outstanding warrant for failing to appear for a court date.

3. LOCAL JURISDICTIONS AND CONTRACT CUSTODIAL FACILITIES

- A. Pursuant to my emergency powers under Minnesota Statutes 2019, Section 12.01 *et seq.*, my office will modify the location of confinement for those individuals incarcerated in all county and municipal custodial facilities, as well as all private custodial facilities that contract with the State, ("local correctional facilities") to

serve their sentences on home confinement until at least the end of the peacetime emergency.

- B. All local correctional facilities shall immediately identify for my office all persons currently held in those correctional facilities who have shelter available upon release such that the conditions of home confinement can be immediately established, for purposes of granting immediate modification of the location of their confinement for the remainder of the peacetime emergency, or their release date, whichever comes first, unless it is determined that a particular individual would pose an immediate and direct threat to public safety.
- C. All local custodial facilities shall immediately identify for my office all people currently incarcerated for technical violations of probation or supervised release, those incarcerated for revocations of probation or supervised release based on a technical violation, and those in custody pending proceedings on alleged technical violations of probation or supervised release, for purposes of granting their immediate release, unless it is determined that a particular individual would pose an immediate and direct threat to public safety.
- D. This Order also applies to all facilities licensed by the Department of Corrections which house youth, pursuant to Minnesota Statutes 2019, Section 241.021, and Minnesota Administrative Rule 2960 *et seq.* Specifically, the Commissioner of Corrections shall order DOC-licensed facilities to release youth with the health conditions outlined in Section 1(B) of this Order or whose underlying health conditions otherwise leave them vulnerable to the virus, as well as those youth who are within 90 days of discharge, unless it is determined that a particular individual would pose an immediate and direct threat to public safety.
- E. Local jurisdictions shall take whatever steps possible, tailored to local needs and practices, to lower the number of people held in local custody. Such steps may include, at the discretion of local jurisdictions:
 - i. Reducing intake into local custodial settings by primarily responding to legal violations through warnings, summonses, and citations and by ceasing custodial arrests unless necessary to prevent an imminent and serious risk of bodily harm to another person and only if individually approved by a supervisory official;
 - ii. Reducing the population of local custodial facilities by releasing all individuals held only on cash bail, individuals held on detainers issued by

immigration or other agencies, individuals within 6 months of completing a post-conviction sentence, releasing or granting temporary release to all “vulnerable populations” as defined above in this Order, and suspending contracts with U.S. Immigration and Customs Enforcement for civil-immigration-detention bed space;

iii. Taking any and all other steps deemed necessary and effective by local jurisdictions to reduce any daily intake and the overall population of local custodial facilities.

F. Strict compliance with any provision of state law that prevents, limits or delays the ability of a local jurisdiction to take steps to quickly reduce intake and populations of custodial facilities to prevent the spread of the virus is hereby suspended through [DATE].

G. No later than 48 hours after the issuance of this Order, all local jurisdictions shall certify receipt of this Order, and provide copies of any policies or orders that have been implemented to accomplish the goals of this Order, and provide weekly updates on implementation by email to [DESIGNATED STAFF AND CONTACT INFORMATION].

H. Effective immediately and on a rolling basis through [DATE], local jurisdictions shall report any instance of a person infected or presumed to be infected with the virus working or incarcerated in any local custodial facility by email to [DESIGNATED STAFF AND CONTACT INFORMATION].

4. EXPANDING ELIGIBILITY FOR PARTICIPATION IN THE WORK-RELEASE PROGRAM

A. Pursuant to my emergency powers under Minnesota Statutes 2019, Section 12.01 *et seq.*, and the power of the Commissioner of Corrections under Minnesota Statutes 2019, Section 241.26, subdivisions 1-3, the criteria for participation in the work-release program (as set out in Minnesota Department of Corrections Policy 205.120) are modified as follows:

i. All offenders are currently eligible to apply for the work-release program regardless of the time remaining on their term of imprisonment, provided

they are not disqualified under the “Exclusionary Criteria”;

- ii. Meeting criteria for either mandatory or discretionary intensive supervised release (ISR) is no longer disqualifying;
- iii. Having a sentence from a state other than Minnesota is no longer disqualifying;
- iv. Application for interstate supervision is no longer disqualifying; and
- v. Prior placement in segregation or loss or suspension of privileges is no longer disqualifying.

The provisions in this Order may be terminated, extended, or otherwise modified by issuance of additional Orders;

Nothing in this Order shall be construed in any way to restrict state or local authorities from ordering any lawful quarantine, isolation, or other lawful public health measure that results in additional reductions of the number of people held in local custody;

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity against the State of Minnesota and its agencies and departments, or any other person.

Nothing in this Order shall be construed to alter existing laws protecting the constitutional rights of defendants or the privacy of an individual’s medical information.

I direct that this Executive Order be filed with Secretary of State Steve Simon and that all state and local agencies cooperate in widespread publicity and notice of this Order. Pursuant to Minnesota Statutes 2019, Section 4.035, Subdivision 2, and Section 12.32, this Order is effective immediately upon approval by the Executive Council. It remains in effect until the peacetime emergency declared in Executive Order 20-01 is terminated or until I issue a subsequent order rescinding this Executive Order.

A determination that any provision of this Order is invalid will not affect the enforceability of any other provision of this Order.

Signed on [DATE], 2020.

Tim Walz
Governor