



Teresa J. Nelson
Legal Director
tnelson@aclu-mn.org
Office: 651.529.1692

March 31, 2020

Hon. Sally L. Tarnowski
Chief Judge, Sixth Judicial District
Duluth Courthouse
100 North 5th Avenue West
Duluth, MN 55802-1285
Sent via e-mail: sally.tarnowski@courts.state.mn.us

Re: COVID-19; release of individuals in correctional facilities in the Sixth Judicial District.

Dear Chief Judge Tarnowski,

The Minnesota state courts have taken numerous important steps to slow the spread of the deadly and highly transmissible novel coronavirus (COVID-19). After Chief Justice Gildea issued several orders related to COVID-19, the Sixth Judicial District, in particular, demonstrated incredible responsiveness and flexibility to the health crisis with respect to the release of individuals in pre-trial custody. However, the unprecedented nature of this global pandemic calls for additional urgent action.

We write today with specific policy recommendations and a request for urgent action by you to protect *all* individuals impacted in the criminal legal system during the COVID-19 pandemic. The goal of all parties right now should be to reduce the numbers of people who are now in or who will enter Minnesota jails, prisons, and houses of correction.

The partnership in the Sixth District between the public defenders, the county attorneys, and the judiciary to reduce the pre-trial custody population is laudable. In a matter of days, the county was able to cut its pre-trial jail population by approximately 50%. We are hopeful that this level of cooperation can serve as a model going forward.

Attached to this letter is a list of 61 people¹ who are residents the Sixth Judicial Public Defenders have identified as having only a short time left on their sentences, who are not a threat to society, and whose sentences should be modified by the

¹ We have excluded the social histories collected for each individual. The full social histories were developed with the cooperation with Arrowhead Regional Corrections (“ARC”) and had been provided two weekends ago to the St. Louis County Attorney.

court to permit them to be released at this time. Twelve residents on the list have the support of their probation officers from ARC as well.

Your Honor has the *sua sponte* power to review and modify sentencing under Minn. R. Crim. Pro. § 27.03, subd. 9. We ask that you use that power to release the individuals on the list provided. In the alternative, we ask the Court to sign an order authorizing Arrowhead Regional Corrections (“ARC”) directors to authorize an immediate release, akin to the Ramsey County District Court order which is attached. We further ask that you respond to this request by Monday, April 6, 2020. We recognize that Courts have limited capacity given the technology challenges to immediately hear each at-risk resident.

All of the people on the attached list are currently confined at the Northeastern Regional Correctional Center, (NERCC) in Saginaw, Minn. Generally, individuals who are sent to NERCC are classified as low-medium risk and are not considered a public safety risk. NERCC usually has excellent programs for substance use disorder; mental health recovery groups; education; and other substance use support group. NERCC has discontinued all of these programs for understandably good reasons to maintain social distance and reduce entry and exits to the facility. With the loss of these programs, the basis for continued confinement of these individuals at NERCC lessens.²

Social histories compiled by the public defense social worker show that people on the attached list have stable homes waiting for them to return to, as required by the Governor and civil leaders, for the 14 weeks remaining before the expected peak for COVID-19 infections (as determined by the Governor and public health officials).³

A fair number of these individuals are due for release in the very near future. In fact, 42 of the 61 people are scheduled for release on or before June 22, 2020. This is a rare and pressing circumstance, in which swift action can reduce the significant number of health risks, hospitalizations, and the unnecessary loss of life

² NERCC’s own mission calls for the humane treatment of inmates and the “preservation of the human rights and dignity of the inmate population as prescribed by the Constitution of the United States and the laws of the State of Minnesota ... At a minimum, no inmate shall leave the facility in worse physical or mental condition than when he was admitted.” Following the steps outlined above to release people where possible is the only way NERCC can currently meet its own mission.

³ Governor Tim Waltz’s excellent March 25, 2020 presentation is available with the corresponding data is available at:

<https://www.facebook.com/GovTimWalz/videos/536202673961023/>.

attributable to COVID-19. It is in the best interest of the correctional staff and their families, those currently in custody and their families, and the greater Minnesota public that these post-disposition individuals be permitted to return to their homes before the pandemic reaches more dangerous levels in this area of the state.

The Legal Rights Center will be filing some motions on a case-by-case basis for many individuals still in post-disposition custody. But that case-by-case approach, coupled with the limitations for court hearings caused by the suspension of transport to the courthouse and the lack of capacity of virtual courtrooms, creates a considerable and significant public health risk. Sadly, we also have heard that the first infection in the Northland correctional facility has occurred with a resident testing positive for COVID-19. Additionally, one correctional staff member at the Red Wing facility has tested positive for COVID-19.⁴ Both those facilities are a risk to both residents and staff. We respectfully request your swift action on this pressing issue.

As you know, the novel coronavirus is highly contagious, deadly, and easily transmitted from person to person. The number of people diagnosed reflects only a portion of those infected, as few people have been tested and many are asymptomatic transmitters. Further, the virus does not discriminate between those individuals being held pre-trial and those in post-disposition custody. Once COVID-19 enters a correctional facility or jail, it is very hard to contain – Rikers Island being today’s cautionary tale, with a rate of transmission inside the facility that far outpaces the rest of New York’s overall rate of cases. Thus, any distinction drawn between pre-trial and post-conviction individuals is an academic one, at best.

In addition to taking immediate action to release the people identified in the attached list, we ask that you adopt additional policy changes going forward. These are policies that are being adopted by courts around the nation as they respond to COVID-19.

Our criminal legal institutions are not equipped to keep their populations and staff safe during this crisis. Facilities, whether they are jails, correctional centers or prisons, are congregate living facilities, with high entry and exit rates, and social distancing standards mandated by public health experts are impossible in these settings. These facilities serve as accelerators for the spread of viruses and illnesses both inside the facilities and into the community via staff. The risks we are facing cannot be overstated. In Cook County, Ill., for example, confirmed cases of COVID-19 among the jail population accelerated from two cases on March 23 to more than

⁴ <https://www.wdio.com/coronavirus/moose-lake-inmate-tested-positive-covid-19/5687842/?cat=10335>

100 – not counting 12 staff members – in less than one week.⁵ It is therefore imperative that jail populations of low-medium risk be decreased. This should be accomplished by:

1. Continuing the reduction of the population held in pretrial detention who do not pose a significant risk to public safety, which your leadership already has made significant strides in doing;
2. Creating a presumption of release for those who are age 60 or older or have a pre-existing medical condition or other factors identified as creating a risk for severe COVID-19 complications;
3. Releasing those who are serving misdemeanor sentences, which is rare in your District;
4. Transferring individuals into electronic home confinement;
5. Suspending the issuance of any new warrants and holding in abeyance any pending warrants except for those that relate to a specific threat to public safety, which the District had made strides in doing;
6. Speeding up the processing of motions and the release of vulnerable individuals by District Court judges;
7. Working with the local sheriffs in the District to create judicial release authority modeled after the attached documents from the Second Judicial District (Ramsey).

While we acknowledge that large-scale policies do not fit every situation that may arise – issues of public safety, domestic violence, and past criminal history may support continued imprisonment – the default setting should be releasing individuals from custody rather than continued imprisonment and the risk of a widespread COVID-19 outbreak.

Thank you for your leadership in these uncertain and dangerous times. We look forward to your response.

Sincerely,



Teresa Nelson
Legal Director

CC: St. Louis County Attorney Mark Rubin
Sixth District Chief Public Defender Daniel Lew

⁵ <https://chicago.suntimes.com/coronavirus/2020/3/29/21199171/cook-county-jail-coronavirus-positive-101-cases-covid-19>