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Iowa

The Honorable Kim Reynolds, Governor of Iowa

The Honorable Susan Christensen, Chief Justice of the Iowa Supreme Court and
Todd Nuccio, Iowa State Court Administrator

Dr. Beth Skinner, Director of the Department of Corrections

Helen Miller, Chair of the Iowa Board of Parole *and* Andrew Boettger, Vice-Chair of
the Iowa Board of Parole

All Iowa Sheriffs individually, and c/o the Iowa State Sheriffs & Deputies
Association

All Iowa County Attorneys individually, Iowa County Attorneys Association c/o
Shayne Mayer, President of the Iowa County Attorney Association

All Iowa Police Chiefs, c/o Sam Hargadine, Executive Director of the Iowa Police
Chiefs Association

Delivered by e-mail or mail, as appropriate.

March 20, 2020

RE: COVID-19 and the Iowa Criminal Justice and Legal Systems

Dear State Leaders,

As the SARS-CoV-2 (COVID-19) strain of coronavirus continues to spread across the United States, and as more public and private actors take drastic steps to combat this pandemic, we commend the actions that have already been taken to protect Iowans, and urge you to further develop and implement holistic policies that align with guidance from public health experts and that will minimize the harm inflicted on people involved in the criminal legal system – and, by extension, the harm inflicted on broader communities. Like all other public agencies, all aspects of the system – from policing and pretrial through sentencing, confinement, and release – will come under intense scrutiny for how the system responds to this national public health crisis.

As you know, according to the Centers for Disease Control and the World Health Organization, older adults and people of any age with serious chronic medical conditions – such as heart disease, lung disease, or diabetes – or who are otherwise immuno-compromised are at higher risk for contracting and getting very sick from COVID-19.

Furthermore, people in prisons and jails are highly vulnerable to outbreaks of contagious illnesses. They are housed in close quarters and are often in poor health. Without the active engagement of the prison or jail administration, they have little ability to inform themselves about preventive measures, or to take such measures if they do manage to learn of them.

While immediate medical attention should be sought for anyone exhibiting symptoms of COVID-19, namely fever, dry cough, and difficulty breathing, excellent personal hygienic practices and social distancing are the most effective tools to combat the spread of the virus. This means staying at least three feet away from someone who coughs or sneezes, avoiding or limiting all physical contact, washing hands regularly with soap and water, and using alcohol-based hand sanitizer to clean hands after coughing, sneezing, or coming into contact with potentially exposed surfaces, objects, or people.

With this in mind, public health experts and groups such as [Dr. Gregg Gonsalves](#), [doctors working in New York City Hospitals](#), [Dr. Marc Stern](#), [Dr. Oluwadamilola T. Oladeru and Adam Beckman](#), [Dr. Anne Spaulding](#), [Homer Venters](#), and [Josiah Rich](#) have all clearly stated that preventing the harm inflicted by COVID-19 can become immensely more difficult for people involved in the criminal legal system. Being arrested and detained, incarcerated, or forced to appear in public spaces such as courts and supervision offices, or having mobility limited even while home, can drastically limit a person's ability to exercise any of the above precautions or to seek medical help. The longer jurisdictions wait to act, the worse this will be.

We commend the steps that you have already taken to protect these vulnerable Iowans. We also urge you to continue to partner with state and local public health experts in further developing informed, immediately actionable steps to ensure that public safety and public health are as protected as possible. This must include preventing people from unnecessarily entering the criminal legal system in the first place, and ensuring that prisons do not needlessly keep people incarcerated who are especially vulnerable to COVID-19. The non-exhaustive list below includes recommended actions, and we implore you to remember that that no one system actor can be held singularly responsible for addressing this crisis. Partnership and transparency across the system are crucial.

In accordance with recommendations from public health experts, the following actions will reduce the number of people who are coming into,

and remaining in, the criminal legal system over the next several months, thereby reducing the overall burden on the system and ensuring that people can adhere to recommended health practices.

Police and other law enforcement officers must drastically limit the number of people who are arrested and then detained, even if just for a short time, in close proximity to other people or in spaces where maintaining hygiene becomes difficult.

Police should cease arrests for low-level offenses and issue citations or desk-tickets in lieu of other arrests so that people can return home. Low-level offenses include mere drug possession and traffic code violations absent an imminent threat to the driver or the public.

This approach balances the need for arrest with the overwhelming public safety concerns presented by COVID-19 and limits the risk of bringing someone who may have the virus into a station or jail, potentially infecting other personnel or first responders.

Prosecutors must use their immense discretion to limit the number of people who are held in jails or in other confined facilities by drastically reducing their requests for pretrial detention and carceral-based sentences. Nationally, prosecutors have publicly called for collective action to address this risk of COVID-19 in jails and detention facilities.¹

Prosecutors should move for release in all but the very few cases where pretrial detention is absolutely the least restrictive means necessary to ensure a person's return to court or to those individuals who pose a risk of violence.

Prosecutors should also be doubly sure to comply with recent legal precedents in setting bail with a person's ability to pay as a paramount consideration.² 87 percent

¹ See Elected Prosecutors Call for Dramatic Reduction in Incarcerated and Detained Populations in Response to Coronavirus (Updated March 18, 2020), <https://t.co/yoFoqYH4of?amp=1>.

² See, e.g., *Daves v. Dallas Co.*, 3:18-cv-0154-n (N.D. Texas Sept. 20, 2018), available at https://www.aclutx.org/sites/default/files/field_documents/preliminary_injunction_opinion.pdf; *State of New York ex rel Desgranges v. Anderson*, No. 90/2018 (New York Supreme Court for Dutchess Co. Jan. 31, 2018), available at https://www.nyclu.org/sites/default/files/field_documents/2018-01-31_decision_order_and_judgment_on_habeas_corpus_proceeding_and_action_seeking_declaratory_judgment_00061815xb2d9a.pdf.

of the people in Iowa county jails are there because they don't have enough money to post bail.³ The public health crisis requires that steps be taken quickly to get as many of those individuals released as possible.

With a special focus on populations that the CDC has identified as particularly vulnerable, prosecutors should also institute a review-and-release protocol regarding cases in which bail was sought and imposed over the past thirty days.

When seeking a plea or requesting a sentence, prosecutors must view incarceration during the public health crisis as a last resort, and must refrain from seeking community-based sentences – such as curfews, geographic restrictions, or electronic monitoring – that limit a person's ability to seek medical help or care for a loved one who has COVID-19.

In line with the 1983 *Bearden v. Georgia* case, prosecutors should also temporarily suspend the collection of unpaid fines and fees so that people are not required to come into court for contempt charges or face possible arrest due to non-payment, especially at a time when many individuals and families will face enormous economic difficulty in light of anticipated high levels of job loss. It makes no sense to squander critical public infrastructure resources and risk public health to seek to recover these debts during the public health crisis.

Finally, prosecutors should dismiss outright cases involving minor offenses, thereby limiting the amount of time a person must spend in court, in order to protect individuals, court personnel, and the public.

Judges have the ultimate decision-making authority beyond what prosecutors may seek to achieve, and should also follow the recommendations highlighted above to limit the number of people who are coming into and forced to remain in jails and prisons.

Judges also have the additional responsibility of ensuring that courthouses remain both accessible and safe for people whose cases are currently pending. Judges must not issue a blanket suspension on all court activity as this will needlessly prolong people's cases and exacerbate the stigma and harm associated with having an open case. For any cases that the court does prolong, judges should not waive defendants' rights to a speedy trial.⁴ As an alternative, judges should allow anyone

³ ACLU Smart Justice, *Blueprint for Smart Justice Iowa* at 8 (2019), <https://50stateblueprint.aclu.org/states/iowa/>.

⁴ While recognizing that extending a defendant's speedy indictment deadline from 45 to 60 days falls within constitutional parameters, and appreciating the extreme public health circumstances preceding such order, we urge the Court not to further

with an open criminal case and upcoming hearing the chance to voluntarily waive that hearing or conduct that hearing via telephone or video conference. Where someone does not have access to either of those technologies, allow counsel to appear in person or via phone on behalf of a charged person without mandating that person's appearance.

We greatly appreciate that in recent days the Court has promptly and carefully already taken many of these important steps.⁵

In exercising the responsibility to limit the number of people who are coming into court during the public health emergency, the Judicial Branch should cancel or continue all scheduled eviction/FED hearings, other than in cases of clear and present danger.⁶ The Governor has today exercised executive authority to put a temporary

extend the deadline. Order In Re Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services (Iowa Mar. 17, 2020), https://www.iowacourts.gov/static/media/cms/document20200318061832_CC5A01DE7085C.pdf, at ¶9.

⁵ Order In re Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services (Mar. 17, 2020), https://www.iowacourts.gov/static/media/cms/document20200318061832_CC5A01DE7085C.pdf.

⁶ Such a move would not only be consistent with public health recommendations and the Iowa Governor's executive order, but also numerous examples from jurisdictions outside Iowa which have already put in place a temporary moratorium on evictions. *COVID-19 Coronavirus and Housing/Homelessness*, National Low Income Housing Coalition, (Mar. 17, 2019) <https://nlihc.org/coronavirus-and-housing-homelessness>; Francis Jervis, *Tenant protection during the novel coronavirus outbreak*, Augmented Blog, <https://blog.augmented.com/renting-during-the-novel-coronavirus-outbreak/> (last visited Mar. 17, 2020) (A running list of eviction moratoriums and other tenant protections); Justine Coleman, *Multiple cities suspend evictions during coronavirus crisis*, The Hill (Mar. 16, 2020, 4:19 PM), <https://thehill.com/policy/healthcare/public-global-health/487877-multiple-cities-suspend-evictions-during-coronavirus> ("Officials in Denver, Seattle, San Francisco and San Antonio, as well as New York state, have announced a suspension in evictions during the outbreak, acknowledging that residents might have lost income and cannot afford to pay rent."); Samantha Fields, *Growing number of cities, states halting evictions because of coronavirus*, Marketplace (Mar. 16, 2020), <https://www.marketplace.org/2020/03/16/growing-number-of-cities-states-halting-evictions-because-of-coronavirus/> ("San Jose and San Francisco last week became the first big cities to put a moratorium on evictions. Since then, Seattle, Los Angeles, Boston and a number of other cities have enacted similar measures.

moratorium on new eviction/FED proceedings through at least April 16, 2020.⁷ We know that the Court has given district courts the option to hold telephonic hearings or postpone eviction/FED cases absent an assertion of clear and present danger, and we strongly urge all district courts to postpone these cases during the public health crisis, rather than proceed telephonically. We applaud those 35+ Iowa district courts which have already taken the step of postponing eviction hearings unless the tenant is alleged to be a clear and present danger.⁸ Iowa sheriffs have also begun recognizing the need to temporarily cease carrying out evictions during the pandemic.⁹

Accordingly, we respectfully ask that further supervisory orders, if necessary, postpone eviction/FED hearings rather than allow them to be held telephonically.

In accordance with recommendations from public health experts, the following actions will reduce the number of people who are currently incarcerated or supervised and will limit burdens people face due to

Several states — including New York, Massachusetts and Kentucky — have temporarily halted some or all eviction proceedings. And housing advocates and lawmakers are pushing for similar measures across the country.”); *Governor Hogan Orders Closure of Bars and Restaurants, Announces Unprecedented Public Health Surge To Combat COVID-19 Crisis*, The Office of Governor Larry Hogan (Mar. 16, 2020), <https://governor.maryland.gov/2020/03/16/governor-hogan-orders-closure-of-bars-and-restaurants-announces-unprecedented-public-health-surge-to-combat-covid-19-crisis/> (Governor Hogan Orders Closure of Bars and Restaurants, Announces Unprecedented Public Health Surge To Combat COVID-19 Crisis).

⁷ *Gov. Reynolds signs additional State Public Health Emergency Declaration, will hold press conference today*, Iowa Office of the Governor, Mar. 20, 2019, <https://governor.iowa.gov/press-release/gov-reynolds-signs-additional-state-public-health-emergency-declaration-will-hold>.

⁸ 2020 Coronavirus Outbreak: What you need to know, Iowa Legal Aid, <https://www.iowalegalaid.org/resource/2020-coronavirus-outbreak-what-you-need-to-know>.

⁹ Zachary Oren Smith, *Johnson County Sheriff’s Office suspends evictions until further notice*, Iowa City Press-Citizen (Mar. 19, 2020), available at <https://www.desmoinesregister.com/story/news/2020/03/19/johnson-co-sheriffs-office-suspends-evictions-until-further-notice/2878285001/>.

incarceration or supervision that place them at elevated risk of being affected by the COVID-19 pandemic.

The Director of the Iowa Department of Corrections and County Sheriffs must exercise their authority to protect the people who are, or will be, incarcerated even after the recommendations discussed above are put into action.

Most importantly, jails and prisons must be kept as empty, safe, and clean as possible. This means increased, frequent sanitizing of facilities. This also means close coordination with state and local public health experts to ensure that all facilities have adequate supplies of soap, hand sanitizer, tissues, and other hygiene products. Each of these products must be made freely and constantly available to all staff and incarcerated people – even if, for the latter, prohibitions on alcohol need to be modified to accommodate for hand sanitizer distribution.

The Department of Corrections and County Sheriffs must educate their staff and persons in their custody. People housed in the prisons and jails need to be informed about the virus and the measures they can take to minimize their risk of contracting or spreading the virus. They must be educated on the importance of proper handwashing, coughing into their elbows, and social distancing to the extent they can. Information about the spread of the virus, the risks associated with it, and prevention and treatment measures must be based on the best available science. Correctional, administrative, and medical staff all must be educated about the virus to protect themselves and their families, as well as the people in their custody.

The Department of Corrections and County Sheriffs must implement procedures to care for those who become ill from COVID-19 in their facilities. Those procedures must include, at a minimum: screening and testing of people for COVID-19, based on the most up-to-date science available; increased access to medical care and removal of all co-pays; access to the medication and equipment necessary to treat those who contract the virus; and the ability to immediately transfer sick patients to outside facilities for care when necessary.

In addition, jails and prisons must implement non-punitive procedures for housing people who are exposed to the virus, who are at high risk of serious illness, or who screen or test positive for COVID-19. This should *not* result in prolonged, wide-spread lock-downs. Any lock-downs or interruptions in regular activities, such as exercise or visits and phone calls with families or attorneys, should be based solely on the best science available and should be as limited as possible in scope and duration.

Prison and jail officials must provide for additional precautions for those who are at high risk of serious illness if they are infected, such as pregnant women and people with chronic illnesses, compromised immune systems, or disabilities, and people whose housing placements restrict their access to medical care and limit the staff's ability to observe them.

The wardens and jail administrators should assess detained and incarcerated populations and maximize the number of people – with a heightened focus on populations identified by the CDC as particularly vulnerable – who can be immediately released, including people who would be released within the next sixty days anyway.

Sheriffs should immediately suspend holding people in local jails and prisons for civil immigration purposes, i.e. pursuant to a detention agreement with Immigration Customs and Enforcement (ICE) or an ICE detainer.

For anyone who is being released, consult with state and local health officials to ensure adequate screening and quarantine procedures are in place so that COVID-19 is not transmitted into the community from within the facility.

Sheriffs must implement procedures to allow programming to continue; in jurisdictions where state and local health officials have urged limiting volunteer access to jails and prisons, this may mean allowing staff or incarcerated people to run programs. Similarly, visitations by family must not be limited unless public health experts urge that measure to be taken. If and when that does happen, limitations should be explicitly temporary and other forms of communication such as emails, voice calls, and video calls must be made **free** for all incarcerated people.

We commend the Iowa Department of Corrections for indicating it is exploring free telephone and video calls.¹⁰ However, this critical step should move from exploration to adoption promptly. The Polk County Jail has shown leadership in this area by facilitating a policy allowing inmates two free video non-attorney visits per week during periods when, due to the COVID-19 pandemic, in-person non-attorney visits are suspended.¹¹ Other jails that temporarily suspend in-person non-attorney visits, and the prison system, should follow course.

¹⁰ *Sheriff's Office precautions for the Covid-19 Pandemic*, <https://www.polkcountyiowa.gov/sheriff/news-press-releases/sheriff-s-office-precautions-for-the-covid-19-pandemic-march-16-2020/>. (Mar.16, 2020).

¹¹ In terms of non-attorney visitation, the Polk County Jail has set a good example in its response to the coronavirus by balancing public health recommendations and the

Also, legal visits, which may be subject to appropriate heightened health screenings during the public health crisis, must not be curtailed. For example, policies limiting physical contact, like handshakes, and those screening the health of attorneys, appropriately protect public and inmate health while protecting inmates' constitutional rights to counsel.¹²

Finally, wardens and sheriffs must restructure staffing plans to ensure that facilities remain well-staffed even if staff are out sick, and should educate staff on proper hygiene procedures both in and out of work.

The Iowa Board of Parole, and probation and parole officers must also exercise their authority to limit the number of people who are incarcerated or who are forced into public spaces. Officers should cease in-person check-ins to accommodate the need for social distancing, and should allow check-ins to occur by telephone or video call. Where those technologies are not accessible to a person under supervision, officers should minimize or temporarily suspend check-in requirements. Additionally, officers should suspend enforcement of any mobility-restricting supervision conditions that impede a person's ability to seek medical care or to support loved ones who may have COVID-19. Finally, officers should limit the number of people being incarcerated by suspending detainers and incarceration for technical (crimeless) rule violations.

The Board of Parole should expedite and expand release opportunities for incarcerated people, reducing the populations in prisons as is recommended by health experts. For inmate populations identified by the CDC as particularly vulnerable – evaluate and seize all opportunities to expedite that process to ensure that anyone

protection of inmates' rights. Polk County Jail has suspended in-person visits, but to accommodate the needs of inmates and their families, is instead allowing two "I-web" video visits per inmate per week, free of cost. Sheriff's Office precautions for the Covid-19 Pandemic, <https://www.polkcountyiowa.gov/sheriff/news-press-releases/sheriff-s-office-precautions-for-the-covid-19-pandemic-march-16-2020/> (Mar.16, 2020); Polk County Health Department announces new medical hotline, community spread across Iowa on 2020-03-16, <https://www.desmoinesregister.com/videos/news/2020/03/16/watch-polk-county-health-department-announces-new-medical-hotline-community-spread-across-iowa/5062624002/> at 11:28 (Kevin Schnieder, Polk County Sheriff).

¹² Polk County Jail has implemented a reasonable attorney screening procedure, which includes the taking of an individual's temperature each visit, allowing attorney-client visits to continue. Polk County Jail Attorney Screening Tool, <https://files.constantcontact.com/8acc8b20101/4992dc7b-9096-41d1-9b55-1028611cd687.pdf> (Mar. 12, 2020).

who would be released from incarceration at any point has the opportunity to be screened for release immediately.

Governors obviously have a uniquely powerful role to play in stopping the spread of COVID-19 and limiting the harm it inflicts on communities by decreasing incarcerated populations and creating a culture in which transparency, safety, and the health of all people are the paramount concerns. First and foremost, the Governor should grant immediate commutations to anyone whose sentence would end in the next year, to anyone currently being held on a technical (crimeless) supervision violation, and to anyone identified by the CDC as particularly vulnerable whose sentence would end in the next two years.

Also, the Governor can mandate that Sheriffs who are processing these releases coordinate with local service providers and public health experts so that people released have a safe and accessible place to return to that is also close to medical facilities and services they may need. Additionally, the Governor needs to mandate data collection and distribution from all criminal legal system agencies and actors who are part of the state's COVID-19 response, as sharing information about this virus is essential in limiting the damage it will cause. The Governor must also consider issuing Executive Orders that seek to achieve the goals and remedies outlined above, particularly where local system actors are awaiting that guidance.

Finally, we commend the Governor for using a sign-language interpreter during her briefings on COVID-19. We urge all state leaders, including the Governor, to provide all COVID-19 related information in the language and format that is conducive to transparency and partnership, to ensure that every Iowan has access to this important information.

We also commend the Governor for using her executive authority to provide a much-needed temporary moratorium on evictions.¹³

In conclusion, it is essential to remember actors within the criminal legal system must coordinate with and defer to state and local public health experts in limiting the risks presented by coronavirus and COVID-19 to people who come into contact with the system.

¹³ *Gov. Reynolds signs additional State Public Health Emergency Declaration, will hold press conference today*, Iowa Office of the Governor, Mar. 20, 2019, <https://governor.iowa.gov/press-release/gov-reynolds-signs-additional-state-public-health-emergency-declaration-will-hold>.

Iowa's prison population more than tripled between 1980 and 2016.¹⁴ The population is 22.96 percent over capacity, and as of March 19, 2020, there were 8,525 people imprisoned in Iowa prisons, which has a capacity of 6,933 people.¹⁵ Another approximately 3,600 Iowans are held in county jails at any given time.¹⁶

Health experts agree that our national response to the SARS-CoV-2 (COVID-19) pandemic must maintain a focus on these populations. There is also an emerging and broad public consensus that supports common sense steps to achieve the goal of protecting the most vulnerable populations during this pandemic.

The urgency of deliberate and thoughtful action cannot be overstated. We are eager to work with anyone who is willing to take the steps outlined above, and we are willing to be a resource for you throughout this process. We want to ensure implementation of policies that will limit the threats presented by this public health crisis. If you have questions or would like to discuss these recommendations further, please contact Rita Bettis Austen, ACLU of Iowa legal director, at rita.bettis@aclu-ia.org, or at 515-207-0567 and/or Daniel Zeno, ACLU of Iowa policy and advocacy director, at daniel.zeno@aclu-ia.org, or at 515-207-3417.

Sincerely,



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¹⁴ Iowa DOC Daily Statistics (Mar. 18, 2020), <https://doc.iowa.gov/daily-statistics>.

¹⁵ *Id.*

¹⁶ Vera, *Incarceration Trends* (2015). Note: Total jail population and pretrial jail population data are drawn from different sources in the cited source. Total jail population data is reported as average daily population in 2015 and excludes federal jail populations, while pretrial jail population is reported as a single day count (taken on June 30) and includes federal jail populations.

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