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Governor Brad Little
State of Idaho

Chief Justice Roger Burdick
Idaho Supreme Court

Josh Tewalt, Director
Idaho Department of Correction

Monty Prow, Director
Idaho Department of Juvenile Corrections

Ashley Dowell, Executive Director
Idaho Commission of Pardons and Parole

Colonel Kedrick Wills, Director
Idaho State Police

Brian Underwood, Chief
IDOC Division of Community Corrections

Sheriff Craig Rowland, President
Idaho Sheriffs Association

Daniel Clark, President
Idaho Prosecuting Attorneys Association

Chief Russ Roper, President
Idaho Chiefs of Police Association

RE: COVID-19 and the Criminal Legal System

Dear Stakeholders,

As the SARS-CoV-2 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 urge you to 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 or otherwise incarcerated in our state—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.

Three urgent steps are needed:

- (1) The immediate release of as many people in custody as possible.**
- (2) A moratorium on new admissions into jails, prisons, and detention facilities.**
- (3) Evidence-based, humane, and rights-affirming measures to protect the health and wellbeing of people who will stay behind walls.**

According to the Centers for Disease Control and the World Health Organization, older adults and people of any age with serious chronic medical conditions (including 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. With this in mind, public health experts and groups have clearly stated that preventing the harm inflicted by SARS-CoV-2 and 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.

Idaho has days, not months, to get the situation under control. The steps taken so far are patently insufficient in the face of a crisis of this proportion. Bold action and a coordinated response are needed.

Therefore, we urge you to partner with public health experts in developing informed, immediately actionable steps to ensure that public safety and public health are as protected as possible. This must include preventing people from entering the criminal legal system in the first place, or being held in jails at the request of immigration enforcement officials, and ensuring that jails and prisons do not 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 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 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 Sheriffs 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 and Sheriffs should cease all arrests for low-level offenses and issue citations in lieu of other arrests so that people can return home, balancing the need for arrest with the overwhelming public safety concerns presented by coronavirus and limiting the risk of bringing someone who may have the virus into a public facility and potentially infecting other personnel or first responders. Criminal legal system stakeholders should meticulously weigh ongoing physical risk for public safety against the risk of transmitting the virus when determining whether to arrest for violent offenses. Idaho law enforcement officials should follow the leads of other regions, including [Los Angeles County, California](#), [Bexar County \(San Antonio\)](#) and [Forth Worth, Texas](#), and [Philadelphia](#), in drastically reducing and minimizing the number arrests and jail bookings.

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. 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 should at the very least be doubly sure to comply with recent legal precedents in setting bail with a person's ability to pay as a paramount consideration. With a special focus on populations who the CDC has identified as particularly vulnerable, prosecutors should also institute a review-and-release protocol in which bail was sought and imposed over the past thirty days. Elected prosecutors should direct their deputies [not to oppose motions to release pretrial detainees](#).

When seeking a plea or requesting a sentence, prosecutors must view incarceration into cramped and often un-hygienic facilities as a last resort, and must refrain from seeking community-based sentences, including 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. Though the Idaho Supreme Court has continued existing show-cause hearings for nonpayment of fines or fees, in addition, in line with *Bearden v. Georgia*, prosecutors should temporarily vacate all fines, fees, and costs of supervision so that people are not at risk of incarceration or probation violation due to non-payment of legal financial obligations and do not come into court or other public facilities to pay them. 461 U.S. 660, 672 (1983) (holding that where a defendant "could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternate measures of punishment other than imprisonment."). Finally, prosecutors should dismiss cases

involving minor offenses, thereby limiting the amount of time a person must spend in court.

Prosecutors should also not charge or issue citations to people dependent on substances to prevent the potentially severe effects of withdrawal at a time with severely reduced capacity for adequate treatment, should not use this as an opportunity to increase charges for possession with intent to distribute, and should not level paraphernalia charges for people sharing harm reduction supplies amongst their communities.

Judges have the ultimate decision-making authority beyond what prosecutors may seek to achieve, and must also follow the recommendations highlighted above in order to limit the number of people who are coming into and forced to remain in carceral facilities. Idaho's courts can follow examples set in places such as [Cuyahoga \(Cleveland\)](#) and [Hamilton \(Cincinnati\)](#) counties in Ohio, where judges have expedited proceedings or ensured the sheriff's authority to release people from jails.

Idaho's judiciary also has the additional responsibility of ensuring that courthouses remain both accessible and safe for people whose cases are currently pending. The courts 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 criminal case. For any cases that the court does prolong, judges should not waive defendants' rights to a speedy trial. Judges should allow anyone 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.

In accordance with recommendations from public health experts, the following actions will reduce the number of people who are currently incarcerated or supervised and limit burdens people face due to incarceration or supervision that place them at elevated risk of being affected by the SARS-CoV-2 pandemic.

Sheriffs should release all people who are incarcerated without having been convicted of any crime, and as many people incarcerated post-conviction as possible, including but not limited to: all people over 55; individuals who have uncontrolled diabetes, respiratory conditions, or are immunocompromised; and all people who are eligible for community supervision or release or who are currently incarcerated for

technical parole or probation violations. Sheriffs should also suspend all practices of holding people in local jails and prisons for civil immigration purposes, pursuant to a detention agreement with Immigration Customs and Enforcement (ICE) or an ICE detainer.

Corrections officials and sheriffs both, to the extent people remain incarcerated in jails and prisons, must exercise their authority to protect the people who are, will soon become, and who may remain incarcerated even after recommendations in this letter are put into action. Most importantly, corrections officials and sheriffs must ensure that facilities are as empty, safe, and clean as possible. This means sanitizing facilities and coordinating with 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 prohibitions on alcohol need to be modified to accommodate for hand sanitizer distribution.

Corrections officials and sheriffs must implement procedures to care for those who become ill 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 information available; increased access to medical care and removal of all copays; 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, corrections officials and sheriffs 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 or wide-spread lock downs. Solitary confinement should *never* be used as a strategy to limit transmission of COVID-19. Solitary confinement is a form of torture and a violation of human rights in all cases.

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

Corrections officials and sheriffs must also not limit visitations with family and loved ones unless public health experts urge that measure to be taken. When visitation restrictions must be in place, 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. Also, legal visits must not be curtailed. Finally, corrections officials 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.

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 voice or video call. Where those technologies are not accessible to a person under supervision, minimize or temporarily suspend check-in requirements. Additionally, agents 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, limit the number of people being incarcerated by suspending detainers and incarceration for technical (crimeless) rule violations.

The **Commission of Pardons and Parole** should expedite and expand release opportunities for incarcerated people, reducing the populations in prisons as is recommended by health experts. The Commission should immediately release anyone currently being held on a technical parole violation and anyone identified by the CDC as particularly vulnerable whose sentence would end in the next two years. The Commission should institute a presumption for release for all people who have a parole hearing scheduled in the next two years. For people whose parole hearings fall outside that time frame—with a focus on populations identified by the CDC as particularly vulnerable—evaluate and seize all opportunities to expedite that process to ensure that anyone who would be released from incarceration at any point has the opportunity to be screened for release immediately.

Idaho's **Governor** obviously has 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 suspend, pursuant to his emergency powers under Idaho Code § 46-1008(5)(a), administrative regulations governing parole, pardon, and commutation to allow expedited parole and commutation as recommended above. The Governor, in cooperation with Idaho's sheriffs, should ensure release of all individuals in custody who are awaiting transfer to ICE custody, and the declare a moratorium on all such future transfers.

Also, the Governor can use his emergency powers to require that those releasing people from custody coordinate with local service providers and public

health experts so that people who may not be able to return home have a safe, accessible place to be that is also close to medical facilities and services. [Harm reduction organizations globally are advocating](#) that people dependent on substances also ensure they have an accessible several-week supply to prevent the potentially severe effects of withdrawal at a time with little capacity for adequate treatment. Additionally, the Governor must mandate data collection and distribution from all criminal legal system agencies and actors who are part of the state's coronavirus response, as sharing information about this virus is essential in limiting the damage it will cause. Finally, Governors must consider issuing Executive Orders that seek to achieve the goals and remedies outlined above, particularly where local system actors are awaiting that guidance.

In conclusion, it is essential to remember actors within the criminal legal system must coordinate with and defer to public health experts in limiting the risks presented by coronavirus and COVID-19 to people who come into contact with the system. Currently, 5 million people cycle through our nation's jails every year, and there are nearly 7 million people incarcerated or under supervision. Health experts agree that these populations need to be a focus in our national response to the SARS-CoV-2 pandemic, and there is 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 bold 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.

Sincerely,

Leo Morales
Executive Director
ACLU of Idaho

Kelly Miller
Executive Director
Idaho Coalition Against Sexual and Domestic Violence

Maria Andrade
Executive Director
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