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March 15, 2020

Michigan Judges Association
Michigan District Judges Association
Via e-mail

RE: COVID-19 RESPONSE

Dear Circuit and District Court Judges:

At the State Appellate Defender Office, most of our clients reside in Michigan's jails or prisons. They are a portion of the approximately 16,000 people in our county jails and 38,000 people in the Michigan Department of Corrections. As the COVID-19 pandemic and associated fears intensify, I fear for incarcerated individuals and the staff who work in correctional facilities.

Incarcerated individuals are a vulnerable population and are in particular danger. First, they are disproportionately afflicted with health concerns that would put them at risk in an outbreak including high blood pressure, diabetes, HIV, hepatitis, and heart problems. Second, they live in environments with far fewer opportunities for necessary hygiene measures. Many facilities do not even permit hand sanitizer and social distancing is an impossibility.

I am hopeful that the lead time in Michigan for a potential spread has allowed the Michigan Department of Corrections and our local jails to plan in a manner that respects the health, safety, and concerns of incarcerated persons, their loved ones, and the people who work in correctional facilities and their families.

That said, the best public health response is simply to not incarcerate people who present little danger to the community, but whose health and safety are at risk with the spread of COVID-19. I appreciate how the Michigan District and Circuit Court Judges have been responding to these challenges and request that all District and Circuit Court judges consider the following additional actions:

Trial Court Process

- Sentencing and trial court hearings must be delayed for people who are not incarcerated. We appreciate that most courts have already taken this step and Administrative Order 2020-1 of the Michigan Supreme Court permits this policy.
- We also appreciate that most (but not *all* courts) have maintained procedures for in-custody individuals. We request this practice continues and starts up immediately for the minority of courts that ended all hearings. Many will be released after a sentencing or trial verdict. We can find creative solutions including procedures by telephone or video with clients who have agreed to waive their physical presence.

Bond and Pre-trial release

- Courts can implement the recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration immediately by releasing people on personal recognizance unless there is a significant risk of danger or a documented significant risk of failure to appear in court.
- Courts can review and adjust all current bonds in light of the current crisis. People who do not present a danger or who are not held on priority charges should be released.

Sentencing

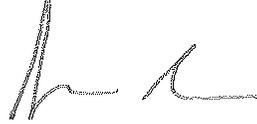
- As per the Task Force recommendations, Judges can sentence people convicted of misdemeanors or low-level non-violent felonies to only fines, community service, or non-jail sanctions. Under our current crisis, these are proportional sentences.
- One-quarter sentencing reductions for jail sentences per MCL 801.257 should be implemented immediately across the board unless there is a danger to the community.
- Courts can work with prosecutors and defense attorneys to release individuals in jail on work release programs, anyone who is within thirty days of completing their jail sentences, or people serving sentences for unpaid financial obligations, minor drug offenses, and misdemeanors other than domestic violence. I believe Muskegon County stakeholders already took many of these steps.

Probation

- In-person probation reporting requirements must be replaced by phone calls.
- If violation of probation hearings do occur, Courts should not revoke probation and sentence people to incarceration for any but the most serious violations.

Thank you for your consideration of these measures. I have also attached a series of our proposed urgent legislative and executive responses for your information. At SADO, we are ready to assist with any issues or input as the crisis continues to develop. Please feel free to reach out and consider us a resource. It has been inspiring to see so many courts already take these steps and to see Michigan's criminal justice stakeholders come together during this emergency.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Sacks', with a stylized flourish at the end.

Jonathan Sacks
Director

Cc: Chief Justice Bridget Mary McCormack
Prosecuting Attorneys Association of Michigan