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For Immediate Release

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Dear Criminal Justice Stakeholders,

The way our current criminal justice system is designed, together with the emergence of a novel virus pandemic, has set the stage for potentially catastrophic consequences in the administration of justice in Idaho. Given the sheer number of incarcerated people in Idaho, the turnover in our county jails and holding facilities, the conditions under which they are detained, and the oncoming spread of the COVID-19 coronavirus, immediate changes must be implemented.

The Idaho Association of Criminal Defense Lawyers (IACDL), together with our national affiliate organization, is “calling for the prompt implementation of comprehensive, concrete, and transparent COVID-19 coronavirus readiness plan for the nation’s prison, jails, and other detention facilities.” The plans must include transparency, not just vis-à-vis incarcerated persons and staff at detention facilities, but also as concerns their loved ones, their communities, and the communities in which these facilities are located. Our organization represents over 400 attorneys who represent the criminally accused throughout the State, and our members are on the frontlines of the criminal court system every day. We have a keen interest that the health and well-being of our clients, their families, and our communities all be served while continuing to ensure the public safety.

Reasons for Concern

Recognizing that the coronavirus is spreading quickly among high concentrations of people in close proximity to one another, schools are being closed, conferences are being rescheduled, travel is being cancelled, and cruise ships are being quarantined. These are all sensible measures; but they also underscore the need to address the tens of thousands of Idahoans that are living

in conditions that are ripest for the spread of this contagious and deadly virus: those who are being held in our jails, prisons, and detention facilities.

According to the Center for Disease Control, the elderly and people with underlying medical conditions are most susceptible to falling severely ill with COVID-19. Both populations are well represented among incarcerated people. The National Commission on Correctional Health Care issued a report in 2017 that indicates the prison population of those over 65 is the fastest growing demographic in the nation’s prisons.¹ Jail and prisons also house disproportionately large numbers of people with chronic illnesses and complex medical needs that many facilities are already less-equipped to treat.²

Similarly, the Idaho Supreme Court’s recent adoption of Idaho Criminal Rule 28, **allows for judicial discretion in ignoring statutory speedy trial rights**. This rule ensures that we will see instances where rights—already granted by the legislature to guarantee that individuals will not be held in detention without a conviction—can easily be circumvented under the current circumstances, and that the entire burden of delays to criminal cases will be borne by the accused who have not yet been convicted but continue to be held in custody.

The IACDL thoughtfully joins the recommendations of thirty-one (31) prosecutors, representing eighteen (18) different states and the District of Columbia, in considering a number of measured responses in light of the coronavirus outbreak.³ Implemented policies should not only reevaluate those who are currently incarcerated, but also seek to assess whether certain individuals should even enter our detention facilities at this moment in time. These proposals would seek to

- (1) Achieve Reduction in Detention and Incarcerated Populations,
- (2) Ensure Humane Conditions of Confinement, and
- (3) Seek Health Care Measure and Protections for Confined Individuals

Reduce Detention and Incarcerated Populations

The IACDL urges local officials to stop admitting people to jail absent a **serious risk** to the physical safety of the community. As a result, the proper responsible agencies should:

- Adopt book-and-release policies for offenses that pose no immediate physical threat to the community, including the simple possession of controlled substances⁴;
- Release all individuals who are being detained solely because they cannot afford cash bail, unless they pose a serious risk to public safety;

¹ See <https://www.ncchc.org/report-examines-trends-in-u.s.-aging-prison-population> and [https://www.n4a.org/Files/n4a_AgingPrisoners_23Feb2017REV%20\(2\).pdf](https://www.n4a.org/Files/n4a_AgingPrisoners_23Feb2017REV%20(2).pdf) .

² See <https://www.prisonpolicy.org/blog/2020/03/06/pandemic/> .

³ See Joint Statement From Elected Prosecutors On COVID-19 And Addressing The Rights And Needs Of Those In Custody, March 2020, at <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf> .

⁴ The Idaho Supreme Court issued a Resolution on March 18, 2020, which authorized a new Bond Schedule regarding Idaho Misdemeanor Criminal Rule 13 with “book and release” recommendations for only a short list of 12 different misdemeanors.

- Reduce the prison population to minimize the sharing of cells and ensure that there are sufficient medical quarantine beds, along with adequate staff, to promote the health and safety of staff, the incarcerated, and any visitors;
- Identify and release the following, unless doing so would pose a serious risk to the safety of the community:
 - the elderly,
 - vulnerable individuals (as defined by the CDC, for example, those with asthma, cancer, heart disease, lung disease, and diabetes),
 - people in local jails who are within 3 months of completing their sentences,
 - people incarcerated solely due to technical violations of probation and parole;
- Develop procedures and reforms that enable past lengthy sentences to be revisited and support release for those individuals who can safely return to the community; and
- Cease all requirements of pre-trial release that are in direct conflict with social distancing recommendations by local, state and national officials.

Guarantee Humane Conditions of Confinement

Every effort should be made by those agencies that operate detention facilities to ensure that those who must remain incarcerated have access to good healthcare, and that their basic rights are being met under these changing circumstances. Consequently, the involved organizations should work with sheriffs, the Department of Correction, and public health officials to:

- Eliminate medical co-pays for anyone in confinement;
- **Maintain access to counsel** and preserve family visitation rights as long as possible and with precautions that can address concerns around the introduction and spread of the virus in facilities;
- Make phone calls free and increase teleconferencing capacity and the means to help people stay connected to family and counsel; and
- Ensure that containment measures do not result in the denial of due process or statutory rights granted to ensure speedy trial guarantees or the access to counsel.

Establish Health Care Practices to Protect Confined Individuals

Criminal justice stakeholders ought to work with public health, corrections, immigration and various government leaders to:

- Avoid the use of widespread lock-downs or solitary confinement as a containment measure and implement more targeted quarantines to control the spread of infection;
- Educate those in custody and staff about the virus and the measure they can take to minimize their risk;
- Implement a humane plan for housing of persons who are not released but who are sick;
- Encourage and direct detention and corrections employees to stay home, with pay, if they feel sick;
- Provide free soap and CDC-recommended hand sanitizer, increased medical care, comprehensive sanitation and cleaning of facilities and other safety measures as recommended by the CDC for those who remain in custody.

In addition, Court Administrators and the Supreme Court must ensure that the various courts across the seven judicial districts equitably and consistently protect adequate access to courts, access to attorneys, the right to a speedy trial in criminal cases, and the due process rights afforded the accused under the Fifth and Sixth Amendments; and that even under the cloud of a public health emergency, Constitutional rights are not eroded.

The IACDL recognizes that in this moment, government agencies will be taxed with an overwhelming number of concerns and considerations. Unfortunately, we are facing a serious threat as a country, and it is our charge to protect communities as a whole and the most vulnerable and susceptible populations. It is likely that no measures taken will be able to avoid the slow spread of the virus, and the cost to life may be significant. However, it is in this moment, that the many stakeholders involved should take the opportunity to reassess and evaluate what will be the cost if we continue with our current methods and procedures.

We sincerely appreciate your consideration of these proposals and would be happy to work with any agencies who desire to address these concerns.

Sincerely,

The Executive Committee & Board of Directors
Idaho Association of Criminal Defense Lawyers