

March 31, 2020

The Honorable Tim Walz, Governor of Minnesota
The Honorable Paul Gazelka, Majority Leader of the Minnesota Senate
The Honorable Melissa Hortman, Speaker of the Minnesota House of Representatives
The Honorable Warren Limmer, Chair, Senate Judiciary and Public Safety Committee
The Honorable Carlos Mariani, Chair, House Judiciary and Criminal Justice Reform Committee

Dear Governor, Mr. Majority Leader, Madame Speaker, and Chairs Limmer and Mariani:

This letter is an update to my letter of March 24th regarding Minnesota's correctional response to the COVID-19 pandemic. It also includes a recommendation for a statutory change, which I am making in accordance with Minnesota Statutes, section 241.93, subdivision 6, paragraph (c).

I previously noted the importance of our correctional response to the COVID-19 pandemic for the health and safety of people held in our state and local correctional facilities, correctional staff, and the broader community. The unique vulnerability of those who live in our correctional facilities, and the potential impact on correctional staff and all our communities, is well known. In my letter I also noted the need for swift, proactive, unified, and in some cases extraordinary action.

I am pleased to report that local officials seem to be taking this kind of action. I have surveyed the local correctional facility populations of nine of Minnesota's ten largest counties (Figure 1, pg. 4). From March 6 to March 27, the combined daily population of local correctional facilities in these counties was reduced by 39%. This should not necessarily lead to the conclusion that more local, or statewide, action is not still needed to reduce and maintain lower local correctional facility populations during this pandemic. But clearly, judges, prosecutors, defense attorneys, and sheriffs have recognized the need for reductions locally and have been able to work together to take extraordinary actions to reduce correctional populations quickly and significantly. These actions have been guided by appropriate public safety as well as public health concerns.

At the state level, population reduction has been negligible. On January 1 the total number of adults held at state correctional facilities was 8,873; on March 1 it was 8,857; and as of March 29, it was 8,841. This lack of significant change is not due to any failing on the part of Department of Corrections Commissioner Schnell or his staff. I believe that appropriate measures are being taken to reduce the population count to the extent allowed under current statutory authority, by minimizing release revocations and working to increase work release program numbers; and due to these efforts, there will be additional reductions. However, I believe they will be minor relative to what is needed, and that the Commissioner's statutory authority is just not sufficient for the

extraordinary circumstances of the current situation. I believe the most important and urgent action to be taken currently is to give him expanded release and intake discretion so that state correctional populations can be lowered like they have at the local level.

The Commissioner's authority to release people or otherwise limit the prison population in a situation like this is limited. Minnesota Statutes, section 243.57 allows for the removal of inmates from a state correctional facility to some other secure and suitable place for care and treatment in the case of an epidemic of infectious or contagious disease. It does not address the problems created by the kind of highly contagious and lethal virus we currently face, a virus that will quickly spread in all correctional facilities and the broader community simultaneously. As noted in my previous letter, I believe the best way to respond is to reduce the population overall so that appropriate social distancing measures can be taken without complete lockdowns; isolation/quarantine is possible as needed; and safety and security and appropriate health care can be maintained given anticipated staffing reductions. To address this shortcoming, I recommend that the legislature quickly amend statutes to allow for more overall population reduction through limiting intakes and expanding supervised release. There may be multiple ways to do this, but here is my recommendation for specific language:

243.57 CONTAGIOUS DISEASE; ~~REMOVAL OF INMATES~~ MITIGATION MEASURES

Subdivision 1. Removal of Inmates. In case of an epidemic of any infectious or contagious disease in any state correctional facility under control of the commissioner of corrections, by which the health or lives of the inmates may be endangered, the chief executive officer thereof, with the approval of the commissioner of corrections may cause the inmates so affected to be removed to some other secure and suitable place or places for care and treatment; and, if the facility is destroyed, in whole or in part, by fire or other casualty and becomes unsuitable for proper detention and custody of the inmates, the chief executive officer, with the approval of the commissioner, may remove them, or any number of inmates, to another safe and appropriate place as may be provided.

Subd. 2. Population Reduction. In case of an epidemic of any infectious or contagious disease likely to spread throughout all state correctional facilities under control of the commissioner of corrections by which the health or lives of the inmates may be endangered, and which can be mitigated by an overall state correctional facility population reduction, as determined in consultation with the commissioner of health, the commissioner of corrections may:

- (1) notwithstanding section 244.101 subdivision 1 and subject to section 244.05, place inmates on supervised release, within 180 days of their supervised release date, and determine eligibility, application and appeal process for release under this section; and
- (2) require that persons sentenced but not yet admitted to confinement in a state correctional facility be held for up to 180 days in a local correctional facility.

Additionally, for this statutory change to be effective, emergency funding will be required to support the increased numbers of people being released. A lack of safe housing and support

systems will limit the Commissioner's ability to release people. Reentry into the community for people who have been incarcerated is difficult in the best of times; it will be much more so now. Also, limiting new admissions to state prisons and housing them locally will place an extra burden on local jurisdictions. This may require additional funding, although some of the burden might be absorbed considering the work local officials have already done to reduce their facility populations.

Granting this kind of extraordinary and ongoing authority to the Commissioner, in my opinion, should happen through legislative action. However, due to the urgent nature of the situation and the conditions under which the legislature is operating, I recommend that, until the legislature can act, the Governor consider furthering the goal of state correctional facility population reduction to the extent possible and allowed through Executive Order. For example, if the Commissioner thinks it would allow more individuals to be released under the work release program, the Governor could suspend certain eligibility criteria of DOC policy 205.120. There may be other actions that could be taken through State Court order or through the Board of Pardons, but I consider recommendations for those actions beyond the purview of my office.

Thank you. Please let me know if you have any questions or if there is any way I can be of assistance.

Respectfully,



Mark Haase

Ombuds for Corrections

CC: Senator Susan Kent; Senator Ron Latz; Representative Kurt Daudt; Representative Jack Considine; Representative Brian Johnson; Representative Marion O'Neill; Chief Justice Lorie Gildea; Lieutenant Governor Peggy Flanagan; Attorney General Keith Ellison; Department of Corrections Commissioner Paul Schnell; Minnesota Sheriffs Association Executive Director Bill Hutton; State Public Defender William Ward; Minnesota County Attorneys Association Executive Director Robert Small

Figure 1

Sample of Minnesota Local Correctional Populations March 6 to March 27, 2020

County	County Pop.	Facility	Jan ADP	6-Mar	27-Mar		27 Mar/6 Mar
Hennepin	1,235,478	ACF	274	283	213		0.75
Hennepin		ADC	733	778	522		0.67
Ramsey	541,493	RCCF	264	233	125		0.54
Ramsey*		ADC	383	420	230		0.55
Dakota	418,201	Jail	194	165	114		0.69
Anoka	347,431	Jail	193	176	107		0.61
Anoka		Workhouse	90	109	30		0.28
Washington	253,317	Jail	193	187	85		0.45
St. Louis	200,080	Jail	166	166	96		0.58
Stearns	156,819	Jail	144	131	89		0.68
Scott	143,372	Jail	130	131	60		0.46
Wright	132,745	Jail	181	194	145		0.75
TOTAL	3,428,936		2945	2973	1816		0.61

ACF = Adult Correctional Facility (Workhouse)

ADC = Adult Detention Center (Jail)

ADP = Average Daily Population

*Ramsey County Jail numbers are from March 9 and March 20.