CASE NO. #20-1469
Lower Court #2:20-cv-10949

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMAAL CAMERON, RICHARD BRIGGS, RAJ LEE, MICHAEL CAMERON, MATTHEW SAUNDERS, individually and on behalf of all others similarly situated,

Plaintiffs-Appellees,

v.

MICHAEL BOUCHARD, in his official capacity as Sheriff of Oakland County, CURTIS D. CHILDS, in his official capacity as Commander of Corrective Services, OAKLAND COUNTY, MICHIGAN,

Defendants-Appellants.

BRIEF *AMICUS CURIAE* OF MICHIGAN SHERIFFS' ASSOCIATION IN SUPPORT OF DEFENDANTS-APPELLANTS' BRIEF ON APPEAL

ABBOTT NICHOLSON, P.C.
Kristen L. Baiardi (P71931)
Attorneys for *Amicus Curiae*
1900 W. Big Beaver Rd., Suite 203
Troy, Michigan 48084
(313) 566-2500
klbaiardi@abbottnicholson.com

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STATEMENT OF CORPORATE DISCLOSURE

Pursuant to Fed. R. App. P. 26.1 and 6th Cir. R. 26.1, *Amicus Curiae* Michigan Sheriffs' Association, makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly-owned corporation?

   No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome?

   No.

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Michigan Sheriffs' Association is a Michigan non-profit corporation whose membership is comprised of some eighty-three (83) Michigan sheriffs. Its purpose is the improvement of county law enforcement and administration through cooperative effort.

At its core, this appeal involves the fundamental issue of whether a federal district court judge may usurp and supersede the state constitutional and statutory framework by which sheriffs and state court judges manage inmates in county jails. In particular, this matter involves an erroneous 2-1 decision by a panel of this Court denying Defendants-Appellants' Motion for Stay Pending Appeal and affirming the district court judge's stunning, unprecedented opinion that held, inter alia, that any incarceration of a medically vulnerable individual during the COVID-19 pandemic is unconstitutional.

While the district court judge's opinion cloaks its extraordinary holding in the alleged "unparalleled and exceptional" circumstances of the COVID-19 pandemic, the dangerous reality is that the legal conclusions in this opinion purport to create not only constitutional rights to release for so-called "medically vulnerable" inmates currently in jail, but also permit medically vulnerable criminal defendants to argue that they may not be sentenced to jail while the pandemic continues. Indeed, even beyond the duration of the COVID-19 pandemic, one can envision defendants and

inmates who assert medically vulnerable status relying upon the district court's flawed analysis to oppose incarceration on constitutional grounds based on the risk of any communicable disease that causes increased risk for medically vulnerable individuals.

The questions at bar have vital significance for MSA's eighty-three member sheriffs, who have a substantial interest in ensuring that Michigan sheriffs' constitutional and statutory rights and responsibilities related to the operation of county jails and care and custody of inmates are not subverted by federal judges who are not in the best position to evaluate the proper health and safety protocols for jails. Further, federal judges are ill-suited to undertake the case-by-case risk assessment necessary to evaluate whether release of a particular inmate would endanger the public.

The proposed *Amicus Curiae* is deeply troubled by the district court's casual dismissal of the longstanding deference to state officials in the conduct of jails and processing of inmate releases.

The *Amicus Curiae* moved for leave of the Court to file this Brief under Fed. R. App. P. 29(a). A party's counsel did not author the brief in whole or in part. Neither a party nor a party's counsel nor a person other than the *Amicus Curiae* contributed money that was intended to fund preparing or submitting this Brief. Fed. R. App. P. 29(c)(5)(B)-(C).

ARGUMENT

In Michigan, county jails are the responsibility of the elected county sheriffs. Throughout Michigan, the eighty-three elected sheriffs oversee the operations of their jails and the inmates in their custody. While sheriffs do not determine who is incarcerated, or for how long, it is the sheriffs' duty to implement the sentencing and release decisions promulgated by state court judges.

Pursuant to Const. 1963, art. 7, §4, sheriffs are constitutional officers whose common law powers cannot be defeased, reduced, or infringed. In matters that are within the scope of his duties and powers, the Sheriff is the chief law enforcement officer in the County, and has no superiors in the performance of the common law, constitutional, and statutory duties pertaining to his office. *McMillan v Monroe County*, 520 US 781, 791, 792-794 (1997) (citing the rule that when performing his common law duties, the Sheriff represents the sovereignty of the State and has no superiors, holding that in the execution of his law enforcement duties the Sheriff represents the State and a "county commission []has no direct control over how the sheriff fulfills his law enforcement duty"); *Allor v Board of Auditors of Wayne County*, 43 Mich 76, 101, 102-103, 4 NW 492 (1880) (Campbell, J.) (No officer vested with powers and duties by Constitution may be deprived thereof; the constitutional offices of justices of the peace, constable and sheriffs are "so connected with the course of criminal justice as to be beyond legislative annihilation"), reversal on other

grounds implicitly recognized, *In re Slattery*, 310 Mich 458, 465, 17 NW2d 251 (1945), accord *People ex rel Leroy v Hurlbut*, 24 Mich 44, 82-83, 102-103 (1871); *White v East Saginaw*, 43 Mich 567, 570, 6 NW 86 (1880); *Wayne Co. Prosecutor v Wayne Co. Bd. Of Comm'rs*, 93 Mich App 114, 122-123, 286 NW2d 62 (1979).

In *National Union of Police Officers v Wayne County Bd of Comm'rs*, 93 Mich App 76, 82-83, 286 NW2d 242 (1979), the Michigan Court of Appeals reviewed the case law and framed the issue as follows:

> The sheriff is a peace officer charged with enforcing the laws enacted by the Legislature under the police power, see 80 CJS §42, p. 211. It is his duty to "wield * * * the executive power for the preservation of the public peace." *Scougale v Sweet*, 124 Mich 311, 322; 82 NW 1061, 1064 (1900). See also *White v East Saginaw*, 43 Mich 567, 6 NW 86 (1880). Thus it may be said that the sheriff's powers and duties comprise a part of the police power of the state, which may be delegated to subordinate governmental agencies or divisions, but may not be otherwise delegated or bargained away, being an inherent attribute of sovereignty. See *People v Robinson*, 344 Mich 353, 74 NW2d 41 (1955), Smith, J. (dissenting), 6 McQuillan, Municipal Corporations (3d ed.), §§24.07, 24.37, pp. 480-482, 552-553. In Michigan, the state's duty of law enforcement for the protection of its citizens has been constitutionally delegated to the county in the person of the sheriff, *Brownstown Twp. v Wayne County*, 68 Mich App 244, 242 NW2d 538 (1976). The effect of this constitutional delegation of power was stated in *Brownstown Township* as follows:
>
> > "The office of sheriff is a constitutional office with duties and powers provided by law. Const. 1963, art. 7, §4 *Labor Mediation Board v Tuscola County Sheriff*, 25 Mich App 159, 162, 181 NW2d 44 (1970). When officers are named in the Constitution they have a known legal character. The Legislature may vary the duties of a constitutional office, but it may not change the duties so as to destroy the power to perform the duties of the office. *Allor v Board of Auditors of County of Wayne*, 43 Mich 76, 102-103, 4 NW 492 (1880). See Murfree, Law of Sheriffs, s 41, p. 22." 68 Mich App at 247-248.

MCL 51.75 states that the "sheriff shall have the charge and custody of the jails of his county, and of the prisoners in the same, and shall keep them himself, or by his deputy or jailer."

MSA respectfully submits that it is against this backdrop of constitutional power and statutory duties that the lawfulness of the district court's ruling herein must be analyzed. Unbelievably, the district court held below that "**home confinement or early release is the only reasonable response to this unprecedented and deadly pandemic…any response other than release or home confinement placement constitutes deliberate indifference**." (R.57, Opinion and Order, pp. 57-59; Page ID# 3043-3045) (Emphasis added).

There is no evidence that Defendants-Appellants herein, or Michigan sheriffs in general, have ignored the COVID-19 pandemic. On the contrary, by way of example, on March 26, 2020, MSA's Executive Director, Matt Saxton, and the Chief Justice of the Michigan Supreme Court, Bridget McCormack, issued a joint press release detailing steps taken statewide to reduce jail population in response to the public health situation. Exhibit A.

In this case, under the guise of the "unprecedented nature" of the current COVID-19 pandemic and ensuing societal disruption, the federal district court judge departed from all established legal precedent governing habeas corpus petitions and Section 1983 claims of deliberate indifference to inmates' medical

needs in favor of fabricating a COVID-19 "get out of jail free" card for wide swaths of jail populations across the state.

The district court wrongfully elevated itself above elected sheriffs and state court judges, who have the primary and rightful authority to determine whether release of an inmate is warranted. This action was inappropriate and repugnant to principles of federalism, comity, and judicial economy. This Court must reverse.

I. THE LOWER COURT FUNDAMENTALLY ERRED BY FAILING TO DISMISS PLAINTIFFS' HABEAS CLAIMS, WHERE THOSE CLAIMS WERE BROUGHT IN DEROGATION OF CLEAR SIXTH CIRCUIT PRECEDENT REQUIRING EXHAUSTION OF STATE REMEDIES AND WHERE THE LOWER COURT IMPROPERLY FRAMED ITS DECISION AS A "FACT OF CONFINEMENT" CASE.

Pursuant to 28 U.S.C. § 2254(b)(1):

> An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that – (A) the applicant has exhausted the remedies available in the courts of the State; or (B)(i) there is an absence of available State corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

See also, *O'Sullivan v Boerckel*, 526 US 838, 845 (1999). The exhaustion requirement "serves to **minimize friction** between our federal and state systems of justice by allowing the State an initial opportunity to pass upon and correct alleged 'violations of prisoners' federal rights. *Duckworth v Serrano*, 454 US 1, 3 (1981) (Emphasis added). Moreover, this Court has held that "[A] federal habeas petitioner "must first exhaust the remedies available in state court by fairly presenting his

federal claims before the state court; **the federal court will not review unexhausted claims**." *Irick v Bell*, 565 F3d 315, 323 (6th Cir. 2009) (citations and quotations omitted) (Emphasis added).

"A federal court will not review claims that were not entertained by the state court due to … the petitioner's failure to raise those claims in the state courts while state remedies were available…." *Id.* At 323-324 (citations and quotations omitted). This includes presentation of the claims to the state appellate courts where review is discretionary and part of the ordinary appellate procedure in the state. *O'Sullivan*, 526 US at 847. "**Where state remedies remain available to the habeas petitioner who has not fairly presented his constitutional claim(s) to the state courts, the exhaustion doctrine precludes a federal court from granting him relief on that claim**…" *Perruquet v Briley*, 390 F3d 505, 514 (7th Cir. 2004) (Emphasis added).

Thus, it is clear that habeas claims fail when state court remedies have not been exhausted. Here, there is no dispute that the Plaintiffs completely bypassed available state court remedies in favor of the federal court forum. It was the district court's duty to dismiss these improper habeas claims based on applicable legal precedent, supra. However, the district court openly rejected the clearly available state court remedies that are demonstrably operating to release inmates in an orderly fashion after review and consideration by state court judges familiar

with the cases and able to weigh the potential COVID-19 risk faced by an inmate with the potential risk to the public from the release of the inmate.

The requirement to exhaust state remedies rests, in part, upon regard for the sovereignty of the state. *Rose v Dickson*, 327 F2d 27, 28 (9th Cir. 1964). Conflict between state and federal authorities with regard to the administration of justice by the state is 'a very delicate matter,' to be avoided whenever possible. *Darr v. Burford*, 339 U.S. 200 (1950) (Justice Frankfurter, in dissent, quoting Justice Holmes). The requirement rests also upon considerations of practical efficiency. The issues presented often concern local attorneys and court personnel, and arise in a context of local procedures and practices, with which state courts are familiar. They may be resolved most effectively by those tribunals. The requirement serves the interests of the federal courts. 'Indeed, any other rule would visit upon the federal courts an impossible burden, forcing them to supervise the countless state criminal proceedings in which deprivations of federal constitutional rights are alleged.' *Wade v. Mayo*, 334 U.S. 672, 679-680 (1948).

Judge Parker rejected this systematic process in favor of inserting herself as a self-appointed arbiter of inmate release decisions. MSA respectfully submits that this is a dangerous precedent to set as it emasculates the very state authorities who are in the best position to make informed decisions regarding appropriate inmate

releases while continuing to fulfill their concurrent mandate to protect society at large from dangerous criminals.

It is also important to note that the district court (presumably in order to position itself to award habeas relief) incorrectly framed the case at bar as a "fact of confinement" case, instead of correctly acknowledging that this is simply a case where Plaintiffs challenge the conditions of their confinement. Indeed, we see this in the exhaustive factual record developed below regarding the sanitary, health, and other mitigation protocols implemented at the Oakland County Jail, and Plaintiffs' challenges to the adequacy thereof. Of course, habeas relief is unavailable when a petitioner challenges the conditions of confinement. The U.S. Supreme Court has held that while "challenging the fact of [an inmate's] conviction or the duration of his sentence…fall within the core of federal habeas corpus[,] claims that merely challenge the conditions of a prisoner's confinement…fall outside that core." *Nelson v Campbell*, 541 US 637, 643 (2004). It was plainly inappropriate for the district court to attempt to side-step the bar on challenges to the conditions of confinement by issuing a blanket decree that the conditions of confinement in the Oakland County Jail during the COVID-19 pandemic are allegedly so dangerous as to make the fact of the inmates' confinement unlawful. This is an additional reason why the district court erred in failing to dismiss the Plaintiffs' legally deficient habeas claims.

II. THE LOWER COURT'S RULING TURNED ESTABLISHED DELIBERATE INDIFFERENCE JURISPRUDENCE ON ITS HEAD, CREATING AN UNTENABLE STANDARD FOR LOCAL AUTHORITIES CHARGED WITH OPERATING JAIL FACILITIES.

The district court erred in finding that the Plaintiffs had any likelihood of success whatsoever on their deliberate indifference claims. The court held that "home confinement or early release is the only reasonable response to this unprecedented and deadly pandemic…any response other than release or home confinement placement constitutes deliberate indifference." (R.93, Opinion, Page ID# 3043-3045). This misguided conclusion now ostensibly provides authority for the release of all "medically vulnerable" state court inmates throughout the United States. Furthermore, it arguably ties the hands of state court judges in sentencing future "medically vulnerable" individuals convicted of crimes to sentences involving incarceration during the pandemic.[1]

The test of whether a constitutional violation sounding in deliberate indifference has occurred has both an objective and a subjective component. "The objective

[1] It is worth noting that, while no one disputes that COVID-19 continues to present some level of infection risk, the Court can take judicial notice of the fact that confirmed cases, deaths, and hospitalization rates in Michigan have improved generally since the lower court's decision. COVID-19 has not spread rampantly in the Oakland County Jail. Governor Whitmer even rescinded the "Stay Home, Stay Safe" order on June 1, 2020, finding conditions had improved sufficiently to warrant moving all Michigan regions to "Phase 4" of the "MI Safe Start" plan. These evolving circumstances should be considered by this Court in evaluating the unprecedented injunctive relief issued by the district court in this case.

component requires that the deprivation alleged must be 'sufficiently serious.'" *Woods v. Lecureux*, 110 F.3d 1215, 1222 (6th Cir. 1997) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). The potential exposure of inmates to a serious, communicable disease may satisfy the objective component. *Helling v McKinney*, 509 U.S. 25 (1993). However, an inmate does not have a constitutional right to be completely free from risk of infection. *See for example, Forbes v Edgar*, 112 F 3d 262 (7th Cir. 1997) (Finding no violation due to an inmate's exposure to tuberculosis where the facility followed its tuberculosis containment protocols). Here, where there is little doubt that COVID-19 is a communicable disease with serious health consequences for some who are infected, for the reasons discussed in Defendants-Appellants' Brief on Appeal, there is a strong argument that the objective prong is not satisfied here based upon improving conditions and the lack of unchecked spread of COVID-19 in the Oakland County Jail.

"To satisfy the subjective requirement, [the plaintiff] must show that the [defendants] had 'a sufficiently culpable state of mind.'" *Id.* This subjective deliberate indifference standard means "that a prison official may be held liable . . . for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Farmer*, 511 U.S. at 847. Thus, a plaintiff must show that a government official "subjectively perceived a risk of harm and then disregarded

it." *Comstock v. McCrary*, 273 F.3d 693, 703 (6th Cir. 2001). Moreover, this burden is not light; even "'an official's failure to alleviate a significant risk that *he should have perceived but did not*, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.'" *Id.* (quoting *Farmer*, 511 U.S. at 838, 114 S.Ct. 1970) (emphasis added in *Comstock*).

The Sixth Circuit Court of Appeals repeatedly has held that deliberate indifference requires more than mere negligence, and something less than acts or omissions directed toward purposely causing harm. *Blackmore v Kalamazoo County*, 390 F.3d 890 (6th Cir. 2004); *Comstock*, supra. Indeed, the U.S. Supreme Court and the Sixth Circuit have held that conduct that is even grossly negligent does not violate the Eighth Amendment. *Farmer*, 511 U.S. at 838; *Walker v Norris*, 917 F.2d 1449, 1454 (6th Cir. 1990). They also have held that a short delay by itself in administering medical treatment – even an unexplained delay – is not enough to demonstrate deliberate indifference to a defendant's medical needs, but instead evinces negligence. *Santiago v Ringle*, 734 F.3d 585, 592-593 (6th Cir. 2013).

Binding U.S. Supreme Court precedent is clear that the Eighth Amendment requires inmates to be furnished with "reasonable safety." *DeShaney v Winnebago County Dept. of Social Services*, 489 US 189 (1989). The voluminous factual record developed below illustrates that the Defendants-Appellants have done that and more in response to COVID-19. They worked with the state courts to expeditiously release

inmates as appropriate, and implemented logical, reasonable mitigation and screening protocols in the jail, which have largely contained and minimized any spread of the virus. There is simply no factual or legal basis upon which to destroy existing Eighth Amendment jurisprudence and expose state and local authorities to essentially "strict liability" for Section 1983 claims by any "medically vulnerable" inmate for the duration of the COVID-19 pandemic, notwithstanding the efficacy of protocols and health standards implemented by correctional facilities to assess and adapt to the risk posed by COVID-19.

CONCLUSION

Perhaps the most troubling aspect of the district court's ruling is its complete disregard for the longstanding principles of federalism and comity that federal courts routinely use as guideposts to limit intrusion into the affairs of branches of state government. In particular, the district court failed to consider the federalism and comity ramifications inherent in entering sweeping, intrusive injunctive relief related to, inter alia, cleaning procedures in the Oakland County Jail, as well as imposing standards for release of "medically vulnerable" inmates. This Court has noted that the restraints of federalism must be considered in determining the availability and scope of equitable relief such as injunctions, especially when the injunction is sought against those in charge of the executive branch of any agency of state or local government. *Kendrick v Bland*, 740 F2d 432 (6th Cir. 1984). Indeed,

the United States Supreme Court has held that comity and federalism procedures provide a most compelling case for deference in the administration of correctional facilities because of the state's strong interest in properly managing such facilities and the many state laws, regulations, and procedures that apply to such facilities. *Preiser v Rodriguez*, 411 U.S. 475, 491-492 (1973).

MSA respectfully submits that even in a time of unprecedented societal changes temporarily implemented to slow the spread of COVID-19, the federal courts should be as cautious and circumspect as ever in casting themselves in new roles as "super wardens" of county jails and other state correctional facilities. The Plaintiffs' habeas claims herein are deficient for failure to exhaust the state remedies that are unquestionably operating expeditiously to effectuate appropriate releases. Their Section 1983 Eighth Amendment claims are likewise deficient because they utterly fail to show deliberate indifference under applicable legal precedent, where there is no factual record to indicate that Defendants-Appellants have intentionally disregarded COVID-19 and have, in fact, taken many affirmative steps that effectively controlled and limited the impact of COVID-19 in the jail.

For all of the foregoing reasons, the *Amicus Curiae* respectfully requests that the Court grant the relief requested in Defendants-Appellants' Brief on Appeal.

Dated: June 5, 2020

Respectfully submitted,

ABBOTT NICHOLSON, P.C.

By: /s/ Kristen L. Baiardi

Kristen L. Baiardi (P71931)
Attorneys for *Amicus Curiae*
1900 W. Big Beaver Rd., Suite 203
Troy, Michigan 48084
(313) 566-2500

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

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Dated: June 5, 2020

Respectfully submitted,

ABBOTT NICHOLSON, P.C.

By: /s/ Kristen L. Baiardi
Kristen L. Baiardi (P71931)
Attorneys for *Amicus Curiae*
1900 W. Big Beaver Rd., Suite 203
Troy, Michigan 48084
(313) 566-2500

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MICHIGAN COURTS NEWS RELEASE
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March 26, 2020

Chief Justice Bridget M. McCormack, Michigan Supreme Court
Sheriff Matt Saxton (ret.), Executive Director, Michigan Sheriffs' Association
Joint Statement

Thank you to judges, sheriffs, and law enforcement statewide who have stepped up to reduce jail populations in response to the ongoing public health emergency. With a single-minded focus on keeping our communities safe, jail populations across Michigan have declined to between 25% and 75% below their maximum capacities.

We are grateful for the efforts taken so far, but we must make sure we do all we can to protect the health of Michiganders. We have half a million criminal court cases each year in Michigan and several hundred thousand people entering jails. Governor Whitmer has requested that we all do our part to limit risk, and judges and sheriffs must work together to protect court employees, jail staff, inmates, and the public at large.

We can be proactive to reduce this risk:

- Judges and Sheriffs should use the statutory authority they have to reduce and suspend jail sentences for people who do not pose a public safety risk.
- Law enforcement should only arrest people and take them to jail if they pose an immediate threat to people in the community.
- Judges should release far more people on their own recognizance while they await their day in court. For some, judges may want to release them under supervision or under a condition that they stay away from a particular place or person.
- And judges should use probation and treatment programs as jail alternatives.

In addition, see the detailed advice that the Michigan Supreme Court State Court Administrative Office previously provided to judges and court administrators statewide. Following this advice WILL SAVE LIVES. (attached below)

Guidance to Trial Courts (Provided to Trial Courts March 20, 2020)

Detention, Bail, and Pretrial Release

In an effort to slow the spread of COVID-19, especially in the confined environments of county jails, courts should collaborate with county stakeholders and consider the following recommendations:

Coordinate with law enforcement in your county about expanding the use of appearance citations (when appropriate and legally permissible) rather than custodial arrests.

Pursuant to MCL 764.9c, police officers may issue appearance tickets, subject to certain exceptions, for misdemeanor or ordinance violations for which the maximum permissible penalty does not exceed 93 days in jail. Appearance tickets save police officers' time for more pressing matters and eliminate jail confinement. Even if an offense does not qualify for an appearance ticket (e.g. felonies or misdemeanors with punishments exceeding 93 days in jail), law enforcement still has the option for many offenses to release defendants, without charges, and submit their report to the prosecutor's office for review.

Coordinate with your prosecutors and law enforcement agencies in your county regarding the possible use of summons (when appropriate) rather than arrest warrants.

Pursuant to MCR 6.103, a court may issue a summons instead of an arrest warrant upon the request of the prosecutor. This presents another opportunity to avoid incarceration and allows the court more flexibility with scheduling arraignments than with in-custody defendants.

If defendants are arrested for warrantless misdemeanor offenses, courts should coordinate with law enforcement to use their discretionary authority to set lower interim bonds for an expedited release of low-risk defendants before arraignment.

Pursuant to MCL 780.581, a police officer may, subject to certain exceptions, set interim bail if defendants are arrested without a warrant for misdemeanor offenses and a magistrate is not available. The amount of interim bail must be "a sum of money" determined by the police officer, not the court, but must not exceed the maximum possible fine for the offense nor be less than 20 percent of the minimum possible fine. Law enforcement agencies sometimes accomplish this by using a "bond schedule." Several courts utilize an Interim Bond Order for this purpose.

Courts must closely adhere to MCR 6.106(C) regarding personal or unsecured bonds to effectuate as many pretrial releases from custody as safely possible.

MCR 6.106(C) requires courts to release defendants on personal or unsecured bonds unless they will not reasonably ensure the appearance of the defendant as required or will present a danger to the public. Money bail of even modest amounts can delay, or outright deny, the release of certain presumptively innocent defendants.

When setting bail, courts should carefully weigh the public necessity of certain pretrial conditions (including drug/alcohol testing, counseling, office visits, etc.) with the risk of spreading COVID-19.

Courts should be mindful that conditions of release, while not confining defendants in jail, can still place defendants in close proximity with other individuals. MCR 6.106(D) allows courts to impose conditions of pretrial release if a personal recognizance bond will not reasonably ensure the appearance of the defendant or the safety of the public. Moreover, research suggests many conditions of pretrial release, with the exception of court date reminders, are ineffective at reducing failure to appear and rearrests rates. When balancing which bond conditions to order with minimizing the spread of the COVID-19, the court should still be mindful that behavior that is dangerous to the defendant or others should not be tolerated.

Consider using non-warrant alternatives (when appropriate) when defendants fail to appear in court or otherwise commit conditional release violations.

Pursuant to MCR 3.606(A)(1) and MCR 6.106(H)(2), a court may order a defendant to appear for a show cause hearing for an alleged bond violation or issue a summons for a modification of bond. Show Cause Orders (MC 230) and Summons Regarding Bond Violations (MC 308) are two options that will avoid custodial arrests and allow courts more control over their dockets. The court should continue to issue bench warrants in those circumstances where the defendant's conduct resulting in the alleged bond or probation violations present a danger to the defendant or others.

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