

TO: Judge Valerie Bailey-Rihn
Presiding Judge, Dane County Circuit Court

FROM: Judge Nicholas McNamara
Presiding Judge, Criminal Division

DATE: June 5, 2020

On behalf of the criminal division judges on the Dane County Circuit Court, I am responding to the issues raised by Sup. Bayrd regarding the court's response to the COVID-19 pandemic in the jail.

As judges, we are deeply concerned about the risks that COVID-19 poses to individuals in or potentially entering the jail, especially older individuals and those with pre-existing health conditions. In making decisions affecting custody, however, judges must also consider factors such as the risk a defendant poses to crime victims and the community. Further, in our adversarial legal system, the court does not act unilaterally or conduct investigations. Courts instead rely on the parties' attorneys to request relief and make decisions based on the law and the facts after hearing from all parties.

With that backdrop, the Dane County Circuit Court has taken the following steps to protect both incarcerated defendants and the community during the pandemic:

1. **Staying Jail Sentences.** In appropriate circumstances and to the extent allowable by law, the court has delayed jail report dates or has authorized the temporary release of defendants serving a jail sentence.
2. **Relief from Warrants.** The court issued an emergency order permitting officers who encounter individuals with outstanding warrants to release them after obtaining current contact information from them without taking them to jail. This order covers non-domestic misdemeanors as well as non-violent Class H and I felonies (excluding repeat OWIs).
3. **Delaying Sentencing.** To avoid requiring defendants to serve jail sentences while the COVID-19 outbreak continues to affect the jail, the court has, in appropriate cases, scheduled sentencing hearings on a later date after accepting a guilty plea.
4. **Reducing or eliminating cash bail.** In appropriate circumstances, the court has reduced or eliminated cash bail to allow defendants awaiting trial to be released from jail. While the goal is always to set cash bail at the lowest amount needed to assure court appearances, the court has factored in the COVID-19 outbreak in the jail and the health risks to individual defendants in making bail decisions.

If the Criminal Justice Counsel has additional questions, my colleagues or I would be happy to answer any questions.