March 27, 2020

The Criminal Justice Community Engagement Workgroup (CJCEW)
Pennington County Safety & Justice Challenge
Rapid City, SD 57701

To our valued community members:

Let me start by saying that we appreciate your input. This is exactly the kind of circumstance for which this committee was formed and your questions in the face of the uncertainty of the present pandemic are ones that we have been wrestling with. I hope that you understand that, like you, we are learning things every day. What I write here may not be the case in weeks or even days, but in the interest of cooperation and openness, I want to share as much as I can with you. We accept the responsibility that we have not to lose sight of the interests and rights those in the criminal justice system, both those who have been convicted and those that are simply accused.

It is important to remember that the ACLU letter is designed for a national problem and does not attempt to recognize or acknowledge the circumstances in individual jurisdictions or the steps that many local governments have taken since the COVID-19. Pennington County has been ahead of the curve in South Dakota and has implemented most, if not all, of the protocols that the ACLU letter recommends.

It is extremely important to understand that our responses to COVID-19 are not new. They are almost entirely extensions and reevaluations of procedures that we have been working on to make our use of the jail less common and more focused. It is because we have done the work over the last two years that our response to the COVID-19 threat has been able to be implemented so quickly.

Street-level Law Enforcement: Both the Pennington County Sheriff’s Office and the Rapid City Police Department have committed to a focus on public safety and citizen complaints. Street level deputies and officers have been reminded of their ability to issue citations in lieu of arresting offenders on most misdemeanor offenses.

This is very much in addition to the changes that the SO and PD have made over the last few years and particularly since the opening of the Care Campus. Street officers have been at the forefront of diverting offenders from the jail to the Care Campus where possible. To date, law enforcement officers have referred over 10,000 people to the Care Campus. Of those, over 1,600 were cases where the referrals could have been arrests. This is in addition to the 6,846 cases in 2019 where PCSO and RCPD issued citations instead of arresting offenders.
Jail Facilities: The Sheriff’s Office has always attempted to do everything humanly possible to maintain a safe, healthy environment in the jail. Long before COVID-19, the risk of infection of a wide variety of diseases exists any time that there is a population in close quarters and especially where there is a constant flow of people in and out of such a facility. In that sense, jails are not unlike hospitals. They have little to no control over who comes into the facility; there are people coming in who are not necessarily compliant with best medical practices; and there could be both deliberate and incidental exposures within the facility.

Since the advent of awareness of the COVID-19 threat, the jail staff have redoubled their efforts at sterilizing spaces and materials with which the inmates and staff may have contact. Basic hygiene products are (as they always have been) available to inmates at no cost. And the Sheriff’s Office, in concert with the Police Department, the courts and the State’s Attorney’s Office, has been working to release inmates consistent with public safety, to create space and distance in the jail.

Jail population has also been reduced through the Jail Population Review Team. This process has been in place for a little over a year and is an effort to ensure that the people held at the jail are not there because of inertia. Individual defendants are reviewed by a team consisting of probation, the Public Defender’s Office, the State’s Attorney’s Office and jail staff. If the team believes that the defendant is appropriate for release, that recommendation is forwarded to the judge handling the case. From March, 2019, through February, 2020, that team reviewed 550 individuals and recommended release of roughly a third. Of those recommended for release, the judge agreed in over 90% of the cases.

Since the advent of the COVID-19 crisis, that team has significantly expanded its review and has been a mechanism to identify candidates for release or bond. The most direct comparison is that on March 31st, 2019, there were 439 inmates in the Pennington County Jail. As of today, March 26th, 2020, there are 318, a decrease of 27.5%.

State’s Attorney’s Office: Consistent with the use of the Public Safety Assessment system, Pennington County has been moving away from use of cash bond for several years. In the present circumstance, we have been even more mindful of the need to reserve incarceration for those who present a serious risk to the safety of our community and those who have demonstrated by past conduct that they have no intention of returning to court.

The SAO has also reasserted its commitment to both diversion and warrant resolution, both of which are designed to ensure that system-involved persons have every opportunity to deal with the criminal justice system without unnecessary, permanent repercussions. To date, over 1,350 people have been offered diversion with a chance to seal and expunge even their arrests. Warrant resolution has cleared over 1,200 warrants, meaning that those people did not face arrest and re-incarceration.

Unified Judicial System: On March 23rd, the 7th Circuit issued an order which:
1. Permits felony arraignments of defendants without their presence based on an affidavit provided by their attorneys,
2. Allows defendants not to appear at any hearing where “no substantive action is taken,”
3. Allows defendants (and witnesses) to appear at all hearings other than trials by telephone or other electronic means,
4. Encourages pleas and sentencings in misdemeanor cases by waiver and affidavit without the presence of the defendant, and
5. States that continuances will be “liberally granted.”

The Court also issued an order for the 7th Circuit on March 25th that specified that defendants who are arrested on misdemeanor warrants, even if the warrant specifies a bond, will be granted release on personal recognizance unless they are also facing new charges for which a PR is not warranted.

**Probation Office:** Recognizing that additional flexibility was essential to the probation officers, on March 18th, the Chief Justice of the South Dakota Supreme Court approved the order of the Seventh Circuit which provided that:

Court service officers must:

i) Critically review any violation reports or requests and place those on hold unless determined necessary (violent offenses)

ii) Critically analyze use of any mandatory sanction...and may defer said sanction, so long as such deferral has been reviewed and approved by the Chief or Deputy Chief Court Services Officer;

iii) Critically analyze in person contact requirements, to include contact options other than office visits and/or in office substance testing.

We certainly appreciate the input that we get from you and your committee and we hope that this will allow them and the members of the community with whom they are in contact better to understand how seriously we are taking this situation and what we have done over the last two years that allows us to respond appropriately and quickly to this crisis. Rest assured that we will continue to adjust as the situation changes. Your ideas, questions and suggestions are integral to our process and are deeply appreciated.

Anyone who is concerned for a relative should contact the attorney who represents the relative. That attorney is in the best position to contact the judge to ensure that the court’s orders are being followed. In addition, take care of each other and help your relatives make good decisions that will not put them in positions where their behavior will require law enforcement action, which could lead to arrest.

Sincerely,

Mark A. Varg
State’s Attorney