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**Recommended Guidance of the Attorney General
Regarding Incarceration Decisions During the COVID-19 Emergency**

To: Prosecutors, Police, and the Department of Corrections

From: Attorney General T.J. Donovan

Date: April 1, 2020

This document provides guidelines for recommended best practices with respect to decisions that affect court appearances and possible incarceration during the COVID-19 emergency. Our collective priority is the safety of all Vermonters, including law enforcement and those who are incarcerated. Thank you for the work you do to keep our communities safe and healthy.

Law enforcement, prosecutors, and Department of Corrections personnel are already doing extensive work to minimize unnecessary incarceration during this crisis. I thank them for their efforts. These guidelines are largely drawn from practices that Vermont officials have already adopted. Vermont's prison population has decreased significantly because of your collective efforts.

These guidelines should serve to make Vermont's response as fair and uniform as possible across the state.

I also want to voice my support for Governor Scott's "Stay Home, Stay Safe" Order. Vermonters are law-abiding, respectful, community-minded individuals. Most Vermonters will fully comply with the Governor's order. Separate guidance regarding enforcement of the Governor's orders is forthcoming. Thank you for all that you do for our communities. Do not hesitate to contact us if you have questions.

Guidelines:

Citations: Citations are the preferred method of serving individuals with notice of their arraignment date. Citations should be issued for a minimum of 8 weeks out. Exceptions for public safety cases apply.

Conditions of Release—Conditions of release should only be requested when a person poses a specific, not theoretical, threat to public safety, or an imminent threat to flee from prosecution. Otherwise individuals should be released on their own recognizance.

Bail—For those charges that have a statutory cap on bail of \$200 (13 V.S.A. § 7551(b)(2)), police and prosecutors should not request bail. For other charges, bail should be requested only if there is an imminent threat to flee from prosecution that cannot otherwise be mitigated.

Hold Without Bail—Holding a person without bail should be used only when the threat to public safety is specific and not theoretical, and where the threat cannot otherwise be mitigated. Holding without bail will remain necessary in some cases to protect the public and survivors.

Probation—The Department of Corrections should consider requesting that courts discharge individuals from probation wherever warranted (pursuant to 28 V.S.A. § 251). The Department should use its authority to cite or arrest individuals for probation violations sparingly and rely instead on graduated sanctions. It should request revocations of probation only when a violation presents a specific threat to public safety.

Furlough—Furlough revocations should issue only when a person poses a specific danger to self or others and is a public safety risk. All other furlough violations should be dealt with using graduated sanctions other than incarceration.

Arrest Warrants—See guidance above. Unless there is a public safety risk, no conditions of release or bail should be requested.

Fugitives—Fugitives should be brought to court forthwith. If there is no public safety risk, release individuals with an appearance bond and any necessary conditions of release. Make a report to issuing state's authority. Set status out 90 days with an agreement to extend Governor's warrant deadline after 120 days.

Domestic/Sexual Violence—Domestic violence and sexual violence cases remain priorities. This guidance does not apply to these crimes.