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IN THE  
**Indiana Supreme Court**

\_\_\_\_\_  
No. 20S-MS-234  
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IN THE MATTER OF: )  
)  
PETITION REQUESTING THE INDIANA )  
SUPREME COURT TO ENGAGE IN )  
EMERGENCY RULEMAKING TO ADDRESS )  
THE ISSUE OF IMPRISONED PERSONS )  
AND THE COVID-19 CRISIS )

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**OPPOSITION OF STATE OF INDIANA AND INDIANA DEPARTMENT OF  
CORRECTION TO PETITION FOR EMERGENCY RULEMAKING**

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**INTRODUCTION**

The State of Indiana and the Indiana Department of Correction, by counsel, file this memorandum opposing the Petition for Emergency Rulemaking submitted by the American Civil Liberties Union of Indiana on March 30, 2020. The State and IDOC respond to the Petition principally as it urges rulemaking directed specifically at IDOC or prisoners, though the discussions below regarding the limits of the Court’s rulemaking authority, the lack of imminent constitutional violations, and overall policy considerations have implications for rulemaking directed at detainees held in county jails.

In its Petition, the ACLU asks the Court to engage in emergency rulemaking to “request” IDOC to make lists of prisoners “who are at heightened risk for severe illness or death from COVID-19” and of prisoners “within 6 months of their expected release date” and to transmit those lists to the trial courts that “committed the prisoner to the particular jail or prison along with any recommendation as to whether . . . the prisoner merits consideration for release . . . given the COVID-19 pandemic.” Pet. 18–19. The ACLU also urges the Court to use emergency rulemaking to “request” that IDOC “have the Indiana Parole Board advance parole considerations to the greatest possible extent” and “further request” that IDOC “review whether any at-risk prisoners are appropriate for temporary release pursuant to its authority . . . .” *Id.* at 20.

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In addition, the ACLU urges the Court to “order” Indiana’s trial courts receiving the requested lists of prisoners “to immediately determine . . . in the case of convicted persons, whether a sentence reduction or suspension is warranted under Indiana law so the person may shelter at home.” *Id.* at 19. And it asks that the Court “further order trial courts to consider all other available options to determine if they should exercise their lawful discretion to reduce the sentences of prisoners so they may be released to shelter at home.” *Id.* at 20.

The Court should deny the ACLU’s Petition. First, while the Court certainly possesses administrative authority over Indiana trial courts, it has no administrative authority over IDOC or Indiana’s prisons. Indeed, ACLU’s Petition seems to acknowledge the limits of the Court’s authority when it urges the Court to use its emergency rulemaking authority merely to “request” IDOC to undertake various actions. The ACLU, or anyone else, of course, may similarly “request” IDOC to make lists, advance parole considerations, or consider prisoners for early release. The Court has no need to use its extraordinary emergency rulemaking authority to make such “requests.” The ACLU, citing Indiana Code § 11-10-1-3(c), argues that IDOC possesses authority to “make arrangements for placement outside the department’ for convicted offenders who cannot be safely housed within the IDOC because of physical incapacity.” *Id.* at 17. IDOC takes seriously its responsibilities for appropriate inmate placement. Its authority in this regard, however, does not justify judicial intervention to suggest that IDOC should place prisoners in any particular location.

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Second, the ACLU suggests that the Court should exercise its emergency rule-making authority so as to “protect the constitutional rights of its citizens.” *Id.* at 17 (internal quotation marks and citation omitted). The ACLU does not, however, explain how judicial management of Indiana’s prisons and prison population, including by reducing lawfully imposed sentences, is necessary to guard against colorable threats to anyone’s constitutional rights. To the extent the ACLU insinuates that incarceration of some inmates during the COVID-19 pandemic may implicate Eighth Amendment rights against cruel and unusual punishments, it has no grounds to suggest IDOCs’ treatment of prisoners either is contrary to contemporary standards of decency or amounts to deliberate indifference to the health and safety of inmates.

Third, Indiana law already provides a mechanism for trial courts to consider case-by-case requests for sentencing modifications. Rather than employ broad-based emergency rulemaking, the Court should continue to rely on the existing procedural tools available to all concerned should particular COVID-19-related issues arise.

IDOC has for several weeks adopted policies, protocols, and practices designed to ameliorate the risks of COVID-19 in Indiana prisons. Indeed, as the leaders of the three branches of state government acknowledged just a few days ago, the potential threat of the spread of COVID-19 “can be mitigated and reduced through implementation of aggressive proactive measures such as those taken at state correctional facilities.” State of Indiana Letter (Apr. 3, 2020) ¶ 2. The last month has amply demonstrated that the scope and impact of the COVID-19 pandemic in the United States—along with national, state, and local governmental efforts to contain it—are rapidly

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evolving. IDOC has taken what the Court has recognized as “aggressive proactive measures” at state correctional facilities. Particularly given existing procedures to address individual cases, the Court has no urgent need to take action that may destabilize these undertakings.

### FACTUAL BACKGROUND

Public safety is central to the mission of the Indiana Department of Correction. Indiana Department of Correction, *Preparedness and Response Plan* (Mar. 3, 2020) at 2, <https://www.in.gov/idoc/files/IDOC%20Pandemic%20Response%20Plan%203-3-2020.pdf#response%20plan>. The largest agency in the State of Indiana, IDOC employs more than 6,400 Hoosiers and is responsible for the safety and security of more than 25,000 adults and 450 juveniles inside of its correctional facilities—which consist of 18 facilities for adults, 3 juvenile facilities, and 10 parole districts. Indiana Department of Correction, *Commissioner’s Welcome*, <https://www.in.gov/idoc/2709.htm>. IDOC is responsible for carrying out its mission through a complex array of policies and procedures which provide guidance specific to each facilities’ needs regarding every area of the organization, including intake of prisoners into the IDOC system; classification of prisoners at each facility; religious, education, and support services; non-essential work-release and in-house training programs; dress; mail; meals; health and safety protocols; internal administrative grievance systems; and re-entry programs. Indiana Department of Correction, *Policies & Procedures* (Jul. 2018), <https://www.in.gov/idoc/2830.htm>.

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IDOC manages infectious diseases in correctional facilities through a comprehensive approach including prevention, testing, treatment, education, and infection control. Dauss Decl. ¶ 5. IDOC posted its handbook regarding COVID-19 response measures for public viewing over a month ago, on March 3, 2020. *Preparedness and Response Plan* at 1. The handbook, as well as additional detailed information regarding IDOC's COVID-19 response, is available at IDOC's comprehensive COVID-19 response website, <https://www.in.gov/idoc/3755.htm>. This website includes links to the following information:

- IDOC Preparedness and Response Plan (Adult and Juvenile)
- Commissioner Robert Carter Jr.'s Directive for Pandemic Response
- IDOC and Wexford COVID-19 Protocol
- Management of Coronavirus Disease 2019 in Correctional and Detention Facilities
- Response to Family/Public Inquiries about COVID-19's impact on health services
- Response to Family/Public Inquiries about COVID-19's impact on mental health services
- Response to Family/Public Inquiries about COVID-19's impact on addiction recovery programming
- IDOC free calls agreement for offenders during COVID-19
- Information regarding stopping the spread of germs
- Information regarding COVID-19 generally and simple preventative actions to help prevent the spread of respiratory viruses.

IDOC's COVID-19 plan of action is consistent with CDC and Indiana Department of Health guidelines, and IDOC continuously reviews and updates its protocols to ensure compliance with those guidelines. Dauss Decl. ¶¶ 6, 49.

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1. *IDOC has implemented extensive hygiene and detection protocols*

Each IDOC facility must “establish a plan for implementing primary and secondary prevention measures, including educating staff and the management of infected or potentially infected offenders, staff, volunteers and visitors.” *Preparedness and Response Plan* at 1. IDOC has instructed all staff regarding primary infectious disease prevention efforts such as cough etiquette, hand hygiene, environmental management, and recognition of the indications of infection within their surrounding environment. Dauss Decl. ¶ 10. These instructions emphasize continuous sanitation of all hard surfaces, including sometimes-overlooked items such as radios, keys, and entrance and exit markers; all IDOC facilities have sanitization stations at strategic locations near entrances to common areas. Dauss Decl. ¶ 11, 13. IDOC staff take the body temperature of all IDOC staff and permitted visitors exhibiting signs of sickness; anyone with a temperature exceeding 100.5 degrees is sent home or otherwise restricted from contact. Dauss Decl. ¶ 8. IDOC is following CDC protocols, which require sending employees with fever home until at least 72 hours have passed since recovery (defined as resolution of fever without the use of fever-reducing medications), until an improvement in respiratory symptoms (e.g. cough and shortness of breath), and at least 7 days have passed since symptoms first appeared. *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, at 12 (Mar. 23, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf> (last accessed Apr. 6, 2020). IDOC also continuously monitors inmates for symptoms. Dauss Decl. ¶ 28.

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As of noon on April 6, 2020, six IDOC inmates have tested positive for COVID-19. These individuals were located at the Indiana Women’s Prison in Marion County, Edinburgh Correctional Facility in Johnson County, and Plainfield Correctional Facility in Hendricks County. Dauss Decl. ¶¶ 36–37. In response to positive COVID-19 results, IDOC is working with the Indiana State Department of Health to test those at risk of exposure and assisting with infection control practices and surveillance including: isolating offenders who tested positive as well as those who have been exposed but are not yet symptomatic; instructing medical staff to continuously monitor exposed persons for symptoms; and providing personal protective equipment (PPE), hand soap, and sanitizers to offenders and staff. Dauss Decl. ¶ 38–43.

### *2. IDOC is prepared with medical equipment and facilities*

IDOC is taking measures to be prepared with medical equipment and facilities to treat COVID-19 infections. Indiana Correctional Industries is working with the Indiana Manufacturers Association and others to assist in the production of PPE, garments, and accessories; it is also manufacturing greater quantities of sanitizer for distribution to all IDOC facilities. Dauss Decl. ¶ 19. Starting as early as March 6, 2020, all supplies of masks, thermometers, sanitizer and other sterilization supplies have been counted and rationed in anticipation of COVID-19 response needs. Dauss Decl. ¶ 9. IDOC is taking inventory of all emergency beds and has requested additional cots from the emergency operation center to disperse to facilities with dormitory housing units. Dauss Decl. ¶ 16. IDOC can use such cots, for example, in the

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event a facility needs to convert gymnasiums and other spaces to quarantine or treatment and recovery space. Dauss Decl. ¶ 16. IDOC has instructed facilities staff regarding plans for isolating symptomatic inmates—including emergency plans if large numbers of inmates are infected simultaneously. Dauss Decl. ¶ 14. Each IDOC warden is prepared for a large scale quarantine scenario, such as by repurposing gymnasiums and warehouses—and disconnecting existing housing units from other shared areas—for use as quarantine facilities. Dauss Decl. ¶ 15.

*3. IDOC is protecting facilities from COVID-19 by restricting visitation, group meetings, and offender transport and intake in accordance with CDC guidelines*

An important element of IDOC's efforts to limit the introduction and proliferation of COVID-19 are its policies limiting the movement of people into and out of each facility and changing offender routines inside each facility to comply with CDC guidelines for distancing. In particular, IDOC now permits only essential offender transports and transfers, such as for emergency medical and disciplinary reasons, and transfers from intake where offenders are brought from county jails into the IDOC system; all non-emergency surgeries, offender-requested transfers, and some classification movements are cancelled. Dauss Decl. ¶ 21. In addition, all offender out-of-state travel is cancelled (except for critical transfers such as extraditions), and inmate working crews and in-service training are suspended. Dauss Decl. ¶¶ 20–24. All non-essential inmate work-release has been cancelled. All volunteer-led religious groups and support groups—such as Alcoholics Anonymous—have been suspended

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since March 19, 2020. Dauss Decl. ¶ 31. IDOC is developing long-term plans for continuing religious services in a safe manner, such as video streaming, offender-led services, and religious programming via electronic tablets. Dauss Decl. ¶ 50.

Intake units are working to separate new offenders into smaller cohorts by date of arrival to limit the spread of any potential COVID-19 positives while processing new offenders. Dauss Decl. ¶ 26. All counties must complete a medical triage report through which they certify that inmates delivered to IDOC have been assessed for COVID-19 and have not displayed symptoms or fever (more than 100 degrees) in the past 24 hours. Dauss Decl. ¶ 29. Any transfers not so certified will not be admitted at intake: those testing positive from a county are returned to the county and all intake from a county with a jail staff member testing positive for COVID-19 has been restricted. Dauss Decl. ¶ 29. If the person testing positive is a parole violator, or otherwise a responsibility of IDOC with symptoms at intake, the person will be placed into a designated quarantined area. Dauss Decl. ¶ 29.

IDOC has instructed wardens to place marks on the floor six feet apart at entry points into facilities so staff waiting to enter and exit do not have unnecessarily close contact with one another. Dauss Decl. ¶ 30. IDOC has suspended in-person visitation at all prisons and juvenile correctional facilities, but is permitting visitation by telephone and video conference. Dauss Decl. ¶ 32. Accommodations for confidential attorney phone calls have been made where the offender places the attorney's name and phone number on an approved telephone list; additional accommodations—such as video conferencing—are available for attorneys wanting to visit inmates on a case-

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by-case basis by contacting each facility head. Indiana Department of Correction, *Visitation*, <https://www.in.gov/idoc/3150.htm>. In addition, IDOC has established a free call schedule from March 18, 2020 through April 14, 2020, to allow offenders to place two free five minute calls each week. GTL Press Release (Mar. 18, 2020), [https://www.in.gov/idoc/files/IN\\_DOC\\_SOE-Coronavirus-CN-Inmate\\_Pod\\_Flyer-ICMv-Mar18.pdf](https://www.in.gov/idoc/files/IN_DOC_SOE-Coronavirus-CN-Inmate_Pod_Flyer-ICMv-Mar18.pdf).

4. *IDOC is working with advocates and county and state officials to stay abreast of COVID-19 developments and to identify higher-risk offenders and non-violent offenders*

IDOC has been compiling data and reports from existing statistical information regarding inmates at higher risk of complications due to age, inmates in lower security classes, inmates close to release, inmates without violent- crime or sex-crime convictions, and inmates matching other criteria as requested by courts and advocates. Dauss Decl. ¶ 44. IDOC regularly consults with the Governor’s task force based on the information collected to determine the best course of action is being taken to remain up to date on the ever-changing COVID-19 protocols, and all IDOC Wardens and Division Directors participate in daily video or teleconference calls to discuss issues and next action steps. Dauss Decl. ¶¶ 45, 47. All IDOC Wardens and Division Directors receive continuous updates from Indiana’s State Department of Health, and periodic calls with the Indiana Sheriffs’ Association and key sheriffs and staff also provide updates regarding COVID-19. Dauss Decl. ¶¶ 46, 48.

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5. *IDOC is protecting inmates and staff by following comprehensive CDC protocols for prevention and containment of COVID-19*

CDC guidance specifically addresses how jails and prisons should handle inmates during the COVID-19 pandemic. CDC advises transferring offenders as a last resort due to the possibility of introducing COVID-19 to another facility. U.S. Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, at 9 (Mar. 23, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf> (last accessed Apr. 6, 2020). Its guidance for specific congregate settings advises both prevention at each facility and containment within the facility if a case occurs. *Id.* at 11, 15–17, 19–21. CDC guidelines also inform social distancing strategies in jails or prisons: limiting transmission by limiting visitors, infection control through recommended personal protective equipment, verbal symptom screening and temperature check protocols for incoming incarcerated or detained individuals and visitors, and medical isolation and care of confirmed cases as well as considerations for persons at higher risk of complications from COVID-19. *Id.* at 7–8, 10–17, 19–26.

IDOC is already following these important CDC guidelines and protocols. Dauss Decl. ¶¶ 6, 49.

**ARGUMENT**

**I. Administration of IDOC and Indiana’s Prisons Belongs in the Executive Branch of Government and Lies Outside the Court’s Emergency Rulemaking Authority**

**A. The Indiana Constitution precludes the Court from taking the emergency action urged by the ACLU**

The ACLU’s Petition for Emergency Rulemaking invites the Court to oversee IDOC’s ongoing response to COVID-19, a course of action that would dramatically infringe upon the Executive Branch’s administrative autonomy in violation of Article 3, Section 1 of the Indiana Constitution. That provision states that “[t]he powers of the Government are divided into three separate departments; the Legislative, the Executive including the Administrative, and the Judicial: and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.” This Court has admonished that “justiciability concerns stemming from Article 3, Section 1, caution the courts to intervene only where doing so would not upset the balance of the separation of powers.” *Berry v. Crawford*, 990 N.E.2d 410, 418 (Ind. 2013). To maintain the separation of powers, this Court “should not intermeddle with the internal functions of either the Executive or Legislative branches of Government.” *State ex. rel. Masariu v. Marion Superior Court No. 1*, 621 N.E.2d 1097, 1098 (Ind. 1993).

With particular reference to prison management, this Court has maintained a long-standing principle that the judiciary is “constrained as a judicial body from interfering with the internal procedures and policies” of the Department of Correction. *See Blackmon v. Duckworth*, 675 N.E.2d 349, 352 (Ind. Ct. App. 1996) (citing *Hasty*

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*v. Broglin*, 531 N.E.2d 200, 201 (Ind. 1988)), *as clarified on reh'g* (Apr. 2, 1997). As the Court of Appeals has observed, “[c]ourts are ill equipped to deal with the increasingly urgent problems of prison administration and reform.” *Cohn v. Strawhorn*, 721 N.E.2d 342, 346 (Ind. Ct. App. 1999) (citing *Turner v. Safley*, 482 U.S. 78, 85–86 (1987)). Operating a prison “is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government.” *Id.* (citing *Turner*, 482 U.S. at 85–86).

“The complex and intractable problems in prisons are not readily susceptible of resolution by judicial decree.” *Id.* (citing *Turner*, 482 U.S. at 85–86). Thus, courts are to “afford substantial deference to the professional expertise of correction officials with respect to the day-to-day operation of prisons and the adoption and execution of prison policies.” *Id.* (citing *Bell v. Wolfish*, 441 U.S. 520, 548–49 (1979)). Such deference is important “not merely because the administrator ordinarily will, as a matter of fact in a particular case, have a better grasp of his domain than the reviewing judge, but also because the operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial.” *Bell*, 441 U.S. at 548.

Here, the ACLU invites this Court to “request” that the Department of Correction “compile a list of all prisoners under their control who are at heightened risk for severe illness or death from COVID-19 because they are 65 or older,” have a series of high-risk conditions, or are within six months of their expected release date. Pet. 18–

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19. Once that list is compiled, the ACLU wants the Court to direct the Department of Correction to “[t]ransmit this list to the Indiana court which committed the prisoner” and craft a recommendation for the sentencing court as to “whether, in the opinion of the penal institution ... the prisoner merits consideration for release.” *Id.* at 19.

Article 3, Section 1 of the Indiana Constitution precludes the Court from so orchestrating IDOC’s response to COVID-19. The only potentially lawful and appropriate circumstance for judicial intervention into IDOC management is in the context of an actual case where actual prisoners—individually or as a properly certified class—prove the existence of unconstitutional prison conditions. *See Bell*, 441 U.S. at 545. Even then, however, judicial decrees and injunctions must be limited to remedying the precise conditions alleged to be unlawful. The ACLU’s Petition for Emergency Rulemaking, however, does not even purport to seek such redress for a violation of the state or federal constitution. The law simply does not afford courts broad authority to undertake institutional management of prisons.

Imprisonment of lawfully convicted and sentenced offenders is an inherently executive function. As the U.S. Supreme Court has repeatedly observed, “[p]rison administration is ... a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint.” *Turner*, 482 U.S. at 85; *see also Bell*, 441 U.S. at 548. Executive authority includes imprisonment of offenders once the judiciary has fulfilled its function of lawfully rendering judgments of conviction and sentencing those offenders according to law. Once

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an offender has been sentenced to imprisonment, it falls to the executive branch to ensure that the offender's sentence is executed. *See e.g.*, Ind. Code § 35-38-3-2 (directing the courts to send a copy of judgment of conviction to the Department of Correction at which point the term of imprisonment begins); I.C. § 35-38-3-4 (directing the Sheriff to transport convicted persons to the Indiana Department of Correction); *State v. Glick*, 106 N.E.3d 1052, 1054 (Ind. Ct. App. 2018) (noting that a trial court “has no jurisdiction over a prisoner after she has been convicted, sentenced and delivered to prison pursuant to a commitment”) (internal citation omitted); *Beanblossom v. State*, 637 N.E.2d 1345, 1347–48 (Ind. Ct. App. 1994) (stating that generally after a sentence is pronounced, jurisdiction over a defendant goes to the Department of Correction).

The Indiana General Assembly has thus created IDOC precisely to carry out that function and has placed IDOC under the direction and control not merely of its own agency head, but, ultimately, of the Governor—who is politically accountable to the ultimate sovereign, the citizens of Indiana. *See* I.C. § 11-8-2-4 (establishing the office of commissioner of correction who “shall be appointed by and serve at the pleasure of the governor”). Prisoners wind up in the custody of IDOC only after passing through the judicial system, of course, but that does not make them the permanent responsibility of the courts.

“The purpose of the separation of powers provision is to rid each separate department of government from any influence or control by the other department.” *A.B. v. State*, 949 N.E.2d 1204, 1212 (Ind. 2011) (citing *State ex rel. Black v. Burch*, 226 Ind. 445, 463, 80 N.E.2d 294, 302 (1948)). This separation of influence is particularly

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important in a time of crisis such as this. In order to respond to this novel threat, each department of Indiana’s government must possess “a legitimate, exclusive sphere of influence” to provide rapid and meaningful assistance to Hoosiers. *See Logansport State Hosp. v. W.S.*, 655 N.E.2d 588, 590 (Ind. Ct. App. 1995) (citing *Hovey, Governor v. State ex rel. Schuck*, 127 Ind. 588, 599, 27 N.E. 175, 178 (1890)). In the event that “any department ‘fails to perform its duty[,] the remedy is not to be found in the attempt of some other department to perform such duties,’” for any such attempt would be “usurpation, more dangerous to free government than the evil sought to be corrected.” *Id.* (quoting *State ex rel. Schuck*, 127 Ind. at 599, 27 N.E. at 178)).

This is particularly true given the public accountability of the Governor, Commissioner of Corrections operating underneath the Governor, the elected Prosecuting Attorneys, and elected Sheriffs of Indiana. As elected officials, these leaders are obligated to answer to the public and are held accountable—through general elections—to ensure they discharge their duties in a responsible and effective way. If the Indiana Supreme Court were to invade the executive branch’s exclusive sphere of influence in an attempt to perform duties outside of their authority, the public’s remedy for error would be removed from the politically and publicly accountable elected officials.

### **B. Consonant with the limits imposed by the Indiana Constitution, the Court’s rulemaking authority does not extend to management of state and local corrections facilities**

Reflective of these constitutional limits on judicial authority, the Court’s rulemaking power does not authorize the promulgation of rules governing IDOC. Indeed, the Indiana Constitution limits the Court’s rulemaking power to the “supervision of

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the exercise of jurisdiction by the other courts of the State; and issuance of writs necessary or appropriate in aid of its jurisdiction.” Ind. Const. Art. 7, § 4; *see also* Ind. Appellate Rule 4(B)(3), (4). This power does not authorize this Court to make substantive law. In the jurisdictional context, for example, the Court has explained that its rulemaking authority cannot “endow the lower courts of this State with jurisdiction not granted them by constitution or statute; the provision [] merely authorizes this Court to supervise the exercise of jurisdiction, not to create it.” *Carpenter v. State*, 360 N.E.2d 839, 842 (1977).

Administrative Rule 17 codifies “the authority vested in the Indiana Supreme Court to provide by rule for the procedure employed in all courts of this state and the Court’s inherent authority to supervise the administration of all courts of this state.” Rule 17 recognizes the need to act in the event of “wide spread disease outbreak . . . requiring the closure of courts or inhibiting the ability of litigants and courts to comply with statutory deadlines and rules of procedure applicable in courts of this state.” Ind. Administrative Rule 17(A). But again, the Rule recognizes that the Court’s authority to act is explicitly limited to the supervision and administration of state courts. *See Carpenter*, 360 N.E.2d at 842. It does not extend to the other branches of government.

Indeed, within the past few weeks, this Court has issued several orders pursuant to Rule 17 that appropriately address the supervision and administration of court procedures. *See, e.g., In the Matter of Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19)*, —N.E.3d—

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, No. 20S-CB-123, 2020 WL 1239846 (Ind. Mar. 16, 2020). These orders implicitly recognize the limits of the Court’s rulemaking authority by addressing only the supervision and administration of state courts. The ACLU’s petition perhaps recognizes this limitation by asking the Court “to order all trial courts” to act versus asking the Court to “request” action from IDOC. *See* Pet. 17–18. But even issuing a formal “request” of IDOC exceeds the Court’s rulemaking authority. The Court can no more issue a rule (emergency or otherwise) requesting IDOC to do something than IDOC can issue a rule requesting the Court to do something.

For its part, IDOC has the authority to arrange placement of offenders outside of the department. Ind. Code § 11-10-1-3(c); *see also* I.C. § 11-10-2-5(b) (juvenile offenders). But it may do so only if “the department determines that a committed offender is mentally or physically incapacitated to such an extent that proper custody, care, and control cannot be provided by the department.” *Id.* IDOC has identified no prisoners fitting these criteria owing to COVID-19. If it does so, it will consider whether placement of such an offender outside of IDOC is practicable. The Court is not institutionally equipped to direct IDOC in its exercise of such authority.

### **II. COVID-19 Does Not Threaten Mass Violation of Inmates’ Constitutional Rights**

The ACLU’s unprecedented request for the Court to arrogate to itself the power to manage prisons and jails is not only constitutionally and procedurally improper, but is also constitutionally unwarranted. Neither the Eighth Amendment nor any provision of the Indiana Constitution authorizes broad-based judicial management of jails and prisons.

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**A. Incarceration at Indiana state correctional facilities during the  
COVID-19 pandemic is not cruel and unusual punishment**

Particularly given the evolving understanding of the pandemic and IDOC's "aggressive proactive measures" to combat it, State of Indiana Letter, ¶ 2, April 3, 2020, incarceration at Indiana state correctional facilities does not, by itself, violate the Indiana Constitution or the United States Constitution.

The Supreme Court has long held that because only the "unnecessary *and wanton* infliction of pain implicates the Eighth Amendment," a prisoner challenging a prison's response to medical problems "must, at a minimum, allege deliberate indifference to his serious medical needs." *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) (internal quotation marks and citations omitted; emphasis in original). "The Eighth Amendment protects prisoners from deliberate indifference to a serious injury or medical need." *Chapman v. Keltner*, 241 F.3d 842, 845 (7th Cir. 2001) (internal citations omitted). And to establish unconstitutional deliberate indifference, a plaintiff "must satisfy an objective and a subjective element, namely that: (1) an objectively serious injury or medical need was deprived; and (2) the official knew that the risk of injury was substantial but nevertheless failed to take reasonable measures to prevent it." *Id.* (internal citations omitted).

1. The "serious medical needs" component is an objective test that looks to whether the complained-of condition is cruel and unusual under contemporary standards of decency. *Rhodes v. Chapman*, 452 U.S. 337, 346–47 (1981). Injury under this standard must, of course, exceed the general discomfort inherent in being incarcer-

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ated. *Id.* at 349 (explaining that “the Constitution does not mandate comfortable prisons”). And the Court has cautioned that “courts must bear in mind that their inquiries ‘spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court’s idea of how best to operate a detention facility.” *Id.* at 351 (quoting *Bell v. Wolfish*, 441 U.S. 520, 539 (1979)).

Most federal courts asked to consider COVID-19 specifically have determined that the mere possibility of spreading disease in prison does not support emergency release. Typically, a court receives a request for release from an inmate or detainee who has not tested positive for the virus but points to generic safety concerns supposedly inherent in correctional facilities to demand immediate release or transfer to home detention. The Third Circuit, for example, has observed in denying a request for compassionate release that “the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP’s statutory role, and its extensive and professional efforts to curtail the virus’s spread.” *United States v. Raia*, No. 20-1033, 2020 WL 1647922, at \*2 (3d Cir. Apr. 2, 2020); accord *United States v. Clark*, No. 19-40068-01, 2020 WL 1446895, at \*3, \*6 (D. Kan. Mar. 25, 2020) (concluding that a detainee “should not be entitled to temporary release . . . based solely on generalized COVID-19 fears and speculation” and pointing out that a detainee “cannot predict the extent to which COVID-19 cases might arise at the facility any more than many Americans can predict how they might be exposed to the virus”); *United States*

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*v. Howard*, No. 1:19-cr-255, 2020 WL 1599693, at \*1 (S.D. Ind. Apr. 1, 2020) (clarifying that “broad and unsubstantiated claims regarding conditions at the jail in light of the worldwide spread of COVID-19 . . . cannot justify release”).

Courts have recognized that generalized fears about prisons and jails vis-à-vis release to the outside world simply “trad[e] one set of problems (*e.g.*, reduced opportunities for social distancing at Greene County jail) for another set of problems (*e.g.*, contamination risks associated with being in an uncontrolled environment.” *United States v. Lunnie*, No. 4:19-cr-180, 2020 WL 1644495, at \*5 (E.D. Ark. Apr. 2, 2020). The U.S. District Court for the District of Maryland, for example, acknowledged that reality when it stated that “COVID-19 is not a virus that has specifically attacked the D.C. Jail but, rather, a global pandemic that all citizens of the world are struggling to combat.” *United States v. Gray*, No. GJH-19-407, 2020 WL 1554392, at \*2 (D. Md. Apr. 1, 2020). Accordingly, in that court’s view, “there is no reason for the Court to believe that the jail is not taking reasonable precautions to prevent spread within that facility nor is there reason to believe that [the petitioner] would not be provided with appropriate medical care if he were unfortunate enough to join the hundreds of thousands of people who have been inflicted with this virus.” *United States v. Gray*, No. GJH-19-407, 2020 WL 1554392, at \*2 (D. Md. Apr. 1, 2020).

To the extent that a few courts have ordered release, the cases have generally involved individualized inquiries involving persons with severe health conditions and specific release plans. *See, e.g., United States v. Resnick*, No. 14-cr-810, 2020 WL 1651508, at \*7–\*8 (S.D.N.Y. Apr. 2, 2020) (granting compassionate release to an older

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inmate who has diabetes and end-stage liver disease and who would be released to his wife). On the whole, however, courts have been reluctant to second-guess prison and jail authorities, or to assume that offenders are less safe within prison walls. *See, e.g., United States v. Boatwright*, No. 2:19-cr-301, 2020 WL 1639855, at \*7 (D. Nev. Apr. 2, 2020) (rejecting a request to stay with a parent since the detainee “offers nothing more than mere speculation that home detention would be less risky than detention at [the correctional facility], which has screening practices and other reasonable COVID-19 precautions in place”); *United States v. Gileno*, No. 3:19-cr-161, 2020 WL 1307108, at \*4 (D. Conn. Mar. 19, 2020) (denying a modification of sentence to home confinement because “the Court cannot assume that the Bureau of Prisons will be unable to manage the outbreak or adequately treat Mr. Gileno should it emerge at his correctional facility while he is still incarcerated”).

To be sure, the CDC has advised that certain populations are at greater risk of infection, but many courts have chosen to take a measured, case-by-case approach. *See, e.g., Peterson v. Diaz*, No. 2:19-cv-1480, 2020 WL 1640008, at \*2 (E.D. Cal. Apr. 2, 2020) (denying a habeas petition for release filed by an immunocompromised offender because he “has not shown that prison authorities are unable or unwilling to address this serious problem within prisons, or that petitioner is unable to take the general, protective measures applicable to all as of yet unafflicted persons”); *United States v. Pritchett*, No. 19-280, 2020 WL 1640280, at \*3 (W.D. Pa. Apr. 2, 2020) (rejecting a request for release by an asthmatic detainee because the potential for exposure to the COVID-19 virus “unfortunately exists anywhere in the community” and

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“speculation concerning possible future conditions does not constitute a ‘compelling reason’ for temporary release”); *United States v. Martin*, No. PWG-19-140-13, 2020 WL 1274857, at \*4 (D. Md. March 17, 2020) (concluding that a medical history of asthma, high blood pressure, and diabetes “alone is insufficient to rebut the proffer by the Government that the correctional and medical staff at [the correctional facility] are implementing precautionary and monitoring practices sufficient to protect detainees from exposure to the COVID-19 virus”).

Courts have generally recognized that incarceration during the COVID-19 pandemic does not offend contemporary standards of decency. Indeed, courts have specifically pointed out the problems that would be caused by an excessively broad understanding of that standard, which could imply the need to release virtually every incarcerated person. *See, e.g., United States v. West*, No. 3:20-MJ-5073, 2020 WL 1550624, at \*3 (W.D. Wash. Apr. 1, 2020) (“Yet, any person in our community at this time could potentially be exposed to others who are ill with COVID-19 disease or are otherwise carrying this Novel Coronavirus. The defense argument about COVID-19 health risks, if accepted as a substantive reason for release, would apply to virtually any pretrial detainee in the United States at this time of global pandemic.”); *United States v. Munguia*, No. 3:19-cr-191, 2020 WL 1471741, at \*4 (N.D. Tex. Mar. 26, 2020) (acknowledging that “the Court cannot release every detainee at risk of contracting COVID-19 because the Court would then be obligated to release every detainee”).

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2. Furthermore, even if they could meet the objective component of an Eighth Amendment claim with respect to COVID-19, incarcerated persons likely cannot satisfy the subjective component, which requires “deliberate indifference” on the part of prison and jail officials. *Wilson v. Seiter*, 501 U.S. 294, 303–04 (1991). As recounted above, far from exhibiting deliberate indifference, IDOC has taken, and is continuing to take, aggressive measures to prevent and treat COVID-19 infections, and Indiana Sheriffs are doing the same in county jails.

Several federal courts have reached the conclusion that similar efforts by the federal Bureau of Prisons satisfy the Eighth Amendment. *See, e.g., United States v. Credidio*, No. 19-cr-111, 2020 WL 1644010, at \*2 (S.D.N.Y. Apr. 2, 2020) (stating that “the Court cannot find that the BOP has been deliberately indifferent to Ms. Credidio’s needs, in light of the numerous and significant plans and protocols recently implemented by the BOP to protect prisoners”); *United States v. Lee*, No. 19-cr-298, 2020 WL 1541049, at \*6 (D.D.C. Mar. 30, 2020) (stating that a detainee would be “hard pressed” to argue deliberate indifference, “given the aggressive precautions that DOC appears to have undertaken to prevent the spread of COVID-19 within its facilities”).

Nor does the Constitution require detention-facility precautions to be perfect: As one court noted, “the fact that ICE may be unable to implement the measures that would be required to fully guarantee Sacal’s safety does not amount to a violation of his constitutional rights and does not warrant his release.” *Sacal-Micha v. Longoria*, No. 1:20-cv-37, 2020 WL 1518861, at \*5–\*6 (S.D. Tex. Mar. 27, 2020) (concluding that

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“the implementation of those measures preclude a finding that ICE has refused to care for Sacal or otherwise exhibited wanton disregard for his serious medical needs”).

Indeed, the Seventh Circuit has repeatedly observed that it “is not easy” for a prisoner to establish that a prison’s response to medical conditions constitutes deliberate indifference. *Pyles v. Fahim*, 771 F.3d 403, 409 (7th Cir. 2014). “A medical professional is entitled to deference in treatment decisions unless no minimally competent professional would have so responded under those circumstances.” *Id.* (quoting *Sain v. Wood*, 512 F.3d 886, 894–95 (7th Cir.2008)). A prison official’s decision can be said to violate the Constitution only if the “decision represents so significant a departure from accepted professional standards or practices that it calls into question whether the doctor actually was exercising his professional judgment.” *Id.*

IDOC’s response to COVID-19 is in accordance with the generally accepted standards of care—CDC guidance in particular. The table below demonstrates that IDOC’s policies closely follow the CDC guidelines and, accordingly, in no measure constitute deliberate indifference to the safety of the inmates under its care.<sup>1</sup>

<b>DOC POLICY</b>	<b>CDC GUIDANCE</b>
The temperature of all IDOC staff and permitted visitors exhibiting signs of sickness must be taken and any persons with temperatures of over 100.5 degrees are sent home or otherwise restricted from contact	Perform temperature checks for all staff daily on entry. p. 12. Perform temperature checks for all visitors and volunteers on entry. p. 13.

<sup>1</sup> See U.S. Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

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DOC POLICY	CDC GUIDANCE
IDOC is taking steps to ration supplies of masks, thermometers, sanitizer and other needed supplies	Ensure that sufficient stocks of hygiene supplies, cleaning supplies, PPE, and medical supplies (consistent with the healthcare capabilities of the facility) are on hand and available, and have a plan in place to restock as needed if COVID-19 transmission occurs within the facility. p. 7.
IDOC has sent instructions to all staff regarding primary infectious disease prevention efforts such as cough etiquette, hand hygiene, environmental management, and recognition of the indications of infection within their surrounding environment.	Provide staff with up-to-date information about COVID-19 and about facility policies on a regular basis. p. 12.
IDOC instructions to all staff include continuous sanitation details and require wiping down all hard surfaces, including sometimes-overlooked items such as radios, keys, and entrance and exit markers.	Adhere to CDC recommendations for cleaning and disinfection during the COVID-19 response. p. 9.
IDOC has developed if/then “decision trees” for all facilities to use if staff or inmates display symptoms, or test positive for COVID-19, to ensure proper protocols are clearly communicated and that appropriate steps are methodically followed.	Example of decision tree. p. 12.
IDOC facilities have placed sanitation stations at strategic locations near entrances to permit all who enter to sanitize immediately before entering common areas.	Provide alcohol-based hand sanitizer with at least 60% alcohol in visitor entrances, exits, and waiting areas. p. 13.
All relevant IDOC staff have received and reviewed plans for isolating symptomatic inmates from each facility. These plans include contingency plans if large numbers would become infected simultaneously.	As soon as an individual develops symptoms of COVID-19, they should wear a face mask (if it does not restrict breathing) and should be immediately placed under medical isolation in a separate environment from other individuals. p. 15.
Each IDOC Warden is advised to prepare for large scale quarantine scenario, such as by repurposing gymnasiums, warehouses, and disconnected housing units into quarantine facilities.	In order of preference, multiple quarantined individuals should be housed in these types of units. p. 20.

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DOC POLICY	CDC GUIDANCE
IDOC is taking inventory of all emergency beds (and requesting additional cots) to be dispersed primarily to facilities with dormitory housing units for use in the event facilities need to convert gymnasiums and other programming space into quarantine or treatment/recovery space.	In order of preference, multiple quarantined individuals should be housed in these types of units. p. 20.
Relevant IDOC staff have reviewed food inventory and service contingency plans, as well as contingencies for medical, commissary, and other important or critical services.	Food service items. p. 18. Provision of meals. p. 21.
IDOC has taken a census of all solid door cells that facilities can use for quarantine in the event an inmate becomes infected.	In order of preference, multiple quarantined individuals should be housed in these types of units. p. 20.
Indiana Correctional Industries is working with the Indiana Manufacturers Association and others to assist in the production of PPE garments and accessories and is manufacturing greater quantities of sanitizer for distribution to IDOC facilities.	Make contingency plans for the probable event of PPE shortages during the COVID-19 pandemic, particularly for non-healthcare workers. p. 8.
All offender out-of-state travel is cancelled, except for critical transfers such as extraditions.	Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding. p. 9.
Only necessary offender transports and transfers are permitted (e.g. emergency medical, disciplinary transfers, transfers from intake). Restricted movement includes non-emergency surgeries, regular offender transfers based on offender requests, and some classification movements.	Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding. p. 9.
All inmate working crews are suspended.	Consider suspending work release programs and other programs that involve movement of incarcerated/detained individuals in and out of the facility. p. 12.
All offender work-release is cancelled.	Consider suspending work release programs and other programs that involve movement of incarcerated/detained individuals in and out of the facility. p. 12.
All in-service training is suspended.	Limit group activities. p. 11.

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DOC POLICY	CDC GUIDANCE
Critical inmate workers have been identified (e.g. food services, PPE manufacturing, key maintenance) for movement to separate housing units to limit the possibility that several may be out of commission at one time if an inmate were to become infected.	Implement alternate work arrangements deemed feasible. p. 14.
Intake units are working to separate new offenders into smaller cohorts by date of arrival to limit the spread of any potential COVID-19 positives while new offenders are being processed.	Perform pre-intake screening and temperature checks for all new entrants. p. 10.
IDOC facilities monitor new offender transfers during admissions and orientation before assigning new offenders to a bed in general population.	Perform pre-intake screening and temperature checks for all new entrants. p. 10.
IDOC continuously monitors inmates for symptoms.	Reminders to report COVID-19 symptoms to staff at the first sign of illness. p. 12.
All counties must complete a medical triage report through which they certify that inmates delivered for processing at intake have been assessed, and have not displayed symptoms or fever (more than 100 degrees) in the past 24 hours, or they will not be admitted at intake. All intake from a county with a staff member testing positive for COVID-19 has been restricted.	Develop information-sharing systems with partners. pp. 5–6.
Wardens are being instructed to place marks on floor six feet apart so staff waiting to enter/exit do not come in close contact unnecessarily.	Implement social distancing strategies to increase the physical space between incarcerated/ detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms). p. 11.
All volunteer services such as volunteer-lead religious services, and support groups such as AA, have been suspended since 03.19.2020.	Restrict non-essential vendors, volunteers, and tours from entering the facility. p. 14.
IDOC has suspended visitation at all prisons and juvenile detention facilities. Most offenders have e-tablets to use for communications and IDOC is permitting extended use of housing unit kiosks that support video visitation.	Consider suspending or modifying visitation programs, if legally permissible. p. 13.

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DOC POLICY	CDC GUIDANCE
IDOC's Industries Division is printing signs to place at facility entry points advising of COVID-19 entrance restrictions.	Post signage throughout the facility communicating safety information. p. 6. Display signage outside visiting areas explaining the COVID-19 screening and temperature check process. p. 13.
IDOC is encouraging the use of telephone and videoconference equipment by courts, public defenders and other attorneys to access their clients housed in IDOC facilities.	Promote non-contact visits. p. 13.
Updated website with information on visitation restrictions and contemporaneous information on other steps being taken <a href="https://www.in.gov/idoc/3238.htm">https://www.in.gov/idoc/3238.htm</a> .	Provide visitors and volunteers with information. p. 13.
As requested by courts and advocates, IDOC staff have been compiling data and developing reports by county listing inmates that are older, in lower security classes, close to release, not convicted of violent crimes or sex offenses, or match other criteria that individual courts have requested. So far, IDOC has sent such data to five counties, including Starke, Marion, Porter, Putnam and Noble counties. IDOC expects that courts may follow up in some cases with amended sentencing orders.	Coordinate with local law enforcement and court officials. p. 6.
All IDOC Wardens and Division Directors are ordered to participate in daily video/teleconference calls to discuss issues and next action steps.	Provide staff with up-to-date information about COVID-19 and about facility policies on a regular basis. p. 12.
All IDOC Wardens and Division Directors are required to register to receive continuous updates using a link to Indiana's State Department of Health.	Provide staff with up-to-date information about COVID-19 and about facility policies on a regular basis. p. 12.
IDOC has established a periodic conference call schedule with the Indiana Sheriffs' Association and key sheriffs and staff to compare notes and discuss COVID-19 issues.	Coordinate with local law enforcement and court officials. p. 6.
IDOC is consistently reviewing laws and policies to identify those that are not consistent with CDC and Indiana Department of Health guidance that the Governor could suspend should the need arise (e.g. restrictions preventing greater use of home detention for pre-trial detainees charged with lower level felonies.)	Review existing pandemic flu, all-hazards, and disaster plans, and revise for COVID-19. p. 6.

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DOC POLICY	CDC GUIDANCE
IDOC is developing a long-term plan for continuing religious services in a safe manner using video streaming, offender-led services, religious programming via e-tablets.	Note that if group activities are discontinued, it will be important to identify alternative forms of activity to support the mental health of incarcerated/detained persons. p. 12.
IDOC is working with Family & Social Services Administration to qualify offenders for food stamps and Medicaid immediately upon release.	Screen individuals who are released and ensure continuity of care. p. 14.

**B. No Indiana constitutional provision is likely to be implicated**

This Court has explained “[i]t is well settled that a custodian under some circumstances has a legal duty to take steps to protect persons in custody from harm.” *Sauders v. Cnty. of Steuben*, 693 N.E.2d 16, 18 (Ind. 1998). This duty is not “to prevent a particular act (*e.g.* suicide),” clarified the Court, “[r]ather, the duty is to take reasonable steps under the circumstances for the life, health, and safety of the detainee.” *Id.*; *see also Reed v. State*, 479 N.E.2d 1248, 1254 (Ind. 1985) (prisoners). To the extent this constitutes an objective test, the above reasons suffice to meet that standard. But “[t]he fact that there is a mere potential for inadequate individual care and security of a prisoner does not present a question of constitutional dimension.” *Id.* at 1254.

The closest state analogue to the Eighth Amendment—Article 1, Section 16 of the Indiana Constitution—provides that “[c]ruel and unusual punishments shall not be inflicted [and a]ll penalties shall be proportioned to the nature of the offense.” This Court has generally analyzed that provision in the context of sentencing, where the standard in Indiana is more protective than the federal standard. *Knapp v. State*, 9

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N.E.3d 1274, 1289 (Ind. 2014). Generally, however, “[t]he cruel and unusual punishment provision under the Indiana Constitution prohibits atrocious punishments but does not prohibit imprisonment.” *Taylor v. State*, 251 Ind. 236, 242, 236 N.E.2d 825, 828 (1968). It targets only punishment that “makes no measurable contribution to acceptable goals of punishment, but rather constitutes only purposeless and needless imposition of pain and suffering.” *Dunlop v. State*, 724 N.E.2d 592, 597 (Ind. 2000) (internal quotation marks and citation omitted).

The Indiana Court of Appeals has suggested that *deliberate denial* of reasonable medical care could violate Article 1, Section 16, see *Naked City, Inc. v. State*, 460 N.E.2d 151, 161 (Ind. Ct. App. 1984), but this Court has not so held. In all events, given IDOC’s aggressive precautions in response to the COVID-19 pandemic, including its treatment of prisoners who have actually contracted the virus, IDOC’s actions in no way constitute deliberate denial of reasonable medical care or “needless imposition of pain and suffering,” and therefore do not implicate the Indiana cruel and unusual punishments clause.

Neither is Article 1, Section 15 apposite. The provision provides that “[n]o person arrested, or confined in jail, shall be treated with unnecessary rigor.” Ind. Const. Art. 1, § 15. This Court has determined, nevertheless, that it “is not a catch-all provision applicable to every adverse condition accompanying confinement,” but “[r]ather, it serves to prohibit extreme instances of mistreatment and abuse,” such as torture and battery. *McQueen v. State*, 711 N.E.2d 503, 505 (Ind. 1999). Plainly, the COVID-19 situation does not create the risk of a colorable Section 15 violation.

### **III. Available Processes for Case-by-Case Review Are Sufficient**

As the Court mentioned in its order of April 3, Indiana law already adequately provides trial courts and offenders with a mechanism to modify sentences and release offenders. *In the Matter of Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19)*, --N.E.3d--, No. 20S-CB-123 (April 3, 2020). When an offender files a petition for modification, if a trial court makes a preliminary decision that an offender is eligible for modification, the trial court may order a progress report from IDOC. *See Schmitt v. State*, 108 N.E.3d 423, 427 (Ind. Ct. App. 2018); *Robinett v. State*, 798 N.E.2d 537, 539 (Ind. Ct. App. 2003), *trans. denied*. After receiving a report from IDOC, a trial court may “reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing.” Ind. Code § 35-38-1-17. Certainly, a trial court could, within its broad discretion, consider the health of the offender and the potential risks that a particular offender may face in light of COVID-19. The existing structure additionally allows for a trial court to consider the unique circumstances of the offender, including criminal history, particular offense, and ability to secure appropriate housing.

This existing statutory framework sufficiently allows trial courts to consider modifying sentences of particular offenders, including early release or suspension, without broad-based intervention by this Court.

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**CONCLUSION**

The Court should deny the ACLU's Petition for Emergency Rulemaking.

Dated: April 6, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on April 6, 2020, I electronically filed the foregoing document using the Indiana E-filing System (“IEFS”). I hereby certify that a copy of the foregoing was served on the following persons using the IEFS:

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