SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA
ADMINISTRATIVE OFFICE

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MEMORANDUM

TO: **CIRCUIT COURT JUDGES**
MAGISTRATES

FROM: **LISA A. TACKETT**
DIRECTOR, COURT SERVICES

DATE: **MARCH 27, 2020**

SUBJECT: **COVID-19 AND PRE-TRIAL RELEASE**

In light of the risk of a potential COVID-19 outbreak in jail facilities, the Department of Military Affairs and Public Safety ("DMAPS") and various groups have reached out to the Supreme Court of Appeals of West Virginia to help develop appropriate guidance.

The Court's March 22, 2020 Administrative Order states that "bond hearings" are considered emergency matters that can proceed during the period of Judicial Emergency. It is requested that Circuit Judges and Magistrates contact the Prosecuting Attorney in each county and request that the Prosecutors and the Assistant Prosecutors review the most recent list of pretrial detainees to identify any pre-trial individuals who do not constitute a public safety risk and may be appropriate candidates for PR or reduced bond. See Rule 46(g) of the West Virginia Rules of Criminal Procedure. Judicial officers are asked to request this action by the Prosecutors by the close of business on March 30, 2020.

Once those individuals are identified, the Prosecutor and defense attorney may consider submitting an agreed order for a PR or a reduced bond, and the judicial officer should deem such requests as emergency, time-sensitive matters for consideration under the March 22 Order. Judges and magistrates may also act *sua sponte* to set bond hearings, where deemed appropriate, to further address these concerns.

As always, judicial officers must fully consider the safety of the public and victims when setting bond or ordering bond revisions in light of the COVID-19 concerns. Factors that may be considered in making such determinations include special treatment of older individuals or individuals with an underlying health condition that make them especially susceptible to complications from the virus. When considering new incarcerations, judicial officers may

consider, while balancing the safety of the public and victims, whether PR or reduced bonds are appropriate to address concerns related to COVID-19.

Moving forward, MAPS has agreed to periodically provide additional information relating to current correctional facility populations. It is anticipated that such information will be identified by county. Judicial officers are requested to review the updated lists that will be distributed from DMAPS via the Administrative Office and continually assess the need to further address the unique concerns related to COVID-19 as outlined above.