



New Mexico CRIMINAL DEFENSE LAWYERS ASSOCIATION

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Richard Pugh
Albuquerque

March 16, 2020

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Justice Michael E. Vigil

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Justice David K. Thompson

c/o Chief Clerk

New Mexico Supreme Court

P.O. Box 848

Santa Fe, New Mexico 87504-0848

Treasurer
Jonathan Ibarra
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New Mexico Courts, Jails and Covid-19

Secretary
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Albuquerque

Dear Justices:

Executive Director
Cathy Ansheles

I write on behalf of the New Mexico Criminal Defense Lawyers Association to propose action that must be taken to protect the health and safety of those who are incarcerated and those who appear in our courts across the state in light of the spread of the novel coronavirus, COVID-19. We understand that our State's Justice system is well aware of the risks of this pandemic as was evident in Chief Justice Nakamura's letter dated March 13, 2020.

Legislative Coordinator
Rikki-Lee Chavez

While social distancing efforts are critical to slow the spread of disease, we respectfully request that our courts take more decisive action. Our membership includes criminal defense attorneys, support staff, and other criminal justice stakeholders who appear *daily* in jails and courtrooms across the state. The population we serve are the most at risk because of their poverty and medical frailty, and if we don't act to protect them, they and the rest of the community will be at increased risk.

We understand that this crisis, and the Court's responses, develop hour by hour and we ask the Court to consider the following actions that are critical to mitigating the impact of Covid-19.

Reduction of Jail Population

Social distancing is the single most effective tool we have to slow the spread and flatten the curve¹ to ensure that adequate healthcare resources are available as the numbers of infections increase. Unfortunately, incarcerated people do not have the ability to utilize social distancing techniques or to protect themselves in any meaningful manner. This

¹ What flattening the curve means and why it is important:

<https://www.nbcnews.com/science/science-news/what-flatten-curve-chart-shows-how-critical-it-everyone-fight-n1155636>).

makes them particularly vulnerable not only to the virus itself but to the fear and apprehension that comes along with it.

We have an additional concern that jails are misinforming the public about implementing testing for Covid-19. Recent press releases from our county facilities imply stringent testing for the virus is taking place. This simply is not true. Those who are arrested, or who are currently incarcerated know that Covid-19 testing is not happening within the jails or upon arrest². Without overt action taken to reassure the incarcerated population NMCDLA is concerned about the possibility of social unrest in our jails such as recently seen in Italy.

We need the Court to recommend to criminal justice participants that they immediately take steps to identify vulnerable people in the jails who can be released in this time of emergency. The reduction in jail population will help staff and detainees alike and will likely minimize the potential for prisoner unrest. Every Criminal and Juvenile Justice Coordinating Council in this state must be tasked to identify a plan to reduce jail populations by releasing non-violent pre-trial detainees, those detained for misdemeanors, traffic cases and failure to pay fines.

In addition, there should be a suspension of arrest and detention for non-violent offenses, failure to pay fines and fees, technical violations of release conditions or probation conditions, or other alleged violations which do not threaten public safety. Law enforcement should be encouraged to issue summons rather than make arrests during this time of crisis. Without these efforts many people in custody will be facing the fear of a life-threatening illness with no ability to help themselves or protect their loved ones. This extraordinary punishment should not be inflicted on those charged with misdemeanors or other non-violent crimes.

Delay of Trials and Telephonic Hearings for Procedural/Non Essential Matters

The inevitable disruption to the court system must not fall on the shoulders of pre-trial detainees. The current discussion is primarily focused on minimizing spread of the disease among court workers and criminal justice staff. Little is being said to address the rights of defendants waiting for their day in court. To balance these needs, delays in trials, cancellation of dockets and telephonic hearings, must come along with significant jail population reduction efforts. The length of delay is uncertain but all indications lead to the possibility of it being measured in months rather than weeks. Therefore, people who are waiting in custody for their trial must have an opportunity to have their case considered for release.

In summary, NMCDLA recognizes this national crisis requires difficult decisions to be made to improve community safety. These safety considerations apply equally to inmates as to jurors or criminal justice staff. We therefore strongly urge the Supreme Court to direct criminal justice partners to cooperate in balancing pre-trial detainee rights to a speedy trial with the need to delay cases and reduce courtroom appearances. This balance necessarily requires an effort to release as many people from pre-trial detention as is possible at this time.

Thank you for considering these critical steps for ensuring the health and protection of our clients and our community. We look forward to working together as we all navigate this crisis.

Sincerely,



Richard Pugh, President

² At the time these assertions were made in the press New Mexico had not acquired the resources for testing large numbers of people.