



Bennett J. Baur
Chief Public Defender

March 15, 2020

New Mexico Supreme Court
Chief Justice Judith K. Nakamura
Justice Barbara J. Vigil
Justice Michael E. Vigil
Justice C. Shannon Bacon
Justice David K. Thompson
(c/o Clerk of Court and Chief Counsel)

Re: New Mexico Courts and COVID-19

Dear Justices,

I know that you all care deeply about our community and are struggling, as we all are, to balance those concerns with our duties to those whom our courts serve, especially in the criminal courts. I believe, however, that the measures that you announced only days ago, while seemingly sufficient at that time, are no longer enough to address the current state of affairs. And the communications I am receiving from public defenders and, through them, from DAs and members of the courts, indicate that this belief is widely shared.

With more than 13 presumptive positive cases of COVID-19 currently being reported by the New Mexico Department of Health, I write to express my concerns about the health and safety of our clients and employees, as well as that of the general public, attorneys, court and jail staff, and all others who would not otherwise be coming into contact if not for court proceedings.

The public health recommendations are clear: social distancing supported by drastic limitations on all public gatherings is the only way to “flatten the curve” and hope to prevent overwhelming the state’s health care system. State health officials announced earlier in the week that there were only 54 open intensive care beds, out of 344 total in the state.

Inmates and detainees do not have the option of social distancing. They live in close proximity, sharing living space, toilets, sinks, showers, and often have limited access to basic hygiene products. The incarcerated population includes disproportionate numbers of at-risk and vulnerable people at greater risk of infection and death.

Crucially, even with the current restrictions in place, court processes require the constant flow of court and transport staff, inmates, public and private attorneys, law enforcement, and jurors in the courtrooms. In recognition of the higher rate of virus transmission that may be allowing, a number of courts across the country and around the world have suspended all but the most essential court proceedings and are putting in place new steps to safeguard our communities. Effective March 16, 2020, here in New Mexico, the Federal District Court will implement new protocols to minimize the health risks associated with the spread of COVID-

19, including continuation of all civil and criminal jury trials and grand jury proceedings, and screening and denying entry to courthouses for individuals in high-risk categories.

As Public Defenders, our statutory and professional mission is to serve our indigent clients; our greater responsibility is to safeguard not just their legal rights, but their actual physical health and safety. We also owe each other a duty of care. These interlocking duties are challenged by the threat of the public health emergency that is sweeping over our community.

At this time, I am therefore asking that the Supreme Court issue an Order or Directive to vacate ALL jury trials for at least 30 days, and to vacate, or allow to occur telephonically, all nonessential hearings, such as status conferences, pretrial conferences, and almost all other hearings for defendants who are out of custody. I also recommend a conference among our court system partners (in an appropriate format) to discuss how to address critical hearings for those in custody; authorizing the release of nonviolent defendants as well as those serving sentences for nonviolent offenses; and suspending arrests and detention for nonviolent offenses, failures to pay fines or fees, technical violations of release or probation, or other alleged violations which do not immediately impact public safety.

Thank you for your careful consideration of our concerns. The Law Offices of the Public Defender will continue to work with you, and with our community, in this critical time.

Sincerely,



Bennett J. Baur
Chief Public Defender
Law Offices of the Public Defender

Cc: AODA, ACLU, NM Legal Aid, NMCDLA, AOC, DOC, City of Albuquerque, NM Assoc. of Counties