

**RESOLUTION OF THE PUBLIC DEFENDER COMMISSION  
CONCERNING PROTECTION OF THE HEALTH, SAFETY AND  
RIGHTS OF ALL NEW MEXICANS**

WHEREAS, the health of all New Mexicans is of critical importance; and

WHEREAS, the constitutional, statutory and procedural rights of all New Mexicans are

critically important to maintaining justice in New Mexico; and

WHEREAS, the Covid-19 pandemic has caused hardship and danger to New Mexicans

including those participating directly in the justice system; and

WHEREAS, all participants in the criminal justice system including court personnel,

witnesses, jurors, counsel and parties must be made medically safe while protecting

constitutional, statutory and procedural rights.

IT IS RESOLVED BY THE NEW MEXICO PUBLIC DEFENDER COMMISSION that the

rights of New Mexicans must be protected, strengthened and zealously guarded during a time of crisis.

The judicial, executive and legislative branches are urged to take all necessary steps to

improve and protect these rights. These rights derive from the United States and New Mexico

Constitutions, New Mexico statutes, Supreme Court Rules and the Performance Standards of the

Public Defender Commission.

BE IT FURTHER RESOLVED that the rights that must be protected include.

1) the effective assistance of counsel, including the ability to confer with counsel and to

have counsel fully informed and prepared;

2) notice of charges and due process of law;

3) proper probable cause procedures including preliminary hearings and grand jury

hearings;

4) release before trial under reasonable conditions, and, if necessary, incarceration that is

healthy;

5) confrontation of witnesses; and

6) the right to compel testimony and present live witnesses.

**BE IT FURTHER RESOLVED** that all court proceedings must be open to the public, and

that defendants be afforded the right to personally appear in court with counsel; and

**BE IT FURTHER RESOLVED** that technological tools cannot substitute for necessary

personal appearance when necessary to protect rights, and technological tools cannot substitute

for necessary personal interaction among participants in the court room, including attorneys,

clients, witnesses, jurors, court personnel and the public; and

**BE IT FURTHER RESOLVED** that when proceedings cannot be properly conducted by

honoring the constitutional, procedural and evidentiary rules while protecting the health of

participants and the liberty interest of the defendant, the proceeding must be delayed until a

proper proceeding is possible.

**BE IT FURTHER RESOLVED** that waivers of some rights including personal

appearance must be allowed only when intelligently made after consultation with counsel; and

**BE IT FURTHER RESOLVED** that hearings must not require the personal appearance of

the defendant if other participants in the case are not required to appear; and

BE IT FURTHER RESOLVED that in-person proceedings must not be conducted unless the aforementioned rights are protected and the health of the participants can be reasonably assured, including:

1) Jury trials, where the jury pool must be drawn from a representative cross section of the community, must not exclude large numbers of the community or cognizable groups of the population due to the Covid-19 crisis, must assure the health and safety of all participants, and must result in an impartial jury determined after adequate voir dire.

2) Evidentiary proceedings must be delayed until a proper and safe proceeding can be conducted absent the knowing and intelligent waiver of the procedure by the defendant.

3) Grand jury proceedings, which must not be conducted unless social distancing and other health protocols are honored.

4) Preliminary hearings must not be conducted until all procedural and evidentiary rules can be protected while protecting the health of the participants and the public.

BE IT FURTHER RESOLVED that whenever possible, an accused must be issued a summons to appear in court rather than being arrested or incarcerated. A summons for the defendant's appearance must issue unless a warrant is justified by a showing by clear and convincing evidence that the accused poses a danger to the community or is a flight risk.