Dear Governor Polis, Chief Justice Coats, Mr. Vasconcellos, Sherriff Wiggins, Mr. Hilkey and Mr. Raynes,

We need to take action to protect the health and safety of everyone who interacts with the criminal justice system across the state in light of the spread of the novel coronavirus, COVID-19. I need not belabor the arguments about the risks of this pandemic to the people of the State of Colorado nor the urgency of action – many of your actions reflect the urgency of this issue. Governor Polis declared a state of emergency three days ago and today, one of our people was confirmed positive with COVID-19.

Instead, I write from the perspective of someone who represents the indigent accused and who has almost 1000 staff members appearing in jails and courtrooms across the state and interacting with the public on a daily basis. The population we serve are at a very high risk because of their poverty and medical frailty. If we do not act to protect them, the reality of “jail churn” will put the rest of the community at risk. I am committed to being a partner in coming up with creative and immediate interventions.

To that end, I have attached to this letter concrete actions we can take together. I ask that your agencies or the agencies you serve work with us to put these actions in place immediately in places where they are not already happening. We are certainly open to other suggestions as well. Some of these efforts may cause delay in the court processes – a delay that will help mitigate the escalation of the illness. We must not allow delay of court proceedings to inform safety decisions in light of this public health emergency.

We must significantly reduce visits by the public and limit the presence of court personnel and litigants at the courthouses. As other public places start closing and/or start limiting access to the public, so too the courthouse should find accommodations that allow for court business to be completed without the presence of large numbers of the public, as is currently occurring.

We must immediately reduce our jail populations. This is the most critical step we can take to protect everyone who works in and interacts daily with the criminal justice system. According to Division of Criminal Justice, in the previous quarter 53,424
people were booked into our county jails, and an almost equal amount were released.¹ People in the state are literally churning through jails after being housed in close quarters, sharing communal eating/toileting/bathing space and mutual ventilation.

Social distancing is the single most effective tool we have to slow the spread and flatten the curve² so that our hospital and medical professionals will be able to address the likely high number of infections at a pace that is safe and effective. Because a person may be highly contagious and moving throughout the jail asymptomatic for several weeks, we must engage in creative problem-solving and aggressive safety measures to ensure that that we release people before there is a first case in the jail, not after.

**We must limit the frequency of in-and-out visits to the jail.** People who are incarcerated are at particular risk because they cannot remove themselves from the close quarters in which they live. They therefore rely on the professionals entering the jail to not introduce contagion. The processes suggested to reduce the jail population overall will help decrease the risk that future and current inmates will introduce and spread the virus to each other. But additional precautions should be put in place to ensure that none of the professionals who enter the jail introduce the virus to each other or the inmates.

My staff is prepared to take action on all of these safety precautions. I ask that we work collaboratively to accomplish these three goals through the precautions I have described or through others that become necessary as this situation progresses. The leadership in each of my twenty-three trial offices is prepared to address jurisdiction-specific needs. We also ask that, where your staff has not yet been in contact with the Public Defender’s Office to discuss options to keep everyone in the criminal justice system safe, they immediately contact the head of the local Public Defender’s Office. We very much appreciate everyone who has already been working collaboratively with us to protect the health and well-being of all of us. I hope that with this collaboration we can keep the public, the litigants, and the staff of our agencies safe.

Sincerely,

Megan Ring
Colorado State Public Defender

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¹ [https://www.colorado.gov/pacific/dcj-ors/ors-data](https://www.colorado.gov/pacific/dcj-ors/ors-data), “Jail Data” created as a result of House Bill 19-1297

In order to accomplish the goal of having fewer members of the public and court personnel in court, we offer the following suggestions:

1. Announce a policy that most case continuances will be 60 days or more unless the accused is in-custody.

2. For any case that is not set for trial, the Court immediately allow for appearance by phone for all released parties and counsel.

3. For any case that is resolving by plea agreement, where the plea does not contemplate jail or probation, the Court accept the plea through efilings with a certificate from counsel that they reviewed the plea with the accused and with a current address for the accused if any court paperwork need be mailed. No call-in court appearance need be scheduled.

4. For any non-felony case where jail or probation is contemplated in a plea agreement, the Court accept the plea through efilings and with an appearance by phone by the accused. Courts that do not accept stipulated plea agreements should suspend that practice for misdemeanor charges and non-VRA F4s-F6s so that pre-sentence investigation reports can be suspended for most cases, so that the accused is not disadvantaged by not being able to allocate directly to the court and not being able to bring in witnesses in support, and so that fewer in-person court hearings need be scheduled.

5. For any other cases resolving by plea agreement, the Court and parties agree to proceed to plea and sentencing only if either party could articulate specific, and irremediable prejudice, by not moving forward. In light of the risk factors created by ongoing incarceration, prejudice would occur if the accused were to remain in-custody without resolving the case. Otherwise, the plea and sentencing will be continued sixty days or more.

6. For advisements, the Court sees no more than 10 defendants at a time, bringing them in waves. Further, the sheriffs should not hold more than ten defendants at a time in “bullpens” awaiting to be seen in court or the maximum number that will allow for three feet of space between inmates, whichever number is smaller.

7. For any case that is set for trial and the accused is on release, unless the prosecution can articulate specific prejudice and irremediable prejudice, the court shall continue the case if there is a waiver of speedy trial. The defense will seek waivers in writing and begin filing them immediately and the Court will allow the continuance to be heard by phone. Trial shall not be rescheduled for 60 days. Alternatively, the court may toll speedy, with agreement from the accused, for 60 days.
8. For any case that is set for trial and the person remains in jail, the court will bring the case to trial as scheduled. However, voir dire should be handled in waves. No more than twenty jurors should be brought in at a time. This will mean that the court and lawyers will have to perform voir dire two or three times, resulting in a delay of two to four hours for any trial.

9. For all other cases set for trial, the parties will immediately consult on whether they can agree to a continuance or a 60-day tolling period. With agreement the Court shall grant the continuance with a written tolling agreement and without appearance of the accused.

10. The Chief Judge should announce a policy that, at a minimum, any lawyer, juror or staff that would ordinarily appear in court who feels sick even if not aware of any exposure or who have any known exposure to the virus, may appear by phone.

In order to accomplish the goal of reducing jail populations, we suggest the following:

1. For persons who are being held pretrial, courts should immediately release without court appearance all who are charged with misdemeanors, traffic offenses, or non-Victim’s-Rights low-level felonies (F6, F5, F4, DF4). Procedurally, in lieu of individual motions, the parties will consult and provide a list of these people to the Court and the Court will then immediately change the monetary condition amount to a personal recognizance release.

2. Where the Court feels that a change in bond conditions other than the monetary condition must be imposed to protect community safety from the person’s justice-related risk (not virus-related risk), the Court should hold en masse phone hearings for those cases to address the parties’ perspectives on bond conditioning. The accused will either appear by phone, or wherever possible, defense counsel will seek a waiver of the accused’s appearance.

3. For other categories of charges, the jails, prosecutors, public defenders, and alternate defense counsel will identify inmates who are most at risk to develop serious illness or die from the virus. Those people should include: people over 60; people living with diabetes, heart disease, lung disease; and people who are immunosuppressed either because of medical condition or medication.¹

The parties will provide a list to the Court so that the Court can set emergency hearings and the prosecution can comply with the Victim’s Right Act. At the hearing, the Court will address bond conditions to allow this group of inmates to

¹ No need to wait for pandemics: The public health case for criminal justice reform, Prison Policy Initiative, https://www.prisonpolicy.org/blog/2020/03/06/pandemic/
be immediately released while also addressing their pretrial justice-related risk to any other person.

The Court should hold these hearings by phone or video in order to expedite the release of these at-risk inmates without requiring them to be transported into the courthouse.

4. The Court should be concerned exclusively with releasing people and setting non-monetary conditions that prevent justice-related risk by the accused to another person. The Court must eliminate considerations of risk of failure to appear or risk of non-violent re-offense (where re-offense does not create risk for others, e.g., personal drug use).

5. For people who are serving sentences in the county jail, any person with 30 days or less remaining on their sentence, the parties will agree to immediate reconsideration to credit for time served without requiring a motion and providing for immediate release. The parties and sheriffs shall consult to identify those cases and provide a list to the presiding judge.

6. For anyone with more than 30 days left on their sentence, the parties shall consult to identify either alternative forms of sentence (primarily in-home detention) or immediate release with a future remand date to be determined and monthly court call-ins to schedule the future remand once the risk of outbreak is reduced.

7. Prosecutors should contact local law enforcement and ask that they exercise greater discretion in not arresting individuals, particularly for misdemeanor and traffic offenses, and instead use summons for all misdemeanors and F4s-F6s that are not VRA crimes.

8. For new arrestees, the Chief Judge should adopt, even if temporarily, a version of the Boulder County Chief Judge Administrative Order, *Criminal Bond Procedures and Appointment of Counsel*, that allows the pretrial supervision program, where available, or the jail to assess and release arrestees without court appearance. This would allow the jail and pretrial services to release defendants quickly without requiring a court appearance and thereby reduce the number of people in the jail while also reducing the number of people in court for advisement hearings.


We do not presume to know how the jails should manage the admittance of inmate family/friend visitors, other professional visitors, and jail personnel. However, we would ask for the following accommodations for members of the defense who are frequent visitors of the jails:
1. Jails should immediately establish procedures for daily “phone visitation” hours on a secure line for defense counsel. If the jail can set up a central point of contact at the jail, public defenders will agree to schedule phone visits of 30 minutes at time with clients. For larger jails, more hours of phone visitation and the opportunity for several phone visits at a time will be necessary.

2. While in-person visits will still be necessary, wherever possible no-contact visits should be utilized where infrastructure allows and the lawyer can accomplish the visit without contact.