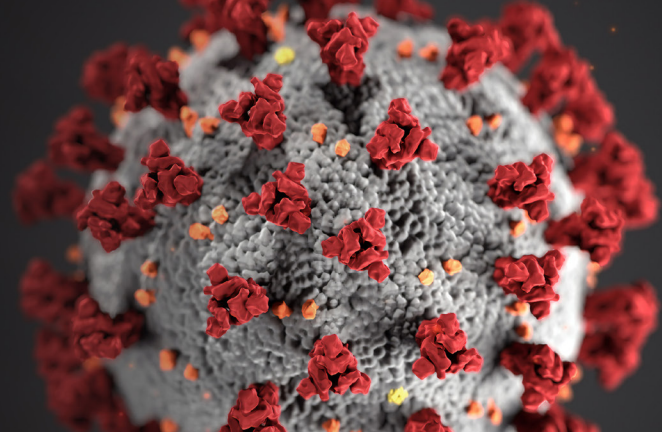


GUIDANCE ON COVID-19

IN RELEASE ADVOCACY



BACKGROUND

Covid-19, the novel coronavirus, poses a heightened risk to the incarcerated population. Lack of sanitation, close quarters, and limited medical capacity create the perfect storm to put people at greater risk of mortality if they are held in custody during an outbreak. It is therefore essential that defenders bring these new circumstances into their early advocacy and ensure that they are educating the court about the unique risks clients face if they are especially vulnerable to Covid-19.

AT INITIAL ARRAIGNMENT

It is essential to figure out which of our clients are at heightened risk before they see a judge or have bail set. This means identifying clients:



60+ YEARS OLD



LIVING WITH A PRE-EXISTING CONDITION

*diabetes | high blood pressure | cancer | any chronic cardiovascular condition
any pulmonary condition, such as asthma, cystic fibrosis, COPD, etc
any chronic renal condition | pregnancy*

For any clients in this category, it is essential that we be asking for release based on a heightened risk of mortality if held in custody. A model argument may look something like this:

*Your honor, my client is over sixty years old and suffers from **high blood pressure and chronic obstructive pulmonary disorder**. We have seen in the news the heightened risk that these conditions pose should my client be infected with the novel coronavirus — my client stands a **nearly 20% risk of mortality** according to the most recent research. We have also seen the heightened risk that locked facilities pose under these conditions — close quarters, lack of access to protective measures, and limited medical capacity all mean that my client would be at greater risk of infection if put in custody, and also pose a greater risk of needing extreme measures, such as ventilator access, to save his life should he become infected. Given the strain on these facilities, **reducing the population in custody is essential to the safety of everyone**, including staff, and my client is an excellent candidate for release/supervised release for [reasons]. We are therefore asking that you consider his special heightened risk in your decision on bail, and release him etc.*

AFTER INITIAL ARRAIGNMENT

Clients who have already been detained pretrial may be eligible for modification of their status. Covid-19 should be considered a changed circumstance, and we are urging defenders to consider both oral and written requests for modification. If you have a client who meets the above conditions and is currently in a locked facility, please consider putting the case on calendar and making the argument for release. Depending on what information is available in your jurisdiction, it may be possible to use specific information about your facilities to urge release. *Factors likely across all facilities include:*

- + *A lack of hand sanitizer (often considered contraband) or easy and frequent access to soap and water (for instance, lack of regular supply of clean tissues and emptying of trash cans)*
- + *Close quarters, double-celling (or worse), and the inability to maintain more than the CDC's recommended six-foot distance (especially if your jail is overcrowded and people are sleeping in close quarters in common areas eg: Fulton County Jail in Atlanta)*
- + *Shortage of medical staff and equipment, including specialized equipment necessary to sustain life in severe infections, such as ICU-level ventilator beds*
- + *Lack of preparation for asymptomatic transmission in facilities, such as failure to screen broadly or test for fevers in the general population*
- + *Inability to quarantine symptomatic or exposed people without the use of solitary confinement or other harsh conditions*

It may be straightforward for defenders to identify clients of a high-risk age, but determining whether clients have underlying conditions that may render them more vulnerable can be a harder task. Outreach — via video conference, at court dates, or even via mail — may be appropriate to determine whether a client should seek a bail modification based on heightened risk of mortality. If clients are ordered to report to Pre-Trial Services (or probation?) while out on bond, consider asking that this condition be modified to phone reporting. The lobbies of such places are crowded, have high turnover and can pose risk of transmission.

COURT DATES

If the purpose of a court date is only a calendar call, or another type of appearance at which your client's appearance is not essential, consider if it is worthwhile having a discussion with your client to stay home. If you decide together that this is the best course of action, address this with the Judge - missing a day of work to enter a crowded courthouse, go through security, using a public elevator and being seated in a packed courtroom may expose your clients to unnecessary risk (particularly those who are already vulnerable). Moreover, it creates a heightened risk for everyone in the courthouse, from security to court officers to the judges themselves.

AT SENTENCING

Securing non-custodial sentences is even more essential given the outbreak. Therefore, even if an in-custody sentence has been agreed to, it is worth considering emergency arguments in favor of alternatives to incarceration (especially for clients that are vulnerable: older clients and those with heart disease, cancer, diabetes or lung disease) An emphasis should be placed on alternatives that do not involve group activities--encouraging forms of probation or even house arrest over programs that require group activities such as community service or therapeutic treatment. Consider asking for phone reporting while on probation.