

IN THE GENERAL SESSIONS AND CRIMINAL COURT FOR DAVIDSON COUNTY,
TENNESSEE

2020 APR -3 PM 12: 09

IN RE VULNERABLE AND INMATES
CHARGED WITH NON-VIOLENT
OFFENSES HOUSED IN THE
DAVIDSON COUNTY SHERIFF'S
DEPARTMENT AND CORE CIVIC
FACILITIES DURING THE GLOBAL
COVID-19 PANDEMIC EMERGENCY

Presiding Judge Joe Binkley, Criminal Court Judges:
Steve Dozier, Angelita Blackshear-Dalton, Cheryl
Blackburn, Jennifer Smith, Monte Watkins, Mark
Fishburn; General Sessions Judges: Lynda Jones
(Presiding), Gale Robinson, Melissa Blackburn,
Ana Escobar, Allegra Walker, Dianne Turner,
Michael Mondelli, William Higgins, Rachel Bell,
Sam Coleman, Aaron Holt

**EMERGENCY PETITION TO THE COURTS EN BANC FOR IMMEDIATE RELEASE
OF VULNERABLE AND LOW-RISK INMATES FROM THE DAVIDSON COUNTY
SHERIFF'S CUSTODY**

Martesha L. Johnson, Chief Public Defender of Metropolitan Nashville & Davidson
County, respectfully moves this Honorable Court to enter an order granting the immediate release
from custody inmates in the following categories:

- 1) all persons who have heightened risk factors identified by the The Centers for Disease Control and Prevention ("CDC") such as age or underlying health conditions that make them more susceptible to serious health consequences from COVID-19;
- 2) all persons who are presently held for any reason on misdemeanor charges that are not crimes of violence, whether those individuals are in custody awaiting trial or whether they are serving a sentence;
- 3) all persons presently held for any reason on felony charges that are probationable and not crimes of violence, including all non-violent C,D, and E class felony charges, whether those individuals are in custody awaiting trial or whether they are serving a sentence;
- 4) all persons being confined pretrial on any crime that is not a crime of violence, following a judicial determination that they are bailable, but who remain in custody because they cannot pay the money bond set in their cases;
- 5) all persons who are being confined for probation or parole violations who are not charged with or suspected of new criminal offenses; and
- 6) all persons serving a sentence who are within 60 days of their sentence expiration date.

This motion is being filed on an emergency basis with request for review *en banc* out of the concern that devastating consequences will result without immediate and decisive action on the part of the Bench as a whole. National and local health experts agree that detention facilities are unable to

protect against an outbreak of COVID-19 and that such an outbreak would overwhelm the capacity of the jail, increase the spread of COVID-19 in the community, and contribute to overwhelming local hospitals. Sheriff Daron Hall has indicated his concerns regarding the potential for an outbreak in the jail facilities in a press release and letter to the Judges dated March 27, 2020.¹

This *en banc* request is fueled out of necessity. It is perhaps an unprecedented request for relief in Nashville, but has been utilized in jurisdictions across the country. As discussed below, relief similar to what we are seeking has been granted in numerous jurisdictions, even those in Tennessee. We fear that failure to act in a similar manner here in Nashville, which has the highest COVID-19 count in the state, will likely result in serious medical emergencies and needless death to those in our jails. For high-risk individuals at risk of severe COVID-19, including 1) those over 60 years of age or 2) those with heart disease, diabetes, blood disorders, neurological disorders, lung disease or compromised immune systems, remaining in jail could amount to a death sentence.² The relief requested is an order dictating that individuals who fall into the categories outlined above shall be released. In the alternative, an evidentiary hearing is requested at which evidence will be presented in support of this motion. In support, Petitioner states:

- I. **The COVID-19 pandemic is an unprecedented national and global health emergency that calls for unprecedented measures to stem it at home and abroad, particularly as it relates to our jails**

We are living in the midst of an extreme, unprecedented, world-wide health emergency caused by the rapid spread of the deadly coronavirus, COVID-19. There is no vaccine for this

¹ Letter to Judges, Sheriff Daron Hall, dated March 27, 2020. "I need a substantial reduction in the Davidson County inmate population. We all know about "social distancing" by now. Unfortunately, that is next to impossible in jails. What is possible is to reduce the population to a level that creates significant isolation opportunities."

² See Centers for Disease Control, *Community Mitigation Strategy*, Appendix A, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>; <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>.

novel virus and there is no cure for COVID-19. On March 11, 2020, the World Health Organization declared a global pandemic.³ The number of people infected globally is growing exponentially. The death toll in Italy, which began experiencing this epidemic about a week earlier than the first diagnosed American case, saw a rise of 30% overnight in the 24 hours between March 5, 2020 and March 6, 2020 and a rise of 25% on March 15 alone—a day in which 368 people died in Italy from COVID-19.⁴ On March 12, 2020, Tennessee Governor Bill Lee issued a proclamation declaring a state of emergency in the State of Tennessee.⁵ On Friday, March 13, 2020, President Donald Trump declared a national emergency.⁶ On March 18, 2020, Mayor John Cooper declared a state of emergency in Nashville.⁷ Projections from the widely cited University of Washington's Health Metrics and Evaluation report indicates that 3,422 Tennesseans could die during the COVID-19 pandemic, up from 1,500 deaths projected just five days ago.⁸

The number of known COVID-19 infections are increasing daily. As of March 30, 2020, there have been more than 186,000 infections nationally⁹; in Tennessee, there are over 2600 known cases of COVID-19¹⁰; Nashville has 785 confirmed cases¹¹, a number that has been increasing

³ See World Health Organization, Director-General Opening Remarks (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁴ Crispian Balmer & Angelo Amante, Reuters, *Italy coronavirus deaths near 200 after biggest daily jump*, (March 6, 2020), <https://www.reuters.com/article/us-health-coronavirus-italy/italy-coronavirus-deaths-near-200-after-biggest-daily-jump-idUSKBN20T2ML>.

⁵ <https://publications.insosfiles.com/pub/execorders/exec-orders-lee14.pdf>

⁶ <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

⁷ <https://www.asafenashville.org/wp-content/uploads/2020/03/Executive-Order-6-1.pdf>

⁸ Tony Gonzalez, WPLN, "Projection: More Than 3,000 Tennesseans Could Die," <https://wpln.org/post/coronavirus-in-tennessee-live-updates-week-of-march-29/>. See also <https://covid19.healthdata.org/projections>

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html#2019coronavirus-summary> Data include both confirmed and presumptive positive cases of COVID-19 reported to CDC or tested at CDC since January 21, 2020, with the exception of testing results for persons repatriated to the United States from Wuhan, China and Japan. State and local public health departments are now testing and publicly reporting their cases. In the event of a discrepancy between CDC cases and cases reported by state and local public health officials, data reported by states should be considered the most up to date.

¹⁰ <https://www.tn.gov/health/cedep/ncov.html>

¹¹ <https://www.nashville.gov/News-Media/News-Article/ID/9621/Daily-Metro-Covid19-Press-Update-For-April-2.aspx>

steadily as more testing sites open. The effects of this disease are extremely severe. 3,603 people have died of COVID-19 in the United States, 24 of those deaths reported in Tennessee. Five of Tennessee's deaths have been reported in Davidson County. A significant percentage of those who do not die will require hospitalization and intensive treatment, including ventilation.

a. The coronavirus is unique from other illnesses due to its highly contagious nature and mortality rate.

COVID-19 is highly transmissible. The CDC advises that the virus passes through coughing and by contact with surfaces.¹² Specific features of the coronavirus disease make it uniquely dangerous. Unlike with the seasonal flu and other diseases, there is no immunity to the population, because it is a new disease. The virus has an infection rate that is double that of the seasonal flu and the mortality rate of this novel disease is at least ten times higher than the seasonal flu. Other features of the coronavirus make it particularly difficult to inhibit the diseases spread, particularly within crowded areas or dense populations. This virus is thought to spread through respiratory droplets or by touching a surface or object that has the virus on it.¹³ Thus, infected people-who may be asymptomatic and not know they are infected-can spread the disease even through indirect contact with others. The New England Journal of Medicine released a study that found that the coronavirus can survive for up to three days on surfaces such as plastic and steel, which are heavily used in the jail.¹⁴

a. The coronavirus poses a particular risk to people incarcerated in jail facilities, which leads to a larger public health risk.

¹² See "How it Spreads," Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html>

¹³ Centers for Disease Control, Coronavirus Factsheet (Mar. 3, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>.

¹⁴ Apoorva Mandavalli, *How Long Will Coronavirus Live on Surfaces or in the Air Around You?*, N.Y Times (Mar. 20, 2020), <https://www.nytimes.com/2020/03/17/health/coronavirus-surfaces-aerosols.html>; See also "Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-," New England Journal of Medicine (Mar. 17, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>.

City and state leaders from across the country have taken substantial steps to curb the spread of the virus. In Tennessee, both Governor Lee and Nashville Mayor John Cooper have issued “safer at home” orders and closed many businesses. The CDC and health departments across the country have urged social distancing-recommending people remaining a distance of at least six feet from every other person.¹⁵ Proper hygiene, including frequent cleaning of all surfaces and frequent hand washing is also recommended.¹⁶ Sheriff Hall indicated in his letter to the judges what other medical and correctional professionals across the country have expressed concern about related to correctional facilities- it is “next to impossible” to practice social distancing in a jail setting.¹⁷ The CDC recognizes the unique challenges correctional facilities face in controlling the transmission of the coronavirus.¹⁸ One of the biggest challenges is that the jail is a congregate environment in which detainees are confined in close proximity to one another and the employees of the Sheriff’s department responsible for working with them.¹⁹ Other relevant challenges people in jail face include:

- Spending significant time in communal spaces, such as eating areas, recreation rooms, bathrooms, cells or holding areas, and they are mostly unable to choose to do otherwise
- Living in spaces with open toilets that could aerosolize bodily fluids into their living spaces
- Lack of access to hand sanitizer that complies with CDC guidelines
- A higher proportion of persons vulnerable to severe illness than in the general population. Half of incarcerated persons have at least one chronic disease and over 81,000 incarcerated individuals in the U.S. are over 60, making them more vulnerable to severe COVID-19.²⁰

¹⁵ See *supra* note 10.

¹⁶ See “How to Protect Yourself,” Center for Disease Control & Prevention (last accessed April 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

¹⁷ See *supra* note 1.

¹⁸ Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

¹⁹ *Id.*

²⁰ Matthew J. Akiyama, M.D., Anne C. Spaulding, M.D., and Josiah D. Rich, M.D., *Flattening the Curve for Incarcerated Populations – COVID-19 in Jails and Prisons*, The New England Journal of Medicine (April 2, 2020), https://www.nejm.org/doi/full/10.1056/NEJMp2005687?query=featured_home

During pandemics, jail facilities become “ticking time bombs” as “[m]any people crowded together, often suffering from diseases that weaken their immune systems, form a potential breeding ground and reservoir for diseases.”²¹ There is a lack of necessary protective equipment for people detained; a lack of proper ventilation systems that would reduce the spread of airborne diseases; difficulties quarantining individuals who become ill; and the potential loss of both medical and correctional staff to the illness.²² If there is an outbreak in Nashville’s jails, the Sheriff would have to rely on outside hospitals that have been heavily strained during this pandemic. In preparation for what could soon be a collapse of the healthcare system, Governor Lee has been identifying locations, like The Music City Center, that could serve as temporary medical facilities.²³ Reducing the number of people in jail infected puts less overall strain on the healthcare system, which may soon be experiencing shortages of hospital beds, hospital staff, and equipment such as ventilators. In a piece published on April 2, 2020 in the New England Journal of Medicine, physicians urge a comprehensive response stem the spread of COVID-19 in jails and prisons.²⁴ First, entry of the virus into the jails must be delayed.²⁵ Second, jails must be prepared to control the illness and bear the high burden it will cause to the system.²⁶ “Decarceration” is recommended

²¹ See Saint Louis University, “Ticking Time Bomb,” *Prisons Unprepared for Flu Pandemic*, ScienceDaily (2006), <https://www.sciencedaily.com/releases/2006/09/060915012301.htm>.

²² “The pathway for transmission of pandemic influenza between jails and the community is a two way street. Jails process millions of bookings per year. Infected individuals coming from the community may be housed with healthy inmates and will come into contact with correctional officers, which can spread infection throughout a facility.” *Pandemic Influenza and Jail Facilities and Populations*, American Journal of Public Health, October, 2009; See also Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, Mar. 9, 2020, <https://www.apnews.com/af98b0a38aaabedbc059092db356697>.

²³ Joel Ebert, “Governor Bill Lee orders Tennesseans to stay at home as the state continues to fight the spread of coronavirus.” The Tennessean, (April 2nd, 2020) “<https://www.tennessean.com/story/news/politics/2020/04/02/gov-bill-lee-issues-stay-home-mandate-tennessee-continues-fight-spread-coronavirus/5112202002/>”

²⁴ Matthew J. Akiyama, M.D., Anne C. Spaulding, M.D., and Josiah D. Rich, M.D., *Flattening the Curve for Incarcerated Populations – COVID-19 in Jails and Prisons*, The New England Journal of Medicine (April 2, 2020), https://www.nejm.org/doi/full/10.1056/NEJMp2005687?query=featured_home

²⁵ See *Id.* at page 2.

²⁶ *Id.*

for the elderly, those who are susceptible to severe illness, and for those unlikely to commit further crimes as a critical means to decrease infection in jails and in surrounding communities.²⁷ Suspending arrests for low-level crimes and misdemeanors, isolating infected persons within the jails, and hospitalizing the seriously ill are recommended as part of a comprehensive response. The authors urge, “The better the mitigation job done by the legal, public health and correctional health partnerships, the lighter the burden correctional facilities and their surrounding communities will bear.”²⁸

Although the jail is a congregate environment, it is not and cannot become an isolated environment. The constant cycling of people in and out of the jail²⁹ makes containment impossible. Deputies who work in the jail come from their communities into the jail, interact with potentially infected individuals and surfaces throughout the day, and then return home to their families and communities at the end of the shift. By necessity, members of the non-incarcerated community, including social workers, attorneys, medical professionals and many others, must enter and leave the jail and courthouse on a daily basis. If the COVID-19 virus spreads within the jail, all of these persons are at heightened risk of contracting the virus and, in turn, spreading it to others with whom they come in contact with in their homes, neighborhoods, courthouse and communities.

b. Action to reduce the jail population further is necessary.

The coronavirus rapidly spread across China’s prisons and jails. As of February 25th, there were 555 confirmed infections in five prisons of three provinces-Hubei, Shandong, and Zhejiang.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See Peter Wagner & Emily Widra, *No Need to wait for pandemics: The public health case for criminal justice reform*, Prison Policy Initiative (Mar. 6, 2020), <https://www.prisonpolicy.org/blog/2020/03/06/pandemic>.

As of February 29th, 806 people in Wuhan city prisons were infected with the virus.³⁰ Recognizing the unique risks to jail populations, courts across Iran granted 54,000 inmates furlough as part of the measures to contain the virus across the country.³¹ Other jurisdictions such as New York have already dealt with the consequences of waiting too long to reduce the jail population. For example, in Rikers Island, the first confirmed case was reported on March 18, 2020. Three days later, 21 inmates and 17 employees had tested positive despite Rikers Island having an 88 bed contagious disease unit with air controlled cells, something Davidson County lacks. In Tennessee we have seen firsthand how the coronavirus impacts congregate settings. Last week, a 207 bed nursing home facility, Gallatin Center for Rehabilitation and Healing, had to evacuate residents due to an outbreak of COVID-19. To date, more than 100 residents and staff members have tested positive, over 20 have been hospitalized and one person has died as a result of the outbreak.³² In the early morning hours of April 2, 2020, both the Davidson County Sheriff's Office and Juvenile Detention Facility have reported their first positive cases of the coronavirus. It has also been reported that employees of the Metro Nashville Police Department³³, Nashville Fire Department³⁴ and Tennessee Bureau of Investigation³⁵ have tested positive for the virus. The news of the DCSO employee testing positive and subsequently being hospitalized along with reports of other inmates

³⁰ The Justice Collaborative, "Explainer: Prisons and Jails are Particularly Vulnerable to Covid-19 Outbreaks," available at <https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJC-VulnerabilityofPrisonsandJailstoCOVID19Explainer.pdf>.

³¹ Claudia Lauer and Colleen Long, "US Prisons, Jails on Alert for Spread of Coronavirus", *The Associated Press* (mar. 7, 2020) at <https://apnews.com/af98b0a38aaabedbc059092db356697>.

³² See Holly Meyer, "Gallatin Nursing Home Hot Spot for fast spreading Covid-19 Outbreak in Tennessee" (March 30, 2020) <https://www.tennessean.com/story/news/local/2020/03/30/gallatin-nursing-home-patients-coronavirus/5087098002/>. See also Mariah Timms and Andy Humbles "Update: 24 patients taken to hospital after coronavirus outbreak at Gallatin nursing home" (March 27, 2020) <https://www.tennessean.com/story/news/local/2020/03/27/tennessee-nursing-home-evacuated-coronavirus/2932185001/>.

³³ Natalie Neysa Alund, *The Tennessean* (March 23, 2020) "Metro Nashville Police Officer tests positive from COVID-19," <https://www.tennessean.com/story/news/health/2020/03/23/nashville-police-officer-test-positive-coronavirus/2901627001/>

³⁴ <https://www.nashville.gov/News-Media/News-Article/ID/9623/Nashville-Fire-Department-Firefighter-Tests-Positive-for-COVID19.aspx>

³⁵ Ethan Illers, WSMV (March 20, 2020) "TBI employee tests positive for COVID-19, prompting delay in firearm background checks," https://www.wsmv.com/news/tbi-employee-tests-positive-for-covid--prompting-delay-in/article_a9d59d68-6ae7-11ea-8fde-977ba5f8d364.html

being medically isolated for symptoms, make it highly probable that the virus will begin to spread amongst the incarcerated community. Sheriff Hall has indicated that there are supply shortages that prevent people from being tested for the virus. The only safe way to prevent more inmates, deputies, criminal justice partners and jail medical staff from being infected is to take swift action to decarcerate people from our city's jails. Because of the way the virus spreads exponentially, reducing the jail population significantly now rather than later is essential to "flatten the curve" of virus transmission.

II. Courts, Jails, Public Defender Offices, Prosecutor Offices, and Police Departments across the United States are pursuing large scale efforts to decrease their jail populations. Nashville must do the same.

Other jurisdictions across the United States have taken extraordinary steps to prevent the mass outbreak of COVID-19 in jails and other detention facilities. Courts across the United States and in Tennessee have issued orders that have resulted in the release of groups of individuals who are in lower-risk categories in order to protect against a mass outbreak in jails and prisons. Public defenders and prosecutors have been engaging in efforts to release people from jails. In New Jersey, after a request for relief by the Office of the New Jersey Public Defender, the New Jersey Supreme Court issued an order that will result in the release of up to 1,000 inmates.³⁶ In Texas, the McLennan County jail is releasing "as many inmates out of the jail as possible," and modifying arrests.³⁷ In Harris County, Judges issued an order categorically releasing individuals held on a number of non-violent felonies. The Chief Justice of the California Supreme Court issued guidance urging lower courts to take drastic measures to reduce the jail population, including releasing individuals within 60 days of completing their sentences, releasing individuals without

³⁶ See *In the matter of the Request to Commute or Suspend County Jail Sentences*, No. 084230 (Mar. 22, 2020 N.J. Sup. Ct.), https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf

³⁷ Rissa Shaw, "Local jail to release some inmates because of COVID-19 threat," *KWTX* (March 18, 2020), <https://www.kwtx.com/content/news/Local-jail-to-release-some-inmates-because-of-COVID-19-threat-568904541.html>.

bail on lower-level offenses and reducing the number of people held on supervised release violations.³⁸ The Montana Supreme Court wrote a letter urging lower courts to “release, without bond, as many prisoners as you are able, especially those being held for non-violent offenses.”³⁹

Jails, prisons and detention facilities across the United States have also taken drastic measures to reduce their populations. The Los Angeles County Sheriff’s Department has released over 600 inmates and has directed officers to cite and release individuals in lieu of arrest.⁴⁰ The Alameda County, California Sheriff’s department released 247 individuals after their sentences were modified.⁴¹ In Atlanta, Fulton County, inmates have been released early and those serving intermittent weekend sentences have been postponed.⁴² In Oregon, the Washington county jail is releasing inmates and ensuring all remaining inmates have their own cell.⁴³ In Tampa, Florida, Hillsborough County, inmates charged with non-violent offenses are being released.⁴⁴ Jails in Pennsylvania, North Carolina, and Washington State are among other jurisdictions taking similar action. The Police Department in Philadelphia has stopped arresting people for “all narcotics offenses, thefts, burglary, vandalism, prostitution, stolen cars, existing bench warrants and

³⁸ Chief Justice Cantil-Sakauye, California Chief Justice Issues Second Advisory on Emergency Relief Measures (Mar. 20, 2020), <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures>.

³⁹ Montana Supreme Court Chief Justice Mike McGrath, Mar. 20, 2020 Letter to Montana Courts of Limited Jurisdictions, <https://courts.mt.gov/Portals/189/virus/Ltr%20to%20COLJ%20Judges%20re%20COVID-19%20032020.pdf?ver=2020-03-20-115517-333>.

⁴⁰ Alene Tchekmedyan, Paige St. John & Matt Hamilton, “L.A. County Releasing Some Inmates from Jail to Combat Coronavirus,” *L.A. Times* (March 16, 2020), <https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>.

⁴¹ Jay Barman, *Santa Rita Jail in East Bay Releases 300 Inmates to Protect Against Virus Spread*, SF News (Mar. 29, 2020), <https://sfist.com/2020/03/19/santa-rita-jail-in-east-bay-releases-300-inmates-to-protect-against-virus-spread/>.

⁴² Blis Savidge, “Fulton County To Release Inmates Early In Light of Pandemic,” *GPB News* (March 16, 2020), <https://www.gpbnews.org/post/fulton-county-release-inmates-early-light-pandemic>.

⁴³ Drew Reeves, “Washington County Jail Releases Some Inmates to Prevent Spread of COVID-19,” *Fox12 Oregon* (March 17, 2020), https://www.kptv.com/news/washington-county-jail-releases-some-inmates-to-prevent-spread-of/article_34cdc2c2-68d3-11ea-bfc0-3725e49b0c0c.html.

⁴⁴ “164 ‘Low Level, Nonviolent’ Offenders Being Released from Hillsborough County Jails,” *ABC Action News* (March 19, 2020), <https://www.abcactionnews.com/news/region-hillsborough/164-low-level-nonviolent-offenders-being-released-from-hillsborough-county-jails>.

economic crimes.” Police departments in Texas, California, Wisconsin, Colorado and Ohio are categorically changing their arrest policies to minimize their jail populations.

The judiciary of Davidson County has inherent authority to take necessary action. The Tennessee Supreme Court, in an order dated March 25, 2020, instructed “the presiding judge or the designee of the presiding judge of each judicial district to develop a written plan to affirmatively address issues regarding the incarceration of nonviolent offenders in furtherance of efforts to reduce the jail population, including but not limited to bond reductions or eliminations, deferred sentences, and suspended sentences.”⁴⁵ In response to this, the judiciary sitting *en banc* in Knox County issued an order releasing people charged with misdemeanors on their own recognizance, with the exception of persons charged with DUIs and domestic crimes. The order also ordered people charged with non-violent felonies (C, D, and E) released on their own recognizance.⁴⁶ The Judiciary of the 12th district took similar action.⁴⁷ In Nashville there have been collaborative efforts to try and reduce the jail population, but we have not seen a substantial decrease in the number of people in jail. As such, the petitioner prays this Honorable Court consider taking action to release categories of individuals.

III. Population reduction is essential to protect the Constitutional Rights of jail detainees and prisoners

Pursuant to the Eighth Amendment to the United States Constitution, as well as Article 1, Section § 16 of the Tennessee Constitution, cruel and unusual punishment is prohibited, even for those convicted of crimes. For pretrial detainees like most of those included in the categories listed in this pleading, *any* conditions that amount to punishment are prohibited, because they violate the

⁴⁵ http://tncourts.gov/sites/default/files/docs/order_-_2020-03-25t120936.486.pdf

⁴⁶ See attached.

⁴⁷ http://tncourts.gov/sites/default/files/docs/12th_judicial_district_-_order_-_pretrial_detention.pdf

presumption of innocence and thus the Fifth Amendment to the United States Constitution and Article 1 § 9 of the Tennessee Constitution. *Bell v. Wolfish*, 441 U.S. 520, 535; 99 S.Ct. 1861, 1872 (1979)(“under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law”). Because subjecting the defendant to a heightened risk of severe health complications or even death while in custody is not only a punishment, but surely a cruel and unusual one, the Court should order the release of all persons in the enumerated categories.

Persons confined in prisons and jails must “be furnished with the basic human needs, one of which is ‘reasonable safety.’” *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993)(citing *DeShaney v. Winnebago County Dept. of Soc. Serv.*, 489 U.S. 189, 200 (1989)). It would be unreasonable to assume that Nashville’s incarcerated population faces no significant risk of harm within the jail because no inmate has tested positive to date. Detection is imminent, as exemplified by positive tests amongst criminal justice system employees that come into contact with inmates and because of the cyclic nature of people coming into the facilities. To expose the incarcerated population to the unmitigated risk of contracting COVID-19-*where there are obvious steps that can be taken to achieve such mitigation-* is constitutionally impermissible. To allow detainees to suffer unnecessary exposure violates the constitutional imperative that prisoners be afforded “reasonable safety” while they are confined. *Helling*, 509 U.S. at 33 (the Eighth Amendment may be violated even where a possible infection might not affect all those exposed). There are known risk factors to COVID-19, and failing to take those into account when determining whether incarceration remains appropriate violates the Eighth Amendment and Art I § 16 of the Tennessee Constitution as well as the Fifth Amendment and Art I § 9 of the Tennessee Constitution related to pretrial detainees. However, the absence of any known risk factors on the part of a given defendant does

not mean that he or she is not exposed to an unconstitutional level of risk of contracting the virus. *Beagle v. Schwarzenegger*, 107 F. Supp. 3d 1056, 1069 (E.D. Cal 2014) (“whether some groups are more susceptible to the disease than others in some way is not dispositive at the pleading stage for Eighth Amendment purposes. Although one group may be at more risk than another, they both may be at a constitutionally unacceptable level of risk.”).

This Court should consider the “total harm and benefits to prisoner and society” that continued imprisonment of the defendant will yield, relative to the heightened health risks posed to the detainees during this rapidly encroaching pandemic. *See Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J. concurring) (calling for heightened judicial scrutiny of the projected impact of jail and prison conditions on a defendant). As set forth above, the risk the novel coronavirus poses to people in Nashville’s jails-as well as to the health and safety of the staff and the broader community-is immense and unprecedented. Consequently, the benefits to both prisoners and society will be best served by the release of individuals in the categories listed above.

CONCLUSION

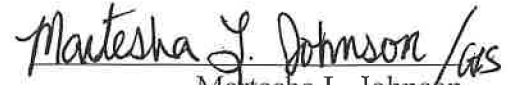
Undersigned counsel prays that the Nashville Judiciary sitting *en banc* enter an order granting release to:

- 1) all persons who have heightened risk factors identified by the The Centers for Disease Control and Prevention (“CDC”) such as age or underlying health conditions that make them more susceptible to serious health consequences from COVID-19;
- 2) all persons who are presently held for any reason on misdemeanor charges that are not crimes of violence, whether those individuals are in custody awaiting trial or whether they are serving a sentence;
- 3) all persons presently held for any reason on felony charges that are probationable and not crimes of violence, including all non-violent C,D, and E class felony charges, whether those individuals are in custody awaiting trial or whether they are serving a sentence;
- 4) all persons being confined pretrial on any crime that is not a crime of violence, following a judicial determination that they are bailable, but who remain in custody because they cannot pay the money bond set in their cases;
- 5) all persons who are being confined for probation or parole violations who are not charged with or suspected of new criminal offenses; and

6) all persons serving a sentence who are within 60 days of their sentence expiration date.

In the event this Court will not enter an order, the petitioner requests a hearing on the motion.

Respectfully Submitted,

Handwritten signature of Martesha L. Johnson in cursive, followed by a horizontal line and the initials "MLJ".

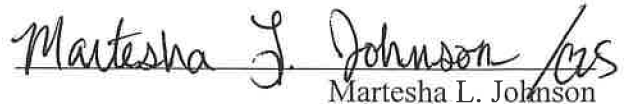
Martesha L. Johnson

Chief Public Defender

Metropolitan Nashville & Davidson County Public Defender's Office

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a copy of the foregoing document upon the District Attorney General Glenn Funk on or about the day of the filing.

Handwritten signature of Martesha L. Johnson in cursive, followed by a horizontal line and the initials "MLJ".

Martesha L. Johnson



OFFICE OF NASHVILLE SHERIFF
DARON HALL

March 27, 2020

Davidson County General Sessions & State Trial Court Judges

Dear Judges,

I am writing today, in these unprecedented times, asking for your assistance. As I'm sure you have heard, inmates throughout the country are extremely vulnerable to COVID-19; therefore, I need a substantial reduction in the Davidson County inmate population. We all know about "social distancing" by now. Unfortunately, that is next to impossible in jails. What is possible is to reduce the population to a level that creates significant isolation opportunities.

This conversation goes beyond the inmate population; it is also about our correctional officers and other frontline employees. Without the ability to separate symptomatic individuals, the risk for all is unimaginable. It is not time for business as usual and the duration for action is unknown.

I am working with Metro Police Chief Steve Anderson and he is committed to the increased use of citations in lieu of physical arrests. We have been monitoring these numbers daily and the chief is committed to his continued cooperation in this effort. From the judicial side, I have been working with the public defender and district attorney by providing numerous lists for consideration including medically high-risk and pregnant inmates, those 60 years or older, as well as individuals within a year of release. Should there be a specific classification of inmate you would like to see, I would be more than happy to assist in providing that information.

Ideally, our population would dip below 1,000 and remain there during this emergency situation. Today we stand at 1,109. I appreciate your assistance moving forward and your efforts to bring relief during this public health crisis.

Sincerely,

Daron

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

03/25/2020

Clerk of the
Appellate Courts

IN RE: COVID-19 PANDEMIC

No. ADM2020-00428

ORDER CONTINUING SUSPENSION OF IN-PERSON COURT PROCEEDINGS
AND EXTENSION OF DEADLINES

On March 13, 2020, in response to the COVID-19 pandemic, the Chief Justice of the Tennessee Supreme Court declared a state of emergency for the Judicial Branch of Tennessee government and activated a Continuity of Operations Plan for the courts of Tennessee. See Tenn. Const. Art. VI, § 1; Tenn. Code Ann. §§ 16-3-501 to 16-3-504 (2009); Moore-Pennoyer v. State, 515 S.W.3d 271, 276-77 (Tenn. 2017); Tenn. Sup. Ct. R. 49. This state of emergency constitutes a “disaster” for purposes of Tenn. Sup. Ct. R. 49 and Tenn. Code Ann. § 28-1-116. In light of ongoing concerns, the Tennessee Supreme Court hereby continues the suspension of in-person court proceedings and the extension of deadlines as set forth in this order. We again emphasize that the local and state courts of the State of Tennessee are open and will remain open under all circumstances, subject to the provisions of this order.

Under the constitutional, statutory, and inherent authority of the Tennessee Supreme Court, we adopt the following provisions. All in-person proceedings in all state and local courts in Tennessee, including but not limited to municipal, juvenile, general sessions, trial, and appellate courts, shall be suspended from the close of business on Friday, March 13, 2020, through Thursday, April 30, 2020, subject to the exceptions below.

Exceptions to this suspension of in-person court proceedings include, but are not limited to:

- Proceedings necessary to protect constitutional rights of criminal defendants, including bond-related matters, preliminary hearings for incarcerated individuals, and plea agreements for incarcerated individuals
- Proceedings related to relief from abuse, including but not limited to orders of protection
- Proceedings related to statutory order of protection hearings after entry of an ex parte order as necessary to satisfy any due process concerns

- Proceedings related to emergency child custody or visitation orders
- Proceedings related to the voluntary surrender of parental rights
- Settlements involving a minor or a person with a disability
- Department of Children's Services emergency matters related to child safety, placement, permanency, or federal funding for children in foster care
- Proceedings related to petitions for temporary injunctive relief
- Proceedings related to emergency mental health orders
- Proceedings related to emergency protection of elderly or vulnerable persons
- Proceedings directly related to the COVID-19 public health emergency
- Other exceptions as approved by the Chief Justice

The presiding judge or the designee of the presiding judge of each judicial district is authorized to determine the manner in which in-person court proceedings for the exceptions listed above are to be conducted. Other exceptions to the suspension of in-person court proceedings must be approved by the Chief Justice. Any permitted in-court proceedings shall be limited to attorneys, parties, witnesses, security officers, and other necessary persons, as determined by the trial judge. Judges and their staff shall ensure that social distancing and other such measures are strictly observed. For purposes of implementing procedural matters during this time, the provisions of Rule 18(c) of the Rules of the Tennessee Supreme Court are suspended to allow judges to issue general orders.

Judges are charged with the responsibility of ensuring that core constitutional functions and rights are protected. Additionally, court clerks are charged with ensuring that court functions continue. See Tenn. Code Ann. §§ 18-1-101 (2009); 18-1-105 (Supp. 2019). Nevertheless, all judges and court clerks should minimize in-person contact by utilizing available technologies, including alternative means of filing, teleconferencing, email, and video conferencing.

Any Tennessee state or local rule, criminal or civil, that impedes a judge's or court clerk's ability to utilize available technologies to limit in-person contact is suspended through Thursday, April 30, 2020. See, e.g., Tenn. R. Civ. P. 43.01. With respect to plea agreements for non-incarcerated individuals, this suspension expressly applies to those provisions of Tenn. R. Crim. P. 11 which otherwise would require the proceeding to be in person in open court. See, e.g., Tenn. R. Crim. P. 11(b)(1) and (2), 11(c)(2)(A).

The presiding judge or the designee of the presiding judge of each judicial district shall develop a written plan to affirmatively address issues regarding the incarceration of nonviolent offenders in furtherance of efforts to reduce the jail population, including but not limited to bond reductions or eliminations, deferred sentences, and suspended sentences. The presiding judge or the designee of the presiding judge of each judicial district shall submit its plan to the Administrative Office of the Courts by the close of

business on Monday, March 30, 2020, absent an extension granted by the Chief Justice.

Judges' offices and court clerks' offices may limit in-person contact with the public during the period of suspension, but must remain functional. If it becomes necessary to close judges' or court clerks' physical offices during the period of suspension, these offices shall remain accessible by telephone, email and fax to the extent possible during regular business hours. If available, drop boxes should be used for conventionally filed documents.

This order expressly encourages and does not prohibit court proceedings by telephone, video, teleconferencing, email, or other means that do not involve in-person contact. This order does not affect courts' consideration of matters that can be resolved without in-person proceedings. Although some non-emergency matters will need to be rescheduled, judges are to continue to resolve matters that do not require in-person court proceedings. Court clerks are to work cooperatively and at the direction of the presiding judge of each judicial district to fulfill the clerks' obligation to facilitate continuing court function.

Deadlines set forth in court rules, statutes, ordinances, administrative rules, or otherwise that are set to expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, are hereby extended through Wednesday, May 6, 2020. Statutes of limitations and statutes of repose that would otherwise expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, are hereby extended through Wednesday, May 6, 2020. See Tenn. Code Ann. § 28-1-116 (2017). Deadlines, statutes of limitations, and statutes of repose that are not set to expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, are not extended or tolled by this order.

With regard to notarizing documents at this time, attorneys and judges are encouraged to utilize the "Online Notary Public Act," Tenn. Code Ann. § 8-16-301, et seq., and the regulations promulgated by the Secretary of State at Sec. of State, Tenn. R. and Reg. 1360-07-03-.01. Additionally, with regard to court filings, declarations under penalty of perjury may be used as an alternative to a notary.

Given the increasing economic issues caused by this pandemic, no judge, clerk, or other court official shall take any action to effectuate an eviction, ejectment, or other displacement from a residence during the effective dates of this order based upon the failure to make a rent, loan, or other similar payment absent extraordinary circumstances as determined by a judge in a court of competent jurisdiction. Nothing in this order affects the obligations, terms, or conditions for payment under existing contracts. Judges also are encouraged to work with court clerks and local law enforcement to develop policies severely limiting or eliminating any new garnishments during this time.

Orders of protection and temporary injunctions that would otherwise expire during the period from Friday, March 13, 2020, through Tuesday, May 5, 2020, are hereby extended through Wednesday, May 6, 2020.

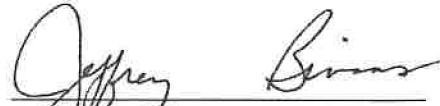
This order applies statewide to all courts and court clerks' offices except administrative courts within the Executive Branch and federal courts and federal court clerks' offices located in Tennessee.

Under the terms of this order, the courts of Tennessee remain open, consistent with the Judicial Branch's obligation to mitigate the risks associated with COVID-19. Judges should work with local law enforcement and other county officials to ensure that, to the extent possible, courthouses remain accessible to carry out essential constitutional functions and time-sensitive proceedings.

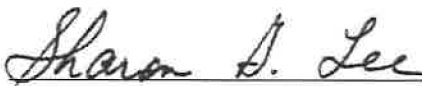
This order is intended to be interpreted broadly for protection of the public from risks associated with COVID-19.


It is so ORDERED.


FOR THE COURT:


Jeffrey S. Bivins, Chief Justice


Cornelia A. Clark, Justice


Sharon G. Lee, Justice


Holly Kirby, Justice


Roger A. Page, Justice

IN THE TWELFTH JUDICIAL DISTRICT OF TENNESSEE

IN RE:	*	STANDING ORDER: 2020-01
COVID-19 PANDEMIC	*	JUDICIARY SITTING <i>EN BANC</i>

STANDING ORDER REGARDING PRETRIAL DETENTION

In response to the COVID-19 pandemic the Tennessee Supreme Court on March 13, 2020, declared a state of emergency for the judicial branch of Tennessee government. The judiciary of this district has been monitoring developments related to the pandemic closely, in particular with regard to the impact of the pandemic on this district's jail population. The high population density of the local jails during the current pandemic poses a special problem not only for those incarcerated but also for the corrections officers, sheriffs' deputies, law enforcement officers, health care workers, and other professionals who regularly come in contact with inmates. In recognition of this problem the undersigned Judges of the Twelfth Judicial District, sitting *en banc*, find that it is necessary and appropriate to take the following extraordinary measures to balance the interests of justice with the interests of public health.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

BAIL FOR UNSENTENCED DEFENDANTS

A. MISDEMEANORS.

- i. That bail for non-violent unsentenced misdemeanor offenses for which any inmate is currently held in any jail within the Twelfth Judicial District is set at zero, and the same inmates be released on their own recognizance pending further disposition of their cases.

- ii. That no bail be required for any person arrested for any non-violent misdemeanor offense occurring within the Twelfth Judicial District after the effective date of this Order, though nothing in this Order is intended to limit the ability of the Office of the District Attorney General to file motions requesting that bail be required for a specific case.

B. PROBATION VIOLATIONS:

- i. That bail for any unsentenced violation of probation arising from a non-violent misdemeanor offense, for which the basis of the alleged violation of probation is as specified in Schedule A, and for which any inmate is currently held in any jail within the Twelfth Judicial District, be set at zero, and that the same inmates be released on recognizance pending further disposition of their cases.
- ii. That no bail be required for any person arrested for any alleged violation of probation based on a misdemeanor sentence and who would qualify for a release on recognizance under Schedule A after the effective date of this Order, though nothing in this Order is intended to limit the ability of the Office of the District Attorney General to file motions requesting that bail be required for a specific violation of probation.
- iii. That bail shall continue to be set by the judge approving the warrant for alleged violations of misdemeanor probation other than those outlined in Schedule A.

- iv. That no bail be required for any person arrested for any alleged violation of probation based on a felony sentence and who would qualify for release on recognizance under Schedule A.
- v. That bail shall continue to be set by the Judge approving the warrant for alleged violations of felony probation other than those outlined in Schedule A.

C. FELONIES:

- i. That bail for unsentenced felony offenses for which any inmate has been determined to be indigent and is currently held in any jail within the Twelfth Judicial District be set according to the attached Schedule A, though nothing in this Order is intended to limit the ability of the Office of the District Attorney General or of any inmate or defense attorney to file motions requesting that bail be modified.
- ii. That bail be set according to the attached Schedule A for any felony offense occurring within the Twelfth Judicial District after the effective date of this Order, or for any felony offense alleged in an indictment remaining unserved after the effective date of this Order.

D. CONTEMPT:

- i. Bail for indigent inmates as evidenced by a properly completed and sworn to Affidavit of Indigency who are held in custody based on any allegation of criminal or civil contempt, other than the failure to appear for an alleged felony offense, is set at zero, and the same inmates be released on recognizance pending further disposition of their cases.


- ii. That no bail be required for any person arrested on any allegation of criminal or civil contempt, other than the failure to appear for any alleged felony offense or violation of felony probation not otherwise eligible for own recognizance release.

E. HEARINGS:

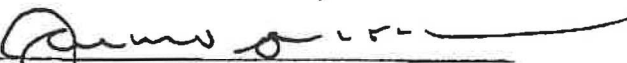
That all hearings regarding any dispute about bail may be conducted telephonically, unless the Judge conducting the hearing orders the hearing to be conducted in person.

ENTER: This 17th day of March, 2020.

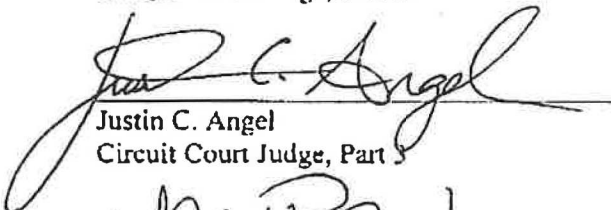
JUDGES OF THE TWELFTH JUDICIAL DISTRICT




Thomas W. Graham
Circuit Court Judge, Part 1



J. Curtis Smith
Circuit Court Judge, Part 2



Justin C. Angel
Circuit Court Judge, Part 3



Melissa Thomas Blevins-Willis
Chancellor

SCHEDULE "A"

Offenses Eligible for Own Recognizance Bonds

1. Non Violent Misdemeanors
2. Non Violent C, D & E Felonies
3. Probation violations based solely on:
 - (a) any allegation of a positive drug screen or admission to use of any controlled substance;
 - (b) any allegation of absconding supervision for a period of four months or less;
 - (c) any allegation of the commission of a new misdemeanor offense other than domestic assault or driving under the influence;
 - (d) any allegation of failure to pay court costs, restitution, supervision fees, or any other payment required by the court as a condition of probation;
 - (e) any allegation of failure to complete any class or assessment; or
 - (f) any other allegation of a technical violation of the rules of probation, excluding the commission of a new felony offense or a new misdemeanor offense involving domestic assault or driving under the influence.
4. All other offenses and revocations not set forth in 1, 2 and 3 above are to be set by the appropriate court.

For purposes of this Schedule, a violent offense would be those offenses against the person set forth in T.C.A. §39-13-101 thru §39-13-533 and those against children as set forth in T.C.A. §39-15-401, 402.

FILED
BY MIKE HAMMOND

IN THE SIXTH JUDICIAL DISTRICT OF TENNESSEE

2020 MAR 30 AM 9:53

IN RE:
COVID-19 PANDEMIC

KNOX COUNTY CRIMINAL COURT
KNOXVILLE, TN

GENERAL ORDER: 3/30/20

JUDICIARY SITTING EN BANC

GENERAL TEMPORARY ORDER REGARDING PRE-TRIAL DETENTION

In response to the COVID-19 pandemic and the Tennessee Supreme Court Order of March 13, 2020 and the continuing order of March 25, 2020 suspending in-person court proceedings, the Criminal Court Judges of the Sixth Judicial District and the General Sessions Court Judges of Knox County sitting en banc do enter this standing order to address the jail population of Knox County detention centers. In light of the population density of the local detention facilities and the need to reduce the potential spread of the COVID virus to inmates, correction officers, and health care workers, it is necessary to take the following temporary extraordinary measures to balance the interests of justice and the interests of public health.

1. Currently incarcerated individuals: the Knox County District Attorney's Office in conjunction with the defense bar have made great strides in reducing the current population in Knox County detention facilities. As of the Supreme Court's order of March 13, 2020, many inmates have been released on their own recognizance. The population has been reduced by 20% in less than two weeks. The parties are encouraged to continue to resolve cases, especially those that will result in release from custody of unsentenced individuals. Motions for release that are not agreed upon by the State may only be heard

with permission of the court. Whether a hearing is to be granted on said motions will be determined on a case by case basis.

2. New misdemeanor arrests: any individual arrested for a misdemeanor offense that does not involve domestic assault or DUI shall be released on their own recognizance. However, nothing in this Order is intended to limit the ability of the Knox County District Attorney to seek bail pursuant to 40-11-148 for individuals who committed a crime while currently free on bond or revocation of bail pursuant to TCA 40-11-141 in specific cases where individuals pose a threat to the safety of the community.
3. New felony arrests: any individual who is arrested on a non-violent (as defined below in paragraph 5) C, D, or E felony and who is determined to be indigent shall be released on their own recognizance. However, nothing in this Order is intended to limit the ability of the Knox County District Attorney to seek bail or revocation of bail pursuant to TCA 40-11-141 in specific cases where individuals pose a threat to the safety of the community.
4. New violations of probation: any individual arrested on a violation of probation shall be released on their own recognizance if there are no pending violations of probation *and* the new violation: 1) alleges a failed drug screen, 2) alleges absconscion for less than three months, 3) alleges a new non-violent (as defined below in paragraph 5) misdemeanor offense, 4) alleges the failure to satisfy monetary obligations in any form, and/or 5) any other alleged technical violation.
5. Violent offense: for purposes of this order, a violent offense is any offense that

would constitute a felony *and* is codified from TCA 39-13-101 through 39-13-533, offenses against children as set forth in TCA 39-15-401, 402, aggravated burglary, DUI 2nd or greater, and all forms of domestic violence. Non-violent offense is any offense not qualifying as a violent offense as defined above.

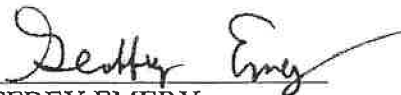
6. Any matter not specifically addressed in this order shall be determined on a case by case by a judge.

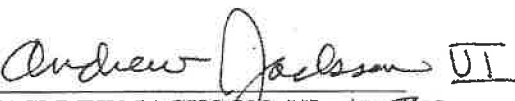
This order shall expire on April 30, 2020 at 11:59 PM.

IT IS SO ORDERED:

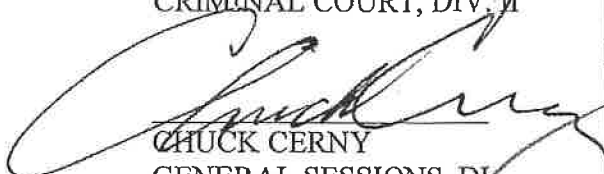

STEVEN W. SWORD
CRIMINAL COURT, DIV. I



SCOTT GREEN
CRIMINAL COURT, DIV. III


GEOFFREY EMERY
GENERAL SESSIONS, DII


ANDREW JACKSON, VI *by this*
GENERAL SESSIONS, DIV. *permission*


KYLE HIXSON
CRIMINAL COURT, DIV. II


CHUCK CERNY
GENERAL SESSIONS, DI


PATRICIA HALL LONG
GENERAL SESSIONS, DIII *by CAC w/perm*


TONY W. STANSBERRY
GENERAL SESSIONS, DV