# IN THE COURT OF APPEALS OF MARYLAND

## ADMINISTRATIVE ORDER

## GUIDING THE RESPONSE OF THE TRIAL COURTS OF MARYLAND TO THE COVID-19 EMERGENCY AS IT RELATES TO THOSE PERSONS WHO ARE INCARCERATED OR IMPRISONED

WHEREAS, Pursuant to the Maryland Constitution, Article IV, § 18, the Chief Judge of the Court of Appeals is granted authority as the administrative head of the Judicial Branch of the State; and

WHEREAS, Chapter 1000 of Title 16 of the Maryland Rules of Practice and Procedure sets forth the emergency powers of the Chief Judge of the Court of Appeals; and

WHEREAS, In instances of emergency conditions, whether natural or otherwise, that significantly disrupt access to or the operations of one or more courts or other judicial facilities of the State or the ability of the Judiciary to operate effectively, the Chief Judge of the Court of Appeals may be required to determine the extent to which court operations or judicial functions shall continue; and

WHEREAS, Due to the outbreak of the novel coronavirus, COVID-19, and consistent with guidance issued by the Centers for Disease Control, an emergency exists that poses a threat of imminent and potentially lethal harm to individuals who have contracted or have come into contact with a person(s) who have contracted COVID-19; and

WHEREAS, The COVID-19 emergency requires further expansion of comprehensive measures to protect the health and safety of Maryland residents including those incarcerated or imprisoned under the laws of Maryland; and

WHEREAS, COVID-19 poses a risk of transmittal to prisoners residing, staff working, and attorneys visiting clients in Maryland adult detention and correctional facilities; and

WHEREAS, The incarcerated and imprisoned populations of Maryland include individuals who, because of age or underlying medical conditions, are at a heightened risk of severe or fatal outcomes if they contract COVID-19; and

WHEREAS, The Maryland Department of Public Safety and Correctional Services has confirmed the existence of COVID-19 in Maryland detention and correctional facilities for adults; and

WHEREAS, The judges of Maryland's trial courts must take into account the unique considerations of the case of each individual before them in considering issues of detention, incarceration, and release; and

WHEREAS, A significant effort is already being undertaken in multiple jurisdictions to address the circumstances of adults who are incarcerated, imprisoned, or ordered to residential treatment programs, the need nevertheless exists to ensure that such efforts continue to be made statewide by the trial courts,

NOW, THEREFORE, I, Mary Ellen Barbera, Chief Judge of the Court of Appeals and administrative head of the Judicial Branch, pursuant to the authority conferred by Article IV, § 18 of the Maryland Constitution, do hereby order this 14th day of April 2020, and effective immediately, as follows:

(a) The Administrative Judges of the Circuit Courts and the District Administrative Judges of the District Court of Maryland (Administrative Judges) are encouraged to communicate with justice system stakeholders to identify at-risk

incarcerated persons for potential release to protect the health of at-risk incarcerated persons during the COVID-19 pandemic crisis, with careful regard for the safety of victims and communities in general; with respect for the statutory rights of victims; and with due consideration given to public health concerns related to inmates who may have contracted COVID-19; and

(b) Administrative Judges further are to direct the setting of prompt hearings to be held on the next business day before any judge assigned to hear such matters, following the service of a warrant or body attachment for the following:

(1) technical or minor violations of probation,
(2) child support contempt matters,
(3) failure to pay costs or fines, or
(4) failure to appear, as appropriate; and

(c) Judges are encouraged, consistent with sections (e) and (f), to consider carefully the introduction of defendants into Maryland prisons, detention facilities, and other congregate placements; and

(d) Pursuant to Maryland Rules 4-216, 4-216.1, 4-216.2, and related statutory requirements, and in light of the risks posed by the COVID-19 pandemic, judges are to expedite the handling of motions for review of bonds, or body attachments in child support contempt matters, and shall hold hearings, as appropriate, for detained adults pending trial for a nonviolent criminal act or acts, or an alleged technical or minor violation of probation, or for contempt of a child support order; and

(e) In considering the release of adult defendants from pretrial detention during the COVID-19 emergency, in addition to other rule and statutory considerations, judges shall consider the following:

(1) whether the defendant suffers from a pre-existing condition that renders the defendant more vulnerable to COVID-19;

(2) whether the defendant displays COVID-19 symptoms or tests positive for COVID-19; and

(3) whether the facility in which the defendant is detained is able to address related medical issues; and

(4) whether a defendant who displays symptoms or tests positive for COVID-19, if released, has resources to meet basic food, housing, and health needs, including any period of quarantine that may be required; and

(5) whether the defendant presents a danger to an identifiable potential victim or the community; and

(6) whether there exists a condition or combination of conditions of pre-trial release that can reasonably protect against such danger; and

(7) whether release of the detained defendant during the COVID-19 emergency is in the interest of justice; and

(f) In determining whether to incarcerate a new defendant on a pretrial basis or order a defendant participating in a problem-solving court into a residential treatment program, judges shall consider carefully the following:

(1) whether there exist serious health risks posed by detention to the defendant, other detained individuals, staff, and the community before ordering a defendant to be detained; and

(2) whether the defendant presents a danger to an identifiable potential victim or to the community; and

(3) whether there exists a condition or combination of conditions of pre-trial release that can reasonably protect against such danger; and

(4) any additional circumstances specific to the defendant that affect the consideration of whether release of the defendant during the COVID-19 emergency is in the interest of justice; and

(g) In addition to the factors required by statute and the Maryland Rules to be considered in sentencing, judges shall consider the factors in (f) as relevant; and

(h) During the COVID-19 emergency, judges should consider the risk that COVID-19 poses to people confined in correctional facilities when taking into account all statutory requirements and relevant Maryland Rules in determining release conditions and the status of defendants pending sentencing and appeal; and

(i) Judges are to continue to act expeditiously to issue a ruling or schedule a remote hearing upon motion of any party to modify a sentence in light of the considerations related to the COVID-19 emergency; and

(j) Consistent with statutory requirements and reflecting the urgency caused by the COVID-19 pandemic, the aforementioned matters shall continue to be scheduled and heard on an emergency basis, either in person or remotely pursuant to the Administrative Order on Remote Electronic Participation in Judicial Proceedings, June 18, 2018, with emergency dockets to be created for this purpose as necessary; and

(k) To the extent that this Administrative Order conflicts with extant Administrative Orders, local administrative orders or policies, this Administrative Order shall prevail; and

(l) This Administrative Order will be revised as circumstances warrant.

/s/ Mary Ellen Barbera
Mary Ellen Barbera
Chief Judge
Court of Appeals of Maryland

Filed: April 14, 2020

/s/ Suzanne C. Johnson
Suzanne C. Johnson
Clerk
Court of Appeals of Maryland

Pursuant to Maryland Uniform Electronic Legal Materials Act
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Suzanne Johnson
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Suzanne C. Johnson, Clerk