

COVID-19 Criminal Justice Update (April 1, 2020)

COVID-19 Response Resource Center: Timely Counsel for your Business

By Daniel Adams on 04.01.2020

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With coronavirus infections multiplying exponentially around the globe, countries, states, and localities are taking action to slow the spread. This update does not attempt to recount all that has changed since my last post. In particular, I do not catalogue all the **state** and local stay-at-home orders that have been enacted—though the **North Carolina Judicial Branch's COVID-19 Resource Page** appears to have aggregated them all. Rather, I focus just on recent developments involving North Carolina state and federal courts and of particular interest to criminal justice practitioners.

NC State Courts

As reported earlier, Chief Justice Cheri Beasley previously entered an **order** extending filing deadlines and certain limitations periods in the trial courts through April 17, 2020. After some initial debate about whether Justice Beasley's order applied in the Business Court, Chief Business Court Judge Louis Bledsoe answered that question in the affirmative, by **order** entered May 23. There was no doubt that Justice Beasley's March 19 order did *not* apply to filings due in the appellate courts. Late last week, however, Justice Beasley entered another **order** extending all appellate court deadlines that fall between March 27 and April 30, 2020, for 60 days. The March 27 order also encourages electronic filing and credits back secure-leave scheduled in April and May 2020.

NC Federal Courts

The CARES Act and Expanded Video and Audioconferencing in Criminal Cases

One provision contained in the **CARES Act** passed by Congress permits the chief judge for each federal district to authorize, during the COVID-19 pandemic, the use of videoconferencing (and, where videoconferencing is unavailable, audioconferencing) for the following types of federal criminal proceedings:

- Detention hearings under 18 U.S.C. § 3142

- Initial appearances under Federal Rule of Criminal Procedure 5
- Preliminary hearings under Rule 5.1
- Waivers of indictment under Rule 7(b)
- Arraignments under Rule 10
- Probation and supervised release revocation proceedings under Rule 32.1
- Pretrial release revocation proceedings under 18 U.S.C. § 3148
- Appearances under Rule 40
- Misdemeanor pleas and sentencings under Rule 43(b)(2)
- Proceedings under the Federal Juvenile Delinquency Act, 18 U.S.C. Ch. 403; and
- Felony pleas and sentencings under Rules 11, 14, and 15, provided:
 - The local chief district judge finds that felony pleas and sentencings cannot be conducted in person without seriously jeopardizing public health and safety;
 - the district judge in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice; and
 - the defendant consents.

On March 31, 2020, the Judicial Conference of the United States made the prerequisite **finding of national emergency** and authorized chief judges to approve expanded video and audioconferencing. Some defendants already have asked to take advantage of these provisions, including **one of the defendants in the Varsity Blues prosecution** [paywall].

In North Carolina, the MDNC has entered **Standing Order 15**, finding a state of emergency and authorizing expanded videoconferencing (and, where videoconferencing is not available, audioconferencing) for all proceedings identified in the CARES Act. I have not yet seen similar orders in the WDNC or EDNC, but suspect they will be entered soon.

MDNC

Additionally, on March 30, 2020, the MDNC amended **Standing Order 13**. Under the amended order:

- All civil jury trials scheduled to begin before May 4 are continued and postponed pending further order of the court
- All criminal cases (including jury trials) are continued to a date on or after May 4, with such time excluded from speedy trial act calculations

- With respect to sentencings and supervised release/probation violation proceedings, each assigned judge will consider continuing such proceedings until after May 4 (I have already had one postponed to late June); “exceptional cases that may be considered for exemption from a continuance include those where a defendant may be considered to have served or over-served sentence”
- Individual judges may take such actions as lawful and appropriate to ensure fairness of the proceedings, the rights of the parties, and the protection of the public; in particular, Magistrate Judges may preside over initial appearances
- Taking into account the recent CARES legislation, each judge may conduct criminal proceedings, including felony change of plea and sentencings, once videoconference or audioconference capabilities are arranged
- As before, the grand jury proceedings for March remain canceled

WDNC

On March 26, 2020, Judge Conrad suspended all oral arguments on civil summary judgment motions. All such motions will be decided on the briefs until further notice.

Coronavirus in Jail and Prison Populations

Coronavirus has now made its way into a number of jails and prisons. As of this writing, New York City was reporting **281 confirmed cases** of COVID-19 among inmates and corrections officers. Multiple cases among inmates and/or corrections officers have been confirmed in at least each of New Jersey, Texas, California, Wisconsin, Illinois, Washington, Florida, and, now, **North Carolina**. In response, states and localities have released thousands of low-risk inmates to thin out jail populations and maximize flexibility for quarantining infected individuals. In North Carolina, Mecklenburg County has **released dozens of inmates** as part of an ongoing case-by-case analysis of who needs to be in custody. Finally, the Alaska Court of Appeals has ruled that the COVID-19 pandemic constitutes “changed circumstances” warranting reconsideration of a defendant’s bail conditions.

In the federal system, at least 28 inmates and 24 corrections officers have tested positive. After **one inmate died** of COVID-19, the **Bureau of Prisons** took the extraordinary step on March 31, 2020, of confining all inmates, nationwide, to their cells for 14 days, with limited exceptions for showers, commissary, and telephone calls. Defense attorneys across the country are filing compassionate release motions to try to get their clients out of prison. On March 26, Attorney General Barr issued a **memorandum** directing the U.S. Bureau of Prisons to prioritize use of home confinement as an alternative to incarceration for low-risk offenders during the COVID-19 pandemic. On March 27, over 400 former U.S. Attorneys, DOJ leaders, and attorneys **urged**

President Trump to release vulnerable individuals from federal custody. At least one federal judge has ordered the release of ten **ICE detainees**. And federal prosecutors agreed not to oppose a continuance of the report date for one parent in the **Varsity Blues case**, who now is scheduled to report on June 30.

For more information, last week, Jamie Markham of the UNC School of Government posted **FAQs about Coronavirus and the Correctional System**. Additionally, I catalogued many of these developments in a recent emergency release motion filed in the MDNC, and am happy to provide citations upon request.

Tags: CARES Act