

In the Indiana Supreme Court

In the Matter of Petition Requesting the
Indiana Supreme Court to Engage in
Emergency Rulemaking to Address the Issue
of Imprisoned Persons and the COVID-19
Crisis

Supreme Court Case No.
20S-MS-234



Published Order

On March 30, 2020, the American Civil Liberties Union of Indiana (“ACLU”) filed a petition alleging the 2019 novel coronavirus (“COVID-19”) threatens persons detained, jailed, and incarcerated in Indiana, and inviting this Court to engage in emergency rulemaking to facilitate release of such persons. Responses to the petition have been filed. The ACLU has tendered a reply, which this Court directs the Clerk to show filed as of its April 7, 2020 date of tender. The Court has reviewed the filed materials. Each Justice has had the opportunity to voice that Justice’s views on this matter in conference with the other Justices, and each has voted on the petition.

This Court has original jurisdiction in, among other things, supervision of the exercise of jurisdiction by the other courts of the State and issuance of writs necessary or appropriate in aid of its jurisdiction. Ind. Const., art. 7, § 4. In accordance with that jurisdiction, this Court “has authority to adopt, amend, and rescind rules of court that govern and control practice and procedure in all the courts of Indiana.” Ind. Code § 34-8-1-3. The petition seeks to invoke that original jurisdiction and rule-making authority.

The petition, however, asks this Court to request that the Indiana Department of Correction (“D.O.C.”) and county sheriffs take certain actions. A plea for such requests to non-court entities does not invoke this Court’s original jurisdiction and rule-making authority. Other parts of the petition ask this Court to order that trial courts take actions. Yet the ACLU accurately acknowledges that Indiana trial courts *already* have tools at their disposal to determine if pretrial detainees and convicted persons should be released from incarceration, Pet., ¶32, and it notes the need to act “consistent with existing law[.]” Reply, p.6. Statutes authorize, for example, suspension of all or part of a sentence or placement on probation for the suspended portion of a sentence as part of a post-conviction forensic diversion program under I.C. § 11-12-3.7-12; review of sentencing when a juvenile offender turns eighteen years of age, I.C. § 31-30-4-5; reduction or suspension of a sentence under I.C. § 35-38-1-17; home detention

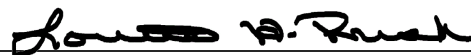
under I.C. § 35-38-1-21; and modification of a sentence of a person assigned to a community transition program, in accordance with I.C. § 35-38-1-25.

This Court has taken steps to address generally concerns expressed in the petition. The Chief Justice met with the Governor and the Leadership of the General Assembly. This resulted in issuance of a joint letter on April 3, 2020. The letter refers to proactive measures taken by the State's correctional facilities, which are also listed in the D.O.C.'s response to the petition. From the very beginning of the COVID-19 epidemic, many judges, sheriffs, prosecutors, local health officials, county representatives, public defenders, and other local justice partners took the initiative and worked together with each other to release low-risk, nonviolent juveniles and inmates to supervision within their communities. The letter encourages counties and communities, including courts, to review the population of local detention facilities and jails to identify which low-risk, nonviolent juveniles and inmates, if any, may be released safely into their communities under pretrial, probation, or community corrections supervision.

Further, the Court has issued emergency orders under Indiana Administrative Rule 17, one of which authorizes courts to review county-jail and direct placement community correction sentences of non-violent inmates and juveniles and, after consultation with a team comprising local prosecutors, a public defender, community corrections, the county sheriff, and local health authorities, to modify sentences to probation and take other action. *In re the Matter of Administrative Rule 17 Emergency Relief in the Indiana Trial Courts Related to the 2019 Novel Coronavirus (COVID-19)*, No. 20S-CB-123, p.2 (Ind. April 3, 2020). That order also helps regulate the number of those in jail by (1) limiting the circumstances in which courts may issue writs of attachment, civil bench warrants, or body attachments under Trial Rule 64 until the expiration of the public health emergency, and (2) stays service of those writs of attachment, civil bench warrants, or body attachments issued but not yet served prior to April 3, 2020, until expiration of the public health emergency. *Id.*

Finally, the ACLU states its understanding that many counties have already taken steps to reduce their jail populations, Pet., ¶27, and it recognizes the extraordinary steps being taken to protect Hoosiers, some of which have been highlighted by the responses. Reply, p.3. We applaud the efforts of all, including the D.O.C. and county criminal justice and health partners, who have collaboratively taken measures in response to the COVID-19 emergency and are examining or reexamining the status of those jailed or incarcerated in Indiana.

For all the reasons set out above, the Court DENIES the petition for emergency rulemaking.
Done at Indianapolis, Indiana, on 4/8/2020.



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.