

## **INSTRUCTIONS FOR COMPLETING FORM MOTION 5-801 “Pro Se Motion for Immediate Release Due to Public Health Emergency”**

This motion can be used to ask the court to reduce your sentence and allow early release because of the public health emergency caused by the coronavirus. This is different from a habeas corpus petition which requires showing that Corrections is showing deliberate indifference to your medical needs. However, you can pursue **both** a sentence reduction and a habeas corpus if you have grounds for both.

This form is mostly ready to file, but needs some personal details added by an individual defendant. You should be able to prepare and file this without a lawyer. You will need to follow these steps:

1. Fill in the court and case information at the top of the first page. This should be the original case you were sentenced in.
2. On Page 2, Section C, fill in details for any of the circumstances that apply to you. It is ok to leave some of them blank if they do not apply to you. It is also OK if none of them apply to you, but then you should write something in section (v) “Other” to explain why the Court should reduce your sentence. This might be about programming and good behavior while incarcerated, connections to family back home, or anything else you think makes you a good candidate for early release.
  - a. If you want to attach letters of support or certificates from programming in DOC, you can describe them in (v) “Other” and then just include them when you mail the motion to the court.
  - b. *Do not use this motion as an opportunity to challenge your convictions or assert your innocence. That is not what Rule 5-801 is for.*
3. On page 3, Section D, you just need to summarize your J&S. List the convictions and the sentence originally imposed. Then in Section E, put whatever DOC has calculated for your time served, remaining, and your projected release date.
4. Lastly, on page 10, you just need to sign your name, write your name and address (NMCD# and facility address) underneath that, and then sign the “service” certificate. You will need to mail copies of the motion to the district court clerk’s office where you were sentenced and the district attorney’s office who prosecuted the case originally. (Court and DA addresses appear on the next page.)
5. Remember to keep a copy for yourself.

## **District Courts**

1st Judicial District Court, Santa Fe  
P.O. Box 2268  
Santa Fe, NM 87504-2268

1st Judicial District Court, Rio Arriba  
P.O. Box 40  
Tierra Amarilla, NM 87575

2nd Judicial District Court  
Criminal Division  
400 Lomas Blvd NW  
Room 119, 1st Floor  
Albuquerque, NM 87102

3rd Judicial District Court  
201 W. Picacho Ave.  
Las Cruces, NM 88005

4th Judicial District Court, San Miguel County  
496 West National Avenue  
Las Vegas, NM 87701

4th Judicial District Court, Guadalupe County  
420 Parker Avenue, Suite 5  
Santa Rosa, NM 88435

5th Judicial District Court, Chaves County  
P.O. Box 1776  
Roswell, NM 88202-1776

5th Judicial District Court, Eddy County  
102 N. Canal, Suite 240  
Carlsbad, NM 88220

5th Judicial District Court, Lea County  
100 North Main, Box 6-C  
Lovington, NM 88260

6th Judicial District Court, Grant County  
PO Box 2339  
Silver City, NM 88062

6th Judicial District Court, Hidalgo County  
PO Box 608  
Lordsburg, NM 88045

6th Judicial District Court, Luna County  
855 S. Platinum  
Deming, NM 88030

7th Judicial District Court, Socorro County  
P.O. Drawer 1129  
Socorro, NM 88901

7th Judicial District Court, Sierra County  
P.O. Box 3009  
Truth or Consequences, NM 87901

7th Judicial District Court, Torrance County  
P.O. Box 498  
Estancia, NM 87016

7th Judicial District Court, Catron County  
(file in Socorro County)  
P.O. Drawer 1129  
Socorro, NM 88901

8th Judicial District Court, Taos County  
105 Albright Street, Suite N  
Taos, NM 87571

8th Judicial District Court, Colfax County  
1413 South Second Street,  
Raton, NM 87740

8th Judicial District Court, Union County  
100 Court Street, Suite 5  
Clayton, NM 88415

9th Judicial District Court, Curry County  
700 N. Main, Suite 11  
Clovis, NM 88101

9th Judicial District Court, Roosevelt County  
109 W. 1st Street  
Portales, NM 88130

10th Judicial District Court, Quay County  
PO Box 1067  
Tucumcari, NM 88401

10th Judicial District Court, DeBaca County  
PO Box 910  
Ft Sumner, NM 88119

10th Judicial District Court, Harding County  
PO Box 1002  
Mosquero, NM 87733

11th Judicial District  
McKinley County – Gallup District Court  
207 W. Hill Ave. 2nd Floor Room 200  
Gallup, NM 87301

11th Judicial District, San Juan County  
103 South Oliver  
Aztec, NM 87410

12th Judicial District Court, Otero County  
1000 New York Ave.  
Alamogordo, NM 88310

12th Judicial District Court, Lincoln County  
P.O. Box 725  
Carrizozo, NM 88301

13th Judicial District Court, Cibola County  
P.O. Box 758  
Grants, NM 87020

13th Judicial District Court, Sandoval County  
P.O. Box 600  
Bernalillo, NM 87004

13th Judicial District Court, Valencia County  
P.O. Box 1089  
Los Lunas, NM 87031

**District Attorneys Offices**

**FIRST JUDICIAL DISTRICT**

**Santa Fe, Los Alamos, and Rio Arriba Counties**

**Santa Fe County – Main Office**

P.O. Box 2041  
Santa Fe, NM 87504-2041

**Los Alamos County**

2500 Trinity Drive, Suite D  
Los Alamos, NM 87544

**Rio Arriba County**

P.O. Box 1209  
Española, NM 87532-1209

**SECOND JUDICIAL DISTRICT**

**Bernalillo County**

**Bernalillo County – Main Office**

520 Lomas NW  
Albuquerque, NM 87102

**THIRD JUDICIAL DISTRICT**

**Dona Ana County**

**Dona Ana County**

845 North Motel Blvd. 2nd Floor Suite D  
Las Cruces, NM 88007

**FOURTH JUDICIAL DISTRICT**

**San Miguel, Mora and Guadalupe Counties**

**San Miguel County – Main Office**

P.O. Box 2025  
Las Vegas, NM 87701

**Guadalupe County**

130 South 4th Street Suite 201  
Santa Rosa, NM 88435

**FIFTH JUDICIAL DISTRICT**

**Eddy, Chaves, and Lea Counties**

**Eddy County**

102 N. Canal Suite 200  
Carlsbad, NM 88220

**Chaves County**

400 N. Virginia Suite G-2  
Roswell, NM 88201

**Lea County**

100 N. Main-Lea County Courthouse  
Lovington, NM 88260

301 N. Dalmont

Hobbs, NM 88240

**SIXTH JUDICIAL DISTRICT**

**Grant, Luna, and Hidalgo Counties**

**Grant County – Main Office**

P.O. Box 1025  
Silver City, NM 88062

**Luna County**

108 E. Poplar St.  
Deming, NM 88030

**Hidalgo County**

300 Shakespeare St., Suite 1  
Lordsburg, NM 88045

**SEVENTH JUDICIAL DISTRICT**

**Socorro, Torrance, and Sierra Counties**

**Socorro County – Main Office**

P.O. Box 1099  
Socorro, NM 87801

**Torrance County**

P.O. Box 706  
Estancia, NM 87016

**Sierra County**

855 Van Patten Street  
T or C, NM 87901

**EIGHTH JUDICIAL DISTRICT**

**Taos, Colfax, and Union Counties**

**Taos County – Main Office**

105 Albright Street, Suite L  
Taos, NM 87571

**Colfax County :**

220 4th. Avenue  
Raton, NM 87440

**Union County**

100 Court Street, Suite 6  
Clayton, NM 88415

**NINTH JUDICIAL DISTRICT**

**Curry and Roosevelt Counties**

**Curry County – Main Office**  
417 Gidding Suite 200  
Clovis, NM 88101

**Sandoval County**  
P.O. Box 1750  
Bernalillo, NM 87004

**Roosevelt County**  
205 South Main Ave.  
Portales, NM 88130

**TENTH JUDICIAL DISTRICT**  
**Quay, Harding, and DeBaca Counties**

**Quay County – Main Office**  
P.O. Box 1141  
Tucumcari, NM 88401

**ELEVENTH JUDICIAL DISTRICT DIV. I**  
**San Juan County**

**San Juan County**  
335 South Miller Avenue  
Farmington, NM 87401

**ELEVENTH JUDICIAL DISTRICT DIV. II**  
**McKinley County**

**McKinley County**  
201 West Hill Ave., Suite 100  
Gallup, NM 87301

**TWELFTH JUDICIAL DISTRICT**  
**Otero and Lincoln Counties**

**Otero County – Main Office**  
Otero County Courthouse Room 101  
1000 New York Ave  
Alamogordo, NM 88310-6998

**Lincoln County**  
P.O. Box 893  
Carrizozo, NM 88301

**THIRTEENTH JUDICIAL DISTRICT**  
**Cibola, Sandoval, and Valencia Counties**

**Cibola County – Main Office**  
P.O. Box 637  
Grants, NM 87020

**Valencia County**  
P.O. Box 1919  
Los Lunas, NM 87031



STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT

STATE OF NEW MEXICO  
Plaintiff,

v.

NO. \_\_\_\_\_  
JUDGE \_\_\_\_\_

\_\_\_\_\_  
Defendant.

**Pro Se Rule 5-801 Motion for Sentence Reconsideration and  
Immediate Release Due to Public Health Emergency**

Defendant, Pro Se, moves this Court for immediate release pursuant to Rule 5-801 NMRA, in order to help prevent avoidable transmission of COVID-19, reduce public health costs, and reduce the risk of a broader health emergency in the community in which Defendant’s correctional facility is located. This motion is timely pursuant to New Mexico Supreme Court Order 20-8500-12 (Apr. 10, 2020), which ordered that “the deadline for filing a motion to reduce a sentence under Rule 5-801(A) NMRA may be waived by the court upon a showing of an extraordinary change in circumstances caused by the current public health emergency,” which is established by the grounds for the motion outlined below.

Defendant requests that this Court grant the motion, or, if opposed, hold an emergency hearing on the motion and allow the appointment of counsel and telephonic appearance by the parties for such hearing. In support of this motion, Defendant states the following:

**I. Defendant’s sentence should be reduced to permit immediate release to a place of relative safety.**

A. When a Corrections Department facility is faced with “contagious sickness,” the Legislature authorizes the Department to remove inmates to a “suitable place of security.”

NMSA 1978, § 33-2-29. This Court should use its authority under Rule 5-801 to achieve that same result.

B. As outlined below in Sections II-IV, the COVID-19 crisis is an extraordinary change in circumstances that puts all incarcerated people, as well as correctional employees, at increased risk of serious illness or death.

C. Defendant raises the following individual grounds for granting the motion:

i. Defendant is particularly susceptible to severe symptoms resulting from COVID-19:

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ii. The facility at which Defendant is detained exposes Defendant to potential risk and harm:

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iii. Defendant is a non-violent offender/held on a misdemeanor/probation violation:

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iv. Defendant is approaching his or her release date:



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v. Other:

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D. Defendant was originally sentenced to the following:

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E. Defendant has completed \_\_\_\_\_ of that sentence and has \_\_\_\_\_ remaining to serve (projected release date: \_\_\_\_\_).

F. If this Court orders, supervision upon release, such supervision need not require more than telephonic reporting to maintain contact with the court. Upon release, Defendant would live at the following address and comply with the Public Health Orders, including the stay-at-home order:

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G. Applying the discretion this Court had at initial sentencing, this Court can modify Defendant's sentence in a manner resulting in immediate release by:

- i. Suspending the remaining sentence and/or running sentences concurrently in manner resulting in time served and release to probation and parole supervision for up to five years, *see* NMSA 1978, § 31-20-5;
- ii. Mitigating the remaining sentence and/or running sentences concurrently in a manner resulting in time served with no remaining suspended time, resulting in release to parole supervision, *see* NMSA 1978, §§ 31-18-15(C) (parole authority), -15.1 (mitigation);
- iii. Suspend the remaining sentence and impose a sentence of community corrections instead, *see* NMSA 1978, § 33-9-9(B) (2013) (“At a sentencing hearing, if a judge of a court of competent jurisdiction determines that placement in community corrections is appropriate, the judge shall defer or suspend the sentence and, as a condition of probation, require an individual to serve a period of time in a community corrections program.”); or
- iv. At a minimum, this Court may order a temporary furlough, under conditions of house arrest, during the duration of the current pandemic, with an order to return to Corrections’ physical custody after public health orders requiring social distancing are lifted, *see State v. Guillen*, 2001–NMCA–079, ¶ 8, 130 N.M. 803 (observing that an inmate remains in constructive custody during a furlough and may be charged with the crime of escape for failing to return from a furlough).

H. There is no public safety rationale for continuing to detain Defendant in the wake of a public health emergency. Defendant’s continued detention increases the likelihood of exposure and spread of COVID-19 to Defendant as well as other detainees, jail personnel, and members of the public outside of the jail.

I. Slowing the spread of the virus is critical to the health and safety of our entire community as it is the only way to ensure the State has the necessary resources to care for those who do become ill.

**II. Continued detention constitutes cruel and unusual punishment.**

A. Holding Defendant in custody in the midst of a public health emergency without a particularized compelling need “constitute[s] a deliberate indifference” to the health of Defendant and the health of others in the community. *Cf. State v. Arrington*, 1993-NMCA-055, ¶ 11, 115 N.M. 559 (cruel and unusual punishment); *see also Estelle v. Gamble*, 429 U.S. 97 (1976); N.M. Const. Art II, Section 13; U.S. Const. amend. VIII.

B. It is cruel and unusual punishment to subject inmates to the substantial risk of contracting COVID-19, which would potentially constitute a death sentence for those infected. Incarcerated persons have a “clear and undisputed right” under both the Eighth Amendment to the United States Constitution and Article II, Section 13 of the New Mexico Constitution to be free from cruel and unusual punishment and not to be “expos[ed] ... to serious, communicable disease.” *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993) (“We have great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate’s current health problems but may ignore **a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year.**”) (emphasis added)

C. With respect to “infectious maladies,” the Court observed:

This was one of the prison conditions for which the Eighth Amendment required a remedy, **even though it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed.** ... Nor can we hold that prison officials may be deliberately indifferent to the exposure of inmates to a serious, communicable disease on the ground that the complaining inmate shows no serious current

symptoms.

*Helling*, 509 U.S. at 33 (emphasis added).

**III. The COVID-19 pandemic is a public health emergency.**

A. On March 11, 2020, the World Health Organization officially classified COVID-19 as a global pandemic. The Governor of New Mexico has declared that the spread of COVID-19 constitutes a public health emergency and, on April 07, 2020, extended the emergency order through at least April 30, 2020. *See* Executive Order 2020-004 (Mar. 11, 2020), <https://www.governor.state.nm.us/wp-content/uploads/2020/03/Executive-Order-2020-004.pdf>; Executive order 2020-022 (Apr. 07, 2020), [https://www.governor.state.nm.us/wp-content/uploads/2020/04/EO\\_2020\\_022.pdf](https://www.governor.state.nm.us/wp-content/uploads/2020/04/EO_2020_022.pdf).

B. On April 06, 2020, the Governor of New Mexico issued an executive order under her clemency powers to begin immediately releasing prisoners in the Department of Corrections in order to lessen the impact of the pandemic and the potential for spreading the virus. *See* Executive Order 2020-021 (Apr. 06, 2020).

C. The New Mexico Department of Health has prohibited all gatherings of more than one hundred people and the New Mexico Supreme Court Order restricts the number of people in a courtroom to fifteen. COVID-19 is highly contagious and deadly.

D. The spread of the virus is accomplished through both airborne mechanisms (sneezing), touching of surfaces that are contaminated, and most commonly through touching other humans carrying the virus. It then enters the body through the mouth, nose, or eyes and infects the respiratory system. There is currently no vaccine or cure.

E. The spread of the virus is overwhelming accomplished through asymptomatic carriers, who externally exhibit no signs of infection but are nonetheless able to spread the

virus throughout the population. *See* Kelsey Piper, “7 case studies that show how coronavirus spreads before you know you’re sick,” <https://www.vox.com/future-perfect/2020/4/3/21206392/presymptomatic-coronavirus-spread-symptoms>.

F. Half of all people with the virus may be asymptomatic or presymptomatic and over 80% of all infections may come from contact with individuals without symptoms. *See* Faye Flam, “Asymptomatic Coronavirus Carriers: How Contagious Are They?” <https://www.bloomberg.com/opinion/articles/2020-03-30/asymptomatic-coronavirus-carriers-how-contagious-are-they>; Alberto Nardelli & Emily Ashton, “Everyone In Iceland Can Get Tested for the Coronavirus. Here’s How the Results Could Help All of Us.” <https://www.buzzfeed.com/albertonardelli/coronavirus-testing-iceland>.

G. As our understanding of COVID-19 develops, we are beginning to learn that the circumstances of exposure are closely related to outcomes: the larger amount of virus that a person is initially exposed to, the higher likelihood that that person develops the most severe symptoms. *See* Joshua Rabinowitz & Caroline Bartman, “These Coronavirus Exposures Might Be the Most Dangerous,” <https://www.nytimes.com/2020/04/01/opinion/coronavirus-viral-dose.html>. In a prison or jail context, this creates a powder-keg situation, heightening the likelihood of widespread severe cases of COVID-19.

H. Slowing the spread of the virus is critical to the health and safety of our entire community as it is the only way to ensure the State has the necessary resources to care for those who do become ill.

I. The Centers for Disease Control and Prevention has specifically identified the following categories of people as at an especially high risk of developing severe and serious health complications if exposed to COVID-19:

- i. People over the age of 65;
- ii. People with Asthma;
- iii. People with Chronic Lung Disease;
- iv. People with Serious Heart Conditions;
- v. People who are Immunocompromised;
- vi. People with Severe Obesity;
- vii. People with Diabetes;
- viii. People with Kidney Disease undergoing dialysis; and
- ix. People with Liver Disease

“Groups at Higher Risk for Severe Illness,”

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>.

#### **IV. COVID-19 in Jails and Prisons**

A. Jails and prisons have a greater risk because of closer quarters, the proportion of vulnerable people detained, and scant medical care resources. According to one epidemiology professor, “If you wanted to set up a situation that would promote rapid transmission of a respiratory virus, you would say prison: it’s close quarters, unsanitary, individuals in frequent contact.” Daniel A. Gross, *“It Spreads Like Wildfire”: The Coronavirus Comes to New York’s Prisons*, *The New Yorker* (Mar. 24, 2020).

B. Experts predict that “[a]ll prisons and jails should anticipate that the coronavirus will enter their facility.” Evelyn Cheng & Huileng Tan, *China Says More than 500 Cases of the New Coronavirus Stemmed from Prisons*, *CNBC* (Feb. 20, 2020). In fact, because of similar vulnerabilities and close quarters, a jail in Chicago is now the largest-known source of infections in the country. *Coronavirus Live Updates: A jail in Chicago is now the largest-known source of U.S. infections*, *New York Times* (Apr. 8, 2020) (with only two diagnoses in late March, 238 inmates and 115 staff members tested positive as of Wednesday April 8, 2020, but the vast majority had not been tested).

C. In jails and prisons in parts of the country farther along the “curve,” jails are being called the “epicenters” of the crisis, with infection rates at least 800% of the population at large, and local hospitals are completely overwhelmed. *See* Julia Craven, “Coronavirus Cases are Spreading Rapidly on Rikers Island,” <https://slate.com/news-and-politics/2020/04/rikers-coronavirus-cases-increase.html>; Chuck Goudie, “Illinois prisoners sick with COVID-19 ‘overwhelm’ Joliet hospital,” <https://abc7chicago.com/health/illinois-prisoners-sick-with-covid-19-overwhelm-joliet-hospital/6064085/?fbclid=IwAR35cT1khUIH8nqN8Ei5v2z9aTIXm1YYUIS3d5mZmEuvMTkKZo4-KgU3OtU>.

B. Prison and jail populations have disproportionately high rates of pre-existing medical conditions that put them at a much higher risk of an extreme, adverse reaction to COVID-19. *See* Peter Wagner & Emily Widra, “No Need to Wait for Pandemics,” <https://www.prisonpolicy.org/blog/2020/03/06/pandemic/>

C. Jail guards and staff are particularly at risk of being exposed and spreading the virus. Lazaro Gamio, “The Workers Who Face the Greatest Coronavirus Risk,” <https://www.nytimes.com/interactive/2020/03/15/business/economy/coronavirus-worker-risk.html>. In particular, overcrowded jail populations overextend jail staff, increasing the probability of exposing prisoners to the virus from outside and also of spreading the disease from a closely-packed prison population back out into the community.

D. There is no public safety rationale for continuing to detain Defendant on the instant charges in the wake of a public health emergency. Defendant’s continued detention increases the likelihood of exposure and spread of COVID-19 to Defendant as well as other detainees, jail personnel, and members of the public outside of the jail. *See* German Lopez, *A coronavirus*

*outbreak in jails or prisons could turn into a nightmare*, VOX MEDIA, Mar. 17, 2020, <https://www.vox.com/policy-and-politics/2020/3/17/21181515/coronavirus-covid-19-jails-prisons-mass-incarceration>.

**V. Conclusion:** In order to keep Defendant safe from COVID-19 and to keep the community, correctional and court employees, and other inmates and members of the community safe, this Court should modify Defendant's sentence as outlined in Section I(G) of this motion and order Defendant's immediate release. If an emergency hearing is necessary to resolve a dispute between the parties, Defendant requests the appointment of counsel, telephonic appearance for all parties, and that the hearing be set as soon as possible.

Respectfully submitted:

/S/ \_\_\_\_\_  
Name, Address, Phone

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed to the District Attorney's Office on the day it was mailed to the District Court Clerk.

/S/ \_\_\_\_\_