



# Texas Criminal Defense Lawyers Association

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*Delivered via email Gwen.Sims@phs.hctx.net and Sherri.Onyiego@phs.hctx.net*

Gwen J. Sims, Med, RD, LD, Interim Executive Director

Sherri D. Onyiego, MD, PhD

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Dear Director Sims and Dr. Onyiego:

I am writing to address your recent recertification of the COVID-19 operating plan for Harris County courts. By letter dated January 9, 2021, you noted your concern for the spread of COVID-19 in our community, especially given the emergence of the UK COVID-19 variant. You recognized in your letter that “local conditions are currently not ‘conducive’ to public gathering for people from different households.” You concluded, however, that trials can proceed based on a risk assessment analysis, stating you understand that limiting trials results in the consequence of “limiting opportunities for due process to take place and the possible negative societal outcomes that might result. Thus, the risk of holding in-person proceedings may be lower than potentially increasing the number of young people and adults in justice-related congregate settings.” Your certification was submitted to the Texas Office of Court Administration and used as the basis for conducting in-person proceedings, including jury trials, in Harris County.

On behalf of the Texas Criminal Defense Lawyers Association (TCDLA) and the Harris County Criminal Lawyers Association (HCCLA), we thank you for seeking to protect the constitutional rights of those accused in criminal cases. Given our unique perspective and considering the instances in your January 9, 2021 letter, in which you highlighted the constitutional rights of defendants, we wanted to share with you the perspective of lawyers and individuals accused who are attempting to navigate the justice system during the pandemic.

Despite a serious overcrowding problem in the Harris County Jail, inmates generally are *not* demanding their constitutional right to a speedy trial. For those defendants whose cases have been called to trial during the pandemic, it is often against their will. In fact, TCDLA and HCCLA lawyer members have in several instances, at the instruction of their clients, filed motions for continuance that specifically waived the client’s right to a speedy trial. Moreover, a significant number of cases called to trial in Harris County involved defendants who were out on bond and not even incarcerated. Some of the cases forced to trial over the objections of defendants are misdemeanor cases, in which the accused is not normally even facing a jail sentence if convicted. Lawyers and their clients are being unwillingly pushed into literally life-threatening circumstances, when no one is demanding due process or a day in court of any kind. TCDLA and HCCLA believe the notion of inmates languishing in jail and demanding speedy trials is, for the most part, a false narrative.



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The irony is that defendants whose cases are called to trial in Harris County are often objecting on the ground that, due to the pandemic, it is uncertain whether minorities, parents of school children, and the elderly may show up for jury service — thereby denying the accused of their constitutional right to a jury selected from a “fair cross section of the community.” It is these valid constitutional concerns — together with the serious health and safety risks inherent in gathering people indoors when COVID-19 cases are on the rise and a new strain apparently poses an increased risk of transmission — that have led EVERY OTHER LARGE COUNTY IN TEXAS TO HALT JURY TRIALS AT THIS TIME.

To summarize: People in jail during the pandemic may be desperate to get out (and we would hope judges would reduce their bonds with appropriate conditions to make that possible), but they generally are *not* desperate for trial during the pandemic. With very rare exceptions, people out on bail have no desire to go to trial right now. They are not asserting their constitutional right to their day in court and they do not want to go to trial, because they are concerned for their safety, the safety of the parties, the safety of the community and the fairness of the proceedings under these historic circumstances.

Your recertification of the operating plan is not being used to ensure protection of constitutional rights, decrease the jail population, or resolve allegations of felony-grade crimes (since some of these trial cases are actually misdemeanors). TCDLA and HCCLA believe it is often being used as a sword to bring defendants, alleged crime victims, witnesses, lawyers and others to court against their will.

Our members have dedicated their lives to the protection and preservation of defendants’ constitutional rights, but our first concern is always the physical safety of our community, our members, and their clients. That is why we wanted to let you know that while we admire and deeply appreciate your consideration of those rights, please understand that your efforts are not advancing those rights and, in our view, may actually result in needlessly putting people in harm’s way. We know that you rightly weigh the risks of in-person gatherings against the reasons such gatherings are required. We simply wish to inform you of the limited benefit of continuing in-person trials. TCDLA and HCCLA respectfully ask that you re-consider whether local pandemic conditions are conducive to in-person proceedings of any type under any previously-submitted in-person operating plan for January and February 2021. Please feel free to contact the undersigned with any questions. Thank you.

Very Truly Yours,

Grant Scheiner  
TCDLA President, 2020-21

Mark Thiessen  
HCCLA President, 2020-21