

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF STATEWIDE RESPONSE) ORDER RE: MODIFICATION
BY WASHINGTON STATE COURTS TO THE)
COVID-19 PUBLIC HEALTH EMERGENCY) OF JURY TRIAL
) PROCEEDINGS
)
) No. 25700-B-631
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WHEREAS, Washington has been in a state of emergency since Governor Inslee’s proclamation on February 29, 2020, due to the novel coronavirus (COVID-19) pandemic, necessitating court-imposed restrictions on in-person proceedings, including the suspension of jury trials until at least July 6, 2020; and

WHEREAS, safely resuming jury trials will require modifications to court rules and procedures to allow for social distancing and compliance with public health protocols, to minimize the risk of coronavirus exposure by jurors, court personnel, litigants and the public; and

WHEREAS, in consultation with trial courts, public health officials, justice partners and coordinate branches of government, this Court convened a work group that produced a set of recommendations for modifying certain procedures and court rules to provide a framework in which courts may safely resume jury trials in both criminal and civil cases, and received Washington State Department of Health guidance specific to trial court operations; and

WHEREAS, the presiding judges across Washington need direction and authority to effectively administer their courts in response to this state of emergency, including authority to adopt, modify, and suspend court rules and orders as warranted to address the emergency conditions.

NOW, THEREFORE, pursuant to the Supreme Court's authority to administer justice and to ensure the safety of jurors, court personnel, litigants and the public,

IT IS HEREBY ORDERED:

1. Jury trials are necessary to the open administration of justice in Washington. Courts may commence new jury trials starting July 6, 2020 in courthouse facilities or offsite facilities, while observing social distancing and following the most protective applicable public health guidance in their jurisdiction. Before July 6, 2020, trials already in session where a jury has been sworn and such measures are in place may proceed or, at the discretion of the trial court or agreement of the parties, be continued to a later date.
2. Any process for summoning potential jurors must include the ability to defer jury service by those who are at higher risk from COVID-19 based on their age or existing health conditions, or those of a household member. However, no identified group may be per se excused from jury service on this basis. Consistent with the most protective applicable public health guidance in their jurisdiction, courts must advise potential jurors of circumstances under which they should not appear in person for jury service, for example current illness or recent coronavirus

exposure; and must advise them of the protective measures the court will follow, such as face masking and social distancing protocols.

3. Whether jury trial proceedings take place in courthouse facilities or offsite facilities, courts must conduct all such proceedings consistent with the most protective applicable public health guidance in their jurisdiction, and must communicate appropriate information about their protective measures through signage, website and social media posts, telephone messages or other publicly accessible appropriate means.
4. The use of remote technology in jury selection, including use of video for voir dire in criminal and civil trials, is encouraged to reduce the risk of coronavirus exposure. Any video or telephonic proceedings must be conducted consistent with the constitutional rights of the parties and preserve constitutional public access. Authorization for video-conference proceedings under CrR 3.4(d)(1) and CrR 3.4(d)(1) is expanded to include jury selection, though the requirement that all participants be able to simultaneously see, hear and speak to one another does not require that all potential jurors be able to simultaneously see one another.
5. Courts may allow the parties to stipulate off the record to hardship excusals of potential jurors, and may consider hardship excusal requests on the record by telephone or video conference means, so long as defendants in criminal matters can have continual, confidential communications with their counsel.
6. Notwithstanding any rule or procedure to the contrary, jury selection may occur in multiple phases of groups sized as appropriate based on consideration of location,

facility and applicable public health guidance. This may include individual questioning of potential jurors in groups. Courts are encouraged to record or create a script of information provided about the proceedings and the case, to ensure consistency among each potential juror group.

7. In the interest of reducing the size of jury panels, court rules providing for peremptory challenges to potential jurors are temporarily modified as follows:
 - a. CrR 6.4(e)(1) is modified to create a presumption of 3 peremptory challenges each for the state and defendant in all criminal cases; provided, however, that in prosecution for offenses punishable by imprisonment in the state Department of Corrections, the parties may request up to 6 peremptory challenges each, which the court has discretion to grant for good cause shown, so long as the same number is afforded to both the State and the defense. Each co-defendant remains entitled to one additional peremptory challenge.
 - b. CrR 6.5 and CrRLJ 6.5 are modified to eliminate the right to additional peremptory challenges for alternate jurors.
 - c. CR 47(b) and CRLJ 38(e) are modified to eliminate the right to additional peremptory challenges for alternate jurors. The court recognizes that the number of peremptory challenges available to each side in civil cases is set at 3 by RCW 4.44.130.

8. This order supplements the court's existing orders. However, where any provision of this Order may be interpreted to conflict with any provision of another Supreme Court order addressing the conduct of jury trials, this order shall control.
9. Nothing in this Order limits the authority of courts to adopt measures to protect health and safety that are more restrictive than this Order, as circumstances warrant. Courts are encouraged to move toward conducting as much court business as can be done consistent with public health and safety, in the interest of the fair and timely administration of justice.
10. The Supreme Court may modify provisions of this Order as required by the continuing public health emergency, and if necessary, will do so by further order. This Order and other applicable emergency orders may be deemed part of the record in affected cases for purposes of appeal without the need to file the orders in each case.

DATED at Olympia, Washington this 18th day of June, 2020.

For the Court


CHIEF JUSTICE