

IN THE POULSBO MUNICIPAL COURT

IN RE THE POULSBO MUNICIPAL COURT
AND THE PANDEMIC OUTBREAK OF THE
CORONAVIRUS DISEASE 2019 (COVID-19)

NO. 2020-5
EMERGENCY ADMINISTRATIVE
ORDER

1. THIS ADMINISTRATIVE ORDER is being issued in response to the current pandemic outbreak of the Coronavirus Disease 2019 (COVID-19). Washington has been “ground zero” for this disease. As of today, there are over 2221 confirmed cases of the disease in Washington, including 20 confirmed cases in Kitsap County.
2. On February 29, 2020, Washington State Governor Jay Inslee declared a state of emergency due to the public health emergency posed by the spread of the coronavirus disease 2020 (COVID - 19).
3. On March 4, 2020, Chief Justice Debra Stephens of the Washington State Supreme Court adopted Order No. 25700-8-602, granting emergency authority upon all Washington courts to adopt, modify, and/or suspend court rules and orders, and to take further actions concerning court operations, as warranted to address the current public health emergency that affects operations of trial courts in Washington State; and
4. On March 13, 2020, Washington State Governor Jay Inslee ordered the closure of all public and private K-12 schools.
5. On March 13, 2020 the City of Poulsbo issued a Proclamation of Local Emergency. The proclamation allows the City to use all resources necessary to prepare for and respond to an outbreak and to adjust City policies and operations.
6. On March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency.
7. On March 16, 2020 Washington State Governor Inslee ordered a prohibition of gatherings of over 50 participants.
8. On March 20, 2020, Chief Justice Debra Stephens of the Washington State Supreme Court adopted Amended Order No. 25700-B-607;

9. On March 23, 2020, Washington State Governor Jay Inslee issued Proclamation 20-25, ordering all residents to stay at home or at their place of residence except to conduct or participate in essential activities, and/or (2) for employment in essential business services, effective March 25-April 6, 2020.
10. On March 16, 2020 this Court adopted Emergency Administrative Order 2020-1 regarding the operations of Poulsbo Municipal Court in light of the COVID-19 pandemic, followed by Amended Emergency Administrative Order 2020-2, adopted on March 24, 2020.
11. On April 29, 2020, Chief Justice Debra Stephens of the Washington State Supreme Court adopted the Second Revised and Extended Order Regarding Court Operations, Order No. 25700-B-618.
12. On May 5, 2020, Washington State Governor Jay Inslee issued Proclamation 20-25.3 adjusting and extending Proclamation 20-25 through May 31, 2020, ordering all residents to stay at home or at their place of residence except to conduct or participate in essential activities, and/or (2) for employment in essential business services, and/or to participate in activities permitted by said proclamation.
13. On May 28, 2020, the Washington State Department of Health approved Kitsap County's variance application to fully implement Phase 2 of Governor Jay Inslee's Phased Approach to Reopening Washington Plan. Kitsap County remains in Phase 2, limiting gatherings to "no more than 5 people outside [one's] household per week", with customer-facing government operations being unpermitted until Phase 3.
14. On May 29, 2020, Chief Justice Debra Stephens of the Washington State Supreme Court adopted the Third Revised and Extended Order Regarding Court Operations, Order No. 25700-B-626.
15. On October 13, 2020, Chief Justice Debra Stephens of the Washington State Supreme Court adopted the Fourth Revised and Extended Order Regarding Court Operations, Order No. 25700-B-646. In this order, the Chief Justice recognized that "many court

facilities in Washington are ill-equipped to effectively comply with social distancing and other public health requirement and therefore continued in-person court appearances jeopardize the health and safety of litigants, attorneys, judges, court staff, and members of the public.”

Further, the Chief Justice also recognized that there needs to be a continued “coordinated response” among Washington courts in an effort to “prevent the further spread of COVID-19”, and therefore, “...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”. Accordingly, this Order permits local courts to adopt measures deemed necessary to protect health and safety, provided such measures are more restrictive than those contained in the Order, and provided local courts attempt to move towards conducting as much court business consistent with public health and safety.

16. The Poulsbo Municipal Court is a very small court, located within the Poulsbo City Hall, that requires litigants, attorneys, and court staff to work in extremely close quarters while attending court hearings. Social distancing is not possible at the Poulsbo Municipal Court. In order to promote the public health goals identified by public officials, and promote the health and safety of users and staff at the court, it is necessary to modify operations and reduce in-person attendance at the Poulsbo Municipal Court during the declared public health emergency.
17. Given the significant number of identified and projected cases of the disease in Washington, the severity of the risk posed to the public, the recommendations of the Washington State Department of Health and the Centers for Disease Control, the limitation of the Poulsbo Municipal Court, the Governor’s related Proclamations and Safe Start Plan, the requirements of Order No. 25700-B-646 and the authority granted by said Order, the current situation demands immediate action by the Poulsbo Municipal Court.

PURSUANT TO Order Nos. 25700-B-607, 25700-B-618, 25700-B-618, and 25700-B-646 of The Supreme Court of Washington, as Presiding Judge of the Poulsbo Municipal Court, in the interest of both public safety and public health during the COVID-19 public health crisis

NOW, THEREFORE, it is hereby –

ORDERED that effective immediately and until further Order of the Court –

1. All non-emergency civil matters, shall be heard by telephone, video, or other remote means, provided that they can be appropriately conducted by such means. Those matters that cannot be appropriately conducted via telephone, video, or other remote means that does not require in person attendance, shall be continued until March 1, 2021, or until further order of the court, whichever is later. The court retains the sole discretion to determine whether a matter can be appropriately conducted via telephone, video, or other remote means that does not require in person attendance. These matters include, but are not limited to the following:
 - A. Infraction hearings (both contested and mitigation). To effectuate any necessary continuances, IRLJ 2.6(a), (b), (d), (e), and (f) shall be suspended. The Court will continue to accept written statements submitted by mail or email pursuant to IRLJ 2.6(c).
 - B. Impound of vehicle or vessel hearings
 - C. Impound of animal hearings.
2. All emergency civil matters, including civil protection and restraining order matters, must be heard by telephone, video or other means that do not require in-person attendance, unless impossible. Where court matters must be heard in person, social distancing and other public health measures must be strictly observed.
 - A. Personal service of a petition for a protection order or temporary protection order is currently suspended, except as to orders directing the surrender of weapons or removal of the respondent from a shared residence. Personal service remains

preferred, and personal service by law enforcement is required for those cases, as determined by the court, where public or individual safety demands it. Where personal service is not required, service may be by law enforcement, including electronic service with acknowledgment by receipt, by process servers, by agreed service memorialized in writing, by publication or by mail. If parties have previously agreed to email service or opted into e-service in the case or other currently open related cases, service of temporary protection orders or reissuance/continuance orders by e-mail or e-service shall be sufficient. Before proceeding with a full hearing, the court shall require proof of service five days prior to the hearing.

- B. The court has discretion to set hearing dates and extend temporary protection orders based on circumstances to reasonably allow for sufficient notice, remote appearance, and presentation of evidence, while avoiding unreasonable delay. Statutory timeframes should be followed. Circumstances relevant to the setting of hearing dates include agreement of the parties, reasonable estimates for completing service, lack of prejudice, and specific findings of good cause, which may include restrictions in place due to the public health emergency. Reissuance orders may be similarly extended. The court may provide a means for weapons surrender hearings that does not require in-person appearance, only when consistent with public safety.
3. The court may enter ex parte no contact orders pursuant to 10.99.040, RCW 10.99.045, RCW 10.14.040, RCW 7.90.150, RCW 9A.46.085, and/or RCW 9A.46.040, when an information, citation or complaint is filed with the court, either by summons or warrant, and the court finds that probable cause is present for a sex offense, domestic violence offense, stalking offense, or harassment offense. Ex parte orders may be served upon the defendant by mail or by electronic means of service. This provision does not relieve the prosecution of proving a knowing violation of such an ex parte order in any prosecution for violating the order. Good cause exists for courts to extend ex parte orders beyond the initial period until a hearing can be held.

4. "I Can't Afford to Pay" criminal motions will be heard ex parte
5. The Court will allow telephonic or video appearances via Zoom for all scheduled criminal hearings, with the exceptions as provided elsewhere in this Order, through March 1, 2021, or until further order of the Court, unless impossible. For all hearings that involve a critical stage of the proceedings, the court will provide a means for the defendant to have the opportunity for private and continual discussion with his or her attorney.
6. All criminal trials are suspended until after March 1, 2021, or until further order of the court. For all criminal trials suspended under this provision, the new trial date after March 1, 2021 will be the new commencement date under CrRLJ 3.3.
7. All other criminal proceedings, other than those specified unless otherwise specified in this Order may proceed, provided that they can be properly conducted by telephonic or video means through Zoom. Those matters that cannot be appropriately conducted via telephonic or video means through Zoom, shall be continued until March 1, 2021, or until further order of the court, whichever is later. The court retains the sole discretion to determine whether a matter can be appropriately conducted through telephonic or video means through Zoom.
8. Arraignment on out of custody cases filed between March 16, 2020 and March 1, 2021, or until further order of the court, or the first appearance in court after that date may be deferred until a date 45 days after the filing of charges. Good cause exists under CrRLJ 4.1, to extend the arraignment dates. The new arraignment date shall be considered the "initial commencement date" for purposes of establishing the time for trial under CrRLJ 3.3 (c)(1), with the exceptions as provided elsewhere in this Order.
9. A continuance of these criminal hearings and trials is required in the administration of justice. Based upon the courts findings that the serious danger posed by COVID-19, along with the spatial restrictions of the Poulsbo Municipal Court, provides good cause

to continue criminal jury trials and constitutes an unavoidable circumstance under CrRLJ 3.3(e)(8), the time between the date of this court's first Order, March 16, 2020 and the date of the next scheduled trial date are EXCLUDED when calculating time for trial. CrRLJ 3.3(e)(3).

10. Zoom video hearings will be given priority over telephonic hearings, given the Court's inability to use the telephone to communicate with other personnel while a person is appearing telephonically. Telephonic hearings will be limited to those that do not require entry of a guilty plea, pre-trial diversion agreement, or sentencing. If a user is unable to appear by Zoom, the user must provide a telephone number to the clerk at the time of scheduling the hearing. The party must be available for the court to call for the duration of the scheduled calendar on the scheduled hearing date. The Court will telephonically contact individuals one case at a time after completing cases heard by Zoom. If the Court at the hearing is unable to contact a party choosing to appear telephonically, the hearing will be stricken.
11. Until further order of the Court, the Court will operate on an emergency modified court calendar via Zoom as follows:
 - A. The first and third Wednesday of each month, from 8:30-9:30AM, will be for out of custody pre-trial hearings where the defendant is represented by private counsel.
 - B. The second and fourth Wednesday of each month, from 8:30-9:30AM, will be for out-of-custody probation hearings where the defendant is represented by private counsel.
 - C. The first and third Thursday of each month, from 9:00-11:00AM, will be for out of custody pre-trial matters where the defendant is represented by the public defender.
 - D. The second and fourth Thursday of each month from 9:00-11:00AM will be for out of custody probation matters where the defendant is represented by the public defender.
 - E. The first and third Wednesday of each month at 8:15AM will be for contested

traffic hearings with counsel.

- F. Every Wednesday at 10:00AM will be the in-custody criminal calendar for private and public defense.
 - G. Every Wednesday at 10:30AM shall be for bench warrant quash hearings.
 - H. Every Wednesday at 11:00AM will be for arraignment matters, including those that are DUI and Domestic Violence returns.
 - I. Every Thursday shall at 11:00AM will be arraignment matters, not including DUI and Domestic Violence returns.
 - J. Civil matters permitted under this Order shall be heard Wednesdays at 11:30AM
 - K. Traffic matters, other than those contested hearings with counsel, permitted under this Order shall be heard the fourth Wednesday of the month at 1:30PM.
 - L. All other in-custody matters, such as new arraignments and warrant returns shall remain as previously scheduled for 10:30AM daily as needed.
12. Under this emergency modified schedule there will be no more than 10 cases heard per calendar as determined by the clerk, and once this limit has been reached the clerk will reset any other matters in accordance with the other provisions of this Order. The court retains sole discretion in the setting of these matters. However, priority in setting cases shall be as follows:
- A. Priority in setting out of custody cases within the 10 case limit will be given to:
 - i. Arraignments involving charges of domestic violence, DUI, Physical Control, violent offenses, sex offenses, harassment, or those with significant public safety concerns.
 - ii. Pre-trial and probation matters where the parties notify the court at least one week prior that there is an agreed resolution, per Section 15 of this Order
 - iii. Probation matters where there are new allegations of probation violations
 - B. Priority in setting in custody cases will be given to:
 - i. First appearances, arraignments, plea hearings, criminal motions, and

sentencing hearings.

- ii. Pretrial release and bail modification motions
- iii. Plea hearings and sentencing hearings that result in the anticipated release of the defendant from pretrial detention within 30 days of the hearing.
- iv. Parties are not required to file motions to shorten time in scheduling any of the matters in subsection (ii) and (iii) of this Section.

13. Motions for Pre-Trial Release:

- A. The court shall hear motions for pre-trial release on an expedited basis without requiring a motion to shorten time, but only if victims or witnesses can participate on an expedited basis. Const. Art 1 (section 35).
- B. The court finds that for those identified as part of a vulnerable or at-risk population by the Centers for Disease Control, COVID-19 is presumed to be a material change in circumstances, and the parties do not need to supply additional briefing on COVID-19 to the court. For all other cases, the COVID 19 crisis may constitute a “material change in circumstances” under CrR/CrRLJ 3.2(k)(1) and “new information” allowing amendment of a previous bail order or providing different conditions of release under CrRLJ 3.2(k)(1), but a finding of changed circumstances in any given case is left to the sound discretion of the Court.
- C. Parties may present agreed orders for release of in-custody defendants which will be signed expeditiously.
- D. If a hearing is required for a vulnerable or at-risk person as identified above, the court shall schedule such hearing within five days. The court is strongly encouraged to expedite hearings on other cases with due consideration of the rights of witnesses and victims to participate.

14. During this modified emergency calendar period, the emergency rules adopted in the Order shall remain in effect, including those regarding speedy trial and speedy arraignment.

15. Any cases wherein there is a case resolution (i.e. guilty plea, entry of pre-trial diversion agreements, entry of deferred prosecutions, compromise of misdemeanors) or where there is an agreed motion where the parties have reached an agreement short of resolving a case but desire to have a court order entered (i.e. modification of conditions of release, modification of other court orders such as sentences and commitments) which have not been scheduled by the court, or for which the parties seek to have heard on an earlier calendar may be scheduled at the discretion of the court with a minimum of one week notice to the court and subject to the terms outlined in Section 16 of this Order. Such hearings for out of custody matters may only be scheduled on Wednesdays for private counsel or Thursdays for the public defender. Such hearings for in-custody matters may be heard only on Wednesdays for both private and public counsel.
16. Any hearings authorized by Section 15 of this Order, shall be scheduled by the Prosecutor after consultation with defense counsel. The Court will not schedule any hearings authorized under Section 15 of this Order upon request of defense counsel. Defense counsel are not to contact the Court to schedule such a hearing.
17. Any out-of-custody criminal case for which counsel seeks an Emergency Motion to accelerate the court date, and for which the Prosecutor declines to schedule a hearing for pursuant to Section 15 of this Order, counsel may submit a written ex parte request which will be reviewed in chambers showing good cause for a hearing date to be accelerated from the continued hearing date. The Court will thereafter notify the party of the Court's decision. For the purposes of this Order only, "emergency" means "an unforeseen combination of circumstances or the resulting state that calls for immediate action."¹
18. The City of Poulsbo Prosecutor's Office and many of the law firms, including the contracted public defender are operating with limited daily personnel in their facilities. The Court is also operating with limited daily personnel in the building. The Court is instantaneously being re-designed from in-person hearings to Zoom video conferencing

¹ *Webster's Third New International Dictionary* 740 (2002) (emphasis added).

hearings with little advance preparation or notice. This transformation of the way the Court conducts business will take time to fully implement. Additionally, hearings held by telephone or video conferencing can be more time consuming than those in person. It will waste precious court resources to schedule hearings, including those authorized by Section 15 of this Order, and thereafter learn that the Prosecutor lacks their own resources to be prepared for a particular hearing or court date. It will also waste precious court resources to have hearings scheduled under this Order and not have the necessary paperwork or forms completed, signed and filed in advance. Accordingly, it is critical that all parties have fully communicated with each other in advance of all hearings authorized by this Order. All necessary paperwork, including forms, must be thoroughly prepared and completed in advance. Said completed paperwork for matters scheduled for the Wednesday calendars as provided for in this Order must be to the City Prosecutor's Office no later than noon the Monday prior to the hearing for Prosecutor approval and signature, and then filed with the Court by defense no later than noon on the Tuesday prior to the scheduled hearing, for matters scheduled for Wednesday calendars. For matters scheduled for Thursday calendars as provided for in this Order, completed paperwork must be to the City Prosecutor's Office no later than noon the Tuesday prior to the hearing for Prosecutor approval and signature, and then filed with the court by defense no later than noon the Wednesday prior to the scheduled hearing. Paperwork that does not comply with these deadlines may result in a required continuance, resetting, or striking of the scheduled hearing for the related case.

19. Counsel is highly encourage to utilize digital/electronic signatures per the Court's Emergency Order 2020-4, and to provide instruction to their client on how to affix digital signatures to documents, particularly prior to their hearing where they may be required to affix their signature on court documents, and/or during the hearing such as sentencing paperwork. Digital signature instructions can be found on the court's website at <https://cityofpoulsbo.com/poulsbo-municipal-court/>

20. The Court finds that obtaining signatures from defendants for orders continuing existing matters places significant burdens on attorneys, particularly public defenders, and all attorneys who must enter correctional facilities to obtain signatures in person. Therefore, this Order serves to continue those matters without the need for further written orders. Additionally:
- A. Defense counsel is not required to obtain signatures from defendants on orders to continue criminal matters through March 1, 2021 or by further order of the Court.
 - B. Courts shall provide notice of new hearing dates to defense counsel and unrepresented defendants.
 - C. Defense counsel shall provide notice to defendants of new court dates
21. The Court retains discretion to issue bench warrants for a defendant's failure to appear for court hearings or violations of conditions of release, consistent with Supreme Court Order 25700-B-646 and related court rules.
22. Bench warrant quash hearings will be conducted by telephone or video only. The defendant can schedule a bench warrant quash hearing no later than 3pm on Tuesday to be heard via video or telephonically on Wednesday at 10:30AM. Hearings will be set to be heard via video, unless that option is not feasible or available, and a telephonic hearing will be set. However, video hearings will take priority. The defendant must provide a valid telephone number and email address. The court will hold the hearing on the record in open court. During this hearing the defendant must provide a current and valid physical and email address.
23. Notices will be mailed to the parties of the next scheduled hearing date via US mail and/or via electronic mail if the court has the email on file. Any person needing to update their mailing address or email address should contact the court clerk at (360) 779-9846.
24. Defendants shall still be required to comply with any terms of probation.
25. The Prosecutor and Public Defender shall remain available and on-call through the duration of this Order.

26. Litigants and attorneys are encouraged to contact the Court concerning court dates.
27. All telephonic, video, or other hearings required to be public shall be recorded, with the recording preserved for the record.
28. Washington’s judicial officers have broad discretion “to preserve and enforce order in the courtroom and to provide for the orderly conduct of its proceedings.”² Accordingly, the Court adopts the following standards and requirements to ensure orderly and safe conduct in the courtroom, including those hearings conducted via telephone or Zoom:
 - A. In order to ensure that appropriate six foot social distancing occurs within Poulsbo Municipal courtrooms pursuant to this Order, the Court and its clerks may require any individual inside a courtroom to leave the courtroom until such time as their individual case is called for a hearing.
 - B. All persons coming into the courtroom are required to use hand sanitizer immediately prior to entering the court area. All individuals shall practice, the six-foot social distancing requirements as recommended by health experts. If you are sick, do not come to court; notify your attorney if you are represented. If you represent yourself, notify the court by phone (360) 779-9846, email (poulsbocourt@cityofpoulsbo.com), or fax (360) 779-1584 prior to your scheduled hearing.
 - C. Litigants and attorneys who feel sick should not enter the Poulsbo City Hall or Poulsbo Municipal Courtroom. Anyone deemed by the Court or staff to exhibit illness symptoms may be ordered to leave the building.
 - D. All attorneys appearing by Zoom shall wear professional business attire.
 - E. Litigants and non-attorneys shall wear appropriate dress. Sunglasses and offensive clothing shall not be permitted. Participants should dress as if they are present in a courtroom because they are present in a courtroom.
 - F. When appearing by Zoom, distractions must be minimized. All persons shall attempt

² *State v. Lormor*, 172 Wn. 2d 85, ¶12 (2011). “Just as trial court judges are permitted to exclude distracting individuals, they are permitted to impose reasonable restrictions on the public’s manner of entry so as to minimize the risk of distraction or impact on the proceedings” *State v. Gomez*, 183 Wn. 2d 29 ¶13 (2015).

to find a quiet location and prevent interruptions by children, a partner, pets, etc.

G. Upon entering a Zoom video courtroom, all participants will enter a waiting room until admitted into the proceedings by the Court. Participants shall remain in the waiting room and will be admitted when the Court is ready. All participants shall be on time and not leave the Zoom hearing or waiting room until the Court recesses or the litigant has been released by the Court.

H. During the Court Zoom session, participants shall not:

- i. Appear while driving a vehicle.
- ii. Appear from a bathroom.
- iii. Appear under the influence of alcohol, marijuana or other controlled substances.
- iv. Sleep or lay down
- v. Eat or Drink
- vi. Smoke or Vape
- vii. Engage in conversations with anyone else other than the attorneys or the Court.

29. The Court declines to engage in a *Bone-Club*³ analysis because the Courts are not closing courtrooms to the public.⁴

30. This Emergency Administrative Order covers all activities occurring within the Poulsbo Municipal Court, located in the Poulsbo City Hall, 200 NE Moe Street, Poulsbo, WA.

31. No part of this Order suspends the defendant's right to a public trial, or the general right of the public to be present at court proceedings under the constitutional provisions that require the open administration of justice.

32. This Order may be modified or extended as the Court continues to evaluate the impacts of the COVID-19 public health crisis on the safety of the public, Court partners, and

³ *State v. Bone-Club*, 128 Wn. 2d 254 (1995).

⁴ *Gomez, supra*.

employees.

33. The court offices will remain open via telephone, email, and fax. However, the court counters are closed until further notice.
34. This Order is effective October 30, 2020 will continue in full force and effect until terminated by separate order of the Court.
35. This Order supersedes the Poulsbo Municipal Court Emergency Administrative Order No. 2020-4 issued May 27, 2020.

Dated: October 30, 2020

A handwritten signature in black ink, appearing to read "Jeffrey L. Tolman", written over a horizontal line.

Jeffrey L. Tolman, Presiding Judge
Poulsbo Municipal Court