

**IN THE MUNICIPAL COURT OF THE CITY OF BELLINGHAM
WHATCOM COUNTY, WASHINGTON**

IN THE MATTER OF
STATEWIDE RESPONSE
BY STATE COURTS TO
THE COVID-19 PUBLIC
HEALTH EMERGENCY

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TEMPORARY
ADMINISTRATIVE ORDER
No. 2021-03

The Court, being fully informed, hereby issues the following FINDINGS:

1. The Court hereby incorporates all findings in Bellingham Municipal Court Temporary Administrative Orders No. 2020-01, 2020-02, 2020-03, 2020-04, 2020-05, 2020-06 (as amended), 2020-07, 2020-08, 2021-01, and 2021-02.
2. The Court hereby incorporates all findings in Washington Supreme Court Order No. 25700-B-606, Second Administrative Order No. 20-2-00001-37, Second Revised and Extended Order Regarding Court Operations No. 25700-B-618, Third Revised and Extended Order Regarding Court Operations No. 25700-B-625, Order Re: Modification of Jury Trial Proceedings No. 25700-B-631, and Fourth Revised and Extended Order Regarding Court Operations No. 25700-B-646.
3. While there has been a significant decline in COVID-19 infections in recent weeks, the pandemic continues and new variants present a risk of a "fourth wave" of infections. As of April 7, 2021, the Bellingham Herald reports Whatcom County has experienced 7,416 confirmed cases and 88 related deaths linked to Covid-19, and the infection rate has declined to 19.9 new cases per day.
4. Vaccines are now available to most high-risk individuals and will soon be available to every adult. However, becoming fully vaccinated currently requires, for two of the three available vaccines, two shots spaced weeks apart followed by additional weeks, a process that may take five to six weeks. Even when fully vaccinated, existing vaccines are less than 100% effective and many individuals who are eligible to be vaccinated have declined to do so.
5. Whatcom County is currently in Phase 3 of Governor Inslee's "Healthy Washington Roadmap to Recovery" plan. Under the plan, many local businesses are gradually being allowed to reopen but with limited capacity and protective measures to ensure public safety.
6. Paragraph 23 of Supreme Court Order No. 25700-B-646 recommends courts follow the "most protective public health guidance" and authorizes courts to adopt measures that are "more restrictive" than that Order, including "extending as necessary the time frames in this Order." Given hazardous local

conditions described above, continued closure of the Bellingham Municipal Court Building, subject to limited and carefully controlled exceptions, remains necessary for public health and safety.

7. After over one year of pandemic conditions and related countermeasures by the Court, the Court has determined that most hearings can be effectively conducted by phone, mail or video communications without risking the transmission of this highly contagious virus. However, criminal trials require personal appearance by the parties and others, including attorneys, defendants, witnesses, victims, interpreters and security personnel.
8. Members of the public are currently able to view all court proceedings via the Court's website on a public YouTube channel and may, upon request, obtain copies of the electronic recordings of court proceedings.
9. In order to accommodate and balance the rights to a jury trial, due process, public trial, and other related constitutional rights against the needs to protect participants and the public from potentially mortal danger, the Court has carefully crafted guidelines for trials, including jury trials, tailored to the specific circumstances present in the Bellingham Municipal Court Building. Those procedures are attached hereto, but may be amended or modified, as circumstances require, by a judicial officer.
10. In considering whether trials should be reconvened in person but without potential audiences physically present, the Court considered the factors set forth in State v. Bone-Club, 128 Wn.2d 254 (1995). The "right to open proceedings is not absolute," but closure is only appropriate under "rare circumstances." Id. at 258 (citations omitted). These trials are being conducted under the rare circumstance of a global pandemic that has killed over half a million Americans and many more people internationally. The proceedings can be viewed via the Court's public website, and therefore public access is curtailed, but not closed. There is a compelling public interest in ensuring that all court participants can participate freely and safely without increased risk of contracting Covid-19. The Court finds the public interest in physical access to the courtroom is outweighed by the compelling interest in preventing the increased risk to the lives and health of the public, jurors, defendants, witnesses, victims, attorneys, security personal, and court personnel during this deadly pandemic. Bone-Club, 128 Wn.2d at 260, also requires courts to consider alternatives to closure and narrowly tailor any closure order. While spectators are ordinarily welcome to observe the proceedings in person, they do not actually participate in the proceedings and can observe those same proceedings from a safe location via the internet. Permitting trials to go forward while allowing the public to observe from a safe location via the internet is the least restrictive means to accommodate the interest in a public trial without endangering its participants and others, including the public. It also comports with emergency orders from the Washington Supreme Court described above. Without such limitations, trials could not be conducted with any reasonable degree of safety, which would necessitate additional delays to the detriment of the right to a speedy trial. Bone-Club, 128 Wn.2d at 258, also requires that anyone present during a closure motion be given the opportunity to object to closure. While no formal motion for closure has been made, the Court will consider any objections to closure, via motion or correspondence, on a case-by-case basis.

The Court, therefore, hereby issues the following emergency orders:

1. **INCORPORATION OF PRIOR ORDERS.** All emergency orders set forth in Temporary Administrative Order 2020-04, 2020-05, 2020-06 (as amended), 2020-07, 2020-08, 2021-01 and 2021-02 remain in effect, subject only to the changes set forth below.
2. **BUILDING CLOSURE.** The Bellingham Municipal Court Building will remain closed to the public until at least July 1, 2021, subject to the exception for trial participants set forth below. This Order does not prohibit executive branch agencies located in the Building, such as the public television station, prosecutor's office, and information technology offices, from operating as they deem appropriate in their respective offices.
3. **TRIAL CALENDAR REOPENING.** Effective May 1, 2021, bench and jury trials, other than stipulated bench trials that do not involve witnesses, may be conducted in person, with the public viewing proceedings via the internet, as set forth in the trial procedures attached hereto. Any objections to closure may be heard on a case-by-case basis.

DATED this 14 day of April, 2021.



DEBRA LEV,
Presiding Judge

TRIAL PROCEDURES DURING COVID-19

1. **Initial Jury Screening and Check-in.** Persons who have been selected by the Whatcom County courts to be potential jurors in Bellingham Municipal Court will first be screened for Covid-19 symptoms and advised of mask and safety requirements at the Whatcom County Courthouse pursuant to the "Whatcom County Covid-19 Jury Check In and Orientation Plan." Potential jurors who are not excused during the initial screening at the Whatcom County Courthouse will proceed to the Bellingham Municipal Court Building (hereinafter the "Building.")
2. **Weapons screening.** Potential jurors and all other courthouse visitors, other than law enforcement officers, will complete weapons screening at the entrance to the Building.
3. **Participants.** Unless ordered by a judicial officer, only the following people are permitted to enter the Building during a trial: Jurors and potential jurors, witnesses, court-appointed interpreters, alleged victims, victim advocates, defendants, defense attorneys and paralegals, prosecutors and prosecution employees, law enforcement officers, corrections deputies, security officers, court staff, judicial officers, and City of Bellingham employees performing maintenance or other necessary services. This limitation does not apply to the ITSD, public television, or city prosecutor's offices. Proceedings of all court proceedings, including trials, may be viewed by the public without charge via the Court's website (www.cob.org) and electronic recordings are available upon request.
4. **Masks.** Masks will be worn at all times in the Building, except as ordered by a judicial officer for good cause so that the trial may proceed appropriately and safely. Masks will be provided to any jurors or participants upon request. Masks must be worn in an appropriate manner, including covering the mouth and nose.
5. **Health screening.** Every person entering the Bellingham Municipal Court Building, other than those already screened during the Initial Screening and Check-in on the same date, shall have their temperature checked and complete a health questionnaire daily. The Court Administrator or her designee may direct any person exhibiting signs of Covid-19 symptoms to wait outside of the Building until notified by the Court.
6. **Jury Selection.** Voir dire and jury selection shall occur in Courtroom 1.
7. **Trial location.** All jury trials and most bench trials will take place in Courtroom 2. Jurors will take breaks in the courtroom.
8. **Seating.** Trial participants will have assigned seats to facilitate and comply with appropriate social distancing.
9. **Restrooms.** Jurors and other trial participants will use the restroom as directed by court staff. Only one person at a time may visit a restroom.
10. **Attorney-client conferences.** Attorney-client conferences during trial will take place outside of the courtroom, out of hearing distance of the jury.
11. **Jury waiting area.** If it is necessary for the jury to be removed while legal or other issues are resolved by the judicial officer in Courtroom 2, jurors will be directed to wait in the lobby or in Courtroom 1 and will be escorted by court staff.
12. **Jury deliberations.** Jury deliberations will occur in Courtroom 2. Jurors will be provided bottled water but, due to health concerns, the Court is not able to provide meals. Jurors are welcome to bring their own meals to consume during deliberations or as needed due to health conditions.

13. **Accommodating disabilities.** Any requests for accommodations due to disabilities or similar concerns should be made known to court staff or judicial officers at the earliest opportunity.