

**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. 2020-07

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, and 2020-06 (as amended).
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. The Court is attempting to facilitate jury trials at the earliest opportunity consistent with public health requirements during this pandemic. However, the Court has limited courtrooms, restrooms, elevators, and other physical spaces to meet social-distancing requirements, staff operating under difficult circumstances due to the pandemic, as well as constitutional mandates such as public access and the right to confront witnesses. The Court has increased the number of courtrooms in use for many calendars in order to promote social distancing and facilitate telephonic hearings, which require more time and personnel than live hearings. These changes require accommodations and have caused additional delays in holding jury trials, which would utilize the same courtrooms. To facilitate maximum flexibility to adapt to changing circumstances, specific jury trial procedures will be set forth in a separate document.
4. The Covid-19 virus continues to pose a clear and present danger to the safety of courthouse visitors and staff. As of October 15, 2020, the Washington Department of Health indicated that, in Whatcom County, there were 1,489 cases of Covid-19 and 49 related deaths, with a mortality rate of 3.3%, according to the Bellingham Herald. Health officials have mandated mask use, encouraged social distancing, and discouraged gatherings of large numbers of individuals, which is typical for calendar sessions in this Court.

5. The Court is committed to ensuring rights to public court proceedings while protecting the safety of all participants and the public. The Court has requested and received authorization for technology to broadcast live from the courtroom during jury trials, which will facilitate a public trial while protecting the public from infection. This technology is currently being tested. The Court is also working to develop procedures to ensure compliance with the applicable laws and Washington Supreme Court orders regarding court proceedings, particularly jury trials.
6. Due to the large and growing backlog, caused by the pandemic, of criminal cases that require jury trials, coupled with the need to comply with state health directives and orders from the Washington Supreme Court, restricted by limited facilities and available calendars, and the upcoming holidays (Veteran's Day, Thanksgiving, Christmas and New Year's), it is extremely difficult to set and hear multiple jury trials, particularly multi-day jury trials, without disrupting other scheduled calendars, during the next two months. The Court will attempt to hold such trials as technology and schedules allow, but it is not possible to accommodate the increased demand for jury trials without unavoidable delays.
7. The Court is making exceptions to comply with the Americans with Disabilities Act as needed, including permitting limited in-person hearings. The Court has heard cases in person to ensure due process for hearing-impaired defendants.
8. The public health emergency and local conditions constitutes unavoidable and unforeseen circumstances affecting the right to trial beyond the control of the Court and the parties, as set forth in CrRLJ 3.3(e)(8). The Court is attempting to facilitate jury trials at the earliest opportunity. However, due to the number of cases, procedural and health requirements, and limited facilities, further delays are unavoidable.
9. Written waivers of speedy trials have proven particularly difficult to obtain under current circumstances. The mail is less than fully reliable. Many defendants, including those who have yet to obtain counsel, lack reliable mailing addresses or lack internet access to the Court's website, and therefore cannot obtain the requisite form. Even after verbally indicating their desire to waive speedy trial in court, many fail to send in written waivers or send them to the wrong court. Finally, written documents transmitted by hand may increase the risk of infection.
10. 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 local conditions described above, such extensions are necessary and additional public health measures will remain in effect.

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

1. **INCORPORATION OF PRIOR ORDER.** All emergency orders set forth in Temporary Administrative Order 2020-04, 2020-05, and 2020-06 (as amended) remain in effect, subject only to the changes set forth below.
2. **THE BELLINGHAM MUNICIPAL COURT BUILDING** will remain **CLOSED TO THE PUBLIC** until such time as the Court determines it to be safe to reopen under Washington Department of Health guidelines. Day-to-day court hearings will continue telephonically and/or by video until further notice. However, the

Courthouse will temporarily open for scheduled jury or bench trials for criminal defendants, witnesses, attorneys, jurors, security officers, victims and court-appointed interpreters, and as otherwise directed by a judicial officer in extraordinary circumstances. The public may view court proceedings live online using the Court's website, and copies of electronic recordings remain available without cost. All persons entering the Bellingham Municipal Court Building shall comply with all applicable health and safety policies and all specific jury trial procedures set forth in a separate document forthcoming.

3. **TRIAL CALENDAR REOPENING AND EXCLUSION OF TIME FOR TRIAL.** Due to the above findings, and pursuant to CrRLJ 3.3(e)(8) and paragraph 23 of Supreme Court Order No. 25700-B-646, speedy trial time is excluded until December 15, 2020 in all criminal cases. After November 15, 2020, jury and bench trials may proceed as set unless the Court determines it is unsafe or unable to do so, or for such other reasons as provided by law.
4. **WAIVER OF SPEEDY TRIAL.** A defendant, or their attorney, may verbally waive the defendant's right to a speedy trial on the electronic record in lieu of the written waiver provided for by CrRLJ 3.3(c)(2)(i). The new commencement date shall be the date of the waiver unless stated otherwise on the record.
5. **SCOPE.** Areas and persons in entities located in the Bellingham Municipal Court Building but outside of the Court's physical space, such as Information Technology, the City Attorney's Office (Criminal Division), and public television, are beyond the scope of this Order.

DATED this 20 day of October, 2020.



DEBRA LEV, Presiding Judge