

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON AND FRANKLIN COUNTIES

IN RE THE MATTER OF)	
THE RESPONSE BY)	Nos. 20-2-00001-03 (BCSC)
BENTON & FRANKLIN)	20-2-50001-11 (FCSC)
SUPERIOR COURT TO THE COUNTIES)	
PUBLIC HEALTH EMERGENCY)	EMERGENCY ORDER #5H ¹
IN BENTON & FRANKLIN COUNTIES)	<i>Re: Jury Trial Excluded Period</i>
AND THE STATE OF WASHINGTON)	<i>For Criminal Trials and Suspension</i>
)	<i>of All Jury Trials through</i>
)	<i>February 1, 2021</i>
)	Effective: December 31, 2020

The public health emergency in Washington State posed by the coronavirus 2019 (COVID-19) continues to evolve and requires modification of prior Orders of this Court. The Court has in mind the factual record of prior Emergency Orders and incorporates the same by reference. In particular, the Court has in mind the following guidance from the judicial and executive branch:

1. Washington Supreme Court Order No. 25700-B-626, AMENDED THIRD REVISED AND EXTENDED ORDER REGARDING COURT OPERATIONS , entered May 29, 2020, Order No. 25700-B-631, ORDER RE: MODIFICATIONS OF JURY TRIAL PROCEEDINGS, entered June 18, 2020, Order No. 25700-B-642, ORDER EXTENDING EXCLUDED PERIOD IN CALCULATING TIME FOR TRIAL, AND ADOPTING RELATED EMERGENCY MEASURES, entered September 10, 2020, and Order No. 25700-B-646, FOURTH REVISED AND EXTENDED ORDER REGARDING COURT OPERATIONS, entered October 13, 2020.²
2. Washington State Department of Health (Hereinafter DOH) COVID-19 and Washington State Courts Public Health Risk Reduction Recommendations, amended August 4, 2020 and further revised on August 28, 2020. Guidance from the Centers for Disease Control and Prevention (hereinafter “CDC”), as revised and amended on September 21, 2020 and October 5, 2020.

¹ While this Order is of general application, it has been given this number to reflect its unique impact on the rights of parties in criminal proceedings.

² The Order states that this Court, “[a]fter October 15, 2020, may further exclude time under these rules based on “individual findings of unavoidable circumstances” due to COVID-19 or other circumstances.” This Court, comparing this provision with prior orders, where the qualifying word “individual” is not present, has in previous orders assumed that the Court is now required to make findings in individual cases, as opposed to the prior ability to exclude time in all pending matters based on the public health emergency. The actions of other Superior Courts, some of which have previously excluded the same period of time from speedy trial, would appear to be consistent with the original broad authority. This Court will proceed henceforth, where such findings are appropriate, in the alternative.

<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (accessed September 28, 2020), *also see* revisions at, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (accessed October 5, 2020).

3. The Governor’s “Safe Start” Program as a part of Washington State’s Coronavirus Response page <https://coronavirus.wa.gov/what-you-need-know/safe-start/whats-open-each-phase> (accessed September 28, 2020).

The Court also has in mind the following factual history:

4. Benton and Franklin County have, as of October 13, 2020, been advanced to Phase 2 of the Governor’s phased reopening plan (“Safe Start”), while long-term care facilities remain in Phase 1. However, infection rates both locally, statewide, and nationally, as of the date of this order, have again risen, with what has been termed a “third wave” of infection locally currently is more than any prior peak in the 14-day rolling average, and it is reasonable to believe that the results of Christmas holiday-related personal contacts and resulting infections are not yet reflected. *See* Benton-Franklin Health District, https://www.bfhd.wa.gov/programs_services/investigations_outbreaks/covid-19/benton-franklin_case_count (accessed December 29, 2020). As a result of this local and statewide infection rate spike, which “puts us in a more dangerous position as we were in March,” Governor Inslee announced statewide restrictions, beginning November 18, 2020, and lasting until Monday, December 14, 2020. <https://www.governor.wa.gov/news-media/inslee-announces-statewide-restrictions-four-weeks> (accessed November 21, 2020). Therein, indoor activities are restricted to slow the spread of the virus. On December 10, 2020, Governor Inslee extended these restrictions until January 4, 2020, and on December 21, 2020, the Governor imposed additional travel restrictions to address potential spread of a new variant of the virus. On December 30, 2020, Governor Inslee extended the activity restrictions an additional week to January 11, 2020.
5. The Washington State Department of Health 7-day rolling average of Confirmed cases has only continued to increase since October 13, 2020, the date on which the Washington Supreme Court excluded time for trial through at least October 15, 2020. *See* Wash. State Dept. of Health Epidemiologic Curves. <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard> (accessed December 29, 2020). This state-wide “third wave” currently is also more than double any prior peak in the 7-day rolling average, and the chart makes clear that cases from the last 10 days may not yet be reported, and thus not accounted for on the graph.
6. Significant numbers of jurors, called for service as a precautionary measure during October and November, have expressed concern regarding a risk to their health from potential jury service. The Clerks of the Court in the

Counties of this Judicial District have reported the following returns on jury summons, which they both indicate are markedly lower than traditional rates of return prior to the present emergency.

Benton County - 2020 - (Jurors Summoned/Jurors Confirmed³)

March	-	1,800	/	596
April	-	1,799	/	392
May	-	1,800	/	761
June	-	1,798	/	738
July	-	1,799	/	698
August	-	900	/	330
September	-	1,800	/	660
October	-	1,800	/	705
November	-	2,700 ⁴	/	836

Franklin County - 2020 - (Jurors Summoned/Jurors Confirmed)

March	-	2,000	/	310
April	-	2,000	/	179
May	-	1,000	/	155
June	-	1,000	/	109
July	-	1,000	/	139
August	-	1,000	/	138
September	-	1,000	/	140
October	-	1,000	/	161
November	-	1,500 ⁵	/	228

7. The majority of counsel and parties on all dockets, including Criminal Dockets in both Counties, continue to appear by telephone or Videoconference, or to avoid any appearance by stipulations and agreements available to them under emergency rules currently in place.

NOW, THEREFORE it is hereby **ORDERED**, pursuant to the authority of Washington Supreme Court Order No. 257000-B-631, No. 25700-B-626, Order No. 25700-B-642, and Order No. 25700-B-646 and the authority as the Presiding Judge of Benton & Franklin Counties, that the following shall be in effect:

³ A confirmed juror may subsequently be excused or deferred if appropriate and do not reflect the anticipated number of jurors that would appear for selection. The “no-show” rate for confirmed jurors is estimated to be 25% for Benton County, and 35% for Franklin County, according the respective Clerks of the Court.

⁴ Summons are sent approximately 6 weeks prior to the anticipated dates of juror service.

⁵ The number of juror summons sent on November 30, 2020 was not available. Summons are sent approximately 6 weeks prior to the anticipated dates of juror service.

A. Findings (Excluded Period/Continued Suspension of Jury Trials): The Court has in mind the factual and procedural recitation in this and other Orders, and considers both the emergency broadly, and its particularized effect in this Judicial District. The Court concludes that, based on the current infection rates Nationally, State-wide, and in this Judicial District, Jury Trials cannot safely proceed at present, have not and could not have safely proceeded in the month of November, and cannot reasonably be expected to proceed until, at the earliest, February 1, 2021. The exclusion of such time is necessary in the interests of justice to allow for the protection of the health of the public during the current emergency, including members of potential juries. This rule will assure, to the greatest reasonable extent possible, that jury trials will be conducted in a manner consistent with the rights of the accused, as well as victim's rights, in a criminal matter, and that, in all matters, the health and safety of all participants is protected, particularly including those jurors called and those jurors empaneled. The Court finds that, pursuant to Order No. 25700-B-646, FOURTH REVISED AND EXTENDED ORDER REGARDING COURT OPERATIONS, entered October 13, 2020, the exclusion of time is necessary to allow for a reduction in the infection rate are necessary to respond to the "third wave" and thus are "unavoidable circumstances" due to COVID-19 and are thus excluded pursuant to CrR 3.3(e)(3) and JuCR 7.8(e)(3).

1. The court finds that, the factual recitation in past and present emergency orders, and particularly considering the epidemiologic curve referenced above, the time for trial during the period between November 1 and February 1, 2021 is excluded in all criminal matters in the District, both in the juvenile and adult divisions, also in the alternative;

2. To the extent that above referenced order of the Supreme Court of the State of Washington requires the general finding above to be reduced to "individual findings" in each case, this court will, if appropriate, make such findings, upon request of a party where an issue regarding the remaining time for trial is raised.

3. The court finds that the present rates of infection make holding a jury trial in either county an unreasonable risk to the public, and no jury trial will be held earlier than February 1, 2021.

B. Incorporation Into The Record: As with all prior Orders of the Supreme Court of Washington, and prior orders of this Court, this Order is deemed part of the record in affected cases for the purposes of appeal without the need to file this order in each case.

Dated at Kennewick, Washington, this 31st day of December, 2020.



Carrie Runge, Adm. Presiding Judge
Benton & Franklin Counties Superior Court