

JUN 11 2020

ALISON H. SONNTAG

KITSAP COUNTY SUPERIOR COURT
KITSAP COUNTY DISTRICT COURT
STATE OF WASHINGTON

IN RE THE KITSAP COUNTY COURTHOUSE AND THE
PANDEMIC OUTBREAK OF THE CORONAVIRUS
DISEASE 2019 (COVID-19)

No. 2020-23

EMERGENCY ADMINISTRATIVE ORDER
RE – COURTHOUSE & COURTROOM
FACIAL COVERINGS

THIS ADMINISTRATIVE ORDER is being issued in response to the current pandemic outbreak of the Coronavirus Disease 2019 (COVID-19).

On May 28, 2020, the Washington State Department of Health approved¹ Kitsap County's variance application to fully implement Phase 2 of Governor Jay Inslee's Phased Approach to Reopening Washington Plan.² Both documents make clear that individuals shall not gather with more than 5 people outside the person's household per week.

On May 29, 2020, Washington State Supreme Court Chief Justice Debra L. Stephens³ issued Order 25700-B-626 (May 29, 2020) captioned "Amended Third Revised and Extended Order Regarding Court Operations."⁴

The Chief Justice recognized the need for "increasingly stringent social distancing measures of at least six feet between people" and encouraged vulnerable individuals to avoid public places.⁵

The Chief Justice also recognized that "many court facilities in Washington are ill-equipped to effectively comply with social distancing and other public health requirements and therefore continued in-person court appearances jeopardize the health and safety of litigants, attorneys, judges, court staff, and members of the public."⁶

Yet, court operations are recognized as essential,⁷ and may often be conducted by alternative means, in alternative settings, and with extra measures taken for public safety...⁸

¹ The Department of Health Kitsap County approval letter (hereafter "Approval Letter") is attached at Appendix A.

² Governor Inslee's Safe Start Washington – Phased Reopening County-By-County (May 31, 2020) (hereafter "Safe Start Plan") is attached at Appendix B.

³ Hereafter "Chief Justice."

⁴ Hereafter "Order." The Order is attached at Appendix C.

⁵ Order, at 1.

⁶ Order, at 1-2.

⁷ Governor Inslee designated the judicial branch as "essential." *Stay Home – Stay Healthy Proclamation 20-25, Appendix* at 10 (Mar. 23, 2020) ("The Courts, consistent with direction from the Washington State Chief Justice."). The Supreme Court has also recognized that court operations are essential. Order, at 3.

⁸ Order, at 2.

Balancing the need for the judicial branch to conduct essential court operations while protecting all users of judicial branch services, the Chief Justice wrote –

In all court operations, courts should follow the most protective public health guidance applicable in their jurisdiction, and should continue using remote proceedings for public health and safety whenever appropriate.⁹

Considering these important public policy matters, the Chief Justice directed courts to begin expanding court operations. The Chief Justice noted, however, that courts must take care concerning the method of delivering judicial services. Court hearings shall be conducted –

- By video, telephone or other remote means whenever possible; or
- In-person with strict observance of social distancing and other public health measures.

Recognizing that a one-size-fits-all statewide approach is unworkable, the Chief Justice granted authority to a court’s presiding judge to adopt more restrictive measures to protect public health and safety where necessary.

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, including by extending as necessary the time frames of this Order.

However, courts are encouraged to move toward conducting as much court business as can be done consistent with health and safety...

Courts should follow the most protective public health guidance applicable in their jurisdiction, based on current guidelines from the Centers for Disease Control, the Washington Department of Health or their local health department, recognizing that planning for and resuming jury trials is essential.¹⁰

With these considerations in mind, and recognizing the difficulty of enforcing “stringent social distancing measures” due to space limitations throughout the Kitsap County Courthouse and Juvenile and Family Court Services; NOW, THEREFORE, it is hereby

ORDERED that effective June 15, 2020 and until further order of the Kitsap County Superior Court and Kitsap County District Court¹¹ –

⁹ Order, at 3.

¹⁰ Order, at 14, ¶23 (paragraphs added for ease of reading).

¹¹ Hereafter “Courts.”

1. PREVIOUS EMERGENCY ORDERS

All previous Emergency Administrative Orders remain in full effect.

2. HIGH-RISK POPULATIONS & ILLNESS

A. High-Risk Populations. The Approval Letter makes clear that during Phase 2 “high-risk populations are strongly encouraged to limit their participation” in permitted activities and business services. “High-risk populations” are defined to include –

- Persons 65 years of age and older;
- People of all ages with underlying medical conditions (particularly not well controlled), including –
 - People with chronic lung disease or moderate to severe asthma,
 - People who have serious heart conditions,
 - People who are immunocompromised,
 - People with severe obesity,
 - People with diabetes,
 - People with chronic kidney disease undergoing dialysis, and
 - People with liver disease; and
- People who live in a nursing home or long-term care facility.¹²

The serious risk of COVID to such persons, especially given the high death rate within that population, does not justify placing the person at risk by entering a courthouse. All persons within the above high-risk population are strongly encouraged to not enter the Kitsap County Courthouse or Juvenile and Family Court Services without wearing the personal protective equipment (PPE) of their choice.

B. Illness Symptoms; Quarantined. No one who feels sick or is in quarantine shall enter the Kitsap County Courthouse or Juvenile and Family Court Services. Anyone deemed by court personnel to be exhibiting illness symptoms may be ordered to leave the building.

¹² Approval Letter, at 2.

3. PERSONAL HYGIENE

Courtroom personnel and persons within the public areas of the Kitsap County Courthouse and Juvenile and Family Court Services including the courtrooms are expected to practice good hygiene by frequently washing hands with soap and water and using sanitizer if soap and water are not available.

All individuals should avoid touching their eyes, nose and mouth with unwashed hands.

All individuals should properly cover coughs and sneezes.

4. MANDATORY SOCIAL DISTANCING MEASURES

A. Broad Discretion. 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.”¹³

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.¹⁴

B. Courthouse And Juvenile And Family Court Services Public Areas. The Kitsap County Courthouse and Juvenile and Family Court Services do not lend itself well to social distancing measures. The Chief Justice recognized that “many court facilities in Washington are ill-equipped to effectively comply with social distancing and other public health requirements.”¹⁵

Yet, Governor Inslee, state and local public health officials continue to emphasize the need for social distancing measures to keep all of us safe.

Social distancing measures of at least six feet between people will be strictly enforced to the greatest extent practicable in all public areas of the Kitsap County Courthouse and Juvenile and Family Court Services. Anyone failing to abide by social distancing measures may be ordered by authorized personnel to leave the building.

C. Courtrooms. Social distancing measures of at least six feet between people will be strictly enforced to the greatest extent practicable in all Kitsap County Courthouse and Juvenile and Family Court Services courtrooms. Anyone failing to abide by social distancing measures may be ordered by authorized personnel to leave the building.

¹³ *State v. Lormor*, 172 Wn.2d 85, ¶12 (2011).

¹⁴ *State v. Gomez*, 183 Wn.2d 29, ¶13 (2015).

¹⁵ Order, at 1.

The seating capacity of Kitsap County Courthouse and Juvenile and Family Court Services courtrooms are severely limited in order to maintain stringent six-foot social distancing measures. For this reason, many hearings will be conducted by Zoom video conferencing.

Courtrooms and court administration areas have been equipped with social distancing markers to illustrate appropriate distancing. Chairs, which should not be moved, have been socially distanced at least six feet from each other.

Every person entering a courtroom shall be seated in an empty social distanced location as soon as possible. If courtroom seating capacity is reached, admittance to the courtroom is closed until additional seating capacity becomes available. Individuals waiting to enter a courtroom shall maintain at least six-foot social distancing in Kitsap County Courthouse and Juvenile and Family Court Services hallways until called to enter the courtroom. Courtroom seating capacity will be strictly enforced.

D. Preferred Courtroom Seating. Due to limited seating capacity in each courtroom, only attorneys, parties, alleged victims and advocates, and witnesses¹⁶ will initially be allowed inside a Kitsap County Courthouse and Juvenile and Family Court Services courtroom. Judicial officers may modify this requirement as necessary and permit others to enter a courtroom so long as courtroom seating capacity is available.

Members of the public may enter the courtroom and be seated at an empty location if courtroom seating capacity is available.

5. FACIAL COVERINGS – COURTHOUSE PUBLIC AREAS

Everyone entering the Kitsap County Courthouse and Juvenile and Family Court Services is strongly encouraged to wear a facial covering.¹⁷ Facial coverings will be available from court staff, but everyone is encouraged to wear their own covering due to the limited supply available to the Courts.

¹⁶ See, e.g., Const. Art. I, §35; RCW 7.69.030 (crime victims, survivors, witnesses); RCW 7.69A.030 (child victims, witnesses); and RCW 7.69B.020 (dependent crime victims, witnesses).

¹⁷ “Facial covering” includes facial masks and facial shields.

6. FACIAL COVERINGS – ENTERING A COURTROOM

All persons entering a Kitsap County Courthouse and Juvenile and Family Court Services courtroom shall wear a facial covering except –

- Child Two Years Or Younger. Any child aged two years or less.
- Child Twelve Years Or Younger. Any child aged twelve years or less unless a parent, guardian, or caregiver supervises the use of facial coverings by a child to avoid misuse.
- Disability. Any person who has a physical disability that prevents easily wearing or removing a facial covering.
- Hearing. Any person who is deaf or hard of hearing, or is communicating with someone who relies on language cues such as facial markers and expression and mouth movements as a part of communication.
- Medical Condition. Any person who has been advised by a medical professional that wearing a facial covering may pose a risk to that individual for health-related reasons.
- Difficulty Breathing. Any person who has trouble breathing, or who is unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.

7. FACIAL COVERINGS – DURING A COURT PROCEEDING

Persons required by §6 to wear a facial covering may remove the facial covering while in the courtroom as follows –

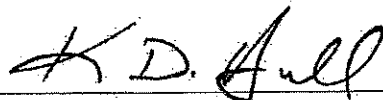
- Active Participants. Any person who is an active participant in a court proceeding during the time the person’s proceeding is being addressed by the Court.¹⁸
- Court Direction. Any person wearing a facial covering who is directed by the Court to remove the covering to facilitate communication and due process.

¹⁸ “Active participant in a court proceeding” includes persons seated at counsel table, witnesses, judge and courtroom staff.

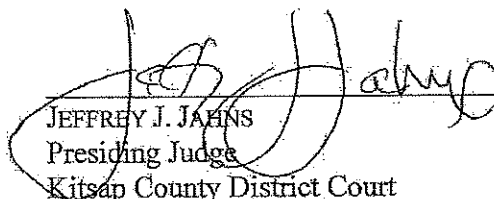
8. THE COURTHOUSE REMAINS OPEN

The Kitsap County Courthouse remains open to the public.

DATED – JUNE 11, 2020



KEVIN D. HULL
Presiding Judge
Kitsap County Superior Court



JEFFREY J. JAENS
Presiding Judge
Kitsap County District Court

APPENDIX A

KITSAP COUNTY PHASE 2 APPROVAL LETTER

(MAY 28, 2020)



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

*PO Box 47890 • Olympia, Washington 98504-7890
Tel: 360-236-4030 • 711 Washington Relay Service*

May 28, 2020

Keith Grellner, Administrator
Kitsap Public Health District
345 6th Street, Suite 300
Bremerton, Washington 98337

Dear Administrator Grellner:

I am in receipt of Kitsap County's COVID-19 variance application requesting approval to fully implement Phase II of Governor Inslee's Phased Approach to Reopening Washington Plan. I have found your application to be complete and your public health, health care, and community resources to be appropriate for the variance consideration.

Kitsap County's Phase II variance application is hereby approved with the following conditions:

1. An individual business is only allowed to reopen after it can implement the state guidelines for a safe start. The guidelines can be accessed at: <https://coronavirus.wa.gov/what-you-need-know/safe-start>.
2. Your department must notify the Washington State Department of Health 24/7 on-call communicable disease duty officer at (206) 418-5500 of any COVID-19 outbreak within your jurisdiction and must do so within six (6) hours of your notification.
3. You are required to monitor the pandemic in your community for signs of community transmission or any concerning acceleration. If you find such condition(s), you must promptly notify the Washington State Department of Health 24/7 on-call communicable disease duty officer at (206) 418-5500 and request a consult with the state's infectious disease epidemiologist or health officer.
4. You may not proceed to Phase III of Governor Inslee's Phased Approach to Reopening Washington Plan without further authorization to do so from me. In no case will authorization to move to the next phase be given without at least a three (3) week monitoring period.

Subject to the conditions in this variance, the activities and business services listed in Phase II of Governor Inslee's Phased Approach to Reopening Washington Plan are now permitted in Kitsap County and exempt from the Stay Home – Stay Health Proclamation's prohibitions. These activities and business services are:

- Recreation: Outdoor recreation involving 5 or fewer people outside your household (camping, beaches, etc.)
- Gatherings: Gather with no more than 5 people outside your household per week
- Travel: Essential travel and limited non-essential travel for Phase I & II permissible activities
- Businesses/employers:
 - Remaining manufacturing
 - Additional construction phases
 - In-home/domestic services (nannies, housecleaning, etc.)
 - Retail (in-store purchases allowed with restrictions)
 - Real estate
 - Professional services/office-based businesses (telework remains strongly encouraged)
 - Hair and nail salons/barbers
 - Pet grooming
 - Restaurants/taverns <50% capacity and table size no larger than 5 (no bar-area seating)


People in high-risk populations are strongly encouraged to limit their participation in these Phase II activities and business services. High-risk populations are currently defined by the CDC as:

- Persons 65 years of age and older;
- People of all ages with underlying medical conditions (particularly not well controlled), including:
 - People with chronic lung disease or moderate to severe asthma,
 - People who have serious heart conditions,
 - People who are immunocompromised,
 - People with severe obesity,
 - People with diabetes,
 - People with chronic kidney disease undergoing dialysis, and
 - People with liver disease; and
- People who live in a nursing home or long-term care facility.

I may revoke this variance if circumstances change within your jurisdiction, such as a significant community transmission, no or minimal access to COVID-19 testing, inadequate surge capacity in the hospital, inadequate PPE supplies, inadequate case and contact investigations, inadequate isolation or quarantine facilities, or other conditions warranting significant concern. My intent would be to discuss my concerns with you prior to taking such action. However, if I find urgent concerns, I reserve the right to immediately revoke the variance. The Governor also retains the right to re-impose restrictions upon your jurisdiction under his authority.

The Washington State Department of Health stands ready to provide any technical assistance you may need in your implementation. We appreciate your work and commitment to your community.

Respectfully,

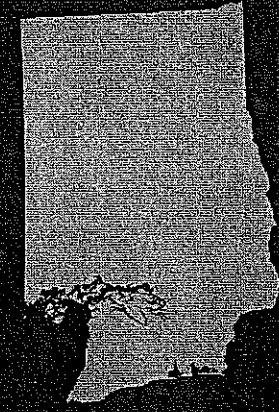

John Wiesman, DrPH, MPH
Secretary of Health

APPENDIX B

SAFE START WASHINGTON

PHASED RE-OPENING

(MAY 31, 2020)



Safe Start Washington

Phased Reopening County-By-County

ISSUED BY THE OFFICE OF THE GOVERNOR | MAY 31, 2020



Safe Start Washington – Phased Reopening County-by-County Governor Jay Inslee

Governor Jay Inslee, in collaboration with the Washington State Department of Health, has established a data-driven approach to reopen Washington and modify physical distancing measures while minimizing the health impacts of COVID-19. Washington will move through the phased reopening county-by-county allowing for flexibility and local control to address COVID-19 activity geographically.

This approach reduces the risk of COVID-19 to Washington's most vulnerable populations and preserves capacity in our health care system, while safely opening up businesses and resuming gatherings, travel, shopping and recreation.

The plan involves assessing COVID-19 activity along with health care system readiness, testing capacity and availability, case and contact investigations, and ability to protect high-risk populations. The plan allows counties and the secretary of Health to holistically review COVID-19 activity and the ability for the county to respond when determining if a county is ready to move into a new phase.

County Application Process

On June 1, each county begins in their current phase. Any county can apply to the secretary of Health to move to the next phase. The application process will require the county to report on key metrics set by the secretary of Health along with other quantitative and qualitative data. The application must be submitted by the county executive, in accordance with the instructions provided by the secretary of Health. If the county does not have a county executive, it must be submitted with the approval of the county council/commission.

The secretary of Health will evaluate county applications based on how their data for the key metrics compare to the targets and their ability to respond to situations that may arise in their county, including outbreaks, increased hospitalizations or deaths, health system capacity and other factors. The metrics are intended to be applied as targets, not headline measures. The targets each contribute to reducing risk of disease transmission, and are to be considered in whole. Where one target is not fully achieved, actions taken with a different target may offset the overall risk. A final decision on whether a county is ready to move to the next phase rests with the secretary of Health. The secretary may approve a county moving in whole to the next phase, or may only approve certain activities in the next phase depending on a specific county's situation.



A county that remains in Phase 1 has the ability to apply for a modified Phase 1 (as described below) to allow additional activity. That application would be submitted to the secretary of Health. The secretary of Health has discretion to modify or change any part of the modified Phase 1 to address the needs of a specific county. All activities must follow the health and safety requirements for those activities.

COVID-19 DISEASE ACTIVITY

COVID-19 disease burden is measured by the following key metrics:

Metric	Target
1. Incidence of new cases reported during prior two weeks	<25 cases / 100,000 / 14 days
2. Trends in hospitalizations for lab-confirmed COVID-19	Flat or decreasing
3. Reproductive rate (if available)	$R_e < 1$

READINESS AND CAPABILITIES NEEDED

The Department of Health and local public health officials will monitor data to assess a county's readiness for safely reopening and modifying physical distancing measures. In addition to disease burden, readiness will be evaluated in four key areas. The four key areas include health care system readiness, testing capacity and availability, case and contact investigations, and ability to protect high-risk populations. Key metrics and their targets for each area, along with other pertinent data that will be considered, are detailed below.



1. Health Care System Readiness

Adequate bed capacity, staffing and supplies in the healthcare system to handle a surge in COVID-19 cases, measured by the following key metrics:

Health Care System Readiness	
Metric	Target
1. % licensed beds occupied by patients (i.e., hospital census relative to licensed beds)	<ul style="list-style-type: none"> ● Green: <80% ● Yellow: 81-90% ● Red: >90%
2. % licensed beds occupied by suspected and confirmed COVID-19 cases	<ul style="list-style-type: none"> ● Green: <10% ● Yellow: 11-20% ● Red: >20%

Other data that will be considered include availability of PPE in hospitals, long term care facilities and other healthcare settings and availability of ventilators in hospitals.

2. Testing Capacity and Availability

Ability for everyone with COVID-19 symptoms and those with high-risk exposures to be tested immediately using a polymerase chain reaction (PCR) test and rapidly receive test results as measured by the following key metrics:

Testing	
Metric	Target
1. Average number of tests performed per day during the past week (or average % tests positive for COVID-19 during the past week)	50 times the number of cases (or 2%)
2. Median time from symptom onset to specimen collection during the past week	Median <2 days

Other data that will be considered include the geographic distribution of testing sites in counties, the ability to test the entire population, and the availability of sufficient swabs, viral transport media, lab reagents and other materials required for COVID-19 testing.



3. Case and Contact Investigations

Ability to rapidly isolate those with COVID-19, identify and quarantine their contacts, and provide case management services as measured by the following key metrics:

Metric	Target
1. Percent of cases reached by phone or in person within 24 hours of receipt of + lab test report	90%
2. Percent of contacts reached by phone or in person within 48 hours of receipt of + lab test report on a case	80%
3. Percent of cases being contacted daily (by phone or electronically) during their isolation period	80%
4. Percent of contacts being contacted daily (by phone or electronically) during their quarantine period	80%

Other data that will be considered include the number of investigators trained and working, the availability of isolation and quarantine facilities, and plans for case management.

4. Ability to Protect High-Risk Populations

Ability to immediately respond to outbreaks in congregate settings, such as long-term care facilities, behavioral health facilities, agricultural worker housing, homeless shelters and correctional facilities, and address the needs of other high-risk populations, including the elderly and the medically frail, measured by the following key metric:

Metric	Target
1. Number of outbreaks reported by week (defined as 2 or more non-household cases epidemiologically linked within 14 days in a workplace, congregate living or institutional setting)	<ul style="list-style-type: none"> 0 - small counties (<75,000) 1 - medium counties (75,000-300,000) 2 - large counties (>300,000) 3 - very large counties (>1 million)

Other data that will be considered include a county's ability to rapidly respond to an outbreak and address health disparities in their communities.



ALL INDIVIDUALS AND BUSINESSES

Until there is an effective vaccine, effective treatment or herd immunity, it is crucial to maintain some level of community interventions to suppress the spread of COVID-19 throughout all phases of recovery. This includes heightened protections for the health and safety of workers in essential sectors, people living and working in high-risk facilities (e.g., senior care facilities) and all other workers.

All Washingtonians have a responsibility to protect themselves and others. Each phase, while allowing for additional services to open and return to full capacity, is grounded in the following required basic practices:

Guidance for Individuals

All phases – Individuals should continue to:

- Engage in physical distancing, staying at least six feet away from other people
- Wear cloth face coverings in public places when not eating or drinking (cloth face coverings should not be placed on children younger than 2 years of age, anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the cover without assistance)
- Stay home if sick
- Avoid others who are sick
- Wash hands frequently with soap and water (use hand sanitizer if soap and water are not available)
- Cover coughs and sneezes
- Avoid touching eyes, nose and mouth with unwashed hands
- Disinfect surfaces and objects regularly

Requirements for All Employers

All phases – Employers are required to:

- Beginning June 8, all employees will be required to wear a cloth facial covering, with the following exceptions: when working alone in an office, vehicle, or at a job site; if the individual is deaf or hard of hearing, or is communicating with someone who relies on language cues such as facial markers and expression and mouth movements as a part of communication; if the individual has a medical condition or disability that makes wearing a facial covering inappropriate; or when the job has no in-person interaction. Employers must provide cloth facial coverings to employees, unless their exposure dictates a higher level of protection under the Department of Labor and Industries' safety and health rules and guidance. Refer to [Coronavirus Facial Covering and Mask Requirements](#) for additional details. Employees may choose to wear their own facial



coverings at work, provided it meets the minimum requirements.

- Keep a safe and healthy facility in accordance with state and federal law, and comply with COVID-19 worksite-specific safety practices, as outlined in Governor Inslee's Proclamation 20-25, and all amendments and extensions thereto, and in accordance with the Washington State Department of Labor & Industries' General Coronavirus Prevention under the "Stay Home, Stay Healthy" order and the Washington State Department of Health's Workplace and Employer Resources and Recommendations.
- Educate workers in the language they understand best about coronavirus and how to prevent transmission, and the employer's COVID-19 policies.
- Maintain minimum six-foot separation between all employees (and customers) in all interactions at all times. When strict physical distancing is not feasible for a specific task, other prevention measures are required, such as use of barriers, minimizing staff or customers in narrow or enclosed areas, and staggering breaks and work shift starts.
- Provide (at no cost to employees) and require the wearing of personal protective equipment (PPE), such as gloves, goggles, face shields and face masks as appropriate or required for the work activity being performed. Cloth face coverings must be worn by every employee not working alone on the job site unless their exposure dictates a higher level of protection under L&I safety and health rules and guidance. Refer to Washington Coronavirus Hazard Considerations for Employers (except COVID-19 care in hospitals and clinics) Face Coverings, Masks, and Respirator Choices for additional details. Cloth face coverings are described in the Department of Health guidance.
- Ensure frequent and adequate hand washing with adequate maintenance of supplies. Use disposable gloves where safe and applicable to prevent virus transmission on tools or other items that are shared.
- Establish a housekeeping schedule that includes frequent cleaning and sanitizing with a particular emphasis on commonly touched surfaces
- Screen employees for signs/symptoms of COVID-19 at the start of their shift. Make sure sick employees stay home or immediately go home if they feel or appear sick. Cordon off any areas where an employee with probable or confirmed COVID-19 illness worked, touched surfaces, etc. until the area and equipment is cleaned and sanitized. Follow the cleaning guidelines set by the Centers for Disease Control to deep clean and sanitize.
- Post a sign strongly encouraging customers to wear cloth facial coverings, and prominently display it at the entrance to the business so that it is immediately noticeable to all customers entering the store. Employers are encouraged to require customers to wear cloth facial coverings, in order to protect their employees.
- Follow requirements in Governor Inslee's Proclamation 20-46 High-Risk Employees - Workers' Rights.



Businesses are also required to implement any health and safety requirements developed specifically for their industry.

Challenge Seattle and the Washington Roundtable have developed a business checklist which is a great starting point for businesses as they prepare for “Safe Start Washington”. Our shared goal is to establish clear requirements that everyone can understand and apply – employers, workers and customers.

PHASED APPROACH TO REOPENING WASHINGTON COUNTY-BY-COUNTY AND MODIFYING PHYSICAL DISTANCING MEASURES

A county will stay in every phase for a **minimum of three weeks**. During that time, the Department of Health, County Elected Leadership, Local Health Jurisdictions, and the governor will re-evaluate the above targets. No phase will last less than three weeks before moving to the next phase, unless moving to a previous phase, in order to allow one complete disease incubation period plus an additional week to compile complete data and confirm trends. After three weeks, a county may apply to move to the next phase through the application provided by the secretary of Health.

If a county experiences an increase in COVID-19 disease activity and they need to return to an earlier phase, they must notify the secretary of Health and include their rationale but they do not need prior approval. Alternatively, the secretary has the authority to return a county to an earlier phase if the county chooses not to do so on its own, and the secretary has identified a need to do so. The secretary must notify a county in writing and provide a rationale for it being moved to an earlier phase.

The following table shows the phased approach for reopening businesses and resuming activities. **This phased approach may be adjusted as the pandemic evolves**. The industries listed are not an exclusive or exhaustive list of industries. Businesses listed in each phase of the plan will have industry-specific guidance and safety criteria developed to ensure workplace safety and public health are maintained. Those business activities are not authorized to open until the industry-specific guidance and safety criteria are issued.

If a county is not ready to move from Phase 1 to Phase 2, they have the ability apply for a modified Phase 1. The secretary of Health has discretion to modify or change any part of the modified Phase 1 to address the needs of a specific county. All activities must follow the health and safety requirements for those activities. The modified Phase 1 could include the following Phase 2 activities with the specific modifications to the previously issued health and safety requirements listed below.



- **High-risk populations**
 - Strongly encouraged, but not required, to stay home unless engaging in modified Phase 1 permissible activities.
- **Recreation and fitness**
 - Only allowed outdoor with five (not including the instructor) or fewer people outside of household.
- **Gatherings**
 - Only allowed outdoor of five or fewer people outside the household.
- **Additional construction**
 - As outlined in Phase 2 guidance.
- **Manufacturing operations**
 - As outlined in Phase 2 guidance.
- **Real estate**
 - 25% of building occupancy.
 - Indoor services limited to 30 minutes.
- **In-store retail**
 - 15% of building occupancy. (This does not apply to currently operating essential retail such as grocery stores. Currently operating essential retail should continue to follow the Phase 2 requirements.)
 - Indoor services limited to 30 minutes.
- **Personal services**
 - 25% of building occupancy.
- **Professional services**
 - 25% of building occupancy.
 - Indoor services limited to 30 minutes for customers.
- **Photography**
 - As outlined in Phase 2 guidance.
- **In-home/domestic services**
 - As outlined in Phase 2 guidance.
- **Pet grooming**
 - 25% of building occupancy.
- **Restaurants**
 - No indoor dining allowed.
 - Outdoor dining is permitted but seating at 50% of existing outdoor capacity.

Additional plans for a phased approach to restarting health care, spiritual gatherings, professional sports, and educational activities are under development and will be released separately.



Families are adjusting to a new way of life, and we understand the impacts this is having on them. The connection between education, child care, youth sports, summer programs and extracurricular activities is critical and must be viewed from a holistic lens to ensure equity and high quality of life. As we prepare for what the reopening of school looks like, we will be working closely with the Department of Health, Office of the Superintendent for Public Instruction, Department of Children, Youth and Families, and parents to release plans in the future.

While child care is currently an essential business activity and a key component to the reopening plan, we know there is more to do. The state will continue efforts to ensure adequate access and affordability for families.



WASHINGTON'S PHASED APPROACH

Modifying Physical Distancing Measures

INDIVIDUALS AND BUSINESSES SHOULD FOLLOW ALL REQUIREMENTS LISTED ABOVE DURING ALL PHASES



Phase 1



Phase 2



Phase 3



Phase 4

High-Risk Populations*

Stay home unless engaging in Phase 1 permissible activities.

Strongly encouraged, but not required, to stay home unless engaging in Phase 1 or Phase 2 permissible activities.

Strongly encouraged, but not required, to stay home unless engaging in Phase 1, 2, or 3 permissible activities.

Resume public interactions, with physical distancing

Recreation

Some outdoor recreation (hunting, fishing, golf, boating, hiking)

Outdoor recreation involving 5 or fewer people outside your household (camping, beaches, etc.)

Outdoor group rec. sports activities (50 or fewer people)
- Recreational facilities at <50% capacity (gyms, public pools, etc.)

Resume all recreational activity

Gatherings (non religious)

No gatherings

Gather with no more than 5 people outside your household per week

Allow gatherings with no more than 50 people

Allow gatherings with >50 people

Travel

Essential travel and limited non-essential travel for Phase 1 permissible activities

Essential travel and limited non-essential travel for Phase 1 & 2 permissible activities

Resume non-essential travel

Continue non-essential travel

Business/Employers

(All businesses will be required to follow safety plans written by the state)

- Essential businesses open
- Existing construction that meets agreed upon criteria
- Landscaping
- Auto/RV/boat/ORV sales
- Retail (curb-side pick-up orders only)
- Car washes
- Pet walkers

- Remaining manufacturing
- Additional construction phases
- In-home/domestic services (nannies, housecleaning, etc.)
- Retail (in-store purchases allowed with restrictions)
- Real estate
- Professional services/offices-based businesses (telework remains strongly encouraged)
- Personal services (hair and nail salons/barbers, tattoo, etc.)
- Pet grooming
- Restaurants/taverns <50% capacity, table size no larger than 5 (no bar-area seating)
- Limited small group fitness
- Drive-in Movie Theaters
- Library (curbside pick-up)

- Restaurants/taverns <75% capacity/table size no larger than 10
- Bar areas in restaurant/taverns at <25% capacity
- Theaters at <50% capacity
- Customer-facing government services (telework remains strongly encouraged)
- Libraries
- Museums
- All other business activities not yet listed except for nightclubs and events with greater than 50 people

- Nightclubs
- Concert venues
- Large sporting events
- Resume unrestricted staffing of worksites, but continue to practice physical distancing and good hygiene

* High-risk populations are currently defined by CDC as: persons 65 years of age and older; people of all ages with underlying medical conditions (particularly respiratory tract conditions); people with chronic kidney disease or moderate to severe asthma; people who have serious heart conditions; people who are immunocompromised; people with severe obesity; people with diabetes; people with chronic kidney disease undergoing dialysis; and people with liver disease, people who live in a nursing home or long-term care facility.

APPENDIX C

SUPREME COURT ORDER

25700-B-626

(MAY 29, 2020)

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF STATEWIDE RESPONSE) AMENDED THIRD REVISED
BY WASHINGTON STATE COURTS TO THE)
COVID-19 PUBLIC HEALTH EMERGENCY) AND EXTENDED ORDER
)
) REGARDING COURT
)
) OPERATIONS
)
) No. 25700-B-626
_____)

WHEREAS, on February 29, 2020, Governor Inslee proclaimed a state of emergency due to the novel coronavirus disease (COVID-19) outbreak in Washington; and on March 13, 2020, President Trump declared a national emergency due to the COVID-19 outbreak across the United States; and

WHEREAS, during this state of emergency, the Centers for Disease Control and Prevention and the Washington State Department of Health have recommended increasingly stringent social distancing measures of at least six feet between people, and encouraged vulnerable individuals to avoid public spaces; and

WHEREAS, consistent with these recommendations, Governor Inslee issued and extended a “Stay Home, Stay Healthy” order directing non-essential businesses to close, banning public gatherings, and requiring Washingtonians to stay home except to pursue essential activities; and

WHEREAS, many court facilities in Washington are ill-equipped to effectively comply with social distancing and other public health requirements and therefore continued in-person court

appearances jeopardize the health and safety of litigants, attorneys, judges, court staff, and members of the public. Yet, court operations are recognized as essential, and may often be conducted by alternative means, in alternative settings, and with extra measures taken for public safety; and

WHEREAS, pursuant to this Court's prior orders, many Washington courts have taken important steps to protect public health while ensuring continued access to justice and essential court services, including by strictly observing social distancing measures, holding proceedings remotely, suspending many in-building operations, and promulgating emergency rules as necessary; and

WHEREAS, the coordinated response from Washington courts to prevent the further spread of COVID-19 must be continued beyond the timeframes in this Court's prior orders while allowing courts to operate effectively and maintain effective and equitable access to justice; and

WHEREAS, this Court's consultation with trial courts, justice partners and coordinate branches of government confirms the need for further direction from this Court by issuing an order that revises and supersedes its prior orders; 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 court personnel, litigants, and the public,

IT IS HEREBY ORDERED:

Court operations are essential, as recognized by the Governor's proclamations and by the Supreme Court. This Court recognizes the authority of all courts to conduct essential court operations, to include not only trials and other hearings, but also clerk's office operations, facilities planning, technology improvements, and the general administration of justice. In all court operations, courts should follow the most protective public health guidance applicable in their jurisdiction, and should continue using remote proceedings for public health and safety whenever appropriate.

With Respect to Civil Matters:

1. All civil jury trials remain suspended until at least July 6, 2020. Trials already in session where a jury has been sworn and social distancing and other public health measures are strictly observed may proceed or, at the discretion of the trial court or agreement of the parties, be continued to a later date. Nonjury trials may be conducted by remote means or in person with strict observance of social distancing and other public health measures.
2. Non-emergency civil matters may be continued until after June 1, 2020. However, courts should begin to hear non-emergency civil matters, so long as such matters can appropriately be conducted by telephone, video or other remote means, or in person with strict observance of social distancing and other public health measures.

3. Courts shall continue to prioritize and hear all emergency civil matters that can be heard by telephone, video, or other remote means, or in person with strict observance of social distancing and other public health measures.
4. Courts shall continue to hear emergency civil protection order and restraining order matters. Courts must provide an accessible process for filing petitions for civil protection orders and motions for temporary restraining orders, which may include filing petitions in person or remotely. Courts are encouraged to provide alternative means for filing, including electronic filing options whenever possible, especially when the courthouse is closed to the public or public clerk's office hours are restricted due to the public health emergency.
 - a. Consistent with the Governor's Proclamation 20-45.2 (May 15, 2020), requirements for *personal* service of the petition for a protection order or temporary protection order are suspended, except as to orders directing the surrender of weapons or removal of the respondent from a shared residence. Personal service remains preferred, and courts should require personal service by law enforcement when removal of children or change of custody of children is ordered, or in other circumstances where public or individual safety demands it. Where personal service is not required, service may be by law enforcement, including electronic service with acknowledgment of receipt, by process servers, by agreed service memorialized in writing, by publication or by mail. If parties have previously agreed to e-mail service or opted into e-service in the case or other currently open related case, 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 judicial officer must require proof of service five days prior to the hearing.

- b. Judicial officers have discretion to set hearing dates and extend temporary protection orders based on the 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. Courts may provide a means for weapons surrender hearings that does not require in-person appearance only when consistent with public safety.
 - c. Guidance for courts implementing emergency measures under this section may be found [here](#).
5. With respect to all civil matters, courts should encourage parties to stipulate in writing to reasonable modifications of existing case schedules and methods of service and to conduct discovery by remote means whenever possible.
 6. Cases filed pursuant to RCW 71.09 (Sexually Violent Predators) are civil cases. However, the liberty interests at stake necessitate prioritizing these cases over general civil cases, in terms of both addressing discovery or other pre-trial motions and assigning the cases for trial. All pre-trial motions in such cases may be decided without oral argument, unless a court grants a party's request for oral argument or *sua sponte* sets oral argument. When oral argument is to occur, such hearings may be conducted by telephone, video, or other means that do not require in person

attendance. If in person hearings are required, they shall be conducted with strict observance of social distancing and other public health measures.

With Respect to Criminal and Juvenile Offender Matters:

7. All criminal jury trials remain suspended until at least July 6, 2020. Trials already in session where a jury has been sworn and social distancing and other public health measures are strictly observed may proceed or be continued if the defendant agrees to a continuance. Nonjury trials may be conducted by remote means or in person with strict observance of social distancing and other public health measures.
8. Many **out of custody** criminal and juvenile offender matters have been continued until after June 1, 2020. After that date, courts should hear matters by telephone, video or other means that do not require in person attendance when appropriate. In addition, courts may hear matters that require in person attendance if those hearings strictly comply with social distancing and other public health measures. Arraignment on **out of custody** criminal and juvenile offender cases filed between March 18, 2020 and July 3, 2020 may be deferred until a date 45 days after the filing of charges. Good cause exists under CrR 4.1 and CrRLJ 4.1 and JuCR 7.6 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 CrR 3.3(c)(1), CrRLJ 3.3(c)(1) and JuCR 7.8(c)(1). Nothing in this section requires suspension of any proceeding, including therapeutic court proceedings, that can appropriately be conducted by telephone, video or other remote means, or

that can be conducted in person with strict observance of social distancing and other public health measures.

9. Courts may enter ex parte no contact orders pursuant to RCW 10.99.040, RCW 10.99.045, RCW 7.92.160, 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.
10. Many **in custody** criminal and juvenile offender matters have been continued until after June 1, 2020 subject to the exceptions set forth in (a) and (b) of this section. After that date, courts should hear such matters by telephone, video or other means that do not require in person attendance when appropriate. In addition, courts may hear matters that require in person attendance provided that any such hearings strictly comply with social distancing and other public health measures.
 - a. Scheduling and hearing of first appearances, arraignments, plea hearings, criminal motions, and sentencing or disposition hearings.
 - b. Courts retain discretion in the scheduling of these matters, except that the following matters shall take priority:

- i. Pretrial release and bail modification motions.
 - ii. Plea hearings and sentencing or disposition hearings that result in the anticipated release of the defendant or respondent from pretrial detention within 30 days of the hearing.
 - iii. Parties are not required to file motions to shorten time in scheduling any of these matters.
11. Juvenile court jurisdiction in all pending offender proceedings and in all cases in which an information is filed with the juvenile court prior to June 1, 2020, in which the offender will reach the age of 18 within 120 days of May 4, 2020, shall be extended to the offender's next scheduled juvenile court hearing after June 1, 2020.
12. A continuance of these criminal and juvenile offender hearings and trials is required in the administration of justice. Based upon the court's finding that the serious danger posed by COVID-19 is good cause to continue criminal and juvenile offender trials, and constitutes an unavoidable circumstance under CrR 3.3(e)(8), CrRLJ 3.3(e)(8), and JuCR 7.8(e)(7), the time between the date of this Order and September 1, 2020 shall be EXCLUDED when calculating time for trial. CrR 3.3(e)(3), CrRLJ 3.3(e)(3), JuCR 7.8(e)(3).
13. The Court finds that obtaining signatures from defendants or respondents 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 authorize continuing those matters without need for further written orders. Additionally:

- a. Defense counsel is not required to obtain signatures from defendants or respondents on orders to continue criminal or juvenile offender matters consistent with this order.
- b. Courts shall provide notice of new hearing dates to defense counsel and unrepresented defendants.
- c. Defense counsel shall provide notice to defendants and respondents of new court dates.

14. Bench warrants may continue to issue for violations of conditions of release. However, courts should not issue bench warrants for failure to appear in-person for criminal or juvenile offender court hearings and pretrial supervision meetings unless necessary for the immediate preservation of public or individual safety. Additionally, courts should not issue or enforce bench warrants for juvenile status offenses or violations.

15. Motions for Pre-Trial Release:

- a. Courts shall hear motions for pretrial release in criminal and juvenile offender matters on an expedited basis without requiring a motion to shorten time. Nothing in this section is intended to affect any statutory or constitutional provision regarding the rights of victims or witnesses.
- 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” and “new information” allowing amendment of a previous bail order or providing different conditions of release under CrR 3.2(k)(1) or CrRLJ 3.2(k)(1), but a finding of changed circumstances in any given case is left to the sound discretion of the trial court. Under such circumstances in the juvenile division of superior court, the court may conduct a new detention hearing pursuant to JuCR 7.4.

- c. Parties may present agreed orders for release of in-custody defendants and respondents, which should be considered 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.
16. Courts should continue to allow telephonic or video appearances for all scheduled criminal and juvenile offender hearings whenever appropriate. All in-person appearances must be conducted with strict observance of social distancing and other public health measures. For all hearings that involve a critical stage of the proceedings, courts shall provide a means for defendants and respondents to have the opportunity for private and continual discussion with their attorney.

General Provisions for Court Operations:

17. Access to justice must be protected during emergency court operations. Where individuals are required to access the court through remote means, courts must provide no-cost options for doing so or provide a means for seeking a waiver of costs. This provision does not require suspending existing systems for remote filings or hearings that are based on a user-fee model.
18. Courts must provide clear notice to the public of restricted court hours and operations, as well as information on how individuals seeking emergency relief may access the courts. Courts are encouraged to provide such notice in the most commonly used languages in Washington, and to make every effort to timely provide translation or interpretation into other languages upon request. The Washington State Supreme Court Interpreter Commission may assist courts in this process.
19. The availability of interpreter services should not be restricted by emergency operations. Interpreting should be done by remote means whenever possible, consistent with protocols developed by the Washington State Supreme Court Interpreter Commission.
20. Washington courts are committed to protecting rights to public court proceedings. Any limitations placed on public access to court proceedings due to the public health emergency must be consistent with the legal analysis required under *State v. Bone Club*, 128 Wn.2d 254 (1995) and *The Seattle Times v. Ishikawa*, 97 Wn.2d 30 (1982). Courts should continue to record remote hearings and to make the

recording or a transcript part of the record, and should develop protocols for allowing public observation of video or telephonic hearings. Guidance for courts in protecting public court proceedings during emergency operations can be found here.

21. Notwithstanding any provision of GR 30 to the contrary, an electronic signature shall be deemed a reliable means for authentication of documents and shall have the same force and effect as an original signature to a paper copy of the document so signed. For purposes of this Order, “electronic signature” means a digital signature as described in Supreme Court Order No. 25700-B-596 (July 16, 2019) and RCW 9A.72.085(5) (repealed); an electronic image of the handwritten signature of an individual; or other electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record, including but not limited to “/s/ [name of signatory]”.
 - a. To the extent not already authorized, whenever a judicial officer or clerk is required to sign an order, judgment, notification, or other document an electronic signature shall be sufficient. The presiding judge, in consultation with the county clerk where applicable, should direct by administrative order the provisions for use of alternative signature methods for judicial officers in that jurisdiction. Guidance in developing such orders may be found here.
 - b. Courts are authorized and are hereby encouraged when practicable to waive by emergency rule or order provisions of GR 30(d) that require: (1) the issuance

of a user ID and password to electronically file documents with the court or clerk; (2) that a party who has filed electronically or has provided the clerk with their email address must give consent to accept electronic transmissions from the court.

- c. The Court finds good cause to permit RCW 26.04.070's requirement that marriages occur "in the presence of" an officiant to include the solemnization of marriages by remote video technologies in accordance with public safety and social distancing requirements. An officiant solemnizing a wedding by remote proceedings shall take necessary steps to confirm the identity of the parties, ensure they possess a valid marriage license, and confirm requirements to promptly complete and file certificates as required by law.

22. This Court recognizes that there are procedural issues in juvenile, dependency, involuntary commitment, child support, and other matters that may not be encompassed in this Order. Nothing in this Order limits other interested parties in submitting similar orders tailored to the unique circumstances of those matters and any other matters not addressed by this Order. Nothing in this Order prevents courts from following specific emergency plans for such matters, including for Involuntary Treatment Act and dependency matters. Where any provisions of this Order may be interpreted to conflict with any provision of another Supreme Court order addressing specific case matters, such as dependency and termination matters, the provisions of the more specific order shall control.

23. 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, including by extending as necessary the time frames in this Order. However, courts are encouraged to move toward conducting as much court business as can be done consistent with public health and safety. Any summons issued for jury trials must provide a process for excusing or delaying jury service by individuals who are at higher risk from COVID-19 exposure based on their age or existing health conditions, or those of a household member. Courts should follow the most protective public health guidance applicable in their jurisdiction, based on current guidelines from the Centers for Disease Control, the Washington Department of Health or their local health department, recognizing that planning for and resuming jury trials is essential.
24. The Supreme Court may extend the time frames in this Order as required by 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, and all time frames previously extended may be deemed further extended by this order. This **amended** revised and extended Order supersedes the Supreme Court's March 18, 2020 order (as corrected March 19, 2020), its March 20, 2020 amended order, and its Extended and Revised Orders of April 13, 2020, April 29, 2020, and May 28, 2020.

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AMENDED THIRD REVISED ORDER
25700-B-626

DATED at Olympia, Washington this 29th day of May, 2020.

For the Court


CHIEF JUSTICE