FILED
SUPREME COURT
STATE OF WASHINGTON
MARCH 20, 2020
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF STATEWIDE RESPONSE BY WASHINGTON STATE COURTS TO THE COVID-19 PUBLIC HEALTH EMERGENCY	AMENDED ORDER No. 25700-B-607

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 novel coronavirus disease (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 has barred gatherings of more than fifty people and ordered all schools, businesses, faith-based organizations, and other public venues to close during the ongoing public health emergency, and the CDC has recommended restricting gatherings to no more than 10 people; 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; and

WHEREAS, pursuant to this Court's March 4, 2020 order, many Washington courts have already taken important steps to protect public health while ensuring continued access to justice and essential court services; however, the crisis is increasing daily and it may become necessary for courts to close, suspend in-building operations or otherwise significantly modify their operations, and

WHEREAS, the increasingly aggressive spread of COVID-19 across Washington requires a uniform, coordinated response from Washington courts to prevent further outbreak and to maintain consistent and equitable access to justice; and

WHEREAS, this Court's consultation with trial court judges, justice partners and coordinate branches of government confirms the need for further direction from this Court; 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 Court's authority to administer justice and to ensure the safety of court personnel, litigants, and the public,

IT IS HEREBY ORDERED:

1. All civil jury trials shall be suspended until after April 24, 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.

2. All non-emergency civil matters shall be continued until after April 24, 2020, except those motions, actions on agreed orders, conferences or other proceedings that can appropriately be conducted by telephone, video or other means that does not require in–person attendance.
3. All emergency matters, including civil protection and restraining order matters, that must be heard before April 24, 2020, must be heard by telephone, video, or other means that does 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. Telephonic, video or other hearings required to be public must be recorded, with the recording preserved for the record.
4. All criminal jury trials are suspended until after April 24, 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. For all criminal trials suspended under this provision, April 25, 2020 will be the new commencement date under CrR 3.3.
5. All **out of custody** criminal matters already pending shall be continued until after April 24, 2020 except those motions, actions on agreed orders, conferences or other proceedings that can appropriately be conducted by telephone, video or other means that does not require in–person attendance.

Arraignment on **out of custody** cases filed between today's date and April 24, 2020 or the first appearance in court after that date shall 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 therapeutic court proceedings that can appropriately be conducted by telephone, video or other means that does not require in–person attendance.

6. Courts may enter ex parte no contact orders pursuant to RCW 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 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. 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.
7. All **in custody** criminal matters shall be continued until after April 24, 2020, with the following exceptions:
    a. Scheduling and hearing of first appearances, arraignments, plea hearings, criminal motions, and sentencing 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 hearings that result in the anticipated release of the defendant 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.

8. Juvenile court jurisdiction in all pending offender proceedings and in all cases in which an information is filed with the juvenile court prior to April 24, 2020, in which the offender will reach the age of 18 within 120 days of April 24, 2020, shall be extended to the offender's next scheduled juvenile court hearing after April 24, 2020.

9. A continuance of these criminal 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 jury 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 the date of the next scheduled trial date are EXCLUDED when calculating time for trial. CrR 3.3(e)(3), CrRLJ 3.3(e)(3), JuCr 7.8(e)(3).

10. 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, for all matters covered in Sections 4 and 5, this Order serves to continue those matters without need for further written orders. Additionally:

a. Defense counsel is not required to obtain signatures from defendants on orders to continue criminal matters through April 24, 2020.

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.

11. Bench warrants may issue for violations of conditions of release from now through April 24, 2020. However, courts should not issue bench warrants for failure to appear in-person for court hearings and pretrial supervision meetings unless necessary for the immediate preservation of public or individual safety.

12. Motions for Pre-Trial Release:

a. Courts shall hear motions for pretrial 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 CrR or CrRL or J 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, which should 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.

13. Courts must allow telephonic or video appearances for all scheduled criminal hearings between now and through April 24, 2020, unless impossible. For all hearings that involve a critical stage of the proceedings, courts shall provide a means for the defendant to have the opportunity for private and continual discussion with his or her attorney. Telephonic, video or other hearings required to be public must be recorded, with the recording preserved for the record.

14. The Court recognizes that there are procedural issue 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 contemplated by this Order; however, parties are strongly encouraged to contemplate the issues addressed in this order. Nothing in this order prevents courts from following specific emergency plans for such matters, including for Involuntary Treatment Act and dependency matters.

15. 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.

16. 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. This amended order supersedes the Supreme Court's March 18, 2020 order (as corrected March 19, 2020).

DATED at Olympia, Washington this 20th day of March, 2020.

For the Court

I write to express my disagreement with paragraphs 11 and 12 of this order. In this time of grave state emergency, bench warrants should not issue for violations of conditions of release without a specific finding that the alleged violation poses a serious threat to public safety. There are so many varied conditions of release that would not jeopardize public safety. Issuing bench warrants without such a finding of serious threat to public safety only serves to funnel more people into detention or for individuals to have outstanding warrants on their record. Outstanding warrants are also a basis for stopping and detaining individuals. I would prohibit such bench warrants absent a specific finding.

I also disagree with the conditions placed on pre-trial release in paragraph 12 that are *conditioned* on a victim or witnesses' participation. The Chief Justice misreads this important Constitutional provision. CrR 3.2 governs pre-trial release and this order, as written, undermines the presumption of release in noncapital cases. At most, notice to a victim or witness of release may be warranted but a victim or witness's participation has never been a condition of release and is not what our state Constitution requires. I object to this requirement which has no basis in the law.

Finally, I disagree with paragraph 12(b)'s statement that COVID-19 constitutes a change in circumstances for only a small portion of our Washington population. I believe it constitutes a change in circumstances for all.

3-18-20