



March 23, 2020

SENT VIA EMAIL

Justice Walters
Chief Justice, Oregon Supreme Court
Oregon Supreme Court
1163 State Street
Salem, OR 97301

Judge Albrecht
Chief Criminal Judge, Multnomah County Circuit Court
1021 SW Fourth Avenue
Portland, OR 97204-1123

Nancy Cozine
State Court Administrator
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

Dear Chief Justice Walters, Judge Albrecht, and State Court Administrator Cozine,

Governor Brown issued Executive Order 20-03 and declared a State of Emergency on March 8, 2020 under ORS 401.165 *et seq* due to the public health threat posed by the novel infectious coronavirus (COVID 19).

Per Judge Albrecht's request, we are submitting recommendations¹ for the Chief Justice Order to be issued on or before 3/27, which will amend the current Chief Justice Order that was issued on 3/16/2020:

1. Definitions. As used in this order:
 - A. "Social distancing" means at least 6 feet between each participant.

¹ These recommendations are based off of the order issued by the Chief Justice of Supreme Court of Kentucky in response to COVID 19 https://kycourts.gov/courts/supreme/Rules_Procedures/202009.pdf

- B. High risk” means the category of persons whom the Centers for Disease Control has identified as being at high-risk for serious illness due to COVID-19:
- i. i. Persons 60 and older;
 - ii. ii. Persons with underlying health conditions including heart disease, lung disease, or diabetes;
 - iii. iii. Persons with blood disorders, chronic kidney and liver disease, and metabolic disorders;
 - iv. iv. Persons with weakened immune systems; and
 - v. v. Persons who are pregnant.

Trials, Hearings

2. All in-person appearances for civil and criminal dockets should be canceled with the exception of emergency and time-sensitive matters, including but not limited to, stalking, domestic and sexual violence hearings, emergency custody hearings, evidentiary hearings in criminal cases, in-custody arraignments, in-custody preliminary hearings, in-custody release and bail motions, and in-custody probation violation hearings. Judges are encouraged to use telephonic or video technology for all necessary hearings. See Section 4 of CJO Order (3/16/20) for exceptions.
3. All civil trials, hearings, and motions should be postponed and rescheduled for a later date or judges are encouraged to use telephonic or video technology for a hearing. Any civil trial or hearing currently in progress shall be set over or completed at the discretion of the presiding judge. Exceptions are civil petitions for an order of protection in cases of stalking, sexual and domestic violence.
4. Reasonable attempts should be made to reschedule all criminal trials, subject to a defendant’s right to a speedy trial.
 - A. The courts should prioritize and expedite release hearings, releasing individuals from jail who are not a threat to public safety; courts should review jail rosters and release, without bond, as many individuals as courts are able, especially those being held for non-violent offenses. Except where otherwise required by law, courts should presume that a noncustodial sentence should be entered unless the state proves a defendant presents a risk to the physical safety of a member(s) of the public.²

² Added consideration should be given to: (1) persons considered "high-risk" pursuant to CDC, OHA, and WHO; (2) persons charged with or sentenced for misdemeanors and non-violent felonies; (3) persons charged with or sentenced for violations of probation that do not include the commission of new, violent, person crime(s); (4) persons incarcerated for municipal court matters; and (5) persons who have 90 days or less remaining on their sentence regardless of the underlying offense. See *also*, comments submitted by Carle Macpherson and others to the Task Force.

- B. Courts should avoid resolutions that could lead to immigration detention where possible.
 - C. The 30-day preliminary hearing requirement for out-of-custody defendants under ORS 135.070 should be waived during this time period.
 - D. Courts must explore alternatives to current arrest and detention policies including use of cite-in-lieu of arrest where appropriate to keep jail population at a minimum.
- 5. With the exception of emergency matters and hearings statutorily required to be held, small claims, eviction, juvenile, probate, traffic, and guardianship cases should be set over. See Section 4 of CJO Order (3/16/20) for exceptions.
 - 6. A case involving an attorney or party who is ill or in a high-risk category should be rescheduled.
 - 7. Judges should issue citations in lieu of bench warrants or notices of failure to appear.
 - 8. All show cause dockets for payment of fines and court costs scheduled within this timeframe should be continued for 60 days.

Special Docket

- 9. A clear and expedited process should be identified for those who are currently incarcerated and are therefore seeking legal remedies for release, treatment, a change in conditions, or anything related to their treatment and COVID 19 putting them at high risk for serious medical complications if or when the disease is contracted.

All Other Direct Court Services

- 10. Remove the Presiding Judge's discretion to hold treatment courts and order that no treatment courts take place.
- 11. Courtroom attendance should be limited to attorneys, parties, district attorney-based and/or community-based victim advocates, and necessary witnesses.
 - A. Requirements for All In-Person Court Operations. For all in-person trials, hearings, and operations, the court shall, when reasonably possible and considering the need for safety measures, take the following precautions For all in-person trials, hearings, and operations, the court shall, when reasonably possible and considering the need for safety measures, take the following precautions:
 - i. Courtrooms are required to limit the number of people in the courtroom to no more than ten people (depending on the size and configuration), and social distancing of six feet or more must be followed; and
 - ii. Maintain vigilance about cleaning in accordance with other OJD guidelines.

- B. All judges and staff must be assigned to work from home, or otherwise directed not to come into the courthouse to work, unless the Administrative Authority directs that they be at work to provide court services in accordance with these restrictions. The Administrative Authority or designee should avoid directing persons in high-risk categories, or those with good cause, to report to the court for work.
12. Jurors who are ill, caring for someone who is ill, or in a high-risk category should have their jury service postponed to a later date.
 13. New juror orientations should be suspended.
 14. Existing jury panels maybe extended at the discretion of the court.
 15. Accessible signage should be posted at all public entry points advising individuals not to enter the building if they have:
 - A. In the previous 14 days, visited South Korea, Iran, China, any European countries, or any other high-risk countries identified by the CDC;
 - B. Resided with or been in close contact with someone who has been in any of those countries within the previous 14 days;
 - C. Traveled domestically within the United States where COVID-19 has sustained widespread community transmission;
 - D. Been asked to self-quarantine by any doctor, hospital, or health agency;
 - E. Been diagnosed with or have had contact with anyone who has been diagnosed with COVID-19; or
 - F. A fever, cough or shortness of breath.
 16. Individuals attempting to enter in violation of these protocols should be denied entrance by a bailiff or court security officer.
 17. Bailiffs should discourage congregating outside courtroom doors and encourage social distancing inside the courtroom.
 18. Individuals with legitimate court business who are ill, caring for someone who is ill or in a high-risk category are advised to stay home and request a continuance by calling the local Office of Circuit Court Clerk.
 19. Cancel probation, parole, and pretrial meetings; court-ordered classes, in-person drug testing; and modify all reporting conditions to phone reporting.
 20. Circuit court judges should use their power to grant release under ORS 137.520; judges can order release of people in jail, subject to conditions and return to jail if conditions are breached.
 21. Courts should waive all overdue court fees, fines, or penalties and order that no fees, fines, or penalties should be assessed during this crisis.
 22. Public Safety and Community

- A. Courts must work with the Criminal Justice Advisory Committee, their Local Public Safety Coordinating Councils, and other stakeholder groups to explore system issues and ensure the health of those who are incarcerated and coming to court.
- B. Courts must explore alternatives to current arrest and detention policies including use of cite-in-lieu of arrest where appropriate to keep jail population at a minimum.
- C. Courts must work with attorneys and their local bar associations to ensure that every possible opportunity to reduce risk and preserve the function of Oregon courts has been identified and explored.

23. Meetings and Conferences, and Travel

- A. No in-person meetings or conferences of more than 5 people may be held, except as authorized by the Presiding Judge, State Court Administrator, or designee. Judges and staff should hold or attend meetings of 5 or fewer persons only after weighing the benefits and risks and the available alternatives.

Participants shall maintain social distancing. Those who do not participate in person should try to attend remotely.
- B. All other meetings and conferences should be conducted remotely.
- C. All in-state and out-of-state work-related travel is prohibited, except as authorized by the State Court Administrator or designee.

24. Appellate Courts, Tax Court, and OJD Divisions

- A. The restrictions described in paragraphs 2 through 23 apply, to the extent practicable, to the Supreme Court, the Court of Appeals, the Tax Court, and except as described in subparagraph 1. below, to the Office of the State Court Administrator (OSCA) and the Divisions within that Office. To the extent that those courts, OSCA, or any divisions are able to continue to conduct their operations using remote services, they should do so.
 - i. The Citizen Review Board (CRB), in keeping with paragraph 2 and 3 of this order, shall postpone and not schedule any CRB reviews during the period of these restrictions.

25. Notice and Communication: Presiding Judges, Trial Court Administrators, and the State Court Administrator and designees must work together to:

- A. Use all reasonable means to inform judges, staff, lawyers, and the public of these restrictions; and
- B. Post information about these restrictions and local court operations on the court's webpage.

Nothing shall preclude the presiding judges in each circuit from implementing additional local restrictions as needed.

These restrictions are to be in effect no later than the beginning of business on Friday, March 27, 2020. These restrictions will continue to until at least May 1, 2020. They may be extended by further order, or they may be amended by further order.

Sincerely,

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