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SUPERIOR COURT CLERK

## SUPERIOR COURT CLERK

## IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY

IN THE MATTER OF THE RESPONSE BY KING COUNTY SUPERIOR COURT TO THE PUBLIC HEALTH EMERGENCY IN WASHINGTON STATE No. 20-0-12050-5

EMERGENCY ORDER # 23 RE: JUVENILE OFFENDER OPERATIONS INCLUDING OUT-OF-CUSTODY FACT FINDINGS

This matter comes before the Court on the public health emergency in Washington State.

The King County Superior Court incorporates Emergency Orders 1 through 22 and now enters a revised order regarding procedures governing juvenile offender operations, including out-of-custody Fact Findings, during the public health emergency. This Order is effective November 25, 2020. Where inconsistent, this Order supersedes all prior Emergency Orders governing juvenile offender operations, including Emergency Order #12. This Order is in effect until January 11, 2021.

## I. FINDINGS

1. The novel coronavirus disease has had an unprecedented impact on our society and court operations. On February 29, 2020, Governor Inslee proclaimed a state of emergency due to the novel coronavirus disease (COVID-19) outbreak in Washington. On March 13, 2020, President Trump declared a national emergency due to the COVID-19 outbreak across the United States.

- 2. In response to the COVID-19 pandemic and public health mandates to reduce inperson gatherings, on March 19, 2020, the Clark Children & Family Justice Center limited juvenile operations to "essential matters" only, which were conducted in one courtroom for approximately 45 days, and encouraged virtual participation. *See* In the Matter of the Response by the King County Superior Court to the Public Health Emergency in Washington State, No. 20-0-12050-5, Dkt. No. 12 at 2 (defining "essential matters"). In May 2020, as the situation improved, and consistent with public health guidelines, the Courthouse gradually increased the number and type of hearings it conducted.
- 3. By July 13, 2020, the Juvenile Court was fully operational, running two courtrooms on its traditional geographic basis each morning and afternoon (except for Monday morning when the courtrooms are closed), as well as a third courtroom to address the existing back-log of cases ready to proceed to trial, the Seattle-based ARY-CHINS and Juvenile Drug Court calendars, and the Truancy Calendar as schools reopened. Again, the Juvenile Court encouraged all possible hearings to be conducted remotely.
- 4. As further explained in Emergency Order #22, this Fall, the spread of COVID-19 began to accelerate. On November 15, 2020, Governor Inslee issued a new proclamation, imposing new restrictions on social gatherings and other behavior. King County has been significantly impacted by the COVID-19 outbreak, and numbers have risen significantly in the last two weeks. The Governor noted in the Proclamation that "a significant risk factor for spreading the virus is prolonged, close contact with an infected person indoors," and that "several factors increase the risk for person-to-person COVID-19 transmission," including: (1) "the more that people and groups interact"; (2) "the longer those interactions last"; (3) "the closer the contact between individuals"; and (4) "the denser the occupancy for indoor facilities."
- 5. As further explained in Emergency Order #22, on November 20, 2020, Washington Supreme Court Chief Justice Debra Stephens issued a message to all Washington courts, acknowledging the dramatic rise of COVID-19 activity in the State and requesting that all courts

reassess "the risk of in-person proceedings and the present ability to mitigate those risks consistent with public health guidance."

- 6. The Court finds that it would be difficult to safely conduct Fact Finding hearings. Specifically, the Court is concerned about the safety of the, at least, six continuous participants (three court personnel and three litigants), who would be together in an enclosed facility for a minimum of 15 hours (during, e.g., a three-day trial), while introducing at least one other person (the witness) continuously over that time period.
- 7. Based upon all of the foregoing sources of information, the dramatic increase in positive COVID-19 rates in King County, and the predictions that these increases will continue, this Court finds that at this time it is not reasonably feasible or safe to continue operations as previously conducted, including conduct out-of-custody Fact Findings, where the litigants, witnesses and other participants travel to the Court and congregate all day in indoor facilities. At this time, out-of-custody Fact Findings pose an unreasonable risk to the health of all of the participants in the Court proceedings. Due to these circumstances and the serious danger posed by COVID-19, a continuance of out-of-custody Fact Findings is supported by good cause, is required in the administration of justice, and is an unavoidable circumstance.

## II. ORDER

- 1. As to Court operations generally, the Juvenile Court is authorized to take all necessary steps to ensure all matters and hearing types proceed with as few persons physically present in the courtroom as possible.
- 2. All out-of-custody juvenile offender Fact Findings shall be suspended until after January 11, 2021. The Court will conduct the scheduled Omnibus Hearings and Pre-Trial Conferences for those matters that both (a) remain on the trial calendar (and any others that are added to that calendar between now and January 11, 2021), and (b) have either Omnibus Hearings, Pre-Trial Conference or fact findings prior to January 11, 2021.

- 3. At that next scheduled hearing, counsel on those matters may raise arguments as to (a) actual prejudice their client may suffer by such a delay (e.g., unavailability of witnesses after January 11), and/or (b) how such a trial could be conducted safely (e.g., consent to witnesses or lawyers appearing by virtual means), and move for an exception to the continuance described in the preceding paragraph. If counsel declines to so move or the Court denies such a motion, then the Court and the parties will reschedule the Omnibus Hearings, Pre-Trial Conference or fact findings as appropriate consistent with this order.
- 4. Balancing the Court's need to maintain public health and safety against the Court's core constitutional obligations to the public, this order does not apply to in-custody offenders awaiting fact finding.
- 5. A continuance of out-of-custody Fact Findings 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 such proceedings, and constitutes an unavoidable circumstance under JuCR 7.8(e)(8), the time between the date of this order and the date of the next scheduled trial date are EXCLUDED when calculating time for trial. JuCR 7.8(e)(8).
- 6. While all juvenile offender Fact Findings have excluded time as a result of this Order, this Court concludes that public health information shall be reviewed, and new findings entered, every fourteen days beginning **December 9**, **2020**, on the issue of speedy trial and the issue of unavoidable circumstance, to determine if the coronavirus pandemic has changed sufficiently to modify this order (and begin trials sooner).

IT IS SO ORDERED.

Dated: December 2, 2020, nunc pro tunc to November 2

JUDGE JIM ROGERS

Presiding Judge, King County Superior Court