

**KITSAP COUNTY DISTRICT COURT  
STATE OF WASHINGTON**

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

**NO. 2020-22 AMENDED  
EMERGENCY ADMINISTRATIVE ORDER  
RE – DISTRICT COURT PHASE 2  
OPERATIONS**

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**THIS ADMINISTRATIVE ORDER is being issued in response to the current pandemic outbreak of the Coronavirus Disease 2019 (COVID-19). This Amended Administrative Order replaces Administrative Order No. 2020-22 which was entered on June 9, 2020.**

On May 28, 2020, the Washington State Department of Health approved Kitsap County’s variance application<sup>1</sup> to fully implement Phase 2 of Governor Jay Inslee’s Phased Approach to Reopening Washington Plan.<sup>2</sup> Kitsap County remains in Phase 2.

The Phased Approach limits Phase 2 gatherings to “no more than 5 people outside [one’s] household per week.” Customer-facing government services are not permitted until Phase 3.

On May 29, 2020, Washington State Supreme Court Chief Justice Debra L. Stephens<sup>3</sup> issued Order 25700-B-626 (May 29, 2020) captioned “Amended Third Revised and Extended Order Regarding Court Operations.”<sup>4</sup>

The Chief Justice recognized that despite Phased Approach limitations, Washington’s judicial branch must continue to operate during the pandemic. In order to protect the public and judicial branch staff, the Chief Justice noted the need for “increasingly stringent social distancing measures of at least six feet between people” and encouraged vulnerable individuals to avoid public places.

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.”

Yet, court operations are recognized as essential,<sup>5</sup> and may often be conducted by alternative means, in alternative settings, and with extra measures taken for public safety...

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<sup>1</sup> The Approval Letter is attached at Appendix A.

<sup>2</sup> Washington’s Phased Approach (September 21, 2020) (hereafter “Phased Approach”) is attached at Appendix B.

<sup>3</sup> Hereafter “Chief Justice.”

<sup>4</sup> The Chief Justice’s Order is available at this Court’s website, [www.kitsapgov.com/dc](http://www.kitsapgov.com/dc), under the Emergency Administrative Orders link.

<sup>5</sup> 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.”).

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.

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<sup>6</sup> 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.

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

ORDERED that effective immediately and until further order of the Kitsap County District Court<sup>7</sup> –

## **1. HIGH-RISK POPULATIONS & ILLNESS SYMPTOMS**

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 –

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<sup>6</sup> The presiding judge is responsible for leading the management and administration of the court’s business. General Rule 29(e). Judge Jeffrey J. Jahns is the presiding judge for Kitsap County District Court.

<sup>7</sup> Hereafter “District Court.”

- 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.<sup>8</sup>

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.

B. Illness Symptoms. Additionally, no one who feels sick shall enter the Kitsap County Courthouse. Anyone deemed by District Court personnel to be exhibiting illness symptoms may be ordered to leave the building.

## **2. DISTRICT COURT CLERK’S OFFICE**

The District Court clerk’s office in room 106 is open to the public. The office will be open daily on judicial days from 8:00 AM to 12:15 PM, and 1:15 PM to 4:00 PM.<sup>9</sup>

## **3. DISTRICT COURT CONTACT INFORMATION**

District Court may be contacted as follows –

- Website – **[www.kitsapgov.com/dc](http://www.kitsapgov.com/dc)**
- Email – **[kcdc@co.kitsap.wa.us](mailto:kcdc@co.kitsap.wa.us)**
- Telephone – **(360) 337-7109**
  - Option 1 – Traffic or vehicle matters
  - Option 2 – Civil matters
  - Option 6 – All other matters

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<sup>8</sup> Approval Letter, at 2.

<sup>9</sup> See Emergency Administrative Order No. 2020-25 Re – District Court COVID-19 2020 Budget Reduction (July 21, 2020). As noted by Order No. 2020-25, ¶2, District Court no longer has adequate funding to fulfill its constitutional duties due to the June 2020 budget reduction.

#### **4. STRINGENT SIX FOOT SOCIAL DISTANCING REQUIRED**

Anyone entering District Court public locations within the Kitsap County Courthouse shall maintain stringent social distancing measures of at least six feet between people. Anyone failing to do so may be ordered by authorized personnel to leave the building.

#### **5. COURTROOM SEATING CAPACITY IS LIMITED**

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.”<sup>10</sup>

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.<sup>11</sup>

The seating capacity of District Court courtrooms is severely limited in order to maintain stringent six foot social distancing measures. For this reason, most hearings shall be conducted by Zoom as discussed herein.

B. Courtroom Six Foot Social Distancing Seating Capacity Will Be Strictly Enforced. Chairs in District Court courtrooms are socially distanced at least six feet from each other. Chairs shall not be moved. Every person entering a District Court courtroom shall be seated in an empty chair as soon as possible. Courtroom seating capacity will be strictly enforced.

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 hallways until called by the District Court to enter the courtroom.

C. Preferred In-Court Seating. Due to limited seating capacity in each courtroom, only attorneys, parties, alleged victims and advocates, and witnesses<sup>12</sup> will be allowed inside a District Court courtroom where in-person courtroom attendance is permitted. District Court judges may modify this requirement as necessary and permit others to enter a courtroom so long as courtroom seating capacity is available.

If any empty chairs in a courtroom are available after those with preferred seating are seated, members of the public may enter the courtroom and be seated in an empty chair.

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<sup>10</sup> *State v. Lormor*, 172 Wn.2d 85, ¶12 (2011).

<sup>11</sup> *State v. Gomez*, 183 Wn.2d 29, ¶13 (2015).

<sup>12</sup> *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).

D. Livestreaming. Members of the public may view any District Court courtroom proceeding through livestreaming available at the District Court website.

## **6. ZOOM VIDEO CONFERENCING**

Zoom provides simplified video and audio conferencing. Zoom can be accessed by a computer or any mobile device such as a cell phone, iPad or tablet. Zoom is free for the user.<sup>13</sup>

A person can join a District Court Zoom hearing by selecting the appropriate courtroom link on the District Court website at –

- [www.kitsapgov.com/dc](http://www.kitsapgov.com/dc)

## **7. ZOOM COURTROOM DECORUM REQUIREMENTS**

**A person appearing by Zoom video conferencing is appearing in open court the same as if the person was appearing in-person in a courtroom.**

Individuals shall comply with District Court courtroom decorum rules. All Zoom participants shall comply with each of the following expectations for courtroom behavior. Failure to comply with any decorum requirement will result in the Court terminating the person's appearance by Zoom and/or rescheduling the case.<sup>14</sup>

A. Attorney Attire. All attorneys appearing by Zoom shall wear professional business attire.

B. Non-Attorney Attire. Appropriate dress is mandatory. Sunglasses and offensive clothing shall not be permitted. Participants should dress as if they are present in a courtroom because they are present in a courtroom.

C. Backgrounds. The camera showing a person appearing by Zoom also shows everything behind the person which will be visible in court. A Zoom participant's actual or virtual background shall not be distracting nor contain inappropriate subject matter or advertising of any kind. A Zoom participant shall make sure the background is calm and neutral.

D. Participant Location & Internet Connection. Distractions must be minimized. All persons appearing by Zoom shall find a quiet indoor location. An adequate internet connection is also required. Participants shall prevent interruptions by children, a partner, pets, etc. If an internet connection is unstable or the surrounding environment is distracting, the hearing will be rescheduled to a later date.

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<sup>13</sup> Zoom's website at <https://zoom.us> provides a series of short "How to Videos" training sessions to assist a new user. The videos are found on the left side of the website under the "About" section. Participants who are new to Zoom should view these short videos in advance of a Zoom hearing to help become familiar with Zoom.

<sup>14</sup> "A judge shall require order and decorum in proceedings before the court." Code of Judicial Conduct 2.8(A).

E. Microphones. Microphones are sensitive. Noise from road traffic, weather, or other sources will impact the audio quality. Participants should keep this in mind when selecting a location for their Zoom court appearance.

F. Participant Movement During A Zoom Hearing. All persons appearing by Zoom shall choose a location where they can sit still comfortably. Participants shall remain seated and still during an entire Zoom hearing. Participants shall not drive while attending a Zoom hearing.

G. Participants Shall Be On Time And Remain. All persons appearing by Zoom shall be on time. Zoom participants shall not leave the Zoom hearing until the Court recesses or the litigant has been released by the Court.

H. Electronic Devices Shall Be Turned Off. Except for the device being used to appear by Zoom, all other electronic devices (such as cell phones, pagers, personal computers) shall be turned off or set to vibrate. Electronic devices shall also be stored during a Zoom court appearance.

I. Zoom Waiting Room. Upon entering a Zoom video courtroom, all participants will enter a “waiting room” until admitted into the proceedings by the Court. Participants shall remain in the waiting room. The Court will admit the participant when ready. Participants should be muted upon entrance into a Zoom courtroom. The Court will unmute a participant when the person’s case is called.

J. While Court Is In Session. The following applies to all persons appearing by Zoom –

- Bathrooms. Zoom participants shall not appear from a bathroom.
- Sleep, Laying Down. Zoom participants shall not sleep or lay down.
- Eat, Drink. Zoom participants shall not eat or drink.
- Sober. Zoom participants shall be sober.
- Smoking, Vaping. Zoom participants shall not smoke or vape.
- Walking. Zoom participants shall sit still during the proceedings and shall not walk around or go outside.
- Behavior. Zoom participants shall behave appropriately and pay attention to the court proceedings even when another case is being heard. Zoom participants must listen to the judge and avoid conversations with anyone else other than the person’s attorney.

## **8. TELEPHONIC APPEARANCES THROUGH DISTRICT COURT TELEPHONE NUMBER NOT PERMITTED**

Telephonic appearances in court<sup>15</sup> through a District Court telephone number are not permitted.<sup>16</sup> See the paragraphs below concerning court appearances by Zoom.

## **9. APPEARANCE BY ZOOM – VIDEO AND AUDIO REQUIRED**

When appearing in court for a hearing or trial through Zoom, participants shall join by both video and audio. Appearance by the Zoom audio-only feature is not permitted without judicial permission.

## **10. APPEARANCE BY ATTORNEYS IN ALL CASES**

Attorneys shall appear through Zoom video conferencing when in-person courtroom appearance is not permitted.

Attorneys may appear through Zoom video conferencing when a client's in-person courtroom appearance is required at the attorney's discretion.

A motion by an attorney to appear by Zoom video conferencing is not required.

## **11. DEFENDANTS IN CRIMINAL CASES WHO ARE UNABLE TO APPEAR BY ZOOM FOR A ZOOM-ONLY HEARING**

If a defendant is unable to appear through Zoom video conferencing when in-person courtroom appearance is not permitted, the defendant shall appear with his or her attorney at the attorney's Zoom video conferencing location. A defendant shall not appear in-person in a courtroom for a mandatory Zoom-only appearance.

## **12. LITIGANTS IN CIVIL CASES**

Civil litigants are strongly encouraged to appear through Zoom video conferencing. A motion by a civil litigant to appear by Zoom video conferencing is not required.

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<sup>15</sup> District Court's previous telephonic hearing process involved the use of the one telephone available in each courtroom. A clerk was unable to communicate by telephone with the clerk's office or security when the telephone was in use for a telephonic hearing. This previous telephonic appearance process is no longer authorized.

<sup>16</sup> Attorneys and litigants may use a mobile device to appear by Zoom video conferencing.

### **13. DISTRICT COURT COURTROOM CALENDAR**

District Court has four courtrooms – 104, 105, 201, and 203. Each courtroom handles distinct types of hearings based upon the day of the week and time.

### **14. DISTRICT COURT COURTROOM 105** **(SOCIAL DISTANCING SEATING CAPACITY – 17)**

A. 8:30 AM Out-of-Custody Arraignment, Motion To Revoke, and Warrant Quashing (Daily).<sup>17</sup> This calendar handles out-of-custody arraignments, post-conviction motions to revoke, and all warrant quashings. All defendants, defense counsel and the prosecution shall appear in-person in the courtroom.

B. 11:00 AM In-Custody Disposition (Tuesday – Friday). This calendar handles in-custody case dispositions. Defendants and defense counsel shall be present in the Kitsap County Jail<sup>18</sup> video courtroom and appear by Zoom video conferencing. The prosecution may appear by Zoom video conferencing or in-person in the courtroom.<sup>19</sup>

C. 11:00 AM Out-Of-Custody Felony Drop Down (Monday). This calendar handles out-of-custody pending Kitsap County Superior Court felony cases which are thereafter filed in District Court for case dispositions. Defendants and defense counsel shall appear by Zoom video conferencing. The prosecution may appear by Zoom video conferencing or in-person in the courtroom.<sup>20</sup>

D. 1:30 PM In-Custody (Daily). This calendar handles in-custody cases except cases handled during the 11:00 AM in-custody disposition calendar. Defendants and defense counsel shall be present in the Jail video courtroom and appear by Zoom video conferencing. The prosecution may appear by Zoom video conferencing or in-person in the courtroom.<sup>21</sup>

E. 1:30 PM Out-Of-Custody DUI & DV Return (Thursday & Friday). This calendar handles out-of-custody mandatory next day return cases involving new charges alleging DUI<sup>22</sup> or domestic violence.<sup>23</sup> All defendants, defense counsel and the prosecution shall appear in-person in the courtroom.

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<sup>17</sup> Defendants are required to be present in the courtroom no later than 8:30 AM so they have sufficient time to speak with defense counsel before the hearings begin at 9:00 AM.

<sup>18</sup> Hereafter “Jail.”

<sup>19</sup> While Zoom video conferencing is preferred, District Court recognizes that members of the public including alleged victims may be present in the courtroom during this calendar and desire to speak directly with the prosecution.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> RCW 46.61.50571.

<sup>23</sup> RCW 10.99.045.

**15. DISTRICT COURT COURTROOM 104**  
**(SOCIAL DISTANCING SEATING CAPACITY – 23)**

A. Mandatory Zoom Video Conferencing In Courtroom 104 – Generally. Appearance in-person in courtroom 104 is not permitted, except as discussed below.

Defendants and defense counsel shall appear by Zoom video conferencing. The prosecution may appear by Zoom video conferencing or in-person in the courtroom.<sup>24</sup>

Unrepresented defendants are strongly encouraged to appear by Zoom video conferencing but may appear in-person in the courtroom.

B. 1:30 PM Out-Of-Custody DUI & DV Return (Monday – Wednesday). This calendar handles out-of-custody mandatory next day return cases involving new charges alleging DUI or domestic violence.

All defendants, defense counsel and the prosecution shall appear in-person in the courtroom for these hearings.

C. 1:30 PM Out-Of-Custody Testimonial Hearings (Alternating Tuesdays). This calendar handles all out-of-custody testimonial hearings.

District Court recognizes the potential constitutional difficulties with attempting to present and receive testimony in a criminal case by Zoom video conferencing.

Accordingly, when testimonial evidence is offered in a criminal case, all defendants, defense counsel and the prosecution shall appear in-person in the courtroom.

The parties may, however, by joint agreement and without prior court approval agree to present testimonial evidence by Zoom video conferencing.

D. 1:30 PM No Contact Order Protected Person Motion (Alternating Tuesdays). This calendar handles motions brought by protected persons who seek rescission or modification of a criminal no contact order.

Protected persons are strongly encouraged to appear by Zoom video conferencing but may appear in-person in the courtroom.

Defendants may only appear by Zoom video conferencing. Attorneys may appear by Zoom video conferencing or in-person in the courtroom.

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<sup>24</sup> See footnote 19.

**16. DISTRICT COURT COURTROOM 203**<sup>25</sup>  
(SOCIAL DISTANCING SEATING CAPACITY – 12)

A. 9:00 AM Name Change (Daily). This calendar handles name change petitions. Appearance by Zoom video conferencing is preferred. Appearance in-person in the courtroom is permitted.

B. 9:00 AM Protection Order Trial (Daily). This calendar handles trials on petitions for protection orders. Appearance by Zoom video conferencing is preferred. Appearance in-person in the courtroom is permitted.

C. 8:30 AM Small Claims Pretrial (Wednesday). This calendar offers parties in small claims actions an opportunity to seek mediation of their dispute through the Dispute Resolution Center of Kitsap County.<sup>26</sup> Parties who do not reach successful mediation will be assigned a mutually convenient trial date at the conclusion of mediation. Pretrial mediation is mandatory.

Appearance by Zoom video conferencing is preferred. Appearance in-person in the courtroom is permitted.

D. 1:30 PM & 3:00 PM Contested Infraction (Monday). This calendar handles contested civil infraction hearings. Due to the June 2020 District Court budget reduction, all infraction hearings are suspended and continued to March 2021 or later.<sup>27</sup>

E. 1:30 PM & 3:00 PM Infraction Mitigation (Tuesday). This calendar handles the mitigation of civil infractions. Due to the June 2020 District Court budget reduction, all infraction hearings are suspended and continued to March 2021 or later.<sup>28</sup>

F. 1:30 PM Small Claims Trial (Wednesday). This calendar handles small claims trials. Appearance by Zoom video conferencing is mandatory. Appearance in-person in the courtroom is not permitted.

G. 1:30 PM Civil Preliminary Trial & Motion (Thursday). This calendar handles civil preliminary trial and motion hearings. Appearance by Zoom video conferencing is required for attorneys. Appearance by litigants by Zoom video conferencing is preferred, but appearance in-person in the courtroom is permitted.

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<sup>25</sup> If no jury trials are held, courtroom 201 will be used for courtroom 203 calendars because of the increased social distancing seating capacity of courtroom 201.

<sup>26</sup> The Dispute Resolution Center's website is at <https://www.kitsapdrc.org/>.

<sup>27</sup> See Emergency Administrative Order No. 2020-25 (July 21, 2020).

<sup>28</sup> *Id.*

H. 1:30 PM Impoundment (Thursday). This calendar handles contested impoundment hearings. Appearance by Zoom video conferencing is preferred. Appearance in-person in the courtroom is permitted.

## **17. DISTRICT COURT COURTROOM 201** **(SOCIAL DISTANCING SEATING CAPACITY – 17)<sup>29</sup>**

A. 9:00 AM Trials (Monday – Friday). This calendar handles jury and bench trials for both criminal and civil cases.<sup>30</sup> District Court re-commenced hearing criminal trials on September 14, 2020. District Court will begin hearing civil trials on January 19, 2021.

Appearance in-person in the courtroom for all criminal trials is required. Appearance in-person in the courtroom for all civil trials is required unless the parties jointly agree otherwise.

B. 1:30 PM Behavioral Health Court (Thursday). This calendar handles District Court Behavioral Health Court. Appearance shall be by Zoom video conferencing. Appearance in-person in the courtroom is not permitted.

C. 10:00 AM THRIVE Court (Alternating Fridays). This calendar handles District Court THRIVE Court. Appearance shall be by Zoom video conferencing. Appearance in-person in the courtroom is not permitted.

D. 10:00 AM Felony Diversion (Alternating Fridays). This calendar handles felony diversion cases. Appearance shall be by Zoom video conferencing. Appearance in-person in the courtroom is not permitted.

## **18. EX PARTE CALENDARS**

A. “I Can’t Afford To Pay” Criminal Motion (Daily). This calendar handles motions in criminal cases to reduce or eliminate court-imposed legal financial obligations. These matters will be heard ex parte in chambers.

B. Temporary Protection Order (Daily). This calendar handles petitions for temporary protection orders. These matters will be heard ex parte in chambers unless the reviewing judge determines that an in-court hearing is required. If an in-court hearing is required, the petitioner may appear by Zoom video conferencing or in-person in the courtroom.

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<sup>29</sup> Social distancing seating capacity for a jury panel is 10.

<sup>30</sup> District Court re-commenced hearing criminal jury trials on September 14, 2020. District Court will begin hearing civil jury trials on January 19, 2021.

## **19. APPOINTMENT OF COUNSEL AND INDIGENCY SCREENING**

An indigent person charged with a crime has a Sixth Amendment,<sup>31</sup> statutory,<sup>32</sup> and court rule<sup>33</sup> right to the appointment of counsel. The right to a lawyer extends to all criminal proceedings<sup>34</sup> and a lawyer shall be provided at every critical stage of the proceedings.<sup>35</sup> If a defendant is not represented and is unable to obtain counsel due to indigence, the court shall assign counsel to the defendant unless the defendant makes a knowing, voluntary and intelligent waiver of counsel.<sup>36</sup>

The right to a lawyer accrues as soon as feasible after a defendant has been arrested, appears before a committing magistrate, or is formally charged, whichever occurs earliest.<sup>37</sup>

A determination of indigency shall be made for all persons “wishing the appointment of counsel” in criminal cases.<sup>38</sup> The determination of indigency “shall be made upon the defendant’s initial contact with the court or at the earliest time circumstances permit.”<sup>39</sup>

Prior to the COVID pandemic, the District Court process for determining indigency status involved an out-of-custody defendant being directed to go into the District Court clerk’s office, meet face-to-face with court staff and screen for counsel.

On March 13, 2020, in response to Kitsap County entering Phase I due to the pandemic, District Court suspended all out-of-custody criminal matters including arraignments and first appearances on criminal motions to revoke.<sup>40</sup>

Kitsap County entered Phase 2 on May 28, 2020. On June 9, 2020 District Court began again hearing out-of-custody criminal arraignments and first appearances on criminal motions to revoke.<sup>41</sup> At that time due to serious concerns for the safety of the public, defendants and court staff, District Court decided to appoint a provisional attorney<sup>42</sup> for any criminal defendant wishing

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<sup>31</sup> *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963) (establishing an indigent defendant’s Sixth Amendment right to counsel at the expense of the state).

<sup>32</sup> RCW 10.101.005.

<sup>33</sup> CrRLJ 3.1(d), 4.1(c).

<sup>34</sup> CrRLJ 3.1(a).

<sup>35</sup> CrRLJ 3.1(b)(2).

<sup>36</sup> CrRLJ 4.1(c).

<sup>37</sup> CrRLJ 3.1(b)(1).

<sup>38</sup> RCW 10.101.020(1)

<sup>39</sup> RCW 10.101.020(3).

<sup>40</sup> Emergency Administrative Order No. 2020-1 (Mar. 13, 2020).

<sup>41</sup> Emergency Administrative Order No. 2020-22. Hereafter “Order 2020-22.”

<sup>42</sup> RCW 10.101.020(4).

an attorney rather than re-commence the previous process of face-to-face indigency screening between the defendant and court staff.

In June 2020, no one thought Kitsap County would remain in Phase 2 now into October 2020. Since June, Kitsap County Superior Court and District Court have taken substantial steps to increase safety for everyone entering the Courthouse.<sup>43</sup> Given these substantial Courthouse safety provisions, District Court now believes that indigency screening as contemplated by RCW 10.10.101 can be safely accomplished with new procedures.

Accordingly, District Court will begin a trial period of indigency screening for out-of-custody criminal defendants who wish the appointment of counsel.<sup>44</sup>

If the trial period proves successful and safe, District Court will make this new indigency screening process permanent at the discretion of the District Court Administrator.

District Court will continue to appoint provisional counsel without indigency screening for in-custody defendants who are detained in jail because District Court will not permit its staff to enter the jail and conduct face-to-face indigency screening.

Individuals are certainly entitled to retain counsel if they choose.

## **20. ZOOM BREAKOUT ROOMS**

For all video appearance hearings that involve a critical stage of the proceedings, courts shall provide a means for parties to have the opportunity for private and continual discussion with their attorneys.<sup>45</sup>

Zoom has such a function called a “breakout room.” Breakout rooms let the Zoom host separate people appearing by Zoom video conferencing into smaller groups where they can have their own private conversations. Those in a breakout room can then return to the larger Zoom video conference when the private conversation is finished.

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<sup>43</sup> Social distancing is required. Social distancing floor markers and physical barriers have been added. Masks are required. Plastic and curtain barriers have been added. Zoom video conferencing technology is now available in all District Court courtrooms. All District Court hearings are livestreamed on the internet.

<sup>44</sup> Indigency screening will not be face-to-face between a criminal defendant and court staff. All defendants will complete an indigency screening form stating their intent to obtain their own attorney or request to screen for appointment of counsel. This will be done prior to a defendant’s hearing in courtroom 105 on the daily 8:30 AM calendar. The screening form will be forwarded to court staff, who will review the form later that day. The defendant will thereafter be notified by email (or by mail if no email address is provided) whether the defendant has qualified for the appointment of counsel, and if qualified referred to the Office of Public Defense.

Due to continued safety concerns for defendants, the public and court staff, the Court will continue to make a provisional appointment of counsel for any criminal defendant who fails to complete the required indigency screening form.

<sup>45</sup> Chief Justice Order, at 10, ¶16 (May 29, 2020).

Parties and their attorneys who want to speak in private during a Zoom video conference should notify the judge. The Zoom host will then create a breakout room for the attorney and client to speak privately. When the private conversation is over, the attorney and client can rejoin the Zoom video conference.

## **21. DISTRICT COURT SHAREPOINT TEMPLATES**

For over a decade, District Court has used electronic court files and electronic forms<sup>46</sup> created through SharePoint. Unfortunately, these electronic form templates are not available unless a person is present in the Kitsap County Courthouse and logs into a county computer.

It is important that counsel be able to access District Court SharePoint templates without having to enter the Kitsap County Courthouse. District Court has created eTemplates for several criminal forms including electronic signatures rather than SharePoint forms which require use of a signature pad. District Court upon request will email eTemplates directly to counsel.<sup>47</sup>

The eTemplates are Microsoft Word forms. The eTemplates are locked except for fields which are able to be filled out by the user.

A completed electronic form based upon an eTemplate should be emailed to District Court to be loaded into the case's electronic court file. The completed electronic form must be returned to District Court in its original Microsoft Word format. A form returned in PDF cannot be reviewed, modified if necessary, or signed by a judge. Additionally, the email should include the case name and cause number in the caption to assist court staff in placing the electronic form in the appropriate SharePoint court folder.

## **22. WARRANT QUASHINGS REQUIRE A PRE-SCHEDULED DEFENDANT APPEARANCE IN-PERSON IN COURTROOM 105 AT 8:30 AM**

Administrative Order No. 2020-25 (June 9, 2020) modified the in-person in the courtroom process for individuals seeking to quash warrants by instead authorizing telephonic warrant quashings. District Court took this action in June to protect the public, litigants and court staff in an effort to limit the number of people required to enter the Kitsap County Courthouse.

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<sup>46</sup> Generally for criminal cases.

<sup>47</sup> Template requests should be sent by email to the Presiding Judge at [jjahns@co.kitsap.wa.us](mailto:jjahns@co.kitsap.wa.us).

Given the many actions taken by both Kitsap County Superior Court and District Court<sup>48</sup> to increase the safety of anyone entering the Kitsap County Courthouse, the process of quashing a warrant by telephone is cancelled.

A defendant who wants to quash a District Court warrant must contact the District Court to schedule a warrant quashing hearing.<sup>49</sup> A quashing hearing will be scheduled at least two judicial days after District Court is contacted and will be scheduled to make sure the additional warrant quashing hearing will not exceed District Court's maximum caseload limit for the day in question.

All District Court warrant quashings will be scheduled in courtroom 105 at 8:30 AM. Defendants must appear on time in-person in the courtroom. Appearance by Zoom video conferencing will not be permitted. Warrants will remain in effect if a defendant appears late for his or her warrant quashing hearing or if a defendant fails to appear for the hearing.

### **23. CRIMINAL CITATIONS & NOTICES TO APPEAR**

CrRLJ 2.1(b) authorizes law enforcement to issue and serve upon a person a criminal citation and notice to appear. This process has been automated through the Statewide Electronic Collision & Ticket Online Records<sup>50</sup> e-ticketing program. In a criminal case, the law enforcement officer completes and issues a SECTOR e-ticket and assigns an arraignment date which is served on the defendant at the scene.

District Court continues to face an arraignment backlog of hundreds of criminal cases. It will likely take the rest of 2020 to properly process these cases. Allowing law enforcement to assign arraignment dates without first contacting court staff to verify whether an arraignment calendar is already full will over-burden an already extensive criminal arraignment calendar.

District Court will continue to accept SECTOR e-ticketing referrals from law enforcement for both criminal and civil infraction cases. Law enforcement, however, is not authorized to schedule arraignment dates on criminal matters until authorized by District Court to do so. Upon receipt of a criminal SECTOR e-ticket, District Court staff will send a summons to the defendant for a court date within the District Court arraignment maximum case setting parameters.

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<sup>48</sup> See footnote 43.

<sup>49</sup> To schedule a warrant quashing hearing, a defendant may contact the District Court by telephone, by email, or in-person in the clerk's office.

<sup>50</sup> Hereafter "SECTOR."

## **24. LIVESTREAMING DISTRICT COURT HEARINGS**

Article I, §10 of the Washington Constitution requires that “[j]ustice in all cases shall be administered openly.”

The open courts doctrine has its foundation in the Magna Carta and in the view of that document by early legal commentators ...

We conclude, that the requirement that justice be openly administered includes, at a minimum, the long recognized right of the public to attend court proceedings. The provision is not expressed as an individual right, but as a command to the judiciary. In our view, the text and history of this provision compels the conclusion that §10 creates a right held by all Washingtonians.<sup>51</sup>

The COVID pandemic has resulted in the need for the judicial branch to implement stringent social distancing measures. District Court has significantly reduced the seating capacity in its courtrooms. This will likely result in members of the public at times not being able to enter a courtroom because the courtroom has reached its maximum distancing seating capacity. District Court will also be conducting many hearings by Zoom. While a member of the public could view court proceedings through Zoom, a large number of the public entering a Zoom video conference could overwhelm the court’s ability to process the cases awaiting hearing through Zoom.

Accordingly, all District Court hearings will be livestreamed to the internet to ensure public access and compliance with Washington’s open courts doctrine. Livestreamed hearings may be found at the District Court website –

- [www.kitsapgov.com/dc](http://www.kitsapgov.com/dc)

## **25. THE COURTHOUSE REMAINS OPEN**

The Kitsap County Courthouse remains open to the public.

DATED – OCTOBER 9, 2020

*/s/ Signed Electronically*

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JEFFREY J. JAHNS

Presiding Judge

Kitsap County District Court

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<sup>51</sup> *In re Detention of Reyes*, 176 Wn.App. 821, ¶23 (2013), *affirmed*, 184 Wn.2d 340 (2015).

# 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 6<sup>th</sup> 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)

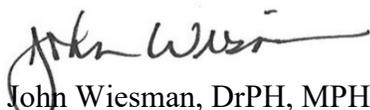
People in high-risk populations are strongly encouraged to limit their participation in these Phase II activities and business services. High-risk populations are currently defined by the CDC as:

- 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

WASHINGTON'S PHASED APPROACH  
(SEPTEMBER 21, 2020)

# WASHINGTON'S PHASED APPROACH

## Modifying Physical Distancing Measures

Last updated: 9/21/2020

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

	 <b>Modified Phase 1</b>	 <b>Phase 2</b>	 <b>Phase 3</b>	 <b>Phase 4</b>
<b>High-Risk Populations*</b>	Stay home unless engaging in Modified Phase 1 permissible activities.	Strongly encouraged, but not required, to stay home unless engaging in Modified Phase 1 or Phase 2 permissible activities.	Strongly encouraged, but not required, to stay home unless engaging in Modified Phase 1, Phase 2 or Phase 3 permissible activities.	Resume public interactions, with physical distancing
<b>Recreation</b>	Some outdoor recreation (hunting, fishing, golf, boating, hiking)	Outdoor recreation involving 5 or fewer people outside your household (camping, beaches, etc.)	<ul style="list-style-type: none"> <li>- Outdoor group rec. sports activities (50 or fewer people)</li> <li>- Recreational facilities at &lt;25% capacity</li> </ul>	Resume all recreational activity
<b>Gatherings (non religious)</b>	Allow gatherings outdoors with fewer than 5 people outside your household per week	Gather with no more than 5 people outside your household per week	Allow gatherings with no more than 10 people	Allow gatherings with > 10 people
<b>Travel</b>	Essential travel & limited non-essential travel for Modified Phase 1 permissible activities	Essential travel and limited non-essential travel for Modified Phase 1 and Phase 2 permissible activities	Resume non-essential travel	Continue non-essential travel
<b>Business/ Employers</b> (All businesses will be required to follow safety plans written by the state)	<ul style="list-style-type: none"> <li>- Manufacturing, construction, domestic services, photography, curbside library services, indoor fitness and drive-in events meeting Phase 2 guidance</li> <li>- Retail following Phase 2 guidance, but guest occupancy at &lt;30% of maximum</li> <li>- Real Estate following Phase 2 guidelines, but guest occupancy at 25% of maximum and indoor services limited to 30 minutes</li> <li>- Professional services following Phase 2 guidance, but occupancy limited to 25% of maximum, with an exception for 1-to-1 services in an enclosed room. Indoor service limited to 30 minutes</li> <li>- Personal services following Phase 2 guidance, but occupancy limited to 25% of maximum with an exception for 1-to-1 services in an enclosed room</li> <li>- Restaurants/Bars** following Phase 2 guidance, but indoor occupancy at 25% of maximum and outdoor occupancy at 50%</li> <li>- Pet grooming following Phase 2 guidance but occupancy limited to 25% of maximum</li> <li>- Staffed water recreation facilities</li> <li>- Agritourism as outlined in Phase 2 guidance</li> </ul>	<ul style="list-style-type: none"> <li>- Remaining manufacturing</li> <li>- Additional construction phases</li> <li>- In-home/domestic services (nannies, housecleaning, etc.)</li> <li>- Retail (in-store purchases allowed with restrictions)</li> <li>- Real estate</li> <li>- League-play bowling</li> <li>- Museums 25% capacity</li> <li>- Agritourism</li> <li>- Professional services/office-based businesses (telework remains strongly encouraged)</li> <li>- Personal services (hair and nail salons, barbers, tattoo, etc.)</li> <li>- Pet grooming</li> <li>- Restaurants &lt;50% capacity, table size no larger than 5 (no bar-area seating)</li> <li>- Indoor dining with household only</li> <li>- Bars**: no indoor seating unless min. food requirements in guidance met</li> <li>- Drive-in events</li> <li>- Library (curbside pick-up)</li> <li>- Limited indoor fitness and training with 300 square feet of distance/person, up to 25% capacity for large facilities.</li> </ul>	<ul style="list-style-type: none"> <li>- Movie theaters at &lt;25% capacity</li> <li>- Customer-facing government services (telework remains strongly encouraged)</li> <li>- Libraries</li> <li>- Museums 50% capacity</li> <li>- Limited indoor fitness and training with 200 square feet of distance/person, up to 25% capacity for large facilities.</li> <li>- All other business activities not yet listed except for those specified for Phase 4</li> </ul>	<ul style="list-style-type: none"> <li>- Nightclubs</li> <li>- Concert venues</li> <li>- Large sporting events</li> <li>- Resume unrestricted staffing of worksites, but continue to practice physical distancing and good hygiene</li> <li>- Live entertainment</li> </ul>

\* 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 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; people who live in a nursing home or long-term care facility.

\*\*For the purposes of the Safe Start Phased Plan, bars are defined as taverns, breweries, wineries and distilleries.

\*\*\*For the purposes of the Safe Start Phased Plan, maximum occupancy refers to the maximum building occupancy as determined by the fire code.