

**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. 2020-22
EMERGENCY ADMINISTRATIVE ORDER
RE – DISTRICT COURT PHASE 2
OPERATIONS

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 judge¹⁰ 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.¹¹

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 until further order of the Kitsap County District Court¹² –

⁹ Order, at 3.

¹⁰ 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.

¹¹ Order, at 14, ¶23 (paragraphs added for ease of reading).

¹² Hereafter “District Court.”

1. PREVIOUS EMERGENCY ORDERS

Emergency Administrative Order No. 2020-6 (Closure Of District Court Clerk’s Office) and Emergency Administrative Order No. 2020-14 (Out-Of-Custody Criminal Cases) are rescinded.

All other previous District Court emergency administrative orders remain in full effect, except as modified herein.

2. 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 –

- 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.¹³

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.

¹³ Approval Letter, at 2.

3. DISTRICT COURT HAS LIMITED IN-PERSON STAFF

The District Court employee work area is small. Twenty work stations are located in this small clerk's office area with little to no social distancing. Some relocation of work stations and the installation of plastic barriers will help. But as the Chief Justice noted, "many court facilities in Washington are ill-equipped to effectively comply with social distancing and other public health requirements."¹⁴

For these reasons, the District Court Presiding Judge has ordered that a maximum of ten District Court personnel will be permitted in the clerk's office work area at any one time.¹⁵

It is not possible for District Court to completely reopen its four courtrooms and return to normal operations with half of the District Court staff unavailable in-person.

4. DISTRICT COURT CLERK'S OFFICE

On June 15, 2020, the District Court clerk's office in room 106 will re-open to the public. The office will be open daily from 8:00 AM to 12:15 PM, and 1:15 PM to 4:30 PM. The District Court Clerk's Office will be operating with limited personnel.

5. DISTRICT COURT CONTACT INFORMATION

District Court may be contacted as follows –

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

6. 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.

¹⁴ Order, at 1.

¹⁵ The remaining employees will work at home through telecommuting protocols.

7. 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.”¹⁶

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.¹⁷

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 witnesses¹⁸ 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.

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

¹⁶ *State v. Lormor*, 172 Wn.2d 85, ¶12 (2011).

¹⁷ *State v. Gomez*, 183 Wn.2d 29, ¶13 (2015).

¹⁸ *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).

8. 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.¹⁹

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**

9. ZOOM COURTROOM DECORUM REQUIREMENTS

A person appearing by Zoom video conferencing is appearing in open court. Individuals are expected and required to comply with District Court courtroom decorum rules.

All Zoom participants shall comply with each of the following expectations for courtroom behavior. A **failure to comply** with any decorum requirement will result in the Court terminating the person's appearance by Zoom and/or rescheduling the case.²⁰

- 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.
- 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.

¹⁹ 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.

²⁰ "A judge shall require order and decorum in proceedings before the court." Code of Judicial Conduct 2.8(A).

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.

**10. TELEPHONIC APPEARANCE NOT PERMITTED –
ATTORNEYS IN ALL CASES**

A. No Telephonic Appearances. Attorneys shall not appear by telephone²¹ or by the Zoom telephone-only feature.²²

B. Zoom Video Conferencing. Attorneys shall appear through Zoom video conferencing when in-person courtroom appearance is not permitted. No motion to appear by Zoom video conferencing is required.

Attorneys may appear through Zoom video conferencing when in-person courtroom appearance is permitted, the attorney desires to appear remotely, and District Court approves. A motion to appear by Zoom video conferencing shall be filed with District Court and served on all parties at least 7 days prior to the hearing.

**11. TELEPHONIC APPEARANCE NOT PERMITTED –
DEFENDANTS IN CRIMINAL CASES**

A. No Telephonic Appearances. A defendant in a criminal case shall appear in-person in a courtroom as required herein.

B. Zoom Video Conferencing. 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's appearance by telephone²³ or by the Zoom telephone-only feature is not permitted in criminal cases.

²¹ Attorneys may use a mobile device to appear by Zoom video conferencing.

²² 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.

²³ Defendants may use a mobile device to appear by Zoom video conferencing.

12. TELEPHONIC APPEARANCE DISFAVORED – PARTIES IN CIVIL CASES

A. Zoom Video Conferencing Strongly Encouraged. When in-person courtroom appearance is not permitted in a civil case, a party is strongly encouraged to appear through Zoom video conferencing. No motion to appear by Zoom video conferencing is required.

B. Zoom Telephone Feature Disfavored, But Permitted. A party's appearance by telephone²⁴ in civil cases is disfavored. If a party is unable to appear through Zoom video conferencing, the Zoom telephone-only feature is permissible. No motion to appear by the Zoom telephone-only feature is required when in-person courtroom appearance is not permitted.

When in-person courtroom appearance is permitted, however, a party's motion to appear by Zoom video conferencing or by the Zoom telephone-only feature is required. A motion to appear by Zoom video conferencing or by the Zoom telephone-only feature shall be filed with District Court and served on all parties at least 7 days prior to the hearing.

A motion is not required, though, where all parties agree to appear by Zoom video conferencing.

13. DISTRICT COURT COURTROOM CALENDAR

District Court has four courtrooms – courtroom 104, 105, 201, and 203. Each courtroom handles distinct types of hearings based upon the day of the week and time.²⁵

Since March 13, 2020, the Presiding Judge has allowed only courtroom 105 to be open on a limited basis. District Court's four courtrooms are re-opened as discussed below.

²⁴ Civil parties may use a mobile device to appear by Zoom video conferencing.

²⁵ The District Court Calendar is attached at Appendix D.

14. DISTRICT COURT COURTROOM 105
(SEATING CAPACITY – 24 CHAIRS)

On June 15, 2020, Courtroom 105 (which handles criminal cases) is re-opened as follows –

A. 8:30 AM Out-of-Custody Arraignment & Motion To Revoke (Daily).²⁶ This calendar handles out-of-custody arraignments and post-conviction motions to revoke. All defendants, defense counsel and the prosecution shall appear in-person in the courtroom subject to strict social distancing measures.

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 video courtroom and appear by Zoom video conferencing. The prosecution may appear by Zoom video conferencing or in-person in the courtroom subject to strict social distancing measures.²⁷

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. Defendants and defense counsel shall appear by Zoom video conferencing. The prosecution may appear by Zoom video conferencing or in-person in the courtroom subject to strict social distancing measures.²⁸

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 Kitsap County Jail video courtroom and appear by Zoom video conferencing. The prosecution may appear by Zoom video conferencing or in-person in the courtroom subject to strict social distancing measures.²⁹

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 DUI³⁰ or domestic violence.³¹ All defendants, defense counsel and the prosecution shall appear in-person in the courtroom subject to strict social distancing measures.

²⁶ 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.

²⁷ 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.

²⁸ *Id.*

²⁹ *Id.*

³⁰ RCW 46.61.50571.

³¹ RCW 10.99.045.

15. DISTRICT COURT COURTROOM 104
(SEATING CAPACITY – 16 CHAIRS)

On June 15, 2020, Courtroom 104 (which handles criminal cases) is re-opened as follows –

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

Defendants, defense counsel and the prosecution shall appear by Zoom video conferencing.

If a defendant is represented by counsel and unable to appear by Zoom video conferencing, the defendant shall appear with the attorney at the attorney’s Zoom video conferencing location. See Section 10 for additional details.

Unrepresented defendants may appear in-person in courtroom 104 as follows –

If a defendant is not represented by counsel and unable to appear by Zoom video conferencing or by the Zoom telephone-only feature, the defendant may appear in-person in the courtroom subject to strict social distancing measures.

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 subject to strict social distancing measures.³²

C. 1:30 PM Out-Of-Custody Testimonial Hearings (Alternating Tuesdays). This calendar handles all out-of-custody testimonial hearings scheduled in courtroom 104.

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 subject to strict social distancing measures.

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

³² The prosecution shall be present in the courtroom at 1:30 PM on Tuesday and Wednesday for next day return hearings. The prosecution has additional cases also scheduled at 1:30 PM on those days which are handled after the return hearings are finished.

District Court recognizes that it may be disruptive to require the prosecution to return to the office to complete the afternoon calendar after being in the courtroom handling the return calendar. The prosecution may appear in-person in courtroom 104 for afternoon hearings subject to strict social distancing measures.

D. 1:30 PM “I Can’t Afford To Pay” Motion (Monday). This calendar handles out-of-custody motions to reduce or eliminate court-imposed legal financial obligations. These matters will be heard ex parte in chambers and no long be heard in open court.

E. 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 may appear by Zoom video conferencing or in-person in the courtroom subject to strict social distancing measures.

Defendants may not 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 subject to strict social distancing measures.

16. DISTRICT COURT COURTROOM 203
(SEATING CAPACITY – 12 CHAIRS)

On July 6, 2020, Courtroom 203 (which handles civil cases) is re-opened as follows –

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 subject to strict social distancing measures is permitted.

B. 9:00 AM Protection Order (Daily). This calendar handles petitions for protection orders. Appearance by Zoom video conferencing is preferred. Appearance in-person in the courtroom subject to strict social distancing measures is permitted.

C. 11:00 AM Temporary Order (Daily). This calendar handles petitions for temporary protection orders. Appearance by Zoom video conferencing is preferred. Appearance in-person in the courtroom subject to strict social distancing measures is permitted.

D. 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.³³ Parties who do not reach successful mediation will be assigned a mutually convenient trial date at the conclusion of mediation. Pretrial mediation is mandatory.

The decision whether appearance will be in-person or by Zoom video conferencing will be announced before July 6, 2020.

E. 1:30 PM & 3:00 PM Contested Infraction (Monday). This calendar handles contested civil infraction hearings. Appearance shall be by Zoom video conferencing. Appearance in-person in the courtroom is not permitted.

F. 1:30 PM & 3:00 PM Impound (1:30 PM 5th Monday; 3:00 PM 4th & 5th Monday). This calendar handles contested impound hearings. Appearance by Zoom video conferencing is preferred. Appearance in-person in the courtroom subject to strict social distancing measures is permitted.

G. 1:30 PM & 3:00 PM Infraction Mitigation (Tuesday). This calendar handles the mitigation of civil infractions. Appearance shall be by Zoom video conferencing. Appearance in-person in the courtroom is not permitted.

³³ The website is at <https://www.kitsapdrc.org/>.

H. Infraction Decision On Written Statements. Defendants may choose to submit a contested or mitigation civil infraction matter by written statement. District Court will decide the matter without an in-court hearing, and notify the defendant in writing of the decision. There shall be no appeal from a decision on written statements.³⁴

I. 1:30 PM Small Claims Trial (Wednesday). This calendar handles small claims trials. Appearance by Zoom video conferencing is preferred. Appearance in-person in the courtroom subject to strict social distancing measures is permitted.

J. 1:30 PM Civil Preliminary Trial & Motion (Thursday). This calendar handles civil preliminary trial and motion hearings. Appearance by Zoom video conferencing is preferred. Appearance in-person in the courtroom subject to strict social distancing measures is permitted.

17. DISTRICT COURT COURTROOM 201 **(COURTROOM NOT YET SOCIAL DISTANCED)**

On June 15, 2020, Courtroom 201 (which handles District Court's therapeutic courts, felony diversion and trials) is re-opened as follows –

A. 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.

B. 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.

C. 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.

³⁴ IRLJ 3.5.

18. DISTRICT COURT COURTROOM 201 – TRIALS **(SEATING CAPACITY – COURTROOM NOT SOCIAL DISTANCED)**

A. Criminal Trials. The Supreme Court will be providing guidance³⁵ to trial courts concerning the procedures necessary to begin conducting jury trials.

The presiding judges of Kitsap County Superior Court and District Court³⁶ have been discussing the recommencement of jury trials. It is clear it will be almost impossible to conduct jury selection for more than one jury trial per week at least for the next few months. Kitsap County Superior Court has a backlog of jury trials which need to commence, including several cases where defendants are in custody awaiting their trials.

For these reasons, District Court will not commence any criminal jury trials until at least September 14, 2020.

B. Civil Trials. District Court has a backlog of criminal jury trials which will need to be tried. Realistically, District Court will need the rest of 2020 to decrease this criminal trial backlog.

Accordingly, no civil jury trials will commence until January 19, 2021.³⁷ Civil bench trials will be heard as currently scheduled.

19. APPOINTMENT OF COUNSEL

An indigent person charged with a crime has a Sixth Amendment,³⁸ statutory,³⁹ and court rule⁴⁰ right to the appointment of counsel. The right to a lawyer extends to all criminal proceedings⁴¹ and a lawyer shall be provided at every critical stage of the proceedings.⁴² 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.⁴³

³⁵ Anticipated by the end of June, 2020.

³⁶ Along with representatives from the Auditor's Office (which issues jury summons and provides the location for jury panels to congregate in the Kitsap County Courthouse), prosecutor's office, criminal defense bar and civil bar.

³⁷ District Court appreciates the ongoing difficulty the COVID pandemic has caused to civil litigants who rightfully deserve to have their cases heard. The Court wishes better options were available.

³⁸ *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).

³⁹ RCW 10.101.005.

⁴⁰ CrRLJ 3.1(d), 4.1(c).

⁴¹ CrRLJ 3.1(a).

⁴² CrRLJ 3.1(b)(2).

⁴³ CrRLJ 4.1(c).

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.⁴⁴

RCW 10.101.020(1) provides that a determination of indigency shall be made for all persons “wishing the appointment of counsel” in criminal cases.

At times, though, a court may appoint an attorney prior to a determination of indigency. RCW 10.101.020(4) reads –

If a determination of eligibility cannot be made before the time when the first services are to be rendered, the court shall appoint an attorney on a provisional basis. If the court subsequently determines that the person receiving the services is ineligible, the court shall notify the person of the termination of services, subject to court-ordered reinstatement.

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.⁴⁵

Kitsap County just entered Phase 2 of the governor’s four phase re-opening plan created to protect everyone during the COVID pandemic. District Court will not put the public and court staff at risk by requiring in-person indigency screening until it is safe to do so.

Accordingly, any person charged with a crime who wishes an attorney will be appointed an attorney on a provisional basis pursuant to RCW 10.101.020(4).

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.⁴⁶

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.

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

⁴⁴ CrRLJ 3.1(b)(1).

⁴⁵ District Court appoints an attorney for all in-custody defendants without a determination of indigency pursuant to RCW 10.101.020(4) because the Court lacks staff to enter the Kitsap County Jail to screen for indigency.

⁴⁶ Order, at 10, ¶16.

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 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 the District Court SharePoint templates without having to enter the Kitsap County Courthouse.

Accordingly, District Court upon request will upload frequently used SharePoint electronic form templates to its website for counsel to download. District Court upon request will also email templates directly to counsel.⁴⁷

The SharePoint electronic form templates are a Microsoft Word form. The templates are locked except for fields which are able to be filled out by the user.

A completed electronic form based upon a template 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, and signed by a judge.

22. BENCH WARRANT QUASHINGS

A defendant who contacts the Court by email or telephone seeking a hearing to quash an outstanding bench warrant will have any District Court warrants quashed ex parte in chambers so long as the defendant provides his or her current mailing and email addresses.

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 Records⁴⁸ e-ticketing program.⁴⁹ 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.

⁴⁷ Template requests should be sent by email to the Presiding Judge at jjahns@co.kitsap.wa.us.

⁴⁸ Hereafter "SECTOR."

⁴⁹ More information about SECTOR is available at the Washington Association of Sheriffs and Police Chiefs website at <https://www.waspc.org/sector-training-information> (visited June 7, 2020).

District Court is facing 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.

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.⁵⁰

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 it has reached its maximum 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**

⁵⁰ *In re Detention of Reyes*, 176 Wn.App. 821, ¶23 (2013), *affirmed*, 184 Wn.2d 340 (2015).

25. MODIFICATION OF METHOD OF COURT APPEARANCE

As the United States Supreme Court noted just a couple of years ago – “we do not begin to claim all the answers today.”⁵¹

The Zoom video conferencing requirements entered in this emergency order may and probably will have unforeseen consequences.

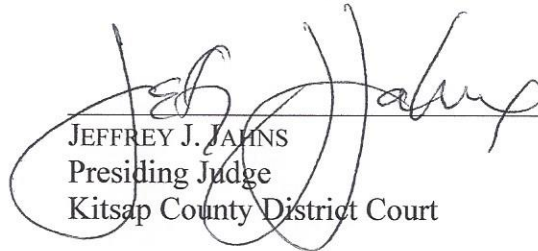
A party may file a written motion at least 14 days before a hearing showing good cause for modification of this emergency order’s appearance requirements. The motion shall be served on all opposing parties no later than the day the motion is filed with District Court. Any written response by an opposing party shall be filed with District Court and served on the moving party within 7 days of the filing of the moving party’s motion.

The Presiding Judge⁵² will review the motion and any response, and notify the parties in writing of the Court’s decision.

26. THE COURTHOUSE REMAINS OPEN

The Kitsap County Courthouse remains open to the public.

DATED – JUNE 9, 2020


JEFFREY J. JAHNS
Presiding Judge
Kitsap County District Court

⁵¹ *Carpenter v. United States*, ___ U.S. ___, 138 S.Ct. 2206, 2220 n.4, 201 L.Ed.2d 507 (2018).

⁵² Or the Presiding Judge’s designee.

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)

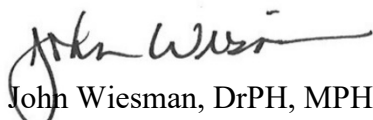
People in high-risk populations are strongly encouraged to limit their participation in these Phase II activities and business services. High-risk populations are currently defined by the CDC as:

- 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 hardline 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.

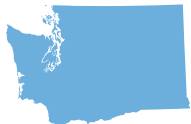
COVID-19 DISEASE ACTIVITY

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:

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:

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:

Case & Contact Investigations

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:

Protect High-Risk Populations

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)	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.

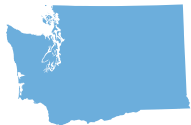
PHASED APPROACH TO REOPENING WASHINGTON COUNTY-BY-COUNTY AND MODIFYING PHYSICAL DISTANCING MEASURES

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.



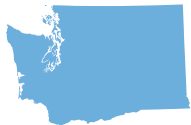
- **High-risk populations**
 - Strongly encouraged, but not required, to stay home unless engaging in modified Phase I permissible activities.
- **Recreation and fitness**
 - Only allowed outdoor with five (not including the instructor) or fewer people outside of household.
- **Gatherings**
 - Only allowed 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.)	<ul style="list-style-type: none"> - 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 I permissible activities	Essential travel and limited non-essential travel for Phase I & II 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)	<ul style="list-style-type: none"> - 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 	<ul style="list-style-type: none"> - 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) - 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) 	<ul style="list-style-type: none"> - 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 	<ul style="list-style-type: none"> - 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 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.

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

APPENDIX D

KITSAP DISTRICT COURT COURT CALENDAR

KITSAP COUNTY DISTRICT COURT CALENDAR

ROOM	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
104 9:00	Pretrial Hearings & Motions to Revoke (PDA/DP) (20 Maximum)				PDA/DP Compliance & Defendant Motions
104 10:30	Pretrial Hearings & Motions to Revoke (PDA/DP) (20 Maximum)				
104 1:30	DUI/DV Returns & Surrender Compliance & ICATP Motions	DUI/DV Returns & Surrender Compliance & Alternating Weeks – NCO Protected Party Motions/Sentencings/CoP	DUI/DV Returns & Surrender Compliance & PT & MR (PDA/DP) (20 Maximum) No Sets 3rd Wed		
105 9:00	Arraignments & Motions to Revoke (Sentences) & Bench Warrant Quashings				
105 11:00	Felony Drop Down CoP (Out of Custody)	In Custody – Dispositions (Video) (8 Maximum)			
105 1:30	In Custody (Video)			DUI/DV Returns & Surrender Compliance In Custody (Video)	
201 9:00	Trials (Trials Set Only On Mondays)	Trials Continued	Trials Continued	Behavioral Health Court [Tentative]	[Human Trafficking Staffing] 10:00 – Alternating Weeks... HT/Felony Diversion
201 11:00	In Custody (Non-Video)				
201 1:30	Trials Continued		[1:30 – BHC Staffing (Tent.)]	Behavioral Health Court	Trials Continued
203 9:00	Name Changes & Unlawful Harassment/Stalking Full Order Hearings (Maximum 5 Per Day) & Surrender Compliance [8:30 Wednesdays – Mandatory Small Claims Mediation (6 Maximum)]				
203 11:00	Unlawful Harassment/Stalking Ex Parte Temporary Order Hearings				
203 1:30	Contested Infractions – Attorney (1st Mon)* Pro Se Traffic (2nd, 3rd Mon)* Civil Infractions (4th Mon)** Impounds (5th Mon)	Mitigation Infractions (30 Maximum)	1:15 – Small Claims (3 Maximum) (Emergency Impounds) No Sets 3rd Wed	Civil – Preliminary Trial Hearings & Motions	
203 3:00	Contested Infractions – Attorney (1st Mon)* Pro Se Traffic (2nd, 3rd Mon)* Impounds (4th, 5th Mon)	Mitigation Infractions (30 Maximum)			

*Contested Infractions. Attorney – 30 Maximum. Pro Se – 20 Maximum.

**Civil Infractions – Board of Health, Zoning, Animal Control, Fire, Fish & Wildlife, Natural Resources

(Revised 03/02/2020)