

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON AND FRANKLIN COUNTIES

IN RE THE MATTER OF)	
THE RESPONSE BY)	No. 20-2-00001-03 (BCSC)
BENTON & FRANKLIN COUNTIES)	No. 20-2-50001-11 (FCSC)
SUPERIOR COURT TO THE)	
PUBLIC HEALTH EMERGENCY)	EMERGENCY ORDER #2
IN BENTON & FRANKLIN)	RE: COURT OPERATIONS
COUNTIES AND THE)	Effective: March 20, 2020
STATE OF WASHINGTON)	

WHEREAS COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person;

WHEREAS the Centers for Disease Control (CDC) identifies the potential public health threat posed by COVID-19 both globally and in the United States as “high” and has advised that person-to-person spread of COVID-19 will continue to occur globally including within the United States;

WHEREAS the state of Washington is experiencing a rapid increase in the numbers of people showing symptoms of and being diagnosed with COVID-19;

WHEREAS the state Department of Health announced 108 new cases as of March 17, 2020, bringing the state total to 1,012 cases including 55 deaths;

WHEREAS Benton-Franklin Counties has one confirmed death from COVID-19 as of March 18, 2020;

WHEREAS this Court issued **Emergency Order #1** on March 16, 2020, and incorporates by reference the findings on pages one through three in said Order;

WHEREAS the Board of Commissioners of Benton County, Washington issued Resolution 2020-258 on March 17, 2020, declaring a state of emergency in Benton County due to COVID-19;

WHEREAS the Board of Commissioners of Franklin County, Washington issued a similar resolution on March 18, 2020;

WHEREAS the Supreme Court of Washington has issued Order No. 25700-B-606 on March 18, 2020 mandating changes to Court operations and calendars;¹

WHEREAS COVID-19 is known to be highly contagious and easily transmitted in public areas such as Courtrooms;

WHEREAS the Court serves the people of Benton-Franklin Counties which includes people categorized as high-risk;

WHEREAS the Court, the Court's staff, and other Court-related county employees live with people who are categorized at high-risk;

WHEREAS the (CDC) has recommended varying degrees of mitigation activities to include cancelling events of more than 10 people where the entity serves high-risk populations;

WHEREAS implementation of social distancing cannot consistently occur for each and every participant in a Courtroom during Court calendars (as occurring prior to COVID-19) given the nature of the proceedings and the limited resources of the Court to monitor and enforce social distancing; and

WHEREAS, according to a new study published in *The New England Journal of Medicine*, "[T]he (COVID-19) virus...is stable for several hours to days in aerosols and on surfaces," it is virtually impossible to maintain the recommended cleaning of the myriad of surfaces in a Courtroom that are touched many times each day by numerous people²;

NOW, THEREFORE, pursuant to the authority of Washington State Supreme Court Order No. 25700-B-602, and the authority as the Presiding Judge of Benton & Franklin Counties Superior Court:

IT IS ORDERED THAT:

A. **EFFECTIVE DATE OF ORDER:**

1. This order is in effect as of **March 20, 2020** and supersedes the Court's **Emergency Order #1**.³

¹<http://www.Courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supreme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf>

² <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>

³ Except as to the Findings on pages 1-3 which were incorporated by reference on page 1 hereinabove.

B. COURT SCHEDULE:

1. The **Daily Court Schedule** for Benton County Superior Court, Franklin County Superior Court and the Juvenile Division of Superior Court is as follows:

COURT	CALENDAR	TIME	COURTROOM
BCSC	<u>Involuntary Treatment Act (ITA)</u>	1:00 p.m.	FCSC Courtroom #1 Video Conference
BCSC	<u>Criminal:</u> ⁴ First Appearances & In-Custody ONLY: (1) Arraignments (2) Plea Hearings (3) Criminal Motions ⁵ & (4) Sentencing Hearings	1:15 p.m. - 3 p.m.	BCSC Justice Center Courtroom E
BCSC	<u>All Emergency Motions & DV Petitions</u> ⁶	1:30 p.m. - 3 p.m.	BCSC Justice Center Courtroom D
FCSC	<u>Involuntary Treatment Act (ITA)</u>	1:00 p.m.	FCSC Courtroom #1 Video Conference
FCSC	<u>All Emergency Motions & DV Petitions</u> ⁷	1:30 p.m. - 2 p.m.	FCSC Courtroom #1
FCSC	<u>Criminal:</u> First Appearances & In-Custody ONLY: (1) Arraignments (2) Plea Hearings (3) Criminal Motions ⁸ & (4) Sentencing Hearings	2:00 p.m. - 3 p.m.	FCSC Courtroom #1
JUVENILE – BCSC & FCSC	<u>Criminal & Emergency Matters:</u> Shelter Care Hearings, Emergency Motions, First Appearances & In-Custody ONLY: (1) Arraignments (2) Plea Hearings (3) Criminal Motions ⁹ & (4) Sentencing Hearings	1:00 p.m. - 3 p.m.	Juvenile Justice Center Courtroom #1

///

⁴ Subject to D. 2. on page "5" of this Order.

⁵ Subject to Para. D 2. on page "5" of this Order.

⁶ DV Petitions: to include all types of petitions for orders of protection, *i.e.* domestic violence, anti-harassment, stalking, sexual assault or extreme risk.

⁷ See Footnote 6 hereinabove.

⁸ See Footnote 5 hereinabove.

⁹ See Footnote 5 hereinabove.

B. COURT SCHEDULE – contd.:

2. For March 20, 2020 to April 3, 2020:

Hours of Operation: the Court will be open on a limited basis from 1 p.m. and 3 p.m. Monday through Friday at the Benton County Justice Center, the Franklin County Courthouse and the Juvenile Justice Center.

3. For April 6, 2020 to May 1, 2020:

Hours of Operation: the Daily Court Schedule will remain the same as detailed in Para. B. 1. hereinabove with the: (a) hours of operation; (b) the beginning and ending time for each docket; and (c) the Courtroom assignment for each docket provided in the Daily Court Schedule as posted on the Court's website: <http://www.benton-franklinsuperiorCourt.com/>. This allows the Court to adjust to the new reality of COVID-19 which presents a very fluid, unpredictable and ever-changing landscape for everyone.

C. EMERGENCY MOTIONS:

For March 20, 2020 to May 1, 2020:

1. Emergency motions may be filed in any case type.
2. All emergency motions will be noted for hearing using the *Emergency Note for Motion Docket and Order* form for the appropriate county to be posted on the Court's website: <http://www.benton-franklinsuperiorCourt.com/>.
3. All emergency motions shall be heard telephonically (unless otherwise ordered by the Court) in open Court, with a clerk and shall be recorded and the record preserved.
4. Should the Court determine that in-person attendance of any party is required for a hearing on an emergency motion, the Court will take all reasonably available steps to ensure social distancing and other public health measures are strictly observed.
5. All emergency motions will be limited to 10 minutes (5 minutes per side), unless otherwise ordered by the court.
6. The moving party shall prepare and file the motion, supporting documentation and proposed order, *i.e.* the *Emergency Note for Motion Docket and Order*. If the party believes that notice should be waived, they shall so state in the motion. The moving party shall file the above documents with the clerk's office via legal messenger or mail and e-mail the motion with supporting documentation to Court Administration at: emergencymotions@co.benton.wa.us.
7. The moving party shall serve the motion on the opposing party at the time of filing the motion as required by statute, court rule and local court rule. Service by e-mail is preferred unless the opposing party's/counsel's email is unknown.
8. Upon receipt, the judicial officer will review and determine if the matter merits an emergency hearing.
 - a. If "yes": The judicial officer will so indicate on the *Emergency Note for Motion Docket and Order* and set a time for the hearing on the date requested. The moving party is responsible for arranging the teleconference with the opposing party (if notice is required) and placing the call to the courtroom at the appointed time.
 - b. If "no": The Court will so indicate on the *Emergency Note for Motion Docket and Order* and the motion will be stricken. They motion may be re-noted after May 3, 2020.

C. EMERGENCY MOTIONS – contd.:

- c. The Court will cause the *Emergency Note for Motion Docket and Order* to be filed with the clerk and e-mailed to the moving party who is responsible for getting it to the opposing party/counsel if possible.
9. The telephone number for hearings on emergency motions when granted is as follows:
 - **Benton County** (Courtroom D): (509) 736-3071 (ext. 3237).
 - **Franklin County** (Courtroom 1): (509) 546-5821.

D. COURT OPERATIONS – March 20, 2020 to May 1, 2020:

1. All civil trials and all criminal trials are suspended until after May 1, 2020. For all criminal trials suspended under this provision, May 4, 2020 will be the new commencement date under CrR 3.3, unless a later date is indicated in any other order.
2. All **in-custody** matters shall be continued to a date after May 1, 2020, with the following exceptions: (a) Scheduling and hearing of first appearances, arraignments, plea hearings, criminal motions, and sentencing hearings; (b) the Court retains discretion in scheduling of these matters, except that the following matters *shall take priority*: (i) Pretrial release and bail modification motions; (ii) Plea hearings and sentencing hearings that result in the anticipated release of the defendant from pretrial detention within 30 days of the hearing; and (iii) parties are not required to file motions to shorten time in scheduling any of these matters.¹⁰ The process for continuing all in-custody matters, not covered by the exception herein, is discussed in Para. D.3. hereinbelow.
3. The process for continuing all **in-custody** matters not covered by the exception in Para. D.2. hereinabove shall be continued as follows: the clerk of each court shall reset those matters six weeks from their current date *provided that* a different date/dates may be set pursuant to a written stipulation of the parties and order of the court and, *provided that*, for the duration of this Order, defense counsel is not required to obtain signatures from defendants on orders to continue criminal matters.
4. All **out-of-custody** criminal matters currently pending and not yet continued by agreement of the parties/counsel to a date after May 1, 2020, shall be continued until after May 1, 2020, and the clerk of each Court shall reset those matters six weeks from their current date *provided that* a different date/dates may be set by a written stipulation of the parties and order of the Court. For the duration of this Order, defense counsel is not required to obtain signatures from defendants on orders to continue criminal matters.
5. Arraignment on **out-of-custody** cases filed between today's date and May 1, 2020, or the first appearance in Court after that date, shall be deferred until a date 45 days after the filing of charges. Good cause exists under CrR 4.1 and 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) and JuCR 7.8(c)(1).¹¹
6. This Court may enter *ex parte* no contact orders pursuant to RCW 10.99.040, RCW 10.99.045, RCW 10.14.040, RCW 7.90.150, RCW 9A.46.085, and/or RCW 9A.46.040, when an information, citation or complaint is filed with the court and the court finds that

¹⁰ See The Supreme Court of Washington – Order No. 25700-B-606, Page 4, Para. 7.

¹¹ The Supreme Court of Washington – Order No. 25700-B-606, Page 3, Para. 5.

probable cause is present for a sex offense, domestic violence offense, stalking offense, or harassment offense. *Ex Parte* orders may be served upon the defendant by mail. This provision does not relieve the prosecution of proving a knowing violation of such an *ex parte* order in any prosecution for violating the order. Good cause exists for the Court to extend *ex parte* orders beyond the initial period until a hearing can be held.¹²

7. Juvenile court jurisdiction in all pending offender proceedings and in all cases in which an information is filed with the juvenile court prior to May 1, 2020, in which the offender will reach the age of 18 within 120 days of May 1, 2020, shall be extended to the offender's next scheduled juvenile court hearing after May 1, 2020.¹³
8. A continuance of the criminal hearings and trials referenced herein is required in the administration of justice. Based upon the Court's finding that the serious danger posed by COVID-19 is good cause to continue criminal jury trials, and constitutes an unavoidable circumstance under CrR 3.3(e)(8) and JuCR 7.8(e)(7), the time between the date of this Order and the date of the next scheduled trial date are EXCLUDED when calculating time for trial. CrR 3.3(e)(3) and JuCR (7.8(e)(3).¹⁴
9. The Court finds that obtaining signatures from defendants for orders continuing existing matters places significant burdens on attorneys, particularly public defenders, and all attorneys who must enter correctional facilities to obtain signatures in person. Therefore, for all matters covered in D. Paras. 1, 4 and 5 hereinabove, and as otherwise allowed by the Court, this Order serves to continue those matters without need for further written orders. Additionally: (a) defense counsel is not required to obtain signatures from defendants on orders to continue criminal matters through May 1, 2020; (b) this Court will work with the respective court clerk's offices in Benton and Franklin Counties for purposes of providing notice of new hearings dates to defense counsel and unrepresented defendants; (c) defense counsel shall provide notice to defendants of new court dates.¹⁵
10. Bench warrants may issue for violations of conditions of release from now through May 1, 2020. This Court will not issue bench warrants for failure to appear in-person for Court hearings and pretrial supervision meetings unless necessary for the immediate preservation of public or individual safety.¹⁶
11. Motions for Pretrial Release: (a) The Court shall hear motions for pretrial release on an expedited basis without requiring a motion to shorten time, but only if victims or witnesses can participate on an expedited basis. Const. Art. 1 (section 35); (b) The Court finds that for those identified as part of a vulnerable or at-risk population by the Centers for Disease Control, COVID-19 is presumed to be a material change in circumstances, and the parties do not need to supply additional briefing on COVID-19 to the Court. For all other cases, the COVID-19 crisis may constitute a "material change in circumstances" under CrR 3.2(k)(1) and "new information" allowing amendment of a previous bail order or providing different conditions of release under CrR 3.2(k)(1), but a finding of changed circumstances in any given case is left to the sound discretion of the Court. Under such circumstances in

¹² The Supreme Court of Washington – Order No. 25700-B-606, Page 4, Para. 6.

¹³ The Supreme Court of Washington – Order No. 25700-B-606, Page 5, Para. 8.

¹⁴ The Supreme Court of Washington – Order No. 25700-B-606, Page 5, Para. 9.

¹⁵ The Supreme Court of Washington – Order No. 25700-B-606, Page 5-6, Para. 10.

¹⁶ The Supreme Court of Washington – Order No. 25700-B-606, Page 6, Para. 11.

the juvenile division of superior court, the Court may conduct a new detention hearing pursuant to JuCR 7.4; (c) Parties may present agreed orders for release of in-custody defendants, which should be signed expeditiously; and (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.¹⁷

12. The Court will allow telephonic or video appearances for all scheduled criminal hearings between now and through May 1, 2020 unless impossible. For all hearings that involve a critical stage of the proceedings, the Court shall provide a means for the defendant to have the opportunity for private and continual discussion with his or her attorney. Telephonic, video or other hearings required to be public must be recorded, with the recording preserved for the record.¹⁸
13. All non-emergency civil matters shall be continued until after May 1, 2020. This includes: (1) Adoptions; (2) Child Support and Child Support Contempt dockets; (3) Civil matters (civil docket, civil status hearings, civil pre-trials and civil settlement conferences); (4) Domestic matters (over 10 docket, under 10 docket, parentage/paternity docket, pro se docket, Prosser docket, status docket and settlement conferences); (5) Adult and Juvenile Drug Court; (6) Guardianship/Probate docket; (7) Juvenile civil matters (at-risk-youth, CHINS, dependency, guardianship, termination and truancy matters); (8) Legal Financial Obligation dockets; (9) Lower Court Appeals; and (10) Special sets.
14. For calendars that were cancelled within the time period of **Emergency Order #1**, *i.e.* March 16, 2020 to April 24, 2020, the clerk shall strike all hearings on those cancelled calendars and parties may re-note the hearing by filing and serving a written re-note of the hearing to an appropriate calendar beginning May 4, 2020, with filing and service subject to the applicable Court rules and local Court rules.
15. For all civil calendars suspended for the time period included in this **Emergency Order #2**, *i.e.* March 20, 2020 through May 1, 2020, the Court clerks shall reset those matters six weeks from their current date *subject to* a written stipulation of the parties and order of the Court (setting a different date/dates after May 1, 2020).
16. The Civil Case Manager may issue a new case schedule order in a pending civil case upon agreement of the parties or order of the court provided the trial date occurs after May 1, 2020.
17. The Domestic Case Manager may issue a new case schedule order in a pending domestic cases upon agreement of the parties or order of the court provided the trial date occurs after May 1, 2020.
18. *Unlawful Detainers.* Beginning March 18, 2020, the Court will not sign orders evicting residential tenants for the next 30 days. This moratorium does not apply to evictions based on waste, nuisance or violations of the law. Any pending Writs not yet executed are stayed for 30 days.
19. Temporary Orders of Protection set to expire during the duration of this Order shall be renewed by the court and calendared 28 days from the current date of expiration by the

¹⁷ The Supreme Court of Washington – Order No. 25700-B-606, Pages 6-7, Para. 12.

¹⁸ The Supreme Court of Washington – Order No. 25700-B-606, Page 7, Para. 13.

court clerk of the respective court with copies sent to law enforcement by the clerk and to the parties by the Court or the respective court clerk. The Court may reset these orders an additional 28 days as needed.

20. Media. The media will be allowed in Court provided that all times the person/persons comply/complies with the Court's direction relative to ensuring the health, welfare and safety of all in attendance at Court.
21. The Court hereby waives the \$30 *ex parte* fee through May 1, 2020.
22. The Court will require any interpreter to comply with social distancing and other mandated public health measures which will be enforced by the Court.
23. The Search Warrant Protocol remains in full force and effect.
24. For all matters, the Court has discretion to remove or direct the removal of an individual who is, or who appears to be ill, to protect the health, welfare and safety of the public.
25. The Court has discretion to take further action necessary to ensure the mandated public health measures are followed.
26. The Court will continue to monitor the threat posed by COVID-19. Its orders will be timely reviewed and will be revised consistent with the threat level as assessed by the proper authorities.
27. This Order may be further extended or modified.

DATED this 19th day of March, 2020.

A handwritten signature in blue ink, appearing to be 'CR' with a flourish, followed by the word 'for' written in a smaller, cursive script.

Carrie Runge, Presiding Judge
Benton & Franklin Counties
Superior Court