

FILED
KING COUNTY, WASHINGTON

MAR 19 2020

DEPARTMENT OF
JUDICIAL ADMINISTRATION

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

IN THE MATTER OF
THE RESPONSE BY
KING COUNTY SUPERIOR COURT
TO THE PUBLIC HEALTH
EMERGENCY IN WASHINGTON
STATE

NO. 20-0-12050-5

EMERGENCY ORDER #10

REGARDING REPRESENTATION
OF ADULT CRIMINAL
DEFENDANTS

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

FINDINGS OF FACT BASED UPON THE PUBLIC RECORD

1. On February 29, 2020, Governor Jay Inslee declared a state of emergency due to the public health emergency posed by the coronavirus disease 2019 (COVID-19).

2. On March 11, 2020, Governor Jay Inslee issued another Proclamation and Order banning gatherings of 250 or more as follows:

**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATIONS 20-05 AND 20-06
20-07**

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, on March 10, 2020, as a result of significant risks from COVID-19 to persons living in congregate care settings, I issued Proclamation 20-06 amending Proclamation 20-05 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, COVID-19, a respiratory disease that spreads easily from person to person and may result in serious illness or death, has been confirmed in 9 counties of Washington State resulting in 24 deaths, with significant community spread in King, Pierce, and Snohomish counties; and

WHEREAS, to reduce spread of COVID-19, the United States Centers for Disease Control and Prevention and the Washington State Department of Health (DOH) recommend implementation of community mitigation strategies to increase containment of the virus, including cancellation of large gatherings and social distancing in smaller gatherings; and

WHEREAS, implementation of limitations on large gatherings and use of social distancing prevent initial exposure and secondary transmission to our most vulnerable populations, and are especially important for people who are over 60 years old and those with chronic health conditions due to the higher risk of severe illness and death from COVID-19; and

WHEREAS, the worldwide outbreak of COVID-19 and the resulting epidemic in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remains a public disaster affecting life, health, property and the public peace; and

WHEREAS, the DOH continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the DOH and local health officials in alleviating the impacts to people, property,

1 and infrastructure, and continues coordinating with the DOH in assessing the
2 impacts and long-term effects of the incident on Washington State and its
3 people.

4 **NOW, THEREFORE**, I, Jay Inslee, Governor of the state of
5 Washington, as a result of the above-noted situation, and under Chapters 38.08,
6 38.52 and 43.06 RCW, do hereby proclaim that Proclamations 20-05
7 and 20-06 remain in effect and are amended to impose restrictions on large
8 gatherings in King, Pierce, and Snohomish counties as provided herein, and that
9 a State of Emergency continues to exist in all counties of Washington State. I
10 again direct that the plans and procedures of the *Washington State*
11 *Comprehensive Emergency Management Plan* be implemented throughout state
12 government. State agencies and departments are directed to continue utilizing
13 state resources and doing everything reasonably possible to support
14 implementation of the *Washington State Comprehensive Emergency*
15 *Management Plan* and to assist affected political subdivisions in an effort to
16 respond to and recover from the COVID-19 epidemic. As a result of this event,
17 State to include the National Guard and the State Guard, or such part thereof as
18 may be necessary in the opinion of The Adjutant General to address the
19 circumstances described above, to perform such duties as directed by competent
20 authority of the Washington State Military Department in addressing the
21 outbreak. Additionally, I continue to direct the DOH, the Washington State
22 Military Department Emergency Management Division, and other agencies to
23 identify and provide appropriate personnel for conducting necessary and
24 ongoing incident related assessments.

25 **FURTHERMORE**, based on the above situation and under the
provisions of RCW 43.06.220(1)(b) and RCW 43.06.220(1)(h), to help preserve
and maintain life, health, property or the public peace, I hereby prohibit the
following activities in King, Pierce and Snohomish counties related to social,
spiritual, and recreational gatherings, which restrictions shall remain in effect
until midnight on March 31, 2020, unless extended beyond that date: Gatherings
of 250 people or more for social, spiritual and recreational activities including,
but not limited to, community, civic, public, leisure, faith-based, or sporting
events; parades; concerts; festivals; conventions; fundraisers; and similar
activities. Violators of this of this order may be subject to criminal penalties
pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 11th
day of March, A.D., Two Thousand and Twenty at Olympia, Washington.

3. On March 11, 2020, King County Public Health Local Health Officer, Dr. Duchin
issued the following Order banning groups of smaller than 250 unless certain steps can be taken:

1 LOCAL HEALTH OFFICER ORDER

2 **Whereas** on February 29, 2020, Governor Inslee proclaimed a state of
3 emergency within the State of Washington due to COVID-19;

4 **Whereas** on March 1, 2020, King County Executive Constantine
5 proclaimed a state of emergency within King County due to COVID-19;

6 **Whereas** state law, RCW 70.05.070(2)-(3), requires and empowers the
7 local health officer to take such action as is necessary to maintain health and to
8 control and prevent the spread of any contagious or infectious diseases within the
9 jurisdiction;

10 **Whereas** state regulation, WAC 246-100-036, requires the local health
11 officer, when necessary, to institute disease control and containment control
12 measures, including social distancing measures he or she deems necessary based
13 on his or her professional judgment;

14 **Whereas**, there is evidence of increasing transmission of COVID-19
15 within King County, scientific evidence and national public health guidance
16 support strategies to slow the transmission of COVID-19 and protect vulnerable
17 members of the public from avoidable risk of serious illness or death resulting
18 from exposure to COVID-19;

19 **Whereas**, the age, condition, and health of a significant portion of the
20 population of King County places it at risk for serious health complications,
21 including death, from COVID-19. Although most individuals who contract
22 COVID-19 do not become seriously ill, persons with mild symptoms and
23 asymptomatic persons with COVID-19 may place other vulnerable members of
24 the public at significant risk; whereas a large surge in the number of persons with
25 serious infections can compromise the ability of the regional healthcare system to
deliver necessary healthcare to the public;

Whereas, the implementation of limitations on large gatherings and use of
social distancing decreases the risk of COVID-19 transmission to our most
vulnerable populations, and is especially important for people who are over 60
years old and those with chronic health conditions due to the higher risk of severe
illness and death from COVID-19;

Whereas, this Order will reduce the likelihood that many individuals will
be exposed to COVID-19 at a single event, and will thereby slow the spread of
COVID-19 in our community; Whereas, this Order will help preserve critical and
limited healthcare capacity in the County by reducing the spread of COVID-19;

1 **Whereas**, this Order is issued in accordance with, and incorporates by
2 reference, the March 11, 2020 Governor’s Executive Proclamation on COVID-19
3 Community Mitigation Strategies;

4 **Whereas** this Order is issued in light of the existence of 234 cases of
5 COVID-19 (including 26 deaths) in King County, as of March 11, 2020, and a
6 significant and increasing number of assumed cases of community transmission
7 and at a time when implementation of largescale social distancing measures is
8 recommended;

9 **Whereas**, social distancing measures can reduce COVID-19 transmission
10 by decreasing the frequency and duration of social contact among persons of all
11 ages, this Order is issued to prevent circumstances often present in mass
12 gatherings that may exacerbate the spread of COVID-19, such as: (a) the increased
13 likelihood that mass gatherings will attract people from a broad geographic area;
14 (b) the a physical environment in which large numbers of people are in close
15 proximity and have multiple opportunities for close contact with one another that
16 facilitates the spread of COVID-19 and; (c) the difficulty in tracing exposure and
17 implementing traditional public health containment measures when large numbers
18 of people attend a single event;

19 **Whereas**, this Order comes after the release of substantial guidance from
20 Public Health—Seattle & King County, the Centers for Disease Control and
21 Prevention, and other public health officials throughout the United States and
22 around the world. The Local Health Officer will continue to assess this quickly
23 evolving situation and may modify or extend this Order, or issue additional
24 Orders, related to COVID-19;

25 **Whereas**, the Local Health Officer hereby finds it is necessary to institute
social distancing measures within King County;

Therefore, as Local Health Officer I ORDER as follows:

1. All events of 250 people or more, are prohibited.

2. Events with fewer than 250 attendees are prohibited unless event
organizers take the following steps to minimize risk: ☐ Older adults and
individuals with underlying medical conditions that are at increased risk of serious
COVID-19 are encouraged not to attend (including employees); ☐ Social
distancing recommendations must be met (I.e., limit contact of people within 6
feet from each other for 10 minutes or longer); ☐ Employees must be screened for
coronavirus symptoms each day and excluded if symptomatic; and ☐ Proper hand
hygiene and sanitation must be readily available to all attendees and employees.

3. Environmental cleaning guidelines from the US Centers for Disease
Control and Prevention (CDC) are followed (e.g., clean and disinfect high touch

1 surfaces daily or more frequently) For the purposes of this Order, an “event” is a
2 gathering for business, social, or recreational activities including, but not limited
3 to, community, civic, public, leisure, or sporting events; parades; concerts;
4 festivals; conventions; fundraisers; and similar activities.

5 Signed and ordered this day of March 11, 2020, in Seattle, Washington, by

6 Dr. Jeff Duchin Local Health Officer
7 Public Health – Seattle & King County

8 4. On March 12, 2020, Governor Jay Inslee ordered all schools closed in King, Pierce
9 and Snohomish counties until April 24.

10 5. On March 12, 2020, the Seattle Times published a Gates Foundation study cited by
11 both Governor Inslee and Dr. Duchin, *Working paper-model-based estimates of COVID-19 burden*
12 *in King and Snohomish counties through April 7, 2020*, Klein, Hagedorn, Kerr, Hu, Bedford and
13 Famulare; Institute for Disease Modeling; Bill and Melinda Gates Foundation; Fred Hutchinson
14 Cancer Research Institute, March 10, 2020. The conclusions of this study were based upon business
15 as usual; 25, 50, and 75 per cent reduction, from January 15 to April 7. The conclusion of the
16 “business as usual” assumption (that is to say, no general orders such as entered by the Governor
17 and Public Health Officer, no banning of large or small groups, no precautions) estimated 25,000
18 infections and 400 deaths in our area by April 7. On the other hand, mitigation efforts such as
19 announced above could reduce the range of deaths by a significant amount.

20 6. Governor Inslee has explained that the coronavirus doubles the infection rate every
21 five to seven days. Some estimates say that by end of April, the infection rate could be one million
22 in our State, without mitigation.

23 7. The Department of Public Defense (DPD) is an agency within the King County
24 Government. Its website states its primary mission and how a person charged with a public crime
25

1 can qualify for a public defender (see <https://kingcounty.gov/depts/public-defense/For-Our-Clients->
2 [Legal-Services-and-Advocacy.aspx](https://kingcounty.gov/depts/public-defense/For-Our-Clients-Legal-Services-and-Advocacy.aspx)):

3 The Department of Public Defense provides attorneys to people who are **financially eligible** and who are
4 facing **certain kinds of criminal and civil proceedings**. Generally, the Department of Public
Defense provides attorneys to:

- 5 • people who have been charged with a crime and face the possibility of jail time
- 6 • people who could lose their children due to a dependency action
- 7 • people who face involuntary commitment to a mental health facility
- 8 • people with outstanding warrants in any King County court
- 9 • youth who have been charged with an offense or face certain civil proceedings
- 10 • people who face contempt of court for failure to pay child support
- 11 • people who face civil commitment as sexually violent predators (RCW 71.09)
- 12 • people who would like to get their felony or misdemeanor convictions vacated

11 **A. How to obtain an attorney**

12 A financial interview is required to see if you are eligible for a public defender. These interviews -- also
13 called financial screenings -- can take place over the phone or in person. **To screen by phone, call 206-477-**
14 **9727.** Interviewers are available by phone from **8 a.m. to 4:30 p.m. Monday to Friday.** (Interviewers take
their last interview at 4:15 p.m.) To screen in person, come to DPD's main office in Seattle or to a courthouse
location. Click [here](#) for hours and specific locations for in-person screenings.

15 At the interview, either over the phone or in person, a DPD screener will ask you questions about your
financial situation and determine if you qualify for a public defender.

- 16 • **If you are found indigent**, it means you cannot afford an attorney. You will be assigned to a public
defense division.
- 17 • **If you are found able to contribute**, it means you have enough money that you cannot be found
18 indigent, but you do not have enough money to hire a private attorney. You will be assigned to
a public defense division, but you will be asked to sign a promissory note. The note means that you
19 will make payments to help pay for your attorney. King County will send you a monthly bill, giving
you up to 12 months to pay for your attorney.
- 20 • **If you are found not indigent**, it means you do not qualify for a public defender. In this case, you
21 must hire an attorney on your own. Please see the resources page for places to find legal help in the
area.

22
23 8. At a meeting on March 11, 2020, convened by Chief Criminal Judge Patrick Oishi
24 and Chief MRJC Judge Veronica Galvan, the subject of which was to discuss the Court's plan in
25 light of the COVID-19 crisis, DPD attorneys Anita Khandelwal and Gordon Hill stated that DPD

1 would no longer accept out-of-custody clients/persons charged with a public crime, and
2 presumably, therefore would no longer screen such individuals to see if they were eligible for
3 representation.

4 9. On March 16, 2020, DPD attorney Gordon Hill went on the record in the King
5 County Courthouse in E1201 and announced that DPD would no longer take on new out-of-custody
6 defendants. Presumably, DPD stopped screening any new defendants on that day.

8 10. On March 18, 2020, Chief Justice Debra Stephens issued Order No. 25700-B-
9 606. The Order provides that the defense attorney shall give notice of all continued out-of-
10 custody cases to defendants.

11 11. Based upon past history, it is reasonable to assume that there are currently
12 a number of unrepresented defendants who would qualify for a public defender and for whom
13 DPD has refused to screen and refused representation. The overwhelming majority of the
14 defendants who are charged do qualify for a public defender.
15

17 CONCLUSIONS OF LAW

- 18 1. On March 4th, 2020, Chief Justice Debra Stephens entered an Emergency Order that states,
19 in part, as follows:

20 **WHEREAS**, during this state of emergency, it may become necessary for
21 courts in these counties to close, relocate, or otherwise significantly modify their
22 regular operations; and

23 **WHEREAS**, the presiding judges in these counties need sufficient
24 authority to effectively administer their courts in response to this state of
25 emergency, including authority to adopt, modify, and suspend court rules and
orders as warranted to address the emergency conditions.

NOW, THEREFORE, pursuant to the Court's authority to administer
justice and to ensure the safety of court personnel, litigants, and the public.

1
2 **IT IS HEREBY ORDERED THAT:**

3 1. The Presiding Judges of the Washington courts are authorized to
4 adopt, modify, and suspend court rules and orders, and to take further actions
concerning court operations, as warranted to address the current public health
emergency;

5 2. Each court shall immediately transmit copies of emergency local
6 rules adopted or modified to address the public health emergency to the
Administrative Office of the Courts in lieu of the requirements of General Rule 7;

7 3. Each court that closes pursuant to this Order or General Rule 21
8 shall sign an administrative order closing the court, file the original with the clerk
of the affected court, and notify the Administrative Office of the Courts as soon as
practicable.

9 2. On March 18, 2020, Chief Justice Stephens entered a second Order setting forth
10 continuances for many case types including criminal matters.

11 3. The Order sets forth how notice shall be received for new hearing dates for matters
12 continued by the Chief's Order.

13 4. It is the Court's obligation to see that counsel is provided to criminal defendants required
14 by both the Washington State Constitution and the United States Constitution.

15 5. It is the Court's obligation to ensure that all criminal defendants receive notice. Per the
16 Order and normal practice, counsel supplies that notice to their clients.

17 6. It is DPD's obligation and role to provide to screen all persons charged with public crimes
18 and represent those who are eligible.
19

20 ORDER

21
22 1. King County Department of Public Defense shall promptly assign attorneys and enter
23 notices of appearance for all individuals whom have been charged in criminal court. This
24 order includes, but is not limited to cases back to March 16, 2020, the day that DPD
25 announced in open court, on the record, in Courtroom E1201, King County Courthouse,

1 its refusal to appoint counsel and appear for out-of-custody criminal defendants. For any
2 of those individuals whom DPD later screens and finds ineligible, DPD may withdraw
3 as in any case for an ineligible defendant. Because DPD refused to screen all individuals
4 for a period of time, this order specifically requires them to contact individuals for all
5 cases where they did not enter a notice of appearance and screen them.
6

- 7 2. DPD shall comply with Chief Justice Stephens' Order at 10(c) for all defendants they
8 represent, in and out of custody, and provide notice of their next hearing date.

9 **It is so Ordered**

10 March 19, 2020

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14 Hon. Jim Rogers, Presiding Judge
15 King County Superior Court
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