

BAR BULLETIN

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Prosecutors and Defense Attorneys Coordinate Coronavirus Response

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APRIL 2020 BAR BULLETIN

By Robert C. Boruchowitz

In an unusual collaboration, the state's criminal defense attorneys and prosecutors jointly proposed an order that the Washington Supreme Court adopted to respond to the Covid-19 crisis. The Court's March 18, 2020 adopted order continued all non-emergency civil matters and most out-of-custody criminal matters until after April 24, 2020. It also urged expediting motions for pre-trial release and said that courts should 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.

In their joint letter to Chief Justice Debra Stephens, Amy Muth, Chair of the WACDL/WDA COVID-19 Taskforce, and Adam Cornell, Snohomish County Prosecuting Attorney, Chair of the ad hoc Committee on COVID-19, wrote:

We may be adversaries in the courtroom, but today, the Washington Association of Criminal Defense Lawyers (WACDL)/Washington Defender Association (WDA) COVID-19 Taskforce, and the Washington Association of Prosecuting Attorneys (WAPA) COVID-19 ad hoc Committee, jointly submits [sic] this Agreed Emergency Order in the interests of justice for all of our citizens. At this time of unprecedented crisis, collaboration among criminal justice stakeholders is essential to both protecting everyone in our community and safeguarding the integrity of the criminal justice system. The public whom we humbly serve should expect nothing less from all of its leaders who are endeavoring to manage this global pandemic. We ask that you immediately adopt the Agreed Emergency Order.

The Court ordered, among other things:

- All civil jury trials shall be suspended until after April 24, 2020.

- All non-emergency civil matters shall be continued until after April 24, 2020. 3. All emergency matters that must be heard before April 24, 2020, must be heard by telephone, video, or other means that does not require in-person attendance, unless impossible. Where court matters must be heard in person, social distancing and other public health measures must be strictly observed. Telephonic, video or other hearings required to be public must be recorded, with the recording preserved for the record.

- All criminal jury trials are suspended until after April 24, 2020.

- All out of custody criminal matters already pending shall be continued until after April 24, 2020. Arraignment on out of custody cases filed between today's date and April 24, 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 CrRLJ 4.1 and JuCR 7.6 to extend the arraignment dates.

- All in custody criminal matters shall be continued until after April 24, 2020, with the following exceptions: a. Scheduling and hearing of first appearances, arraignments, plea hearings, criminal motions, and sentencing 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 hearings that result in the anticipated release of the defendant from pretrial detention within 30 days of the hearing.

- Juvenile court jurisdiction in all pending offender proceedings and in all cases in which an information is filed with the juvenile court prior to April 24, 2020, in which the offender will reach the age of 18 within 120 days of April 24, 2020, shall be extended to the offender's next scheduled juvenile court hearing after April 24, 2020.

- 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 Sections 1 and 2, this Order serves to continue those matters without need for further written orders.

- Courts should 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.

- Courts 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.

• Parties may present agreed orders for release of in-custody defendants, which should be signed 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. 13. Courts must allow telephonic or video appearances for all scheduled criminal hearings between now and through April 24, 2020, unless impossible

• For all hearings that involve a critical stage of the proceedings, courts 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.

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