

**IN THE TRIAL COURTS FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT**

In the Matter of:

**IN-PERSON GRAND JURY
PROCEEDINGS HELD IN JUNEAU
FROM
JANUARY 1, 2021 TO MARCH
31, 2021,**

First Judicial District.

**PRESIDING JUDGE ADMINISTRATIVE ORDER 21-1 RE: IN-PERSON GRAND
JURY PROCEEDINGS HELD IN JUNEAU**

On January 8, 2021, the State, through District Attorney Angela Kemp, filed a Motion for Limited In-Person Grand Jury Proceedings. In-person grand jury proceedings were suspended through at least February 1, 2021 as a result of Special Order of the Chief Justice Order No. 8213. Per that order, the presiding judge of each district may allow in-person grand jury proceedings "in exceptional circumstances." In making that decision, the presiding judge is required to consider the following factors:

- a. The requests of the parties and victim(s);
- b. The age of the case;
- c. Whether a criminal defendant is in custody;
- d. The classification of any charged offense(s);
- e. The number of other required participants, including victims, custodial officers, interpreters, investigators, or other lawyers;
- f. The facilities available for the trial or proceeding;
- g. The prejudice suffered by any party;

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- h. A criminal defendant's access to counsel;
- i. Any special transportation requirements;
- j. Any local quarantine requirements or other health mandates; and
- k. The COVID-19 case counts for the area or location.¹

The State requests leave to hold in-person grand jury proceedings in Juneau as long as current circumstances (namely the current COVID-19 case counts in Juneau and the community's current risk level) remain as is. The same motion was filed, and granted, in Ketchikan by then Presiding Judge Trevor Stephens. The circumstances (which were essentially the same as those in Juneau) were considered by Judge Stephens with respect to Ketchikan, and I find no compelling reason to come to a different conclusion. The State's motion is granted. I adopt the same findings made by Judge Stephens as follows.

1. Per Special Order of the Chief Justice Order No. 8144, in-person grand jury proceedings resumed in the City and Borough of Juneau (CBJ) in June 2020 and were held on a regular basis until November 25, 2020 when Special Order of the Chief Justice Order No. 8213 was issued, suspending in-person grand jury proceedings statewide until at least February 1, 2021 due to the statewide surge in COVID-19 cases. When the Chief Justice issued Order No. 8213 the daily case rate over 14 days in the CBJ was 29.7.² The daily case rate has

¹ Special Order of the Chief Justice Order No. 8213 at ¶ 4.

² CBJ COVID-19 Risk Metrics & Mitigation Strategies Dashboard;
<https://app.smartsheet.com/b/publish?EQBCT=0a602fc51ee24966abb3721c8fabfb82>.

been dropping since the beginning of December. As of January 11, 2021, the daily case rate in Juneau was 7.59.³

2. **The classification of any charged offense(s).** Criminal Rule 5(e) is suspended through March 15, 2021 and the State, per Special Order of the Chief Justice Order No. 8204 and Presiding Judge Administrative Order 20-09, may present cases to the grand jury via videoconference (Zoom), without grand jurors being present in the courtroom (a new process that may be subject to legal challenge). Thus, the State is not presently required to present cases to the grand jury but may choose to do so via Zoom. However, those in Alaska charged with a felony offense have a right to grand jury review of their cases in a timely manner under Article I Section 8 of the Alaska Constitution. This fundamental constitutional right must be balanced against potential health risks.

3. **The number of other required participants, including victims, custodial officers, interpreters, investigators, or other lawyers.** Special Order of the Chief Justice No. 8202 set a COVID-19 reference point for conducting in-person misdemeanor jury trials as the Chief Justice instructed Presiding Judges to “strongly consider whether to limit or suspend misdemeanor trials in any district or community where the average daily case rate is greater than 20-25 cases per 100,000 population as reported in the daily Case Count Summary from the Alaska Department of Health and Social Services.”⁴ Although the case limit may not directly apply to grand jury proceedings, it is nevertheless a guidepost, taking into consideration the size of the available facility and the local case rate. Misdemeanor jury trials

³ *Id.*

⁴ Special Order of the Chief Justice Order No. 8202 at ¶ 2.

generally involve at least 13 people in the courtroom,⁵ often including more people;⁶ while grand jury proceedings involve between 15 and 21 people in the courtroom.

4. **The facilities available for the trial or proceeding.** As the State noted, the jury assembly room at the Dimond Courthouse in Juneau is large enough for grand jury proceedings involving 21 people (18 jurors, a prosecutor, a witness, and an in-court clerk) who are social distancing as required by Special Order No. 8144 and CBJ Emergency Ordinance Serial No. 2020-61.⁷

5. **Any local quarantine requirements or other health mandates.** The CBJ is experiencing a relatively low COVID-19 case rate. The case rate is considerably below the above-referenced range of 20 – 25 cases per 100,000 population and is trending downward, and there are sufficient available facilities in Juneau to conduct in-person grand jury proceedings while adhering to all pertinent COVID-19 related mandates, protocols, and orders.

6. **The COVID-19 case counts for the area or location.** The State is correct that the COVID-19 case count for the CBJ has been low relative to other areas of the State of

⁵ Six jurors, defendant, defense attorney, prosecutor, investigating officer, in-court clerk, a witness, and the Judge.

⁶ A victim, a Judicial Services Officer, family and friends of the defendant, and person(s) there to support a victim.

⁷ Motion for Limited In-Person Grand Jury Proceedings, p. 2 (Jan. 8, 2021); Ordinance No. 2020-61 – An Emergency Ordinance Extending Use of a Mask or Face Coverings in Certain Indoor Settings, on Capital Transit, and in Close Proximity to Others, and Providing a Penalty, <https://juneau.org/index.php?gf-download=2020%2F12%2FOrd2020-61-Emergency-Ordinance-Extending-Use-of-Mask-or-Face-Coverings.pdf&form-id=22&field-id=11&hash=c699147d961dc0f82ea0d19aead1d5c33ae939614fd9e4343b02adb85d2dbdc7> (Dec. 14, 2020).

Alaska.⁸ According to the City and Borough of Juneau’s COVID-19 Risk Metrics & Mitigation Strategies Dashboard, the daily case rate in Juneau on January 11, 2021 (the last day reported) was 7.59.⁹ The Department of Health and Social Services daily Case Count Summary (Table 2c) (as of January 12, 2021) reflects an average daily COVID-19 case rate over 14 days in the CBJ as 10.5, with three cases being reported on average over the last seven days.¹⁰ These numbers are well below the 20 – 25 cases per 100,000 population limit established by Special Order No. 8202 for holding in-person misdemeanor jury trials. Additionally, due to the drop in the daily case rate, the CBJ’s risk level has been reduced from “Level 3 – High,” as it was in November, to its current “Level 2 – Moderate.”¹¹ The moderate alert level recommends indoor gatherings of no more than 50 people (which is well below the number necessary for grand jury proceedings), as long as appropriate safety measures are observed (masks and social distancing).¹²

7. The two “exceptional circumstances” – available facilities to conduct grand jury proceedings and relatively low COVID-19 case counts – are, in the context of grand jury proceedings, two of the most important, if not most important, considerations of those the

⁸ Motion for Limited In-Person Grand Jury Proceedings, p. 2.

⁹ CBJ COVID-19 Risk Metrics & Mitigation Strategies Dashboard, <https://app.smartsheet.com/b/publish?EQBCT=1974bb51a6a34ab2831ef4d26e4b84e5>.

¹⁰ Alaska Department of Health and Social Services Coronavirus Response, Data Hub Presentation, Summary Tables (12JAN2021), <https://coronavirus-response-alaska-dhss.hub.arcgis.com/datasets/summary-tables-12jan2021>; see Special Order of the Chief Justice Order No. 8202 at ¶ 2 (instructing Presiding Judges to strongly consider whether to hold misdemeanor trials by reviewing COVID-19 case rates as reported by DHSS).

¹¹ CBJ COVID-19 Risk Metrics & Mitigation Strategies Dashboard, <https://app.smartsheet.com/b/publish?EQBCT=1974bb51a6a34ab2831ef4d26e4b84e5>.


¹² See Motion for Limited In-Person Grand Jury Proceedings, p. 2.

Presiding Judge is required to consider. The current CBJ COVID-19 case rate, available facilities for in-person proceedings, and Alaska Court System COVID-19 related mandates/protocols/orders warrant the Court's authorization of in-person grand jury proceedings in Juneau.

Finally, given the impact of the COVID-19 pandemic on staffing, the State shall coordinate with the Juneau Clerk of Court in scheduling grand jury proceedings to ensure that the Clerk's Office can accommodate in-person proceedings. I will continue to monitor the case rate on a regular basis and will issue subsequent related orders as are necessary and appropriate under the circumstances.

IT IS SO ORDERED.

Dated at Juneau, Alaska on January 13, 2021.



Amy Mead
Presiding Judge
First Judicial District



Distribution: Chief Justice Joel Bolger; Stacey Marz, Administrative Director; Lesa Robertson, Executive Administrative Assistant; First District Judges; First District Magistrates; First District Clerks of Court; James Kwon, ACA; Clayton Jones, Rural Court Training Assistant; First District DAs; Juneau Bar Association; Sitka Bar Association; Ketchikan Bar Association.

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