

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

In the Matter of:

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

First Judicial District.

**PRESIDING JUDGE ADMINISTRATIVE ORDER 21-2 RE: IN-PERSON GRAND
JURY PROCEEDINGS HELD IN SITKA**

On January 12, 2021, the State, through District Attorney Angela Kemp, filed a Motion for Limited In-Person Grand Jury Proceedings to be held in Sitka, Alaska. The next day Judge Jude Pate, Superior Court Judge in Sitka, recommended the motion be conditionally granted.

In-person grand jury proceedings were suspended through at least February 1, 2021 as a result of Special Order of the Chief Justice 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;

**PRESIDING JUDGE ADMINISTRATIVE ORDER 21-2 RE: IN-PERSON GRAND
JURY PROCEEDINGS IN SITKA**

- g. The prejudice suffered by any party;
- 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 Sitka given the decrease in COVID-19 case counts since November 2020. The same motion was filed, and granted, in Ketchikan and Juneau.² With respect to the above-listed factors that must be considered relevant to grand jury proceedings, the circumstances presented in Ketchikan and Juneau when the State's motions were granted were the same circumstances as those currently in Sitka. For that reason, and based upon the Findings and Recommendation made by Judge Pate (attached), the State's motion is granted and the following findings are adopted.

1. On November 25, 2020, Special Order of the Chief Justice No. 8213 suspended 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 Special Order No. 8213, the Department of Health and Social Services (DHSS) reported an average daily case rate over 14

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

² See Presiding Judge Administrative Order 21-1, <https://public.courts.alaska.gov/web/covid19/docs/1st-ao-21-1.pdf> (Jan. 13, 2021); Presiding Judge Administrative Order 20-12, <https://public.courts.alaska.gov/web/covid19/docs/1st-ao-20-12.pdf> (Dec. 29, 2020).

days in Sitka of 54.4.³ As of January 21, 2021, the DHSS average daily case rate in Sitka is 18.4.⁴

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 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.

As Judge Pate noted, the offenses charged to the Sitka grand jury are felony-level conduct.⁵ 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. 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

³ Alaska Department of Health and Social Services Coronavirus Response, Data Hub Presentation, Summary Tables (Table 2c) (25NOV2020), <https://coronavirus-response-alaska-dhss.hub.arcgis.com/datasets/summary-tables-25nov2020>.

⁴ Alaska Department of Health and Social Services Coronavirus Response, Data Hub Presentation, Summary Tables (Table 2c) (20JAN2021), <https://coronavirus-response-alaska-dhss.hub.arcgis.com/datasets/summary-tables-21jan2021>.

⁵ Findings and Recommendation, p. 1 (Jan. 13, 2021).

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.”⁶ 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 generally involve at least 13 people in the courtroom,⁷ often including more people,⁸ while grand jury proceedings involve between 15 and 21 people in the courtroom.

4. **The facilities available for the trial or proceeding.** As Judge Pate disclosed, Sitka has a large and suitable space for in-person grand jury proceedings.⁹ The former Sitka law library is traditionally used for in-person grand jury proceedings and can accommodate proceedings involving 21 people (18 jurors, a prosecutor, a witness, and an in-court clerk) who are strictly social distancing as required by Special Order of the Chief Justice No. 8144.

5. **The COVID-19 case counts for the area or location.** The DHSS Case Count Summary (Table 2c) (as of January 21, 2021) reflects an average daily COVID-19 case rate over 14 days in Sitka as 18.4, with one case being reported on average over the last seven days.¹⁰ These numbers are sufficiently below the 20 – 25 cases per 100,000 population limit

⁶ Special Order of the Chief Justice No. 8202 at ¶ 2.

⁷ Six jurors, defendant, defense attorney, prosecutor, investigating officer, in-court clerk, a witness, and the Judge.

⁸ A victim, a Judicial Services Officer, family and friends of the defendant, and person(s) there to support a victim.

⁹ Findings and Recommendation.

¹⁰ Alaska Department of Health and Social Services Coronavirus Response, Data Hub Presentation, Summary Tables (Jan. 12, 2021), <https://coronavirus-response-alaska-dhss.hub.arcgis.com/datasets/summary-tables-12jan2021>; see Special Order of the Chief Justice 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).

established by Special Order No. 8202 for holding in-person misdemeanor jury trials.

The City and Borough of Sitka COVID-19 DASHBOARD markedly reports a “high” risk level.¹¹ At this risk level, the City and Borough of Sitka strongly encourages that face masks be worn both indoors and outdoors, that a physical distance of six feet be maintained, and that gatherings be limited to less than 50, among other recommendations.¹² Given the facility available in Sitka, these recommendations can be followed while holding in-person grand jury proceedings.

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


Given the impact of the COVID-19 pandemic on staffing, the State shall coordinate with the Sitka 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 as recommended by Judge Pate.

¹¹ City and Borough of Sitka COVID-19 DASHBOARD, <https://app.smartsheet.com/b/publish?EQBCT=1f1d47c7628742018348f0642cb7c29f>.

¹² See *id.*; City of Sitka, *Resolution 2020-30: Encouraging Continued COVID-19 Prevention Efforts*, <https://cityofsitka.org/2020/11/11/resolution-2020-30-encouraging-people-in-the-city-and-borough-of-sitka-to-continue-covid-19-prevention-efforts-for-keeping-sitka-schools-open/> (Nov. 11, 2020).

IT IS SO ORDERED.

Dated at Juneau, Alaska on January 21, 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.

PRESIDING JUDGE ADMINISTRATIVE ORDER 21-2 RE: IN-PERSON GRAND JURY PROCEEDINGS IN SITKA

1 **IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**
2 **FIRST JUDICIAL DISTRICT AT SITKA**

3 **In the matter of the**)
4 **GRAND JURY**)
5))
6 **at Sitka, Alaska**)
7 **January 1, 2021 to March 31, 2021**)

Filed in the Trial Courts,
State of Alaska First District
Sitka

JAN 14 2021

Clerk of the Trial Courts
By SO Deputy

8 **FINDINGS AND RECOMMENDATION**

9 Having considered the Motion for Limited In-Person Grand Jury
10 Proceedings filed by the State on January 13, 2021, and pursuant to the Special
11 Order of the Chief Justice No. 8213, the court enters the following **FINDINGS**:
12

13 a. The State made a request to hold in-person grand jury proceedings in
14 Sitka when the local COVID-19 case numbers are low.

15 b. The State made no representation as to the age of cases pending for
16 the Sitka grand jury. This leaves the court without direct information on the age of
17 cases. However, the most recent grand jury proceeding in Sitka took place October
18 22, 2020. Therefore, the age of an undetermined portion of the pending cases is, at
19 a minimum, three months.
20

21 c. The court does not have any information regarding defendants in
22 custody awaiting indictment on charges within the venue of Sitka.

23 d. The offenses charged to the Sitka grand jury are felony-level conduct.

24 e. The typical grand jury in Sitka consists of 18 jurors, a prosecutor, and
25

1 a clerk. The number of witnesses varies, but only one witness is present with the
2 grand jury at any point in time. Often, witnesses appear telephonically.

3 f. Sitka has a large and suitable space for in-person grand jury
4 proceedings. The room used for the grand jury is the former Sitka law library. The
5 room is large and can accommodate 18 grand jurors, a prosecutor, a witness, and a
6 clerk. There is sufficient space for strict social distancing. Further, the room was
7 used for in-person grand jury proceedings for several months prior to the
8 suspension.
9

10 g. There is no prejudice suffered by the prosecution or defense by
11 allowing in-person grand jury proceedings to resume in Sitka.
12

13 h. The criminal defendant's access to counsel is not implicated by a
14 decision to allow in-person grand jury proceedings to resume in Sitka.
15

16 i. The court is not aware of any special transportation requirements that
17 would result from a decision to allow in-person grand jury proceedings to resume
18 in Sitka.

19 j. Sitka does not have local quarantine requirements or other health
20 mandates and abides by the State of Alaska quarantine guidance.
21

22 k. According to the Department of Health and Social Services
23 <https://coronavirus-response-alaska-dhss.hub.arcgis.com/> on January 13, 2021,
24 Sitka's average daily COVID-19 case rate over the last 14 days increased to 13.4 and
25 over the last 7 days remained at 20.1. On January 12, 2021, Sitka's average daily

1 COVID-19 case rate over the prior 14 days increased to 12.6 and over the prior 7
2 days increased to 20.1. On January 11, 2021, Sitka's average daily COVID-19 case
3 rate over the prior 14 days was 10.0 and over the prior 7 days was 16.7.

4 By way of comparison, on January 13, 2021, Ketchikan's average daily
5 COVID-19 case rate over the prior 14 days was 14.6, and over the prior 7 days
6 was 14.6; on January 13, 2021, Juneau's average daily COVID-19 case rate over the
7 prior 14 days was 9.6 and over the prior 7 days was 8.0.

8 According to the City and Borough of Sitka's COVID-19 Dashboard
9 [https://app.smartsheet.com/b/publish?EQBCT=1f1d47c7628742018348f0642cb7](https://app.smartsheet.com/b/publish?EQBCT=1f1d47c7628742018348f0642cb7c29f)
10 [c29f](https://app.smartsheet.com/b/publish?EQBCT=1f1d47c7628742018348f0642cb7c29f), Sitka has 16 current active cases and 5 cumulative hospitalizations. Sitka's
11 rolling 14 day case rate is 1.79. The risk level for the City of Sitka, Sitka School
12 District, and Mt. Edgecumbe High School is "high".

13 Based on these findings, the court enters the following


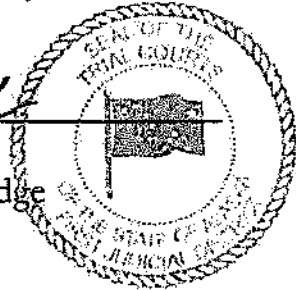
14 **RECOMMENDATION** to the Presiding Judge of the First Judicial District:

15 The State's Motion for Limited In-Person Grand Jury Proceedings should be
16 **CONDITIONALLY GRANTED**.

17 The average case rates in Sitka are currently trending upward and sit on the
18 cusp of the protective threshold of 20-25 cases per 100,000 population set by
19 Special Order of the Chief Justice No. 8202. Using the information referenced
20 above from the Department of Health and Social Services, if either the 14 day or 7
21 days

1 day case rate exceeds 25 cases per 100,000, the Presiding Judge should reevaluate
2 the decision to allow in-person grand jury proceedings to resume.

3
4 SO ORDERED this 13th day of January, 2021

5
6 
7 Jude Pate
8 Superior Court Judge
9 

10 CERTIFICATION

11 I certify that on 14 day of Jan. 21
12 a true copy of this do was placed
13 in attorney's box/mailed to the following:
14 Judge Michael Angelo Kemp
15 Gary Olson, Margaux
16 By SD