

IN THE SUPREME COURT OF THE STATE OF ALASKA
SPECIAL ORDER OF THE CHIEF JUSTICE
ORDER NO. 8352

Order Providing for In-person Criminal Jury Trials Using Mitigation Measures

Since March 2020 the Alaska Court System has taken various COVID-19-related measures to keep its staff and the public safe in courthouses, issuing special orders, administrative bulletins, and implementing policies. Alaska's COVID-19 case counts at times were among the highest in the country and local hospitals activated emergency crisis protocols to ration care. Due to the high statewide and local COVID-19 case counts, high levels of community transmission, and lack of local hospital capacity, court orders largely suspended in-person criminal jury trials; a few such trials were authorized when circumstances warranted.

After months of extremely high COVID-19 case counts, Alaska communities are for the most part seeing declining numbers and downward trends and local hospitals have increased capacity. And much has been learned about mitigating COVID-19 transmission by using social distancing and masking. Effective vaccines are widely available, treatments exist for those who contract COVID-19, and making rapid testing available to trial participants now is possible. Most courthouses now use MERV-13 air filters providing higher level air filtration, including for viruses. The court system has thought carefully about how to safely conduct jury trials and has successfully done so on several occasions.¹

¹ See Alaska Court System Conducting Criminal and Civil Jury Trials, and Grand Jury During the COVID-19 Pandemic updated March 4, 2021 (<http://courts.alaska.gov/covid19/docs/conducting-trials-gj-pandemic.pdf>). See Special Order of the Chief Justice number 8310 (regarding visitor safety precautions <https://courts.alaska.gov/covid19/docs/socj-2021-8310c.pdf>)

As stated in the September 20, 2021 Chief Justice Special Order 8333, “Trial by jury is one of the oldest discernible and distinguishing institutions of our Anglo-American system of jurisprudence”² and “an essential institution in our democracy.”³ The Alaska Constitution requires the judicial branch to convene jury trials for criminal cases to be fairly and publicly tried in an expeditious fashion so as to ensure the rights of defendants,⁴ victims of crime,⁵ and the public generally.⁶ Thus the presumption must be, to the greatest extent possible, that criminal jury trials will proceed. Beginning January 10, 2022, there will be no further suspensions of criminal jury trials absent extraordinary circumstances. Criminal jury trials will proceed unless a trial court is unable to socially distance all participants, enforce masking, or provide a sufficient number of jurors because of local COVID-19 outbreaks reflected by school closures, hospital alerts, stay-at-home ordinances, or travel restrictions.

The presiding judge shall consider imposing additional restrictions effectively mitigating risk of COVID-19 transmission while maintaining the requirement that criminal jury trials be public hearings of record in compliance with substantive and procedural due process rights of the parties, including but not limited to:

1. limiting the number of trials permitted at a courthouse at one time;
2. limiting the number of prospective jurors allowed in the courthouse at one time;

² State v. Browder, 486 P.2d 925, 937 FN 38 (Alaska 1971) (citing Baker v. City of Fairbanks, 471 P.2d 386, 402 (Alaska 1970)).

³ Alvarado v. State, 486 P.2d 891, 903 (Alaska 1971).

⁴ “In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury...” Alaska Const. art. I, § 11. Alaska Rule of Criminal Procedure 45 governs a criminal defendant's statutory speedy trial rights under Alaska law.

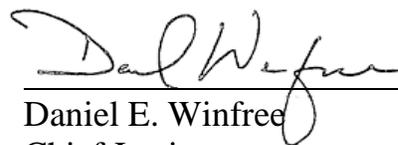
⁵ “Crime victims, as defined by law, shall have the following rights as provided by law: [...] the right to timely disposition of the case following the arrest of the accused.” Alaska Const. art. I, § 24.

⁶ “[T]here is a compelling public interest in the prompt and orderly disposition of such matters.” Green v. State, 544 P.2d 1018, 1023 (Alaska 1976) (citing in a footnote to Chief Justice Warren Burger’s comments to the American Bar Association in 1970: “Indeed the delays in trials are often one of the gravest threats to individual rights. Both the accused and the public are entitled to a prompt trial.”).

3. conducting some or all of a jury selection process by video conference;
4. ordering that public participation be by online streaming of audio or video broadcasts to avoid unnecessary groupings of individuals in the courtroom or other courthouse locations;
5. issuing directives or orders to judges, staff, attorneys, and parties concerning courtroom procedure;
6. providing COVID-19 rapid tests to courtroom participants; and
7. issuing any other order or directive that will permit criminal jury trials to proceed without depriving any party of substantive or procedural due process, including an order that a particular trial be held offsite when the local courthouse cannot safely accommodate a trial.

The presiding judge shall review any order requiring mitigation measures every 30 days and renew it when no less restrictive or more narrowly tailored approach will adequately protect the public health, or modify it as appropriate under then-existing circumstances.

DATED: December 2, 2021



Daniel E. Winfree
Chief Justice

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