

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1974

Resetting, Extending, and Tolling
Criminal Rule 45 to permit an
orderly transition and scheduling
of criminal trials.

After national and state emergency declarations regarding the pandemic outbreak of the novel coronavirus (COVID-19), Chief Justice Bolger exercised authority granted by the full court and issued a general order suspending jury trials beginning March 16, 2020 to ensure the safety of court participants, court staff, and Alaska communities. The pandemic evolved and jury trials remained suspended into 2021. A series of special orders suspended Criminal Rule 45, which establishes court-imposed speedy trial time limits. As COVID-19 case counts lowered and vaccination rates increased, Chief Justice Bolger and Presiding Judges issued orders allowing some jury trials to resume across the state.

We recognize that the pandemic has substantially impacted the process for criminal cases. During the jury trial suspension, many criminal cases remained unresolved and pending in the court system despite the small percentage of cases typically resolved through a jury trial. All court locations now face a backlog of criminal cases. We also recognize that we must balance the rights of victims and defendants with the need for an efficient process to move cases toward resolution.

To ensure an orderly transition and scheduling of criminal cases for trial,
IT IS ORDERED:

- 1. Criminal Rule 45 Tolling and Reset.** For all criminal cases, the time for trial will be tolled through September 12, 2021. As set forth below, the time for trial under Alaska Criminal Rule 45 shall be reset effective September 13, 2021 and all time prior to September 13, 2021 shall be excluded in Rule 45 time computations.

2. Felony Cases.

- a. *Pending cases as of September 12, 2021.* For all felony cases pending on September 12, 2021, the time period for trial under Criminal Rule 45 is reset. The time for trial under Criminal Rule 45(b) shall be **200 days** and begins to run on September 13, 2021; time calculations shall run in accordance with the rule. All time prior to September 13, 2021 shall be excluded in time calculations.
- b. *Cases initiated between September 13, 2021 and December 31, 2021.* For all felony cases initiated between September 13, 2021 and December 31, 2021, the time for trial under Criminal Rule 45(b) shall be **180 days** and time calculations shall run in accordance with the rule.
- c. *Cases initiated on or after January 1, 2022.* For felony cases initiated on or after January 1, 2022, the time for trial under Criminal Rule 45 and time calculations shall run in accordance with the rule.

3. Misdemeanor and Violation Cases.

- a. *Pending cases as of September 12, 2021.* For all misdemeanor and violation cases pending on September 12, 2021, the time period for trial under Criminal Rule 45(b) is reset. The time for trial shall begin to run on September 13, 2021; time calculations shall run in accordance with the rule. All time prior to September 13, 2021 shall be excluded in time calculations.
- b. *Cases initiated on or after September 13, 2021.* For misdemeanor and violation cases initiated on or after September 13, 2021, the time for trial under Criminal Rule 45 and time calculations shall run in accordance with the rule.

4. Trial Dates.

- a. For cases with trial dates already scheduled beyond the time limits established in paragraphs 2.a. and 3.a., this Order does not affect those trial dates and they are deemed to comply with Rule 45.
- b. Cases set for trial by agreement of the parties are deemed to comply with Rule 45.

5. Combined Charge Cases. For cases with both felony and misdemeanor/violation charges, the felony calculations in paragraph 2, above, apply. If a felony charge is reduced by dismissal or amendment, the felony time calculations in paragraph 2, above, will continue to apply.

6. Trial Scheduling Priority. The assigned judicial officer should proactively manage the trial court calendar to ensure that trial time is maximized, and when prioritizing criminal cases for a jury trial, the judicial officer should consider the following factors:

- a. The age of the case;
- b. The requests of the parties and victims;
- c. Whether the defendant is in custody;
- d. The classification of any charged offenses;
- e. The number of other required participants, including jurors, victims, custodial officers, interpreters, investigators, or other lawyers;
- f. The facilities available for the trial or proceeding;
- g. The prejudice suffered by any party;
- h. The defendant's access to counsel;
- i. Any special transportation requirements;
- j. Any local quarantine requirements or other health mandates;
- k. The COVID-19 case counts and risk levels for the area or location;
and
- l. Any special health considerations for trial participants.

- 7. Trial Court Tolling Authority.** The assigned judicial officer may on the judicial officer's own initiative order a limited continuance and toll the Criminal Rule 45 time for trial in a case when necessary to address case backlogs and scheduling conflicts. For example, when more than one case may be ready for trial, the judicial officer shall prioritize the cases based on the factors in paragraph 6; when the first case is set for trial, other cases may need to be continued.
- 8. Presiding Judge Trial Suspension and Tolling Authority.** A Presiding Judge may limit or suspend felony, misdemeanor, or violation trials for any district or location when required for public health or to comply with local health mandates. A Presiding Judge should consider a suspension when the COVID-19 average daily case rate over 14 days as reported by the Alaska Department of Health and Social Services rises above 20-30 cases per 100,000 population or the local risk level is otherwise seriously elevated. The time for trial will be tolled under Alaska Criminal Rule 45(d) during the time of the temporary suspension. For cases affected by a temporary suspension, the period of delay is excluded in computing the time for trial under Alaska Criminal Rule 45.

DATED: July 21, 2021

EFFECTIVE DATE: July 21, 2021

/s/
Chief Justice Winfree

/s/
Justice Maassen

/s/
Justice Carney

/s/
Justice Borghesan