

FILED
KING COUNTY, WASHINGTON

MAR 17 2020

DEPARTMENT OF
JUDICIAL ADMINISTRATION

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY**

IN THE MATTER OF
THE RESPONSE BY
KING COUNTY SUPERIOR COURT
TO THE PUBLIC HEALTH
EMERGENCY IN WASHINGTON
STATE

NO. 20-12050-5

EMERGENCY ORDER #7

REGARDING ITA COURT AND
CASES

This matter comes before the Court on the public health emergency in Washington State.

FINDINGS OF FACT BASED UPON THE PUBLIC RECORD

1. On February 29, 2020, Governor Jay Inslee declared a state of emergency due to the public health emergency posed by the coronavirus disease 2019 (COVID-19).

2. On March 11, 2020, Governor Jay Inslee issued another Proclamation and Order banning gatherings of 250 or more as follows:

**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATIONS 20-05 AND 20-06
20-07**

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in

1 the United States and confirmed person-to-person spread of COVID-19 in
2 Washington State; and

3 **WHEREAS**, on March 10, 2020, as a result of significant risks from
4 COVID-19 to persons living in congregate care settings, I issued Proclamation
5 20-06 amending Proclamation 20-05 by prohibiting certain activities and
6 waiving and suspending specified laws and regulations; and

7 **WHEREAS**, COVID-19, a respiratory disease that spreads easily from
8 person to person and may result in serious illness or death, has been confirmed
9 in 9 counties of Washington State resulting in 24 deaths, with significant
10 community spread in King, Pierce, and Snohomish counties; and

11 **WHEREAS**, to reduce spread of COVID-19, the United States Centers
12 for Disease Control and Prevention and the Washington State Department of
13 Health (DOH) recommend implementation of community mitigation strategies
14 to increase containment of the virus, including cancellation of large gatherings
15 and social distancing in smaller gatherings; and

16 **WHEREAS**, implementation of limitations on large gatherings and use
17 of social distancing prevent initial exposure and secondary transmission to our
18 most vulnerable populations, and are especially important for people who are
19 over 60 years old and those with chronic health conditions due to the higher risk
20 of severe illness and death from COVID-19; and

21 **WHEREAS**, the worldwide outbreak of COVID-19 and the resulting
22 epidemic in Washington State continue to threaten the life and health of our
23 people as well as the economy of Washington State, and remains a public
24 disaster affecting life, health, property and the public peace; and

25 **WHEREAS**, the DOH continues to maintain a Public Health Incident
Management Team in coordination with the State Emergency Operations Center
and other supporting state agencies to manage the public health aspects of the
incident; and

WHEREAS, the Washington State Military Department Emergency
Management Division, through the State Emergency Operations Center,
continues coordinating resources across state government to support
the DOH and local health officials in alleviating the impacts to people, property,
and infrastructure, and continues coordinating with the DOH in assessing the
impacts and long-term effects of the incident on Washington State and its
people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of
Washington, as a result of the above-noted situation, and under Chapters 38.08,
38.52 and 43.06 RCW, do hereby proclaim that Proclamations 20-05
and 20-06 remain in effect and are amended to impose restrictions on large
gatherings in King, Pierce, and Snohomish counties as provided herein, and that
a State of Emergency continues to exist in all counties of Washington State. I
again direct that the plans and procedures of the *Washington State
Comprehensive Emergency Management Plan* be implemented throughout state

1 government. State agencies and departments are directed to continue utilizing
2 state resources and doing everything reasonably possible to support
3 implementation of the *Washington State Comprehensive Emergency*
4 *Management Plan* and to assist affected political subdivisions in an effort to
5 respond to and recover from the COVID-19 epidemic. As a result of this event,
6 State to include the National Guard and the State Guard, or such part thereof as
7 may be necessary in the opinion of The Adjutant General to address the
8 circumstances described above, to perform such duties as directed by competent
9 authority of the Washington State Military Department in addressing the
10 outbreak. Additionally, I continue to direct the DOH, the Washington State
11 Military Department Emergency Management Division, and other agencies to
12 identify and provide appropriate personnel for conducting necessary and
13 ongoing incident related assessments.

14 **FURTHERMORE**, based on the above situation and under the
15 provisions of RCW 43.06.220(1)(b) and RCW 43.06.220(1)(h), to help preserve
16 and maintain life, health, property or the public peace, I hereby prohibit the
17 following activities in King, Pierce and Snohomish counties related to social,
18 spiritual, and recreational gatherings, which restrictions shall remain in effect
19 until midnight on March 31, 2020, unless extended beyond that date: Gatherings
20 of 250 people or more for social, spiritual and recreational activities including,
21 but not limited to, community, civic, public, leisure, faith-based, or sporting
22 events; parades; concerts; festivals; conventions; fundraisers; and similar
23 activities. Violators of this of this order may be subject to criminal penalties
24 pursuant to RCW 43.06.220(5).

25 Signed and sealed with the official seal of the state of Washington on this 11th
day of March, A.D., Two Thousand and Twenty at Olympia, Washington.

3. On March 11, 2020, King County Public Health Local Health Officer, Dr. Duchin
issued the following Order banning groups of smaller than 250 unless certain steps can be taken:

LOCAL HEALTH OFFICER ORDER

Whereas on February 29, 2020, Governor Inslee proclaimed a state of
emergency within the State of Washington due to COVID-19;

Whereas on March 1, 2020, King County Executive Constantine
proclaimed a state of emergency within King County due to COVID-19;

Whereas state law, RCW 70.05.070(2)-(3), requires and empowers the
local health officer to take such action as is necessary to maintain health and to

1 control and prevent the spread of any contagious or infectious diseases within the
2 jurisdiction;

3 **Whereas** state regulation, WAC 246-100-036, requires the local health
4 officer, when necessary, to institute disease control and containment control
5 measures, including social distancing measures he or she deems necessary based
6 on his or her professional judgment;

7 **Whereas**, there is evidence of increasing transmission of COVID-19
8 within King County, scientific evidence and national public health guidance
9 support strategies to slow the transmission of COVID-19 and protect vulnerable
10 members of the public from avoidable risk of serious illness or death resulting
11 from exposure to COVID-19;

12 **Whereas**, the age, condition, and health of a significant portion of the
13 population of King County places it at risk for serious health complications,
14 including death, from COVID-19. Although most individuals who contract
15 COVID-19 do not become seriously ill, persons with mild symptoms and
16 asymptomatic persons with COVID-19 may place other vulnerable members of
17 the public at significant risk; whereas a large surge in the number of persons with
18 serious infections can compromise the ability of the regional healthcare system to
19 deliver necessary healthcare to the public;

20 **Whereas**, the implementation of limitations on large gatherings and use of
21 social distancing decreases the risk of COVID-19 transmission to our most
22 vulnerable populations, and is especially important for people who are over 60
23 years old and those with chronic health conditions due to the higher risk of severe
24 illness and death from COVID-19;

25 **Whereas**, this Order will reduce the likelihood that many individuals will
be exposed to COVID-19 at a single event, and will thereby slow the spread of
COVID-19 in our community; Whereas, this Order will help preserve critical and
limited healthcare capacity in the County by reducing the spread of COVID-19;

Whereas, this Order is issued in accordance with, and incorporates by
reference, the March 11, 2020 Governor's Executive Proclamation on COVID-19
Community Mitigation Strategies;

Whereas this Order is issued in light of the existence of 234 cases of
COVID-19 (including 26 deaths) in King County, as of March 11, 2020, and a
significant and increasing number of assumed cases of community transmission
and at a time when implementation of largescale social distancing measures is
recommended;

1 **Whereas**, social distancing measures can reduce COVID-19 transmission
2 by decreasing the frequency and duration of social contact among persons of all
3 ages, this Order is issued to prevent circumstances often present in mass
4 gatherings that may exacerbate the spread of COVID-19, such as: (a) the increased
5 likelihood that mass gatherings will attract people from a broad geographic area;
6 (b) the a physical environment in which large numbers of people are in close
7 proximity and have multiple opportunities for close contact with one another that
8 facilitates the spread of COVID-19 and; (c) the difficulty in tracing exposure and
9 implementing traditional public health containment measures when large numbers
10 of people attend a single event;

11 **Whereas**, this Order comes after the release of substantial guidance from
12 Public Health—Seattle & King County, the Centers for Disease Control and
13 Prevention, and other public health officials throughout the United States and
14 around the world. The Local Health Officer will continue to assess this quickly
15 evolving situation and may modify or extend this Order, or issue additional
16 Orders, related to COVID-19;

17 **Whereas**, the Local Health Officer hereby finds it is necessary to institute
18 social distancing measures within King County;

19 **Therefore**, as Local Health Officer I ORDER as follows:

20 1. All events of 250 people or more, are prohibited.

21 2. Events with fewer than 250 attendees are prohibited unless event
22 organizers take the following steps to minimize risk: Older adults and
23 individuals with underlying medical conditions that are at increased risk of serious
24 COVID-19 are encouraged not to attend (including employees); Social
25 distancing recommendations must be met (I.e., limit contact of people within 6
feet from each other for 10 minutes or longer); Employees must be screened for
coronavirus symptoms each day and excluded if symptomatic; and Proper hand
hygiene and sanitation must be readily available to all attendees and employees.

3 3. Environmental cleaning guidelines from the US Centers for Disease
Control and Prevention (CDC) are followed (e.g., clean and disinfect high touch
surfaces daily or more frequently) For the purposes of this Order, an “event” is a
gathering for business, social, or recreational activities including, but not limited
to, community, civic, public, leisure, or sporting events; parades; concerts;
festivals; conventions; fundraisers; and similar activities.

Signed and ordered this day of March 11, 2020, in Seattle, Washington, by

Dr. Jeff Duchin Local Health Officer
Public Health – Seattle & King County

1 4. On March 12, 2020, Governor Jay Inslee ordered all schools closed in King, Pierce,
2 and Snohomish counties until April 24.

3 5. On March 12, 2020, the Seattle Times published a Gates Foundation study cited by
4 both Governor Inslee and Dr. Duchin, *Working paper-model-based estimates of COVID-19 burden*
5 *in King and Snohomish counties through April 7, 2020*, Klein, Hagedorn, Kerr, Hu, Bedford and
6 Famulare; Institute for Disease Modeling; Bill and Melinda Gates Foundation; Fred Hutchinson
7 Cancer Research Institute, March 10, 2020. The conclusions of this study were based upon business
8 as usual; 25, 50, and 75 per cent reduction, from January 15 to April 7. The conclusion of the
9 “business as usual” assumption (that is to say, no general orders such as entered by the Governor
10 and Public Health Officer, no banning of large or small groups, no precautions) estimated 25,000
11 infections and 400 deaths in our area by April 7. On the other hand, mitigation efforts such as
12 announced above could reduce the range of deaths by a significant amount.

13
14
15 6. Governor Inslee has explained that the coronavirus doubles the infection rate every
16 five to seven days. Some estimates say that by end of April, the infection rate could be one million
17 in our State, without mitigation.

18 7. King County Superior Court presides over cases brought under Washington’s
19 Involuntary Treatment Act (ITA), Revised Code of Washington (RCW) 71.05 and 71.34. These
20 cases typically require access to a court hearing within 72 hours of the filing of a petition to
21 involuntarily commit a person to a psychiatric or other hospital.

22
23 8. The King County Department of Public Defense (DPD) is charged with providing
24 attorneys to those involuntarily detained under the ITA in order to protect their state and federal
25 constitutional rights. DPD has expressed concern about the health and safety of its attorneys;

1 who must have contact with their respondent ITA clients in order to provide counsel and to
2 prepare for hearings before the court.

3 9. DPD has expressed concern that its ITA attorneys are not being provided with
4 the medical records necessary for their effective representation, and are not being provided with
5 necessary and available protective equipment for their face-to-face meetings with ITA clients.
6

7 10. The King County Prosecuting Attorney's Office (PAO) is charged with providing
8 representation to the petitioner hospitals in ITA cases. The PAO has expressed concern about
9 the difficulty in obtaining records and providing them to the Court and opposing counsel. They
10 have also encountered difficulty in transporting ITA respondents to video-capable hospital court
11 rooms or conference rooms so that DPD attorneys may communicate with the respondents to
12 provide counsel and to prepare for hearings.
13

14 11. DPD has informed the Court it will not assign attorneys to ITA clients because
15 of the above-referenced concerns.

16 12. In meetings on these issues, medical professionals in the hospitals have informed
17 the parties that if the ITA cases are not heard, the respondents will come to the emergency rooms
18 instead and help cripple the health care system during the COVID-19 crisis.

19 CONCLUSIONS OF LAW

- 20 1. On March 4th, 2020, Chief Justice Debra Stephens entered an Emergency Order that states,
21 in part, as follows:
22

23 **WHEREAS**, during this state of emergency, it may become necessary for
24 courts in these counties to close, relocate, or otherwise significantly modify their
25 regular operations; and

WHEREAS, the presiding judges in these counties need sufficient
authority to effectively administer their courts in response to this state of

1 emergency, including authority to adopt, modify, and suspend court rules and
2 orders as warranted to address the emergency conditions.

3 **NOW, THEREFORE,** pursuant to the Court's authority to administer
4 justice and to ensure the safety of court personnel, litigants, and the public,

5 **IT IS HEREBY ORDERED THAT:**

6 1. The Presiding Judges of the Washington courts are authorized to
7 adopt, modify, and suspend court rules and orders, and to take further actions
8 concerning court operations, as warranted to address the current public health
9 emergency;

10 2. Each court shall immediately transmit copies of emergency local
11 rules adopted or modified to address the public health emergency to the
12 Administrative Office of the Courts in lieu of the requirements of General Rule 7;

13 3. Each court that closes pursuant to this Order or General Rule 21
14 shall sign an administrative order closing the court, file the original with the clerk
15 of the affected court, and notify the Administrative Office of the Courts as soon as
16 practicable.

17 2. It is the Court's constitutional obligation to see that counsel is provided to ITA
18 respondents.

19 3. It is DPD's obligation to provide counsel to ITA respondents as provided by contract
20 with the Executive and as ordered by the Court.

21 4. It is the Court's obligation to ensure that ITA respondents have access to court hearings
22 in a timely manner, as is required by our state and federal constitution.

23 5. It is also the Court's obligation to ensure that the ITA respondents do not flood the
24 emergency rooms as a result of a failure of cases to go forward.

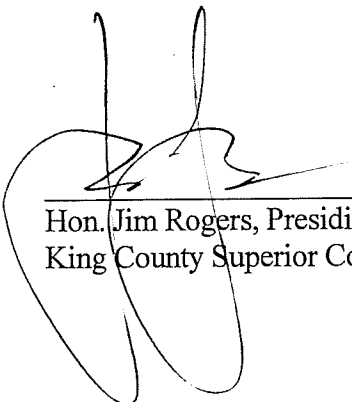
25 6. The Court has balanced the health and safety needs of defense attorneys, prosecutors,
judges, and staff against the constitutional rights of those involuntarily detained pursuant
to the ITA statute.

ORDER

1. King County Department of Public Defense shall promptly appoint counsel for ITA cases.
2. The King County Evaluation and Treatment Hospitals and other King County hospitals where ITA respondents are detained, as Petitioners in ITA cases, shall promptly provide all available and necessary records to defense counsel either on the Cloud or by way of other electronic transmission as promptly coordinated through DPD, PAO counsel, and ITA Court staff.
3. The King County Evaluation and Treatment Hospitals and other King County hospitals where ITA respondents are detained, as Petitioner in ITA cases, shall provide to defense counsel who choose to visit their ITA clients in person, access to the protective protocols and equipment, if needed, as used by medical professionals.
4. The Court will facilitate and allow remote access for preparation for and participation in ITA hearings consistent with the attached memorandum re: Changes to ITA Department Procedures – Step-Down Plan.

It is so Ordered

March 17, 2020



Hon. Jim Rogers, Presiding Judge
King County Superior Court