

THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

In the matter of

PROCEDURES FOR CRIMINAL
PROCEEDINGS EFFECTIVE
DECEMBER 6, 2021

**MISCELLANEOUS GENERAL
ORDER 21-25**

The Coronavirus Disease 2019 (“COVID-19”) pandemic continues to be an ongoing national emergency under the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* The Judicial Conference of the United States found that “emergency conditions due to the national emergency declared by the President with respect to COVID-19 will materially affect the functioning of the federal courts generally,” and this statement remains in effect today. However, the State of Alaska has recently seen a decrease in COVID-19 cases, including a 28% decrease in cases in the past week, a decrease in the cumulative case rate per 100,000 people, and a decrease in the strain on hospitals’ staffing and resources.¹ Moreover, the COVID-19 vaccine recently became available to all Alaskans aged five years and older.² The Court must balance public health and safety with its duty to protect criminal defendants’ rights and to resolve cases in a timely manner.

THEREFORE, in light of the foregoing, the Court orders that MGO 21-24 shall be modified as set forth below. This Order shall be the controlling Order on criminal jury trials and hearings effective December 6, 2021. It supersedes prior MGOs to the extent they are inconsistent.

Judges retain discretion, on a case-by-case basis, to take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties. In doing so, judges shall impose proper restrictions to continue to protect public safety and prevent the spread of COVID-19.

¹ Alaska Dept. Health & Social Services, *Alaska COVID-19 Information Hub*, available at <https://alaska-coronavirus-vaccine-outreach-alaska-dhss.hub.arcgis.com/> (last accessed Nov. 15, 2021) (last updated November 12, 2021).

² Alaska Dept. Health & Social Services, *COVID-19 Vaccine Information for all Alaskans*, available at <https://dhss.alaska.gov/dph/Epi/id/Pages/COVID-19/vaccineinfo.aspx> (last accessed Nov. 15, 2021) (last updated Oct. 19, 2021).

A. Commencement of Socially Distanced Criminal Jury Trials in December 2021

All criminal jury trials scheduled to occur after December 6, 2021, shall proceed as scheduled, and the parties to these proceedings should be prepared to go forward. All pretrial and trial-specific deadlines in criminal cases scheduled to begin after December 6, 2021, remain in effect. Judges may issue orders concerning continuances as necessary.

The public and the media will be permitted to observe jury trials in-person as space allows while maintaining social distancing. If a courtroom does not have sufficient space for socially distanced spectators, a live stream of the proceedings shall be available for public viewing in another room at the courthouse. Spectators must have their phones muted, and members of the public and media are strictly prohibited from recording or broadcasting any part of a trial, in any fashion or for any purpose. Further instructions and restrictions are set forth on the Court's website and may change as necessary.

B. Criminal Jury Trials in 2022

The Court will continue to monitor public health changes and recommendations. However, the Court anticipates that *non-socially distanced trials* will commence as scheduled in January 2022, pending further guidance from public health authorities.

C. Mask or Face Covering Requirements

All trials and all other court proceedings will follow social-distancing guidelines for all participants. Unless otherwise ordered, for the health and safety of all participants, all prospective jurors, attorneys, parties, witnesses, court staff, and the public must wear suitable masks or face coverings, regardless of vaccination status, when at the federal courthouse. This requirement balances the Court's decision not to inquire as to prospective jurors' vaccination status, while also promoting the safety of all jurors regardless of vaccination status.

D. Prospective Juror Protocol for Criminal Jury Trials

Jurors are not required to be vaccinated to serve on a petit jury. Consistent with existing Court practices, the Court will issue an optional supplemental COVID-19 questionnaire to jurors and inform them about the Court's updated COVID-19 related policies for jury trials.

The Court will evaluate on a case-by-case basis who should be temporarily excused or deferred on the basis of COVID-19 health concerns.

E. Remote Criminal Proceedings

Pursuant to § 15002(b)(1) of the CARES Act, the Chief Judge finds that emergency conditions due to the COVID-19 pandemic persist and continue to materially affect the function of the courts within this judicial district. The Chief Judge specifically finds that while COVID-19 vaccines are widely available and the spread of COVID-19 has recently been considerably reduced, the effects of the COVID-19 pandemic continue to materially affect the function of the courts within the District of Alaska. Like many courts across the country, the District of Alaska now faces a backlog of criminal cases directly caused by the Court's limited ability to process criminal cases and hold criminal jury trials since March 2020, such that it is anticipated that the effects of COVID-19 on the Court's operations will continue to strain judicial resources for the foreseeable future. The ability to utilize videoconferencing or teleconferencing for the criminal events listed in § 15002(b)(1) is necessary for the Court to address the backlog of criminal cases caused by the COVID-19 pandemic. Reauthorization under the CARES Act will permit the proceedings listed below to proceed by videoconference, or by telephone if videoconferencing is not reasonably available, at the discretion of individual judges.

- Detention hearings under 18 U.S.C. §§ 3142 - 3145.
- Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure.
- Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure.
- Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure.
- Arraignments under Rule 10 of the Federal Rules of Criminal Procedure.
- Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure.
- Pretrial release revocation proceedings under 18 U.S.C. § 3148.
- Appearances under Rule 40 of the Federal Rules of Criminal Procedure.
- Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure.
- Pretrial conferences (“status conferences”) under Rule 17.1 of the Federal Rules of Criminal Procedure.
- Proceedings under 18 U.S.C. § 403 (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

Neither the President nor the Judicial Conference of the United States have terminated the emergency authority under § 15002(b)(5). Thus, pursuant to the authority granted in § 15002(b)(3), the Chief Judge reauthorizes the use of videoconferencing, or telephone if videoconference is not reasonably available, for an additional 90-day period, as set forth above.

Notwithstanding the foregoing, pursuant to § 15002(b)(5) of the CARES Act, this authority shall terminate on the last day of the covered emergency period as defined by § 15002(a), or the date on which the Judicial Conference of the United States finds that emergency conditions due to the national emergency declared by the President under the National Emergencies Act with respect to the COVID-19 pandemic no longer materially affect the functioning of either the federal courts generally or the courts within this district, whichever occurs first.

F. Felony Pleas and Felony Sentencings

Pursuant to § 15002(b)(2) of the CARES Act, the Court finds that felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure can be conducted in person without seriously jeopardizing public health and safety. As a result, effective December 6, 2021, all felony pleas and felony sentencings shall be conducted in person unless otherwise ordered. Authorization for use of video teleconferencing or telephone conferencing for the criminal proceedings in § 15002(b)(2) is hereby terminated effective December 6, 2021.

There may be specific cases in which felony sentencings by videoconference or by telephone may facilitate court operations. A defendant who has previously entered a plea of guilty to a felony charge may waive his or her physical presence and consent to sentencing by videoconference or telephone conferencing pursuant to Federal Rule of Criminal Procedure 43(c).

DATED this 23rd day of November, 2021.

/s/ Timothy M. Burgess
Hon. Timothy M. Burgess
Chief United States District Judge

/s/ Sharon L. Gleason
Hon. Sharon L. Gleason
United States District Judge

/s/ Joshua M. Kindred
Hon. Joshua M. Kindred
United States District Judge

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