

THE SUPREME COURT OF WASHINGTON

PROPOSED GENERAL ITA COURT
ORDER

Case No.

WHEREAS, on February 29, 2020, Governor Inslee proclaimed a state of emergency due to the novel coronavirus disease (COVID-19) outbreak in Washington; and on March 13, 2020, President Trump declared a national emergency due to the COVID-19 outbreak across the United States; and

WHEREAS, during this state of emergency, the Centers for Disease Control and Prevention and the Washington State Department of Health have recommended increasingly stringent social distancing measures of at least six feet between people, and encouraged vulnerable individuals to avoid public spaces; and

WHEREAS, consistent with these recommendations, Governor Inslee has barred gatherings of more than fifty people and ordered all schools, businesses, faith-based organizations, and other public venues to close during the ongoing public health emergency, and the CDC has recommended restricting gatherings to no more than ten people; and

WHEREAS, many court facilities in Washington are ill-equipped to effectively

comply with social distancing and other public health requirements and therefore continued in-person court appearances jeopardize the health and safety of litigants, attorneys, judges, court staff, and members of the public; and

WHEREAS, pursuant to this Court's March 4, 2020 order, many Washington courts have already taken important steps to protect public health while ensuring continued access to justice and essential court services; however, the crisis is increasing daily and it may become necessary for courts to close, suspend in-building operations or otherwise significantly modify their operations, and

WHEREAS, the increasingly aggressive spread of COVID-19 across Washington requires a uniform, coordinated response from Washington courts to prevent further outbreak and to maintain consistent and equitable access to justice; and

WHEREAS, this Court's consultation with trial court judges, justice partners and coordinate branches of government confirms the need for further direction from this Court; and

WHEREAS, the presiding judges across Washington need direction and authority to effectively administer their courts in response to this state of emergency, including authority to adopt, modify, and suspend court rules and orders as warranted to address the emergency conditions; and

WHEREAS, pursuant to this Court's March 20, 2020 order, the Court recognizes that there are procedural issues involved in civil commitment cases that are unique to the circumstances of those cases, which warrants a supplemental statewide order.

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

IT IS HEREBY ORDERED:

1. All parties to civil commitment proceedings are responsible for making best efforts to comply with the Involuntary Treatment Act (ITA), as set forth in chapter 71.05 RCW, and the Behavioral Health Services for Minors Act, as set forth in chapter 71.34 RCW, to ensure

that all detained and civilly committed patients' civil rights are respected during this public health emergency.

2. Healthcare facilities shall provide for reasonable means and methods of communication between detained and civilly committed patients and their counsel, which may include in person, video, or telephone. Attorneys shall make best efforts to provide healthcare facilities as much advance notice as possible about their desire to communicate with patients and their preferred method for doing so.

3. Designated Crisis Responders (DCRs) will follow the guidance issued by the Washington State Health Care Authority for video evaluations under the ITA. For emergency detentions under RCW 71.05.153, DCRs shall conduct interviews in person whenever safe and feasible. Where an in person interview is not safe or feasible, the DCR may conduct an interview by secure video if the technology is available. Before initiating a change in practice to video evaluations, DCRs, in conjunction with their Behavioral Health Administrative Service Organization, should first consult with their prosecutors to ensure that the prosecutor will move forward with petitions generated through video evaluations. If the prosecutor is not willing to support video evaluations, it may not be an option for that county/region. For non-emergent detentions under RCW 71.05.150, DCRs may conduct the interview in person whenever safe or feasible, or through secure video if the technology is available. In conducting an ITA evaluation by video, DCRs must ensure that a healthcare professional is present with the individual being evaluated if the DCR and facility together determine that presence is necessary.

4. Each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation shall have reasonable access to a telephone, both to make and receive confidential calls with counsel, pursuant to RCW 71.05.217(5).

5. Court proceedings and patient meetings with defense counsel shall be conducted by remote means if reasonably feasible, and may be conducted by telephone if video is not

available or appropriate in the circumstances of the particular case. Where court proceedings must occur in person, or where defense counsel must meet in person with a patient, social distancing and other public health measures must be strictly observed.

6. If an attorney visits a healthcare facility in person, the attorney is subject to that facility's safety and protective measures with respect to social distancing, the use of personal protective equipment and any other practice or protocol designed to prevent exposure to COVID-19.

7. Healthcare facilities shall make their best efforts to provide requested records to counsel via remote capabilities for their use in ITA proceedings, recognizing that facilities are different in how patient records are maintained and in their ability to transmit remotely. Attorneys will identify only the minimum records necessary to adequately prepare and present a case.

8. Trial court clerks shall review their procedures and consider implementing measures to facilitate the filing of pleadings without the need for person-to-person contact.

9. For proceedings conducted by video or telephone, the judge or commissioner will explain how the hearing will occur to ensure the respondent understands the process.

10. No cases shall be dismissed for violation of any procedural requirements in this order, except where requirements have been totally disregarded, consistent with RCW 71.05.010(2), and as provided in *In re C.W.*, 147 Wn.2d 259, 281 (2002).

11. This order is intended to supplement this Court's amended order of March 20, 2020, for purposes of matters under the ITA. It takes effect immediately.

12. To ensure consistency throughout the state, this order shall supersede all trial court orders regarding procedural requirements for ITA proceedings. No trial court shall enter a general ITA order that is inconsistent with the terms of this order.

13. The Washington Supreme Court may extend the time frames in this order as required by the continuing public health emergency, and if necessary, will do so by further order.

This order and other applicable emergency orders may be deemed part of the record in affected cases for purposes of appeal without the need to file the orders in each case.

14. As used in this order, “parties” includes DCRs, petitioners, respondents, intervenors, and counsel.

15. The Court recognizes that ITA patients will be detained in a variety of situations depending on the facility where detained, the circumstances present in those facilities during the period of detention, and the circumstances present in the courts during the period of detention. Accordingly, this order is intended to provide flexibility to the parties and healthcare facilities while protecting the rights of detained and committed individuals.

DATED at Olympia, Washington this _____ day of March, 2020.

For the Court

CHIEF JUSTICE