

1 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF BUTTE**

2 **EMERGENCY ORDER OF THE PRESIDING JUDGE**

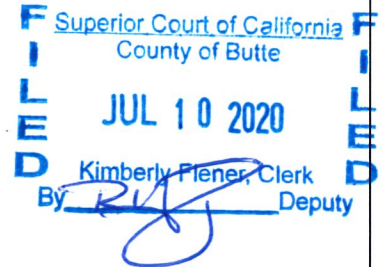
3 **AFFECTING JURY TRIALS**

4 **I.**

5 **FINDINGS**

6 **A.**

7 **PUBLIC HEALTH CRISIS**



8 Herein, this court adopts and incorporates the findings of this court, of the California Judicial
9 Council, and of the Chief Justice of the California Supreme Court, issued previously in response to the
10 public health crisis emanating from the coronavirus and COVID-19.

11 Herein, this court takes judicial notice of the website of the Office of the Governor of the State
12 of California, and all declarations issued therefrom in response to the public health crisis emanating from
13 the coronavirus and COVID-19.

14 Herein, this court takes judicial notice of the websites for the Center for Disease Control and
15 Prevention (CDC), the California Department of Public Health, and the Butte County Department of
16 Public Health wherein those departments address the public health crisis emanating from the coronavirus
17 and COVID-19.

18 Herein, this court takes judicial notice of the website Covidactnow.org, as the state of California
19 derives information from Covidactnow.org.

20 Based thereon this court does find that the public health crisis emanating from the coronavirus
21 and COVID-19 remains a persistent threat that warrants ongoing mitigation measures by this court to
22 protect the public, litigants, attorneys, staff, court users, and justice partners, and that this public health
23 crisis presents a real danger to those same individuals if mitigation measures are not put into place by
24 this court and maintained throughout the crisis.

25 This court further finds that the unique process of selecting and convening a jury from hundreds
26 of people in the community presents risks not equal to services or venues addressed directly in categories
27 listed in the reopening plan for the State of California. While an essential governmental function, the
28 risk to court users including prospective jurors is elevated by the number of people in one space, the
length of time they are together, the amount of conversation that must be had, and the limitations of the
facility for social distancing.

With these unique features affecting the gathering of prospective jurors, this court finds that
mitigation measures affecting jury trials are necessary, and further finds that the mitigation measures

1 ordered herein necessarily must restrict and reduce the number of jury trials that can be held during the
2 state of emergency in light of the requirement for social distancing.

3 In response to this public health crisis, this court has been consulting with justice partners,
4 including the District Attorney of Butte County, the Sheriff of Butte County, and the Director of the
5 Butte County Public Defender consortium, on intended mitigation measures, court operations and jury
6 trials. This court consulted also with a representative of Butte County Administration, to determine
7 appropriate mitigation measures affecting jury selection and jury trials.

8 This court finds from the data sources referenced herein that from June 23, 2020 to June 30,
9 2020, case numbers for positive COVID-19 tests have averaged of 9.14 per day. And, from July 1,
10 2020 to July 8, 2020, case numbers for positive COVID-19 tests have averaged 17 per day. This court
11 finds Butte County has not had a stable infection rate since early May and further finds that as of July
12 6, 2020 Butte County's infection rate in Butte County is 1.28, indicating an unstable infection rate and
13 caution is warranted. (Covidactnow.org) The Court will continue to monitor average number of
14 infections per day.

15 This court finds from the data sources reviewed that an infection rate over 1.09 is considered
16 high risk, and that an increase in hospitalization rates represents an increased risk in the community.
17 This court finds that the percentage of infection from testing is also a marker of increased risk. This
18 court finds that a community is considered at risk if the number of infections increases steadily over a
19 14 day period, especially if deaths have resulted during that same period of time. From the data sources
20 referenced herein, this court finds that Butte County meets those dangerous metrics.

21 **B.**

22 **COURT OPERATIONS**

23 In response to this public health crisis, this court has reviewed routinely information provided
24 on the websites for Butte County Department of Public Health, the California Department of Public
25 Health, the Office of California Governor Newsom, Covidactnow.org, and the Center for Disease
26 Control and finds therefrom that all sources inform the court on past, present and future risk of infection
27 and the sources are interrelated and all sources have been equally considered.

28 This court finds the orders of this court previously provided for restricted calendars and
restricted access, and have incorporated reintroduction of access and services over several weeks period
of time starting June 12, 2020. This court graduated the increase in calendars and access as part of a plan
to return the court to operations that meet the needs of court users while maintaining public health and
safety. On June 12, 2020, this court ordered the return to criminal in-custody defendant time-not-waived
jury trials to begin on July 13, 2020.

1 This court prepared for this limited return to jury trials by ordering that summons issue for July
2 13, 2020 and for each Monday thereafter so that each Monday is available for an in-custody time-not-
3 waived jury trial. Also in preparation for return to jury trials, and as a mitigation measure, this court
4 directed the time for which prospective jurors are summonsed to be at intervals and in smaller groups.
5 This court directed courtrooms be measured so that summonsed prospective jurors would maintain six
6 feet of distance while seated inside the courthouse and courtroom.

7 This court finds that on June 18, 2020, California Governor Newsom mandated compliance with
8 guidance from the California Department of Public Health wherein face coverings must be worn in
9 public settings. This court finds no exception was listed therein for courtrooms or jury selection or jury
10 trials. This court issued an order implementing the Governor's order.

11 As an ongoing mitigation measure, this court reviews routinely information provided on the
12 websites for Butte County Department of Public Health, the California Department of Public Health, the
13 Office of California Governor Newsom, Covidactnow.org, and the Center for Disease Control to
14 determine whether access to the courthouse remains safe in light of the present rate of infection in the
15 county.

16 This court finds from the data sources referenced herein, that the Governor of California
17 recommends return to services of any kind to be done in stages in light of the risk the service provides
18 and in light of the infection rate at the time. This court further finds that the Governor of California
19 mandates in the State's Resilience Roadmap to "monitor critical indicators and alter scope of reopening
20 if necessary to protect public health and safety."

21 Based thereon, this court finds that the jury trial protocol for the Butte Superior Court must
22 include mitigation measures and the plan must be subject to an objective indicator that, in order to protect
23 public health and safety, alters the scope of whether and when jury trials are held while balancing the
24 Constitutional right of the prosecution and the defense to proceed timely to trial.

25 C.

26 **IMPACT OF PUBLIC HEALTH CRISIS IN BUTTE COUNTY ON JURY TRIALS**

27 This court finds that as of the date of this order, the coronavirus has not abated. Not in Butte
28 County, not in the state of California, nor the nation. Specifically within Butte County, as of the date of
this order, Butte County is in the fifth week of a persistent upward trajectory of infection rates. This
court finds that Butte County currently reports 338 cases positive for COVID-19. There have been
exponential increases in the case numbers over the last three weeks. In the last week, hospitalization
numbers have doubled and reported deaths have increased.

1 This court finds that the state metrics for county compliance to open businesses are guided by
2 several factors and subject to state and county protocols. State metrics for reopening do not reference
3 courts or jury trials, where hundreds of people are ordered to come into an enclosed area over a several
4 hour period of time and be seated next to members of the community with whom they likely have not
5 had contact. This unique aspect of jury trials requires this court to rely on all data sources referenced
6 herein to determine whether an increasing infection rate within the county warrants a continuance of a
jury trial.

7 This court finds that the current public health crisis is ongoing with no date certain to decline
8 nor end. This court further finds the coronavirus is a highly contagious airborne disease rendering severe
9 health complications including death of which risks are greater for people 65 years or older or those with
10 health complications. This court finds that juries are summonsed as a random cross section of the
community and those responding to a summons will include people in high risk categories.

11 Courts of Appeal have found the presence of an epidemic or pandemic as supportive of good
12 cause to extend the time for trial beyond the statutory time. (See Stanley v. Superior Court (2020) 50
13 Cal.App.5th 164, COVID-19; People v. Tucker (2011) 196 Cal.App.4th 313, H1N1; In re Application
14 of Venable (1927) 86 Cal.App. 585, epidemic of infantile paralysis) This court finds that it is the
15 responsibility of the Presiding Judge, under California Rule of Court, Rule 10.603, to ensure the safe
operation of court proceedings.

16 **D.**

17 **ORDER OF THE COURT**

18 For the reasons stated herein, Attachment A is ordered to apply to criminal in-custody time-not-
19 waived jury trials. As stated in the attachment, if the data sources referenced herein indicate high risk
20 for the rate of infection, or if Butte County is placed on the monitoring list for the state of California, the
21 Presiding Judge intends thereafter to find good cause to continue jury trials set for the next available jury
22 trial date in order to better protect the public, jurors, litigants, attorneys, staff, court users, and justice
partners from the risk of infection.

23 **SO ORDERED.**

24 Date: 7/10/2020

25 Clare Keithley
26 Hon. Clare Keithley
27 Presiding Judge
28

**ATTACHMENT
A**

1. Criminal In-Custody Time-Not-Waived Jury Trials

a. When Trials Will Go Forward

Jury selection for jury trials will go forward if on the Trial Assignment Calendar the Friday before the date for trial, the Presiding Judge determines from the following data sources that the risk of coronavirus spread is low or medium for Butte County:

- i. Covidactnow.org solid line indicator¹
- ii. CalCat NowCast most recent report
- iii. Butte County Public Health reports a 7-day decrease or flat rate of infection
- iv. Butte County is not on the state of California Covid19.ca.gov Monitoring List

b. When Trials Will Not Go Forward

Jury selection for jury trials will not go forward if on the Trial Assignment Calendar the Friday before the date for trial, the Presiding Judge determines from the following data sources that the risk of coronavirus spread is high or critical for Butte County:

- i. Covidactnow.org solid line indicator
- ii. CalCat NowCast most recent report
- iii. Butte County Public Health reports a 7-day increased rate of infection
- iv. Butte County is placed on the state of California Covid19.ca.gov Monitoring List

c. When Indicators Are In Conflict

The Presiding Judge will consider all four data sources and consider current infection rate and all models predicting future spread.

2. Cases Will Go to Trial Based on Readiness

- a. A *Readiness List* will be maintained by the Court to determine which cases are pending and ready for trial.
- b. Cases assigned on the Trial Assignment Calendar (TAC) to go to trial on Monday will be those 1st and 2nd on the *Readiness List*.
- c. Cases 3rd, 4th, 5th, and 6th on the *Readiness List* will not be vacated until the Monday of Jury Selection to ensure that if the case(s) listed 1st or 2nd resolve that cases 3rd or 4th or 5th or 6th on the *Readiness List* proceed.

¹ Covidactnow.org explains: "Because of how we weight our data (Gaussian smoothing), and because of potential reporting delays and errors in the incoming case data, we need 7 preceding days of data before we can calculate a final R_t value. Therefore, we notate preliminary R_t values — values for which we don't yet have 7 preceding days of data — with the dotted line."

- d. The *Readiness List* will be ready for each TAC calendar.
- e. The *Readiness Lists* will be based on the following criteria:
 - i. Weight of the Charge
 - ii. Age of the Case
 - iii. Mental Health Concerns
 - iv. Witness Availability
 - v. Courtroom Availability
 - vi. Input from Counsel
 - vii. Input from Assigned Judge

3. Number of Juries

- a. Only two juries will be selected on any given week subject to availability of resources.
- b. All juries will be selected on a Monday, with Tuesday as an available second selection day if needed.
- c. One jury will be selected in Oroville, the other jury will be selected in Chico.
- d. Cases #1, #3 or #5 on the *Readiness List* will be heard in Oroville with Jury selection on Monday.
- e. Cases #2, #4 or #6 on the *Readiness List* will have the jury selected in Chico on Monday, with evidence taken in Oroville on subsequent days.
- f. Remaining cases on the *Readiness List* will be continued on the finding of good cause in that the facility for the Butte County Superior Court cannot summons jurors in numbers wherein those jurors can be seated during jury selection six feet apart while assuring safe distance for courthouse users who are attending other calendars at the same time. Such continuances will be set for the next available date, or a different date selected by counsel.
- g. Trials will proceed over 4 court days in each given week to have a trial begin and end in the same week thereby making trial time available the following week for another trial. Trials needing more than 4 days must so disclose when set for trial.
- h. Trial will start at 9:00 a.m. and end at 4:00 p.m., unless the trial judge and counsel arrange otherwise.

4. Jury Selection and Trial Will Be Subject to Mitigation Measures

- a. Prospective jurors will be summonsed for staggered time for arrival for jury selection.
- b. Masks are required to be worn at all times, consistent with the Governor's Order, and with the order of the Presiding Judge.

- c. Face shields with drapes may be allowed for any person who requests such an accommodation as outlined in the Governor's Order. (Exhibit 1)
- d. Prospective jurors will be seated in jury assembly and overflow courtrooms.
- e. All waiting jurors will be given written information affecting cause.
 - i. Dates for trial
 - ii. Names, location, charges
- f. In-person Hardship Claims Will Be In-Person Only Until the August 3, 2020 Jury Selection date.
 - i. Vetted at the courthouse through written form before entering the courtroom for voir dire
 - ii. A Hardship claim form will be provided in Jury Assembly pursuant to emergency Local Rule 1.14
 - iii. Form will provide the grounds for an undue hardship and be kept as part of the record
 - iv. Prospective juror will sign under penalty of perjury
 - v. Jury Commissioner will rule on the claim unless review is sought with the Judge
 - vi. Hardship claim forms will be retained by the court as part of the Jury Commissioner's records
- g. Hardship by Mail Will Replace In-Person Claims as of the August 3, 2020 Jury Selection date.
 - i. Hardship claim forms will be mailed with the summons
 - ii. Form will provide the grounds for an undue hardship and be kept as part of the record
 - iii. Prospective juror will sign under penalty of perjury
 - iv. Jury Commissioner will rule on the claim unless review is sought with the Judge
 - v. Hardship claim forms will be retained by the court as part of the Jury Commissioner's records
- h. Prospective Jurors will be called into the Courtroom in Groups of 11 only.
 - i. The first 11 on the Random list(s) will go into the courtroom for jury selection and be sworn
 - ii. All waiting jurors will be given written information about the trial so they can answer more quickly when called into the courtroom
 - iii. Additional groups of no more than 11 jurors at a time, in the order they appear on the Random list(s), will be requested from the Jury Commissioner by the Judge presiding over the selection until selection is complete
- i. Change Courtroom Configuration for Jury Selection
 - i. Audience seating will be used for voir dire and trial
 - ii. Seats are numbered and identified at six foot intervals
 - iii. Masks are required
 - iv. Deliberations will be in a courtroom to accommodate social distancing
 - v. Public access will be by means of broadcast to an available courtroom or other public access area subject to available seating



SONIA Y. ANGELL, MD, MPH
State Public Health Officer & Director

State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

June 18, 2020

GUIDANCE FOR THE USE OF FACE COVERINGS

Because of our collective actions, California has limited the spread of COVID-19 and associated hospitalizations and deaths in our state. Still, the risk for COVID-19 remains and the increasing number of Californians who are leaving their homes for work and other needs, increases the risk for COVID-19 exposure and infection.

Over the last four months, we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre-symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing.

This document updates existing CDPH guidance for the use of cloth face coverings by the general public when outside the home. It mandates that face coverings be worn state-wide in the circumstances and with the exceptions outlined below. It does not substitute for existing guidance about social distancing and handwashing.

Guidance

People in California must wear face coverings when they are in the high-risk situations listed below:

- Inside of, or in line to enter, any indoor public space;¹
- Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank;²
- Waiting for or riding on public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle;
- Engaged in work, whether at the workplace or performing work off-site, when:
 - Interacting in-person with any member of the public;
 - Working in any space visited by members of the public, regardless of whether anyone from the public is present at the time;

¹ Unless exempted by state guidelines for specific public settings (e.g., school or childcare center)

² Unless directed otherwise by an employee or healthcare provider



- Working in any space where food is prepared or packaged for sale or distribution to others;
- Working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
- In any room or enclosed area where other people (except for members of the person's own household or residence) are present when unable to physically distance.
- Driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present. When no passengers are present, face coverings are strongly recommended.
- While outdoors in public spaces when maintaining a physical distance of 6 feet from persons who are not members of the same household or residence is not feasible.

The following individuals are exempt from wearing a face covering:

- Persons age two years or under. These very young children must not wear a face covering because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.
- Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.
- Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided that they are able to maintain a distance of at least six feet away from persons who are not members of the same household or residence.
- Persons who are engaged in outdoor work or recreation such as swimming, walking, hiking, bicycling, or running, when alone or with household members, and when they are able to maintain a distance of at least six feet from others.

- Persons who are incarcerated. Prisons and jails, as part of their mitigation plans, will have specific guidance on the wearing of face coverings or masks for both inmates and staff.

Note: Persons exempted from wearing a face covering due to a medical condition who are employed in a job involving regular contact with others should wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.

Background

What is a cloth face covering?

A cloth face covering is a material that covers the nose and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand or can be improvised from household items such as scarfs, T-shirts, sweatshirts, or towels.

How well do cloth face coverings work to prevent spread of COVID-19?

There is scientific evidence to suggest that use of cloth face coverings by the public during a pandemic could help reduce disease transmission. Their primary role is to reduce the release of infectious particles into the air when someone speaks, coughs, or sneezes, including someone who has COVID-19 but feels well. Cloth face coverings are not a substitute for physical distancing, washing hands, and staying home when ill, but they may be helpful when combined with these primary interventions.

When should I wear a cloth face covering?

You should wear face coverings when in public places, particularly when those locations are indoors or in other areas where physical distancing is not possible

How should I care for a cloth face covering?

It's a good idea to wash your cloth face covering frequently, ideally after each use, or at least daily. Have a bag or bin to keep cloth face coverings in until they can be laundered with detergent and hot water and dried on a hot cycle. If you must re-wear your cloth face covering before washing, wash your hands immediately after putting it back on and avoid touching your face. Discard cloth face coverings that:

- No longer cover the nose and mouth
- Have stretched out or damaged ties or straps
- Cannot stay on the face
- Have holes or tears in the fabric