

# In the Supreme Court of the State of Idaho

RE: COMMENCEMENT OF )  
JURY TRIALS AND GRAND )  
JURY IMPANELMENT )  
\_\_\_\_\_ )

ORDER OF FEBRUARY 3, 2021

This Court's September 10, 2020 Order, as well as this Court's September 16, 2020, Order In Re: Grand Jury Proceedings, established a standard to determine when certain jury proceedings could commence. The standard articulated was based upon the incidence rate of confirmed or presumed COVID-19 cases in the relevant county.

A primary purpose of these orders was to address the substantial health and safety risks upon all jury trial and grand jury participants caused by community spread of COVID-19 cases, while seeking to also protect the legal rights of parties.

The virus is easily transmitted, especially in group settings. Both jury trials and grand jury impanelment proceedings require groups of people to congregate in indoor settings. In addition, in both types of proceedings, most participants are not voluntarily present, but rather are required under penalty of law to appear and participate.

On December 10, 2020, pursuant to Idaho Court Administrative Rule 48, and due to the worsening community spread of COVID-19 cases, the increased pressure on Idaho's healthcare professionals and systems, the general unavailability of a viable vaccine, and in order to foster public safety for both the general public as well as those who would otherwise be required to participate in a jury trial or grand jury impanelment proceeding, this Court ordered that that no jury trial, whether criminal or civil, nor grand jury impanelment proceeding shall commence in Idaho state courts until further order of this Court. However, continuing service by seated grand juries was left to the discretion of the presiding district judge who impaneled the grand jury, based on the standards and protocols set forth in this Court's September 16, 2020 Order. The December 10, 2020 order provided that it would be reconsidered by the Court not later than March 1, 2021.

To allow the respective judicial districts to prepare for the resumption of jury trials and impanelment of grand juries, while continuing to foster public safety and mitigation against the spread of COVID-19 cases, pursuant to Idaho Court Administrative Rule 48, the commencement of all jury trial proceedings and grand jury impanelments shall be subject to the following terms until further order of the Court.

1. **Commencement of Jury Trials and Impaneling a Grand Jury**. Beginning March 1, 2021, jury trials and impaneling of a grand jury may commence subject to the conditions

and limitations set forth in this order. The word “commence” means the first day members of a jury venire are required to physically appear at a courthouse or other designated location.

2. **Priority of Jury Trial Settings.** Jury trials shall, to the extent that a case is ready to go to trial, be held in the following order of priority with the first being the most important and then listed in descending order:
  - a. Criminal cases in which defendants are incarcerated
  - b. Criminal cases
  - c. Civil cases
  
3. **Weekly Publication of COVID-19 Incident Rates.** The Data and Evaluation Unit of the Administrative Office of Courts shall utilize data obtained from the Idaho Department of Health and Welfare’s COVID-19 Data Dashboard, and shall determine the weekly COVID-19 incident rates for each county every Thursday evening after 5:00 p.m. Mountain Time. The weekly COVID-19 incident rates shall be published to the Administrative District Judges and Trial Court Administrators on Friday mornings of each week.
  
4. **Weekly COVID-19 Incident Rate Postponements.** Jury proceedings may commence anytime during a calendar week unless the Administrative District Judge has determined that:
  - a. The county in which the prospective juror has been summoned to attend court has a seven-day moving average incidence rate of confirmed or presumed cases of COVID19 of 25.0 or greater per 100,000 population as reflected on the Cases by County page of the Idaho Department of Health and Welfare’s COVID-19 Data Dashboard available at [www.coronavirus.idaho.gov](http://www.coronavirus.idaho.gov);
  
  - OR
  
  - b. The county in which the prospective juror has been summoned to attend court has a seven-day moving average incidence rate of confirmed or presumed cases of COVID19 of between 14.0 and 24.9 per 100,000 population and an upward or increasing 14-day trend as reflected by the Seven-Day Moving Average Incidence Rate on the Cases by County page of the Idaho Department of Health and Welfare’s COVID-19 Dashboard available at [www.coronavirus.idaho.gov](http://www.coronavirus.idaho.gov). An upward trend occurs when the seven-day moving average incidence rate for the Thursday of the relevant reporting week is higher than the seven-day moving average incidence rate for the prior Thursday.

***The Administrative District Judge’s determination described in this paragraph shall be based on the weekly COVID-19 incident rates published ten (10) days prior to the calendar week in which the jury trial is scheduled to occur.*** For example, a jury trial may commence during the week of March 1 in a county unless the Administrative District Judge determines on February 19, 2021 that the weekly COVID-19 incident rates published that day exceed the limits set forth in subsections 4(a) or 4(b) above.

Once a trial has commenced, it should continue to verdict unless, in the discretion of the assigned judge, a significant change in the weekly COVID-19 incidence rate or other local COVID-19 incident or public health action justifies a temporary suspension of the trial. Any order in this regard must be supported with written findings.

5. **Other Administrative District Judge Postponements.** Notwithstanding the conditions set forth in paragraph 4, an Administrative District Judge may, in the exercise of discretion, enter an order prohibiting the commencement of jury trials in a county where there are circumstances beyond the incidence rates which pose a substantial increase in the health or safety risks to jury trial participants. Such an order shall be in writing and contain the factual basis for the determination and shall upon entry be submitted via email to the Administrative Office of the Courts.
6. **Trial Court Discretion to Commence or Discontinue Jury Trial.** Nothing contained in this order shall be construed to limit or expand an assigned judge's discretion to commence or suspend a jury trial for reasons unrelated to COVID-19.
7. **Tolling of Speedy Trial.** If this order or any previous orders of this Court result in any delay in the commencement of jury trials due to COVID-19, the time used to calculate the right to a speedy trial pursuant to I.C. § 19-3501 shall be deemed to have been tolled by said order.

IT IS SO ORDERED.

DATED this 3<sup>rd</sup> day of February, 2021.



G. Richard Bevan,  
Chief Justice, Idaho Supreme Court

ATTEST:



Clerk