

# In the Supreme Court of the State of Idaho

RE: EMERGENCY ORDER )  
REGARDING COURT )  
SERVICES )

Order  
February 17, 2022

This Court has previously issued a series of emergency orders intended to address the substantial health and safety risks faced by the public accessing the courts, court personnel, and participants in court proceedings caused by the community spread of the coronavirus. On November 29, 2021, this Court issued an amended administrative order regarding procedures to be followed if a county was subject to crisis standards of care as determined by the Idaho Department of Health and Welfare or if the seven-day moving average incident rate of confirmed or presumed cases of COVID-19 was 25 or greater per 100,000 population.

As of February 17, 2022, no counties in Idaho are currently subject to crisis standards of care and incident rates are on a downward trend across the state. Additionally, as of that same date, the Idaho Department of Health and Welfare reports there is currently a backlog of 29,800 COVID-19 tests which have not been processed, rendering the seven-day moving average incident rates incomplete. Therefore, we have concluded that further modification of our safety protocols is warranted. In order to begin the process of returning the courts to regular operation, while continuing to foster public safety, court operations shall be governed by the following rules until further order of this Court.

1. **Weekly Publication of COVID-19 Incidence 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 incidence rates for each county every Thursday evening after 5:00 p.m. Mountain Time. The weekly COVID-19 incidence rates shall be published on the following Friday morning of each week and disseminated to the Administrative District Judges and Trial Court Administrators as soon as practicable once they are published.
2. **Administrative District Judges Authorized to Issue Orders Regarding Courthouse and Courtroom Risk Reduction Protocols in Their Districts:** The Administrative District Judge shall be responsible for ensuring appropriate measures are in place in each courthouse in their district to reduce the risk of transmission of the coronavirus to persons participating in a court proceeding or conducting court business. In the discretion of the Administrative District Judge, appropriate measures may include, but are not required or limited to, social distancing, masking, and the use of remote proceedings. In determining appropriate measures, the Administrative District Judge should consider local conditions including, but not limited to, the COVID-19 incidence rate of the county as reflected in the weekly incidence report described in paragraph one and whether crisis standards of care have been activated in the health district. At no time shall a person who is not a testifying witness, while in the portions of the courthouse where court business is conducted, be asked or required to remove a mask against their wishes.

3. **Court Proceedings Other Than Jury Trials:** Other than jury trials, court rules which prohibit hearing any case or part thereof remotely remain suspended during the effective term of this order. Subject to the approval of the district's Administrative District Judge, an assigned judge has the discretion to hold proceedings in person or remotely, i.e. with all participants utilizing remote technologies including teleconferencing and video conferencing, pursuant to the following conditions and requirements:
- a. All trials on a petition to terminate parental rights shall be held in person.
  - b. All felony sentencing hearings in which the crime the defendant is being sentenced carries a possible sentence of life and the assigned judge has not previously agreed to impose a sentence of less than life, shall be held in person with the defendant and counsel present in the courtroom.
  - c. All felony sentencing hearings in which the crime the defendant is being sentenced carries a maximum sentence of less than life imprisonment or in which the assigned judge has previously agreed to impose a sentence of less than life, may be held remotely only if:
    - i. both parties stipulate, and the judge agrees, to hold the sentencing remotely, and
    - ii. the defendant provides, on the record, a knowing, intelligent, and voluntary waiver of all the rights granted by Idaho Code section 19-2503.
  - d. Any party intending to offer documentary evidence during a hearing held remotely must provide the court and all parties a list of such exhibits and copies thereof at least seventy-two hours before such hearing unless the assigned judge modifies the time for good cause shown.
  - e. An audio recording of all court proceedings must be created in For The Record (FTR) software or in Zoom software. For court proceedings in district court, the official record may be kept by a court reporter in addition to the audio recording. With the permission of the assigned judge, a court reporter may report proceedings remotely.
  - f. To protect the integrity of the remote proceeding, an assigned judge has the discretion to enter other orders or impose other requirements to promote the safety of participants or to promote efficiency.
4. **Conduct of Jury Trials:** All provisions of I.C.R. 24 and I.R.C.P. 47, not otherwise modified in this order, shall remain in force and effect. Provided, any jury trial shall be subject to the following conditions:
- a. In a criminal jury trial, with the judge's approval, counsel for both parties and defendant(s) may stipulate that a witness may testify remotely. If the defendant(s) is/are not present pursuant to Idaho Criminal Rule 43, counsel for the defendant may stipulate on his or her behalf.
  - b. In civil jury trials, with the assigned judge's approval, counsel for the parties may stipulate to offer any or all testimony remotely.
  - c. Peremptory Challenges.