

In the Supreme Court of the State of Idaho

IN RE: JURY TRIALS

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ORDER

To allow for the resumption of jury trials while fostering public safety and mitigating against the spread and the continuing rise in COVID-19 cases, and in light of the current inability of court administration throughout the state to comply with minimum safety protocols necessary for addressing the COVID-19 pandemic, pursuant to Idaho Court Administrative Rule 48 all State of Idaho jury trial proceedings shall be governed by the following rules until further order of the Court.

1. This Court's Order of April 22, 2020, IN RE: EMERGENCY REDUCTION IN COURT SERVICES AND LIMITATION OF ACCESS TO COURT FACILITES remains in full force and effect except to the extent modified by this Order.
2. Due to the continuing rise in positive COVID-19 cases throughout Idaho, the time during which no trial juror shall be required to appear in person shall be extended to September 14, 2020. No jury trial shall commence in a criminal case before September 14, 2020, and in a civil case before December 1, 2020.
3. Any person sixty-five years of age or older shall be excused from jury service if the person indicates on the COVID-19 questionnaire form that he or she wishes to be excused. *See Idaho Department of Health and Welfare, COVID-19 Guidance for Idaho Courtrooms and Juries: Public Health Risk Reduction Recommendations – June 29, 2020* (“Refrain from or consider refraining from calling on people who are 65 years of age or older for jury pools”).
4. This Court's prior emergency orders suspending jury trials entered on March 23, March 26, April 14, and April 22, 2020, as well as this order shall be deemed to have tolled the time utilized to calculate the right to a speedy trial pursuant to I.C. § 19-3501.
5. COVID-19 Jury Questionnaires
 - a. Each jury commissioner, in addition to the summons sent to prospective jurors, shall send each juror a COVID-19 Questionnaire in the form provided in **Attachment A** to this order, which must be completed by the juror and returned to the jury commissioner prior to the prospective juror appearing for jury duty. In the event a juror does not return the questionnaire, the Jury Commissioner shall contact the juror and attempt to resolve the issue, which may include completing the questionnaire over the telephone.

- b. The Jury Commissioner may modify this COVID-19 questionnaire to include a juror number or other similar identifying feature.
 - c. The completed questionnaires, which include private and individual health information, shall be available to the Judge, Jury Commissioner, and each party for use in the jury selection process. Such questionnaires are otherwise confidential and shall be exempt from disclosure as defined in Idaho Court Administrative Rule 32(g). The questionnaires may not be further disseminated by the parties or counsel of record. The district judge may place additional conditions on the use or publication of jury COVID-19 questionnaires. Any violation by a person granted access to the COVID-19 questionnaires as provided in this order, or as provided by a district court order regarding disclosure will constitute contempt of court.
 - d. Jurors who report positive responses to any of the questions on the COVID-19 questionnaire will be contacted by the Jury Commissioner.
6. Each day of trial, including during jury selection, all persons entering the courtroom or related facility, including for voir dire, will be screened before entering. This screening will include a noninvasive temperature check for temperature exceeding 100.3 degrees Fahrenheit and a series of questions regarding known exposures to COVID-19 and recent symptoms. For public health reasons, any persons demonstrating risk will be denied entry to the courtroom. The jury commissioner shall be notified of any juror who is denied entry. Each county may determine the method by which court staff will notify the jury commissioner. The health screening shall be in the form provided in **Attachment B** to this order.
7. 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.
8. The following shall govern jury selection in all jury trials:
 - a. For all jury trials, the court shall use the struck jury system as outlined in I.R.C.P. 47(g) for civil cases and I.C.R. 24(f) in criminal cases;
 - b. Peremptory challenges allotted to each side, being procedural mechanisms and not substantive rights, shall be modified as follows:
 - i. Pursuant to I.C.R. 24(d), if the offense charged is punishable by death and the state is seeking a death sentence when voir dire commences, each party, regardless of the number of defendants, is entitled to 10 peremptory challenges.
 - ii. Pursuant to I.C.R. 24(d), in all other felonies, each party, regardless of the number of defendants, is entitled to three peremptory challenges; however,