



RESPONSES TO COVID-19:

AGENCY OVERVIEWS, UPDATES, AND CHANGES IN SERVICE

April 6, 2020

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LAW AND JUSTICE INTERIM COMMITTEE (LJIC): JUDICIAL BRANCH AND AGENCY OVERSIGHT

JUDICIAL BRANCH

To address the COVID-19 pandemic's effect on the Judicial Branch, Chief Justice Mike McGrath has issued a series of memos and an order from the Montana Supreme Court giving guidance to the lower courts. The chief justice stresses that the courts have a unique and important role in maintaining a civil society so closing them entirely is not an option. He also acknowledges that district court judges and lower court judges have broad discretion and are familiar with their local communities, so preventative measures might need to be tailored to fit each court. However, his goal is to ensure that the Judicial Branch's response is "uniform" and "coordinated" while maintaining "consistent and equitable access to justice".

A March 27 order from the Supreme Court to local courts, district courts, and the Water Court:

- requires that all civil jury trials be suspended until April 10;
- requires that all nonemergency civil matters be continued until after April 10 unless related proceedings can be held without requiring parties to appear in person;
- requires that all emergency civil matters be held by telephone or video means unless it is impossible;
- requires strict observance of social distancing if an in-person appearance is necessary;
- suspends all criminal jury trials until April 10 unless a trial was already in session at the time of the order;
- provides processes to continue or conduct hearings, appearances, or other proceedings on criminal cases;
- allows courts to enter no-contact orders related to sex offenses, domestic violence offenses, stalking, or harassment, and the orders to be served by mail;
- extends certain timelines related to juvenile offenders who will reach the age of 18 prior to April 10;
- requires courts to notify defense attorneys and unrepresented defendants of new hearing dates and defense counsel to notify defendants;
- asks courts not to issue bench warrants for failure to appear in court or in pretrial meetings unless "necessary for the immediate preservation of public or individual safety";
- provides guidance for conducting expedited hearings on pretrial release for defendants;
- requires courts to allow appearances by telephone or video calls for all scheduled criminal matters unless that is impossible and provides guidelines for recording the calls while still allowing defendants to confer privately with defense attorneys;
- limits when signatures on certain orders or affidavits are required;

- allows courts to adopt more restrictive measures to protect health and safety or to extend the order's timeframe; and
- automatically extends the order's provisions should the governor extend the stay at home directive.

The chief justice's March 13 and 17 memos provided additional guidance related to:

- Minimizing in-person contacts related to court hearings, meetings, travel, and payment of financial obligations;
- Allowing remote work for staff when possible;
- Coordinating with local authorities to evaluate which pretrial adult defendants and youth involved in a court proceeding should be detained; and
- Placing priority on criminal matters, orders of protection, and child abuse and neglect cases.

The Supreme Court canceled an oral argument scheduled for April 3. Instead, it will consider the case as submitted to it in briefs. As of April 3, the court still planned to hear a second argument at the end of April, but without allowing spectators into the courtroom. The court already provided livestreams of arguments prior to the outbreak.

OTHER RESOURCES

- Memos and orders from Chief Justice McGrath: <https://courts.mt.gov/>
- Local District Court rules related to COVID-19: <https://courts.mt.gov/local-virus-rules>

DEPARTMENT OF CORRECTIONS (DOC)

On April 1, the governor issued a directive ordering DOC to suspend all transfers of inmates into department facilities unless certain conditions were met. Those conditions include observing a 14-day quarantine of incoming inmates and limiting out-of-state transfers to the "most pressing or severe cases". The directive allows the DOC director to suspend all transfers if the department does not have the bed capacity to provide a 14-day quarantine.

In addition, the April 1 directive allows the DOC to use supervision fees paid by offenders on community release to purchase equipment to enable remote supervision of offenders. Another provision suspends restrictions on the use of housing vouchers so the DOC can use those funds more broadly to support the housing needs of inmates who are being released from custody. Finally, the directive suspends the statutory limit on the number of inmates the department may house in county detention centers (also known as "jail holds"). The statute required the DOC to maintain a monthly average of 250 or fewer jail holds.

On March 30, Director Reginald Michael updated the LJIC on the department's responses to the COVID-19 situation. Many of these measures that were already implemented at that time are now also covered in the governor's April 1 directive, including:

- suspending visits at secure facilities and asking attorneys to use electronic means to meet with clients;
- providing each inmate one free phone call and one free video call each week;
- screening staff, offenders, and others entering a DOC facility for infection as well as testing inmates who are appropriate for testing; and
- consulting with the Board of Pardons and Parole to identify offenders who may be appropriate for parole.

In addition, the DOC developed a webpage of COVID-19 resources to inform the public about the DOC's responses and has established a hotline and e-mail address for questions from employees. Inmates receive information about COVID-19 through notices in prison units, on tablets, and during visits by clinical services staff. As of April 2, the DOC had tested three inmates for the virus. All three tests were negative for the virus.

The Probation and Parole Division is limiting in-person contacts by probation and parole officers with certain lower-risk parolees and probationers who are supervised in the community and will conduct presentence investigations over the telephone.

OTHER RESOURCES

- Governor Steve Bullock's April 1 Directive on Preventing Spread of COVID-19 in State Correctional Facilities: <https://covid19.mt.gov/Portals/223/Documents/Corrections.pdf?ver=2020-04-01-133318-433>
- Department webpage on COVID-19 response: <https://cor.mt.gov/COVID-19>
- DOC update to LJIC, March 30: <https://leg.mt.gov/content/Committees/Interim/2019-2020/Law-and-Justice/Meetings/March-2020/corrections-COVID-19-present-3-30-20.pdf>

DEPARTMENT OF JUSTICE (DOJ)

As of April 2, the DOJ's Office of Consumer Protection has received 14 price-gouging complaints. In addition to providing consumer protection warnings and advice, the department recently provided open-meetings guidance to local governments who need to meet during the pandemic. The DOJ is also revising the testing process used for Montana Highway Patrol trooper applicants, though details are not yet finalized.

The Division of Criminal Investigation has limited its fingerprint processing services to Tuesdays through Thursdays. In addition, these fingerprint services will be provided only to critical infrastructure workers (such as nursing license applicants, day care owners and operators, first responders, individuals providing homes for children in abuse and neglect proceedings, etc.).

Information on the Motor Vehicle Division's responses to the pandemic and the delay in implementation of REAL ID can be found in the Transportation Interim Committee update.

OTHER RESOURCES

- Attorney General's Letter of Advice related to open meetings: <https://media.dojmt.gov/wp-content/uploads/LOA-March272020.pdf>
- DOJ COVID-19 information: <https://dojmt.gov/agooffice/montana-department-of-justice-covid-19-information/>
 - Division of Criminal Investigation information: <https://dojmt.gov/enforcement/>

OFFICE OF STATE PUBLIC DEFENDER (OPD)

The day-to-day work of the OPD continues with some staff still using their physical office locations while practicing social distancing. In addition to its ongoing caseload, Public Defender Division attorneys are filing motions to ask that certain clients be released from detention. These individuals include those who are at higher risk of serious health complications from a COVID-19 infection and individuals charged with or convicted of a nonviolent offense. The process to secure release depends on the jurisdiction. In a limited number of jurisdictions, the prosecutor and defense attorneys agree on a list of people to release. In most jurisdictions, individuals are considered on a case-by-case basis with OPD attorneys filing motions that are then considered by courts.

Prior to the onset of COVID-19, many courts already allowed participants to join certain proceedings electronically. Even then, however, most participants were physically present in the courtroom, with only one party dialing in from an off-site location. Now, most participants are present electronically. This situation poses a challenge for courts and attorneys for several reasons, including that the various courts use different video applications that aren't always designed to connect multiple participants simultaneously. Also, defense counsel must be allowed to confer privately with their clients during proceedings without being recorded.

To reduce foot traffic in its regional offices, OPD uses text messages and e-mail to encourage clients to call or e-mail their attorneys rather than stopping by in person. The office is also piloting a program that sends text messages to clients to notify them of upcoming or changed court dates.

The OPD continues to work with and provide updates to county attorneys, the Governor's Office, the Office of Court Administrator, and the Attorney General's Office. In addition, the staff continue to monitor caseloads and will analyze how caseloads might be affected by the COVID-19 situation.

OTHER RESOURCES

- March 2020 OPD newsletter:
http://publicdefender.mt.gov/Portals/61/Newsletters/2020/Mar2020_COVID-19_Edition.pdf