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March 24, 2020

Co-Chairs Holvey, Roblan, and Members of the Joint Special Committee on Coronavirus Response,

Thank you for this opportunity to provide you with information on the Judiciary Committees' response to court operations and public safety concerns raised by the coronavirus outbreak. In response to the Governor's declaration of a public health emergency and subsequent orders restricting in-person gatherings, the Chief Justice directed limitations on court functions through Chief Justice Order 20-006. (Appendix A). As the reach of the outbreak has grown, and in-person contact restricted, the Oregon Judicial Department and public safety stakeholders brought several items of immediate concerns to our attention.

A small work group was immediately brought together in response to these concerns. The work group was composed of the Chairs of the House and Senate Judiciary Committees, representatives of the Department of Justice, Oregon Judicial Department, Legislative Counsel and Judiciary Counsel. The work group met three times in four days in order to bring you the proposals below. It considered several possible avenues for addressing these concerns, including a line by line review of all deadlines and procedures found in statute, eventually settling on the concepts outlined below.

**Court Authorization Concept:**

First, the immediate need before the courts is to ensure safety and fairness in the administration of justice while courts are in reduced service levels and individuals are restricted from participating in court proceedings. To address these necessary and immediate changes, the work group proposes one legislative concept that would provide the necessary authority to the Chief Justice to extend or modify statutory deadlines and procedures. The concept would also automatically extend the statute of limitation in civil cases that were otherwise set to expire upon declaration of a coronavirus emergency. Each of these provisions will be limited to only coronavirus-related emergencies and will have a sunset provision.

The concept will give the Chief Justice discretionary authority to modify deadlines, both in rule and in statute, throughout the duration of the emergency. In contrast, statutes of limitations will be suspended by legislative authority.

As an example of how this grant of authority will be utilized, the Chief Justice would be authorized to extend deadlines for speedy trial provisions. Speedy trial is the right an accused person has in both the US and Oregon constitutions to due process without substantial delay. Under Oregon's law, that means

a variety of timelines must be met, including that a defendant must be arraigned within 36 hours of arrest. If an arraignment is not able to be held, the person must be released. Similarly, a defendant is entitled to trial within 60 days of arrest without certain extensions or the consent of the defendant. If the trial cannot be commenced within that time, the defendant must be released.

Additional examples of necessary timeline changes can be found throughout the criminal, juvenile, and civil codes. This authorization would allow the Chief Justice to allow a good cause exception for jurisdictional and permanency hearings in juvenile dependency cases, notices and objections could be extended in guardianship cases, and discovery deadlines could be modified.

The work group agrees that a statutory grant of discretionary authority to the Chief Justice for the duration of the coronavirus emergency would be the most appropriate approach to provide court experts with the tools needed to keep courts working efficiently and fairly in the time of crisis. By adding a sunset provisions, we are ensuring that we address the immediate need in a narrow fashion that would then allow for examination and analysis of the outcomes of utilizing such an authorization in times of emergency.

The concept also provides an automatic extension of the civil statute of limitations, including those arising out of rule or administrative action, upon declaration of a coronavirus emergency by the Governor. The statute of limitations would be tolled for 90 days from the date of the end of the emergency declaration. The extension would only apply to cases that would have been affected by the emergency order. For example, if a civil claim had a deadline for filing on April 1, 2020, that would be given an extra 90 days after the end of the emergency. But it would not revive claims that were extinguished before the emergency order started, nor would it apply to claims whose time runs after the order is lifted. And again, this provision would sunset.

These recommendations will be included in one legislative counsel concept.

**Public Safety Concept:**

The workgroup also recognized there are additional public safety concerns that need further deliberation and discussion and fall outside of court processes outlined in the concept above.

The public safety concept will address the most pressing concerns the workgroup has heard from public safety partners. These include:

- Process for reducing jail exposure by modifying arrest requirements on execution of warrants. Currently, many warrants require arrest of the subject of the warrant, though it may be for a misdemeanor or C felony offense. In order to comply with the arrest requirement, a person who poses a more substantial danger to the community may be released in order to provide a spot for the newly arrested individual. This increases both public safety risk and increases the risk of transmission of the coronavirus.
- Domestic violence reduction efforts. Since the Governor's reduced contact (stay at home) orders have been in place, multiple public safety partners have reported an increase in calls on domestic violence as well as an increase in the number of firearm sales. Senate Bill 1546 from the 2020 session had one component that would directly assist law enforcement in domestic violence situations by clearly and accurately informing law enforcement when a person was disqualified from possessing a firearm. An additional avenue of immediate concern is the process for extending emergency protection orders. Currently, an emergency

protective order expires after seven days. The work group will continue to examine ways to keep victims safe from abusers, even in the midst of a shelter in place order.

- Juvenile waiver into adult court process provisions. Senate Bill 1546 from the 2020 session also included technical, consensus amendments to implementation of SB 1008 (2019). These fixes included modification to detention hearings, OYA placement, and venue decisions. Juvenile courts and juveniles in the system face uncertain hardships trying to balance the current requirements of SB 1008 in the midst of the coronavirus outbreak.

**Other Concepts:**

Finally, there are numerous additional items that will require even greater time and consideration before those concepts will be ready for review. Those items include law enforcement and Oregon Health Authority data information sharing to identify situations in which coronavirus may be present, parenting time and custody issues, and public meeting concerns. Accordingly, the work group is not considering any of those items for inclusion in the public safety concept bill.

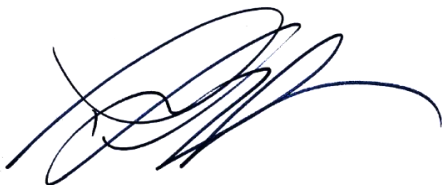
Thank you for your time today and your consideration of these efforts.

Sincerely,

A handwritten signature in blue ink, appearing to read "F. Prozanski".

Floyd Prozanski

Senate Judiciary Committee Chair

A handwritten signature in blue ink, appearing to read "Tawna Sanchez".

Tawna Sanchez

House Judiciary Committee

In the Matter of Imposing “Level 3”	)	CHIEF JUSTICE ORDER
Restrictions on Court Operations	)	No. 20-006
	)	
	)	ORDER IMPOSING “LEVEL 3”
	)	RESTRICTIONS ON COURT
	)	OPERATIONS

The conditions and impact that result from the spread of the COVID-19 virus are changing rapidly. In accordance with Governor Kate Brown’s emergency declaration and the current thinking of those in the public health community, and in consultation with our OJD Advisory Committee, I am directing institution of **Level Three** restrictions on operations, through at least March 27, 2020. All courts must take steps to ensure that these restrictions are in place no later than the beginning of business on Thursday, March 19, 2020. These restrictions may be extended beyond March 27, and further restrictions may be implemented. On the other hand, we may be able to increase our operations through the use of technology.

For now, we are requiring that the Oregon circuit courts, the appellate courts, the Tax Court, and the State Court Administrator’s Office and its Divisions comply with these Level 3 restrictions to significantly limit the number of persons in our courthouses and places of work. Our goal is to do our part to help slow the spread of the COVID-19 virus and to minimize any health risks to court personnel, litigants, representatives, and others who come to our courthouses, while meeting our courts’ obligations to the public.

This is a dynamic situation and things are changing very quickly. I encourage all Presiding Judges, Trial Court Administrators, Division Directors, and the State Court Administrator to thank everyone – staff and community – for their patience; to let everyone know that Oregon’s courts are doing their best to serve the public and protect their communities; and to convey the message that courts will continue to evaluate and adjust as the situation develops. And, as Chief Justice, I thank all OJD judges and staff for their continued diligence, commitment, and care. As my dad would say, you have been GREAT!

ORS 1.002 provides that the Chief Justice of the Oregon Supreme Court is the administrative head of the judicial department of government in this state; shall exercise administrative authority and supervision over the courts of this state consistent with applicable provisions of law and the Oregon Rules of Civil Procedure; and, to facilitate exercise of that administrative authority and supervision, may make rules and issue orders as appropriate or take any other action appropriate to perform the functions of the office of Chief Justice.

I HEREBY ORDER, pursuant to ORS 1.002, that the following “Level 3” restrictions on court operations must be in effect no later than the beginning of business on Thursday, March 19, 2020, and will be in effect through Friday, March 27, 2020, unless further extended:

1. Definitions. As used in this order:
  - a. “Social distancing” means at least 3 feet between each participant.
  - b. “High risk” means the category of persons whom the Centers for Disease Control has identified as being at high-risk for serious illness due to COVID-19:
    - (1) Persons 60 and older;

- (2) Persons with underlying health conditions including heart disease, lung disease, or diabetes;
- (3) Persons with weakened immune systems; and
- (4) Persons who are pregnant.

## 2. Jury Trials

- a. This subparagraph applies to jury trials other than jury trials for defendants who are in custody on criminal charges that provide them with a statutory or constitutional right to a speedy trial. All such jury trials scheduled to begin during the period of these Level 3 restrictions shall be postponed, with no motion to that effect needed. No new jury trials shall be scheduled during that period.
- b. This subparagraph applies to jury trials for defendants who are in custody on criminal charges that provide them with a statutory or constitutional right to a jury trial, where such rights have not been voluntarily waived. Absent a party's motion to postpone such a trial, the court shall not postpone such trials unless it determines that postponement will not violate a statutory or constitutional right.
- c. Courts may complete jury trials that have commenced and that can be completed before the beginning of business on Thursday, March 19.

## 3. Forcible Entry and Detainer Proceedings

- a. All first appearances under ORS 105.137(1) and (2) shall be postponed without the need for a motion. All parties who are required to appear on the date set by summons shall be deemed to have appeared, and no answer shall be required at that time. When the date for first appearance is rescheduled by the court, all parties shall appear at such first appearances in person on the date set.
- b. All trials under ORS 105.137(6) shall be postponed. A landlord that wishes to have the court enter an order that a defendant pay rent pending trial must file a motion for such an order.

## 4. All Other Trials and Hearings

Courts shall postpone and not schedule any other in-person hearings or trials during the period of these Level 3 restrictions, except in the following circumstances:

- a. In-custody arraignments, in-custody probable cause hearings, in-custody probation violation hearings, and in-custody plea hearings;
- b. Grand jury proceedings or preliminary hearings for felony indictments;
- c. Case scheduling or docket management hearings;
- d. Civil Commitment hearings;
- e. In Juvenile proceedings:
  - (1) Protective Custody Order applications;
  - (2) Shelter hearings;

- (3) Delinquency in-custody initial appearances; and
    - (4) 10-day detention review hearings and 28/56-day detention duration hearings for in-custody youth;
  - f. In Family proceedings:
    - (1) Motion for Expedited Parenting Time;
    - (2) Immediate Danger motions and hearings;
    - (3) Protective Order applications (Family Abuse Prevention Act, Elderly Persons and Persons with Disabilities Abuse Prevention Act, Sex Abuse Protective Orders, Emergency Risk Protection Orders, and Stalking Orders);
    - (4) Contested Protective Order hearings; and
    - (5) In-custody Violation of Restraining Order trials;
  - g. In Probate proceedings, temporary guardianship or conservatorship *ex parte* motions;
  - h. Treatment court proceedings, but only if the Presiding Judge determines that those proceedings are necessary and can be conducted by observing social distancing; and
  - i. Other circumstances in which a Presiding Judge determines that a postponement or failure to schedule would violate a statutory or constitutional right.
5. All Other Direct Court Services
- a. Each court shall determine the in-person court services that the court is legally required to provide, and each court must continue to provide those services.
  - b. Courts shall not provide any other in-person services.
  - c. Courts shall answer their phones during their established business hours.
  - d. Courts shall consider their abilities to provide services remotely or telephonically.
  - e. As needed, a Presiding Judge or designee may direct that a court's legally required in-person services be provided for limited hours with limited staff. All in-person services must be provided observing social distancing.
  - f. If a person seeking in-person services exhibits symptoms associated with COVID-19, the court may refuse service to the person and direct the person to leave the courthouse.
6. Presiding Judge Authority
- a. Each Presiding Judge has discretion to order that a particular trial, hearing, or other court operation will take place if the assigned judge, after consulting with the parties and other affected persons, determines that there is a need for in-person court action, that social distancing can be required, and that the court can order other reasonable precautions to protect the health of the participants, including court staff.

- b. Each Presiding Judge shall have authority to suspend any Supplementary Local Rule that may be an impediment to Level 3 operations.

7. Requirements for All In-Person Court Operations

For all in-person trials, hearings, and operations, the court shall, when reasonably possible and considering the need for safety measures, take the following precautions:

- a. Require social distancing; and
- b. Maintain vigilance about cleaning in accordance with other OJD guidelines.

8. Expectations for Lawyers

When in-person trials or hearings are held, attorneys are expected to appear in-person, unless the attorney is excused, or the court has adopted a procedure that allows attorneys to appear remotely or telephonically. An attorney who has concerns about appearing in-person due to COVID-19 concerns should seek to be excused, request a postponement or remote appearance if desired and feasible, and, if necessary, take steps to help the client find substitute counsel.

9. Remote Work Assignments

All judges and staff must be assigned to work from home, or otherwise directed not to come into the courthouse to work, unless the Administrative Authority directs that they be at work to provide court services in accordance with these Level 3 restrictions. The Administrative Authority or designee should avoid directing persons in high-risk categories, or those with good cause, to report to the court for work.

10. Public Safety and Community

- a. Courts must work with the Criminal Justice Advisory Committee, their Local Public Safety Coordinating Councils, and other stakeholder groups to explore system issues and ensure the health of those who are incarcerated and coming to court.
- b. Courts must explore alternatives to current arrest and detention policies including use of cite-in-lieu of arrest where appropriate to keep jail population at a minimum.
- c. Courts must work with attorneys and their local bar associations to ensure that every possible opportunity to reduce risk and preserve the function of Oregon courts has been identified and explored.

11. Meetings and Conferences, and Travel

- a. No in-person meetings or conferences of more than 5 people may be held, except as authorized by the Presiding Judge, State Court Administrator, or designee. Judges and staff should hold or attend meetings of 5 or fewer persons only after weighing the benefits and risks and the available alternatives.

Participants shall maintain social distancing. Those who do not participate in person should try to attend remotely.

- b. All other meetings and conferences should be conducted remotely.
- c. All in-state and out-of-state work-related travel is prohibited, except as authorized by the State Court Administrator or designee.

12. Appellate Courts, Tax Court, and OJD Divisions

- a. The Level 3 restrictions described in paragraphs 1 through 11 apply, to the extent practicable, to the Supreme Court, the Court of Appeals, the Tax Court, and except as described in subparagraph b. below, to the Office of the State Court Administrator (OSCA) and the Divisions within that Office. To the extent that those courts, OSCA, or any divisions are able to continue to conduct their operations using remote services, they should do so.
- b. The Citizen Review Board (CRB), in keeping with paragraph 4 of this order, shall postpone and not schedule any CRB reviews during the period of these Level 3 restrictions.

13. Notice and Communication

Presiding Judges, Trial Court Administrators, and the State Court Administrator and designees must work together to:

- a. Use all reasonable means to inform judges, staff, lawyers, and the public of these restrictions; and
- b. Post information about these restrictions and local court operations on the court's webpage.

14. These Level 3 restrictions are to be in effect no later than the beginning of business on Thursday, March 19, 2020. They will continue to at least March 27, 2020. They may be extended by further order, or they may be amended by further order.

15. This order takes effect immediately.

Dated this 16<sup>th</sup> day of March, 2020.



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Martha L. Walters  
Chief Justice