



consistent with any specific orders in the S.Ct. Order.

- c. Paragraph 10 of the S.Ct. Order allows specific jurisdictions discretion in managing cases and scheduling matters.
  - d. Paragraph 23 of the S.Ct. Order advises trial courts to move forward all processes that can be done consistently with regard to public health and safety.
7. The KMC Order was specifically issued to provide a return to as much normal procedure under the court rules as permitted given the restrictions. Under the S.Ct. Order and the KMC Order all the rules of Criminal Procedure are back in effect to the extent they can be accommodated safely.
8. Existing Court Rules support the KMC Order's interpretation.
- a. CrRLJ 1.1 requires all rules, including decision of cases and orders of superior courts relating to procedural rules, to be construed so as not to affect or derogate from the constitutional rights of defendants.
  - b. CrRLJ 3.1(a)(1) specifically places the burden of the court to ensure speedy trial in accordance to the rule as to each particular defendant.
9. Cases interpreting how CrRLJ 3.3(e) is applied and calculated are consistent. The issue of exclusion does not get raised until some occurrence triggers the analysis, such as an attempt to set trial outside the operative speedy trial for that case over the objection of the defendant. *See City of Seattle v. Guay*, 150 Wash.2d 288 (2003); *State v. George*, 160 Wash.2d 727 (2007); *Khandewhal v. Seattle Municipal Court*, 6 Wash.App. 323 (2018-Div. I). The decision on whether speedy trial is potentially violated, or whether time is excluded under the rule is driven by a case by case factual analysis. The decision is reviewed based on the facts at the time of the hearing, not on the facts established weeks or months earlier in a separate order that is not specific to the case at issue.
10. The Court does not believe there is any disagreement on these above principles. The sole contention is about the effect of the Supreme Court's emergency order that a specific excluded period is found in all cases through September 1, 2020. Our Court accepts the Supreme Court's finding that the Covid-19 Emergency order is sufficient unforeseen circumstances to justify excluding speedy trial time, to at least September 1, 2020. However, such a blanket order cannot substitute for a trial court's case by case review of the circumstances and the ability of the parties to make their case specific record as to the basis for the decision at the time that decision is made.
11. The Court believes that the procedure outlined for Kent Municipal Court meets all of these principals and complies with the S.Ct. Order for the following reasons:
- a. It establishes a procedure for addressing the speedy trial issues on the record in each case in accordance with the normal rules of procedure.

- b. It provides a hearing of the issue in each case when it becomes apparent to the court that speedy trial cannot be complied with in the case and allows the reasons to be placed on the record.
- c. It provides the defense at that hearing the opportunity to place any objection on the record if time is extended under the S.Ct. Order, including any arguments that the cause of delay is something other than the Covid-19 emergency.
- d. There is no certainty that cases which are set for trial will commence to trial. Both in custody and out of custody defendants may set a trial date and then enter alternative dispositions up to the day of trial. Delaying decision on effectiveness of exclusion periods in specific cases allows the Court to tentatively set cases that want to go to trial within their applicable speedy trial, and to have a surplus of cases set on a specific date to allow for as many trials to proceed as the court is able to provide.
- e. There are ample issues effecting whether a given case will proceed to trial on time that have nothing to do with the parties' ability to proceed. This includes but is not limited to lack of jurors due to the emergency, lack of judicial resources to handle the case load set, insufficient facilities to handle trials given social distance guidelines in effect at the time trial starts. Those standards could be changed (relaxed or tightened) after trial is set but before trial is scheduled which could affect the issues. Witnesses who are essential could be impacted by Covid-19 personally and thus result in delay for safety considerations, which could not be anticipated when trial is set.
- f. The Court also has to weight the impact of delayed trials based on the cases that are prepared to go on a given trial date. There is more prejudice to an in custody defendant who is continued than one who is out of custody. If there are limited resources to handle cases, the court is within its authority to prioritize in custody defendant trials over out of custody trials.
- g. Despite all these issues, there are some cases which can be heard within their speedy trial dates and they should be heard if the court is able to.
- h. For all these reasons, notwithstanding the S.Ct. Order Paragraph 12, the Court cannot use a blanket order on pending cases, and must rule on this issue on a case by case basis, as required under the rules. Doing so only when the issue becomes ripe is the only way to manage trial scheduling and ensure that dispositions do not prevent others from going to trial when possible.

It is ORDERED as a supplemental to the Kent Municipal Court Emergency Administrative Order No. 2020-03 on May 18, 2020, and pursuant to the Supreme Court Order dated May 29, 2020 that the following process shall be used for speedy trial issues in Kent Municipal Court:

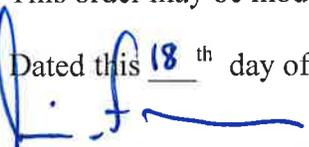
1. Speedy trial calculation will start in all criminal cases as outlined in the previous order, June 2, 2020 for any matters in custody on that date, and first appearance after June 2, 2020 for out of custody cases.
2. If defendant seeks to set trial they shall be assigned to an available trial date that is within their speedy trial calculation. If in the court's determination there is no reasonable ability to set the trial within the speedy trial period, the court shall engage in CrRLJ 3.3 analysis including the effect of CrRLJ 3.3(e) and the S.Ct. Order, with opportunity of the parties to make a fact specific basis for any objection in that case.
3. On any given dates set for trial the court will know the number of trials that can commence and the number of cases that remain ready to proceed to trial. If the court determines it lacks capacity to handle all trials set for that day the court will prioritize cases for trial as follows:
  - a. As between an in-custody defendant and an out of custody defendant, in-custody cases get priority for trial.
  - b. As between in-custody cases the priority shall be for the case with the earlier arraignment date.
  - c. As between out of custody cases the priority shall be for the case with the earlier trial setting order.

Any cases that are set for trial but cannot be heard as set due to limited resources and the impact of Covid-19, the court shall engage in CrRLJ 3.3 analysis including the effect of CrRLJ 3.3(e) and the S.Ct. Order, with opportunity of the parties to make a fact specific basis for any objection in that case.

Following this process will protect the rights of all parties, allow the court to proceed on all the trials that can be safely managed during this crisis, will limit the potential for unused courtrooms for trials due to dispositions, and preserve the record in a case-by-case basis.

This order may be modified as circumstances change.

Dated this 18<sup>th</sup> day of June, 2020.

  
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Michael Frans  
Presiding Judge  
Kent Municipal Court

  
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Anthony David Gipe  
Assistant Presiding Judge  
Kent Municipal Court