

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA

December 03, 2020

JULIA C. DUDLEY, CLERK  
BY: A. Seagle  
DEPUTY CLERK

IN THE MATTER OF:

POSTPONEMENT OF JURY  
TRIALS UNTIL MARCH 1, 2021

Second Amended  
Standing Order 2020-10 and 2020-14

This Standing Order supplements all prior Standing Orders concerning the COVID-19 pandemic.

1. In response to the public health crisis posed by the pandemic, the court previously suspended jury trials through August 31, 2020. See Amended Standing Orders 2020-10 and 2020-14. The court was hopeful that jury trials could resume after that date, but the pandemic has worsened.

2. As of December 1, 2020, the Virginia Department of Health reported 240,063 total cases, 14,725 hospitalizations, and 4,093 deaths. The statewide 7-Day positivity rate for PCR testing was 8.0%, with higher rates reported in various counties in the Western District of Virginia. COVID-19 cases have steadily increased over the last two months. See <https://www.vdh.virginia.gov/coronavirus/covid-19-daily-dashboard/>. (Last visited December 1, 2020).

3. This increase in Virginia cases tracks what is happening nationally. Data collected by the Centers for Disease Control and Prevention show a sharp increase of cases this fall. 152,000 new cases were reported on December 1, 2020, total cases surpassed 13 million, and deaths increased to 267,302. See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>. (Last visited December 1, 2020).

4. The Governor of Virginia has implemented additional restrictions, and federal courts

around the country are reimposing restrictions to protect the public.

5. The judges of the Western District of Virginia met by videoconference recently and considered a recommendation to postpone jury trials made by the Western District's multiagency Pandemic Response Team. Because of the resurgence of the pandemic, and with the concurrence of the Federal Public Defender, United States Attorney and the Criminal Justice Act Panel District Representative, the court has determined to postpone the resumption of all civil and criminal jury trials in this district until March 1, 2021. The court will continue to closely monitor the situation and should conditions improve will revisit this temporary postponement.

6. Section II. 3. of Standing Order 2020-14 is amended to read as follows:

**3. Criminal jury trials may resume on Monday, March 1, 2021.**

As of March 1, 2021, it will be left to the discretion of the presiding judge whether a criminal jury trial will proceed based on the circumstances of each Division. Any continuance as a result of the disruption created by the COVID-19 pandemic to a criminal jury trial shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), as described in Standing Order No. 2020-10. For any continued case, the court will enter an order to incorporate the findings made in Standing Order No. 2020-10, or further findings, in the record of each case. A presiding judge may conduct a criminal jury trial prior to March 1, 2021 in a specific case based on the requirements of that case and the public health circumstances present in that Division of court.

7. Videoconference hearings during the pandemic have proven successful, and the court will continue to hold hearings, mediations and other court proceedings via videoconference whenever practicable. Except in criminal cases where consent is not obtained, videoconference hearings should be held in most cases as they limit personal interaction and the potential spread of the disease.

8. Although this standing order postpones generally all civil and criminal jury trials until March 1, 2021, a presiding judge may conduct a jury trial in an individual case should the exigencies of that case and the interests of justice so require.

9. The court finds that the public health and justice concerns weighing against holding jury trials in criminal cases as reflected in Standing Order 2020-10, concerning the Speedy Trial Act, remain true today given the recent spike in COVID-19 cases in this district. The court finds that the postponement of the resumption of criminal jury trials to March 1, 2021 is necessary to safely resume trials in a manner that guarantees every defendant a fair trial in the midst of a pandemic involving a deadly and easily transmitted disease. It is essential that the resumption of criminal jury trials provides the accused with the full measure of trial rights, to include not only a right to a public trial, but one where the jury represents a fair cross-section of the community and will not be distracted during the evidence or rush to judgment during deliberations based on fear of exposure to COVID-19. “Jurors must be given reasonable assurance of their safety before participating in the jury process. They must be comfortable during the course of a trial and be able to focus on the evidence and not the risk of a COVID-19 infection.” Report of the Jury Subgroup, COVID-19 Judicial Task Force, Conducting Jury Trials and Convening Grand Juries During the Pandemic.<sup>1</sup> In addition, because of restrictions posed by the pandemic, the court is concerned about resuming criminal trials under circumstances in which access to counsel and means of investigation are limited.

10. **Because of the public health crisis posed by the pandemic, the court excludes the time period prior to March 1, 2021 from the Speedy Trial Act calculation pursuant to 18 U.S.C. § 3161(h)(7)(A).** The court finds that the ends of justice served by taking such action during this public health crisis outweigh the best interest of the public and the defendant in a speedy trial. In that regard, the court finds that the exclusion of the period prior to March 1, 2021 from the Speedy Trial Act calculation period is necessary to balance the health and safety of

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<sup>1</sup> Available at: [https://www.uscourts.gov/sites/default/files/combined\\_jury\\_trial\\_post\\_covid\\_doc\\_6.10.20.pdf](https://www.uscourts.gov/sites/default/files/combined_jury_trial_post_covid_doc_6.10.20.pdf).

jurors and prospective jurors, court staff, defendants, counsel, witnesses, and the public with the constitutional obligation to continue federal court operations during the COVID-19 pandemic.

11. The court will continue to monitor the COVID-19 public health emergency and will amend this and prior Standing Orders as required by the changing circumstances posed by the pandemic.

Enter: December 2, 2020



Michael F. Urbanski  
Chief U.S. District Judge  
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Chief United States District Judge