



1           Second, CJ SO No. 8213 authorizes a Presiding Judge to allow in-person grand  
2 jury proceedings prior to February 1, 2021 “in exceptional circumstances,” which circumstances  
3 expressly include “The COVID-19 case counts for the area or location” and “The facilities  
4 available for the trial or proceeding.”

5           Third, the State is correct that the COVID-19 case counts in the Ketchikan  
6 Gateway Borough (KGB) have generally been low relative to many other areas of the state of  
7 Alaska. The December 28, 2020 State of Alaska, Department of Health & Social Services daily  
8 Case Count Summary (Table 2c) reflects that the average daily COVID-19 case rate in the KGB  
9 for the past 14 days is 4.2, with two cases reported in the last seven days.  
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11           Fourth, CJ SO No. 8202 set a COVID-19 case count benchmark for conducting  
12 in-person misdemeanor jury trials inasmuch as the Chief Justice therein instructed Presiding  
13 Judges to “strongly consider whether to limit or suspend misdemeanor [jury] trials in any district  
14 or community where the average daily case count rate is greater than 20-25 cases per 100,000  
15 population as reported in the daily Case Count Summary from the Alaska Department of Health  
16 and Social Services.” Misdemeanor jury trials usually involve at least 13 people in the  
17 courtroom,<sup>2</sup> and often could include more persons.<sup>3</sup> While grand jury proceedings generally  
18 involve between 15 and 21 people in the courtroom.<sup>4</sup> So the 20-25 case count rate referenced in  
19 CJ SO No. 8202 may not directly apply across the board to grand jury proceedings, but it is  
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23 <sup>2</sup> Six jurors, defendant, defense attorney, prosecutor, investigating officer, in-court clerk, a  
witness, and the Judge.

24 <sup>3</sup> A victim, a JS Officer, family/friends of the defendant, a person or persons there to support a  
victim.

25 <sup>4</sup> 12-18 grand jurors, in-court clerk, prosecutor, and a witness. Grand jury proceedings in  
Ketchikan usually begin with 18 grand jurors in the (court)room used for grand jury proceedings.

1 nonetheless a guidepost, taking into consideration the size of the available facility and the local  
2 case count rate.

3 Fifth, Courtroom 406 at the Ketchikan State Building is sufficiently large for a  
4 grand jury proceeding involving 21 persons who all are social distancing as required by CJ SO  
5 No. 8144.<sup>5</sup> And the new Ketchikan courtroom (formerly the Law Library) will be available  
6 beginning in January 2021 and it is larger than Courtroom 406.

7 Sixth, the KGB, given the above, is experiencing relatively low COVID-19 case  
8 count rates which are considerably below the above-referenced 20-25 range and which are  
9 trending downward, and there are sufficient available facilities in Ketchikan to conduct in-person  
10 grand jury proceedings while adhering to all pertinent Alaska Court System COVID-19 related  
11 mandates, protocols, and orders.

12 Seventh, the two “exceptional circumstances” referenced above – relatively low  
13 COVID-19 case counts and sufficient available facilities to conduct grand jury proceedings – are,  
14 in the context of grand jury proceedings, two of the most important of the listed considerations, if  
15 not the most important considerations.

16 Eighth, the undersigned recognizes that Criminal Rule 5(e) is suspended through  
17 March 15, 2021 and that the State, per CJ SO No. 8204 and Presiding Judge Administrative  
18 Order 20-09, could present cases to the grand jury by video-conference (Zoom), without grand  
19 jurors being present in the grand jury (court)room, a new process that may be subject to legal  
20 challenge. So the State is not presently required to present cases to the grand jury and could  
21 choose to do by Zoom technology. But persons in Alaska charged with a felony offense have a  
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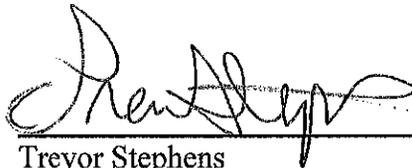
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25 <sup>5</sup> All of the other ordered COVID-19 requirements also remain in effect, including face coverings, temperature screening, and other health screening protocols.

1 right to have the grand jury review their cases in a timely manner per Article I, § 8 of the Alaska  
2 Constitution. Potential health risks must be balanced against certain fundamental constitutional  
3 rights. The current KGB COVID-19 case counts, available facilities for in-person grand jury  
4 proceedings, and implementation of the Alaska Court System COVID-19 related mandates,  
5 protocols, and orders warrant the State being allowed to proceed with in-person grand jury  
6 proceedings in Ketchikan.

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8 This Order is premised on the COVID-19 case count situation in Ketchikan not  
9 materially worsening. The Presiding Judge for the First Judicial District will be monitoring the  
10 case counts on a regular basis and will issue such subsequent grand jury related orders as are  
11 necessary and appropriate under the circumstances.

12 **IT IS SO ORDERED.**

13 Dated at Ketchikan, Alaska this 29<sup>th</sup> day of December 2020.

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16 Trevor Stephens  
17 Presiding Judge - First Judicial District

18 Distribution

19 Chief Justice Joel Bolger  
20 Administrative Director Stacey Marz  
21 Court System General Counsel Nancy Meade  
22 Rules Attorney Stacey Steinberg  
23 ACA James Kwon  
24 Rural Court Administrator Clayton Jones  
25 1<sup>st</sup> District Clerks of Court  
1<sup>st</sup> District Magistrate Judges  
1<sup>st</sup> District Judges  
1<sup>st</sup> District DAs  
SBA  
JBA  
KBA

**PRESIDING JUDGE ADMINISTRATIVE ORDER 20-12 RE: IN-PERSON GRAND  
JURY PROCEEDINGS HELD IN KETCHIKAN**

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
2 FIRST JUDICIAL DISTRICT AT KETCHIKAN

3 In the Matter of the  
4 GRAND JURY  
5 at Ketchikan, Alaska  
6 January 1, 2021 to  
7 March 31, 2021

FILED in the Trial Courts  
State of Alaska First District  
at Ketchikan

DEC 28 2020

Clerk of the Trial Courts  
By \_\_\_\_\_ Deputy

8 MOTION FOR LIMITED IN-PERSON GRAND JURY PROCEEDINGS

9 I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

10 Per Special Order No. 8213, in-person grand jury proceedings are  
11 suspended until at least February 1, 2021. Until that date, in-person grand jury  
12 proceedings may be conducted only in “exceptional circumstances.” The State hereby  
13 moves for a finding that the current circumstances in Ketchikan are “extraordinary” and  
14 for prospective permission to conduct in-person grand jury proceedings in Ketchikan  
15 during the coming grand jury term—so long as the circumstances do not change  
16 dramatically.

17 The Chief Justice issued Special Order No. 8213 on November 25, 2020.  
18 At that time, COVID-19 cases were surging across the state. As the order noted, the  
19 statewide alert level was high and the most recent average daily case rate was 77 cases  
20 per 100,000 population. The Chief Justice found that conducting public trials under those  
21 circumstances would be “unduly dangerous” and suspended both trials and grand jury  
22 proceedings.

23 The current conditions in Ketchikan differ markedly from the statewide  
24 conditions noted by the Chief Justice in Special Order No. 8213. DHSS’s most recent  
25 COVID-19 case count has Southern Southeast Alaska with a case count of 5.38 cases per  
26 100,000 with the number trending downwards.  
27

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1 According to the Ketchikan Gateway Borough's COVID-19 Risk  
2 Dashboard, there are currently only 6 active cases in the borough and less than one  
3 percent of COVID-19 tests taken in the last week came back positive. The Dashboard  
4 notes a community risk level of "moderate," recommends that safety measures be used  
5 with indoor mid-size gatherings of less than 50 persons, and indicates that the disease  
6 situation is one of "decreasing spread."

7 Ketchikan is very fortunate to have such low numbers and encouraging  
8 prospects. When compared to the statewide numbers the Chief Justice was considering at  
9 the time that Special Order No. 8213 was issued, Ketchikan's current numbers are truly  
10 extraordinary.

11 Ketchikan is also lucky, unlike many other places in the state, to have a  
12 large and suitable space available for in-person grand jury proceedings. Courtroom 406 is  
13 approximately 1500 square feet. There is plenty of room for strict social distancing, and  
14 in-person grand jury proceedings were held without issue in the courtroom for several  
15 months prior to the November 25, 2020 suspension. If permitted, the space is well suited  
16 to continue to be a safe venue for in-person grand jury during the coming term.

17 Given Ketchikan's low COVID-19 numbers and the facilities available to  
18 conduct in-person grand jury proceedings, the current circumstances in Ketchikan are  
19 indeed "extraordinary." While the situation is undoubtedly fluid and close monitoring  
20 will be necessary, it appears that in person grand jury proceedings can be conducted in  
21 Ketchikan in relative safety.

22 WHEREFORE, the State requests limited permission to conduct in-person  
23 grand jury proceedings in Ketchikan when the local COVID-19 case numbers are low.  
24 Since circumstances can and do change, an order prospectively allowing in-person grand  
25 jury in Ketchikan at times when numbers are at or below a specific benchmark seems  
26 advisable. The State suggests the 14 day moving average for Southern Southeast Alaska  
27 as noted by DHSS might be appropriate or a similar benchmark tied to the Ketchikan  
Gateway Borough's COVID-19 Risk Dashboard.

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Respectfully submitted this 28<sup>th</sup> day of December, 2020 at Ketchikan,  
Alaska.

CLYDE "ED" SNIFFEN, JR.  
ACTING ATTORNEY GENERAL

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