⚠ **COVID-19 alerts from Missouri courts:**

⚠ Please read court-specific notices. To determine the status of a particular proceeding, please check the case's docket entries in Case.net, ask your attorney or contact the local clerk's office.

Order dated June 5, 2020, re: Procedures for Jury Proceedings During COVID-19 Pandemic

Supreme Court of Missouri
en banc

June 5, 2020

Effective June 5, 2020

PROCEDURES FOR JURY PROCEEDINGS DURING COVID-19 PANDEMIC

This Order supplements and should be read in conjunction with and during the effective period of this Court's May 4, 2020, Order and Operational Directives.

1. The safety of jurors, visitors, court personnel, parties, and attorneys is paramount, and no jurisdiction can resume jury proceedings until after sufficient planning and preparation have occurred. The resumption of jury proceedings too early would not only risk the health of participants, but it could also undermine public confidence in the courts and damage the integrity of trial by jury, a cornerstone of our justice system. Recent research indicates that COVID-19 could also be spread through the air by normal breathing or conversation in addition to sneeze/cough-induced droplets. Therefore, every reasonable precaution should be taken in the context of jury proceedings.

2. In addition to meeting the Gateway Criteria set forth in this Court's May 4, 2020, Operational Directives, in order to conduct grand or petit jury proceedings under any phase, the presiding judge must determine whether the circuit has the proper facilities (or alternative facilities) and equipment in place to conduct jury proceedings in compliance with social distancing protocols, local occupancy rate limitations, and other recommended health and safety strategies.

3. A court must complete at least fourteen days in an operating phase before it can proceed to the next operating phase. Therefore, the earliest a court could enter Phase Three would be June 13, 2020.

4. Absent exigent circumstances, jury proceedings are not anticipated prior to a court's implementation of Phase Three as set forth in the current Operational Directives.

5. In addition to the general COVID-19 Notice required by the order dated May 4, 2020, each court or board of jury commissioners should make available electronically a specific COVID-19 Notice. This specific Notice should be posted on the court's website, if possible, and included with the jury summons or other form approved by the courts pursuant to section 494.010 et seq., RSMo. In addition, this specific Notice should: (1) advise potential jurors of the safety precautions taken inside the courthouse, including the availability of hand sanitizer and the requirements of masks to be worn by every person entering the courthouse, handwashing with soap, social distancing, etc.; (2) encourage persons summoned to consider, before reporting for jury duty, whether they qualify for a hardship deferral; (3) include a mechanism to allow summoned persons to submit requests for deferral or excuse from jury service in some manner other than in person. (Note: A jury information letter from the Texas federal court has been included as Appendix A as an acceptable form of Notice.)

6. Efforts should be taken to educate the general public about the importance of jury service to the administration of justice and how the safety and well-being of all jurors and participants in the jury trial process are being addressed. Each county or circuit is encouraged to reach out to the public through local print, radio, and television and through any county's or circuit's website and social media accounts (Facebook, Twitter, etc.). It is also recommended that each county or circuit and the State Court Administrator reach out to local bar associations and other media outlets in their areas to participate as a partner in this educational effort.

7. Courts should suspend the issuance of warrants for jurors who fail to appear when summoned and suspend the execution of warrants previously issued for that reason until after the pandemic abates. Courts should follow up with non-responders with a second notice and second summons. Courts may offer deferral in the place of a warrant.

I. GENERAL PROCEDURES

a. These procedures should be utilized throughout all aspects of the trial, including jury selection, presentation of evidence, argument, and juror deliberations.

b. Before resuming jury proceedings in any court facility or courthouse, the presiding judge should first consult with county emergency and public health authorities to ensure local health conditions and facility readiness sufficient for expanding judicial proceedings to include jury trials.

c. Any constitutional and statutory rights of in-custody defendants to appear in person and not remotely shall remain in effect.

d. Each court should investigate options to expedite juror entrance (or utilize a separate entrance if feasible) into the court facilities, in order to reduce the contact jurors may have with the general public or with courthouse employees.

e. Each court should have a screening protocol for all trial participants, including utilization of no-touch infrared thermometers to assess individuals for fever. The judicial officer in the courtroom must make the decision about what action is necessary in the event of a failed or refused test based on his or her role in the proceedings and the particular situation.

f. Hand sanitizer dispensers should be available in designated areas, and masks, hand sanitizers, and other personal protective equipment (PPE) should be made available to all jurors, litigants, and court staff.

g. HEPA air filters should be used to maintain air quality given the specific size of each courtroom and jury room.

h. Essential workspaces (tables, doorknobs, witness chair and counter, etc.) should be wiped down frequently during the day.

i. Methods and procedures consistent with social distancing requirements should be implemented for restrooms and elevators.

j. All areas in the courthouse (or alternative forum), including jury assembly rooms, private conference rooms, jury deliberation areas, courtroom galleries, counsel table, etc., should afford appropriate social distancing between any two individuals, as shown by taped demarcation.

k. Masks should be required outside trial proceedings, but might not be required of all participants at all times during a trial, depending on the trial judge's rulings, after giving careful consideration to any statutory or constitutional issues raised.

l. Courts should implement a deferral policy and include a manner to request deferral without requiring personal appearance. Deferrals of jury service should be freely granted, particularly for persons who are at high risk for infection, who tested positive for the virus or who are in self-quarantine, and any person who works in the health care field or in a hospital assessing, treating or caring for those with COVID-19.

II. JURY SELECTION

a. Courts should re-configure the courtrooms to allow for distance between jurors, counsel, witnesses, and court staff. Additional measures such as Plexiglass or other types of clear barriers should be utilized between the judge, witnesses, the court reporter, court staff, attorneys, and jurors. If there is inadequate space for social distancing protocols or other protective measures, the assembly room (and jury selection process) should be moved to an alternate location with adequate space.

b. Persons should be seated at safe social distances in the courtroom gallery or other larger spaces in the courthouse for purposes of jury selection and throughout the trial.

c. Jurors should be seated in the jury box distanced six feet apart, with the balance of the jurors seated in the area surrounding the jury box. Alternatively, if the size of the courtroom does not allow use of the jury box and its surrounding area for adequate spacing, jurors may be seated in a cordoned off area of the gallery instead of the jury box.

d. Courts should limit the number of potential jurors involved in voir dire at any one time. Jury selection may be done in phases with fewer panel members questioned at one time as well as by staggering reporting days and times. The use of jury questionnaires that can be sent to prospective jurors should be considered to reduce the number of jurors needed for the jury selection process.

e. The court should consider whether to empanel extra alternate jurors.

III. TRIAL

a. The court should ensure that each juror has adequate sight lines to the witness stand and can hear and see all proceedings. It is recommended that the court instruct all jurors that they must advise the court if, at any time during the court proceedings, they cannot hear or see any part of the proceedings.

b. Courts should utilize alternative methods for conducting bench conferences. In order to make a record while still maintaining appropriate social distancing between the attorneys, the judge, and the court reporter, judges, counsel, and court reporters should consider moving to an alternative location for discussions required outside the hearing of the jury.

c. Courts should strongly encourage pre-marked and pre-exchanged exhibits in order to limit the need for counsel and the judge to come within close proximity to each other during trial. This procedure might include the use of exhibit notebooks for the parties, court, witnesses, and jurors to be “filled” as the exhibits are admitted unless a stipulation can be reached in advance as to exhibits. The use of technology to publish exhibits to the parties, counsel, and jury should

be strongly encouraged, with preservation of the exhibits shown. If it is not possible to provide each juror with a separate copy of the exhibit or publish the exhibit using technology, jurors should be provided with gloves before any item of evidence is passed to them (as well as instructions on the proper handling of the gloves). Any exhibits passed to the jury should be collected and preserved after the jury has had adequate time to review.

d. Witnesses should remain outside the courtroom until called to testify unless the witness has a constitutional or statutory right to remain in the courtroom.

e. Courts should consider sending all documentary and photographic exhibits to the jury after trial, rather than waiting for the jurors to request such exhibits, in order to reduce the need for contact between the jurors and bailiff.

f. During breaks in the jury trial and deliberations, every effort should be made to accommodate social distancing between the jurors, including situating the chairs in the jury room against the walls to increase capacity, or using a larger room or the courtroom itself to provide for appropriate distancing during the deliberation process. It is further recommended that courts minimize jurors' outside contact by providing sanitization products, meals, and adequate, clean bathroom facilities in close proximity to the jury room or deliberation area. Self-serve refreshments and vending machine use for jurors should be discontinued to reduce risk of contamination.

g. The public has the right to view open public court proceedings that are not otherwise closed or confidential according to the law. As a result of social distancing and other restrictions, there may not be any room in the courtroom for the public to attend in-person. If there is no room for members of the public to be inside the courtroom, it is recommended that the public have access to the jury trial and on-the-record proceedings via live stream controlled by the court.

IV. GENERAL COURT RECOMMENDATIONS

Appropriate levels of screening are required under Phases Zero, One, and Two, but may remain necessary under Phase Three for jury proceedings. Public health experts recommend health screening upon entry to the courthouse. This includes asking simple questions regarding symptoms and prior contacts with exposed individuals, as well as the utilization of no-touch infrared thermometers to assess individuals for fever.

a. To minimize the need for sanitizing frequently-touched door handles, doors may be propped open, to the extent that this does not disrupt courthouse security or courtroom proceedings.

b. If there is no suitable location in the court facilities to conduct jury proceedings in a manner consistent with social distancing protocols, the presiding judge should explore feasible alternative facilities, such as school gymnasiums, community centers, or other public facilities.

c. If there is limited space in the courtroom for members of the public, it is recommended that the court determine who will be allowed to be physically present by taking into account statutory and constitutional provisions. This recommendation to limit the number of people in the courtroom is not intended to infringe upon the rights of victims to attend and be heard at court proceedings. Victims should work with the county's victim-witness coordinator or clerk of court to determine how best to participate in court proceedings.

d. To the extent possible, other court hearings that are scheduled to take place in the same courtroom during a jury trial should be rescheduled, especially if those hearings involve numerous individuals participating in person. Additionally, circuit courts should determine the number of jury trials that can be safely conducted at the same time and still maintain social distancing protocols.

Day – to – Day

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GEORGE W. DRAPER III
Chief Justice