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CLERK SUPREME COURT

In the Iowa Supreme Court

In the Matter of Resuming Jury Trials During COVID-19) **July 22, 2020 Order**

This order provides the policies and procedures for the resumption of jury trials in Iowa. The supreme court's prior order of July 9, 2020, titled "In the Matter of Resuming In Person Court Services During COVID-19," likewise applies to jury trials unless otherwise modified in this order. Both that order and this order will remain in effect until further order of this court.

The Iowa Judicial Branch continues to carefully monitor the public health situation, balancing the need to take measures to reduce the spread of the virus with its commitment to ensuring access to justice. In seeking guidance on how best to balance the public's health and safety with the constitutional right to a trial by jury, the Iowa Supreme Court established the Jumpstart Jury Trials Task Force. The task force—composed of a cross-section of judges, attorneys, and court personnel from across Iowa in consultation with public health experts and county officials—was charged with developing recommended temporary policies and procedures for the safe and fair resumption of jury trials in Iowa's courts. In combination with our July 9 In Person Court Services order, the court has now adopted many of the recommendations of task forces focused on both the resumption of jury and family law trials.

To inform Iowans about the safety measures the judicial branch is taking to ensure the health and safety of judges, court staff, attorneys, parties, and all Iowans who access court services, the judicial branch has shared information on the steps that each court shall complete to resume jury trials before September 14. This information, along with all the supreme court's supervisory orders and press releases, are found on the Iowa Judicial Branch's dedicated

COVID-19 webpage at https://www.iowacourts.gov/iowa-courts/covid-19-information-and-updates/.

The judicial branch gratefully acknowledges the information and recommendations provided by the Jumpstart Jury Trials Task Force, the Jumpstart Family Law Trials Task Force, the Judicial Council, the University of Iowa College of Public Health, the Iowa Department of Public Health, and the Centers for Disease Control and Prevention. Implementation of many of the protocols set forth below will vary based on physical layout, local needs, and available resources, and the judicial branch expresses its continued appreciation for the strong, critical partnerships between individual counties and local court officials.

I. Juror summonsing and check-in

a. *Limit the number of simultaneous jury trials*: Within a courthouse, courts shall consider limiting the number of jury trials that start on a given day as necessary to reduce the population of prospective jurors to accommodate physical distancing.

b. *Modified trial schedules*: Courts shall consider modifying trial schedules to avoid unnecessary movement of jurors around the courthouse (e.g., scheduling trial days from 8:30 a.m. until 2:30 p.m. with no lunch break and two twenty-minute restroom breaks).

c. *Summon more than typical*: Courts shall consider increasing the number of jurors typically summoned (e.g., by 50%).

d. *Summon earlier than typical*: Courts shall consider sending juror summonses further in advance (recommended 2–4 weeks earlier) to allow supplemental summonsing if the initial yield is insufficient.

e. *Other facilities*: Courts shall consider options for conducting trial operations at alternative facilities in larger spaces outside the courthouse, such as school gyms or public auditoriums. If using non-courthouse facilities, courts shall address security, internet or Wi-Fi needs, technological needs, restrooms, and sound amplification.

f. *Advance screening*: State court administration shall include the following questions as part of the juror qualification process:

   i. Are you experiencing COVID-19 symptoms (fever greater than 100 degrees, new loss of taste or smell, unusual shortness of breath, fatigue) and have you tested positive for COVID-19?

   ii. Are you experiencing COVID-19 symptoms (fever greater than 100 degrees, new loss of taste or smell, unusual shortness of breath, fatigue) and concerned you might test positive for COVID-19?

   iii. Are you caring for someone who tested positive for COVID-19?

   iv. Are you a member of a high-risk population for COVID-19 (for example, over 65 or with an underlying medical condition)?

   v. Are you caring for or living with someone who is a member of high-risk population for COVID-19?

   vi. Are you afraid to be in a large group for an extended period even if physically distanced six feet from others and everyone is wearing a face covering?

   vii. Are you a medical professional currently treating COVID-19 patients?

g. *Deferrals*: Courts may grant deferrals to a later date within a 12-month period to anyone answering "yes" to any of the screening questions in section I.f. above and requesting a deferral. (Note: Iowa Code section 607A.6 provides that a court may defer a term of service upon a finding of hardship, inconvenience, or public necessity.)

h. *Advanced handling of hardship challenges*: To minimize both the number of prospective jurors at the courthouse and the time prospective jurors must spend there, courts shall consider handling hardship challenges by online communications before prospective jurors report for service.

i. *Advance calls if symptomatic*: Courts shall provide prospective jurors a court phone number and request that prospective jurors call the court *before* coming to the courthouse on their jury service days if experiencing COVID-19 symptoms (fever greater than 100 degrees, new loss of taste or smell, unusual shortness of breath, fatigue). Prospective jurors reporting any of these symptoms shall be deferred, and instructed not to come to the courthouse and to seek medical advice.

j. *Interactions necessitating less than six feet of distancing*: If six feet of distancing is not possible (e.g., at service points or counters where encounters do not permit distancing), courts shall use temporary plexiglass dividers.

k. *Juror reporting and check-in*: Courts shall consider the following actions:

    i. Staggering arrival times for jurors and splitting juror check-in locations to avoid congestion.

ii. Using paging or text messaging to permit potential jurors to remain outside the courthouse (such as in their cars or elsewhere in close proximity) until they need to come in.

iii. Providing potential jurors pre-printed, stick-on disposable juror badges instead of plastic badges.

iv. Instructing potential jurors to keep personal items (including water bottles and food) separate from other jurors' personal items.

v. Instructing potential jurors to display documents (e.g., jury summons, driver's license) to court staff without court staff taking possession. Court staff touching potential jurors' documents shall sanitize or wash hands frequently.

vi. Enabling potential jurors to bypass typical juror assembly areas or gathering rooms and directing them instead to report directly to the courtroom for check-in and seating.

vii. Directing jurors to bring their own reading material and removing shared magazines and newspapers from jury rooms.

l. *Juror meals*: If a lunch break is included in a trial day schedule, courts shall determine and explain to prospective jurors procedures for lunch. Courts shall consider risks associated with jurors bringing in outside food to eat in the courthouse, jurors leaving the courthouse to get lunch, or courts facilitating lunch delivery to jurors at the courthouse at jurors' expense. If jurors are permitted to bring their own lunches, courts shall regularly disinfect refrigerators, microwaves, and similar high-touch surfaces, and shall direct jurors to mark and keep separate their food containers.

II. Jury selection and trial

a. *Communication on safety efforts*: Courts shall inform prospective jurors about the efforts undertaken by the judicial branch and counties to ensure their safety when fulfilling their civic duties as jurors and of the importance of jury service in our system of justice, and shall express appreciation for those who serve. Courts shall also remind jurors of the steps jurors should take for their enhanced safety, including washing hands frequently, wearing face coverings at all times, and keeping six feet of physical distance from others.

b. *Limiting the number of prospective jurors in the courtroom*:

   i. *Smaller jury panels*: Courts shall consider bringing smaller jury panels into the courtroom for voir dire.

   ii. *Remote video voir dire*: In civil cases or criminal cases with consent of the parties, courts shall consider virtual voir dire with jurors participating remotely by video conference.

c. *Transparent face shields*: Courts shall provide to all persons speaking during the voir dire process, including members of the jury venire who are selected for questioning, transparent face shields enabling a full view of the face (including the person's mouth), which shall be worn throughout the proceedings.

d. *Distancing*: Courts shall reconfigure courtrooms as necessary to accommodate proper distancing. Courts shall space seats during jury selection at least six feet apart in all directions. Staff shall use tape or similar indicators to mark seats for use or non-use and the floor to show where counsel may stand during voir dire.

e. *Time limitations*: Courts should exercise reasonable control over the time spent on voir dire questioning by attorneys to expedite the process of jury selection. Courts shall consider employing greater use of advance written questionnaires or agreed-upon common questions to prospective jurors to minimize repetition.

f. *Private conferences with prospective jurors*: Courts shall determine the location for individual conferences to discuss private matters involving the court, counsel, and individual potential jurors while still observing physical distancing protocols and the defendant's right in criminal cases to be present for all proceedings.

g. *Opening statements and closing arguments*:

    i. *Time limits*: To expedite trials, courts shall exercise reasonable control over the time spent on opening statements and closing arguments by attorneys.

    ii. *Distancing*: Courts may place tape markings on the floor showing where counsel may stand during opening statements and closing arguments to comply with physical distancing protocols.

h. *Visibility of exhibits*: Courts shall consider providing additional projectors, screens, or monitors to display exhibits enabling jurors at appropriate physical distances the ability to view documentary or other physical evidence.

i. *Sidebars*: Courts shall inform counsel before trial where and how sidebar conferences will occur. Courts shall give preference to locations for sidebars outside the courtroom.

i. Courts may discourage sidebar conferences because of difficulties in maintaining proper distancing and to avoid unnecessary time delays.

ii. If sidebar conferences must be conducted in the courtroom with others present, courts shall consider use (or expanded use) of white noise machines to mask the participants' voices.

iii. In lieu of oral sidebars, courts shall consider use of real-time electronic messaging feeds between counsel and the court that allow lawyers to submit issues and the court to address them electronically without the time delays of oral sidebars.

j. *Special considerations for criminal defendants in jury trials*: If the defendant is in custody, courts shall ensure that new courtroom configurations do not reveal any in-custody status (e.g., preventing the jury from seeing or hearing shackles, handcuffs, prison garb, etc.).

k. *Jury breaks*: Courts shall consider procedures for discharging jurors for breaks that do not separate the jurors into groups. If jurors must be separated into groups to maintain distancing during breaks, courts shall consider procedures that avoid separating jurors into the same groups each time.

l. *Break locations*: Courts shall consider permitting jurors to use a larger courthouse conference room or training area, or to vacate the building, for breaks during trial. Alternatively, courts shall consider keeping jurors in the courtroom for recesses (in effect becoming the jury room) with all other court participants leaving and the jurors remaining.

m. *Notebooks*: Courts may provide jurors a large envelope in which jurors can store their own notebooks and pens at the end of the trial day in the jury room with no one else handling the notebooks and pens.

III. Deliberations

a. *Location*: Courts shall determine a location for jury deliberations that permits appropriate physical distancing.

b. *Transparent face shields*: Courts shall require all members of the jury to wear their transparent face shields during deliberations. Courts shall instruct jurors to take home the face shields at end of each day for cleaning and to bring them back for the next day's deliberations.

c. *Sight lines and sound*: Courts shall ensure adequate sight lines and sufficient sound amplification to enable jurors to hear and see each other while deliberating. Courts shall test lines of sight and audio amplification in advance of trials, and shall instruct jurors to advise the court if they cannot hear or see any other jurors during deliberations.

d. *Maintaining integrity and confidentiality*: Courts shall ensure no outside presence interferes in the deliberations. As necessary, courts may instruct a bailiff or other court personnel to stand outside the doors to the jury's deliberation room and ensure no one overhears jurors during deliberations who might be talking louder than normal to overcome physical distancing.

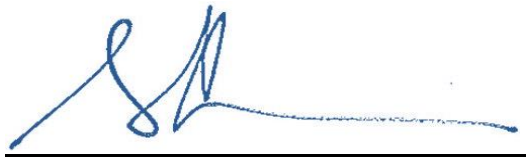
e. *Equipment to view exhibits*: Courts shall provide jurors access to equipment required for viewing all exhibits and jury instructions during deliberations.

f. *Physical exhibits*: Courts shall place admitted physical exhibits on a central table in the jury room during deliberations and shall adopt procedures to sanitize any physical exhibits a juror touches.

The court will continue to monitor circumstances and update this order as necessary.

Dated this 22nd day of July, 2020.

The Supreme Court of Iowa

By 

Susan Larson Christensen, Chief Justice

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