



Protocol for In-Courthouse COVID-19 Symptom
or At-Risk Condition by a Participant in Arizona
State Courts

(Version 4.0, As of October 29, 2020)

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PREAMBLE

This document sets forth a recommended protocol for courts to address in-courthouse symptom(s) or at-risk condition(s) by a participant in Arizona State Courts. This Protocol is the product of the Supreme Court of Arizona’s COVID-19 Continuity of Court Operations During a Health Emergency Workgroup and the Jury Management Subgroup (collectively, the “Plan B Workgroup”) in response to a question raised during the Superior Court Presiding Judges’ Meeting on Monday, June 22, 2020.

This Protocol Version 4.0 is current as of October 29, 2020 and replaces the original Protocol, which was current as of July 1, 2020, Version 2.0, which was current as of July 20, 2020, and Version 3.0, which was current as of August 20, 2020. For ease of reference, changes of consequence in this Protocol Version 4.0, when compared to Protocol Version 3.0, are underlined; otherwise, the text of the Protocol Version 3.0 remains unchanged in this Version 4.0. Accordingly, new or different information in this Protocol Version 4.0, when compared to the Protocol Version 3.0, is in redline (underlined) showing the new or different information.

This Protocol Version 4.0 is prompted by the issuance of Arizona Supreme Court Administrative Office of the Courts Administrative Directive (A.D.) 2020-22, “Health Screening Protocols” (October 22, 2020). A.D. 2020-22 replaces A.D. 2020-17, “Health Screening Protocols” (August 10, 2020). The primary change in A.D. 2020-22, when compared to A.D. 2020-17, is to account for a revised definition of “close contact” promulgated by the Centers for Disease Control and Prevention (CDC) on October 21, 2020. A.D. 2020-22 is attached as Appendix 1. The primary focus of this Protocol Version 4.0 is to account for A.D. 2020-22, and to ensure that this Protocol Version 4.0 uses consistent terminology with A.D. 2020-22.

This Protocol Version 4.0, as with Protocol Versions 2.0 and 3.0, follows the most recent Arizona Supreme Court Administrative Order (A.O.) 2020-143 (August 26, 2020), “Authorizing Limitation of Court Operations During a Public Health Emergency And Transition To Resumption Of Certain Operations.” A.O. 2020-143 is the most recent comprehensive directive for court operations in Arizona. A.O. 2020-143 provides additional directives on transition to “resume certain operations in an orderly way that prioritizes the safety of the public, judicial officers, and employees of the judiciary.” This Protocol Version 4.0 is written to provide a resource for local courts to help implement A.O. 2020-143.

The primary focus of Protocol Version 2.0 was to incorporate comments and suggestions provided to the Plan B Workgroup by individuals at the Mel and Enid Zuckerman College of Public Health at the University of Arizona. Those comments and suggestions remain in this Protocol Version 4.0. These public servants were kind enough to provide, at the request of the Plan B Workgroup, comments and suggestions from a public health perspective that helped fill an enormous need. The Plan B Workgroup owes an enormous, but unpayable, debt to those individuals for their willingness to do so. The Plan B Workgroup recognizes, thanks, and commends Dr. Kelly Reynolds, MSPH, PhD, Professor, Department Chair of Community, Environment and Policy; Dr. Joe Gerald, MD, Associate Professor & Program Director, Public Protocol for In-Courthouse COVID-19 Symptom or At-Risk Condition by a Participant in Arizona State Courts

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Health Policy & Management; Dr. Kristen Pogreba-Brown, PhD, MPH, Assistant Professor of Epidemiology; and Leila Barraza, J.D., M.P.H., Associate Professor and Interim Director, Arizona Area Health Education Centers, for taking time to review and comment on the original Protocol. This Protocol Version 4.0, as with Protocol Versions 2.0 and 3.0, continues to have benefitted greatly from their generous contributions and insight.

This Protocol Version 4.0 builds on the June 1, 2020 Plan B Workgroup Jury Management Best Practice Recommendations During the COVID-19 Public Health Emergency¹ and the May 1, 2020 COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup Best Practice Recommendations². Those Recommendations and this Protocol Version 4.0 focus on enhancing and maintaining the safety of the courthouse environment, recognizing COVID-19 transmission may occur among those who are without symptoms, and known exposures means that the physical space of a courthouse is of utmost importance. Masking and social distancing is particularly important. Although masking and social distancing cannot eliminate all risk, such measures can reduce risks. In addition, frequent disinfection of common surfaces (e.g., door handles, tables) and bathrooms should be a priority as well. Other measures, such as workplace testing, merit consideration but are beyond the scope of those Recommendations or this Protocol Version 4.0. In addition, individuals who have been incarcerated should be considered at higher risk of active infection owing to greater rates of transmission in institutionalized settings than in the general public.

Finally, because knowledge is changing quickly, additional information available (from a public health perspective, based on experience in courts, and other resources) should be referenced in addressing any incident that arises.

I. “PARTICIPANT” DEFINED

In this Protocol, “Participant” is defined as including each of the following: (1) a criminal defendant; (2) a juror (defined to include both a potential juror and a juror selected to participate in a trial); (3) the judge presiding over a matter; (4) a witness; (5) an attorney representing a party or witness; (6) a party, other than a criminal defendant, and including a party representative; (7) a victim, victim representative, and victim advocate; (8) a court reporter; (9) an interpreter; (10) security personnel (particularly where a criminal defendant is in custody), and (11) court staff involved in a matter, including a bailiff, a deputy clerk, and others present. These Participants are

¹ <https://www.azcourts.gov/Portals/216/Pandemic/JuryManagementWkGp.pdf?ver=2020-06-02-131720-410>

² <https://www.azcourts.gov/Portals/216/Pandemic/050120CV19COOPRecommendations.pdf?ver=2020-05-06-150156-047>

discussed in four categories (criminal defendant; potential juror or juror; judge; and all others) in Section VI below.

II. “SYMPTOMS” AND “AT-RISK CONDITIONS” DEFINED

Arizona Supreme Court Administrative Order 2020-143 (August 26, 2020) at 3 directs the Administrative Office of the Courts to provide a health screening protocol, directing that individuals who do not pass the protocol be excluded from any courthouse. A.D. 2020-22 defines COVID-19 “Symptoms” (“persistent unexplained symptoms at any time within the last 10 days”) and “At-Risk Conditions” for (1) judicial and court personnel and (2) the public coming to the courthouse (i.e., all other individuals coming to the courthouse). This Protocol uses the definitions for “Symptom” and “At-Risk Condition” reflected in A.D. 2020-22, in conjunction with information provided by public health agencies.

“**Symptom**” means any one or more³ of the following, that are persistent and unexplained, at any time within the last 10 days:

- Fever over 100.4 degrees Fahrenheit or body chills;
- Cough;
- Shortness of breath or difficulty breathing;
- Fatigue;
- Muscle or body aches;
- Headache;
- New loss of taste or smell;
- Sore throat;
- Congestion or runny nose;
- Nausea or vomiting;
- Diarrhea; or
- Additional conditions identified by a public health agency. See, e.g., <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (listing symptoms)

“**At-Risk Condition**” means:

³ It is important to note that the presence of a single Symptom will activate the protocol.

- Have had a COVID-19 diagnosis or a positive test result during the last 10 days; or
- A close contact as defined by being within 6 feet of an infected person for a cumulative total of 15 minutes or more within a 24 hour period starting from 2 days before the infected person’s illness (symptoms) onset or, for asymptomatic persons, 2 days prior to the positive test specimen collection from the infected person.

Judicial officers and court personnel with any Symptom or At-Risk Condition “should notify their supervisor/presiding judge and Human Resources Department for information and direction on returning to the workplace and, if needed, seek medical advice/treatment.” [A.D. 2020-22 at 3] Other participants with any Symptom or At-Risk Condition shall be excluded from entering the courthouse. [A.D. 2020-22 at 5]

The CDC and other public health agencies have identified symptoms of COVID-19 and what is considered having close contact with someone who has COVID-19 or has exhibited symptoms consistent with COVID-19. Recognizing that symptoms and the definition of close contact may change as additional information is identified, when crafting a protocol for a specific court or courthouse, local courts should consult the most recent information available from the CDC, the Arizona Department of Health Services, county and local health agencies, and other trusted sources for the most current identified symptoms, definition of close contact, and best practices more generally in addressing COVID-19. Local courts also should frequently reference those trusted sources in clarifying, modifying, and changing a protocol for a specific court or courthouse. As of October 29, 2020, such information can be located at:

- CDC:
 - <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (COVID-19 information)
 - <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (symptoms of coronavirus)
 - <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html> (when to quarantine)
 - <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html> (people at increased risk)
- Arizona Department of Health Services: <https://azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/index.php#novel-coronavirus-home>
- Arizona Counties:
 - Apache: <https://www.apachecountyaz.gov/>
 - Cochise: <https://covid-cochisehealth.hub.arcgis.com/>
 - Coconino: <https://www.coconino.az.gov/2294/COVID-19-Information>

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- Gila: https://www.gilacountyaz.gov/news_detail_T5_R475.php
- Graham: <https://www.graham.az.gov/CivicAlerts.aspx?AID=181>
- Greenlee: <https://www.co.greenlee.az.us/departments/health-county-services/>
- La Paz: <https://www.lpchd.com/>
- Maricopa: <https://www.maricopa.gov/5460/Coronavirus-Disease-2019>
- Mohave: <https://covid-19-mohave.hub.arcgis.com/>
- Navajo: <https://www.navajocountyaz.gov/Departments/Public-Health-Services/COVID-19>
- Pima: <https://webcms.pima.gov/cms/One.aspx?portalId=169&pageId=527452>
- Pinal: <https://www.pinalcountyaz.gov/publichealth/Coronavirus/Pages/Home.aspx>
- Santa Cruz: <https://www.santacruzcountyaz.gov/732/COVID-19-Novel-Coronavirus>
- Yavapai: <https://www.yavapai.us/chs>
- Yuma: <https://www.yumacountyaz.gov/government/health-district/divisions/emergency-preparedness-program/coronavirus-2019-covid-19-yuma-county-updates-3651>

III. NEED FOR COMMUNICATION WITH APPROPRIATE COURT STAFF WHEN A PARTICIPANT WITH ANY SYMPTOM OR AT-RISK CONDITION IS DENIED ACCESS TO THE COURTHOUSE

Courts should adopt return to work criteria for judicial officers and court personnel with any Symptom or At-Risk Condition consistent with guidance from the CDC and state and county health authorities [A.D. 2020-22 at 3], and judicial officers and court personnel should comply with such criteria established by the courts. See e.g., <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/returning-to-work.html>

Under screening protocols currently in place, any Participant (including judicial officers and court personnel in courts that have not adopted return to work criteria) with any Symptom or At-Risk Condition seeking to enter a courthouse, “shall be excluded from entering the courthouse until: (1) Ten days have passed since the onset of Symptoms [and/or positive test], 24 hours have passed since fever resolved without use of medication, and other symptoms have improved; (2) Fourteen days have passed after [the last time the Participant had] close contact with someone with COVID-19 illness with no development of symptoms. A close contact is defined as being within 6 feet of an infected person for a cumulative total of 15 minutes or more within a 24 hour period starting from 2 days before the infected person’s illness (symptoms) onset or, for asymptomatic persons, 2 days prior to the positive test specimen collection from the infected person; (3) if exclusion is for a symptom, a medical diagnosis other than COVID-19 Protocol for In-Courthouse COVID-19 Symptom or At-Risk Condition by a Participant in Arizona State Courts

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explains that symptom; (4) negative COVID-19 test results indicate no COVID-19 infection under CDC guidelines.” [A.D. 2020-22 at 5]⁴ This includes, where applicable, self-screening. [A.D. 2020-22 at 4-5] Any Participant who self-screens and reports a Symptom or At-Risk Condition, “should call the court to reschedule or be referred to appropriate electronic or on-line options for finding information, filing of motions, or other court services.” [A.D. 2020-22 at 5] Any Participant who is refused entrance to a courthouse for any of these reasons, “will be provided a phone number to reschedule or be referred to appropriate electronic or on-line options for finding information, filing motions, or other court services.” [A.D. 2020-22 at 5-6] Courts are required to provide notice to the public of this and other screening information through communications about any court proceeding, by posting the information on the court’s website and posting signage at all entrances at the courthouse. [A.D. 2020-22 at 5 & 6]

Local courts should identify, communicate, and implement a communication protocol to immediately relay to appropriate court personnel when a Participant with any Symptom or At-Risk Condition is denied access to the courthouse, based on self-reporting or screening. Such communication is essential to ensure that appropriate measures are taken, to ensure that other Participants are not waiting for extended periods of time for a Participant who has been refused entrance to the courthouse and, as a result, will not be appearing, and to prevent warrants from being issued or matters proceeding by default for a failure to appear. To the extent this involves private health information, such information should be shared only as necessary and with efforts to safeguard it.

Although guided by the needs and structure of the specific local court, at a minimum, the communication protocol likely would involve immediately communicating the fact of a Participant with any Symptom or At-Risk Condition being refused access to the courthouse, based on self-reporting or screening, as follows:

- **Criminal Defendant with any Symptom or At-Risk Condition:** Immediately communicate to court administration and the specific trial judge/division where the criminal defendant was set for a hearing the fact of being refused access to the courthouse and any available details, including the name of the individual. In addition, if the individual is or was in custody, immediately communicate to appropriate personnel where the individual is being held or was held in custody.
- **Potential Juror or Juror with any Symptom or At-Risk Condition:**
 - **For a potential juror:** Immediately communicate to court administration and the jury commissioner the fact of the potential

⁴ The bracketed language from this quote taken from A.D. 2020-22 clarifies the requirements consistent with other provisions in that directive.

juror being refused access to the courthouse and any available details, including the name of the individual.

- **For a juror:** Immediately communicate to court administration and the specific trial judge/division where the juror was serving the fact of the juror being refused access to the courthouse and any available details, including the name of the individual.
- **Judge Presiding Over the Matter with any Symptom or At-Risk Condition:** Immediately communicate to court administration, the presiding judge of the court and, if applicable, the relevant department presiding judge, and the specific trial judge division where the judge presiding over the matter was serving, the fact of being refused access to the courthouse and any available details.
- **Other Participant with any Symptom or At-Risk Condition:** Immediately communicate to court administration, the presiding judge of the court, and the specific trial judge(s)/division(s) where the other Participant was set for a hearing(s), the fact of being refused access to the courthouse and any available details, including the name of the individual. If the Other Participant is a court employee, they should be directed to contact Human Resources to discuss COVID-related benefits.

IV. NEED FOR JUDGE PRESIDING OVER CALENDAR TO DIRECT PARTICIPANTS TO REPORT ANY SYMPTOM OR AT-RISK CONDITION BY PARTICIPANTS TO THE COURT

During the final pretrial conference, at the beginning of a jury trial when jurors are selected, and at the beginning of each court day, the judge presiding over the calendar should direct Participants in court (including the jurors), on the record, of the need for all Participants to bring to the judge's attention, through a pre-determined manner (ideally through electronic means, but with other options available), any concerns about any Symptom or At-Risk Condition by any Participant as soon as possible after learning of such information. This would include reporting of any Symptom or At-Risk Condition of any Participant to the court through electronic or other means what means are appropriate, recipients of such information (including more than one recipient to ensure redundancy, such as the judge's judicial assistant, bailiff, and a court administrator), specific contact information for recipients, and the need, upon receipt of such a report, for the court to take appropriate actions, including to undertake questioning based on such a report to understand the details and circumstances and decide how to proceed. Jurors should also be directed of the need for Participants to bring any health safety concerns to the court's attention.

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Attached as Appendix 2 are samples of: (1) an advisement to be given at the beginning of each court day and at the beginning of each day of trial (or, as appropriate, each matter) when the appropriate Participants are present; (2) notification language in an ongoing matter; (3) notification language in a completed matter; (4) questions for a jury regarding any Symptom or At-RiskCondition; and (5) a disclosure.

V. MANNER OF REPORTING OF ANY SYMPTOM OR AT-RISK CONDITION

A. *Remote Reporting Through Electronic Means*

Because any Participant with any Symptom or At-RiskCondition should not be allowed to enter a courthouse until they meet one of the qualifying criteria under A.D. 2020-22, reporting of such Symptom or At-Risk Condition by any Participant **should** be made remotely by electronic means, which could include electronic mail, text message, telephone, or video conferencing. In that case, the participant with any Symptom or At-Risk Condition **should not** be allowed in the courthouse and **should not** be asked to return to the courthouse. Instead, as soon as possible, appropriate questioning of the participant with any Symptom or At-Risk Condition should be attempted and made (if possible) by the appropriate individual (typically the judge presiding over the calendar or, if the judge has any Symptom or At-RiskCondition, another judge) on the record through electronic means and then appropriate disclosure and follow-up taken, as discussed below in Section VII.

B. *In-Courthouse Reporting*

If a Participant with any Symptom or At-Risk Condition either reports such information while in the courthouse, or becomes symptomatic while in the courthouse, that Participant: (1) should be isolated; (2) should be removed from the courthouse immediately; and (3) as soon as possible after having been removed from the courthouse, appropriate questioning of the Participant with any Symptom or At-Risk Condition should be attempted and made (if possible) by the appropriate individual (typically the judge presiding over the calendar or, if the judge has any Symptom or At-Risk Condition, another judge) on the record through electronic means and then appropriate disclosure and follow up should be taken, as discussed below in Section VII.

Attached as Appendix 3 is a Checklist summarizing appropriate steps to be taken, depending upon the manner such information is reported, as well as the protocols for specific types of Participants.

VI. PROTOCOLS FOR SPECIFIC TYPES OF PARTICIPANTS

A. *Criminal Defendant with any Symptom or At-Risk Condition*

If the Participant with any Symptom or At-Risk Condition is a criminal defendant, a record should be made of the Symptom or At-Risk Condition, with the criminal defendant present remotely using electronic means (and, if such remote appearance by the criminal defendant is not possible, in the absence of the criminal defendant). Unless the criminal defendant with any Symptom or At-Risk Condition does not have a right to be physically present or properly waives the right to be physically present, either by agreeing to be remotely present using electronic means (unless such remote appearance is not possible) or to not be present at all, and is found to have knowingly, voluntarily, and intelligently waived the right to be physically present, the judge presiding over the matter would need to either (1) continue the matter until the criminal defendant could again properly be present in court to participate or (2) if a trial, and the trial cannot be continued, declare a mistrial. Appropriate disclosure and follow-up would need to be taken as discussed below in Section VII.

B. *Potential Juror or Juror with any Symptom or At-Risk Condition*

If the Participant with any Symptom or At-Risk Condition is a potential juror or juror, the court should determine whether jury selection and the trial can proceed and if any disclosures to other Participants is appropriate (which would depend, chiefly, on whether the potential juror or juror with any Symptom or At-Risk Condition was ever in the courthouse during the time period in question).

Questions 8 and 19, posted in a Q&A on June 20, 2020⁵, provide the following protocol addressing jurors who are selected to serve:

8. Does any court have contingencies if a juror is exposed to a COVID-19 case during trial?

This should be handled on a case-by-case basis by the trial judge. Jurors must follow the screening protocol required by Administrative Directive [2020-22] each day before they travel to the courthouse. It is recommended that the judge who is presiding over the trial have some type of daily check-in with the jurors, i.e., a reminder to bring to the judge's attention, through

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<https://azcourts.sharepoint.com/:b:/s/EmergencyPlanning/EViUhYtiHixGiEr8otkyRc0BoeZJaBzlaTWHA1vk4hcBcA?e=nrCXpF> (Last visited on August 20, 2020).

a pre-determined mechanism, any concerns about the juror's health. If a seated juror reports an exposure to COVID-19, the judge may need to question the juror to understand the circumstances and consider releasing the juror if necessary. This can be done remotely with a juror who stays home based on the self-screening.

The court should have a conversation with the other jurors as it relates to their ability to continue to serve, e.g., are they going to be too concerned, does the court need to take further steps, etc. This will be judge-specific, case-specific, and juror-specific, based on the information that is provided. Additionally, the CDC recommended protocol for response to exposure in the workplace should be used in the jury context: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

19. Are there any confidentiality concerns when a juror or potential juror discloses health information during the voir dire/selection process?

When a juror discloses concerns based on health issues, or a potential juror discloses during the qualification/voir dire process a similar concern, there needs to be a re-enforced caution on that as confidential information. If this discussion becomes an "in chambers" discussion, this adds another complexity, much like side-bar conferences. Courts may consider a telephonic alert from the juror of significant symptoms, then a video conference to interview the juror on the record. The explanation to the rest of the panel can then become a generic, "Juror #6 has been excused upon his/her request for personal reasons."

Technically, if a juror with any Symptom or At-Risk Condition is excused and there are sufficient alternate jurors to allow the trial to proceed (or an agreement/waiver that the trial could proceed without the juror), the remaining jurors could continue and allow the trial to proceed. Practically, however, the inquiry by the presiding judge with the remaining jurors, on the record with the parties present, would provide information for the trial judge to determine whether the trial properly should proceed. That decision would be based on the responses provided, the estimated duration of the trial, the Symptom or At-Risk Condition involved, input from the parties and other Participants, and other case-specific information.

Excusing a juror with any Symptom or At-Risk Condition implicates numerous other issues: What information should be disclosed to the other jurors, bearing in mind the privacy rights of the persons infected with the virus? What types of questions should be asked of the

remaining jurors? When did the issue arise (at the beginning of trial, in the middle of trial, during deliberations)? If an At-Risk Condition is involved, what was the nature of the At-Risk Condition and did measures taken during the trial sufficiently minimize the risk to other Participants? How much information, and when, should be disclosed to jurors and what type of follow-up questions would be necessary and appropriate with jurors to determine their ability to proceed forward and to be fair and impartial jurors? In addition, appropriate disclosure and follow-up would need to be taken as discussed below in Section VII.

C. Judge Presiding Over the Matter with any Symptom or At-Risk Condition

If the Participant with any Symptom or At-Risk Condition is the judge presiding over the matter, that judge should immediately leave the courthouse and should report such Symptom or At-Risk Condition to court staff and the applicable presiding judge, or other applicable court administrator, by electronic means. The issue should be raised with counsel and the parties on the record, with another judge presiding, and appropriate questioning of the originally assigned judge presiding over the matter with any Symptom or At-Risk Condition should be attempted and made (if possible) on the record through electronic means and then appropriate disclosure and follow-up should be taken, as discussed below in Section VII.

Whether another judge could replace the judge presiding over the matter who developed any Symptom or At-Risk Condition would involve a case-by-case inquiry in consultation with the parties and their attorneys. The inquiry in a criminal matter is governed by Arizona Rule of Criminal Procedure 19.4, which by analogy would provide guidance for all jury trials and other matters. Rule 19.4 provides that, where a judge presiding over a criminal matter “becomes ill or is otherwise incapacitated, that judge may be replaced by another judge of the same court,” or if no such judge is available, the matter must be continued “until selection of another judge to resume the proceeding.” Ariz. R. Crim. P. 19.4. “If the new judge believes after reviewing the record that continuing the proceeding would be unduly prejudicial, the judge must order a new trial or proceeding. The judge should consider the manifest necessity of declaring a mistrial over the objection of the defendant before ordering it.” *Id.*

D. Other Participants with any Symptom or At-Risk Condition

Other Participants in a matter include witnesses; attorneys representing parties or witnesses; parties (other than a criminal defendant) and party representatives; a victim, victim representative, and victim advocate; court reporters; interpreters; security personnel and other court staff, such as a bailiff and a deputy clerk; and others present. The manner of reporting of any Symptom or At-Risk Condition by these other Participants should follow the protocol in Section V above.

If the other Participant with any Symptom or At-Risk Condition is one of these other Participants, the issue should be raised with the judge presiding over the matter, counsel, and the parties, on the record, and appropriate remote questioning of the other Participant with any Symptom or At-Risk Condition should be attempted and made (if possible) on the record through

electronic means and then appropriate disclosure and follow-up should be taken, as discussed below in Section VII.

When any Symptom or At-Risk Condition is reported for such other Participant, in deciding how the matter should continue, the judge presiding over the matter should consider whether the other Participant could be replaced, whether the participation of the other Participant could be waived, or whether the other Participant could remotely participate.

i. Could the Participation of the Other Participant with any Symptom or At-Risk Condition Be Replaced or Waived?

Resolving this question would be based on a case-by-case inquiry addressing relevant issues that could include: (1) is the other Participant a witness? (2) if so, could another witness provide the necessary testimony instead? (3) if so, is the other Participant's testimony necessary? (4) if the other Participant is an attorney, is co-counsel available to continue? (5) can the involvement of the other Participant be waived (for example, a client or client representative in a civil matter or trial, or a case agent in a criminal trial)? (6) if the other Participant is a member of court staff, is there another member of court staff who could replace that person? and (7) any other factors that would impact the ability of the other Participant to be replaced or waived. Depending upon the case-specific answers to these questions, and any other issues identified by the parties, the judge presiding over the matter would then need to decide whether the matter should continue with the other Participant being replaced, whether the participation of the other Participant could be waived, or whether the other Participant could participate remotely.

ii. Could the Other Participant with any Symptom or At-Risk Condition Participate Remotely?

If the other Participant cannot be replaced or their presence waived, consideration should be given as to whether the other Participant could remotely participate. Resolving this question would be based on a case-by-case inquiry addressing relevant issues that could include: (1) is the other Participant a witness? (2) if so, has the witness begun testifying? (3) is the witness medically well enough to complete testimony remotely? (4) does the Confrontation Clause apply? (5) if the Confrontation Clause does apply, could remote testimony be allowed?⁶ (6) is remote participation feasible given available technology? (7) is remote participation feasible given the role of the other Participant in the proceeding? and (8) any other factors that would impact the ability of the other Participant to participate remotely. Depending upon the answers to these case-specific questions, as well as any other issues identified by the parties, the judge presiding over the matter

⁶ See *Maryland v. Craig*, 497 U.S. 836, 850 (1990) (authorizing remote testimony where the State shows that (1) the denial of face-to-face confrontation is necessary to further an important public policy; (2) the reliability of the testimony is otherwise assured; and (3) there is a case-specific showing of necessity for the accommodation); see also *State ex rel Montgomery v. Kemp*, 239 Ariz. 332, 336 ¶ 19 (Ariz. Ct. App. 2016) (adopting *Maryland v. Craig* standard for the use of two-way video testimony in a criminal trial).

would need to decide whether the matter should continue with the other Participant participating remotely, whether a continuance would be needed, or whether a mistrial should be declared.

VII. APPROPRIATE FOLLOW-UP AND DISCLOSURE

Regardless of whether the matter continues, is suspended, or a mistrial is declared, appropriate follow-up and disclosure is essential any time the court learns that a Participant has any Symptom or At-Risk Condition. This includes the judge presiding over the matter (or, if the judge presiding over the matter has any Symptom or At-Risk Condition, another judge or other appropriate court personnel) immediately gathering and then acting on the following:

A. Immediately Gather Available Details About When and How the Participant with any Symptom or At-Risk Condition Developed Symptoms or Was Exposed

While protecting privacy rights, gathering available details about when and how the Participant with any Symptom or At-Risk Condition developed the Symptom or experienced the At-Risk Condition may provide critical information to help prevent further potential spread. Accordingly, immediately gathering available relevant details may be essential to further those significant public health functions. To the extent practical or possible, such information should be gathered by the court in a manner that furthers privacy rights. In addition, the court should safeguard information so that it is shared only with appropriate health officials inside and outside of the court.

B. Identifying Contacts the Participant with any Symptom or At-Risk Condition Had While In Court

This inquiry focuses on where, physically, the Participant with any Symptom or At-Risk Condition was located while participating in the court proceedings. This would include identifying specific entries, security screening facilities, rooms, courtrooms, elevators, and other spaces in the courthouse. This also includes confirming whether the Participant wore a mask at all times when in the courthouse (and, if not, when and where), identifying who was closest to the Participant and whether others were close enough to cause At-Risk Condition concerns for others, facilities used by the Participant in the courthouse, items touched by the Participant (e.g., paper documents, writing instruments, electronic display screens, etc.), and other issues and facts relevant to ensuring safety for others. If possible, courts also should take measures to identify other individuals who were present in the courthouse and where they were present in the courthouse, if notification under this protocol is indicated, including under Section VII(C) below.

This information needs to be identified quickly to undertake numerous important follow-up cautions, including communication, remediation, target increased cleaning, isolation, etc. Unless a local court already has a plan in place for such actions (including training for appropriate

personnel), continuing education is recommended for the individuals involved in this investigation so that they have the appropriate training to undertake such an investigation.

C. Communicating With Participants Who Had or May Have Had Contact with the Participant with any Symptom or At-Risk Condition While In Court

As a follow-up to these identification efforts, measures should be taken, where possible, to immediately communicate through electronic or other appropriate means with other Participants who had or may have had contact with the Participant with any Symptom or At-Risk Condition while in court to advise them of that fact, any details that can be provided, and recommend that those Participants and other individuals get tested. Privacy considerations are important, so the notification should not reveal the name of the Participant with any Symptom or At-Risk Condition. Another consideration is that the local court may receive many questions following this communication. It may be helpful to be prepared to answer these questions, perhaps with a script or list of available resources (such as local or state health department websites). Courts also should explore whether such efforts may be undertaken by local health officials outside of the court.

D. Communicating With Courthouse Personnel To Ensure Remedial Efforts Are Undertaken

To supplement safety measures, including screening, social distancing, and deep and frequent cleaning in courthouses, when a Participant with any Symptom or At-Risk Condition is identified, along with ensuring that individual is not allowed back in the courthouse and encouraging that person to seek medical care, communication efforts should relay the information, including available details, to the presiding judge, court administration, court security, and any other individuals involved in the courthouse to allow for those individuals to take measures to ensure safety and security in the courthouse. Subsequent follow-up would include deep cleaning and other remedial efforts, appropriate quarantines, clarification in protocol based on information learned, and documentation of such measures undertaken by the court. Such communication may also involve others implicated, including agencies providing services and assigning counsel to represent individuals.

As resources, the CDC has a listing of information about quarantines including various scenarios and a calendar. See <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html>. In addition, the Maricopa County Health Department has guidelines for quarantine after a COVID-19 close contact. See <https://www.maricopa.gov/DocumentCenter/View/58864/Quarantine-Guidance-for-Household-and-Close-Contacts?bidId=> (“Quarantine Guidance for Household and Close Contacts”); see also <https://www.maricopa.gov/5512/Sick-or-Exposed-to-COVID-19> (“Sick or Exposed to COVID-19”). The United States Department of Labor has guidance for measures in the

workplace. See <https://www.osha.gov/Publications/OSHA3990.pdf> (“Guidance on Preparing Workplaces for COVID-19”).

Appendix 1 (Administrative Directive 2020-22)

IN THE SUPREME COURT OF THE STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

In the Matter of:)
)
HEALTH SCREENING PROTOCOLS) Administrative Directive
) No. 2020 - 22
) (Replacing Administrative
) Directive No. 2020-17)
_____)

To protect courthouse safety during the COVID-19 pandemic, the Chief Justice issued Supreme Court Administrative Order No. 2020-143, effective August 26, 2020. The Order requires the Administrative Office of the Courts to provide judicial leadership with health screening protocols to be used to detect COVID-19-related symptoms consistent with recommendations by public health officials to prevent the spread of the virus.

Therefore, pursuant to Administrative Order No. 2020-143,

IT IS DIRECTED that the “Arizona Courts Health Screening Protocols for Judicial and Court Personnel” and “Arizona Courts Health Screening Protocols for the Public” attached to this Directive are hereby approved and provided to judicial leadership for use in implementing Section I, paragraphs (9) and (10) of Administrative Order No. 2020-143.

IT IS FURTHER DIRECTED that this Directive replace Administrative Directive No. 2020-17.

Dated this 23rd day of October, 2020.

DAVID K. BYERS
Administrative Director of the Courts



Updated October 23, 2020

ARIZONA COURTS HEALTH SCREENING PROTOCOLS FOR JUDICIAL OFFICERS AND COURT PERSONNEL

The Arizona Judiciary is committed to the safety of the public, judges and court personnel. Pursuant to Supreme Court Administrative Order No. 2020-143, the Administrative Office of the Courts has established the following updated health screening protocols for judicial officers and court personnel, effective on Oct 23, 2020:

Daily Wellness Check

All judicial officers and court personnel are required to conduct a daily wellness check, prior to coming into the workplace, that includes checking for any of the following:

- Persistent unexplained symptoms any time within the last 10 days:
 - Fever over 100.4 degrees Fahrenheit or body chills
 - Cough
 - Shortness of breath or difficulty breathing
 - Fatigue
 - Muscle or body aches
 - Headache
 - New loss of taste or smell
 - Sore throat
 - Congestion or runny nose
 - Nausea or vomiting
 - Diarrhea

- At- risk conditions:
 - Have had a COVID-19 diagnosis or a positive test result during the last 10 days.
 - A close contact as defined by being within 6 feet of an infected person for a cumulative total of 15 minutes or more within a 24 hour period starting from 2 days before the infected person's illness (symptoms) onset or, for asymptomatic persons, 2 days prior to the positive test specimen collection from the infected person.

Judicial officers and court personnel who have one or more of these symptoms or conditions should notify their supervisor/presiding judge and Human Resources Department for information and direction on returning to the workplace and, if needed, seek medical advice/treatment.

The above-mentioned listing of symptoms and conditions may change based on updated guidance from the Center for Disease Control and Prevention (CDC) and state and county health authorities.

Return to Workplace

Courts should adopt return to workplace criteria consistent with guidance from CDC and state and county health authorities.

Temperature Taking

Court leadership may implement body temperature screening for judicial officers and court personnel.

Notes:

1. Information on COVID-19 symptoms and the self-check process are updated frequently and can be found on the CDC website at <https://www.cdc.gov/coronavirus>. The CDC website also provides information on the differences between the symptoms of COVID-19 and Influenza (Flu). Please refer to this website for the most current guidance.
2. CDC advises that the foregoing list of symptoms does not include all symptoms. CDC recommends calling your medical provider for any other symptoms that are severe or concerning to you.
3. Having a temperature reading at 100.4 degrees Fahrenheit or above does not necessarily mean a person is sick with COVID-19. Some activities, the intake of caffeine, and some medical conditions can raise your body temperature.

Approved October 23, 2020

Administrative Directive No. 2020-22



Updated October 23, 2020

ARIZONA COURTS HEALTH SCREENING PROTOCOLS FOR THE PUBLIC

The Arizona Judiciary is committed to the safety of the public, judges and court personnel. Pursuant to Supreme Court Administrative Order No. 2020-143, the Administrative Office of the Courts has established the following health screening protocols for Arizona's courts, effective on October 23, 2020:

LEVEL 1: BASIC SCREENING (No Security Personnel; No Body Temperature Screening)

In courts that do not have security screening, courts should ask the public to self-screen and not come to court with any of the following:

- Persistent unexplained symptoms any time within the last 10 days:
 - Fever over 100.4 degrees Fahrenheit or body chills
 - Cough
 - Shortness of breath or difficulty breathing
 - Fatigue
 - Muscle or body aches
 - Headache
 - New loss of taste or smell
 - Sore throat
 - Congestion or runny nose
 - Nausea or vomiting
 - Diarrhea
- At-risk conditions:
 - Have had a COVID-19 diagnosis or a positive test result during the last 10 days.
 - A close contact as defined by being within 6 feet of an infected person for a cumulative total of 15 minutes or more within a 24 hour period starting from 2 days before the infected person's illness (symptoms) onset or, for asymptomatic persons, 2 days prior to the positive test specimen collection from the infected person.

Note: Information on COVID-19 symptoms and a self-check process are updated frequently and can be found on the Centers for Disease Control and Prevention (CDC) website at <https://www.cdc.gov/coronavirus>. The CDC also provides information on the difference between symptoms of COVID-19 and Influenza (flu). Please refer to this website for the most current guidance.

Courts shall provide notice to the public of this additional screening through communications about any court proceeding, posting the information on the court's website, and posting signage at all courthouse entrances.

Service to Individuals Who Report Symptoms or Conditions: Courthouse visitors who have any of the above symptoms or conditions should call the court to reschedule or be referred to appropriate electronic or on-line options for finding information, filing of motions, or other court services. Court staff should take appropriate action to provide access to court services while maintaining appropriate safeguards. In-person proceedings should not be scheduled until cessation of symptoms, a diagnosis of a non-contagious condition that explains a symptom, or negative COVID-19 test results no longer indicate COVID-19 infection under CDC guidelines or direction from other state and county health authorities.

**LEVEL 2: BASIC + ENHANCED SCREENING
(Security Personnel; No Body Temperature Screening)**

In courts with security screening, security officers or other designated court staff shall ask courthouse visitors the following two questions:

1. Have you tested positive or experienced any symptoms of COVID-19 in the last 10 days?
2. Have you had contact with someone who has tested positive for the COVID-19 virus in the last 14 days?

If a courthouse visitor answers "yes" to any of these questions, the visitor shall be excluded from entering the courthouse until:

1. Ten days have passed since the onset of symptoms, 24 hours have passed since fever resolved without use of medication, and other symptoms have improved.
2. Fourteen days have passed after close contact with someone with COVID-19 illness with no development of symptoms. A close contact defined as being within 6 feet of an infected person for a cumulative total of 15 minutes or more within a 24 hour period starting from 2 days before the infected person's illness (symptoms) onset or, for asymptomatic persons, 2 days prior to the positive test specimen collection from the infected person.
2. If exclusion is for a symptom, a medical diagnosis other than COVID-19 explains that symptom.
3. Negative COVID-19 test results indicate no COVID-19 infection under CDC guidelines.

Courts shall provide notice to the public of this additional screening through communications about any court proceeding, posting the information on the court's website, and posting signage at all courthouse entrances.

Service to Individuals Refused Entry: Courthouse visitors who are refused entrance will be provided a phone number to reschedule or be referred to appropriate electronic or on-line options for finding information, filing of motions, or other court services. Security and other court staff should take appropriate action to provide access to court services while maintaining appropriate safeguards.

Security officers should be masked and gloved while screening courthouse visitors.

**LEVEL 3: ENHANCED + SECURITY PERSONNEL
DOING BODY TEMPERATURE SCREENING**

If approved by Judicial leadership pursuant to AO 2020-143, Section I (10), courthouse visitors may be screened for body temperature at entrances to the courthouse if:

1. Temperature screening is conducted by court personnel with a non-touch, calibrated human electronic temperature device;
2. Security is masked and gloved; and
3. Equipment is frequently sanitized for everyone's protection.

In the event that a courthouse visitor is found to have a temperature of 100.4 degrees Fahrenheit or above, the visitor should be retested after the initial temperature test. If the temperature is not below 100.4 degrees Fahrenheit, the visitor shall be excluded from entering the courthouse until body temperature is below 100.4 degrees Fahrenheit, a diagnosis of a non-contagious condition that explains an excessive temperature, or negative COVID-19 test results indicate no COVID-19 infection under CDC guidelines.

Courts shall provide notice to the public of this additional screening through communications about any court proceeding, posting the information on the court's website, and posting signage at all courthouse entrances.

Service to Individuals Refused Entry: Courthouse visitors who are refused entrance will be provided a copy of this protocol, a phone number to reschedule or be referred to appropriate electronic or on-line options for finding information, filing of motions, or other court services. Security and other court staff should take appropriate action to provide access to court services while maintaining appropriate safeguards.

Note: Courts should check manufacturer specifications to confirm temperature screening devices being used are accurate when used in high-temperature climates.

Approved October 23, 2020

Administrative Directive No. 2020-22

Appendix 2 (Sample Advisements, Notifications, and Questions)⁷

Sample Advisement to be Given at the Beginning of Each Court Day and at the Beginning of Each Day of Trial When the Appropriate Participants are Present

Attention Courtroom Participants: ___ County is currently responding to a public health crisis related to COVID-19. As you saw before entering the courthouse today, the court is taking various safety precautions to help minimize your risk while you are in the courthouse. As you know, you had your temperature taken upon entry, you are required to wear your mask while in the building, and we are asking that you keep at least 6 feet distance from others while you are in the courthouse.

We understand that the virus is present in the community and may be present in the courthouse. As we continue our operations, we anticipate that we will have individuals who are diagnosed with COVID-19 or test positive for the virus, who develop symptoms or at-risk conditions of the virus. Symptoms of the virus include any one of the following conditions or persistent and unexplained symptoms:

- Fever over 100.4 degrees Fahrenheit or body chills;
- Cough;
- Shortness of breath or difficulty breathing;
- Fatigue;
- Muscle or body aches;
- Headache;
- New loss of taste or smell;
- Sore throat;
- Congestion or runny nose;
- Nausea or vomiting;
- Diarrhea;
- Have had a COVID-19 diagnosis or positive test result during the last 10 days; or
- Additional conditions identified by a public health agency. [Refer to most updated symptoms, including referring to most recent version of CDC guidelines. <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (listing symptoms); <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/returning-to-work.html> (providing return to work guidance).]

Exposure includes close contact with someone who has tested positive for COVID-19 or has symptoms consistent with the COVID-19 virus during the last 14 days. A close contact is defined

⁷ Given the verbal nature of this admonition, and for simplicity, the events listed in Symptoms and At-Risk Conditions are combined in the definition of Symptoms.

as anyone who was within 6 feet of an infected person for a cumulative total of at least 15 minutes or more within a 24 hour period starting from 2 days before the onset of the infected person's illness or symptoms or, for non-symptomatic persons, 2 days before the positive test specimen collected from the infected person. Exposure also includes close contact with someone who has COVID-19 or has exhibited symptoms consistent with COVID-19 as defined by a public health agency. [Reference to the then current definitions of exposure and close contact by public health agencies and other trusted sources should be referenced.]

We have developed a protocol in conjunction with public health recommendations to address those situations when they arise. You will be notified by court staff if we receive confirmation of a positive diagnosis, report of a symptomatic person, or report of exposure by a participant present during a proceeding in which you were present. We expect that we will be able to continue forward with many of our court proceedings during the public health crisis, but we may have some delays as we continue to evaluate the safest process for all involved.

If you are not feeling well, if you are diagnosed with COVID-19, test positive for COVID-19, develop any of the symptoms of COVID-19 or are exposed to someone with COVID-19, please immediately contact and let any of the following individuals know: my judicial assistant INSERT NAME HERE or bailiff INSERT NAME HERE or OTHER SPECIFIC PERSON NAMED HERE. Please do so by calling them at XXX, via text message at XXXX, by electronic mail via XXX or by telling them, while at least 6 feet distant. Thank you.

Sample Notification Language in an Ongoing Matter

Attention Courtroom Participant: The court has been advised that on __, 20__ an individual was present in the courtroom between __ and __; was seated at ____ (if known) and that individual reported to the court on ____, 20__ as [AS APPLICABLE: having been diagnosed with COVID-19; tested positive for COVID-19; whose symptoms were consistent with COVID-19; was exposed to someone with COVID-19; and/or was exposed to someone whose symptoms were consistent with COVID-19]. As a result, the court has immediately delayed any further proceedings in this matter until ____, 2020. The delay will allow for additional information to be gathered and shared, if possible, as well as additional deep cleaning of the courtroom and other relevant portions of the courthouse before any further proceedings are being held in the courtroom. As additional information becomes available to share, including further scheduling in this matter, you will be contacted by court staff. In addition, you may be contacted by public health and you may wish to consult your own health care provider for further guidance. At this time, you are free to leave the courthouse and you need not return until you are later contacted with further details. [Consider additional language if the trial will be continued or a mistrial declared]

Sample Notification Language in a Completed Matter

Attention Courtroom Participant: The Court has been advised that on __, 20__ an individual was present in the Courtroom __ between __ and __; was seated at ____ (if known) and that individual reported to the court on ____, 20__ as [AS APPLICABLE: having been diagnosed with COVID-19; tested positive for COVID-19; developed at least one symptom of COVID-19; was exposed to someone with COVID-19; and/or was exposed to someone with at least one symptom of COVID-19]. As a result, additional deep cleaning is being undertaken in the courtroom and

other relevant portions of the courthouse before any further proceedings are held in the courtroom. As additional information becomes available to share, you may be contacted by court staff. In addition, you may be contacted by public health and you may wish to consult your own health care provider for further guidance.

Sample Questions for Reported Symptom or At-Risk Condition

NOTE: Arizona Supreme Court Administrative Directive 2020-22 lists who would conduct symptom screening for individuals attempting to enter a courthouse, depending on the nature of the court, including self-screening, security officers and other designated court staff. Along with those individuals, courts should determine who has the designated role and authority to ask these questions for any reported Symptom or At-Risk Condition.

Symptoms and Close Contact

1. How are you feeling?
2. Have you experienced any symptoms consistent with COVID-19 within the past 10 days (with a current list of symptoms provided to the individual for a self-assessment)?
3. How long have you had these symptoms?
4. Have you had any recent contact with a person suffering with COVID-19?
5. If YES, when was your most recent contact with that person?
6. Who have you been in **close contact** with in the courthouse? (The CDC defines “close contact” as being within 6 feet of an infected person for a cumulative total of 15 minutes or more within a 24 hour period starting from 2 days before the infected person’s illness (symptoms) onset or, for asymptomatic persons, 2 days prior to the positive test specimen collection from the infected person.⁸ Which of your fellow jurors have you talked to about how you feel?

At-Risk Condition

1. Why do you think you have been exposed to a person infected with COVID-19?
2. When was your most recent contact with that person? (The prior two weeks is the relevant time-period)
3. Were you in **close contact** with this person? (The CDC defines “close contact” as being within 6 feet of an infected person for a cumulative total of 15 minutes or more within a 24 hour period starting from 2 days before the infected person’s illness (symptoms) onset or, for asymptomatic persons, 2 days prior to the positive test specimen collection from the infected person.)
4. Has the person with which you had contact been tested for COVID-19?
5. If YES, was the test positive for COVID-19?
6. If NO to question 4, why do you think the person is infected with COVID-19?
7. How are you feeling?

⁸ <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

8. What symptoms are you having, if any?⁹

Note: The relevant inquiries likely will change over time, and frequent reference should be made to conditions identified by a public health agency. See, e.g., <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (listing symptoms); <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/returning-to-work.html> (providing return to work guidance).

If Excused

Please see a doctor immediately and ask to be tested for COVID-19. Please inform _____ about your test results so we can take care of those who may have had close contact with you.

NOTE: The July 1, 2020 Protocol contained Exhibit A that follows. Comments received included that it was not clear how this information will be used and may not be necessary. If the Participant identifies through self-assessment that they have experienced COVID-19 symptoms in the last 10 days, that should be enough to drive the next steps of isolation. This also avoids having to consider how this information will be maintained and stored. Accordingly, although retained here because it was in the July 1, 2020 Protocol, if such an assessment is used, those caveats apply and it also will need to be updated frequently to ensure that it complies with the most recent information identified by public health agencies.

Exhibit A

CDC COVID-19 SYMPTOM ASSESSMENT

COVID-19 Symptoms	Presence of Symptoms	Date of Onset	Duration
Shortness of breath or difficulty breathing	Check Box (Y/N/U/R)	Date of onset	Number of days
Fatigue	Check Box (Y/N/U/R)	Date of onset	Number of days
Muscle or body aches	Check Box (Y/N/U/R)	Date of onset	Number of days
Fever over 100.4 degrees Fahrenheit or body chills	Check Box (Y/N/U/R)	Date of onset	Number of days

⁹ See Exhibit “A” for a checklist of COVID-19 symptoms as of August 20, 2020.

CDC COVID-19 SYMPTOM ASSESSMENT

COVID-19 Symptoms	Presence of Symptoms	Date of Onset	Duration
Headache	Check Box (Y/N/U/R)	Date of onset	Number of days
Cough	Check Box (Y/N/U/R)	Date of onset	Number of days
New loss of taste or smell	Check Box (Y/N/U/R)	Date of onset	Number of days
Sore throat	Check Box (Y/N/U/R)	Date of onset	Number of days
Congestion or runny nose	Check Box (Y/N/U/R)	Date of onset	Number of days
Nausea or vomiting	Check Box (Y/N/U/R)	Date of onset	Number of days
Diarrhea	Check Box (Y/N/U/R)	Date of onset	Number of days
Malaise	Check Box (Y/N/U/R)	Date of onset	Number of days
Have had a COVID-19 diagnosis or positive test result during the last 10 days	Check Box (Y/N/U/R)	Date of onset	Number of days
Additional conditions identified by a public health agency	Check Box (Y/N/U/R)	Date of onset	Number of days
Persistent pain or pressure in the chest*	Check Box (Y/N/U/R)	Date of onset	Number of days
New confusion*	Check Box (Y/N/U/R)	Date of onset	Number of days
Inability to wake or stay awake*	Check Box (Y/N/U/R)	Date of onset	Number of days

Protocol for In-Courthouse COVID-19 Symptom or At-Risk Condition by a Participant in Arizona State Courts
Version 4.0 as of October 29, 2020

CDC COVID-19 SYMPTOM ASSESSMENT

COVID-19 Symptoms	Presence of Symptoms	Date of Onset	Duration
Bluish lips or face*	Check Box (Y/N/U/R)	Date of onset	Number of days
Other symptom(s)	Check Box (Y/N/U/R)	Date of onset	Number of days

Y = Yes U = Unknown

N = No R = Refused

Sample Disclosure of Any Symptom or At-Risk Condition

We have learned that (a fellow juror, a member of court staff, trial participant, etc.) has reported (symptoms or exposure to a person with symptoms) that may be consistent with COVID-19. The nature of this report is (***summarize report while respecting confidentiality***). We have determined that the nature of the exposure (***prevents us / does not prevent us***) from continuing with trial.

Judicial Options:

Mistrial: Excuse the jury and encourage the jurors see a medical professional to consider testing for COVID-19.

The Trial Continues: Inform jurors to tell the bailiff if they have questions or concerns with continuing to serve as a juror in this matter. Inform them that their questions or concerns will be shared with the judge, and the judge will consult with the lawyers in the case. The court may ask to have a private conversation with the juror to explore these issues further.

Take a recess to allow for questions or concerns.

Appendix 3

Checklist for In-Courthouse COVID-19 Symptom or At-Risk Condition by a Participant in Arizona State Courts

(Version 4.0, As of October 29, 2020)

This Checklist is provided as a quick reference for courts to address any in-courthouse COVID-19 Symptom or At-Risk Condition by a Participant in Arizona State Courts. This Checklist is based on the Protocol for In-Courthouse COVID-19 Symptom or At-Risk Condition by a Participant in Arizona State Courts Version 4.0 (as of October 29, 2020) (“Protocol”). Along with portions of the Protocol referenced here, the Protocol in its entirety should be referenced for definitions, details, and guidance. This Checklist is designed to be available on the bench and elsewhere to guide immediate and appropriate responsive action upon receipt of information regarding any Symptom or At-Risk Condition by a Participant, based on answers to two primary questions:

1. **HOW WAS THE SYMPTOM OR AT-RISK CONDITION BY A PARTICIPANT REPORTED?**

- A. **IN THE COURTHOUSE** (i.e., the Participant with any Symptom or At-Risk Condition is currently in the courthouse)

IMMEDIATELY: (1) take action to isolate the Participant; (2) have the Participant removed from the courthouse; (3) obtain appropriate information remotely; (4) take appropriate action and institute communications as necessary; and (5) take appropriate action based on the identity of the Participant with any Symptom or At-Risk Condition and those persons with whom they had contact as indicated in Question 2 below. [**Protocol Version 4.0 §§ III; V(B); VII**]

- B. **REMOTELY** (i.e., the Participant with any Symptom or At-Risk Condition is not currently in the courthouse)

PROMPTLY: (1) obtain appropriate information remotely; (2) take appropriate action and institute communication as necessary; and (3) take appropriate action based on the identity of the Participant with any Symptom or At-Risk Condition and those persons with whom they had contact as indicated in Question 2 below. [**Protocol Version 4.0 §§ III; V(A); VII**]

2. **WHO WAS THE PARTICIPANT WITH ANY SYMPTOM OR AT-RISK CONDITION?**

- A. **CRIMINAL DEFENDANT WITH ANY SYMPTOM OR AT-RISK CONDITION**

1. Make a record with the criminal defendant present remotely using electronic means (and, if such remote appearance by the criminal defendant is not possible, in the absence of the criminal defendant).
2. Does the criminal defendant have a right to be physically present for the upcoming proceeding(s)?

- a. If no, consider proceeding accordingly.
- b. If yes, and the criminal defendant is present remotely using electronic means, does the criminal defendant waive the right to be physically present, either by agreeing to:
 - be remotely present using electronic means (if possible), *or*
 - not be present at all?
3. If the criminal defendant wishes to waive the right to be physically present, is the waiver knowing, voluntary, and intelligent?
 - a. If yes, make the finding and consider proceeding accordingly.
 - b. If no, and after consulting with the parties and hearing from any victim or victim representative,
 - continue the matter and schedule periodic status hearings (e.g., once per week) until the criminal defendant can again properly be present in court to participate, *or*
 - if it is a trial and the trial cannot be continued, declare a mistrial, and reschedule a new trial.
4. Make appropriate disclosure and follow-up as described in Protocol Version 4.0 § VII.

[Protocol Version 4.0 §§ VI(A) and VII]

B. POTENTIAL JUROR/JUROR WITH ANY SYMPTOM OR AT-RISK CONDITION

1. Make a record with the parties present.
2. If the Participant with any Symptom or At-Risk Condition is a potential juror, determine whether jury selection and the trial can continue and if any disclosures to other Participants is appropriate (which would depend, chiefly, on whether the potential juror with any Symptom or At-Risk Condition was ever in the courthouse during the time period in question).
3. If the Participant with any Symptom or At-Risk Condition had been selected and was serving as a juror:
 - a. Are there sufficient alternate jurors to allow the trial to proceed (or an agreement/waiver that the trial could proceed without the juror)?
 - If no, declare a mistrial.
 - If yes, practically, discuss and determine disclosure to and inquiry of the remaining jurors, on the record with the parties present (remotely, if appropriate), that is appropriate to provide information for the trial judge to determine whether the trial properly should proceed.
 - b. After undertaking that disclosure and inquiry with the remaining jurors, and after consulting with the parties and hearing from any

victim or victim representative in a criminal matter, determine whether the trial can proceed as scheduled, whether a continuance is necessary, or whether a mistrial should be declared.

4. Make appropriate disclosure and follow-up as described in Protocol Version 4.0 § VII.

[Protocol Version 4.0 §§ VI(B) and VII]

C. JUDGE PRESIDING OVER THE MATTER HAS ANY SYMPTOM OR AT-RISK CONDITION

1. A different judge makes a record with the parties present.
2. Determine whether the proceedings can continue with a different judge.
 - a. If yes, proceed forward with having a different judge conduct the proceedings, with appropriate disclosures.
 - b. If no, and after consulting with the parties and hearing from any victim or victim representative in a criminal matter, either:
 - i. Reschedule the proceedings to allow sufficient time for the judge presiding over the proceedings who had any Symptom or At-Risk Condition to rejoin the proceedings after being cleared medically, *or*
 - ii. Begin anew the proceedings before a different judge (including declaring a mistrial if the issue arises during trial).
3. Make appropriate disclosure and follow-up as described in Protocol Version 4.0 § VII.

[Protocol Version 4.0 §§ VI(C) and VII]

D. OTHER PARTICIPANT WITH ANY SYMPTOM OR AT-RISK CONDITION

1. Make a record with the parties present, either in the absence of the Participant with any Symptom or At-Risk Condition, or with that Participant appearing by electronic means.
2. Can the role of the Participant with any Symptom or At-Risk Condition be filled by another individual?
 - a. If yes, consider moving forward accordingly.
 - b. If no, can the presence of the Participant with any Symptom or At-Risk Condition be waived?
 - i. If yes, and if waived (or if a waiver is not necessary), consider moving forward accordingly.
 - ii. If no, can the Participant with any Symptom or At-Risk Condition appear remotely?

1. If yes, consider moving forward accordingly.
2. If no, after consulting with the parties and hearing from any victim or victim representative in a criminal matter, determine whether to continue the proceedings and, if the issue arises during trial, declare a mistrial.
3. Make appropriate disclosure and follow-up as described in Protocol Version 4.0 § VII.

[Protocol Version 4.0 §§ VI(D) and VII]