

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:

June 23, 2020

Type of Action Requested:

Formal Action/Request
 Information Only
 Other

Subject:

Arizona’s Response to the Pandemic

FROM:

Mr. Marcus Reinkensmeyer, Court Services Division Director, AOC
Hon. Samuel A. Thumma, Court of Appeals, Division One
Hon. Joseph Welty, Presiding Judge, Superior Court in Maricopa County
Hon. Kyle Bryson, Presiding Judge, Superior Court in Pima County

DISCUSSION:

In response to the declaration of a statewide emergency by the Governor of the State of Arizona and concern for the spread of COVID-19, Arizona Supreme Court Chief Justice Robert M. Brutinel issued a series of administrative order directing courts to conduct business in a manner that reduces the risks associated with this public health emergency.

Directives set forth in these administrative orders include limiting in-person contact as much as possible by using available technologies; following the Centers for Disease Control and Prevention’s (CDC) social distancing recommendations; limiting the number of attendees required at in-person proceedings; liberally granting continuances; and authorizing flexibility for local rules and practices in each county.

To provide additional guidance and direction to Arizona’s courts, the Arizona Supreme Court formed the COVID-19 Continuity of Court Operations During a Health Emergency Workgroup (“Plan B Workgroup”), with a two-fold charge:

- identify and expand best practices supporting core court operations during the COVID-19 crisis and into the future; and

- formulate recommendations on a transition from emergency operations to what will be “new normal” for day-to-day operations until such time as COVID-19 is resolved, including phased resumption of jury trials and other on-site court operations.

Presenters will discuss the recommendations and the resumption of court operations, recognizing that the state of the pandemic is a highly fluid and that local strategies will vary based on local needs, physical layout, and available resources of Arizona’s local courts.

[Attachments: (1) Plan B Workgroup Best Practice Recommendations Report; (2) Jury Management Subgroup Best Practice Recommendations Report; and (3) Administrative Order 2020-79]

RECOMMENDED COUNCIL ACTION:

Information only.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AUTHORIZING LIMITATION OF)	Administrative Order
COURT OPERATIONS DURING A)	No. 2020 - 79
PUBLIC HEALTH EMERGENCY)	(Replacing Administrative
AND TRANSITION TO RESUMPTION)	Order No. 2020-75)
OF CERTAIN OPERATIONS)	
)	

Due to concern for the spread of COVID-19 in the general population, the Governor of the State of Arizona declared a statewide public health emergency on March 11, 2020 pursuant to A.R.S. § 26-303 and in accordance with A.R.S. § 26-301(15). Since March 18, 2020, several administrative orders have been issued in response to the COVID-19 public health threat that limited and modified court operations to ensure justice in Arizona is administered safely. The most recent such order, Administrative Order No. 2020-70 issued on April 24, 2020, directed Arizona’s courts to conduct business in a manner that reduced the risks associated with COVID-19. This order supersedes that administrative order and provides direction on transition to resumption of certain operations in an orderly way that prioritizes the safety of the public, judges, and employees of the judiciary.

For the purposes of this order, the term “judicial leadership” refers, as applicable, to the chief judge of the court of appeals, the presiding superior court judge, the presiding judge of a limited jurisdiction court that has multiple judges, or, for limited jurisdiction courts that have only one judge, the judge of such court.

Arizona courts remain open to serve the public. Nevertheless, given the ongoing threat to public safety, certain limitations and changes in court practices and operations are still necessary. These changes will occur in phases consistent with this order and the Standards in Attachment A.

Therefore, pursuant to Article VI, Sections 3 and 5, of the Arizona Constitution,

IT IS ORDERED that all Arizona Courts and the office of the presiding disciplinary judge may begin transitioning to in-person proceedings on June 1, 2020 to the extent this can be safely accomplished.

IT IS FURTHER ORDERED that presiding superior court judges continue to meet with local criminal justice system stakeholders to coordinate how best to handle the phasing-in of normal procedures in criminal proceedings, including resuming petit and grand jury proceedings.

IT IS FURTHER ORDERED that presiding superior court judges shall determine for the courts in their respective counties how in-person court proceedings and courthouse activities are

to be phased-in and conducted, consistent with this order, in a manner that protects the health and safety of all participants. The chief judge of each court of appeals division shall determine how in-person court proceedings are to be phased-in and conducted.

IT IS FURTHER ORDERED that:

I. TO PROTECT COURTHOUSE SAFETY:

1. The presiding superior court judge of each county and the chief judge of each division of the court of appeals is authorized to adopt or suspend any local rule or order needed to address the current public health emergency in cooperation with public health officials and to take any reasonable action that circumstances require to enable necessary operations of the Court of Appeals (COA) and the superior, justice and municipal courts in each COA division or county.
2. Until Arizona enters Phase II and except where the size of the staff or other constraints will not allow, judicial leadership shall implement a staffing plan, which may include dividing personnel into two or more teams or using other methods to prevent all or a substantial portion of court personnel from becoming infected or requiring quarantine at the same time due to work-related contact. The presiding judge may exempt personnel who perform critical court functions from this provision if there is no practical alternative.
3. Courts should modify operations to limit the number of transportation events to necessary in-court hearings for individuals in custody or receiving services pursuant to court order, including combining hearings subject to maximum gathering size required by this order, and to minimize mixing of populations to eliminate avoidable quarantines when such individuals are returned to custody following court hearings.
4. Rule 10.2, Rules of Criminal Procedure; Rule 42.1, Rules of Civil Procedure; Rule 2(B), Rules of Procedure for Juvenile Court; Rule 6, Rules of Family Law Procedure; Rule 133(d), Justice Court Rules of Civil Procedure; Rule 9(c), Rules of Procedure for Eviction Actions; and any local rule that provides litigants with a change of judge as a matter of right, are suspended until December 31, 2020 to reduce the risk of virus exposure inherent in out-of-county judges' travel, and to ensure adequate judicial resources for backlog reduction.
5. Judicial leadership shall adopt practices following the gathering size and social distancing standards in Attachment A, considering the size of the courtrooms and other spaces where people gather in and around the courthouse. A court should not schedule in-person multiple, simultaneous proceedings that are inconsistent with these standards. Until Phase II, in extraordinary circumstances and with appropriate precautions, judicial leadership may authorize a maximum of 30 persons to gather in one location provided social distancing measures are

taken. The intent of this requirement is to discourage scheduling of multiple court hearings at a single date and time. Courts should coordinate with law enforcement to require staggered citation appearance times.

6. Judicial leadership must require all participants in court proceedings, including attorneys, parties, victims, witnesses, jurors, court personnel, and other necessary persons, to notify the court prior to appearing at the courthouse, of any COVID-19 diagnosis, symptoms, or exposure notification by public health authorities and to make alternative arrangements to participate.
7. Until Phase III, judicial leadership should limit any required in-person proceedings to attorneys, parties, victims, witnesses, jurors, court personnel, and other necessary persons, where necessary to maintain the recommended social distancing within the courthouse, including each courtroom, and the judge in each proceeding is authorized to make reasonable orders to ensure the health and safety of hearing participants consistent with the parties' right to due process of law.
8. Judges shall liberally grant continuances and make accommodations, if necessary and possible, for attorneys, parties, victims, witnesses, jurors, and others with business before the courts who are at a high risk of illness from COVID-19 or who report any COVID-19 diagnosis, symptoms, or exposure notification by public health authorities.
9. The Administrative Office of the Courts shall provide judicial leadership with a health screening protocol used to detect COVID-19-related symptoms consistent with recommendations by public health officials to prevent the spread of the virus. Through Phase I, judicial leadership should implement the COVID-19 screening protocol for court and judicial personnel. Not later than June 1, 2020, court staff and judicial officers shall wear their own or court-provided masks, face coverings, or face shields when having any in-person contact with other personnel or the public, or as allowed by section I(11).
10. The Administrative Office of the Courts shall provide judicial leadership with a health screening protocol used to detect COVID-19-related symptoms consistent with recommendations by public health officials to prevent the spread of the virus. Through Phase I, judicial leadership should implement the COVID-19 screening protocol for the public. Through Phase I, and where courthouse entrance security screening is available, the COVID-19 screening protocol may require body temperature screening for the public. Judicial leadership shall require court participants and visitors to wear a mask or other face-covering in the courthouse beginning not later than June 1, 2020 and may

provide the required face-covering for use by persons who do not have their own. Courts shall exclude persons from the courthouse who refuse to cooperate with or who do not pass established screening protocols or refuse to wear a

mask or other face covering. Judicial leadership shall post these requirements at entrances and on their public website.

11. During in-courtroom proceedings, the judge may authorize removal of masks or face coverings for purposes of witness testimony, defendant identification, making an appropriate record, or other reasons as deemed necessary by the judge provided that appropriate social distancing or other protective measures are followed.
12. Judicial leadership should establish and implement social distancing and sanitation measures established by the [United States Department of Labor](#) and the [CDC](#).

II. TO USE TECHNOLOGY TO MINIMIZE IN-PERSON PROCEEDINGS:

1. Proceedings in all Arizona appellate, superior, justice, juvenile, and municipal courts and before the presiding disciplinary judge may be held by teleconferencing or video conferencing, consistent with core constitutional rights.
2. During Phases I and II, judicial leadership should limit in-person contact as much as possible by using available technologies, including alternative means of filing, teleconferencing, video conferencing, and use of email and text messages to reasonably ensure the health and safety of all participants.
3. Judges may hold ex parte and contested hearings on orders of protection electronically.
4. Judicial leadership may authorize the use of available online dispute resolution (ODR) platforms to resolve cases.
5. Judicial leadership may authorize the use of electronic, digital, or other means regularly used in court proceedings to create a verbatim record, except in grand jury proceedings.
6. When the public is limited from attending in-person proceedings, beginning July 1, 2020, to the extent logistically possible, the presiding judge of the superior court shall provide public access by video or audio to civil and criminal court proceedings typically open to the public to maximize the public's ability to observe court proceedings. The presiding judge or single judge of a limited jurisdiction court should make video or audio proceedings, excluding small claims cases, available to the public to the greatest extent possible. The presiding judge of the superior court should also list the availability of video and audio proceedings on the AZCourt site.
7. The 100-mile distance requirement for a limited jurisdiction court to accept a

telephonic plea under Rule 17.1 (f) of the Rules of Criminal Procedure is suspended through December 31, 2020.

8. Clerks may attend court proceedings by teleconferencing or video conferencing to comply with A.R.S. § 12-283(A)(1).
9. Title 36 Chapter 5, A.R.S. matters are confidential and not open to persons other than the parties, witnesses, and their respective counsel. When these proceedings are not conducted in-person, judicial leadership must use technology in a manner that protects the patient's rights to privacy and confidentiality.
10. The judge in each proceeding conducted using video-conferencing may limit and permit recording as appropriate to apply the policies provided in Rule 122, Rules of the Supreme Court, to those proceedings.
11. When conducting virtual hearings, courts may establish procedures to collect the defendant's fingerprint, or to otherwise establish the defendant's identity as an alternative means of complying with the procedures required by A.R.S. § 13-607 and Rule 26.10 of the Rules of Criminal Procedure.

III. TO APPROPRIATELY PRIORITIZE CASE PROCESSING:

1. Constitutional and statutory priorities for cases continue to apply unless otherwise waived.
2. For cases where the right to a jury trial has not been waived, but where limits on courthouse facilities or judicial or court personnel capacity require prioritization and recognizing that constitutional and statutory preferences govern for specific issues raised in a specific case, cases shall be scheduled in the following order of priority:
 - (a) Criminal felony and misdemeanor cases, where the defendant is in custody;
 - (b) Sexually violent person trials;
 - (c) Criminal felony cases, where the defendant is not in custody;
 - (d) Criminal misdemeanor cases, where the defendant is not in custody; and
 - (e) Civil and any other jury trial cases.
3. Where limits on courthouse facilities or judicial, or court personnel capacity require prioritization and recognizing that constitutional and statutory preferences govern for specific issues raised in a specific case, cases shall be scheduled in the following order of priority:
 - (a) Juvenile;
 - (b) Criminal;

- (c) Mental Health;
- (d) Family (involving minor children);
- (e) Family (not involving minor children);
- (f) Probate (involving protected persons);
- (g) Civil;
- (h) General Probate; and
- (i) Tax and Administrative cases.

4. Where backlogs exist, judicial leadership should expand case disposition capacity, including calling back retired judges, using judges pro tempore and temporarily reassigning judges from other assignments.

IV. TO SAFELY PROVIDE FOR JURY TRIALS AND GRAND JURIES:

1. Trials of cases to a jury may resume when Arizona enters Phase I, but not prior to June 15, 2020.
2. The presiding judge of the superior court in each county should determine when jury trials can safely begin, taking into consideration the physical space of individual courthouses and courtrooms. Judicial leadership shall employ appropriate social distancing and other measures necessary for the protection of jurors and the general public and shall post on court websites a schedule and information describing the protective measures taken.
3. Until December 31, 2020, to reduce the number of citizens summoned to jury duty, procedural rules (including Rule 18.4(c), Rules of Criminal Procedure; Rule 47(e), Rules of Civil Procedure; and Rule 134(a)(1), Justice Court Rules of Civil Procedure) are modified to afford litigants only two peremptory strikes for potential jurors per side in all civil and felony cases tried in the superior court, and one peremptory strike per side in all misdemeanor cases, and all civil cases tried in limited jurisdiction courts. This provision does not apply to capital murder cases.
4. To accommodate social distancing standards, courts may stagger times for prospective jurors to report for jury duty, direct them to individual courtrooms rather than jury assembly rooms, and conduct voir dire remotely or in multiple groups. At the direction of the presiding judge, prospective jurors may be summoned to non-courthouse facilities that can accommodate larger numbers of individuals.
5. Judicial leadership may authorize the use of technology to facilitate alternatives to in-person appearance for selecting grand and petit jurors and for conducting grand jury proceedings, and with the permission of the presiding superior court judge, for jury trials.

6. As required by A.R.S. § 21-202(b)(2), jury commissioners must temporarily excuse prospective jurors whose jury service would substantially and materially affect the public welfare in an adverse manner, including but not limited to those who report a COVID-19 diagnosis, symptoms, or notification by a public health official of exposure to COVID-19 and may temporarily excuse potential jurors who are highly vulnerable to COVID-19.
7. The presiding judge of the superior court in coordination with the county attorney in each county may determine when grand juries can be resumed in a safe manner with proper social distancing. Grand jury selection may be conducted in-person by staggering the appearance of prospective jurors or by electronically screening them. The presiding judge may authorize grand jury proceedings to be held by video-conferencing.

V. TO CALCULATE TIME CONSIDERING THE EMERGENCY:

1. The period of March 18, 2020 through August 1, 2020 is excluded from calculation of time under rule provisions and statutory procedures that require court proceedings to be held within a specific period of time, including Rule 8, Rules of Criminal Procedure; Rules 17, 25, 79 and 100, Rules of Procedure for the Juvenile Court; Rules 2, 3, and 15, Rules of Procedure in Eviction Actions; and Rule 38.1(d)(2), Rules of Civil Procedure. A judge, pursuant to Rule 8, may extend this exclusion of time in criminal cases, for good cause including, but not limited to COVID-19 illness, quarantine and travel restrictions.
2. The time for conducting preliminary hearings for in-custody defendants under Rule 5.1(a) and (d) and probation revocation arraignments under Rule 27.8 (a)(1), Rules of Criminal Procedure is extended to twenty (20) days from an initial appearance that occurs through July 3, 2020.
3. Until August 1, 2020, notwithstanding Rule 6 (b)(2), Rules of Civil Procedure, in an individual case, the court may extend the time to act under Rules 50(b), 52(b), 59(b)(1), (c), and (d), and 60(c) as those rules allow, or alternatively, may extend the time to act under those rules for 30 days upon a showing of good cause.
4. The following are not excluded from calculations of time:
 - (a) For persons held in-custody: initial appearances, arraignments, preliminary hearings, in-custody probation violation, and conditions of release;
 - (b) Domestic violence protective proceedings;
 - (c) Child protection temporary custody proceedings;
 - (d) Civil commitment hearings and reviews;
 - (e) Emergency protection of elderly or vulnerable persons proceedings;
 - (f) Habeas corpus proceedings;
 - (g) COVID-19 public health emergency proceedings;
 - (h) Juvenile detention hearings;

- (i) Election cases; and
 - (j) Any other proceeding that is necessary to determine whether to grant emergency relief.
5. For the period of March 18, 2020 through August 1, 2020, if a judge is unable to rule on a pending matter due to the judge's illness or is otherwise unable to work, the judge is deemed to be physically disabled, and the period of time the judge is ill or unable to work is excluded from the calculation of the 60 days from the date of submission in which a matter must be determined under A.R.S. § 12-128.01 or § 11-424.02.

VI. IN GENERAL:

1. Court offices shall remain accessible to the public by telephone and email during their regular business hours to the greatest extent possible, including using drop boxes for documents that cannot be e-filed if it becomes necessary to close court offices to the public.
2. During this period of reduced operations, courts and court clerks shall make reasonable efforts to provide alternative methods of accessing court records.
3. Probation officers are authorized to use social distancing and technology of all types to supervise those on criminal and juvenile probation, including, where appropriate, for contacts with such individuals.
4. Clerks of the court shall continue to issue marriage licenses and may do so remotely if the available technology allows licenses to be properly issued.
5. A judge may perform a marriage ceremony at the courthouse with no more than 10 persons present with proper social distancing and may perform a marriage ceremony in the electronic presence of the couple and witnesses at the parties' request.
6. The Administrative Office of the Courts may use technology to ensure social distancing for its operations, including the Court Appointed Special Advocate program, the Foster Care Review Boards program, and the Certification and Licensing programs under Part 7, Chapter 2, of the Arizona Code of Judicial Administration.
7. Limited jurisdiction judicial leadership may issue orders as necessary to implement the provisions of this order and take actions consistent with this order and orders issued by their presiding superior court judge.
8. Judicial leadership must notify court customers, the public, and the Administrative Director of all administrative orders issued under the authorization provided by this order using the most effective means available.

9. Judicial leadership must provide information regarding court access and operations in both English and Spanish.
10. The presiding superior court judge of a county and judges and staff in leadership in the limited jurisdiction courts in the county shall periodically meet to coordinate county-wide court activities impacted by the current COVID-19 crisis. Attendance at such properly scheduled meetings is mandatory unless excused by the county presiding judge.

Dated this 20th day of May, 2020.

FOR THE COURT:

ROBERT BRUTINEL
Chief Justice

ATTACHMENT A

Standards for Resumption of On-site Court Operations During a Public Health Emergency

In planning for a phased resumption of on-site court operations, courts¹ must consider the following factors:

1. The status of the pandemic in each local court jurisdiction;
2. The size and functionality of courthouse facilities, both in terms of courtrooms and other public meeting areas; and
3. The size of the bench and supporting court staff.

The timing of the phases will be largely determined by Arizona specific directives. The Administrative Office of the Courts (AOC) will notify the judicial leadership in advance of phase transition dates. Taking these factors into account, local courts should systematically resume on-site operations as follows:

Phase Zero (Current Phase): Due to the statewide public health emergency, all in-person court proceedings should be avoided to the greatest extent possible, consistent with constitutional rights.

- Courts should follow CDC social distancing guidelines and limit the number of persons at any court event to 10. Judicial leadership may authorize groups larger than 10, but not to exceed 30.
- The empanelling of new petit juries is suspended.
- In-person contact is to be limited through the use of virtual hearings (audio or video), electronic recording of court proceedings and electronic transmission of documents.
- Certain state and local court rules are suspended or amended to maximize public safety.

Phase I: Courts may begin transitioning to in-person proceedings to the extent this can be safely accomplished on June 1, 2020 in compliance with the following standards:

- Courthouse Safety:
 - Until Arizona enters Phase II and except where the size of the staff or other constraints will not allow, judicial leadership shall implement a staffing plan, which may include dividing personnel into two or more teams or other methods to accomplish the goal of preventing all or a substantial portion of court personnel from becoming infected or requiring quarantine at the same time due to work-related contact.
 - Judicial leadership shall limit any required in-person proceedings to attorneys, parties, victims, witnesses, jurors, court personnel, and other necessary persons.

¹ In this attachment, courts include Arizona courts, Office of the Presiding Disciplinary Judge, and Court of Appeals.

- Judicial leadership should modify operations to limit the number of transportation events to necessary in-court hearings for individuals in custody.
- Courts should follow CDC social distancing guidelines and limit the number of persons at any court event to 10. Judicial leadership may authorize groups larger than 10, but not to exceed 30.
- Courts shall utilize the AOC's health screening protocol.
- Courts shall require masks or face coverings to be worn in the courthouse.
- Courts shall exclude persons failing the screening protocol from entry to the courthouse.
- Rules which provide litigants a change of judge as a matter of right are suspended until December 31, 2020.
- Courts shall exclude persons failing the screening protocol from entry to the courthouse and attempt to make alternative arrangements for them to conduct court business. If an excluded person is attempting to attend a scheduled court proceeding, the appropriate court shall be notified of the person's inability to enter the courthouse.
- Technology
 - Courts shall continue the use of virtual hearings, electronic recording and electronic transmission of documents.
 - Courts shall provide public access by video or audio to court proceedings which are typically open to the public, specifically for the case types designated in this Administrative Order.
 - Courts shall consider and encourage the use of on-line dispute resolution (ODR).
- Appropriately Prioritize Case Processing
 - Courts shall follow the prioritization of case types, both for jury and non-jury cases.
 - Courts shall expand case disposition capacity, using retired judges and judges pro tempore and temporarily reassigning judges from other assignments.
- Jury Trials and Grand Juries
 - Jury trials may resume on June 15, 2020, subject to the approval of the presiding superior court judge.
 - Courts shall utilize appropriate social distancing and measures necessary for the protection of jurors, including the use of technology for virtual selection of petit and grand jurors and conducting of grand jury proceedings and, with the approval of the presiding superior court judge, for jury trials.
 - The presiding superior court judge may determine when grand juries can be resumed.
- In General
 - Courts may use drop boxes for filing documents that cannot be e-filed.

Phase II: Scheduling of in-person court proceedings can resume, while limiting the projected number of courthouse visitors during peak times.

- Courthouse Safety

- On-site court staffing should systematically increase during Phase II, as necessary to serve the increased number of visitors at the courthouse. Courts should continue to maintain two or more teams, with some teams working at the courthouse while others work remotely, or otherwise ensure that an exposed employee will not interrupt the operations of the court.
- Courts should follow CDC social distancing guidelines and limit the number of persons at any court event to 30. Judicial leadership may authorize groups larger than 30, but not to exceed 50.
- Technology
 - The use of technology should continue, both to maximize public safety and to maximize efficiencies in court operations.
- Appropriately Prioritize Case Processing
 - Some courts may no longer have a need to expand case disposition capacity.
- The other Phase I provisions remain in effect during Phase II, specifically the sections of this Administrative Order regarding:
 - Jury Trials and Grand Juries
 - In General

Phase III: Scheduling of in-person court proceedings and other on-site court services can fully resume, while limiting the projected number of courthouse visitors during peak times.

- Courthouse Safety
 - On-site court staffing should be largely restored during this phase to serve the increased number of visitors at the courthouse. Courts may still opt to have some staff continue working remotely. These staff would be available for deployment to the courthouse in the event that on-site staff become infected.
 - Courts should follow CDC social distancing guidelines and limit the number of persons at any court event accordingly.
 - Consistent with guidance from CDC, courts may relax screening protocols for court participants and visitors, including the wearing of masks in the courthouse.
- Technology
 - The use of technology should continue, both to maximize public safety and to achieve efficiencies in court operations.
- Jury Trials and Grand Juries
 - Courts should continue to employ appropriate social distancing and other measures necessary for the protection of jurors, including the use of technology for virtual selection of petit and grand jurors and conducting of grand jury proceedings and, with the approval of the presiding superior court judge, for jury trials.
- In General
 - Courts should continue to use drop boxes for documents that cannot be e-filed.

Phase IV: Return to normal operations – no restrictions.



COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup Best Practice Recommendations

May 1, 2020

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COVID-19 Continuity of Court Operations During Public Health Emergency Workgroup

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COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup Best Practice
Recommendations



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COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup Best Practice Recommendations

May 1, 2020

I. INTRODUCTION

Creation and charge of the workgroup

In response to the declaration of a statewide emergency by the Governor of the State of Arizona and concern for the spread of COVID-19, changes to the ordinary practices of Arizona’s courts are necessary. On March 16, March 18, April 6, and April 24, 2020, Arizona Supreme Court Chief Justice Robert M. Brutinel issued Administrative Orders 2020-47, 2020-48, 2020-60, and 2020-70, respectively, directing courts to conduct business in a manner that reduces the risks associated with this public health emergency.

Directives set forth in these administrative orders include limiting in-person contact as much as possible by using available technologies; following the Centers for Disease Control and Prevention’s (CDC) social distancing recommendations; limiting the number of attendees required at in-person proceedings; liberally granting continuances; and authorizing flexibility for local rules and practices in each county.

To provide additional guidance and direction to Arizona’s courts, the Arizona Supreme Court formed the COVID-19 Continuity of Court Operations During a Health Emergency Workgroup (“Plan B Workgroup”). The two-fold charge of the Plan B Workgroup is to:

“Arizona Courts remain open to serve the public. Nevertheless, given the current emergency, and in the interest of public safety, certain limitations and changes in court practices are necessary.”

Administrative Order No. 2020-70 (“Authorizing Limitation of Court Operations During a Public Health Emergency”)

- identify and expand best practices supporting core court operations during the COVID-19 crisis and into the future; and
- formulate recommendations on a transition from emergency operations to what will be “new normal” for day-to-day operations until such time as COVID-19 is resolved, including phased resumption of jury trials and other on-site court operations.

The Plan B Workgroup was also asked to provide recommendations (including suggestions for a transitional administrative order) at an Arizona Supreme Court strategic planning effort in late April 2020.

Overview of this report

This report begins with a summary of the workgroup membership and process. The report then lists ten guiding principles that the workgroup identified. Recommendations and best practices are then provided in the following areas: (1) maintaining health conditions during resumption of court operations; (2) data driven allocation of resources; (3) local transition planning and implementation (including considerations for an Arizona Supreme Court transitional administrative order); (4) jury management; (5) best practices throughout the transition and beyond; and (6) communications strategies. The report includes, at Appendix 1, a draft transitional administrative order reflecting, at a level consistent with prior statewide administrative orders, numerous transitional recommendations contained in this report. Appendix 2 provides selected additional resources.

The workgroup and the workgroup process

Members of the workgroup were selected, quite intentionally, to represent a wide variety of different perspectives - of both urban and rural courts at all levels. Members include two superior court judges, four limited jurisdiction court judges, three superior court/deputy court administrators, one superior court clerk of court, one superior court clerk of court representative, one limited jurisdiction court administrator, Assistant General Counsel of the State Bar of Arizona, the Judicial Education Officer for the Administrative Office of the Courts (AOC), and AOC staff. The workgroup met virtually, at least weekly, beginning April 8, 2020.

The environment leading to the creation of the workgroup was unprecedented. Courts are essential to protecting constitutional rights, providing a neutral forum for the criminally accused, issuing protective orders, and resolving many other types of legal

disputes. Given these essential functions, Arizona courts have remained open to serve the public through the statewide emergency, with limitations and changes in court practices given the concerns of the spread of COVID-19.

During this crisis, Arizona's courts have acted to protect the health and safety of participants, the public and court employees, while ensuring constitutional and statutory obligations. Out of necessity, the pandemic has required courts to move certain proceedings to virtual platforms. Courts have vacated most face-to-face hearings scheduled in March, April, and May 2020, and are largely hearing emergency matters. This has caused inevitable limitations in resolving many case types, leaving larger numbers of matters to be resolved moving forward.

The recommendations here seek to address court operations, recognizing that the state of the pandemic is a highly fluid situation and the timetable for the resumption of new normal court operations is conditioned on guidance from public health officials. The recommendations are intended to provide a platform for general guidance, understanding that local strategies will vary based on local needs, physical layout, and available resources of Arizona's local courts.

II. GUIDING PRINCIPLES

The recommendations here are intended to provide general guidance to judges and court managers to resume day-to-day operations in the new normal. Local courts are best situated to determine which recommendations are appropriate to implement in any specific court or court facility. With that premise, the workgroup identified the following ten guiding principles that helped focus its work and these recommendations.

The transition:

- 1) **Will** seek to manage contagion transmission, recognizing medical breakthroughs and collaborative advice are required to eliminate such transmission.
- 2) **Must** recognize that resolving cases where an individual is being held in custody pending resolution has priority over resolving cases where an individual is not being held in custody pending resolution.
- 3) **Must** follow constitutional and statutory mandates that place a priority on or deadlines for resolving certain types of cases, unless those mandates are waived or found to have been waived.
- 4) **Must** account for the differences between jury and non-jury trials, including the number of people that jury trials bring to the courthouse, the social distancing

challenges jury trials create, and the lead time to secure the attendance of potential jurors.

- 5) **Must** recognize that the effort will involve courts allocating limited resources to needs that exceed capacity, requiring triage and continuous, empirical needs assessment before and during the transition to best effectuate that triage.
- 6) **Must** recognize that, given differences in needs and resources in individual courts, timetables for transitions in courts will not be uniform, necessitating a statewide directive that allows flexibility for specific timing of implementation in a specific court for the resumption of hearings that have been stayed or restricted.
- 7) **Should** recognize that rule-based mandates and standards adopted by the Arizona Supreme Court or local courts can be suspended during the transition or repealed.
- 8) **Should** encourage courts to continue to employ, and where appropriate expand, technology of all types to facilitate alternatives to face-to-face hearings in open court that drive significant traffic to courthouses, and other alternatives that have been effective and consistent with the rights of all involved, identified during emergency operations.
- 9) **Should** encourage courts to continue to identify innovative ways to expand capacity and ensure social distancing to meet needs, including involving retired judges and judges pro tempore, temporary reassignment from rotational or other assignments, scheduling and allocation of interpreters and court reporters, overtime and temporary staff, extended hours (including weekends and evenings), and other measures.
- 10) **Should** encourage, where in-court hearings are required for individuals in custody or receiving services pursuant to court order, efforts to minimize the number of transportation events for such individuals, including combining hearings where possible, to minimize mixing of populations and eliminate avoidable quarantines when such individuals are returned to custody following court hearings.

III. MAINTAINING HEALTH CONDITIONS DURING RESUMPTION OF COURT OPERATIONS

A. Social distancing consistent with CDC guidelines

As courts resume new normal operations, adherence to social distancing and gathering size guidelines must remain intact. Certain precautions must be put in place

and maintained to ensure the health and safety of the public and court staff. This includes regulating the number of visitors admitted into court buildings and public court spaces, including filing lobbies, customer service counters, courtrooms, offices, and jury assembly and deliberation areas. To this end, it is recommended that courts do the following:

- Continue to follow direction from public health officials, including particularly, the CDC and the Arizona Department of Health Services, as it relates to social distancing.
- Refrain from scheduling multiple, simultaneous hearings in a number that would jeopardize social distancing, for example, high volume arraignment, eviction, or child support enforcement calendars. In scheduling matters, courts should consider:
 - The size of the courtroom and courthouse facilities
 - Whether staggered start times can be scheduled
 - Alternative available waiting areas
 - Creating seating assignments that ensure social distancing
- Create “courtroom admittance” policies that include:
 - Limiting those physically permitted in the courtroom to the parties, attorneys, victims, jurors, witnesses, and other persons whose presence is essential to the case
 - Setting a maximum occupancy level for courtrooms and other meeting areas
 - Considering any necessary adjustments for security protocols
 - Provide public access to open court hearings using video streaming technology
- Consistently apply the court’s “courtroom admittance” policies.
- Maximize the use of remote appearances through technology, such as video and audio platforms, giving due consideration to compliance with constitutional and statutory rights, feasibility, and connection stability.
- Create admittance policies based on direction from public health officials regarding the maximum number of persons allowed in a courtroom, other rooms in a courthouse, and the courthouse itself at any one time.
- Consider using paging and texting technology. The Scottsdale City Court is exploring ways in which paging technology (analogous to that used in restaurants

to notify patrons that their table is ready) can be used to ensure social distancing through limiting the number of people entering the courthouse at any one time. Specifically, court visitors check in at the front of the courthouse, indicate their reason for being there, and are handed a pager that will signal when they should return and enter the courthouse. This allows visitors to appropriately social distance while they wait, without fear that they might miss being called for their court appearance.

- Consider using appointment systems to minimize the assembly of visitors seeking court-related services during peak days and times. With limited capacity to expand the size of facilities, increase staffing, or curtail the public's need for court-related services, appointment or reservation solutions will assist in maximizing the distribution of visitors. Appointment systems may be of particular use in spreading out individuals who are filing documents, seeking law library assistance, submitting evidence, accessing records, or obtaining marriage licenses.
- Consider how to best accommodate the needs of particularly vulnerable individuals (based on health or other issues, including age, underlying medical issues, compromised immune systems, etc.), including alternatives to in-person court appearances and the need to travel to the courthouse for such vulnerable individuals, and those who may live with or provide custodial or residential care for them.
- Adopt admittance policies including provisions for turning away people who are ill, appear to be ill, or exhibit symptoms including coughing, sneezing, shortness of breath, etc., looking to the use of technology or other means so that such individuals' rights are protected.
- Some courts have instituted, or are seeking to institute, a policy of taking the temperature of all court staff and visitors entering the court building. Along with complying with applicable law, such a policy should seek to account for related issues, such as false positives, asymptomatic carriers, turning away visitors with a fever and providing them with information to explain how they can complete their court business using alternative means and whether to seek the care of a health care professional, maintenance of thermometers, etc.
- Establish guidelines and requirements to enter the court buildings, which should be posted on the court's website and at the entrance of the building, in English and Spanish and should comply with the Americans with Disabilities Act.

B. Signage and specific path routing directions

Courts are encouraged to provide clear and concise signage throughout the courthouse that directs people to courtrooms, court departments, waiting areas, restrooms, etc., so that people can travel to their destination using the appropriate path.

- Signage should be highly visible and easy to understand.
- Signage should be posted on the walls and floors of the courthouse.
- Court departments, courtrooms, and waiting areas should be clearly labeled.
- Social distancing policies and expectations should be posted in a conspicuous location and should be easy to understand.
- Signage should include arrows and other directional graphic images to assist visitors in reaching their destination.
- Courts should post on their website internal maps of the public areas of the courthouse and traffic patterns used to ensure social distancing, along with easy to follow instructions for visitors that explain the steps that should be followed to conduct business efficiently.
- Courts should develop and post on their website a Q&A or FAQ document with specific instructions about where in the courthouse people need to go based on the business they are conducting.
- Court postings should be in English and Spanish and should comply with the Americans with Disabilities Act.

C. Paper filings and the use of depository boxes

Currently, all general jurisdiction courts accept e-filing for civil cases, with some accepting e-filing for other case types. Work is now underway to quickly expand e-filing to other case types.

- Courts should urge attorneys and litigants to submit documents via electronic transmission, by e-filing if available or, in the alternative, by e-mail attachment, whenever possible.
- For cases involving paper filings (documents that cannot be e-filed), courts are urged to use secure depository boxes located outside the courthouse. This will reduce the number of people that must come through security and into the courthouse.
- If a depository box is used, there should be markers on the ground to reflect safe social distances if a line should form.

- Courts using a depository box should have a policy on their website and at the depository box that details how the documents placed in the depository box will be processed. For example:
 - How often the depository box will be checked by court staff and documents removed
 - The cut-off time for filing a document in order for a document to be considered filed the “same day” or filed the next day
 - How to include a payment with the document deposited and what payment methods are acceptable
- Courts should check the depository box and remove documents at least twice a day, once at the open of business and once at the close of business.
- Courts should promptly process documents filed and contact the filer if there are problems with the filing, payment for the filing, etc.

D. Protection of staff

Among other measures taken to transition back to new normal day-to-day operations is ensuring that court staff is adequately protected. This includes ensuring that work areas are frequently deep cleaned and disinfected and any items that could contribute to the spread of the virus be removed from these areas.

a. Masks and gloves

Another measure for protecting court staff is to provide them with personal protective equipment (PPE). If a court provides PPE, such as gloves and face masks, it must ensure that proper training is provided on the correct way to utilize face masks and gloves to avoid cross-contamination.

b. Protective barriers and physical set-backs at customer service counters and other public facing areas

Protective barriers are a measure that can be used to protect staff when they are interacting with court visitors. For example, courts may opt to install protective windows or have physical setbacks at customer service counters and other public-facing areas that will allow interaction at a safe distance. Courts may seek funding for these items through the Supreme Court of Arizona’s Court Security Improvement grant application.

E. Siloed team staffing model

In this arrangement, court staff are divided into teams (A, B, and C), with teams supporting particular judges or departments. Teams are assigned to work on-site at the

courthouse on alternating days or weeks, while other teams perform their job functions through teleworking. This model significantly reduces the number of staff in the courthouse, opens up office space, enhances social distancing, and reduces the exposure of staff to possible transmission. It also helps ensure continued court operations. If a staff member in one team becomes infected or exposed, that team can isolate at home through a recovery period while other teams continue on-site staffing.

F. Proceedings involving symptomatic in-custody individuals

Arizona courts recognize that resolving cases where an individual is being held in custody pending resolution has priority over resolving cases where an individual is not being held in custody. The threat of COVID-19 exposure and spread presents challenges related to how courts should conduct proceedings with in-custody individuals who are symptomatic. Recommendations for handling these situations include:

- Maintaining consistent and frequent communication with the local jails to stay informed as to whether any in-custody defendants have tested positive for COVID-19.
- Collaborating with local jails to develop solutions for communicating with in-custody defendants through virtual or telephonic means to minimize transport needs.

If a symptomatic individual must be transported to the courthouse, the court should designate a secured area, other than the courtroom, where the individual can be held with proper security, personal protective equipment, and cleaning precautions.

G. Communication with staff about law changes and sick leave

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (FFCRA) into law. The FFCRA is designed to provide relief in the form of paid and job-protected sick leave for those impacted by COVID-19. The current Family and Medical Leave Act (FMLA) has been expanded to include potential paid leave under the FFCRA.

- Court administrators, clerks, and other managers must keep staff informed of the changes in such laws and how the changes impact their employment as they relate to sick leave and job duties.
- Courts should ensure that employees are kept informed of available crisis support and employee assistance programs.

H. Frequent deep cleaning of court facilities and informing the public

Measures should continue to be taken to ensure that court facilities are adequately cleaned and disinfected to prevent the transmission of COVID-19. Courts should be transparent and keep the public informed about such measures as follows:

- Ensure that courthouse facilities are deep cleaned frequently and regularly, both throughout the day and after hours.
- Develop protocols and ensure that entryways to the courthouse are deep cleaned and disinfected frequently and regularly, including wiping down surfaces such as counters, security screening stations, metal detectors, conveyor belts and bins, doors, doorknobs and push bars, etc.
- Develop protocols for cleaning and disinfecting both public and staff work areas at the end of each day or after a staff member has occupied a work station, if staff are rotated in the work station throughout the day.
- Heighten cleaning in offices and common areas throughout the day by regularly wiping down surfaces such as counters, door knobs, railings, etc.
- Restrooms and the surfaces therein should be frequently cleaned and disinfected.
- Ensure that hand sanitizer is made available in communal areas.
- Make paper towels available at hand washing stations so that staff and visitors can use a paper towel to open the door. Wastebaskets should be placed close to the door and emptied regularly so that they do not become overfilled.
- Posting on court websites, in English and Spanish and in compliance with the Americans with Disabilities Act, the measures being taken to clean and disinfect court facilities. Posted information should include the frequency in which the facilities are being cleaned.

IV. DATA DRIVEN ALLOCATION OF RESOURCES

In response to the pandemic, courts have moved certain proceedings to virtual platforms. Local courts are encouraged to conduct on-going data-based assessments of case backlogs, both in terms of case hearings and processing activities, e.g., disposition reporting, issuance of notices, payment processing, etc.

A. Prioritization of case types for resolution during initial transition

Where limits on capacity require prioritization and triage, the following priorities for general case types should apply (recognizing constitutional and statutory preferences govern specific issues that may be raised in a specific case), starting with highest priority:

- 1) Criminal
- 2) Juvenile
- 3) Mental Health
- 4) Family (involving minor children)
- 5) Family (not involving minor children)
- 6) Probate
- 7) Civil
- 8) Tax and Administrative cases

In criminal cases specifically, courts should apply the following priorities (recognizing constitutional and statutory preferences govern specific issues that may be raised in a specific case), starting with highest priority:

- 1) Criminal cases, where the defendant is in custody
- 2) Criminal felony cases, where the defendant is not in custody
- 3) Criminal misdemeanor cases, where the defendant is not in custody

B. Reallocation of resources consistent with needs and capacity

Certain case types and issues presented must be prioritized. Given the limitations created by the pandemic, most courts will need to shift resources temporarily to address cases within the timeframes required by statute and constitutional guarantees.

a. Shifting criminal caseload to civil and family court judges

Courts should temporarily shift criminal case assignments to judges who would ordinarily handle family and civil cases so that criminal cases can be addressed by a greater number of judicial officers as expeditiously as possible. After criminal matters have been sufficiently addressed, judicial assignments can be redistributed or otherwise reallocated to the new normal.

b. Postponement of civil trials on an as needed basis

Courts should postpone civil trials to the extent that the resources necessary for conducting civil trials can address urgent and time-sensitive matters in criminal cases.

c. Deployment of pro tempore and retired judges, contingent upon the availability of courtrooms and staff support

Where limitations exist, courts should expand case disposition capacity by calling retired judges back to work and using judges pro tempore.¹ To support these adjunct judicial resources, courts should address the scheduling and reallocation of interpreters, court reporters, and other personnel. Properly allocating and scheduling such resources will be essential to avoid unnecessary delay in calling matters for scheduled hearings and to avoid the need to reschedule hearings. Recognizing that the pandemic may result in budget reductions, staffing strategies may include reassigning staff to different duties, overtime hours for court staff, deployment of temporary staff, extended hours (including weekends and evenings), and other measures.

V. LOCAL TRANSITION PLANNING AND IMPLEMENTATION (INCLUDING DRAFT RECOMMENDED SUPREME COURT TRANSITIONAL ADMINISTRATIVE ORDER)

As courts transition from emergency operations to resume what will be the “new normal” for day-to-day operations, there will be countless best practices and lessons learned. As developments have come so quickly in the recent past, emergency operations have changed weekly, daily, and at times, hourly. The future will include significant improvements, including medical breakthroughs, that will ease transitioning to this new normal. For now, these and other variables mean the transitional recommendations here are based on imperfect information. Although including countless actions and steps, the suggestions that follow are in two categories: (a) recommendations for an Arizona Supreme Court transitional administrative order and (b) local court transition planning and implementation.

A. Supreme Court transitional administrative order

The workgroup recommends that a statewide transitional administrative order be expressed in a single, comprehensive Arizona Supreme Court administrative order. This continues the practice in Arizona to date, and provides clarity and ease of reference, recognizing those directives may then be implemented by local courts in administrative orders and policies.

¹ The AOC has procured a limited number of laptop computers which are available for local courts to equip pro tempore and retired judicial officers to work and remotely conduct hearings.

Based on the ten guiding principles detailed in Section II, the workgroup recommends the issuance of an Arizona Supreme Court administrative order (AO), replacing AO 2020-70 in its entirety, that (1) includes the provisions in AO 2020-70 that remain valid, either until the transition efforts begin in earnest or otherwise, and (2) includes the following modifications or additions, which are largely self-explanatory:

- Unless waived or found to be waived, constitutional and statutory priorities for cases continue to apply.
- Courts should continue undertaking needs assessments and planning for how to best allocate resources and identify appropriate processes when hearings resume in stayed proceedings, including how to triage, how to account for cases needing to be resolved, identifying available resources and new operational standards, including for jury selection and service (both petit and grand juries), and therapeutic/specialty/problem solving court operations.
- Requests for time-sensitive matters, such as orders of protection, injunctions against harassment, ex parte temporary child custody orders, court-ordered inpatient medical treatment, evictions, temporary emergency orders, expedited election matters, temporary restraining orders, etc., should continue to be priority matters.
- Empaneling of new petit juries scheduled through (DATE TO BE DETERMINED) should be rescheduled.
- Employing appropriate management and social distancing measures, empaneling new petit juries may resume beginning (DATE TO BE DETERMINED).²
- For cases where a party has a jury trial right that has not been waived, where limits on capacity require prioritization and triage, the following priorities shall apply, starting with highest priority:
 - 1) Criminal cases, where the defendant is in custody
 - 2) Criminal felony cases, where the defendant is not in custody
 - 3) Criminal misdemeanor cases, where the defendant is not in custody

² It is recommended that the dates to reschedule empaneling juries and resume empaneling juries be two specific dates, perhaps a Friday followed by a Monday. The workgroup hoped specific dates could be pinpointed during this effort, but recognizing the situation is quite fluid and also not knowing precisely when a transitional AO may issue, no specific dates are recommended here. That determination is better left to an informed assessment at the time of the issuance of such an AO, including then-current circumstances and guidance by health experts.

- 4) Civil and any other cases
- Where capacity limitations require prioritization and triage, the following priorities for general case types apply (recognizing constitutional and statutory preferences govern for specific issues raised in a specific case), starting with highest priority:
 - 1) Criminal
 - 2) Juvenile
 - 3) Mental Health
 - 4) Family (involving minor children)
 - 5) Family (not involving minor children)
 - 6) Probate
 - 7) Civil
 - 8) Tax and Administrative cases
 - Temporarily suspending or reducing, until the end of the year, rules of court that afford litigants peremptory strikes for potential jurors. For example, in criminal trials involving a 12-person jury, suspending peremptory challenges would reduce by approximately 46 percent the number of qualified jurors necessary to select a jury (depending on the number of alternates involved), meaning the number of potential jurors to be called to serve would correspondingly be reduced.
 - Temporarily suspending, until the end of the year, rules of court that afford litigants a peremptory notice of change of judge for a judge assigned to a case either in all courts or, alternatively, in courts where there are five or fewer authorized judgeships. This would reduce the need to have judges from other counties or courts travel to a different courthouse to preside over such matters and help ensure adequate judicial resources for backlog reduction.
 - Employing appropriate management and social distancing measures, and employing and, where appropriate expanding, use of technology of all types to facilitate alternatives to face-to-face hearings, for resumption of grand jury proceedings.
 - Courts should continue to employ and, where appropriate expand, the use of all types of technology identified during emergency operations to facilitate alternatives to face-to-face interactions that drive significant traffic to courthouses and other alternatives that have been effective and consistent with ensuring the preservation of the rights of all involved.

- Courts should continue to identify ways to expand capacity and ensure social distancing to meet needs, including involving retired judges and judges pro tempore, temporary reassignment from rotational or other assignments, scheduling and allocation of interpreters and court reporters, overtime and temporary staff, extended hours (including weekends and evenings), and other measures.
- Where in-court hearings are required for individuals in custody or receiving services pursuant to court order, efforts should be taken to minimize the number of transportation events for such individuals, including combining hearings where possible to minimize mixing populations and eliminating avoidable quarantines when such individuals are returned to custody following court hearings.
- Courts are encouraged to conduct juvenile hearings using technology, by consolidating hearings where possible and with limited public access, as appropriate, to ensure social distancing.
- Courts are encouraged to ensure that high volume court calendars account for social distancing, including distancing in the courthouse and in courtrooms, between courtrooms being used, and in calendaring and scheduling.
- Courts should continue to advance alternative dispute resolution options, including online dispute resolution platforms, to resolve issues and cases without the need to hold hearings in courtrooms.
- Probation officers should be authorized and encouraged to use social distancing and technology of all types to supervise those on adult and juvenile probation, including, where appropriate, for contacts with such individuals.
- Court Appointed Special Advocate and Foster Care Review Board programs should be authorized and encouraged to use technology to ensure social distancing.
- The AOC should be authorized and encouraged to use social distancing and technology of all types in continuing to implement the Certification and Licensing Programs under Part 7, Chapter 2, of the Arizona Code of Judicial Administration.
- Extend the June 1, 2020 deadlines in AO 2020-70 to (DATE TO BE DETERMINED).
- Limited jurisdiction presiding judges, or for limited jurisdiction courts that have only one judge, the judge of such a court, should be authorized to take actions consistent with these directives, provided they comply with constitutional and statutory requirements.

- Other provisions are suggested in the proposed draft Supreme Court AO, attached as Appendix 1.

B. Transition planning and implementation

Transition planning and implementation will be a key aspect of implementing any Supreme Court transitional administrative order. Local court transition planning and implementation should involve a wide range of considerations, including those addressed in this report, with focus on unique needs, resources, limitations, and other factors of the specific court.

Such efforts will benefit from thoughtful and creative involvement by individuals involved in the local court. Participants should involve presiding and other judges, the clerk of court and others in that office, and court administrators, benefited by, as appropriate, meetings or communication with local justice partners and the local bar.

Transition planning and implementation efforts will differ from past initiatives in critically important ways. These efforts *must* be based on the thought that courts are not planning how to return to pre-COVID 19 normalcy. Instead, the efforts should focus on determining what the new normal will look like and then planning for how to prepare for and implement that new normal.

These local planning and implementation efforts will be a sea change for all involved. It is to look to a new normal that does not yet exist, in defining how that new normal will look. Efforts will include thinking about what could work that has never been tried, what was tried with and without success (limited or otherwise) during the pandemic and other new, newish, or newly-rediscovered alternatives from the pre-pandemic world that was the old normal. This sea change will involve re-evaluating many aspects of court operations, including how courtroom activities proceed. It will include a reconsideration of how to deal with time-worn issues but using new and creative solutions that may not be perfect, but that have become necessary in the new normal.

This, in turn, will necessitate change in the day-to-day activities of judges in the new normal—not simply returning at a set date to how things were done before. Change is not always easy, and the familiar is comfortable. But for all involved, including judges, local planning and implementation efforts need to acknowledge – at the beginning and throughout – the essential nature of the cultural change needed to see what the new normal will be, and to plan and transition to that new normal.

Transition planning and implementation efforts also should look at budgetary and financial issues. These efforts may require improvements or changes to facilities,

technology, and safety and health programs. Further, personnel expenses may rise if overtime is used or if medical leaves increase. Accordingly, transition planning and implementation measures should include:

- Reassessing current fiscal year and future budgets for opportunities to reallocate discretionary or non-essential funds to crisis response activities.
- Monitoring special revenue trends and forecast reductions through the next fiscal year.
- Reviewing crisis related expenditures and external funding.
- Seeking grant funding opportunities directly available to the court, through the local funding authority or the AOC.

VI. JURY MANAGEMENT

Courts around the country are responding to COVID-19 in numerous ways, working to balance public health and safety with access and openness. Jury commissioners and their staff are at the forefront of this response, navigating through jury management issues. This section serves as a resource for best practices to assist with reinstating jury operations.

A. Reevaluating juror reporting practices

Traditionally, all summoned jurors have been scheduled to report to the jury assembly room in large numbers at the same time on a given day. In the new normal, jury commissioners should plan to replace that practice with having smaller groups appear at staggered reporting times. For example, on a day where 150 potential jurors are needed, this might involve having 50 individuals reporting at 8:30 A.M., 50 individuals reporting at 10:00 A.M., and 50 individuals reporting at noon.

Another alternative is to direct jurors to report directly to a designated courtroom instead of a single jury assembly room. When more than one panel is required to ultimately select a jury, an option is to have smaller panels for voir dire report to courtrooms.

Paging and texting technology should also be considered. The same technology that is used in restaurants to notify patrons that their table is ready can be used by courts to communicate with jurors regarding the location and time they should appear in a designated location.

B. Ensuring public health and safety in jury assembly areas

Jury assembly areas, whether traditional assembly rooms or courtrooms, should frequently be deep cleaned and disinfected, and items that could contribute to the spread of the virus should be removed from these areas. Recommended activities include:

- Wiping down essential workspaces (countertops, tables, armchairs, doorknobs, kiosks, etc.) frequently during the day and overnight.
- Avoiding the direct exchange of documents with jurors. If direct exchange is unavoidable, staff or jurors (or both) should wear gloves.
- If the court uses personal protective equipment, such as gloves and face masks, the court must ensure that proper training is provided to staff and the public on the correct way to utilize these items to avoid cross-contamination.
- Restricting access to common areas and removing courtesy amenities previously offered that are no longer appropriate (coffee, microwaves, refrigerators, puzzles, games, books, magazines, etc.).
- Providing jurors information ahead of time on what is and is not available, so they can come prepared (for example, whether water, vending machines, etc., will be available).

C. Maintaining physical distancing in the courtroom

Courts will have to determine the best strategies for reinstating jury operations to ensure conformance with social distancing requirements. Courts should:

- Consider alternative jury selection processes, including multiple small panels for a single case, using struck method of jury selection (as opposed to strike and replace), and using technology for remote initial questioning.
- Seat jurors in a cordoned-off section of the courtroom gallery instead of the jury box.
- Utilize a larger courthouse conference room or training area for trial recesses and deliberations instead of the jury deliberation room.
- Minimize the number of jurors at each stage of jury service.
- Have staggered reporting times.
- Have jury panels report directly to the courtroom.
- Assemble smaller panels (10-15 potential jurors) to report to the courtroom for voir dire.
- Explore administering written questionnaires remotely.
- Explore remote voir dire using video technology.

- Consider remote options for prescreening jurors for hardship and for cause conflicts.

D. Considering and addressing changes in juror response

Once the decision is made to resume trials, jury commissioners should anticipate changes in prospective juror response rates. The nature and magnitude of that change is unknown, particularly in the “not available” category (i.e., no show, undeliverable, disqualified, exempt, excused, postponed, etc.). Many factors, including local circumstances, will have a significant influence, as reflected in the National Center for State Courts’ “Jury Managers’ Toolbox” located at: <http://www.ncsc-jurystudies.org/Jury-Managers-Toolbox.aspx>. Jury commissioners should account for these changes to make sure that trials are not continued due to a lack of potential jurors secured or, alternatively, that more potential jurors appear than are needed.

Given the need for clear messaging to the public, it is recommended that the criteria for evaluating requests for excusals from, and deferrals for, jury service be generally consistent on a statewide basis during the resumption of jury trials. Consideration should be given to the creation of a workgroup to formulate such recommended criteria.

To evaluate requests for deferrals, particularly from prospective jurors identified as high risk, jury commissioners are encouraged to continue to gather demographic data, including census bureau data, and to communicate with public health officials to identify appropriate deferral criteria. In addition, local courts will need to evaluate their jury service policies, including viewing deferral as a preference to excusal from service.

Deferral policies should be re-evaluated. Following recommendations by the National Center for State Courts, consideration should be given for Arizona deferral policies to include:

- First deferral as a matter of right
- Extension of the first deferral period (for example, if currently 6 months, consider extending up to 12 months)
- Clarification of “good cause” for second deferral:
 - Persons currently testing positive for COVID-19 or in quarantine
 - Persons at high-risk of infection
 - Persons living with others at high risk of infection

- Health care professionals, first responders, and hospital cafeteria and custodial staff³

In deferral policies, courts should also include in the definition of “good cause” childcare responsibilities related to health directives that close schools or childcare providers. Courts must also ensure that deferral policies comport with state and federal laws.

Failure to appear (FTA) rates for jury service could change in the new normal. Points of discussion for FTA policies should consider:

- Adopting relaxed FTA policies.
- Continuing to follow up with non-responders and failure to appear jurors with a second notice/summons, using this as an opportunity to highlight the importance of juror response, and offer deferrals if a person falls into a particular category.
- Considering an “amnesty” program for a period of months after jury trials resume. For those who have not shown up in the past, courts should clearly explain that the court can either issue an order to show cause or a warrant, or if the person calls, they will simply be put in a new pool for the future.

E. Remote grand juries

Courts should explore ways to conduct grand jury proceedings remotely. Technology platforms should be configured to safeguard required secrecy of grand jury proceedings and deliberations with appropriate security measures to ensure confidentiality and privacy.

F. Alternatives to one day/one trial policies

Potential jurors are summoned weeks, if not months, before they need to report. Jury commissioners should consider whether jurors who have already been summoned can be kept on hold for a period of time and be called when the court resumes jury trials. If this is not possible, jury commissioners need to start summoning more jurors and communicate in advance with others involved in the process. If already-summoned jurors can be brought back to serve, procedural aspects of the process need to be addressed, including possible issuance of a new summons and how to contact the jurors (including electronically).

³ <http://www.ncsc-jurystudies.org/What-We-Do/COVID-Resources.aspx> (Last visited April 19, 2020).

G. Communication regarding safeguards used to ensure the health of potential jurors, jurors, and court staff

Courts must keep the public informed about jury service and the precautionary measures taken to prevent the spread of COVID-19. This information should be widely communicated to jurors, potential jurors, and court staff. Information about these precautions should be included on jury summonses and other communication outlets, including:

- Public service announcements, media advisories, and press releases
- Court websites and social media platforms
- Juror call-in messages
- Courthouse signage
- Other technologies, including text messaging and email

Examples:

Superior Court in Maricopa County

<https://superiorcourt.maricopa.gov/jury/juror-announcement-page/>

Superior Court in Pima County

[https://www.sc.pima.gov/Portals/0/Library/SuperiorCourt Jury Notice.pdf?no-cache](https://www.sc.pima.gov/Portals/0/Library/SuperiorCourt%20Jury%20Notice.pdf?no-cache)

Phoenix City Court

<https://www.phoenix.gov/court/jury-duty>

Scottsdale City Court

<https://www.scottsdaleaz.gov/court/jury-duty>

Public messaging to jurors is a critical part of planning for reinstating jury trials. The National Center for State Courts recommends that courts convey two messages as they ramp up operations: (1) that courts take public health and safety seriously and have implemented policies to prevent the risk of infection and (2) show what the courts are doing to ensure confidence in those efforts.⁴

Courts need to continue to let everyone know that “Jurors are our heroes!” Courts also need to publicly acknowledge that jurors are critically important participants in the

⁴ <http://www.ncsc-jurystudies.org/What-We-Do/COVID-Resources.aspx> (Last visited April 19, 2020).

administration of justice. Communicating this message appeals to the civic mindedness, altruism, and importance of jury service.⁵

H. Continuously monitor innovations underway

The Superior Court in Maricopa County is currently exploring the implementation of a hybrid virtual jury selection process that combines in-person selection with some remotely connected jurors, a completely virtual trial, a virtual settlement conference program, a new electronic recording system to create the verbatim record that allows full functionality to have remote evidentiary hearings and trials, and a potential virtual mock trial partnering with law students to run through remote jury selection. A clearinghouse for these and other efforts around the country can be found at:

<https://judicialstudies.duke.edu/covid-19-response-resources-for-judges/>.

VII. BEST PRACTICES THROUGHOUT THE TRANSITION AND BEYOND

In response to the pandemic, Arizona courts have quickly implemented an array of court technology solutions providing 24/7 remote access to court services. In addition to pandemic safety considerations, the expanded use of online court technologies results in improved public access and efficiencies in internal court operations. Some of the re-engineered processes and supporting technologies appear to be scalable for wide-spread use, bringing about economies of scale.

Given these benefits, it is recommended that many of the re-engineered business processes remain in place and be expanded beyond the duration of the pandemic. Governing court rules and policies should be amended as necessary to support the continuing deployment of court technologies.

The AOC is working to create training videos, guides, and other materials to assist judges, court managers, and court staff navigate new technologies during these times. Courts are encouraged to continue to explore alternative educational resources to expand their knowledge of these platforms and other available technologies that may be useful.

A. Digital Courts

⁵ *Id.*

a. Expansion of electronic filing in general and limited jurisdiction courts

Currently, all general jurisdiction courts accept e-filed documents for civil cases, with some accepting e-filed documents for other case types. Work is underway to quickly expand e-filing services to include the following additional case types in general jurisdiction courts: criminal, family, probate, guardianship, and juvenile delinquency. Future e-filing initiatives include case initiation documents and e-filing in limited jurisdiction courts, e.g., small claims, civil, misdemeanor, and evictions.

- Courts should be flexible with implementing e-filing so that parties can file documents without coming into the courthouse.
- After e-filing has been implemented, courts should revisit their business processes to determine whether more efficient measures can be put in place.

b. Enhanced use of e-bench

E-bench, currently operational in Arizona Judicial Automated Case System (AJACS) supported general jurisdiction courts, supports a digital workflow process for judges and judicial support staff. E-bench functionality has been expanded to support the e-filing of court orders created by judicial officers. Integration provides for automated data entry of related information into the court's case management system.

B. Remote appearances where possible

Remote court appearances are now being conducted for a wide array of hearing types via telephonic and video-conferencing technologies, e.g., orders of protection, criminal arraignments, emergency family court matters, etc.

- Courts should explore the continued use and expansion of technology to conduct court proceedings that previously would have been held in person.
- The AOC has secured a statewide Zoom® license for video conferencing services that courts should use to conduct remote proceedings where possible.
- Courts should explore the live streaming functionality of these platforms. Zoom® allows for video live streaming, which can be used for public viewing of court proceedings, as well as remote video interpreter services. Most of the conferencing systems have electronic recording capacity, which can be employed to make the verbatim record of court proceedings, and some systems also support online interpreter services.

C. Online dispute resolution (ODR)

A one-year ODR pilot program for online resolution of criminal misdemeanor and family law cases recently concluded in the superior court in Pinal and Yuma Counties and in the Scottsdale City Court. The ODR process was not mandated in the pilot program, resulting in a relatively low number of litigants opting to use the ODR system. With that caveat, in cases in which the litigants chose to use the ODR system, the courts achieved relatively high rates of case resolution. The ODR system proved successful in serving litigants at long distances from the courthouse, providing access 24/7.

Planning is underway to expand Scottsdale City Court's criminal misdemeanor ODR project to other courts. This model program allows litigants to resolve cases without visiting the courthouse, further averting limitations in case processing that would otherwise occur during the pandemic. Courts should explore ways to expand the use of ODR, so in-person contact can be avoided to the greatest extent possible. Additionally, courts should explore ways to expand the use of ODR for resolution of misdemeanor, family, and consumer law cases, including small claims and civil disputes.

D. Allowing remote payment of financial obligations to the court

The Supreme Court recently implemented the Offsite Cash Payment service supported by the Pay Near Me network, allowing litigants to make cash payments for restitution, fines, and other court-ordered financial obligations at 7-Eleven®, Family Dollar®, and other retail locations across the state. Planning is underway to provide expanded availability of online citation payments, online enrollment into local courts' Fines, Fees, and Restitution Enforcement (FARE) programs and Compliance Assistance Programs (CAP), and online entry into time payment contracts. Courts should ensure that litigants are made aware of these payment options by posting information at the courthouse, on the court's website, and through social media.

E. Electronic recording of court proceedings

Production and preservation of a record of proceedings in a court of record are fundamental functions of the judicial branch. The Task Force to Supplement Keeping of the Record by Electronic Means examined the use of electronic recording to create the verbatim record and issued a report and recommendations in August 2019. The report and recommendations can be viewed here:

<https://www.azcourts.gov/Portals/74/SKREM/082919/Final%20SKREM%20Report.pdf?ver=2019-09-09-132821-173>

Administrative Order 2020-70 provides for electronic recording of court proceedings, except in grand jury proceedings, to create the verbatim record. This measure should temporarily continue.

- Except for grand jury proceedings, to expand capacity, courts can use electronic recording to create and maintain a complete and accurate record in proceedings where creating a verbatim record is necessary, notwithstanding a party's request that the proceedings be recorded by a court reporter.

F. Expanded use of text messaging communications

Text messaging services are available through a statewide services contract procured by the AOC. Some courts send text reminders to litigants regarding court hearing dates, financial payment options, failure to pay, and failure to appear.

- Courts should use and expand the use of text messaging to advise litigants of alternative hearing arrangements (e.g., video hearings, telephonic hearings, rescheduled hearings, etc.), remote e-court services, and alternative court locations.
- Text messaging reminders and communications should be implemented by all courts as a best practice, which has shown a reduction in failure to appear and failure to pay rates.

G. Use rules of reason and alternative means to confirm identity and related issues

As courts move forward with conducting more proceedings in a virtual environment, they should exercise rules of reason when considering the restrictions that should be imposed in these virtual environments as follows:

- Remove unintended barriers or additional challenges when creating policies and procedures for the virtual environment. For example, if checking a defendant's driver license was not a step taken at the in-person arraignment process, the court should not necessarily concern itself with checking the defendant's driver license through a video platform.
- Attempt to use resources and documents already in the case file, if there is a need to verify a party's identity. For example, if a court collects a copy of a plaintiff's driver license when they file a petition for an order of protection and the court later needs to verify the plaintiff's identity to grant a dismissal request, the court

can use the driver license copy already in the file to compare to the person appearing by video.

- Ensure that statutes that require biometric data be collected are adhered to when creating policies for video appearances and verifying identity.

H. Using tele-health technology

The American Medical Association recognizes that “[t]he use of telemedicine and remote care services are critical to the safe management of the COVID-19 pandemic, while also ensuring uninterrupted care for 100 million Americans with chronic conditions.”⁶ Using tele-health for mental health evaluations and restoration to competency education is a recommended practice, provided the following practices are ensured:

- Language aligns with national best practices and standards for competency and mental health evaluations
- Access to standards of care and administration of justice⁷
- Timely access to medical records for attorneys and evaluators

As a rural community, Graham County contracts with a psychologist who conducts the restoration sessions remotely. As a result of the COVID-19 pandemic, other courts have implemented similar practices so that mental health evaluations and restoration to competency sessions can be conducted remotely.

To implement these practices, the workgroup recommends that Arizona’s courts:

- Adopt the Committee on Mental Health and the Justice System’s approved guidelines and templates/forms for mental health evaluators.
<https://www.azcourts.gov/Portals/74/MHJS/Resources/PJSMarch2020MHEvalGuidelinesandForms.pdf?ver=2020-04-27-090424-643>
- Adopt the Committee on Mental Health and the Justice System’s recommended best practices for restoration to competency.
<https://www.azcourts.gov/Portals/74/MHJS/Resources/CompetencyRTCBPs2420.pdf?ver=2020-04-27-090342-170>
- Communicate the revised guidelines, templates, forms, and best practices to current practitioners and mental health evaluators.

⁶ <https://www.ama-assn.org/practice-management/digital/ama-quick-guide-telemedicine-practice> (Last visited April 17, 2020).

⁷ Includes time requirements, geographic differences, and the standards/requirements for the person who may be accompanying the defendant in the room during the evaluation.

- Create and implement training for practitioners.
- Implement protocols and orders for limited jurisdiction court judges to transfer a case to the superior court for further proceedings pursuant to Arizona Revised Statute § 13-4517 where the defendant has been found incompetent and not restorable, as allowed by Rule 11.5, Arizona Rules of Criminal Procedure.

The AOC is exploring the use of tele-services for other types of evaluations, treatment, screenings, group work, and education services specific to mental health, family counseling, DUI/SUD, sex offender counseling, and crisis intervention.

VIII. COMMUNICATION STRATEGIES

Ongoing communications are vital when making decisions related to the reduction or delay of court services. The need to share information and collaborate is essential during these trying times. The Chief Justice of the Arizona Supreme Court regularly confers with presiding superior court judges, clerks of court, and court administrators. Court leaders should engage with both their state and local partners and the public to provide consistent information on the availability of court services. Communication plans should include the following, accounting for appropriate social distancing:

- Periodic interaction of general and limited jurisdiction judges and court managers
- Meetings or communications with local justice partners
- Meetings or communications with the state and local bar associations
- Ongoing updates to all court staff
- Use of the Supreme Court's Public Information Officer (PIO) and local PIO or designees to share public information
- Posting updates on court services on social media outlets

Part of courts' communication responsibilities include making sure that the judicial branch serves our Limited English Proficiency (LEP) customers by complying with the requirements of Title VI of the United States Civil Rights Act of 1964, which includes the translation of court announcements, signage, and forms, and should comply with Americans with Disabilities Act. The AOC is translating into Spanish and posting on the Arizona Judicial Branch website information relating to the COVID-19 pandemic. Completed translations and translations in progress are highlighted in Appendix 2.

In addition, the Video Remote Interpreting (VRI) room at the AOC is still available for courts to use. The AOC building is open, and interpreters can enter safely with the

knowledge that the building's facilities staff have increased cleaning and disinfecting protocols for all commonly touched surfaces.⁸

To use the VRI room, courts can contact AOC language access staff (dsvoboda@courts.az.gov; kgray@courts.az.gov; cwashburn@courts.az.gov) to inquire as to its availability.

Courts looking for other ways to provide interpreters and protect their health and wellbeing during the pandemic can choose from the following:

- WebEx with computer audio and video enabled. This does not support simultaneous interpreting, but it does allow the interpreter to view the LEP person(s) and other participants.
- Zoom® is an internet-based videoconferencing tool that allows multiple people to meet online. Zoom® includes an interpreting feature that supports simultaneous interpreting. With this tool, an interpreter can connect from anywhere with an internet connection to a court hearing where Zoom® is being used.
- Interpreters can call into the courtroom with existing teleconference equipment from home or their office or by using their cell phone. This option requires hearings to proceed in the consecutive mode.
- Courts with on-site interpreters who wish to avoid the close contact with others that live in-person interpreting entails could use a work or cell phone to call the LEP person(s) and use their cell phones as ad hoc interpreting equipment.

The AOC is compiling information on best practices and resource materials on the pandemic response, both from local courts and national court improvement organizations. The workgroup recommends that the AOC create a secure portal, providing Arizona judges and staff ready access to this kind of information.

⁸ For those with Cisco VRI equipment installed in their courtrooms, the system allows for full simultaneous interpreting, as well as private attorney-client consultations when necessary. For courts without the Cisco VRI equipment, the AOC VRI room may still be able to connect to a court's videoconferencing equipment such as Polycom. In these instances, a test connection will need to be scheduled first to ensure connectivity, and the hearing will have to be held using consecutive interpreting rather than simultaneous.

APPENDIX 1—Draft Recommended Supreme Court Administrative Order

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AUTHORIZING LIMITATION OF)	Administrative Order
COURT OPERATIONS DURING A)	No. 2020 – XX
PUBLIC HEALTH EMERGENCY)	(Replacing Administrative
AND TRANSITION TO RESUMPTION)	Order No. 2020-70)
OF CERTAIN OPERATIONS)	
)	

Due to concern for the spread of COVID-19 in the general population, the Governor of the State of Arizona declared a statewide emergency pursuant to A.R.S. § 26-303 and in accordance with A.R.S. § 26-301(15). On April 24, 2020, Administrative Order No. 2020-70 directed Arizona’s courts to conduct business in a manner that reduces the risk associated with this public health emergency. This order supersedes, revises, clarifies, and adds to that direction and provides direction on transition to resumption of certain operations.

Arizona courts remain open to serve the public. Nevertheless, given the current emergency, and in the interest of public safety, certain limitations and changes in court practices are necessary.

Therefore, pursuant to Article VI, Sections 3 and 5, of the Arizona Constitution,

IT IS ORDERED that all in-person proceedings in all Arizona appellate, superior, justice and municipal courts and before the presiding disciplinary judge be avoided to the greatest extent possible consistent with core constitutional rights until further order of this court.

IT IS FURTHER ORDERED that, unless waived or found to be waived, constitutional and statutory priorities for cases continue to apply.

IT IS FURTHER ORDERED that requests for time-sensitive matters, such as orders of protection, injunctions against harassment, ex parte temporary child custody orders, court-ordered inpatient medical treatment, evictions, temporary emergency orders, expedited election matters, temporary restraining orders, etc., should continue to be priority matters.

IT IS FURTHER ORDERED that empaneling of new petit juries scheduled through (DATE TO BE DETERMINED) be rescheduled.

IT IS FURTHER ORDERED that, employing appropriate management and social distancing measures, empaneling new petit juries may resume beginning (DATE TO BE DETERMINED).

IT IS FURTHER ORDERED that, for cases where a party has a jury trial right that has not been waived, where limits on capacity require prioritization and triage, the following priorities shall apply (recognizing constitutional and statutory preferences govern for specific issues raised in a specific case), starting with highest priority:

- 1) Criminal cases, where the defendant is in custody
- 2) Criminal felony cases, where the defendant is not in custody
- 3) Criminal misdemeanor cases, where the defendant is not in custody
- 4) Civil and any other cases.

IT IS FURTHER ORDERED that, where capacity limitations require prioritization and triage, the following priorities for general case types apply (recognizing constitutional and statutory preferences govern for specific issues raised in a specific case), starting with highest priority:

- 1) Criminal
- 2) Juvenile
- 3) Mental Health
- 4) Family (involving minor children)
- 5) Family (not involving minor children)
- 6) Probate
- 7) Civil
- 8) Tax and Administrative cases

IT IS FURTHER ORDERED [temporarily suspending, through December 31, 2020, all rules of court that afford litigants peremptory strikes for potential jurors] **or alternatively** [temporarily reducing, through December 31, 2020, the number of peremptory strikes for potential jurors to XX per side.]

IT IS FURTHER ORDERED [temporarily suspending, through December 31, 2020, all rules of court that afford litigants peremptory strikes for a judge assigned to a case] **or alternatively** [temporarily suspending, through December 31, 2020, all rules of court that afford litigants peremptory strikes for a judge assigned to a case in courts where there are five or fewer authorized judges.]

IT IS FURTHER ORDERED, to reduce the likelihood of an entire courthouse staff becoming infected from work-related contact, that wherever possible, court staff assigned to each courthouse should be divided into at least two teams with only one team physically at the courthouse at a time and the other working remotely.

IT IS FURTHER ORDERED that, where face-to-face in-court hearings are required for individuals in custody or receiving services pursuant to court order, efforts should be taken to

minimize the number of transportation events for such individuals, including combining hearings where possible to minimize mixing populations and eliminating avoidable quarantines when such individuals are returned to custody following court hearings.

IT IS FURTHER ORDERED that all courts are encouraged to:

- conduct juvenile hearings using technology, by consolidating hearings where possible and with limited public access, as appropriate, to ensure social distancing;
- take measures to ensure that high volume court calendars account for social distancing, including distancing in the courthouse and in courtrooms, between courtrooms being used, and in calendaring and scheduling; and
- continue to advance alternative dispute resolution options, including online dispute resolution platforms, to resolve issues and cases without the need to hold hearings in courtrooms.

IT IS FURTHER ORDERED that all courts should continue to:

- undertake needs assessments and planning for how to best allocate resources and identify appropriate processes when hearings resume in stayed proceedings, including how to triage, how to account for cases needing to be resolved, identifying available resources and new operational standards, including for jury selection and service (both petit and grand juries), and therapeutic/specialty/problem solving court operations;
- employ appropriate management and social distancing measures, and employ and, where appropriate expand, use of technology of all types to facilitate alternatives to face-to-face hearings, for grand jury proceedings;
- employ and, where appropriate expand, use of all types of technology identified during emergency operations to facilitate alternatives to face-to-face interactions that drive significant traffic to courthouses and other alternatives that have been effective and consistent with ensuring the preservation of the rights of all involved; and
- continue to identify ways to expand capacity and ensure social distancing to meet needs, including involving retired judges and judges pro tempore, temporary reassignment from rotational or other assignments, scheduling and allocation of interpreters and court reporters, overtime and temporary staff, extended hours (including weekends and evenings), and other measures.

IT IS FURTHER ORDERED that the presiding judge of each court shall determine how any in-person court proceedings and courthouse activities are to be conducted in each of the courts' courtrooms, consistent with state administrative orders, under conditions that protect the health and safety of all participants including:

- limiting in-person contact as much as possible by using available technologies, including alternative means of filing, teleconferencing, video conferencing, and use of email and text messages and issuing orders to reasonably ensure the health and safety of all participants;
- following CDC social distancing and gathering size recommendations, considering the

size of the court facility. Courts shall not schedule in person multiple, simultaneous hearings in a number that prevents appropriate social distancing or gathering size, considering the size of the courtroom, and in no event shall a court schedule more than 10 persons at one time. The intent of this order is to discourage the use of large group scheduling of court hearings. However, in extraordinary circumstances, and with appropriate precautions, the presiding judge may authorize groups larger than 10 but in no event larger than 25 provided social distancing measures are taken;

- requiring all scheduled participants to notify the court of any COVID-19 symptoms or suspected exposure and to refrain from coming to the courthouse;
- limiting any required in-person proceedings to attorneys, parties, victims, witnesses, jurors, court personnel, and other necessary persons, where necessary to maintain the recommended social distancing within a court facility, and authorizing trial judges to make reasonable orders to ensure the health and safety of hearing participants consistent with the parties' right to due process of law; and
- liberally granting continuances and additional accommodations to parties, witnesses, attorneys, jurors and others with business before the courts who are at a high risk of illness from COVID-19.

IT IS FURTHER ORDERED that presiding superior court judges of each county continue to meet with local criminal justice system stakeholders to coordinate how best to handle criminal proceedings, including grand jury proceedings.

IT IS FURTHER ORDERED that, until further order, the presiding superior court judge of each county is authorized to adopt or suspend any local rules and orders needed to address the current public health emergency in cooperation with public health officials and to take any reasonable action that the circumstances require to enable necessary operations of the superior, justice, and municipal courts in each county.

IT IS FURTHER ORDERED that any court rule that impedes a judge's or court clerk's ability to use available technologies to eliminate or limit in-person contact in the conduct of court business is suspended through December 31, 2020, except such suspension is subject to constitutional requirements. Judges may hold ex parte hearings on orders of protection electronically.

IT IS FURTHER ORDERED that if it becomes necessary to close court offices to the public during the period of suspension, these offices shall remain accessible to the public by telephone and email during their regular business hours to the greatest extent possible, including using drop boxes for documents that cannot be e-filed.

IT IS FURTHER ORDERED that for the period March 18, 2020 through (DATE TO BE DETERMINED) if a judge is unable to rule on a pending matter due to illness or is otherwise unable to work, the judge is deemed to be physically disabled and therefore that period is excluded from the calculation of the 60 days from the date of submission in which a matter must be determined under ARS §§ 11-424.02 and 12-128.01.

IT IS FURTHER ORDERED that the period March 18, 2020 through (DATE TO BE DETERMINED):

- Is excluded from calculation of time under rule provisions and statutory procedures that require court proceedings to be held within a specific period of time, including Rule 8, Rules of Criminal Procedure; Rules 17, 79, and 100, Rules of Procedure for the Juvenile Court; Rules 2 and 3, Rules of Procedure in Eviction Actions; and Rule 38.1(d)(2), Rules of Civil Procedure. A judge, pursuant to Rule 8, may extend this exclusion of time in criminal cases, for good cause.
- Is not excluded from calculation of time for:
The following proceedings for persons held in-custody: initial appearances, arraignments, preliminary hearings, in-custody probation violations, and conditions of release;
Domestic violence protective proceedings;
Child protection temporary custody proceedings;
Civil commitment hearings and reviews;
Emergency protection of elderly or vulnerable persons proceedings;
Habeas corpus proceedings;
COVID-19 public health emergency proceedings;
Juvenile detention hearings;
Election cases; and
Any other proceeding that is necessary to determine whether to grant emergency relief.

IT IS FURTHER ORDERED that the clerks of the court shall continue to issue marriage licenses and may do so remotely if the available technology allows licenses to be properly issued. A judge may perform a marriage ceremony at the courthouse with no more than 10 persons present with proper social distancing.

IT IS FURTHER ORDERED that the time for conducting preliminary hearings for in-custody defendants under Rule 5.1(a) and (d) and probation revocation arraignments under Rule 27.8 (a)(1), Rules of Criminal Procedure is extended to twenty (20) days from an initial appearance that occurs through (DATE TO BE DETERMINED).

IT IS FURTHER ORDERED that electronic, digital or other means regularly used in court proceedings may be used to create a verbatim record, except in grand jury proceedings, notwithstanding a party's request that the proceedings be recorded by a certified court reporter.

IT IS FURTHER ORDERED that, until (DATE TO BE DETERMINED), notwithstanding Rule 6 (b)(2), Rules of Civil Procedure, in an individual case the court may extend the time to act under Rules 50(b), 52(b), 59(b)(1), (c), and (d), and 60(c) as those rules allow, or alternatively, may extend the time to act under those rules for 30 days upon a showing of good cause.

IT IS FURTHER ORDERED that probation officers are authorized and encouraged to use social distancing and technology of all types to supervise those on adult and juvenile probation, including, where appropriate, for contacts with such individuals.

IT IS FURTHER ORDERED that the Court Appointed Special Advocate and Foster Care Review Board programs are authorized and encouraged to use technology of all types to ensure social distancing.

IT IS FURTHER ORDERED that the Administrative Office of the Courts is authorized and encouraged to use social distancing and technology of all types in continuing to implement the Certification and Licensing Programs under Part 7, Chapter 2, of the Arizona Code of Judicial Administration.

IT IS FURTHER ORDERED that limited jurisdiction presiding judges, or for limited jurisdiction courts that have only one judge, the judge of such a court, should be authorized to take actions consistent with these directives, provided they comply with constitutional and statutory requirements.

IT IS FURTHER ORDERED that the presiding superior court judge and the limited jurisdiction presiding judge, or for limited jurisdiction courts that have only one judge, the judge of such a court, shall notify court customers, the public, and the Administrative Director of all administrative orders issued under the authorization provided by this order using the most effective means available. All courts shall provide information regarding court access and operations in both English and Spanish.

Dated this XXX day of MONTH, 2020.

ROBERT BRUTINEL
Chief Justice

APPENDIX 2—Selected Resources

Articles

Nine Best Practices to Protect Your Next Virtual-Teleconferencing Meeting, courtesy of Jones, Skelton & Hochuli, PLC.

https://www.jshfirm.com/nine-best-practices-to-protect-your-next-virtual-teleconferencing-meeting/?inf_contact_key=e4299354174dc185eed83068599dfa31680f8914173f9191b1c0223e68310bb1

Some countries use temperature checks for coronavirus. Others don't bother. Here's why.

https://www.washingtonpost.com/world/coronavirus-temperature-screening/2020/03/14/24185be0-6563-11ea-912d-d98032ec8e25_story.html (Last visited April 27, 2020)

Broadcasts:

- Lights, Camera, Motion!, April 7, 2020 <https://vimeo.com/405221328>
- Lights, Camera, Motion!: Act II, April 15, 2020 <https://vimeo.com/408411009>
- Lights, Camera, Motion!: Act III, April 20, 2020 <https://vimeo.com/411552388>
- Access to Justice Considerations for State and Local Courts as They Respond to COVID-19 <https://vimeo.com/403847184>
- NCSC Tiny Chat 1: Introduction & Thinking About Court Users in the Response to COVID-19 <https://vimeo.com/404707855>
- NCSC Tiny Chat 2: Clear Communications <https://vimeo.com/407555606>
- NCSC Tiny Chat 3 Federal Pass-Through Funding <https://vimeo.com/410000945>

Tools and Guides

- NCSC Coronavirus and the Courts: <https://www.ncsc.org/pandemic>
- Jury Planning: <http://www.ncsc-jurystudies.org/Jury-Managers-Toolbox.aspx>
- Cybersecurity During a Pandemic:
<https://www.ncsc.org/~media/Files/PDF/Newsroom/Coronavirus%20Resources/Pandemic-Cybersecurity-Threats-Cyber-Hygiene.ashx>

- Implementing Technology in a Crisis:
<https://www.ncsc.org/~media/Files/PDF/Newsroom/Coronavirus%20Resources/Tech-In-Crisis.ashx>
- Cushman and Wakefield *Recovery Readiness: A How-to Guide for Reopening Your Workplace*, <https://www.cushmanwakefield.com/en/insights/covid-19/recovery-readiness-a-how-to-guide-for-reopening-your-workplace>

Translations

Local courts may link to, copy, borrow, or modify any of these materials to adapt them to their current procedures.

Completed translations include:

- Administrative Office of the Courts' COVID-19 information and update webpage
- Notice on AZPoint instructing users to contact their court for information on hearings held via telephone or videoconference
- Guidelines for parenting plans during the pandemic
- Common signage language for courts
- Alternate payment plan information on FARE collection notices for those whose income has been negatively affected by the pandemic
- Information on delayed eviction actions for residential leases, including the tenant's notice to landlord form
- Answers to general questions about court operations developed in collaboration with AZCourtHelp.org, including information on potential changes to courts' hours of operations; restrictions on in-person appearances; options for telephonic or video appearances; relaxed requirements for the filing of documents; delays to eviction actions; etc.

Translations in progress include:

- COVID court visitor screening flyer
- Administrative Orders and Directives with information pertaining to the public, including AO 2020-60 and 2020-70 regarding the limitation of court operations due to the pandemic; AO 2020-59 regarding the modification of court rules during the pandemic; and Administrative Directive 2020-03 regarding time requirements for the CASA and Legal Document Preparer programs
- Notice on Supreme Court Clerk's Office operations

- Notices on the current operations during the pandemic for both Divisions One and Two of the Arizona Court of Appeals

Jury Management Subgroup Best Practice Recommendations During the COVID-19 Public Health Emergency

Arizona Supreme Court
Administrative Office of the Courts

June 1, 2020



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- Honorable Tim Wright – Superior Court in Gila County
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I. INTRODUCTION

The right to trial by jury remains one of our most valued liberties, enshrined in the Sixth and Seventh Amendments to the Constitution of the United States and in Article 2, Section 23 of the Constitution of the State of Arizona.¹ Jurors are the heart of the judicial system in the United States, as juries put a human face on the law, help with legitimate case outcomes, and contribute to the finality of criminal cases and civil disputes.² The institution of jury trials has survived small pox, polio, tuberculosis, the Spanish Flu, and multiple wars and we must continue to preserve it during these extraordinary times.

Background

In response to the declaration of a statewide emergency by the Governor of the State of Arizona and concern for the spread of COVID-19, Arizona Supreme Court Chief Justice Robert M. Brutinel has issued a series of administrative orders directing courts to conduct business in a manner that reduces the risks associated with this public health emergency.

Directives set forth in these administrative orders include limiting in-person contact as much as possible by using available technologies, including suspending jury trials; following the Centers for Disease Control and Prevention’s (CDC) social distancing recommendations; limiting the number of attendees required at in-person proceedings; liberally granting continuances; and authorizing flexibility for local rules and practices in each county.

To provide additional guidance to Arizona courts, the Arizona Supreme Court formed the COVID-19 Continuity of Court Operations During a Health Emergency Workgroup (“Plan B Workgroup”). On May 1, 2020, the Plan B Workgroup issued its “*Best Practice Recommendations*,” identifying best practices supporting core court operations during the COVID-19 crisis and into the future. The recommendations include a transition from emergency operations to what will be the “new normal” for day-to-day operations until such time

Juries play a fundamental role in our democracy, “performing a critical role in the American justice system in protecting the rights of criminal defendants, in resolving intractable civil disputes, and in promoting public trust and confidence in the courts.”

National Center for State Courts,
Center for Jury Studies

¹ *Jurors: The Power of 12*, Report of the Arizona Supreme Court Committee on More Effective Use of Juries (1994).

² *Id.*

as COVID-19 is resolved, including phased resumption of jury trials and other on-site court operations.³

Arizona Supreme Court Administrative Order (AO) 2020-79, issued May 20, 2020, and replacing AO 2020-75, authorized courts to begin resuming certain operations that had been suspended, including jury trials, beginning June 15, 2020. A Subgroup of members from the Plan B Workgroup and additional individuals, in consultation with the Plan B Workgroup, examined jury operations to make recommendations regarding what courts should consider for the resumption of jury trials in the new normal. This Report sets forth those recommendations.

Administrative Order 2020-79

AO 2020-79 provides the most recent guidance for the Arizona courts on the return to on-site court functions. AO 2020-79 provides direction on the resumption of jury trials, including the following measures for grand jury proceedings and jury trials:

- Jury trials may resume when Arizona enters Phase I, but not before June 15, 2020.
- The presiding judge of the superior court in each county should determine when jury trials can safely begin, taking into consideration the physical space of individual courthouses and courtrooms. Judicial leadership, referring, as applicable, to the chief judge of the court of appeals, the presiding superior court judge, the presiding judge of a limited jurisdiction court that has multiple judges, or, for limited jurisdiction courts that have only one judge, the judge of such court, shall employ appropriate social distancing and other measures necessary for the protection of jurors and the general public and shall post on court websites a schedule and information describing the protective measures taken.
- Until December 31, 2020, to reduce the number of citizens summoned to jury duty, procedural rules (including Rule 18.4(c), Rules of Criminal Procedure; Rule 47(e), Rules of Civil Procedure; Rule 134(a)(1), Justice Court Rules of Civil Procedure; and Rule 9(c), Rules of Procedure for Eviction Cases) are modified to afford litigants only two peremptory strikes for potential jurors per side in all civil and felony cases tried in the superior court, and only one peremptory strike per side in all misdemeanor cases and all civil cases tried in limited jurisdiction courts. This modification does not apply to capital murder cases.
- To accommodate social distancing standards, courts may stagger times for prospective jurors to report for jury duty, direct them to individual courtrooms rather than jury assembly rooms, and conduct voir dire remotely or in multiple groups. At the direction of the presiding judge, prospective jurors may be summoned to non-courthouse facilities that can accommodate larger numbers of individuals.
- Judicial leadership may authorize the use of technology to facilitate alternatives to in-person appearance for selecting grand and petit jurors and for conducting grand jury proceedings, and with the permission of the presiding superior court judge, for jury trials.

³ <https://www.azcourts.gov/Portals/216/Pandemic/050120CV19COOPRecommendations.pdf?ver=2020-05-06-150156-047> (last visited May 27, 2020).

- As required by A.R.S. § 21-202(B)(2), jury commissioners must temporarily excuse prospective jurors whose jury service would substantially and materially affect the public welfare in an adverse manner, including but not limited to those who report a COVID-19 diagnosis or symptoms, or notification by a public health official of exposure to COVID-19, and may temporarily defer or excuse potential jurors who are highly vulnerable to COVID-19.
- The presiding judge of the superior court, in coordination with the county attorney in each county, may determine when grand juries can be resumed in a safe manner with proper social distancing. Grand jury selection may be conducted in-person by staggering the appearance of prospective jurors or by electronic means. The presiding judge may authorize grand jury proceedings to be held by videoconferencing.

Overview of this report

The Subgroup considered various logistical issues involved in resuming grand jury proceedings and jury trials in Arizona state courts. The recommendations in this Report are based on the information currently available, recognizing that the landscape is evolving and changing. By necessity, this Report is being provided as of June 1, 2020, fully recognizing that future developments and experience will have a significant impact on the recommendations in this Report. Accordingly, constant communication based on future developments and experience (both best practices and lessons learned) will be essential in ensuring the safe resumption of grand jury proceedings and jury trials.

The Subgroup looked to many resources, including Arizona law; the National Center for State Court's (NCSC) principal court research consultant, Dr. Paula Hannaford-Agor; the United States District Court for the District of Arizona; general recommendations of health experts; AO 2020-79; Plan B Workgroup *Best Practices Recommendations* (including the 10 guiding principles set forth in those *Recommendations*); publicly available information, including recommendations from the NCSC; reports from local court task forces; and elsewhere.

Based on this research and discussion with local trial courts, this Report presents recommendations and best practices in the following areas: (1) remote grand jury proceedings; (2) taking measures to ensure the health and safety of all participants; (3) ensuring a jury pool that is a fair cross section of the community; (4) voir dire; (5) pretrial preparation, including resolving motions, scheduling, and preliminary jury instructions; (6) conducting jury trials; (7) attorney conduct and evidence during trial; and (8) final jury instructions and return of verdict. The appendix includes selected additional resources.

Although submitting this Report on June 1, 2020, information-gathering and education efforts will continue for the foreseeable future. Later this week, Subgroup and Workgroup members will virtually attend a webinar, *Reestablishing Jury Pools in the COVID-19 Era*, presented by the Council of Chief Justices/Conference of State Court Administrators Rapid Response Team, to be held Thursday, June 4, 2020. In addition, on Monday, June 8, 2020, members will present at a webinar for Arizona courts, *Resumption of Jury Trials: Part 1 Pre-trial and Part 2 Conducting the*

Trial. In this interactive webinar, panelists will respond to questions “from the field,” with publication of an FAQ to follow.

II. REMOTE GRAND JURY PROCEEDINGS

Grand juries play a vital role in Arizona’s criminal justice system. Grand juries are to determine whether probable cause exists to show both that a crime has been committed and that one or more named individuals committed that crime. Procedural requirements for grand jury proceedings are unique and require due care to ensure fairness and confidentiality of the grand jury process.

By statute, each presiding judge in a county with a population of 200,000 or more people is to convene a grand jury every four months. Each grand jury must sit until a new grand jury has been impaneled or its term expires. A.R.S. § 21-402. With this background in mind, the Subgroup makes the following recommendations for remote grand jury proceedings.

A. Virtual grand jury proceedings

Impaneling a grand jury presents challenges as courts work diligently to resume court operations and ensure social distancing. Because the function of a grand jury differs from that of a petit jury, in grand jury proceedings, the rules of evidence and the Confrontation Clause are not applicable. Although these and other differences are applicable to virtual grand jury proceedings, videoconferencing platforms must be configured to safeguard the secrecy of grand jury proceedings and deliberations. Courts should also require electronically signed non-disclosure agreements from the grand jurors to ensure privacy during and after the online grand jury proceedings.

The Administrative Office of the Courts (AOC) has secured a statewide Zoom® license for videoconferencing services that courts can use for grand jury proceedings. Courts should explore the functionality of this platform, and other robust and secure videoconferencing platforms which allow for remote video interpreter services and electronic recording capacity, recognizing that by statute, courts shall appoint a court reporter to capture the verbatim record of all grand jury proceedings. A.R.S. § 21-411.

In April 2020, the Superior Court in Mohave County started using Zoom® to conduct grand jury proceedings. The grand jury in place at that time was impaneled in-person shortly before the statewide emergency was declared, having almost 120 days of remaining service before its end date. While the grand jurors appeared in person for a few weeks before the Governor issued the stay-at-home order, they were advised that future sessions would be conducted remotely and that instructions and call-in information would be sent to them. The court advised the grand jurors that although the proceedings would take place remotely, the proceedings would nonetheless remain confidential. The court then emailed or mailed each grand juror an instruction sheet with information explaining how to download the software to participate remotely.

The Superior Court in Mohave County organized a successful test run to work out operating procedures before conducting actual grand jury proceedings remotely. To do this, the court asked

the grand jurors to call in the day before their next session and court staff reviewed the process with the grand jurors.

On the day the actual grand jury proceedings were to take place remotely, the prosecutor, the court reporter, and the grand jury foreperson appeared in person in the same room, keeping appropriate social distancing. Other participants, including the grand jurors and some of the witnesses, appeared remotely. The prosecutor was the “host” of the proceedings and provided the remote call-in information to the witnesses. The prosecutor also controlled the video communications for hearing attendees. Since April 9, 2020, when Mohave County started the remote grand jury proceedings, the grand jury has returned indictments against 159 defendants.

The Superior Court in Mohave County’s next grand jury will be sworn in on July 9, 2020. For this grand jury, the court intends to have prospective grand jurors appear remotely if they wish. They will virtually “appear” in the morning and a panel will be selected. At that time, the jury foreperson will be selected, and the grand jury will begin considering evidence presented. During the lunch break, the jury foreperson will be asked to drive to the courthouse to sign indictments and be present when the judge returns to hear them. At the end of the day, the judge and grand jury clerk will join the prosecutor and the grand jury foreperson to hear the indictments, set bonds, if appropriate, and schedule arraignments. The grand jury clerk will also take the roll and mail debit cards to each grand juror for their per diem compensation. Each week, additional funds will be placed on the jurors’ debit cards for their attendance at grand jury proceedings.

B. Security in virtual grand jury proceedings

To ensure security, all virtual grand jury proceedings must be password protected, requiring all participants to enter a unique password before joining any proceeding. The court should ensure that a new password is generated for each new jury and/or each session. The court should also provide the host ID number to the prosecutor or another authorized person managing the proceedings, enabling that person to “lock” the meeting access after the last participant has joined, remove users, mute users, and disable users’ video if necessary. In addition, appropriate admonishments about the need for secrecy and security in grand jury proceedings should be provided as each session begins and ends. Furthermore, appropriate written acknowledgments by grand jurors of the understanding of the admonishment would be appropriate.

III. TAKING MEASURES TO ENSURE THE HEALTH AND SAFETY OF ALL PARTICIPANTS

Courts around the country are responding to COVID-19 in numerous ways, working to manage the contagion by balancing public health and safety with access and openness. Jury commissioners and their staff are at the forefront of this response, navigating through many unprecedented jury management issues. AO 2020-79 directs judicial leadership to employ appropriate social distancing and other measures necessary to ensure the health and safety of all participants, including jurors. This section serves as a resource for best practices to maximize doing so.

A. Reevaluating prospective juror reporting practices

Juror reporting practices must be re-evaluated as courts resume jury operations. The following strategies are designed to disperse the number of individuals appearing for and participating in jury service at any given time. Application of these recommendations in any individual courtroom or courthouse will depend upon specific logistical considerations unique to that facility.

a. Staggered reporting times

Historically, jury service brings, at times, hundreds of summoned jurors to the same courthouse each day. Traditionally, large groups of summoned jurors have been scheduled to report to the jury assembly room at the same time on a given day. To accommodate social distancing standards, AO 2020-79 authorizes courts to stagger reporting times for prospective jurors. For example, on a day where 150 potential jurors are needed, this might involve 50 individuals reporting at 8:30 A.M., 50 individuals reporting at 10:00 A.M., and 50 individuals reporting at noon. Depending upon needs and logistical limitations (including, for example, elevators), reporting numbers could be even smaller and at even more specific times throughout the day. Jury commissioners are strongly encouraged to implement this practice.

b. Multiple groups and smaller panels for voir dire

AO 2020-79 authorizes courts to direct prospective jurors to individual courtrooms rather than jury assembly rooms and to conduct voir dire in multiple groups where such measures would help with social distancing. Courts should implement these options as feasible. When more than one panel of potential jurors is required to select a jury, courts should conduct voir dire in multiple groups by having smaller panels report to courtrooms for voir dire. This allows courts to employ social distancing while conducting multiple sessions of voir dire, striking jurors for cause, joining the panels, and then completing voir dire and allowing peremptory strikes.

c. Non-traditional jury assembly areas

Courts should identify all possible areas within the courthouse where jurors can safely assemble. For each area, the court should identify the total seating available (applying social distancing measures) to determine appropriate seating arrangements. These measures likely will result in courts losing about two-thirds of the seating that would have been available under pre-COVID-19 circumstances.

Courts may also consider summoning potential jurors to non-courthouse facilities that can accommodate larger numbers of individuals. Examples include high school gymnasiums, empty retail buildings⁴, training facilities, theaters, convention centers, etc.⁵

B. Ensuring public health and safety in jury assembly areas

⁴ <https://www.thenewstribune.com/news/coronavirus/article242661641.html> (last visited May 25, 2020).

⁵ <https://www.independent.ie/irish-news/juries-could-be-picked-in-hotels-due-to-distancing-concerns-39216369.html> (last visited May 25, 2020).

Along with ensuring appropriate social distancing, jury assembly areas, whether traditional assembly rooms, courtrooms, or non-courthouse facilities, should be deep cleaned and disinfected, frequently, and items that could contribute to the spread of the virus should be removed from these areas. Recommended activities include:

- Wiping down workspaces (countertops, tables, armchairs, doorknobs, kiosks, etc.) frequently during the day and overnight using anti-viral cleaning products identified by the CDC.
- Avoiding the direct exchange of documents with jurors. If direct exchange is unavoidable, staff or jurors (or both) should wear gloves.
- Removing all unnecessary papers and paperwork from desks.
- Training for staff and others on the appropriate way to use gloves and face masks to avoid cross-contamination.
- Restricting access to common areas and removing courtesy amenities previously offered to jurors (such as snacks, coffee, puzzles, etc.) that are no longer appropriate.
- Providing jurors information ahead of time on what items are, and are not available, so they can come prepared.
- Posting handwashing signs.
- Placing hand sanitizer and wipes at counters and various locations of the jury gathering areas.
- Providing single use golf pencils or similar writing devices that are then discarded.
- Limiting the number of people in elevators to two to four people at a time (depending upon the size of the elevator) and frequently disinfecting elevator surfaces. The floors on each elevator should be marked so that people know where to stand to appropriately social distance. If staffing levels permit, it may be appropriate to have court personnel operate the elevator for jurors so that control surfaces are touched by fewer people.
- Because jury deliberation rooms in many courthouses will no longer be the designated area for juror breaks and deliberations, courts should consider reserving nearby restrooms for jurors, if possible, in a manner that minimizes interaction with other panels, lawyers, etc.
- If courtrooms are used for juror breaks and deliberation, both audio and video systems used to record court proceedings must be disabled during that time. In addition, attorneys will need to remove all of their materials from the courtroom.
- During Phase 1, AO 2020-79 requires judicial leadership to require court participants and visitors to wear masks or other face coverings, and courts may also require body temperature screening. Information regarding the requirement to wear masks and temperature screenings should be clearly communicated to all, including prospective jurors and jurors, so that they know what to expect before entering the courthouse.⁶

⁶ The Administrative Office of the Courts has developed health screening protocols through Administrative Directive 2020-10. <http://www.azcourts.gov/Portals/22/adminidir/pdfs/2020/2020-10%20AD.pdf?ver=2020-05-21-155131-590> (last visited May 31, 2020).

C. Communication regarding safeguards used to ensure the health of prospective jurors, jurors, and court staff

Courts must keep the public informed about jury service and the precautionary measures taken to prevent the spread of COVID-19. Public messaging is a critical part of planning for reinstating jury trials. The NCSC recommends that courts convey two messages as they resume jury trial operations: (1) communicating that courts take public health and safety seriously and have implemented policies to prevent the risk of infection and (2) showing what the courts are doing to ensure confidence in those efforts.⁷

This includes posting to their website information describing the protective measures taken. Such information should be widely communicated to the public, including prospective jurors, jurors, and court staff.⁸ Information about the safety measures being taken also should be included on jury summonses and other communication outlets, including:

- Public service announcements, media advisories, and press releases
- Social media platforms
- Juror call-in messages
- Courthouse signage
- Other communication technologies, including text messaging and email

A powerful example from the Superior Court in Pima County is found at:

<https://youtu.be/9IC9mnTDNdE>

D. Maintaining social distancing in the courtroom

Courts should identify, in advance, effective strategies for resuming jury operations in each specific facility where jury operations will be undertaken to ensure conformance with social distancing requirements. Jurors should have a safe experience and they must perceive that they will have a safe experience. Courts should:

- Provide clear signage and notices regarding social distancing requirements including seat and floor marking.
- Court postings should be in English and Spanish and should comply with the Americans with Disabilities Act (ADA).
- Consider alternative jury selection processes, including multiple small panels for a single case, using a struck method of jury selection (as opposed to strike and replace), *see* Ariz. R. Crim. P. 18.5(b) (discussing struck method in first sentence and strike and replace in second sentence) and using technology for remote screening (either initial screening or more broadly).

⁷ <http://www.ncsc-jurystudies.org/What-We-Do/COVID-Resources.aspx> (last visited June 1, 2020).

⁸ See Appendix for examples.

- Maximize the use of remote appearances through technology, such as video and audioconferencing platforms, giving due consideration to compliance with constitutional and statutory rights, feasibility, and connection stability.
- Seat jurors in a cordoned-off section of the courtroom gallery instead of, or in addition to, the jury box.
- Consider re-engineering courtrooms to accommodate social distancing, e.g., remove the jury box and replace it with individual chairs, remove some individual chairs in the jury box to ensure social distancing, or install ceiling height plexiglass between each juror. For example, the Phoenix City Court is completely reconfiguring some of its courtrooms to accommodate social distancing for jury trials.
- Use a larger courthouse conference room or training area for the jury to use during trial recesses and deliberations instead of the jury deliberation room.
- Minimize the number of prospective jurors present at each stage of jury service.
- Implement staggered reporting times.
- Have jury panels report directly to the relevant courtroom in lieu of congested jury assembly rooms.
- Assemble smaller panels (10-15 potential jurors) to report to the courtroom for voir dire.
- Explore administering written questionnaires remotely.
- Explore remote voir dire using video technology.
- Consider remote options for pre-screening jurors for hardship and for cause.
- Consider remote options for conducting jury trials in their entirety.

IV. ENSURING A JURY POOL THAT IS A FAIR CROSS SECTION OF THE COMMUNITY

As courts begin resuming new normal jury operations, reducing unnecessary foot traffic must be considered in policies and procedures implementing social distancing measures. Societal shifts resulting from the COVID-19 pandemic will inevitably impact how people will respond to a jury summons, how many people will seek excusals or deferrals, and how many people will appear through electronic means who would have otherwise sought an excusal or deferral. The complete nature and magnitude of this impact is largely unknown. Thus, courts should maintain juror yield and utilization statistics to support data driven decisions as jury management policies are adjusted in response to the new normal.

A. Online screening of prospective jurors

Along with regular foot traffic from daily filings and other daily business, petit jury and grand jury impanelments can bring hundreds of additional people to the courthouse on any given day. To reduce these numbers and ensure social distancing, courts should consider using technology that allows for virtual jury selection through a videoconferencing platform. Courts should also

implement processes to ensure that jurors are called in only when the court is certain that a trial is going to proceed. This focus on utilization has even more importance in the new normal.

AO 2020-79 allows judicial leadership to authorize the use of technology to facilitate alternatives to in-person appearances for selecting jurors. Using technology for this purpose will require coordination and planning. Using videoconferencing technology for prospective juror screening will have significant benefits, including reducing foot traffic in the courthouse and mitigating logistical challenges with court facilities to provide social distancing.

One solution that can be implemented to reduce juror foot traffic in the courthouse is an online screening tool to screen jurors for hardship. If such an online solution is used, the jury summons should include information regarding where jurors should go online to complete such a questionnaire.

Juror utilization is the measure of how efficiently the court allocates jurors who report to the courthouse for jury service.⁹ This measure is important as it relates to the cost of jury operations. It is also important because it impacts the costs potential jurors incur as citizens experiencing jury service and their perceptions of the local justice system.¹⁰ To this end, the pre-screening process can be strengthened by using questionnaires and other remote inquiries, such as supplemental questions, for further screening. For example, initial questioning can avoid situations where potential jurors are summoned to appear, only to go through the initial voir dire and be released after physically appearing in court.

The Superior Court in Maricopa County has created a proposal for an eJuror questionnaire and anticipates this will be very helpful to the process.¹¹ Jurors will be directed via their summons to respond online to complete their questionnaire. The questionnaire has three sections: contact information, qualifications, and demographic information. The questionnaire also contains general questions regarding ability to serve and potential hardships, beyond what is currently directed by statute. Each weekday morning, a report will be generated that reflects the information entered the previous day in response to the questions and identifies each juror that indicated a hardship request. This information will be provided to a duty judge, who will consider it and grant or deny the hardship request. The court will notify the juror of the court's ruling by phone or email, or by postcard if the juror did not provide a phone number or email address.

B. Establishing policies for COVID-19 related deferrals or excusals

Courts should establish and consistently apply policies governing requests for COVID-19 related deferrals or excusals, based on a specific application of established policies, the statutory standard for persons entitled to be excused from jury service set forth in A.R.S. § 21-202 and information available from the CDC and the Arizona Department of Health Services. In applying

⁹ Paula Hannaford-Agor, *Assessment of Jury Operations and Procedures for High Profile and Lengthy Trials in the Eighth Judicial District Court of Nevada* (2008).

¹⁰ *Id.*

¹¹ See Appendix for questionnaire.

such policies, deferrals (allowing a person to defer jury service to another time) should first be considered before granting excusals (where a person is excused from jury service altogether).

Although public health guidance is subject to change, at present, the CDC has identified the following groups of persons who may be at high risk for severe illness from COVID-19: (1) people 65 years and older; (2) people living in a nursing home or long-term care facility; and (3) people of all ages with underlying medical conditions, particularly if not well controlled, including (a) chronic lung disease or moderate to severe asthma; (b) serious heart conditions; (c) immunocompromised conditions; (d) severe obesity; (e) diabetes; (f) chronic kidney disease undergoing dialysis and (g) liver disease.¹² Court policies governing excusals and deferrals should take into account this guidance.

All such court policies should also address how jury trial proceedings will occur, recognizing that proceedings for an in-person jury trial are different than those for remote jury service (in whole or in part). Furthermore, it is particularly important that information about deferrals and excusals is captured and retained to ensure that potential jurors represent a fair cross section of the community and to address legal challenges which may be posed after the trial.

C. One day/one trial process

During the pandemic recovery, courts should consider whether temporary alternatives to the one day/one trial model would yield better juror utilization by allowing courts to allocate jurors for multiple matters instead of summoning new jurors and going through the selection process anew. Courts could keep jurors “on call” for a certain number of days and ask them to report when needed during the established timeframe. Courts should continue to examine their jury trial operations during the pandemic recovery to determine which is most practical for their court, e.g., moving away from the one day/one trial model might work well in a large court, but might not work as well in a smaller court with an irregular or fluctuating jury trial schedule. Courts seeking to implement this practice would need to comply with statutory requirements, including A.R.S. §§ 21-332(B) and 21-335(B).

D. The digital divide

The jury pool from which the jurors are selected must be a fair cross section of the community. A “digital divide” refers to the gulf between those who have ready access to technology and the internet and those who do not. While courts work to safely resume jury trials through social distancing, diligence requires taking measures to ensure that impaneled juries are selected from a pool of prospective jurors representing a fair cross section of the community and not only of those persons who have ready access to technology and the internet. The NCSC is currently working with five states, including Arizona, on a proof of concept that would provide free internet or other technology solutions for prospective jurors to close this digital divide. This effort also may involve

¹² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited May 28, 2020).

the use of more traditional technology, like telephone contact, to reach further into the community than what reliance solely on robust internet service may allow.

E. Continuously monitor innovations underway

Innovation and new methods for conducting court business are rapidly evolving during today's public health emergency. Courts should continue to monitor and stay abreast of innovations for handling jury selection and jury trials, fully leveraging technology. A clearinghouse of these jury management innovations and other efforts around the country can be found at:

<https://judicialstudies.duke.edu/covid-19-response-resources-for-judges/>.

V. VOIR DIRE

“The challenge of voir dire is to elicit meaningful information about prospective jurors’ abilities to maintain fairness and impartiality, and to obtain that information with reasonable efficiency.”¹³

Compared to some other states, Arizona has a comparatively limited voir dire process typically driven by the judge presiding over the trial in an effort to obtain a fair and impartial jury. Voir dire should be limited to traditional inquiries, including individualized case-based issues, so courts can start with a smaller group of prospective jurors who include only those likely to serve. This approach enhances safety by not bringing people to court who likely will not be selected to serve as jurors. Courts should continue to carefully plan how many people are brought to the courthouse, when they are brought to the courthouse, and the paths by which they will need to travel in the courthouse. Courts should also plan for what the jury process will look like in the courtroom to ensure the safety of all participants.

A. Remote voir dire

The Superior Court in Maricopa County has created a proposal for a remote voir dire process (although it will not use this process as it resumes jury operations). As contemplated, the processes for reporting to juror service would involve a combination of virtual and standard in-person reporting. Prospective jurors reporting virtually would be screened electronically and sign into the virtual platform. The prospective juror would then answer voir dire questions via video on their day to “check in.” The prospective juror would be sent a questionnaire and avow under oath that the answers are correct. A staff member of the jury office would be present to troubleshoot and address any camera or sound issues. Prospective jurors reporting in person would be directed to a specific location to fill out a questionnaire, which would include a time screen.

All questionnaires would be given to the trial judge once they are complete. The first 100 (a pre-determined number) prospective jurors who check in either in person or virtually would be assigned to a panel for a particular case. The judge would then question the panel in a courtroom

¹³ Judge Gregory E. Mize and Paula Hannaford-Agor, *Building a Better Voir Dire Process* (2008).

with the lawyers and the defendant in a criminal case present (unless the defendant's presence is waived). The judge would be able to show the jurors on screen, or the lawyers can log into the session in the platform to view the prospective jurors as they respond. Strikes for hardship would then be completed.

A modified strike and replace method can be used which allows no more than 15-20 prospective in-person jurors to be brought into the courtroom. The court can also use the struck method, where another 5-10 jurors can be added virtually or be physically brought to the courtroom.

The Superior Court in Mohave County plans to impanel a petit jury to hear a case in mid-June using the Zoom® videoconferencing platform. The court will complete jury selection on one day and then ask the impaneled jurors to appear the next day for a one- or two-day jury trial. The court anticipates that many prospective jurors will choose to appear remotely, but the summons will indicate the option of appearing virtually or in-person. The court will provide an instruction sheet, schedule a test run to ensure the technology is functioning, and ensure that prospective jurors know what to expect. They will be instructed on how to "raise their hands" during the voir dire process and will also be instructed on what to do if they are placed in a Zoom® virtual waiting room.

Courts can also consider using video broadcasting technology, allowing prospective jurors to be broadcast into the courtroom to participate in voir dire without having to leave the jury assembly room or other area in the courthouse, which would eliminate the need to ride in an elevator and traverse the courthouse.

B. Peremptory strikes and alternate jurors

AO 2020-79 temporarily limits the number of peremptory strikes in an effort to reduce the numbers of citizens summoned to jury duty. Courts should also examine the practical need for alternate jurors and reduce the number of jurors or eliminate the need for alternates where feasible. There are pros and cons to having alternate jurors. Factors such as the length of the trial, type of case, issues presented, etc., should be considered when determining if and how many alternate jurors are necessary. Minimizing the number of alternate jurors where practical allows for fewer people in the courthouse and respects the time of the alternate juror who may be present for the entire trial, but then dismissed once deliberations begin. Eliminating or reducing alternate jurors should be weighed against the public health realities that jurors may be more likely to have issues arise during the course of trial that may lead to excusal.

VI. PRETRIAL PREPARATION, INCLUDING RESOLVING MOTIONS, SCHEDULING, AND PRELIMINARY JURY INSTRUCTIONS

Jury trials are most efficient when issues that can be addressed before trial are indeed resolved pretrial. Pretrial conferences are vital to resolve as many issues as possible, to limit movement in the courtroom and to avoid delay and unnecessarily lengthening jury trials.

In criminal matters, consideration should be given as to whether the defendant needs to be present for a specific pretrial hearing or, as another alternative, whether the defendant may appear virtually. Where the defendant is in custody, courts should be cognizant of moving an in-custody defendant from one facility to another, as it mixes populations and increases risk of infection. Moves of in-custody defendants also result in quarantines when such individuals are returned to jail after court hearings.

AO 2020-79 sets forth the following priority for jury trials:

1. Criminal felony and misdemeanor cases, where the defendant is in custody;
2. Sexually violent person trials;
3. Criminal felony cases, where the defendant is not in custody;
4. Criminal misdemeanor cases, where the defendant is not in custody; and
5. Civil and any other jury trial cases.

Particularly for criminal matters in limited jurisdiction courts, applying these priorities require the court to first determine whether the defendant has a jury trial right. Some charges are jury eligible by statute, e.g., DUI (A.R.S. § 28-1381, et. al); contempt (A.R.S. § 12-863(A), Ariz. R. Crim. P. 33.4). Other misdemeanors may be jury eligible if qualified by the test set forth by *Derendal v. Griffith*, 209 Ariz. 416, 104 P.3d 147 (2005) (charge must be jury eligible at common law or a “serious” offense; “moral quality” prong no longer a basis for jury trial). Caselaw has developed addressing whether various charges are jury eligibility and should be addressed early on in the case to determine whether the defendant has a jury trial right.¹⁴

The most effective way to optimize jury trial time is to address, and resolve, issues that can be anticipated *before* trial. Accordingly, the new normal will—by necessity—acutely focus on the need for pretrial motions and hearings to limit the scope of matters considered during the trial, avoid delay, and provide that trials are not unnecessarily lengthened.

Pretrial conferences can and should address a variety of issues that will make trials more efficient and, as a result, shorter. In criminal matters, for example, pretrial conferences should address a variety of issues before the day of trial, including (1) length of trial and schedule; (2) jury selection issues and voir dire proceedings; (3) hearing and resolving pretrial motions (including motions in limine, where applicable); (4) settling preliminary instructions; and (5) courtroom protocols. In addition, scheduling orders are necessary to set deadlines for such motions and filings, ensuring they will be fully briefed by the time of the pretrial conference.

Courtroom protocol issues discussed at a pretrial conference should address, among other matters, how exhibits (including stipulations regarding the admission of exhibits), bench conferences, and mid-trial motions will be handled so that the jury is not inconvenienced; offers

¹⁴ See Appendix for selected misdemeanor offenses that have, and have not, been deemed jury trial eligible.

of proof; witness examination; no speaking objections; juror questions (including whether jury questions will be allowed or, given COVID-19 concerns, temporarily suspended for good cause); approaching witnesses; and other logistical issues for trial.

Prior to the trial, victim rights issues should also be addressed, including accounting for the victim's right to be present, whether the victim wishes to be present remotely (if technology is available), and the size of the courtroom. In addition, the need for interpreters and ADA issues also should be addressed pretrial to avoid unnecessary delay.

Along with resolving these issues at hearings held before the day of trial, orders resolving pretrial motions and addressing other trial protocol issues will continue to be essential to provide notice and detailed trial protocols to make jury trials as efficient as possible and avoid delays or confusion.

Rules regarding jury trials for eviction matters in the Superior and Justice Courts are addressed in the Rules of Procedure for Eviction Actions ("RPEA"). The eviction process must be completed in a very short time, even if the case is continued. A jury trial request for an eviction action must be demanded at or before the initial appearance or it is waived. RPEA 11(d). Trial is set for an initial return date, but it may be continued for no more than three days in Justice Court or ten days in Superior Court. Courts should implement procedures for hearing and deciding substantive motions in eviction actions before the day of trial so that jurors do not have to wait for a decision on the motion. Additionally, dispositive motion hearings should be conducted before and separate from the trial.

VII. CONDUCTING JURY TRIALS

Along with the importance of pretrial proceedings, rulings and preparation, courts must determine the logistics of getting people into the courtroom, including jurors, attorneys, witnesses, members of the public, etc. Courts should explore alternatives, such as projecting the trial on a screen in an area that allows the public and others to view the trial remotely or through video livestreaming. This will limit the number of people in the courtroom to those whose physical presence is necessary, as defined in AO 2020-79.

During the initial resumption of jury trials, jurors should first be assigned to criminal cases or other cases where a jury trial is required to be initiated within specific statutory limits, in accordance with the priorities set forth in AO 2020-79.

A. Mask Requirements

AO 2020-79 requires all court participants and visitors to wear a mask or other face-covering in the courthouse beginning June 1, 2020 and throughout Phase 1. This means that, along with court personnel, all jurors, defendants, witnesses, and attorneys will be required to wear masks, including during trials. Consideration should be given to permit witnesses to remove their masks while testifying. Courts also should consider installing plexiglass around the witness stand and allowing participants to wear clear face shield masks, particularly witnesses while testifying, so

that they can be accurately identified. Courts should further consider how the requirement for masks or other face-coverings might influence in-court identification in those cases where identification is at issue.

Courts should instruct jurors that witnesses may be wearing masks, and this should not be considered in the determination of the witness' credibility. Accordingly, if masks are worn by witnesses while they are testifying, courts should ensure that the types of masks worn are consistent among the witnesses. For example, certain witnesses should not wear see-through masks while others wear opaque cloth masks.

Courts must also consider accommodations for interpreters, including American Sign Language interpreters, and should be mindful that special masks may have to be used so that lip reading is possible.

B. Bench trials and remote civil juries

Given the case priorities set forth in AO 2020-79, on the whole, criminal jury trials will proceed before civil jury trials. Additionally, because available jurors will be allocated to serve on criminal juries, the number of available jurors for civil trials may decrease. However, parties otherwise entitled to a jury trial can stipulate to a bench trial conducted in-person in the courthouse. *See* Ariz. Const. Art. 6 §17. Alternatively, for civil matters, the trial could be recorded and submitted to an asynchronous virtual jury. In this circumstance, the judge, the attorneys, the witnesses, any parties or party representatives and court staff would be in the courtroom, at an appropriate distance, while the jury then participates remotely.

C. Stipulating to judge selection

AO 2020-79 suspends until December 31, 2020 all rules that provide litigants with a change of judge as a matter of right. Accordingly, local courts could consider encouraging bench trials by allowing counsel to select the trial judge by stipulation. The court could also allow counsel to select any superior court judge regardless of whether the judge is currently assigned to the criminal bench, subject to the selected judge's availability and agreement, and approval by the relevant presiding judge. Not only would this encourage bench trials, thus eliminating challenges associated with holding jury trials, but it would also allow for a more flexible use of judicial resources.

D. Alternative civil trial approaches

a. Virtual trials

As courts work to find workable solutions to resuming jury trials, the State of Texas explored ways in which technology could be used for this purpose and held a virtual civil jury trial using videoconference technology on May 18, 2020.¹⁵ The jury trial was a one-day summary jury trial where jurors heard a condensed version of the case and rendered a non-binding verdict.

¹⁵ <https://www.reuters.com/article/us-health-coronavirus-courts-texas/texas-tries-a-pandemic-first-a-jury-trial-by-zoom-idUSKBN22U1FE> (last visited May 28, 2020).

Approximately two dozen potential jurors logged in by smartphone, laptop, or tablet for jury selection, and the trial was livestreamed on YouTube to accommodate public access.¹⁶

Courts opting for virtual trials should be mindful that they may be resource intensive, requiring a staff person to operate the technology and facilitate the process. Courts should consider conducting a short training for the jurors before the virtual trial begins. In addition, an appropriate court staff member would be responsible for technology during trial, including deliberations. This person would be muted and would not participate in the deliberations, but would be able to respond to any requests to display evidence, etc. As noted in section IV(D), courts should also ensure that potential jurors represent a fair cross section of the community and not only include those with high speed internet access. Courts may wish to consider whether a virtual trial is appropriate if any of the evidence is tactile or sensory specific as such evidence may not be able to be “displayed” in a virtual setting.

b. Summary jury trial

The Superior Court in Maricopa County has proposed several approaches for conducting summary jury trials. The report of the Civil Department Innovation Subcommittee (“CDIS”) indicates that this would be a non-binding alternative dispute resolution process in various possible forms, including for example:

- Approximately 15 venire panel members would be used to seat 4 jurors for a one-day trial with limited time-frames and relaxed evidentiary rules. A one-day jury trial might be binding or might be followed by a one-day mediation.
- A virtually appearing 8-person jury. The trial would not exceed two days. The trial might be followed by a one-day mediation.
- A recorded trial, detailed below.

The Maricopa County Superior Court CDIS report outlines the following process:

The jurors who respond using the online screening application, detailed in section IV(A), would be provided a questionnaire to ensure the juror has reliable internet access, a private space to participate, and a computing device with a camera. Jurors would be given a pretrial opportunity to appear and test their equipment. If a juror participates remotely, the juror’s time would constitute jury service as though it were in-person jury service.

Remote jury selection would attempt to replicate in-person jury selection in that bench conferences would occur outside of the jury’s presence. The CDIS report also recommends that courts should attempt to allow the jury to be together in the virtual meeting room before trial and during breaks to replicate the experience of jurors becoming a cohesive group.

In some scenarios, jurors will appear virtually, but lawyers and some witnesses will appear in person. Virtual jurors must be able to see the livestream of the trial, lawyers must have individual laptops, or the court must have cameras turned to the well of the court and available to show the

¹⁶ <https://www.bing.com/videos/search?q=texas+youtube+virtual+jury+trial&docid=13914474292524&mid=E5BEBD36F002C61065EBE5BEBD36F002C61065EB&view=detail&FORM=VIRE> (last visited June 1, 2020).

witness as the witness testifies. One possibility is to require remote jurors to have web cams so that the court and counsel can observe appearances and ensure that the jurors are present and attentive.

Juror questions may be submitted to the judge using a real-time chat feature. Deliberations will be in a secure password protected virtual room. Jurors will call the bailiff if they have a question or they have reached a verdict. Jurors will be provided a digital copy of exhibits using an online document repository or email.

After a verdict is reached, jurors will share with the judge a copy of the form of verdict. Absent any outstanding issues with the verdict form, the parties will join the meeting room and the clerk will read the verdict.

Jurors will be asked if the verdict accurately reflects their verdict and upon request, the jurors will be polled by the court. Jurors cannot sign the verdict form. As such, the judge will sign and file a verdict form indicating that the verdict was shown to the court by the foreperson, read in open court, and the jurors were asked to confirm the verdict on the record.

After the verdict, jurors will be questioned to gather additional information to improve virtual jury selection and service and juror compensation will be mailed.

c. Recorded trials

The Superior Court in Maricopa County is considering an approach whereby trials are recorded without a jury in the courtroom, and the recording is later shown to jurors to consider, deliberate, and render a verdict. This would allow courts to limit the persons present at the trial to attorneys, parties, testifying witnesses, and court staff. This also allows for a highly streamlined approach, with objections to testimony and evidence being edited out of the version of the video recording shown to the jury. Likewise, unexpected, objectionable, and prejudicial testimony could be edited out of the video. As such, jurors would see a finished video that would take less time to view than if they had been in court.

E. Exhibits

In a virtual jury process, the publishing of exhibits will need to be done differently. Parties should be required to have copies of any exhibit they are going to ask be published for each juror rather than passing around a single exhibit. This requirement could be addressed during pretrial hearings, so that the parties know which exhibits the court is likely to admit, meaning it could be published. In the alternative, before having jurors handle exhibits, jurors should sanitize their hands, put on gloves, and then handle the exhibit. Upon returning the exhibit or passing the exhibit, jurors should remove their gloves, throw them away in a nearby trash can, and sanitize their hands again.

F. Making the record

Courts should determine the most efficient procedure for creating the record during trials. For example, courts often experience time constraints related to court reporter breaks, etc. Courts may consider establishing a presumption that all parts of the jury trial during which the jury is not

actually present (discussing instructions, sidebars, etc.) will be conducted without a court reporter so that courts can maximize the time the court reporter is available for testimony and avoid delay.

Another significant issue is making a record on objections. Many judges favor a process that would allow attorneys to make a record of the objection and allow the judge to state the reasons for the ruling on the record. Sometimes this procedure involves sidebar discussions, providing more detail that the jury cannot hear. Because having counsel and the court reporter in close proximity to each other at the bench for this purpose is problematic, courts should explore using electronic recording technology for this purpose by having the attorneys speak directly into the recording system. The best solution, however, is to address as many issues as possible pre-trial, and then discuss the issue during a scheduled break or have the jury taken out of the courtroom if it is necessary for both sides to make a record of the objection. The attorneys can then make their objection on the record from their respective tables.

AO 2020-79 allows judicial leadership to authorize the use of electronic, digital, or other means regularly used in court proceedings to create a verbatim record, except in grand jury proceedings. With proper protocols in place, courts may consider using alternative means, or a hybrid method, to create the record. The Task Force to Supplement Keeping of the Record by Electronic Means examined the use of electronic recording to create the verbatim record and issued a report and recommendations in August 2019. The report and recommendations, which also lists the statutory and then-current rule requirements, can be viewed here:

<https://www.azcourts.gov/Portals/74/SKREM/082919/Final%20SKREM%20Report.pdf?ver=2019-09-09-132821-173>

G. Court interpreting

In resuming jury trials, courts should ensure that they continue to use credentialed interpreters. With social distancing measures and face mask requirements in place, courts will need to prepare for new challenges. For example, face coverings may increase an interpreter's need to ask for repetitions and clarifications. Courts should plan ahead for this and discuss with the interpreter how to best handle those requests. For interpreted testimony where the interpreter is physically present in the courtroom, the interpreter typically sits or stands with the witness on or next to the witness stand. With social distancing requirements, however, it may be necessary to plan for additional space to accommodate distancing when a witness needs an interpreter. Courts should also discuss with attorneys and the interpreter ahead of time how to handle objections to interpreted testimony and requests from the interpreter for repetitions or clarifications.

For simultaneous interpreting during in-person events, the interpreter should be provided with wireless equipment, so they do not have to remain in close proximity to the Limited English Proficiency (LEP) person. Where wireless equipment is not available, work or personal cell phones can be used to call the LEP person(s) and use their cell phones as ad hoc interpreting equipment. As a last resort, the interpretation can be performed in the consecutive mode, with the court planning for extra time accordingly.

For American Sign Language interpreters, both the interpreter and the relevant participant(s) may need to be exempted from requirements to wear masks. Facial expressions and other non-verbal communications are vital components of providing such effective interpretation.

When one or more participant(s) appear(s) remotely:

- Ensure that those appearing remotely have the requisite technology and that it meets the minimum technical requirements for the platform to be used.
- Ensure that the interpreter is technically competent with any equipment to be used.
- Perform a check of audio and video, as appropriate, prior to starting the event, to ensure that all participants can see and hear each other.
- Discuss with the interpreter the procedure to follow for requesting repetitions or clarifications.
- Discuss with attorneys the procedure for objections to interpreted testimony.
- Clearly identify all participants in the hearing or event.
- Remind participants of the interpreter's role.
- Remind participants that interpreters are ethically obligated to interpret everything they hear.
- Advise all court participants to speak clearly and more slowly than they otherwise would.
- Ensure the courtroom and all other locations from which participants appear are as quiet as possible.
- Advise all speakers to identify themselves each time they speak so the interpreter can more readily identify the voices.
- Ask participants to speak directly into their microphones so the interpreter can hear them.
- Ask participants to speak in brief, but complete segments for easier interpretation.
- If needed, direct participants to pause so interpretation can be performed.
- Allow only one person to speak at a time.

A National Center for State Courts "Recommendations For In-Person Court Interpretations" bulletin, addressing in-person court interpretation in the new normal, issued earlier today, can be found at:

https://www.ncsc.org/data/assets/pdf_file/0030/38478/Recommendations-In-Person-Court-Interpretation.pdf (last visited June 1, 2020).

VIII. ATTORNEY CONDUCT AND EVIDENCE DURING TRIAL

Many of the issues surrounding attorney conduct during trial and dealing with evidentiary issues should be addressed, and where possible resolved, before trial and through court orders addressing those issues and the governing protocols. This occurs in a variety of ways using a variety of mechanisms, including the court's enforcement of disclosure and discovery obligations, motions in limine, final pretrial statements, court-ordered deadlines for disclosure, discovery and

objections, protocols adopted by individual judges, and other measures more fully discussed above in the Pretrial Preparation and Conducting Jury Trial sections. When applied properly, these mechanisms make trials more efficient and effective, shorter, and result in a better jury experience. In the new normal, these mechanisms are critically important to prevent avoidable delays during trial and to help maintain social distancing.

Trial judges have substantial authority and discretion to control and direct attorney conduct during trial. Along with the court's inherent authority, "[t]he court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protect witnesses from harassment or undue embarrassment." Ariz. R. Evid. 611(a); *see also* Ariz. R. Civ. P. 40(b) ("The court should adopt trial procedures as necessary or appropriate to facilitate a just, speedy, and efficient resolution of the action," including time limits, advance scheduling, pretrial rulings, electronic presentation of evidence and "other means of managing or expediting trial"). Among other things, courts should consider the following procedures for attorney conduct during trial:

- Require that all attorneys are healthy and not symptomatic and that they report to the court if they are not healthy or are symptomatic before coming to court. The AOC has developed health screening protocols through Administrative Directive 2020-10.¹⁷ In the event an attorney is not healthy or is symptomatic, measures should be taken for the attorney to (1) participate remotely; (2) have another attorney take their place during trial; or (3) take other appropriate action.
- Prohibit attorneys from physically approaching any witness. Relevant exhibits should be placed on the witness stand before the witness takes the stand. If that has not occurred and a relevant exhibit is not within reach of the witness, court staff will make that exhibit available to the witness using appropriate procedures to ensure safety.
- Require that attorneys question witnesses while seated at counsel table, avoiding the traditional use of a common lectern (which would create the need for the lectern, microphone, and related areas to be deep cleaned between direct, cross, and re-direct examination for each witness).
- Establish clearly defined and limited areas where counsel can stand when presenting opening statements and closing arguments to ensure appropriate social distancing.
- Prohibit speaking objections. Speaking objections are improper, waste time, can provide information that the jury should not receive, and are avoidable. Instead, a timely objection or motion to strike summarily stating the specific ground applicable (unless the ground is apparent from the context) properly preserves at trial a claim of error in a ruling to admit or exclude evidence. Ariz. R. Evid. 103(a)(1).
- Prohibit sidebar or bench conferences where attorneys physically approach the bench. Along with compromising social distancing, such conferences are often unnecessary,

¹⁷ <http://www.azcourts.gov/Portals/22/admindir/pdfs/2020/2020-10%20AD.pdf?ver=2020-05-21-155131-590> (last visited May 31, 2020).

distracting to the jury, and cause delay. Instead, issues that need to be addressed outside of the presence of the jury should be addressed before trial or, for unexpected or new issues that arise during trial, such issues should be addressed during a scheduled break outside of the presence of the jury, either in chambers or in open court.

- Alternatively, if technology allows the use of white noise (to prevent the jury from hearing) and headphones and sensitive microphones (allowing only the judge and counsel to hear and be heard and the court reporter to hear), such alternatives can be used in the rare occasion where counsel and the judge need to confer about an issue outside of the hearing of the jury.
- Another alternative would be to use a see-through barrier between the parties and the judge, with appropriate microphones, that would allow the attorneys to safely approach the bench while providing an appropriate barrier and also allowing the court reporter to hear. In extraordinary circumstances, the court could excuse the jury from the courtroom, with resulting delay and the possibility of compromising social distancing.
- If sidebar or bench conferences are allowed, designate a safe area to conduct sidebars that allows for appropriate social distancing and is deep cleaned after use and that is out of the presence of the jury and where a record can be created. A sidebar will generally have a minimum of three people and therefore will require a substantial space.
- Prohibit counsel from approaching the bench for any other reason unless first requested and the request is granted by the court and, even then, ensure proper social distancing.
- Direct counsel to remove all items from counsel tables at the lunch break and the end of each day to allow for deep cleaning of the area.
- Encourage the use of technology in dealing with exhibits. If courtroom technology is available, this may include having all involved (including the witness, judge, and counsel) use a screen to view an image of an exhibit, as opposed to requiring that the physical or paper exhibit be handed around. Similarly, if courtroom technology is available, this may include having video screens to allow an exhibit to be published to the jury or for each juror to have a tablet, deep cleaned before trial begins and then assigned to that individual juror for the entirety of the trial, to view exhibits admitted into evidence.
- If available technology cannot be used to manage exhibits, require counsel to have marked original exhibits to be used at trial and sufficient copies so that (1) counsel, the judge, each witness, and the court reporter have their own, and (2) for exhibits that will be offered in evidence, sufficient copies so that, if admitted in evidence in a way that will be available for deliberation, each juror would have his or her own copy and not have to handle and share the same exhibit.
- If juror notebooks are used, jurors should be instructed where to leave their notebooks during breaks and at the end of the day so that they will not be disturbed and can later be picked up by that same juror with appropriate social distancing. If this is not feasible, measures should be taken to gather juror notebooks using gloves or other appropriate measures, so they are retained securely during breaks or overnight and then provided back

to the jurors. Where feasible, jurors should be provided with disposable pens or pencils and paper that will not be shared, and then thrown away at the end of the trial.

- Particularly when Arizona Rule of Evidence 615 (“the Rule”) is invoked, consider where witnesses should wait before they are called to testify and communicate with counsel about that location to ensure that counsel informs witnesses of the location.
- Require counsel to provide notice, at least 24 or 48 hours in advance, of witness order and scheduling to avoid delays and to ensure social distancing.
- Require counsel to advise all witnesses of courtroom procedures and to make inquiries to ensure witnesses are healthy and not symptomatic.
- Rope off “no-person zones” to ensure proper social distancing in the courtroom, including by the jury box, by the witness stand, and by the bench.
- Have hand sanitizer available for counsel, witnesses, jurors, and court personnel.
- Ensure that the witness stand, including the seat and microphone, is deep cleaned after each witness testifies.
- Require that anyone handling original exhibits should do so wearing appropriate disposable gloves to be thrown away at the end of each trial session.

IX. FINAL JURY INSTRUCTIONS AND RETURN OF VERDICT

Final jury instructions and verdict forms must be in writing and filed. *See* Ariz. R. Civ. P. 51(e)(2).; Ariz. R. Crim. P. 21.3(d), 23.1(a). As with preliminary jury instructions, the discussion and settling of final jury instructions and verdict forms should be done in a way that ensures social distancing and does not delay trial. This may involve the court taking the jury instructions submitted by the parties, drafting final instructions and verdict forms for consideration by the parties and then circulating those drafts to the parties electronically. The parties and the court can then discuss those drafts either during breaks at trial or before or after the trial day, as applicable. Then, the court can revise and finalize the final instructions and verdicts to be used, again circulating them to the parties electronically. The parties also need an opportunity to make any objections, on the record for the final jury instructions and verdict forms, either during breaks at trial or before or after the trial day. Additionally, the court needs an opportunity to rule on these objections.

Along with the court reading the final instructions and verdict forms to the jury, how each individual juror will be provided copies will depend upon what technology is available. If courtroom technology is available, this may involve having a video screen visible to the jury that displays the final instructions and verdict forms as well and for each juror to have a tablet, deep cleaned before trial begins and then assigned to that individual juror for the entirety of the trial.

If such technology is unavailable, each juror should be provided a written copy of the final instructions and verdict forms, with measures taken to ensure that the paper is only touched by

disposable gloves and placed on the juror's chair during the break just before the final instructions are given.

Fielding of jury questions during deliberations should be planned for in advance. If technology is used, it may be that the jury foreperson emails or otherwise electronically messages the jury question to the bailiff, who could then forward the question to the judge and parties. When an answer is formulated by the court after consultation with the parties, that response could be provided from the court to the foreperson in the same electronic format. If, on the other hand, no such technology is used, a paper note (treated with appropriate care) could be used for the question and the response. Similar approaches would be used when the jury is unable to reach a verdict and is at an impasse.

In a criminal trial, the form of verdict would be signed by the foreperson (through the juror's number or signature); in a civil case, the verdict would be signed by the foreperson or the number of jurors required to return a less than unanimous verdict, again, through the juror's/jurors' number(s) or signature(s). If technology is used, that form of verdict could be signed electronically and shared with the court. Alternatively, and where no technology is used, the appropriate juror(s) would need to physically acknowledge by signing the verdict form(s) to be used and provided to the court.

The return of the verdict, in whatever form provided, would be done in open court. Jurors then could be polled to ensure that it was their true verdict, as appropriate. The jury would then be thanked for their service and discharged. Any post-verdict debriefing by the court, including to assess the measures taken, would need to be done remotely or otherwise, ensuring appropriate social distancing.

X. CONCLUSION

This Report recommends the best practices courts should implement to resume jury operations in light of the COVID-19 pandemic as of June 1, 2020. These recommendations represent the best practices identified by the Subgroup after surveying Arizona courts and researching these issues at the national level over the past several weeks. Many of these precautions and recommendations will be implemented on a temporary basis, subject to change based on CDC guidance, user experience, and court discretion. Courts should modify local processes as deemed appropriate, which includes resuming previous successful processes.

As courts begin resuming jury trials, additional and different best practices will likely become apparent and more changes will be required as the recommendations in this Report are implemented. In order to keep current with the best practices developing in Arizona and around the country, the Subgroup recommends forming a standing committee to examine current and future jury practices in an ongoing effort to improve jury operations in Arizona.

APPENDIX —SELECTED RESOURCES

Arizona Jury Service: What to Expect

<https://www.azcourts.gov/juryduty/Jury-Service-What-to-Expect>

Example Juror Announcement Webpages

Superior Court in Maricopa County

<https://superiorcourt.maricopa.gov/jury/juror-announcement-page/>

<https://superiorcourt.maricopa.gov/jury/excused/>

Superior Court in Pima County

https://www.sc.pima.gov/Portals/0/Library/SuperiorCourt_Jury_Notice.pdf?no-cache

Phoenix City Court

<https://www.phoenix.gov/court/jury-duty>

Scottsdale City Court

<https://www.scottsdaleaz.gov/court/jury-duty>

Selected Authorities Addressing Whether Misdemeanor Offenses Are Jury Eligible

Misdemeanor Offenses Eligible For a Jury Trial:

- **DUI** (A.R.S. § 28-1381, et. al)
- **Indecent exposure** (A.R.S. §13-1402), *City Court of City of Tucson v. Lee*, 16 Ariz. App. 449, 494 P.2d 54 (1972) (common law right)
- **Shoplift / Theft** (A.R.S. §13-1802, 1805), *Bosworth v. Anagnost*, 234 Ariz. 453, 323 P.3d 736 (App. 2014); *State v. Superior Court In and For Pima County*, 121 Ariz. 174, 589 P. 2d 48 (1978) (common law right); *Sulavka v. State*, 223 Ariz. 208, 221 P.3d 1022 (App 2009); *State v Kaluali (Kroll, real party in interest)*, 243 Ariz 521, 414 P.3d 690 (App. 2018) (theft of services).
- **Reckless Driving** (A.R.S. §28-693A), *Urs v. Maricopa County Atty’s. Office*, 201 Ariz. 71, 31 P.3d 845 (2000) (common law right)
- **Resisting Arrest** (A.R.S. §13-2508) *State v. Le Noble*, 216 Ariz. 180, 164 P.3d 686 (App. 2007) (common law right)
- **Allegation of Sexual Motivation** *Fushek v. State*, 218 Ariz. 285. 183 P.2d 536 (2008)

- **Unlawful Imprisonment** *Kaniowsky v. Pima County Consol. Justice Court*, 239 Ariz. 326, 371 P.3d 654 (App. 2016)
- **Contempt** (if consequences can exceed \$300 or six months in jail) (Ariz. R. Crim. P. 33.4)

Misdemeanor Offenses Not Eligible for a Jury Trial

- **Drag Racing** *Derendal v. Griffith*, 209 Ariz. 416, 104 P.3d 147 (2005)
- **Marijuana Possession** *Stoudamire v. Simon*, 213 Ariz. 296, 141 P.3d 776 (2006)
- **Assault** *Spence v Bacal*, 243 Ariz. 504, 413 P.3d 1254 (App. 2018) (multiple assaults); *Phx. City Prosecutor v. Klausner*, 211 Ariz. 177, 118 P.3d 1141 (2005)
- **Interfering with Judicial Proceedings** *Ottaway v. Smith*, 210 Ariz. 490, 113 P.3d 1247 (2005)
- **DUI Prior Convictions**, *Newkirk v. Nothwehr*, 210 Ariz. 601, 115 P.3d 1264 (2006)
- **Assault, Contributing to the the Delinquency of a Minor**, *Fushek v. State*, 215 Ariz. 274, 159 P.3d 584 (App. 2007)
- **Adult Services** (Scottsdale City Code violation), *Crowell v. Jejna*, 215 Ariz. 534, 161 P.3d 577 (App. 2007); *Buccellato v. Morgan*, 203 P.3d 1180 (Ariz.App 2008)
- **Trespass** *State v. Willis*, 218 Ariz. 8, 178 P.3d 480 (App. 2008)
- **Obstructing Highway** *Mack v. Dellas*, 235 Ariz. 64, 326 P.3d 331 (App. 2014)
- **Serious Physical Injury/Death w/Moving Violation (28-672)** *Phoenix City Pros. Office v. Hon. Nyquist*, 404 P.3d 255, 243 Ariz. 227 (App. 2017)

Superior Court in Maricopa County

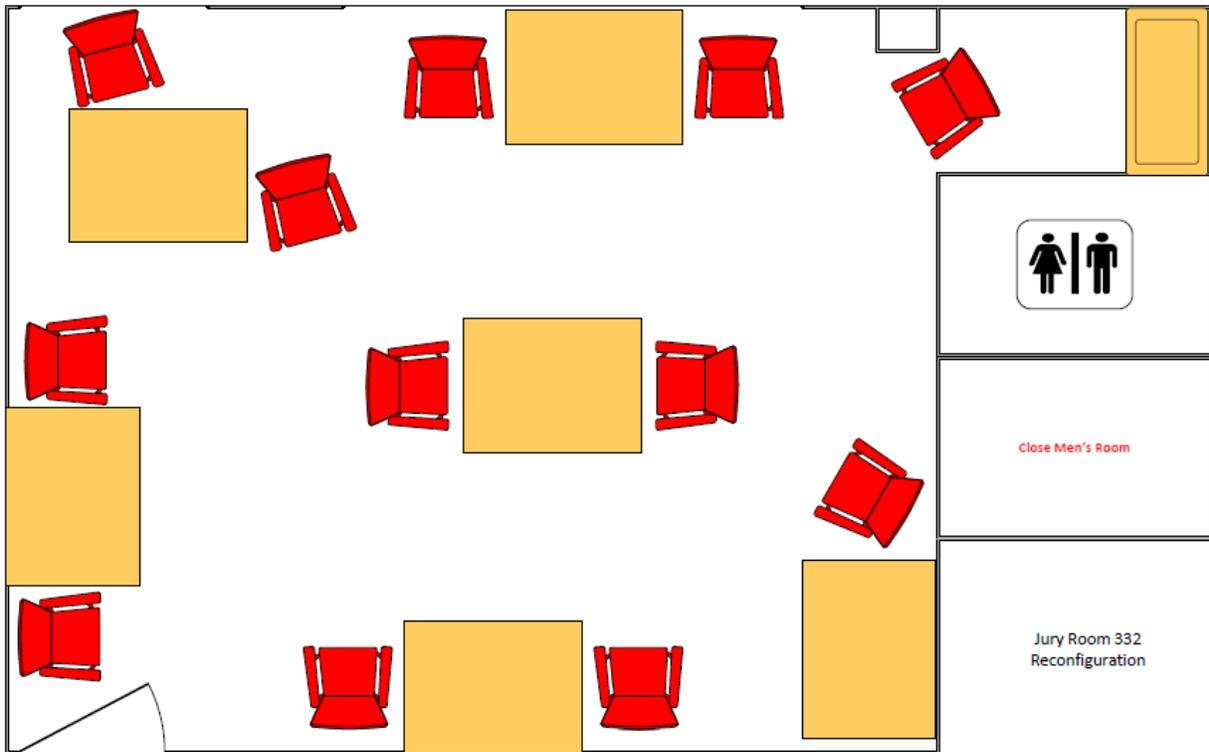
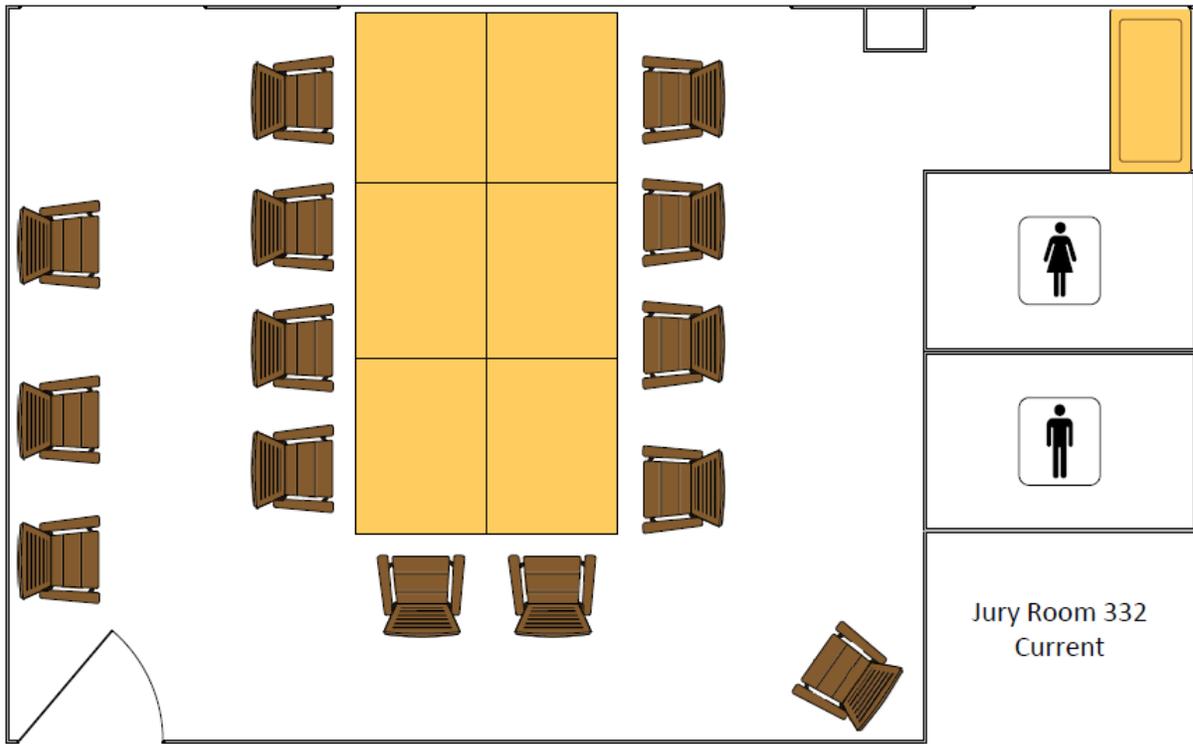
Social Distancing in the Assembly Room

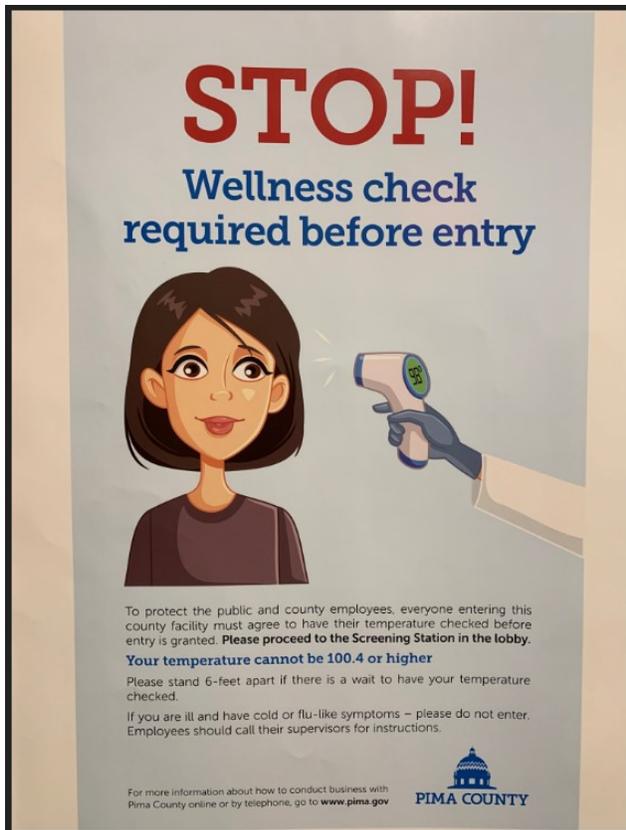


Jury Assembly Room, Superior Court in Maricopa County, Arizona



Superior Court in Pima County





Court Interpreter Guidelines and Best Practices

Questions regarding interpreter issues can be directed to the AOC Language Access Coordinator: dsvoboda@courts.az.gov.

Remote Platforms

A number of options exist. Some courts may opt for a simple telephonic option. Others may choose a more sophisticated video remote interpreting platform. Still others may use a combination of options. Here are brief notes on some common options:

- Telephonic only – simple, low tech solution. Does not provide video of remote participants. Not recommended for interpreted events longer than 30 minutes or events involving testimony.
- Video options
 - AOC VRI System – allows full simultaneous interpreting and private attorney-client communications. Requires Cisco VRI equipment. May be compatible with other videoconference equipment, but with less functionality
 - WebEx – interpreted events can be performed in the consecutive mode
 - Zoom – allows full simultaneous interpreting and private conferences for sidebars or attorney-client communications
- Hybrid Options

- Using options that are normally limited to the consecutive mode of interpretation, simultaneous can be achieved by having another conference call line or direct telephone call between the interpreter and the LEP party. The interpreter and LEP party simply mute their courtroom mics for simultaneous and then unmute them when needing to address the court or answer questions.

Superior Court in Maricopa County Juror Prescreen Questionnaire

HARDSHIPS

The following questions address your ability to serve as a juror. Please keep in mind it is not whether you want to serve, but whether you can serve. Arizona law only permits a prospective juror to be removed for specific reasons, including that jury service would cause an undue or extreme physical or financial hardship to the prospective juror or that service would substantially and materially affect the public interest or welfare.

Additionally, if you are concerned about managing your work responsibilities or care for another, you may request to postpone your jury service for up to 90 days. Please visit the [Jury website](#) for details or call 602-506-JURY(5879) for more information.

Are you requesting to be released from jury service as a result of undue hardship (example: financial, employment, travel, care provider, etc.)? Yes/No

If yes: My request is related to:

Care Provider: Yes/No

If you are requesting to be released from jury service because you provide care for another (child or adult), is there someone who can provide the care while you serve on a jury? Yes/No/I don't know

Please explain in detail why not or whether you need additional information to answer this question:

COVID-19: Yes/No

If your personal experience during the COVID-19 pandemic would make it hard for you to participate as a juror for any reason, please explain and be specific:

Employment: Yes/No

If your request to be released from jury service is employment related, please identify your employer, the nature of your employment, and your job duties and be specific:

Financial Hardship: Yes/No

If you are requesting to be released from service due to financial hardship, please review our [Compensation](#) page. Additionally, the [Arizona Lengthy Trial Fund](#) allows jurors who qualify to recover some, most, or maybe even all of your lost income during jury service. For trials of 6 or more court days, you may be reimbursed for lost income of up to \$300 a day from day 1 to the end of the case. If you still are concerned about potential loss of income you will have an opportunity to explain that below.

After reviewing the information regarding juror compensation, are you still requesting to be relieved from service due to financial hardship? Yes/No

If yes, please explain in detail the reason for your request:
If yes, does your employer compensate you for jury service?

Physical: Yes/No

Please detail the reason you are requesting to be released from jury service, and be specific:

If you would like to submit a doctor's note or a medical excuse form, please call the Jury Office at 602-506-5879 for more information.

Other: Yes/No

If you are requesting to be released from jury service for a reason not listed above, please explain and be specific:

IF YOU ANSWERED "YES" TO ANY OF THE ABOVE, YOU ARE NOT EXCUSED FROM JURY SERVICE. IF THE COURT DETERMINES THAT YOU ARE NOT ABLE TO COMPLETE YOUR SERVICE AT THE COURTHOUSE, YOU WILL BE NOTIFIED.

TRIAL LENGTH

If because of health reasons or other unavoidable circumstances you are unable to serve on a trial of the length indicated below, answer "no". Please keep in mind it is not a matter of whether you want to serve or do not want to serve, but whether you can serve. If you answer "no", you are required to complete the section below indicating the reason why you are unable to serve on a trial.

Can you serve on a trial of any length? Yes/No

If no, why not?

Can you serve on a trial of up to ten (10) days? Yes/No

If no, why not?

Can you serve on a trial of up to five (5) days? Yes/No

If no, why not?

Can you serve on a trial of up to three (3) days? Yes/No

If no, why not?

IF YOU ANSWERED “NO” TO ANY OF THE ABOVE, YOU ARE NOT EXCUSED FROM JURY SERVICE. IF THE COURT DETERMINES THAT YOU ARE NOT ABLE TO COMPLETE YOUR SERVICE AT THE COURTHOUSE, YOU WILL BE NOTIFIED.

TECHNOLOGY

You may be asked to serve as a juror-from-home using a video conference platform. Please complete the questions below to indicate your eligibility.

Do you have EACH of the following:

1. A private and quiet space? Yes/No

2. Access to a reliable internet connection? Yes/No

3. Access to a tablet, smart phone, or desktop or laptop computer with a camera?

Yes/No

4. The physical ability to watch and listen to court proceedings using a computer or phone (typically trial occurs between 9:00 a.m. and 5:00 p.m. excluding breaks and lunch)? Yes/No

5. The general ability to watch and listen to court proceedings without interruption or distraction (typically trial occurs between 9:00 a.m. and 5:00 p.m. excluding breaks and lunch)? Yes/No

I cannot serve as a juror-from-home because:

IF YOU ANSWERED “NO” TO ANY OF THE ABOVE, YOU ARE NOT EXCUSED FROM JURY SERVICE. IF THE COURT DETERMINES THAT YOU ARE NOT ABLE TO COMPLETE YOUR SERVICE AT THE COURTHOUSE, YOU WILL BE NOTIFIED.

Based on the information I have provided above, I am asking to be released from jury service. Yes/No

if yes: **Would you like to postpone your service? Yes/No**

IF YOU WOULD LIKE TO POSTPONE YOUR SERVICE, YOU WILL HAVE AN OPPORTUNITY TO SELECT A NEW DATE AFTER YOU HAVE COMPLETED THIS QUESTIONNAIRE. ONCE YOU HAVE FILLED OUT AND SUBMITTED ALL THE PAGES OF THIS QUESTIONNAIRE, YOU WILL BE TAKEN TO A PAGE WHERE YOU WILL HAVE THE OPTION TO REQUEST A POSTPONEMENT. IF YOU ARE COMPLETING THIS QUESTIONNAIRE WITHIN TEN DAYS BEFORE YOUR DATE OF SERVICE, YOU ARE NO LONGER ELIGIBLE TO REQUEST A POSTPONEMENT.