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STANDARDS AND PRACTICES ESSENTIAL TO THE RESUMPTION OF JURY TRIALS IN OHIO

REPORT AND RECOMMENDATIONS

PREPARED FOR CHIEF JUSTICE MAUREEN O'CONNOR
SUPREME COURT OF OHIO

OHIO JURY TRIAL ADVISORY GROUP
MAY 12, 2020



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"Trial by jury is a privilege of the highest and most beneficial nature and our most important guardian of both public and private liberty."

*Justice William Blackstone,
Supreme Court of the
United States, 1765*

"In all controversies concerning property, and in all suits between two or more persons ... the parties have a right to a trial by jury; and this method of procedure shall be held sacred..."

*President John Adams,
1780*

"The right to trial by jury is one of the most fundamentally democratic institutions in the history of the human race. Throughout history, the right to trial by jury has been considered the crown jewel of our liberty."

*Justice Andrew Douglas,
Supreme Court of Ohio, 1996*

Overview

Due to the COVID-19 pandemic, much of the world has been brought to a standstill. Every facet of personal life and commerce has been affected. Unprecedented during our lifetimes, trial court operations have been paused in the name of public safety. This includes jury trials in civil, criminal and juvenile matters. While the duration and reach of the pandemic remains largely speculative, consensus within the Ohio legal community is that jury trials must proceed when (1) deemed essential; (2) can be conducted in compliance with best medical practices; and (3) are able to honor the fundamental rights of all parties to the judicial process. This advisory group, on behalf of Ohio's legal community, asserts that cases must be evaluated on an individualized basis and that a 'one size fits all' approach is not appropriate.

This trial advisory group was authorized by Chief Justice Maureen O'Connor of the Ohio Supreme Court, on May 2, 2020. The group is comprised of stakeholders, other than judges, who are in any way involved in the jury trial process. This includes civil plaintiffs' lawyers, civil defense lawyers, prosecutors, criminal defense lawyers, bailiffs, court reporters, Sheriff's deputies, juvenile practitioners and clerks of court. In total, data responsive to this effort was obtained on behalf of approximately 50,000 professionals. It was important to the group that input come from differing geographical and sized Ohio jurisdictions. We are confident that this goal was accomplished.

The trial advisory group commends the Ohio Judicial Conference for its effort toward keeping all stakeholders safe. On May 1, 2020, the Conference released a report entitled "Continuing Jury Operations" (CJO) which carefully examined the jury process and made recommendations to trial courts. The goal of this advisory group is to compliment the effort by seeking input from the additional interest groups in order to consider the unique needs of all courtroom participants.

Process

After an initial assessment was made to determine what information was needed to formulate this advisory submission, parties throughout Ohio were asked to engage in a massive collaborative effort. There was an immediate acknowledgment of the importance of this effort. Accordingly, representatives for the numerous state organizations convened initial virtual conferences to outline the needs and goals. Thereafter, the groups were structured into Representative Groups and Working Groups. The former served as the small group members speaking on behalf of the larger organizations. The latter was tasked with communicating with their respective organizations in obtaining the data that would be considered for inclusion into the instant submission.

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An electronic survey (distributed using the Survey Monkey platform) was designed and utilized by most of the stakeholder working groups. Larger group data, including electronic survey results, was then conveyed to the representative group for assessment and discussion. Expectedly, while the groups did have unique needs and recommendations, there was much overlap. Many of these concerns were also shared by the Ohio Judicial Conference. As such, this report blends much of the content of the groups into common themes. That which had not been addressed is set forth herein in a separate section. Individualized or practice specific needs are listed in separate sections.

The recommended 'best legal practices' were then shared with Andy Wilson, Esq., Senior Advisor for Criminal Justice Policy to Governor DeWine and Dr. Mark Hurst, M.D., Ohio Department of Health, to confirm whether the compilation conformed with the Ohio Department of Health directives and regulations approved by Governor Mike DeWine. Once vetted, the instant report was prepared, reviewed by all representatives, and finalized for presentation to Your Honor.

Summary of Findings

The stakeholders agreed on many, if not most, points. For instance, everyone concurred that individual safety during this difficult time is paramount. There was also complete recognition that the legal and constitutional rights of all parties must be adhered to even under the current circumstances. As anticipated, however, with differing interests, constitutional protections, and viewpoints on the gravity of the pandemic, many of the groups expressed differing opinions as to the solutions. Moreover, as the advisory group consists of criminal and civil practitioners, they and their clients' needs will logically differ.

Civil practitioners shared many similar concerns. These concerns include the need for social distancing, cleaning and sanitizing courtrooms, effects on jurors, use of PPE and utilization of alternative larger forums. Many of these same concerns were raised by the Ohio Judicial Conference in the issued "Continuing Jury Operations" report. With little exception, counsel for plaintiffs and defendants agreed on the inevitable needs that would be faced should jury trials recommence amidst the COVID-19 pandemic.

The criminal law practitioners, by and large, recognize the need to resume jury trials. The parties identified potential situations where a jury trial might have to advance regardless of the precautions that a court has in place to counter the potential spread of COVID-19. Examples include cases where speedy trial violations loom or where a defendant demands that his/her trial proceed. Beyond dual recognition of basic precautionary needs (PPE, sanitized courtrooms, and clear written or electronic public notices), defense counsel and prosecutors raised many different needs and perspectives warranted by their differing roles within the criminal justice system. Like the other stakeholders, the unique concerns and recommendations follow.

Ohio sheriff departments, bailiffs, and clerks of courts raised many legitimate areas of concern that need to be confronted prior to jury trials recommencing. In addition to their in-court roles, the sheriffs and their employees raise concerns related to safety both before and after the daily trial process. Specifically, many of their concerns and recommendations dealt with the transport of defendants or witnesses and keeping detention centers free from COVID-19. Bailiffs and clerks of courts are tasked with overseeing the administrative aspects of trial as well as assisting in making sure all aspects of daily trial function efficiently. It is this group of stakeholders that secure jurors for trial, usher them into the courtroom, initiate COVID-19 cautionary steps – such as temperature taking – and assist the jury as needed and as

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directed by the trial judge. Their separate needs, concerns, and recommendations highlight areas that must be settled before cases can safely resume to trial.

Court reporters have provided input that detail the safety concerns of the reporters and offer guidance on maintaining the more accurate records of trial proceedings. While they too share many of the same concerns as the other stakeholders, they bring an interesting perspective to this collaborative effort as they typically observe all proceedings from a stationary position. This allows them to offer keen insight as to how all of the stakeholders, including judges, interact throughout trial.

The juvenile practitioners and administrators share in the primary concern of public health and safety. These practitioners recognize that the vast majority of juvenile court proceedings occur without juries. However, cases involving serious youthful offender specifications do require a jury. In such cases, the protections mandated or recommended in adult trials should apply equally to the juvenile trial.

Lastly, Dr. Hurst offers his invaluable expertise in seeking solutions to many of the shared concerns and recommendations. Recognizing that the stakeholders are only so capable of determining solutions, as this crisis relates to issues of medicine and epidemiology, his consult and ability to confer with other experts was vital to this advisory process.

The raw data included in the addendum provides further insight into the feelings, thoughts and suggestions of practitioners, law enforcement and court personnel. The extensive feedback that was received in a matter of mere days is evidence of the profound impact this health crisis has had on all individuals involved in Ohio's justice system. This advisory effort is remarkable as it has brought together so many professionals from different aspects of the process to work together in maintaining the integrity and function of the trial process. This was a true statewide effort.

The following sections include concerns and recommendations unique to the stakeholders. To be clear, there was overall agreement that jury trials should recommence for essential matters when doing so is safe and maintains individual rights. The attached addendum includes submitted reports, raw data, and a recent medical study pertaining to transmission of COVID-19 from asymptomatic sources.¹

Civil Jury Trials

After counsel for plaintiffs and defendants agreed on essential and recommended practices, both groups recognized that courts will possess different capabilities and that every case must be viewed on an individual basis. As the pandemic is a fluid situation, protocols must be revisited regularly. At all times, the trial courts must retain a public plan for adhering to directives and recommendations. The civil groups seek to begin trials again unless the parties agree that a continuance is warranted.

¹Hao-Yuan Cheng, M.D., MSc; Shu-Wan Jian, DVM, MPH; Ding-Ping Liu, PhD, et al., *Contact Tracing Assessment of COVID-19 Transmission Dynamics in Taiwan and Risk at Different Exposure Periods Before and After Symptom Onset*, JAMA Intern. Med., May 1, 2020.

(explaining the findings of a study of the first 100 confirmed cases of COVID-19 in Taiwan. The study concluded that COVID-19 was most contagious in the early stages of the disease, even before symptoms began to show. The high transmissibility of COVID-19 before and immediately after symptom onset suggests that finding and isolating symptomatic patients alone may not suffice to contain the epidemic, and more generalized measures may be required, such as social distancing.)

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Should trial proceed, the Civil Lawyers deem the following **essential**:

- That there be uniform strategies in place at entrance checkpoints to avoid the use of communal trays;
- That all access points, including external door handles, be sanitized and/or left ajar when permissible throughout court hours;
- That temperature checks of all individuals entering the courthouses be taken, in addition to screening for symptoms of COVID-19 at any later point, as needed;
- That personal protective equipment (“PPE”) be worn by all judges, counsel, clients, public observers, witnesses, court personnel, and law enforcement at all times. This includes the requirement to use facial masks;
- That courts supply skin sanitizer, masks, and gloves to trial participants and public observers;
- That courtrooms and jury rooms be of sufficient size to allow for recommended social distancing practices;²
- That the voir dire process allow for recommended social distancing practices;³
- That sidebar conferences must be conducted in an appropriate location to allow for recommended social distancing practices;⁴
- That trial courts be prevented from removing trial counsel where requests for continuances are due to counsel’s concern for their own physical well-being during the COVID-19 pandemic.
 - Added consideration must be afforded to practitioners who are sixty-five (65) years of age or older and those in high-risk groups. This rule should be absolutely adhered to where counsel was engaged prior to Governor Mike DeWine’s declaration of a State of Emergency in Ohio on March 9, 2020;
- That courts permit all witness testimony to be conducted via videoconference where needed because expert witnesses may refuse to come to a courthouse and rules do not presently permit their video attendance;
- That exhibits for witnesses be used and exhibited electronically. Hard copies should only be used where needed. If hard copies are needed, protocol must be in place to sanitize the copies and exchange process; and,
- That continuances be freely granted where the parties are in agreement. A single form should be created and used statewide whereby parties can indicate agreement for a continuance. This approach will deter judges from unnecessarily delaying cases while also allowing parties to agree that a trial can be continued without prejudice to any party interest.

Should trial proceed, the Civil Lawyers deem the following as **recommended**:

- That temperature detection kiosks be utilized;
- That designated areas for public observers which adhere to constitutional guarantees be used;
- That juror questionnaires be utilized prior to a court appearance date;
- That each party should be permitted to submit questions for inclusion in the juror questionnaires, if agreed upon, or as decided, by the trial court;
- That extra jurors be called for the voir dire process;

² *Id.*

³ *Id.*

⁴ *Id.*

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- That alternative locations be considered for trial and allowed when feasible. Civil trials do not typically require the same court personnel and security needs as a criminal trial. Examples may include county buildings, libraries, churches, movie theatres, vacant retail space and/or malls;
- That there is the utilization at trial of a current sitting judge by agreement of the parties and with a judge that the parties agree to;
- That additional funding be allotted for visiting judges to preside over bench and jury trials;
- That communication between counsel and clients is critical and must be afforded despite social distancing requirements. This envisions breakout rooms or areas for each party to confer as needed; and,
- That electronic means for communication between counsel and the court is needed. Parties should have the ability to raise concerns on the record prior to any trial.

Criminal Jury Trials

The Criminal Defense Lawyers, while desirous of restarting jury trials, raise a number of conditions that must first be met before resumption should occur. The basis for said concern is the deprivation of Fundamental Fairness and Due Process should certain conditions not be met.

Due to the heightened fear and danger of viral transmission, the defense groups deem the following **essential**:

- That until the risk of spreading COVID-19 has been mitigated, only essential trials proceed. Essential trials may include those where an incarcerated defendant requests to advance to trial, where speedy trial rights are implicated, and/or where parties agree to move forward due to sensitive issues in the case;
- That continuances be liberally granted where there are issues that would prevent the fair administration of justice;
 - An example includes:
 - Older and/or high-risk lawyers should not be forced to proceed to trial prior to widespread testing or immunization;
- That incarcerated defendants be afforded access to their counsel and to a sanitized conference room in the courthouse for confidential trial preparation in accordance with a set protocol. It must be recognized that access requirements differ between cases depending on case complexity, amount of evidence, duration, and many other unique factors;
- That in order to adequately prepare for trial, a thorough investigation be conducted by the defense. Due to the current pandemic, it is exceptionally difficult, if not impossible in certain circumstances, to interview witnesses and perform other critical investigative steps. In matters where defense investigation cannot be completed due to health concerns, the trial should be continued, or pre-trial depositions should be permitted;
- That trials be continued where service of subpoenas cannot be perfected on a witness, or if a witness is unable/unwilling to appear due to health concerns.
- That trial courts be prevented from removing trial counsel where requests for continuances are due to counsel's concern for their own physical well-being during the COVID-19 pandemic. Added consideration must be afforded to practitioners sixty-five (65) years of age or older and those in high-risk groups. This rule should be absolutely adhered to where counsel was engaged or assigned prior to Governor Mike DeWine's declaration of a State of Emergency in Ohio on March 9, 2020;

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- That counsel, co-counsel, and clients be able to effectively communicate in real-time in a confidential manner during trial. Current social distancing practices and facial masks prevent this. The defense groups refer to Ohio Rule of Professional Conduct 1.4 – Communication;
- That alternatives to the wearing of facial masks be employed before a trial should commence. Wearing a mask hinders courtroom communication, impairs the voir dire process and impedes the ability to gauge witness credibility via nonverbal communication. To require the removal of masks increases the danger of transmitting COVID-19 and potentially subjects individuals to greater harm;
- That video testimony violates the Confrontation Clause of both the Federal and Ohio Constitutions and should be reserved for limited situations deemed necessary or agreed upon by both parties;
- That courts listen to defense counsel's concerns about being unable to render effective assistance of counsel in a particular trial due to the current pandemic. In such circumstances, accommodations and/or continuances should be liberally granted;
- That jury questionnaires to assist in effective voir dire, and, to allow jurors to share health concerns, be utilized in advance of trial. Said questionnaires should be distributed and collected prior to the date of trial in order to afford the parties adequate time for review. As it relates to COVID-19 and other medical concerns, a statewide standardized questionnaire should be assembled that is based upon the latest Ohio Department of Health and/or Center for Disease Control and Prevention data and findings;
- That larger jury pools be summoned and those jurors with legitimate health concerns be excused for cause;
- That courts ensure that the exclusion of certain jurors (older and/or high-risk) does not result in a non-representative or biased jury;
- That great care be taken by courts to advise jurors of all their duties to properly assess evidence and deliberate under these different and difficult circumstances. Otherwise jurors may seek to leave the courthouse as soon as possible;
- That space and opportunity be provided to any juror who requests to discuss any matter in private while still observing social distancing protocols;
- That the defendant's right to have family members, friends, and other supporters not be eliminated. This holds true for alleged victims, members of the press, and concerned citizens as well. Some limitations may be reasonable but public access must be maintained; and,
- That counsel have access to clients detained in local jail for trial preparation purposes. An inability to prepare with detained clients may result in a need for a continuance. This may prove difficult where the client, despite lack of effective trial preparation, will not waive his or her speedy trial rights.

Should trial proceed, the defense groups deem the following as **recommended**:

- That courts distinguish which cases must proceed from those that can be continued. Trials should not proceed if the primary consideration is reducing docket size;
- That courts consider the lowering of bonds or granting of personal bonds in cases so that detained defendants can adequately work with their counsel to prepare for trial. Detained individuals face increased difficulties related to trial preparation;
- That, if incarcerated, a defendant's clothing be delivered in a sealed bag to the jail at least forty-eight (48) hours prior to trial – unless otherwise directed by a court or sheriff's department. The defendant's clothing should be cleaned and sanitized after each day of trial or replaced by other clean clothing;

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- That trials be moved to larger venues to allow for proper social distancing where feasible.⁵ Attention must be given to proper ventilation, cleaning, and sanitizing;
- That requested breaks be granted to allow counsel and client, or the State and its agents, to speak privately, as needed;
- That courts be prepared to feed and accommodate jurors as courthouse cafeterias and local restaurants may be unable to accommodate social distancing protocols;
- That, due to small and/or limited restroom facilities, breaks should be extended, and sanitizing should be frequent;
- That, in order to limit animosity toward a defendant for having to appear in court, wear PPE, and face increased risk of contracting COVID-19, courts should address this subject in introduction, voir dire, and closing instructions; and,
- That protocols be in place prior to trial related to the use of interpreters while being socially distant and that address how interpretation is to be conducted with a facial mask. This may be solved by clear face masks/shields or Plexiglass partitioning.

Ohio Prosecuting Attorneys Association

The Ohio Prosecuting Attorneys Association is ready to resume trials with appropriate safety precautions in place. This group echoes the sentiment that each case, and each courthouse, be assessed on an individualized basis. Their concerns look to the health and safety of all parties, including jurors, and focus on resuming trials with proper social distancing and PPE.

Should trial proceed, the Ohio Prosecuting Attorneys Association deems the following **essential**:

- That we recognize that jury trial accommodations, modifications, and protocols will vary from county to county. Due to different capabilities, it is important to acknowledge that a 'one size fits all' approach to countering COVID-19 and recommending jury trials is not feasible;
- That, believing that COVID-19 has peaked in Ohio, trials should resume barring standard considerations for a continuance;
- That, for purposes of voir dire, additional jurors be summoned, and remote juror questionnaires be utilized for initial health screenings. Voir dire should also be conducted with smaller panels that allow for observance of social distancing protocols. Times for jurors summoned to court should be staggered to prevent increased entrance security screening needs and to minimize juror wait time inside the courthouse;
- That face shields, as addressed by Dr. Hurst and the Ohio Department of Health, be used by witnesses rather than masks to allow for observation of non-verbal communication. While masks are preferred for protection over a face shield, circumstances may warrant the use of a shield;
- That additional, separate room(s) be available to the media and public with proceedings being publicly broadcasted;
- That witness stands and microphones be sanitized between each use;
- That courtrooms be cleaned and sanitized following trial each day; and,
- That jury deliberations be conducted in the courtroom or other larger spaces to maintain social distancing protocols.

⁵ *Id.*

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Should trial proceed, the Ohio Prosecuting Attorneys Association deem the following as **recommended**:

- That, for purposes of jury selection and composition, existing statutory schemes be followed to treat COVID-19 as a medical excuse. Deferments for medical conditions are routinely sought with affidavits and sworn testimony;
- That face mask removal is only appropriate where proper social distancing can be employed;
- That additional, separate room(s) be available for sidebars and communication between counsel, clients and representatives. Rooms should be cleaned and sanitized after each use as needed;
- That videoconferencing be used when feasible;
- That exhibits be published electronically. Juries may need to be supplied with separate and complete copies of all exhibits where electronic systems are unavailable. All hard copy or tangible evidence should be cleaned and sanitized if touched by any individual; and,
- That Plexiglass partitioned courtrooms may be an adequate solution to countering the transmission of COVID-19.

Clerk of Courts, Ohio Municipal Bailiff's Association & Buckeye Sheriff's Association

The Clerk of Courts, Ohio Municipal Bailiff's Association, and the Buckeye Sheriff's Association also have numerous interests and concerns about resuming trials. These concerns focus on the health and safety of courthouse personnel, security, inmates, lawyers, judges and the general public.

The Clerk of Courts, Ohio Municipal Bailiff's Association, and Buckeye Sheriff's Association deem the following **essential**:

- That all safety protocols be clear, concise, openly posted, and provided to jurors with their summons;
- That face masks be required to be worn by all persons entering the courthouse;
- That PPE be supplied to inmates, court personnel, and court security. This includes masks, gloves, spit guards, hand sanitizer, and disinfectant;
- That court security and employees be trained in identifying signs and symptoms of COVID-19 exposure;
- That all hardware, including handcuffs, phones, and radios be routinely sanitized;
- That all entrances into the courthouse be well marked with restrictions and proper distance spacing on stairs, hallways, and public areas;
- That juror start or report times be staggered to allow for slowed flow of courthouse entrants;
- That prior to inmate transport, an inmate's temperature be taken and they wear PPE at all times;
- That only one inmate be moved at a time and security maintain hands on control of any moving inmate;
- That inmates be socially distanced both while waiting and while inside the courtroom; and,
- That Ohio prisons provide inmate exposure risks at the time of transport so that sheriffs can provide accurate risk information to the court and relevant parties.

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Should trial proceed, the Clerk of Courts, Ohio Municipal Bailiff's Association, and Buckeye Sheriff's Association deem the following as **recommended**:

- That any limits on the number of people permitted in the courtroom be clear, concise, and openly posted on the courthouse exterior and interior areas;
- That courthouse security (bailiffs and deputies) be empowered to enforce social distancing and be permitted to remove persons showing signs of COVID-19;
- That temporary orders be used to authorize courthouse security to enforce policies necessary to uphold all public safety measures;
- That PPE supplies be kept on a limited basis to prevent denial of admission to someone in need of court services;
- That the media may need to be provided alternative viewing options depending on infrastructure restrictions and social distancing protocols;
- That police officers, and other witnesses, be on call or scheduled for their exact court appearance time to reduce exposure and unnecessary waiting; and,
- That courthouse security and personnel be advised of:
 - Available training in COVID-19 detection;
 - The optimal PPE for use in a maximum capacity courtroom;
 - The optimal number of people in a particular courtroom; and,
 - The optimal PPE for use in inmate transport.

Ohio Court Reporters Association

The Ohio Court Reporters Association also has expressed concern about procedures once trials resume. These concerns stem from the practical limitations of masks, social distancing, and the handling of physical exhibits.

The Ohio Court Reporters Association deems the following **essential**:

- That, due to difficulty hearing speakers with masks, people be able to speak and testify free from obstruction. (i.e. without mask, use of face shield, Plexiglass partitioning, etc.);
- That courts develop uniform protocols for the handling and conveyance of exhibits to court reporters;
- That original exhibits be pre-marked, sanitized, and provided to the court reporter when needed;
- That exhibit copies not be passed between individuals;
- That parties provide individual copies of each exhibit to each juror, if they can be sanitized, or utilize electronic publishing in court;
- That directives be uniformly issued requiring that all individuals remain socially distanced from court reporters, not come into contact with court reporter equipment, and not convey any exhibits, documents, or other evidence directly to court reporters; and,
- That court reporters, and all other courtroom stakeholders, be supplied with adequate PPE and sanitizer, recognizing that frequent cleaning will be necessary throughout trial.

Should trial proceed, the Ohio Court Reporters Association deems the following as **recommended**:

- That courts use court reporters in electronic recording courtrooms;

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- That courts utilize Plexiglass shields on the witness stand, court reporter station, judge's bench, jury box, podium, bailiff's station, security area, and counsel tables;
- That courts utilize seating areas in the rear of courtrooms for the jury;
- That courts utilize sound amplification and document viewing screens;
- That, since court reporters can use headsets for sound amplification, lawyers and other speakers be provided microphones for clarity;
- That movements of lawyers and other individuals in the courtroom be restricted; and,
- That, when possible, witnesses appear and testify via virtual conferencing – with the recognition that this may be better suited for civil matters, instead of criminal matters.

Juvenile Court Proceedings

While the vast majority of juvenile court proceedings occur without juries, cases involving serious youthful offender specifications would require a jury. In such cases, the protections mandated or recommended in adult trials should apply equally to the juvenile trial. The juvenile practitioners and administrators share in the primary concern of public safety as they encourage county and state entities to provide basic protections including PPE to all parties (including parents), daily individual temperature monitoring and protocol that dictates that PPE be worn at all times throughout the jury process.

Should trial proceed, Juvenile court representatives deem the following **essential**:

- That transport staff and youth wear proper PPE at all times and maintain proper social distancing as directed by the Ohio Department of Health and Center for Disease Control and Prevention;
- That plain clothes for the youth at trial be cleaned and delivered in a sealed bag to the jail at least forty-eight (48) hours prior to trial – unless otherwise directed by a court or sheriff's department. The youth's clothing should be cleaned and sanitized after each day of trial or replaced by other clean clothing;
- That counsel tables be separated, and chair placement be configured to maintain proper social distancing as directed by the Ohio Department of Health and Center for Disease Control and Prevention;
- That podiums, witness boxes and other shared areas be cleaned and sanitized after each use;
- That accommodations be made to allow for attorney and client communication. The state and its agents must also be permitted unobstructed communication during trial;
- That sidebars be held outside the hearing of the jury in a space that allows for the maintenance of proper social distancing guidelines as directed by the Ohio Department of Health and Center for Disease Control and Prevention;
- That courthouses be clearly marked in all areas open to the public with social distancing markers. This includes security areas, elevator lobbies, and common areas;
- That youth should not be transported to court in groups from detention centers as proper social distancing would be difficult.

Should trial proceed, juvenile court representatives deem the following as **recommended**:

- That courtrooms currently equipped with fixed audio and video systems be modified and/or reconfigured to allow for recordation of courtrooms which have been reorganized in compliance with current best legal and medical practices. All systems should be tested in advance of trial;

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- That court reporters be utilized in all courtrooms where fixed audio and video systems cannot be modified and/or reconfigured to allow for recordation of reorganized courtrooms;
- That breaks must be granted to allow for attorney and client private communication as needed;
- That all exhibits be placed in plastic sleeves to allow sanitizing of the bag without contacting the exhibit;
- That the handling of physical evidence be minimized or avoided where possible. Exhibits, including physical evidence, should be displayed electronically when available;
- That exhibits be marked by counsel without transference to the court reporter or any other party. Evidence handling protocol should be uniform, precise and made known to all parties prior to trial;
- That jurors be provided instruction related to handling of evidence and be provided PPE as needed for evidence examination. Documents, and other evidence where possible, should be provided to jurors in properly sanitized plastic sleeves or containers;
- That any courtroom used for a jury trial be maintained and checked for proper ventilation system functioning;
- That the use of stairwells be encouraged. This contemplates social distancing and proper sanitization protocols are in place;
- That courts utilize single case assignment times. Due to the COVID-19 pandemic, this will help to reduce the number of individuals waiting to enter courtrooms. Multiple case calls at the same time will result in more densely populated public areas; and,
- That courts reduce the number of courtroom participants and observers by utilizing live feed monitors stationed in alternative rooms where social distancing can be maintained as directed by the Ohio Department of Health and Center for Disease Control and Prevention.

Additional Recommendations of Dr. Mark Hurst, M.D., Ohio Department of Health

The advisory group was fortunate to have Dr. Mark Hurst, M.D., participate in this process. His expertise proved invaluable. Dr. Hurst provided insight to ensure that all legal recommendations remain in conformity with “best medical practices.”

Dr. Hurst’s **declarations and recommendations** include:

- That the current risk of spreading COVID-19 cannot be eliminated. The threat can be reduced dependent on the precautionary steps taken by the courts and the adherence to safety protocols by all parties, including members of the public;
- That without a mask (in the event that masks are not mandated), people must distance themselves from others by no less than six (6) feet;
- That physical distancing beyond six (6) feet further decreases the chances of transmitting COVID-19 between individuals;
- That, while not certain, it is hopeful that widespread antibody testing for COVID-19 may be seen in or around August of 2020;
- That masks, particularly those worn by detainees and law enforcement, should be replaced routinely. This is especially important when transferring inmates;
- That facial masks with N95 designations are reserved for medical and first responders. For purposes of trial process, N95 or similar grade masks may not be necessary. This contemplates that all other safety protocols are followed;

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- That the proposed use of Plexiglass partitioning in the courtroom would be a sound solution to the concerns of conducting trial during this pandemic. It is noted that such steps must contemplate all Americans with Disabilities Act (“ADA”) mandates. For instance, jury boxes must be constructed with partitions that allow a juror in a wheelchair to safely enter and exit their protected space. Additionally, Plexiglass areas must be cleaned and sanitized after use by each witness and regularly throughout trial;
- That the use of video conferencing for witness testimony may help to reduce the risk of spreading COVID-19;
- That there should be universal use of masks by all individuals entering the courthouse and courtroom for trial. The use of good patency Plexiglass partitioning and/or virtual witness presentation may lessen the need for strict in-court mask mandates;
- That witness stands or boxes must be properly cleaned and sanitized after use by every witness. The cleaning agents must be an EPA approved disinfectant with activity against COVID-19;
- That the use of a hard microphone versus a soft or porous cloth covered microphone is preferred as it can be more easily cleaned and sanitized. This will help to reduce the risk of spreading COVID-19;
- That, where face shields (in lieu of masks) are utilized, said shields must cover the sides and the bottom of the face. Facial masks do provide greater protection against COVID-19;
- That in courthouses that have multiple floors and utilize elevators, an effort be made to conduct trials on lower floors so as to eliminate the need for elevator use except when needed (i.e. ADA considerations and individuals in wheelchairs). When an elevator must be used, all individuals that entered it should utilize facial masks and immediately clean their hands and use sanitizer upon exiting. Use of the elevator must be limited to two (2) individuals at a time. Each elevator car in use should be cleaned and sanitized regularly; and,
- That wearing facial masks may not be appropriate for all individuals. Examples include, but are not limited to, those with asthma, claustrophobia, and victims of sexual trauma.

Again, the Ohio trial advisory group thanks Dr. Hurst for his time and expertise. In addition to the above suggestions, he provided regular feedback to group questions and suggested practices.