

# Supreme Court Resuming Operations Task Force



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# Supreme Court Resuming Court Operations Task Force

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# Introduction

The Indiana Supreme Court launched the Resuming Court Operations Task Force regarding impacts to court operations as a result of the COVID-19 public health crisis. This subgroup specifically addresses the pandemic as it relates to civil jury trials. The process of reopening courts will lead to new actions and new adjustments. However, a functioning, effective civil justice system is an important element to the legal system.

The guides and practices suggested herein are in direct response to the ongoing public health emergency created by COVID-19, and the Court's inherent authority to supervise the administration of all courts of this state pursuant to Indiana Administrative Rule 17. The Court will notify all courts when that emergency supervision has ended and that any public health emergency created by COVID-19 no longer rises to the level of invoking Indiana Administrative Rule 17. At that time, the Court expects all courts may return to the normal operating procedures that existed immediately prior to the public health emergency created by COVID-19.

Special thanks and acknowledgment goes to the California Pandemic Continuity of Operations Working Group and Ohio Jury Trial Advisory Group that provided a framework for this subgroup to prepare the Resource Guide for the Resumption of Civil Jury Trials in Indiana.

## DISCLAIMER

This resource guide is not a standard or regulation, and it creates no new legal obligations. It contains recommendations that are advisory in nature, informational in content, and are intended to assist courts in providing a safe environment for the public, litigants, lawyers, and judicial and administrative staff.



# Guiding Principles

## Summary of Principles

Topic	
1	<u>Uphold Access to Justice, Liberty, and Due Process while Balancing Safety and Health</u>
2	<u>Protect the Health and Safety of the Public, Justice Partners, Judicial Officers, and Staff</u>
3	<u>Closely Monitor Public Health Directives and Comply with Applicable Health and Safety Laws, Regulations, and Orders</u>
4	<u>Address Varying Local Challenges with Flexible Response Plans</u>
5	<u>Maximize Flexibility in Crisis Planning to Rescale, Reinvent, Reduce, or Retire Certain Court Services, Calendars, and Programs</u>

Guiding  
Principles

General  
Considerations

Facilities

Jury  
Management

ADR and Remote  
Proceedings

Attachments

## Principle 1 | Uphold Access to Justice, Liberty, and Due Process while Balancing Safety and Health

Inherent in all plans responsive to a crisis is the obligation to maintain continued, fair, and equal access to the courts, including the protection of constitutional and civil rights. While continuity of court operations might require a more modern method, the method must incorporate individual and procedural constitutional and civil rights protections. A continuity of operations plan should look toward protection of those rights through avenues that afford the most access to the courts but in a manner that balances the need to maintain the health and safety of all court users, court staff, and the public.

## Principle 2 | Protect the Health and Safety of the Public, Justice Partners, Judicial Officers, and Staff

Courts have a responsibility to endeavor to provide safe facilities to those required to attend. To demonstrate commitment to the wellbeing of the community that the court serves as well as court staff, judges, and justice partners, all decisions on court operations should have health and safety as a central guide. How the goal will be met will be influenced by the unique local health orders of each jurisdiction, the varied impact of the virus in each county, and the resources and needs of each court.

## Principle 3 | Closely Monitor Public Health Directives and Comply with Applicable Health and Safety Laws, Regulations, and Orders

It is important to use an objective, fact-based measure to determine the propriety and range of full, reduced, or closed court operations. Decisions regarding the range of court services and court access should be consistent with directives from local, state, and national healthcare directives to ensure that community members may comply with the needs of the court without violating public health directives.

## Principle 4 | Address Varying Local Challenges with Flexible Response Plans

The impact of COVID-19 varies amongst counties and courts. Within each county, the impact will ebb and flow with diminishing or spiking infection rates. This fluctuation in severity should be anticipated and factored into a court's plans for crisis response and continuity of operations. The plan should include the expectation of periodic surges of caseloads and needs.

A crisis response and continuity plan should be tailored according to the resources and needs of the particular court, with a short-term plan of immediate response, a midterm plan of stability for the court and community, and a long-term plan that is sustainable over the coming months.

A long-term plan that provides access to the courts at some level benefits the community by demonstrating stability in a time of crisis. A long-term plan assumes that the crisis is long-lasting. Plans should anticipate periodic surges in caseloads and increasing and decreasing service levels, and identify which programs and services need to be prioritized or expanded based on individual community needs and statutory requirements.

## Principle 5 | Maximize Flexibility in Crisis Planning to Rescale, Reinvent, Reduce, or Retire Certain Court Services, Calendars, and Programs

Courts responding to a crisis should look at continuity planning with an understanding that court services may require revision to address the immediate needs of the court and community, including replacing traditional practices with new practices and procedures. Use of technology by each court increases that court's flexibility to quickly and sustainably increase safety and efficiency and meet the needs of court users and justice partners.

## General Considerations

*The hierarchy of controls is a framework that can be used to create an operational plan and select ways to control and mitigate the hazard of COVID-19 exposure. The best way to achieve this is to systematically remove the virus from the court altogether. The most effective approach is limiting the possibility of exposure by screening potentially infected people while implementing strategies to limit building occupancy. During the COVID-19 outbreak, when it may not be possible to completely eliminate the hazard, operational plans and protection measure should be deployed using the most effective measures feasible for the activity. There are advantages and disadvantages to each type of control measure when considering the ease of implementation, effectiveness, and cost.*

### Summary of Considerations

Topic	
1	<u>Elimination</u>
2	<u>Engineering Controls</u>
3	<u>General Hygiene and Cleanliness</u>
4	<u>Personal Protective Equipment</u>



# Hierarchy of Controls

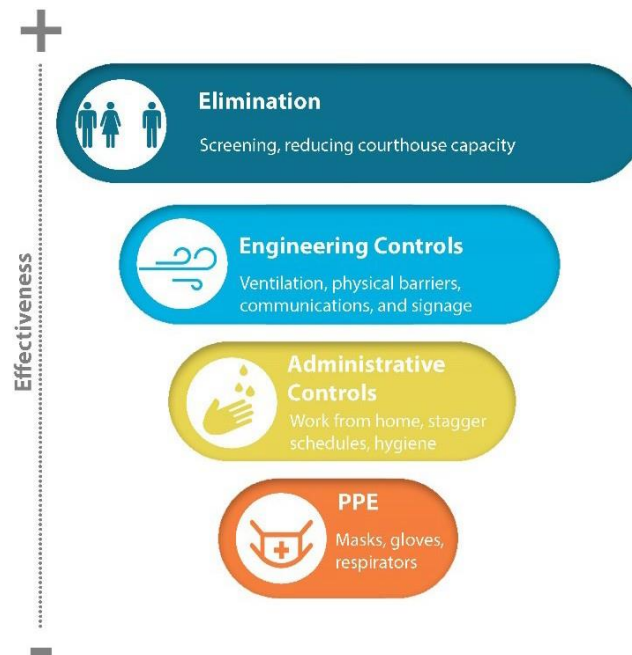


Figure 1. Hierarchy of Controls.

This diagram demonstrates how the hierarchy of protection controls ranges from most effective to least effective with examples of tactics under each heading. The categories are based on Occupational Safety and Health Administration (OSHA) guidance developed for reopening offices.

## 1. Elimination

While complete elimination of a hazard from the environment is the ideal goal, practical constraints will require that goal to be accomplished over time and over a series of continued, supporting actions. Some ideas for preventing a hazard from entering an environment include:

- A. Instituting temperature assessment requirements before entries to courthouses.
- B. Developing health questions for screening of judges, staff, and public entering the building.
- C. Using technology to conduct proceedings remotely.

## 2. Engineering Controls

### A. Modifications to Building Mechanical Systems

Though most building mechanical systems have modification limits, there are ways to help reduce airborne particles:

1. The Indiana Occupational Safety and Health Administration regulations and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) best practices generally:
  - Require that in mechanically ventilated buildings, the heating, ventilation, and air conditioning (HVAC) system must be run continuously during working hours.
  - Recommend maintenance of buildings in accordance with their original ASHRAE design criteria and increase the frequency of filter changes to improve indoor air quality.
2. The following, additional engineering controls can be considered based on risk assessment and feasibility for individual buildings:
  - Increase outdoor air ventilation where practical and feasible by reducing the population in the building. This increases the effective dilution ventilation per person.
  - Open minimum outdoor air dampers, as high as 100 percent, to eliminate recirculation (in the mild weather season, this need not affect thermal comfort or humidity, but clearly becomes more difficult in extreme weather).

### B. Communication and Signage

1. Place posters at courthouse entrances and other visible areas that encourage staying home when sick and address: cough and sneeze etiquette, preventive practices such as social distancing, hand hygiene, and avoiding face touching.
2. Use floor markings to demonstrate six-foot spacing in areas where large numbers of people may congregate or need to wait in line (queuing).
3. Use elevator and room capacity signage.
4. Provide/place instructions for one-way circulation.

### C. Social Distancing to Maintain Six Feet of Separation

1. Establish and communicate maximum capacity for the building, rooms, and spaces, including staff areas.
2. Rearrange furniture in existing rooms and spaces.
3. Use alternate locations for court functions that provide adequate space and the recommended six feet of separation.

4. Use technology to maintain separation between parties.
5. Install physical barriers, such as clear, plastic sneeze guards, where six feet of separation cannot be achieved.
6. Install queuing control devices, such as stanchions with retractable belts, to define paths that provide separation of six feet or more.

### 3. General Hygiene and Cleanliness

- A. Hygiene and Cleanliness
  1. Provide resources that promote personal hygiene:
    - Tissue, no-touch trash cans, hand soap, alcohol-based hand sanitizer containing at least 60 percent alcohol, disinfectants, and disposable towels for workers to clean their work surfaces.
    - Cleaning crews with personal protective equipment (PPE) and plastic bag-lined waste bins so they can be emptied without touching the contents.
  2. Encourage regular handwashing and use of hand sanitizer or alcohol-based hand wipes.
  3. Clean premises recurrently, especially counters, door handles, and other frequently touched surfaces.
  4. Frequently clean equipment used often, such as payment portals and public-use kiosks.

### 4. Personal Protective Equipment

- A. Consider requiring (and whether you will be providing) face covers for courthouse occupants.
- B. Provide gloves and face coverings, where appropriate.

# Facilities

*Indiana court functions are considered medium-risk-exposure jobs which, according to The Indiana Division of Occupational Safety and Health (IOSHA), are those that require frequent and/or close contact with (i.e., within six feet of) people who may be infected with COVID-19, but who are not known or suspected COVID-19 patients. In areas with ongoing community transmission, workers in this category may have contact with the general public (e.g., schools, high-population-density work environments, courthouses, and some high-volume retail settings).*

*As courts return to full operations, they will need to consider a variety of safety measures and guidelines issued by local, state, and federal officials. The Centers for Disease Control (CDC), IOSHA, and local public health officials provide specific guidance to reduce workplace exposures for all court staff and court facility users. The CDC is also providing states and other jurisdictions with technical assistance regarding surveillance data collection and reporting, contact tracing, infection control, and outbreak investigation. They developed and are guiding the overall response to COVID-19 to advise and support communities during the phased reopening. Many such measures have been well considered by the CDC Coronavirus 2019 Community Mitigation Strategies and should be consulted.*

*Safe work practices encompass how the court will implement the guidance provided by the CDC and IOSHA. These safe work practices must be developed in conjunction with the safety requirements established by the public health official in each local jurisdiction. Local conditions will influence the decisions that public health officials make regarding community-level strategies. The activities required to maintain safe court operations must be developed by each court based on their operational needs, capabilities, and resources along with their local jurisdictional requirements.*

## Summary of Considerations

Topic	
1	<a href="#"><u>Court Entrances</u></a>
2	<a href="#"><u>Public Counters</u></a>
3	<a href="#"><u>Jury Assembly</u></a>
4	<a href="#"><u>Jury Selection (Voir Dire)</u></a>
5	<a href="#"><u>Jury Deliberations</u></a>
6	<a href="#"><u>Courtroom Areas</u></a>

# 1. Court Entrances

## A. Concerns and Challenges

The primary concerns in court entrances generally relate to providing separation during queuing for both security/weapons and health screening, particularly in court facilities with space constraints. Narrow entries and lack of exterior covered areas create difficulties at high-traffic times, like jury assembly.

Another area of primary concern is in the security screening area and the challenge of providing sufficient space and separation between screeners and people entering the building. Activities like passing trays through screening or using a hand-held metal detector (HHMD) are likely to result in reduced social distancing.

## B. Planning and Best Practices

### 1. Exterior Space

It is likely that at times court visitors will need to queue outside the entrance to maintain the six feet of separation. Floor or pavement markings can be used to provide proper spacing but planning the alignment of queuing spaces should include considerations for shelter from sun and rain as well as accessibility. Long queues can be especially difficult for seniors and people with disabilities. Providing a separate priority lane with a temporary shelter may be necessary to accommodate people in this category. Courts may also consider implementing ways to triage the lines outside the courthouse to determine if the individual needs to enter the courthouse at all. Some of the more universal screening requirements include the following:

- a. First before entering the courthouse, all jurors, lawyers, witnesses and staff should be screened through a series of questions regarding health and exposure. Each person's temperature should be checked for temperatures above 100.3 Fahrenheit.
- b. Further, all persons should be required to wear masks meeting the requirements of the court upon entering the courthouse. This is especially true for jurors who may be confined to tighter spaces than are lawyers and witnesses.
- c. The courtrooms should undergo sanitation each day, including but not limited to wiping down high-touch surfaces such as chairs, tables, door handles, etc., with disinfectant wipes.
- d. The courtroom can be marked to indicate where counsel should stand when addressing the court or jury to ensure social distancing at all times.
- e. The Court may prohibit the use of a shared podium.

f. To ensure adequate social distancing, jurors must remain a minimum of six feet apart at all times.

g. Courthouses should prohibit attorneys from approaching witnesses, staff and the judge during all phases of the trial, absent specific leave of the Court. In all circumstances, as mentioned, a minimum social distance of six feet should be required. As part of a pre-trial conference, the lawyers should be tasked with the duty of informing their clients and witnesses of the proper procedures.

## 2. Vestibules and Pre-Security Queuing Areas

a. Inclement weather such as wind, wind-driven rain, snow, and extreme heat and cold may be handled with a “metering” concept with staff at each entry vestibule to keep exterior doors closed until each visitor has cleared the vestibule, to help maintain door closure.

b. Space limitations will likely be an issue but extending and maintaining spaced queuing will allow for social distancing.

c. Sequence temperature and health-question screening before courthouse visitors enter the security screening area may significantly help decrease the risk of admittance of an infected individual. Turn away individuals who:

- Exhibit temperatures over the established threshold for the building.
- Answer health screening questions affirmatively.
- Will not wear a face covering if that is required.

## 3. Security

a. During metal detector screening, maintain social distancing as much as possible.

b. Use an acrylic or glass screen between staff and public, similar to accommodations in retail checkout areas.

c. Use an increased number of security trays and sanitize the trays frequently. A tray “slide” could help to avoid the need to touch the tray.

d. Place sanitizer stations in areas that allow staff to sanitize after handling each bag or other handled item.

e. Ensure that staff is always wearing a face covering when using HHMDs.

## 2. Public Counters

### A. Planning and Best Practices

#### 1. Counter Areas

- Floor markings can be used to provide proper spacing but planning the alignment of spaces should include considering size and the potential need for a line or row to extend into other spaces.

#### 2. Counters

- Check spacing between counters and provide floor markings leading up to counters.
- Close off counters to provide additional space if necessary, to reduce capacity.
- Provide physical barriers between staff and clients, if not already utilized.
- Use gloves when handling documents and/or sterilize documents with a handheld ultraviolet wand.
- Provide sanitizer stations near the counters.

## 3. Jury Assembly

### A. Concerns and Challenges

Jury assembly rooms can get congested, particularly in older courthouses that weren't designed for larger volumes of people. Some estimates show that indoor public spaces may need to have their seating capacity reduced to 20-50 percent of normal to comply with social distancing rules. Some courts operate without the use of jury-assembly rooms. If courtrooms are traditionally used for this purpose, there may be a significant drop in the number of available jurors due to physical occupancy constraints.

Jury calls may need to be spread over several days to assure that qualified jurors can be selected. See the [Jury Management](#) section for suggestions regarding jury summoning, jury selection, and jury management during a trial.



B. Planning and Best Practices

There are specific ways Courts can help limit jury exposure to contagions. Court should consider some of the following measures:

1. Avoid having jurors report until actually needed.
2. Limit the number of jurors assembled in one location by asking jurors to report for service on a staggered schedule.
3. Provide hand sanitizer and masks to jurors.
4. Consider impaneling extra alternates to guard against delays or mistrials for any reason.
5. Require that jurors report directly to a courtroom as opposed to a jury assembly room.
6. Require jurors to report by phone each morning of trial confirming that the juror has not experienced any symptoms consistent with COVID-19. If a juror reports symptoms consistent with COVID-19 by phone, the juror should not be allowed to come to the courthouse. If a juror experiences symptoms consistent with COVID-19 while at the courthouse, the juror should be subject to immediate quarantine and a test administered.
7. To the extent possible, certain restrooms should be designated for juror-only use and should be cleaned with disinfectant after each break, lunch, and at the end of the day. Ideally, restrooms should have an open window. If that is not possible, engineering should address the air flow in the restrooms. Additionally, disinfectant wipes should be readily available in the jury room and the restroom for use throughout the day.
8. Counter Queuing Areas
  - Check spacing between counters and provide floor markings leading up to counters.
  - Close off counters to provide additional space if necessary, to reduce capacity.
  - Provide physical barriers between staff and client, if not already utilized.
9. Seating and Amenity Areas
  - Remove or mark off chairs to reduce density and allow distancing.
  - Define walking paths with stanchions or floor markings.
  - Limit occupancy in amenity areas; potentially close off certain sections.



C. Potential Alternatives

1. Rework jury assembly procedures to allow for smaller pools.
2. Move operations to an offsite location that accommodates larger groups.
3. Use other rooms to stage jury assembly.
4. Use technology to create a pre-screening process or obtain more accurate attendance counts

## 4. Jury Selection (Voir Dire)

A. Concerns and Challenges

Reduced jury pools will likely impact court operations, and having fewer potential jurors available at one time will extend the process.

Most current courtrooms hold only about 15 potential jurors at a time with social distancing. This may require additional voir dire sessions and cleaning time, further extending the process.

B. Planning and Best Practices

1. Courtroom

- a. Assess courtroom seating and remove or mark off chairs as needed to achieve social distancing.
- b. Potentially modify the traditional method of numbering jurors. Sequencing of seating will help maintain social distance.
- c. Consider releasing selected jurors after each session so the courtroom can be sanitized.

C. Potential Alternatives

1. Schedule pools for specific times to reduce pressure on jury assembly and allow faster recovery time in the courtroom.
2. Move operations to an offsite location that accommodates larger groups.
3. Use more than one courtroom at a time to allow staging larger groups.
4. Consider on-line jury examination.

## 5. Jury Deliberations

### A. Concerns and Challenges

Jury deliberation rooms are generally designed to be just large enough to accommodate 14 to 16 people without social distancing. Test fits of these rooms show that once social distancing is established, they will only fit 6 to 9 people, rendering the area completely inadequate for the entire jury to participate. Alternate locations may not be suitable (acoustically protected, secure restroom access, etc.) for groups.

### B. Planning and Best Practices

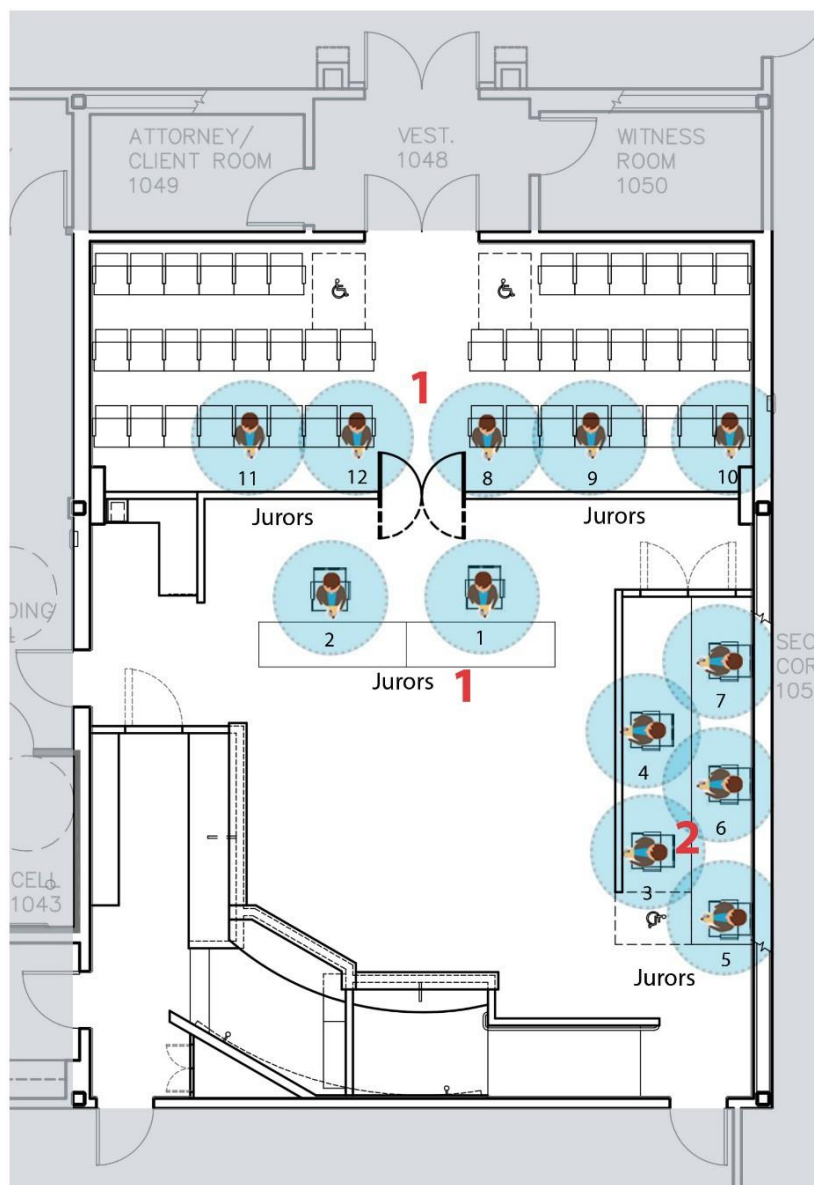
#### 1. In jury deliberation and amenity areas:

- Confirm the maximum capacity of the jury deliberation suite.
- Evaluate other, large-volume space options in or near the courthouse for viability of hosting jury deliberations for suitable requirements (acoustic isolation, restroom facilities). Determine what staffing is needed in an alternate location.
- Consider options outside the courthouse for jury lounge areas.

### C. Potential Alternatives

Consider using the courtroom as the deliberation suite. The jurors will most likely already be spaced appropriately in this area and there is access to the jury suite for needed amenities.

The figure below illustrates an example of potential arrangements and provision of alternative measures for jury deliberation that could work for some courtrooms.



**1 Sensitive Area!**  
Moving jurors to allow for better conversation may trigger the need to provide cleaning during transition points.

**2 Sensitive Area!**  
It may be difficult, or even impossible, to maintain a full six-foot separation. Consult with the local health official or consider use of physical dividers.

Figure 2. Jury Deliberation in Courtroom

It also identifies potentially sensitive areas in the courtroom.

## 6. Courtroom Areas

### A. Concerns and Challenges

Fixed casings and furnishings can pose difficulty when planning for a new standard of distancing. Modifying these features could be expensive, and reversing the changes in the future would likely require additional costs. Because of this, this section focuses on adopting measures that can be more readily adjusted.

The dynamic nature of courtroom operations does not lend itself to social distancing. Discreet sidebar conversations and passing of materials, etc., creates exposure potential, and solutions will require a higher attention to detail. See the figures on the following pages for an example of potential arrangements and provision of alternative measures that could work for some courtrooms as well as sensitive areas within the courtroom.

### B. Planning and Best Practices

#### 1. Spectator Seating

- a. Remove or mark off chairs to reduce density and provide distancing. Many spectator seating areas have three rows, so it may be conducive to block off the entire middle row.
- b. Use open spaces for wheelchair accommodations by placing a chair in that position (as long as it is easily moved and can be stored out of the way).
- c. When using the spectator area for jury seating, clearly identify jury areas to help with separation.
- d. Create a hierarchy for seat assignment to spectators, like what might be enacted for a high-profile trial.

### C. Potential Alternatives

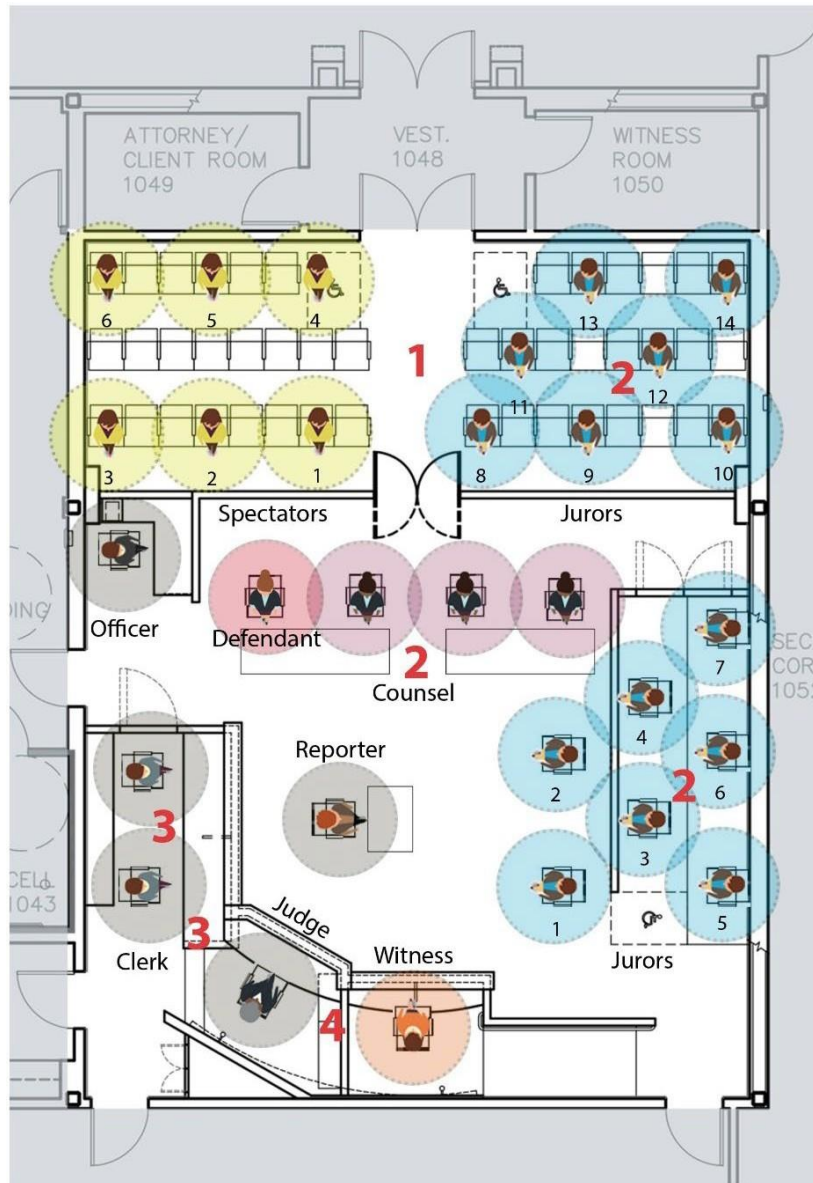
#### 1. Bench and Witness Stand Area

- a. **Bench:** Many courtroom layouts allow for six feet of separation from the bench, except during times of interaction. Floor tape or other markings can be used to define levels of approach for counsel, or to define travel paths within the well.
- b. **Witness Stand:** This area is also generally well-separated but could be further protected through use of floor markings to establish distancing.

- c. **Court Reporter:** This station is generally well-separated but can be further protected through use of floor markings to define paths.
- d. **Lecterns:** Mobile lecterns can be used to help with definition of paths and stations but should be cleaned regularly if used with any frequency.
- e. **Counsel Tables:** Most tables do not allow for six feet of separation. Moving or reorienting tables may help with this, but it is likely that the participants will be limited to four people. Use of the spectator gallery may be necessary for all or part of the counsel to maintain a six-foot distance.

The following pages illustrate potential alternative courtroom layouts that support social distancing objectives. A six-foot “bubble” is drawn around each person to help demonstrate the required separation.

Smaller courtrooms have less flexibility for alternative arrangements, so social distancing in these environments should be carefully planned.



**1 Sensitive Area!**  
Proximity of spectators to jurors may be problematic. Additional separation or inclusion of physical screening devices may be needed.

**2 Sensitive Area!**  
It may be difficult, or even impossible, to maintain a full six-foot separation. Consult with the local health official or consider use of physical dividers.

**3 Sensitive Area!**  
Proximity between clerks and between the judge and closest clerk can be restricted in smaller courtrooms. In addition, passed materials create closer conditions which may warrant use of physical barriers.

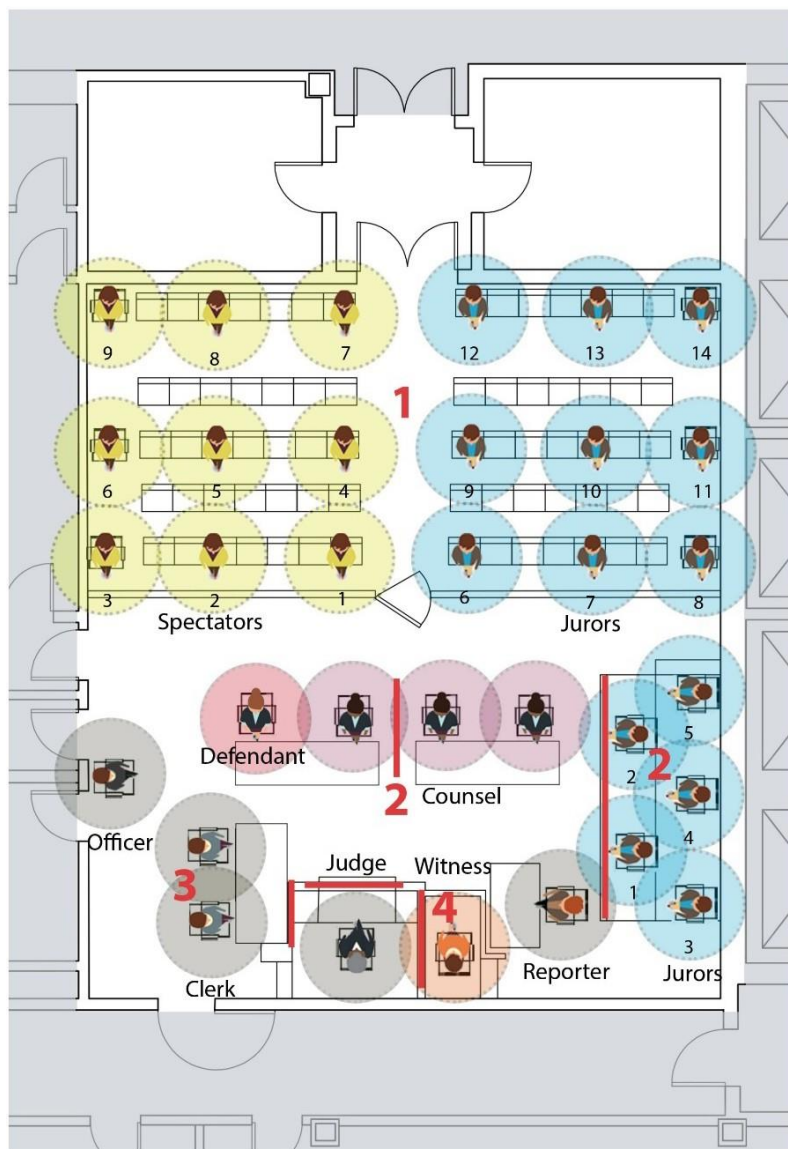
**4 Sensitive Area!**  
Use of a physical barrier here may help maintain separation.

Figure 3. Potential Mitigations in a Small Courtroom

In potentially sensitive areas, additional physical barriers may be necessary.



In a standard-sized courtroom, more options are available but there are still sensitive areas that need to be considered.



### 1 Sensitive Area!

Proximity of spectators to jurors may be problematic. Additional separation or inclusion of physical screening devices may be needed.

### 2 Sensitive Area!

It may be difficult, or even impossible, to maintain a full six-foot separation. Consult with the local health official or consider use of physical dividers.

### 3 Sensitive Area!

Proximity between clerks and between the Judge and closest clerk can be restricted in smaller courtrooms. In addition, passed materials create closer conditions which may warrant use of physical barriers.

### 4 Sensitive Area!

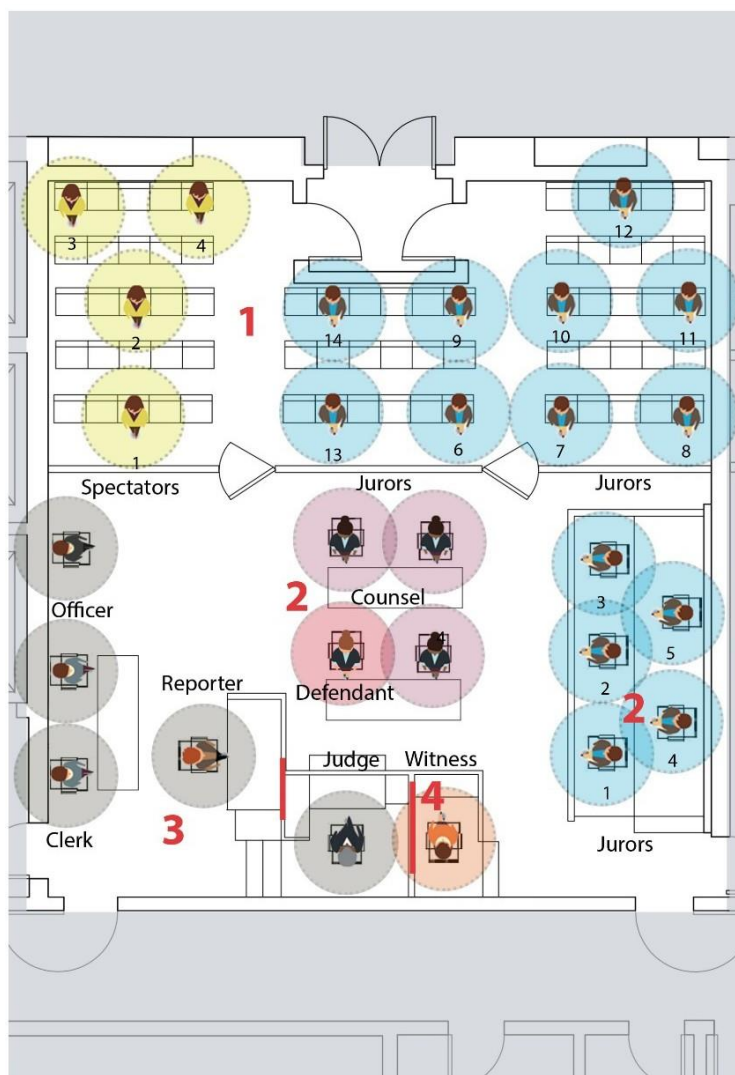
Use of a physical barrier here may help maintain separation.

Figure 4. Potential Mitigations in an Alternately Configured Courtroom.

In this configuration, additional separation and physical barriers can be considered to address sensitive areas.

## Jury Box

Most jury boxes only allow four or five positions when socially distanced. Depending on well size and configuration, two additional jurors might be located just outside the box. The remaining jurors could be seated in the spectator seating area. See the figure below for an example of potential arrangements and provision of alternative measures that could work for some courtrooms as well as sensitive areas in the courtroom.



### 1 Sensitive Area!

Proximity of spectators to jurors may be problematic. Additional separation or inclusion of physical screening devices may be needed.

### 2 Sensitive Area!

It may be difficult, or even impossible, to maintain a full six-foot separation. Consult with the local health official or consider use of physical dividers.

### 3 Sensitive Area!

Proximity between clerks and between the judge and closest clerk can be restricted in smaller courtrooms. In addition, passed materials create closer conditions which may warrant use of physical barriers.

### 4 Sensitive Area!

Use of a physical barrier here may help maintain separation.

Figure 5. Potential Jury Arrangement for a Typical Courtroom



## Other Potential Alternatives

Move operations to an offsite location that accommodates larger groups. This may be useful and available for civil trials. It should be considered if there is agreement between counsel and the parties.

## 7. State Executive, Public Health, and Local Orders

### A. State Orders

Governor Holcomb has put in place a [Statewide Executive Order](https://www.in.gov/gov/2384.htm) directing all Indiana Residents to stay home except to go to an essential job or to shop for essential needs. The COVID-19 emergency response and reopening of the State of Indiana will be a dynamic process in response to changing local conditions guided by a four-stage roadmap. Please refer to the Governor's Executive Orders link: <https://www.in.gov/gov/2384.htm> for the current status of the State's position on reopening.

### B. Local Orders

Local health officers will guide and direct local orders based on the four-stage roadmap. Operational plans for courts throughout Indiana will vary and be informed by local conditions and orders from local public health officials, for example, local orders in some cities may require face coverings for public occupants of businesses, hence operational plans for occupying courthouses are following suit with courts adopting rules requiring face coverings. Screeners may need to turn away noncompliant visitors to the courthouse. Several counties have closed their courthouses to the public, pending movement of the geographic region into a later stage of reopening. Local court operational plans will be based on guidance from the local public health official.

As local health jurisdictions in the state begin their transition into different stages, as set forth in the Governor's order, a local health jurisdiction may implement or continue more restrictive public health measures if the jurisdiction's local health officer believes conditions in that jurisdiction warrant it.

Courts will need to follow local executive orders as they evaluate the use of their facilities. For example, modern, open office areas often have low-height workstations with staff in a closer proximity than is necessary to attain social distancing and circulation paths, and work patterns often create conditions where staff members are nearer to each other than desired.

# Jury Management

*Jury management presents additional challenges toward minimizing exposure to infection due to the high level of social interaction and dependence on public participation. As such, courts may wish to consider a variety of practices in order to remain flexible as local, state, and federal guidelines and the nature of the pandemic change over time. Additionally, courts will need to balance public health orders and prospective jurors' concerns with the need to conduct trials and ensure individual due process rights are upheld. The following section is structured based on the overall process of the summoning and selection of jurors and the completion of jury service, including resuming jury trials. The Indiana Jury Rules should be followed and are instructive.*

## Summary of Considerations

Topic	
<u>JURY SUMMONSING</u>	
1	<u>Estimate Juror Availability in Anticipation of Challenges</u>
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# Jury Summoning

Prior to summoning, expect that the court's juror yield will be noticeably reduced from pre-pandemic operations. This may be further impacted by shelter-in-place orders, phased county-by-county reopening, and other restrictions at the federal, state, and local level. The business of the courts is considered an essential activity, including jury service.

## 1. Estimate Juror Availability in Anticipation of Challenges

Courts will need to work closely with judicial officers to determine estimated numbers of jurors per case type and per trial, and then summons jurors accordingly to adapt to challenges presented by COVID-19. Some options to assist with this endeavor include:

- A. Summoning 25 to 50 percent more jurors than typically summonsed based on case type, trial scheduling, and previous juror yields.
- B. Contacting your local and state health departments to understand the rates of infection in your area.
- C. Maintaining communication to determine day-to-day changes to juror yield and tailor your protocols accordingly.
- D. Encouraging increased use of internet, phone, and text-based communications with jurors, including:
  - Emergency alerts.
  - Reporting instructions.
  - Modified security screening announcements.
  - New court rules or standing orders for jurors.
  - Other necessary information, such as the use of face coverings or recommendations to bring personal hand sanitizer and policies for bringing bags of personal belongings.
- E. Encouraging modifications to in-person jury assembly rooms and/or designate alternative areas for jury assembly.
  - When using assembly rooms, consider measuring and marking six feet (social distancing) areas for seating and standing.
  - When using assembly rooms, consider providing hand sanitizer, disinfecting wipes, face coverings, and gloves, when available, to jurors that require them.

- F. Coordinating with facilities staff to regularly clean high-traffic surfaces where jurors congregate (courtrooms, deliberation rooms, overflow areas, and designated alternative trial locations), and that prospective jurors see this occurring to increase their confidence in the court's ability to maintain a clean environment.
- G. Encouraging the increased use of on-call and telephone standby procedures.
  - Prospective jurors placed on-call and telephone standby would receive day-of reporting instructions sufficiently in advance of their reporting time and location.
  - Prospective jurors placed on-call and telephone standby can be directed to appear at the courthouse, courtroom, overflow area, or designated alternative trial location to minimize grouping.
- H. Instituting a phased system based on a court's usual operating hours, case scheduling, and trial calendar. For example, summoning small groups at two-hour intervals of 8:00 A.M., 10:00 A.M., 12:00 P.M., and 2:00 P.M.; or summoning jurors in morning and afternoon groups.
- I. Assisting prospective jurors in navigating to specific courtrooms, overflow areas, or designated alternative trial locations through electronic communications, signage, maps on the court's website, and limited frontline or security staff when necessary, to avoid crowding.
  - This may be especially important in high-congestion areas within a given courthouse, courtroom, overflow area, or alternative trial location, such as elevators, stairs, and narrow corridors.
  - Coordinate with your facilities staff to preempt any crowding before jurors appear for service.
- J. Placing notices, instructions, and announcements regarding the court's efforts to protect public health for all visitors while resuming day-to-day operations.
  - Information regarding specific protocols can be included with the jury summons, the court's interactive voice response (IVR) system, jury portal, and/or on the court's website.
  - The court can draft a public service announcement and partner with local news media to assist.

- K. Ensuring that information provided by the court attempts to make it sufficiently clear that prospective jurors must have received instructions from the court or contacted the court before they arrive in person. (Many people do not respond to jury summonses and may instead just show up, which is not recommended.)
- L. Preparing and planning for a gradual rollout. These are unprecedented times, so there will be challenges, even for courts that perform jury management well.
  - General information that courts may wish to review, including reference materials from other states, is available from the National Center for State Courts' (NCSC) Center for Jury Studies COVID-19 resources webpage.
- M. It will be especially important to work on public messaging about jury service to assure jurors that courts are taking precautions to protect their health and safety, and to emphasize the importance of jury service to the justice system.
- N. Conveying other messages to jurors during the epidemic or pandemic:
  - Jurors are our heroes! Jurors should be particularly lauded for fulfilling their civic duty during this trying period.
  - Appeal to the public's civic-mindedness, altruism, moral courage, and other positive characteristics to foster a sense of community togetherness in continuing our lives despite current conditions.
  - Jury service remains a right and obligation of citizenship. When jurors don't respond when summonsed, access to justice for the public is put at risk. The public may assume that they are not required to appear for jury service if a public health order or other seemingly conflicting protocol is in effect. Courts can endeavor to communicate that, in fact, jury service is an essential activity that is not suspended during a shelter-in-place order and there is no legal conflict between observing such orders and responding to a jury summons.
- O. Exploring juror prescreening that includes questions designed to determine whether individuals have COVID-19 symptoms, exposure to COVID-19, or are in self-quarantine.

## 2. Juror Postponements, Excusals, Disqualifications, and Failures to Appear

- A. Juror postponements/deferrals and excusals are addressed in Indiana Jury Rules. Courts should expect increased requests for postponements and excusals. It is usually preferable to follow up with and/or postpone/defer a given individual's service rather than leave them listed as a failure to appear (FTA). Options to consider are:
1. Utilizing a system to consider and grant all requests for postponements and excusals remotely without requiring additional documentation (e.g., a doctor's note), or the juror's appearance, when the request is made under penalty of perjury and through the court's established written or electronic means.
  2. Modifying the deferral/postponement period to meet the need for jurors.
    - Consider periods greater than 30, 60, or 90 days or shorter periods of 5, 10, or 20 days. The appropriate interval should balance the need to maintain day-to-day operations with a prospective juror's need for scheduling accommodations.
  3. Reviewing disqualifications to ensure eligible jurors are not being summarily denied the opportunity to complete jury service, including those with criminal histories, English as a second language, and who have temporarily relocated during the pandemic.

## 3. Sample Summons Letter and Questionnaire to Prospective Jurors

- A. Attachment 1(a) and 1(b) are a sample letter and Supplemental Questionnaire which the Courts may consider when mailing the jury summons to prospective jurors. These samples may assist the courts in determining exclusions of potential jurors due to COVID-19 issues and concerns.

B. Jury Selection

Due to the increased risk of COVID-19 infection among large groups of people within enclosed spaces, courts will need to develop plans for minimizing exposure and protecting public health by limiting groups of people to the minimum number necessary to complete essential operations within each courtroom, overflow area, or designated alternative trial location.

## 4. Options for Jury Management

- A. Courts may wish to request that an external party perform a review of their facilities and obtain a list of recommendations from their local county public health department.
1. For example, coordinating with experts from the county public health department to complete a walkthrough and review of court facilities in order to provide specific recommendations, such as:
    - Using remote temperature checks of individuals entering a courthouse, courtroom, overflow area, and/or designated alternative trial location.
    - Developing a health screening questionnaire for court visitors.
    - Identifying types of temporary barriers and/or other infrastructure that can be installed to increase safety to all persons.
- B. Implement social distancing in all areas of the courthouse.
1. In courtrooms, seat jurors in cordoned off sections of the gallery and jury box and use markings for six-foot social distancing.
  2. Provide larger conference rooms or other spaces for jurors to use as:
    - Overflow area for additional panels.
    - Waiting rooms during court recesses.
    - Deliberation rooms.
- C. Provide hand sanitizer and antiseptic wipes in strategically placed locations and make available a limited number of face coverings and gloves in areas where jurors will be located.
- D. Temporarily discontinue providing physical copies of flyers and pamphlets.
- E. Implement a schedule for all areas used by jurors and visitors to be cleaned and disinfected daily.

- It may be beneficial for some of this cleaning to be observable by jurors to maintain their confidence in the court's ability to protect public health while maintaining day-to-day operations.
- F. Ensure that notebooks provided to jurors are not reused.

## 5. Options for Judges and Attorneys

Judges and attorneys may wish to consider the following options during the jury-selection phase:

- A. Tailor jury panel sizes to the limits of the specific courtroom, overflow area, or alternative trial location. Coordinate with your jury department's staff for implementation.
- B. Link to different areas via video (courtrooms, assembly rooms, or overflow areas) to allow judges and parties to speak with more jurors at the same time. Coordinate with your jury department's staff for implementation.
- C. Use designated alternative locations for holding jury selection requiring a greater number of potential jurors. Examples include:
  - School theaters and gymnasiums.
  - County fairgrounds.
  - Concert and theater venues.
  - Sports arenas/stadiums.
  - Hotel conference halls.
  - County and city council rooms.
  - Other municipal buildings.
- D. Use temporary juror badges that can be discarded at the end of each trial or selection process or collect badges at the end of each day to allow jurors to leave immediately from the court when excused.
  - Collecting badges will require storage in a secure location and a process for jurors to remember their badge number or have the court provide a copy for them to leave at home.
  - Coordinate this process with the jury department to ensure consistency and accurate tracking of jurors' service.



- E. Modify courtroom schedules to reserve the first half of the day for all non-jury-related matters, such as:
  - Pleas agreements.
  - Settlements.
  - Motions for a continuance.
- F. For voir dire, coordinate protocols for social-distancing sidebars or to permit prospective jurors to answer certain questions outside the hearing range of other prospective jurors.
- G. Release jurors from the courtroom, courthouse, overflow area, or designated alternative trial location in stages to avoid group congregation.

## Juror Management During Trial

### 6. Accounting for Withdrawal of Jurors

Courts will need to account for the possible withdrawal of a portion of sworn jurors due to various circumstances, including infection, exposure to infection, financial emergencies, changes to dependent care arrangements, updates to local, state, or federal health orders, and other unforeseeable or exigent circumstances. Options include:

- A. Using more than the usual number of alternate jurors when possible and if space allows (for example, use at least two more alternates than usual per case type, per trial, for a total of typically four alternates).
- B. Maintaining regular screening of all individuals participating in a given trial, including:
  - Remote temperature checks with infrared thermometers.
  - Verbal or written symptom and exposure questionnaires.
  - Brief check-ins regarding any changes, updates, or concerns that should be discussed.
- C. Judges and court leadership reviewing and considering whether they are allowed to require the wearing of face coverings, compliance with temperature checks, and completion of health screenings, based on public health orders at the local, state, and federal level.

- D. Judges mentioning in their jury instructions that jurors must not rush to verdict to avoid continued participation in trial, even given current conditions resulting from the pandemic or epidemic.
- E. Providing a deliberation room that allows sufficient social distancing, including during breaks and meals.
  - Consider advising jurors ahead of time of any limitations to onsite amenities and to pack lunches accordingly.
- F. Discouraging mingling after the reading of the verdict and conclusion of proceedings.
- G. When concluding proceedings, dismissing jurors and parties in the case in staggered groups to avoid crowding and congregating.

## 7. Public Viewing of Jury Trials

During a pandemic, public access to court proceedings may be impacted by considerations that protect public health. To that end, review whether courtrooms to be used for jury trials will have space to ensure necessary social distance between jurors, the parties, witnesses, and members of the public, including victims and family members. When space may be limited, consider:

- Showing the proceedings in another courtroom for the public and others.
- Showing the proceedings in a designated area outside the courtroom via local video or webcast.
- Providing listen-only call-in lines.
- Streaming the proceedings to the internet through a secure platform.

## Trial Proceedings

It is important for all trial participants to fully understand what is expected with regard to social distancing and minimizing personal contact, so that risk of exposure is minimized. The most effective means to accomplish this is by the trial court issuing a general order. At a minimum, the general order should discuss the handling of trial exhibits, any demarcation lines established in the courtroom, the handling of sidebars, and any other issues that will affect how the case is tried in the courtroom. It is imperative that all take seriously ways to present exhibits to reduce or eliminate the physical handling and transfer of exhibits between courtroom participants and controlled movement in the courtroom. A model general order is attached in the attachments section.

# ADR and Remote Proceedings

*The COVID-19 pandemic caused many courts to reduce services and hear only essential matters. This section is intended to provide guidance to courts on ADR and remote proceedings to encourage the use of alternate dispute resolution tools to reduce the need for in-person court proceedings or trials.*

## Summary of Considerations

Topic	
1	<a href="#">ADR Rules</a>
2	<a href="#">Remote Proceedings</a>

### 1. ADR Rules

Parties are always encouraged to endeavor to use other forms of dispute resolution for their matter, rather than a jury trial, if practicable, and in light of the COVID-19 pandemic.

The Indiana Rules for Alternative Dispute Resolution, as well as the ADR Pamphlets provided by the United States District Courts in Indiana, set forth a variety of forms of alternative dispute resolution that may be an option in the right cases.

These suggested alternate methods include mediation/settlement conferences with judges, arbitration, mini-trials, summary jury trials, and private judges/special masters.

While the parties should always consider taking available COVID-19 precautions, no matter the method of case resolution, the level of public safety concerns needed for these proceedings may not rise to the level of those set forth herein for a jury trial. Thus, these alternative means may provide the parties to a case with a more expedient conclusion to their matters.

## 2. Remote Proceedings

When possible, in person proceedings is the preference of the Court and remains the gold standard for trial proceedings. However, due to the ongoing emergency related to the 2019 novel Coronavirus (COVID-19), the parties are encouraged to re-familiarize themselves and liberally consider the use of remote proceedings as set forth in Administrative Rule 14. Specifically, the parties should consider the use of remote proceedings allowed by Administrative Rule 14 set forth in the Indiana Rules of Court as well as in the modified Administrative Rule 17 Emergency Order Permitting Expanded Remote Proceedings issued by the Indiana Supreme Court on May 13, 2020 (<https://www.in.gov/judiciary/files/order-other-2020-20S-CB-123i.pdf>), or as set forth in any future orders by the Indiana Supreme Court.

This use of remote proceedings would include the allowance of remote testimony of witnesses, as well as the use of audiovisual communications, consistent with the Supreme Court's Order, to select a jury or any portion of the jury selection proceedings. In civil jury trials, the parties may also conduct the entire trial using remote audiovisual communications if all parties consent to the process.

## Attachments

Dear \_\_\_\_\_:

You have been summoned for jury duty beginning \_\_\_\_\_. You must report absent being excused by the Court.

In addition to the information provided on your Jury Summons, please be aware that our Court continues to monitor the Coronavirus (COVID-19) pandemic closely and takes the health and safety of all persons seriously.

1. As posted at the entrance to each court facility, persons who are sick; who are experiencing fever, cough, or shortness of breath; or who have had contact with a confirmed COVID-19 positive person within the past 14 days should not enter the building.
2. As potential juror who had been summoned for an upcoming term of service:
  - a. Please fill out and return the attached COVID-19 exposure questionnaire by email to the Court at \_\_\_\_\_. If you cannot email the questionnaire, please contact the Court directly at \_\_\_\_\_ for alternative options.
  - b. If you fall within one or more of the below categories (identified by the CDC as being at high risk for severe illness from COVID-19), you are urged to email the Court at \_\_\_\_\_. If applicable, your jury duty will be postponed to a later date.
  - c. In your email, please state that you want to postpone your service and specify which high-risk category applies to you.
    - i. 65 years or older;
    - ii. Any age with an underlying medical condition, including:
      1. Chronic lung disease or moderate to severe asthma;
      2. Serious heart condition;
      3. Immunocompromised;
      4. Severely obese (BMI of 40 or higher);
      5. Diabetes;
      6. Chronic kidney disease undergoing dialysis;
      7. Liver disease;
      8. A temperature exceeding 100.3;
  - d. For those not within one of the above categories, the normal excuse process will apply.

3. Please follow the instructions on your summons for reporting information until you are either notified to appear for jury selection or are excused from service.
4. All jurors should know the Court takes their health very seriously. To that end we:
  - a. Encourage masks. While masks are optional, we suggest bringing a mask for wear during jury service. The Court has a supply of disposable masks for use by jurors as well.
  - b. Employ social distancing which has been worked into the Courts' practice – to include staggered arrival times and expanded seating arrangements.
  - c. Ensure adequate restrooms are readily available for hand washing. Hand sanitizer is also available.
  - d. Encourage jurors to bring their own bag lunch (ideally meals not requiring microwave use).
  - e. Will consider and engage other measures as further guidance is received from the CDC and local health officials.

Thank you for your anticipated service to our community. Please contact us immediately with any questions or concerns.

Sincerely,

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## COVID-19 EXPOSURE SUPPLEMENTAL QUESTIONNAIRE

Please answer the following questions and submit them to the Court as directed in the Jury Summons prior to arriving at the Courthouse.

1. Have you experienced any recent illnesses? If so, please describe:
2. Have you traveled anywhere outside your resident county? If so, please describe:
3. Have you traveled on a commercial flight since January 1, 2020? If so, please describe:
4. Has anyone in your immediate family, social, or work circles tested positive for COVID-19? If so, please describe those circumstances in detail, including the date of the test.
5. Have you been contacted by anyone advising you that they have tested positive for COVID-19? If so, please describe in detail those circumstances.
6. Have you been tested for COVID-19? If so, when did that occur and what were the results?
7. Have you experienced a temperature above 100.3 in the last 30 days?
8. Have you experienced a new cough within the last 14 days that you cannot attribute to another health condition?

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9. Have you experienced shortness of breath in the last 14 days that you cannot attribute to another health condition?
10. Have you experienced a sore throat in the last 14 days that you cannot attribute to another health condition or a specific activity such as physical exercise?
11. Have you experienced muscle aches in the last 14 days that you cannot attribute to another health condition or a specific activity such as physical exercise?
12. Have you experienced a loss of smell or taste in the last 14 days?
13. Have you experienced chills in the last 14 days?
14. Have you experienced nausea, vomiting or diarrhea in the last 14 days?
15. Is there any reason why are at a higher risk of contracting COVID-19 or experiencing complications from COVID-19? If so, please provide a brief explanation.



## MODEL GENERAL ORDER REGARDING RULES OF CONDUCT FOR TRIAL PARTICIPANTS DURING PENDENCY OF PANDEMIC EMERGENCY ORDER

The Court hereby issues the following order regarding conduct applicable to all trial participants in this Court, including, but not limited to lawyers, clients, witnesses, client representatives, members of the jury, court reporters, law clerks, and security personnel:

1. All persons in the Courthouse must stay a minimum of six feet away from all other persons at all times. Exceptions to this rule may only be granted by the Trial Judge. For example, counsel may be permitted to approach a testifying witness for limited purposes. In this instance, the Court may direct that counsel and the witness must cease speaking and wear their respective face masks. The Court may also require other measures to avoid encroachment within six feet, such as leaving an exhibit on a table to be retrieved by the witness.
2. All persons in the Courthouse must wear an approved mask at all times unless an exception is granted by the Presiding Judge. (Specifications for masks may be designated by the Court). Due to difficulty of hearing speakers with masks, people may be permitted by the Court to speak and testify free from obstruction (i.e. without a mask or through the use of a transparent facial mask, face shield, or Plexiglass partitioning).
3. Personnel in the Courtroom will be limited to as few as possible as determined by the Court.
4. Witnesses must be on call or scheduled for their appearance to reduce exposure and unnecessary waiting.

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5. Witnesses will be required to wear a face mask at all times. It is the responsibility of counsel calling the witness to ensure that a mask is available for the witness. Clear face shield masks are encouraged for the use of witnesses. Counsel should ensure that there are sufficient quantities of clear face shield masks available so that each witness will have a properly sanitized mask. Any previously used face shield mask must be properly sanitized.

6. The use of shared podiums found in Courtrooms will only be allowed by permission of the Court.

7. Counsel, along with their clients and client representatives, must stay at their designated counsel table at all times except when speaking. Breaks will be liberally given to allow counsel to speak to their clients without the risk of being overheard.

8. Tape lines are to be placed in front of the jury box, witness stand, and bench. Counsel must stand behind the taped line at all times so that proper social distancing is maintained.

9. Sidebar conferences are not permitted absent specific approval of the Court. Participants may need to remove themselves from the Courtroom and use a room that allows for proper social distancing.

10. When counsel is speaking, he or she should stay at his or her designated counsel table, or alternatively, must remain on the designated mark in the Courtroom.

11. Physical handling and transfer of exhibits is discouraged. All exhibits, with the exception of tangible exhibits that cannot be reproduced for the purpose of trial, must be shown electronically. All trial participants must have adequate viewing of the electronic exhibits either by shared screen in the Courtroom or individual screens or tablets.

12. If a tangible exhibit must be passed among jurors, they will be provided hand sanitizer, instructed on the proper hand hygiene and offered Court-supplied, disposable gloves. Further, jurors will be instructed to avoid touching of the face, eyes, and mouth. Court personnel will assist in the proper handling and disinfecting of exhibits.

13. Each juror will be given his or her own copy of exhibits unless the volume or other characteristics of the exhibit render individual copies impracticable. In such cases, precautions will be taken to protect against transfer of contamination.

14. During breaks of deliberations, jurors will be taken into a jury room where there is adequate space to maintain a minimum distance between one another of six feet. Before entering the deliberation room, jurors will be required to use hand sanitizer. Upon exiting the deliberation room, jurors will be required to use hand sanitizer. As previously stated, jurors must wear masks at all times, including when speaking in the deliberation room.

15. Breaks generally will be longer to allow for staggered trips to the restroom.

16. Courthouse security is empowered to enforce social distancing and other orders including the removal of persons showing signs of COVID-19.

The foregoing rules have been recognized by this Court as necessary to ensure adequate protection of all trial participants. Failure to comply with these rules of conduct constitutes a violation of a court order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Name of Judge