

NORTH CAROLINA
9th Judicial District
11th Prosecutorial District

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
Criminal Section

FRANKLIN, GRANVILLE, PERSON
VANCE AND WARREN COUNTIES

ADMINISTRATIVE GUIDELINES REGARDING
EXPANDING OPERATIONS OF CRIMINAL DISTRICT COURTS

DRAFTER’S NOTE: These guidelines were created using the Franklin County District Courtroom and Courthouse facilities as the model. Some of your home county Courthouses are markedly different from Franklin County’s facilities, and thus, maximum capacities, number of Administrative Periods, time frames for Periods and Cleaning, etcetera may need to be modified as you deem fit in your local plan. However, in order to allow for ease of Court Management with Different Judges holding Court in all our Counties, your model needs to follow the basic scheduling parameters and other guidelines set out herein.

Acknowledging that social distancing and other safety measures will likely remain in effect at least in the short term after our Court System Criminal Operations begin expanding, the undersigned hereby establishes the following protocols and procedures regarding expanding the operations of Criminal District Courts in the 9th Judicial District and the 11th Prosecutorial District:

I. COUNTY HEALTH DIRECTOR/COUNTY MANAGER/SHERIFF

Each local Judge should contact and regularly consult with the local County Health Director and County Manager beginning as soon as possible and both before and during the preparation and planning for expanding operations of our Criminal Courts. As soon as practical, the local Judge should share the Judge’s written plan for expansion of her/his local criminal District Court with the Health Director, County Manager, District Attorney and Sheriff so as to determine your plan’s compliance with any social distancing requirements and other health regulations, to make the County aware of any materials and work-force necessary to implement the plan, and to gain approval of the local plan prior to the beginning of expanded operations and, ultimately, the resumption of regular operations.

II. CAPACITY AND SOCIAL DISTANCING:

Each local Judge shall first establish the social distancing capacity of the Judge's local District Criminal Courtroom (i.e. persons should not be within six feet of each other). Said capacity should be calculated by determining 20 percent of the total allowed occupancy for fire safety purposes as calculated by the local Fire Marshall. That figure is the total allowable number of people in the courtroom at any given time. To determine the Courtroom's audience seating capacity, subtract the number of essential persons necessary to be present in Court. By way of example, the Franklin County Criminal District Courtroom has fire rated seating capacity of 250 persons which makes the social distancing capacity 50 persons. After subtracting out for the Judge, the Clerk, the District Attorney, the Victim Witness Coordinator, a bailiff and a Defense Attorney (6 persons), the potential audience seating capacity is 44 persons. However, the final audience seating capacity should be determined after consulting with Local Health Director. If the audience capacity recommended by the Director is less than the calculated number, the Director's recommendation shall be used.

Courtroom audience seating should be determined in accordance with social distancing guidelines requiring six feet of separation. Each audience seat should be marked with numbered placards placed in numerical sequence. Audience members shall fill the seats in order beginning with seat 1 and continuing numerically through the last numbered seat. The placards or other type of signage used for seat marking should be approved by the County Manager and should be provided by the County.

Social distancing requirements shall also be enforced in the areas where persons are waiting to enter the Courtrooms and Courthouses. Floor line-up markings located at least six feet away from other such markings should be placed in hallways, entrance ways and other common areas where persons stand awaiting entry to the Courtroom. Additionally, depending on the particular Courthouse and premises, markings on floors or sidewalks should be made in at least six feet intervals outside and along the sidewalk up to the point of entry of the Courthouse. The total number of line-up marks both inside and outside the Courthouse should equal the number of audience available seats in the Courtroom. For example, in Franklin County the number of line-up marks should be the lower of 44 or the Health Director's number.

Additionally, and if not already existing, County Maintenance staff should have appropriate signage made that informs the public that entry in the Courthouse and the Courtroom is prohibited to persons having any of the current symptoms of the COVID-19 virus. The signs should also include that all persons shall wear protective masks or face coverings inside the Courthouse and Courtroom if the same are available. The signs should contain a current list of all known symptoms and shall be prominently placed and displayed at all public entrances to the Courthouse and at any public entrances to the Criminal District Courtroom(s).

III. COURT SESSIONS AND PROCEDURES:

Each daily session of criminal Court will be made up of 4 periods, the first three of which are Administrative Periods and during which **only Defendants** will be allowed into the Courtroom's audience area. The number of Defendants allowed into Courtrooms during each administrative period shall match the number of seats marked in the audience area of the Courtroom. In each Administrative Period, the first Defendant entering the Courtroom shall be directed by security to seat 1, the second to seat 2, the third to seat 3 and so on until the numbered seats are full.

A. Administrative Periods:

On Criminal Court days, Courthouse Security will begin allowing Defendants to enter the Courtroom at 9:15 a.m. The First Administrative Period shall begin promptly at 9:30 a.m. Once the Courtroom's seats are filled, Courthouse Security shall require everyone else in the entry line and elsewhere in the Courthouse to exit the Courthouse and the premises until 15 minutes prior to the next Administrative Period's projected starting time, at which time persons can begin lining up to enter the next period of the session. Once the seats in the Courtroom are filled for any period, except for Court Personnel and as noted below in Section VI. G., no one else shall enter the Courtroom until allowed by Security when seating is begun for the next Period. During any Administrative Period, the Court should address Defendants individually in numerical order beginning with seat 1. The Court shall address all preliminary matters involved with Defendants including, but not limited to, the right to court appointed counsel and/or private counsel, first time continuance requests, and guilty/responsible pleas to cases in which there are no victims. After addressing each Defendant's preliminary issues, if a further trial or hearing is necessary, the Court shall determine and announce if the additional hearing will be held on that day of Court during the 4th period or on a later Court date. After each individual Defendant's cases are addressed, the Defendant shall immediately leave the Courtroom and Courthouse until the return time set on that day or the new continuance Court date. The Second and Third Administrative Periods shall be dealt with in the same manner as the First Period.

The First Administrative period shall last from 9:30 a.m. until the later occurring of 10:30 a.m. or until such time as all First Period Defendants have been dealt with preliminarily. The Second Administrative Period shall begin at the later occurring of 10:45 a.m. or 15 minutes subsequent to the first period's end and shall end one hour after it began. The Third Administrative Period shall begin 15 minutes after the end of the Second Administrative Period and shall last until that period's last Defendant's matters have been handled per these guidelines.

B. Breaks--Administrative Periods, Lunch and Cleanings:

At the end of each of the first two Administrative Periods, there shall be a 15 minute break during which each Courthouse Maintenance Staff shall conduct a disinfectant "wipe

down” cleaning of the Courtroom substantial enough to meet safety protocols. After the Third Administrative Period, there shall be an hour lunch break during which Maintenance shall perform an appropriate Courtroom cleaning considering the number of persons attending the three Administrative Periods on that Court date. During all breaks, the **only** persons allowed in the Courtroom are Courthouse Maintenance Staff.

Maintenance Staff shall also ensure that hand-sanitizing stations are located at or near the entrance of the Courthouse and before the entry into the Courtroom. Said stations should be checked frequently to confirm they are working and contain enough sanitizer.

C. Fourth Period--Trials and Pleas:

The Fourth Period is designated to handle and conduct guilty plea hearings and trials for Defendants pleading not guilty to charged offenses. The Fourth Period will begin promptly at 2:30 p.m. At 2:15 p.m., Courthouse Security will allow Courtroom entry to Defendants, alleged Victims, and Witnesses necessary for trials. Courthouse Security shall direct Defendants and Defense Witnesses to sit in the audience area on the side of the Courtroom behind the Defense Attorneys’ table. Victims and State’s Witnesses shall be directed to sit in the audience area located behind the District Attorney’s table. During this Period, the Court should first address any plea agreements, including cases involving victims. The order of these cases called for plea shall be determined by the District Attorney. Thereafter, the Court shall conduct trials for Defendants pleading not guilty/responsible. The order of the cases called for trial shall be determined by the District Attorney.

D. Jail Cases:

In-custody Defendants needing 96 hour hearings, 72 hour hearings, 48 hour hearings or who have not been advised of the charges against them and their right to an attorney shall be addressed at 9:00 a.m. If a county has CourtCall, WebEx or another AOC approved remote means to access jail cases, that system shall be utilized at 9:00 a.m. for the above-referenced cases.

ALL OTHER JAIL CASES (i.e. all Defendants on the docket having an attorney or who have waived their right to an attorney and are representing themselves) shall be addressed during the 4th session of court.

E. Courthouse Security Guards (sometimes noted as Courthouse Security or “Security”):

Courthouse Security is an essential part of the adequate functioning and operation of the Criminal Courts subject to these guidelines as the Officers will provide information about the Court’s operation and will control the inflow and outflow of persons into the Courthouse and the Courtroom. Judges should extensively consult with Courthouse Security regarding the protocols

and procedures herein set forth. In addition to their existing work duties, Security will be responsible under these guidelines for the following:

1. maintaining social distancing requirements for persons lined up to enter the Courthouse and the Courtroom;
2. measuring temperatures of persons and asking questions about COVID-19 symptoms exhibited by any persons seeking entry into the Courthouse and Courtroom (NOTE: taking temperature readings should occur only if Security has appropriate devices such as non-contact “gun” thermometers and Security deems it safe to do so);
3. preventing persons exhibiting COVID-19 symptoms from entering the Courthouse and Courtroom;
4. requiring persons who have protective masks or protective face coverings available to wear them at all times while in the Courthouse;
5. ensuring only Defendants enter the Courtroom during the Administrative Periods, telling persons how to be seated once inside the Courtroom, and ensuring only allowed persons enter the Courtroom during the Fourth Period;
6. efficiently dispersing persons from the Courthouse when the Courtroom is full for any Period so as to minimize the number of persons in the Courthouse, and routinely providing information as to when to begin lining up for the next Period of Court, if there is to be a next period;
7. clearing the Courtroom after each period expires;
8. except as set out below, ensuring that only Defendants who attended an Administrative Period on a day of Court enter the Courtroom during the Fourth Period of that day of Court;
9. repeatedly relaying to the public clear instructions as to the operation of these guidelines including who is allowed to be in Court during any Period contemplated, repeatedly explaining how persons should line-up, lining persons up when awaiting entry into the Courtroom and Courthouse, and informing victims, witnesses and other necessary persons when they should return to the Courthouse to line-up for entry into Court for the Fourth Hearing Period; and
10. explaining that notices of new court dates and/or subpoenas will be sent by the Clerk’s Office to Defendants, Victims and Witnesses who did not make it inside the Courtroom during any period.

IV. CLERKS:

Clerks remain indispensable to the Criminal Courts' operation under these guidelines. As the record keepers, Clerks are tasked with many duties. These guidelines likely substantially increase our Clerk's responsibilities. Local Judges should regularly confer with their local Clerks about how these guidelines will be implemented so as to make them aware of tasks that may be in addition to responsibilities they are already expected to handle.

During each session of Court, the Clerks shall note in their records which Defendants appeared in Court during the First, Second and Third Periods of the session and shall note the result of their appearance (i.e.-continuance date, plea, trial, etcetera). **Except as noted below, only Defendants who appeared in one of the three Administrative Periods of a day of Court will have their cases handled during the Fourth Period of that specific day of Court.** For Defendants that do not reach the Courtroom on their court date, the Clerk, at the end of the Fourth Period, shall inform the Court of their cases, and along with the District Attorney and Defendant's Counsel (if applicable), the Judge shall set continuance dates for said cases. The Clerk shall send out notice of new court dates assigned to Defendants not appearing in Court. For Defendant's not appearing in Court during the three Administrative Periods, the Court will not issue Failures to Appear and/or Orders for Arrest. For Defendants who appeared in an Administrative Period who are told to return for the Fourth Trial/Plea Period, and who fail to appear in the Fourth Period, the Presiding Judge has the discretion to issue FTAs and Orders for Arrest.

At the end of the Administrative Period held immediately prior to the lunch break, the Clerks shall provide a copy of the calendar with Clerk's notations as to which Defendants are to return to Fourth Period. Courthouse Security should use said calendar to determine which Defendants, Victims and Witnesses should be allowed into the Fourth Period. Security shall require all persons not associated with one of the Fourth Period Defendants' cases to leave the premises and said persons will be told that they will be notified via mail, subpoena or otherwise of the next scheduled court date to appear.

V. ATTORNEYS:

Attorneys will be representing many persons in Criminal Court during the period of expanding operations. Attorneys often have to travel between several counties to meet their clients' needs. As a result, the time-lines set out herein are likely to be burdensome for Attorneys needing to be in more than one place at a time. Accordingly, **and during any period of any session**, the Court and the District Attorney shall try to resolve Defense Attorney cases on the docket with pleas on non-waivable and waivable offenses if such can be done without undue delay considering the Period time frames set out in these guidelines.

Regarding waivable offenses, the Defendant should be encouraged by Counsel not to attend Court. For non-waivable offenses, if the Attorney's client is in the Courtroom when the Attorney appears, the Court shall handle the case as soon as practical. If Defense Counsel's case is non-waivable and the Defendant was not able to make it into the Court session, Defense

Counsel shall let the Court know immediately and have the client on standby near the Courthouse (i.e.-in Courthouse parking lot or other area nearby). Upon receiving Court approval, Defense Counsel shall promptly notify Security to allow the Defendant client into the Courtroom when he/she enters the building. Upon entering the Courtroom, the represented Defendant shall take any available numbered seat and the Court shall hear the Attorney's case as soon as is practical.

If the Defense Attorney's case is one involving a Victim who wishes to attend and is entitled to attend the plea hearing, then, in advance as far as possible, and so as to allow for notice to the Victim, the Defense Attorney shall let the District Attorney know of such and of the time the Attorney will appear in Court. Under said circumstances, the District Attorney should coordinate with Security to allow the Victim into the Courtroom when a marked seat is available during the appropriate Period of Court. When a Victim wishes to attend a hearing but cannot attend due to short notice, then, if appropriate under the circumstances, the case shall be continued to a date set by the Court.

When Defense Counsel has cases on a docket for trial, the Defense Counsel shall notify the District Attorney as soon as practical of learning of the necessity of a trial. On the trial date, the Defense Counsel shall notify the client and the Client's witnesses, and the District Attorney shall notify the Victim and the State's witnesses to arrive at the Courthouse during the time for entry into the Fourth Period of any session. In case any parties or necessary witnesses do not make it into the Courtroom, the District Attorney and Defense Counsel shall coordinate with Security about allowing entry for such persons into the Courtroom when numbered seats become available.

VI. OTHER CONSIDERATIONS AND GUIDELINES:

A. No guideline, protocol or directive in this plan is designed to infringe upon, interfere with, or supersede the provisions of the Crime Victim's Rights Act. In the event that circumstances possibly violative of said Act arise during sessions conducted under these guidelines, then the Court should follow the Act's provisions and alter the proceedings to allow compliance with the same.

B. Nothing herein prevents the Court from taking a plea to an offense involving a Victim without said Victim's presence during any Court Period so long as the District Attorney has determined through due diligence that it is appropriate to go forward with the plea in the Victim's absence and the plea will comply with the provisions of the Crime Victim's Rights Act.

C. All Judges, District Attorneys, Defense Attorneys, Clerks, Security, Law Enforcement, Courthouse Maintenance Staff and others involved in the Criminal Court sessions designed by these guidelines should communicate freely and regularly, both prior to and during sessions, to help the processes outlined herein move smoothly, efficiently and safely.

D. The time frames herein for beginning and ending Periods within any session of Court are provided for guidance. As no two Court dates are ever the same, on the day of any session

conducted pursuant to these guidelines, the trial Judge has the discretion to modify said time frames, alter the number of Administrative Periods held, decrease the number of persons allowed in the Courtroom for any Period held, and take other safety measures the Judge deems appropriate for any session.

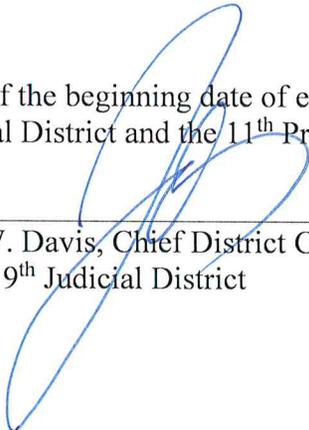
E. Any person seeking entry to the Courtroom who presents with a fever or any other symptom associated with COVID-19 shall be required to immediately leave the Courthouse premises and shall not return to the Courthouse for at least 72 hours.

F. Safety of all persons involved in the Court System is the of the upmost concern. The goal of these guidelines to conduct effective and efficient Court sessions that completely dispose of as many cases as possible while maintaining the highest state of safety possible.

G. Each County's local Judge(s) should use these guidelines to prepare an Administrative Order for her/his County's expansion of Criminal District Court Operations. Upon completion, the local Judge(s) and I will sign the Administrative Order for each County and cause the same to be filed.

H. As seats become available in the Courtroom during the three Administrative Periods as Defendants leave and as seats become available as persons leave the Fourth Period, Courthouse security may allow the general public to enter the Courtroom and fill up to five seats in each period; said members of the general public shall sit numbered seats left by the persons leaving.

Signed the 12th day of May, 2020, and effective as of the beginning date of expansion of the Criminal District Courts operations of the 9th Judicial District and the 11th Prosecutorial District.



John W. Davis, Chief District Court Judge
9th Judicial District