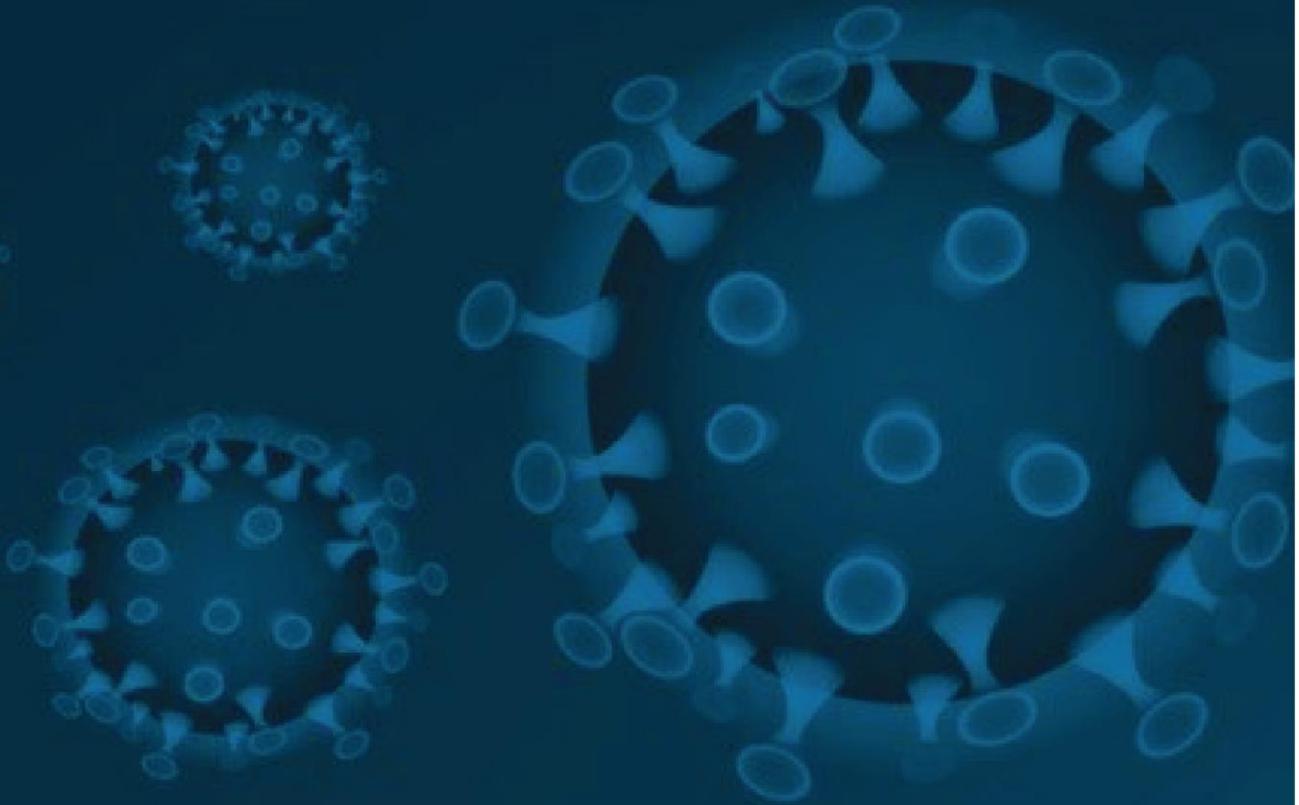




# COVID-19 FIELD GUIDANCE FOR LOCAL JUDICIAL OFFICIALS

PREPARED BY  
NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS  
BASED ON  
RECOMMENDATIONS OF THE JUDICIAL BRANCH COVID-19 TASK FORCE  
JULY 7, 2020



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**Appendix A:** Jury Service During COVID-19 Frequently Asked Questions Template



**About the North Carolina Judicial Branch**

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent, and accessible forum for the just, timely, and economical resolution of their legal affairs.

**About the North Carolina Administrative Office of the Courts**

The mission of the North Carolina Administrative Office of the Courts is to provide services to help North Carolina’s unified court system operate more efficiently and effectively, taking into account each courthouse’s diverse needs, caseloads, and available resources.



# INTRODUCTORY MESSAGE FROM THE JUDICIAL BRANCH COVID-19 TASK FORCE

On March 10, 2020, North Carolina Governor Roy Cooper issued [Executive Order No. 116](#), the first in a series of executive orders declaring a State of Emergency to coordinate the response and protective actions to prevent the spread of COVID-19. On March 13, 2020, the Chief Justice of the Supreme Court of North Carolina, The Honorable Cheri Beasley, issued the [first in a series of emergency directives for the court system](#) aimed at protecting the health of court personnel and the public during the outbreak of COVID-19. Both the Governor and Chief Justice have issued numerous additional emergency orders since mid-March. While Chief Justice Beasley's orders have been clear since the onset of this public health emergency that the North Carolina courts must remain open for essential business, the scope of court operations and services have been significantly curtailed due to the need to minimize foot traffic and in-person contact in court facilities and courtrooms across the state.

On April 30, 2020, Chief Justice Beasley created the Judicial Branch COVID-19 Task Force and charged it with working with the conferences and associations within the Judicial Branch to develop recommendations for future emergency directives, policy changes, and best practices to help courts across the state provide increased levels of service to the public during the remainder of the COVID-19 health emergency.

While this public health emergency has continued to strain the state, the country, and the world, leaders in many states, including North Carolina, have begun to ease restrictions to allow more functions of daily life to resume as safely as possible. Effective May 8, 2020, Governor Cooper implemented the first phase of a [three-phase approach to relaxing some restrictions](#) in North Carolina. On May 22, 2020, North Carolina moved into the second phase. As we continue to move through the phases in the Governor's plan, the Task Force has discussed the numerous unique challenges facing the state's court system. The Task Force's focus has been on expanding limited court operations in a manner and on a timeline that ensures the public receives enhanced services from the Judicial Branch, while continuing to protect the health and safety of court personnel and the members of the public that rely on meaningful access to the courts.

As it always has, the Judicial Branch continues to work at the intersection of justice, the preservation of constitutional rights, and public safety. COVID-19 has added another lane to that intersection—public health—and it requires all of us to work together to navigate an even more challenging crossing. As Chief Justice Beasley has noted, it is time to shift our focus and consider not only what matters *must* be heard, but what matters *can* be heard safely. If it is possible to proceed with a matter safely, we must figure out new ways to do so.

On [June 12, 2020](#) and [June 30, 2020](#), respectively, the Task Force submitted two reports to the Chief Justice. The information in those reports was offered as a resource for the Chief Justice and local court officials as the Judicial Branch works to balance these competing concerns and phase back toward full operations, based on research and consultation with public health authorities. The points in those reports, and in this report, should be viewed as recommendations and guidance, not directives. While North Carolina has a unified court system, there is no one set of rules that can be implemented



identically in all 100 counties in the state. Ultimately, the manner and methods for expansion back to full operations will best be made by local court officials through cooperation and communication among themselves, in light of their local courthouse designs, caseloads, staffing limitations, and infection data.

June 1, 2020 was the beginning of a “soft expansion” back to normal operations and, at this time, our court facilities and courtrooms across the state should not look like they did the day before this emergency began. All court officials must stay informed about the current state of the Governor’s Executive Orders and the Chief Justice’s Emergency Directives, as well as all public health guidance from the [Centers for Disease Control and Prevention](#) (CDC) and state and local public health officials.

In both of its reports, the Task Force urged judicial officials throughout the state to communicate, collaborate, and cooperate with all local court leaders and partners—including district and superior court judges, clerks, court managers, district attorneys, public defenders (where applicable), private attorneys, sheriffs, and local county and public health officials—as we all seek to scale back toward full operations in ways that both provide for the efficient administration of justice and keep people safe. All local officials must strive to provide a safe and healthy courthouse, but also to instill confidence in that safety among the people who choose or are required to enter court facilities. Clear and consistent messages about safety precautions should be communicated to the public by local officials through both words and action.

Local communication will be particularly important in coordinating higher volumes in different courts in a staggered manner. Each district is responsible for ensuring that there is sufficient court staff and courtroom space to hold court efficiently and safely. Each district is also responsible for ensuring that the numbers of people entering and remaining in individual courtrooms, as well as court facilities in general, are manageable and allow for appropriate social distancing. This time, perhaps more than any other time in our history, will require careful coordination between divisions of the trial court with regard to scheduling and the use of courthouse space, as well as other resources that may be in high demand and short supply. Court personnel, attorneys, and the public must be cognizant that judicial offices across the state likely will not be operating at full capacity in the near future.

The COVID-19 pandemic continues to present rapidly changing circumstances, and there is a possibility of increased cases of infection during the coming months. Plans for expansion back to full operations must be flexible enough to allow both for “ramping up” and “ramping down” court operations as circumstances demand. The past few months have presented difficult challenges for everyone, and the next few months will present new and equally difficult challenges. On behalf of the thousands of elected and appointed officials and court staff across the state, the Task Force asks for your patience and understanding as we all navigate this “new normal.”

The Honorable F. Donald Bridges, Co-Chair  
District 27B Senior Resident Superior Court Judge

The Honorable Wayland Sermons  
District 2 Senior Resident Superior Court Judge

The Honorable Billy West  
District 14 District Attorney

The Honorable Jay Corpening, Co-Chair  
District 5 Chief District Court Judge

The Honorable Teresa Vincent  
District 18 Chief District Court Judge

The Honorable Robert Evans  
District 8 District Attorney



The Honorable Marsha Johnson  
Harnett County Clerk of Superior Court

Kinsley Craig  
District 27B Trial Court Coordinator

The Honorable Jason Cheek  
Davidson County Magistrate

John McCabe  
Attorney at Law

Patrick Weede  
Attorney at Law

The Honorable Elisa Chinn-Gary  
Mecklenburg County Clerk of Superior Court

Kellie Myers  
District 10 Trial Court Administrator

The Honorable Jennifer Harjo  
New Hanover County Public Defender

Wade Harrison  
Attorney at Law

JD Keister  
Attorney at Law

## OVERVIEW OF FIELD GUIDANCE BASED ON TASK FORCE RECOMMENDATIONS

The Task Force met regularly throughout the months of May and June 2020, and it submitted an interim report to the Chief Justice on [June 12, 2020](#) and a final report on [June 30, 2020](#). The information in this separate field guidance report contains the North Carolina Administrative Office of the Courts' (NCAOC) guidance to local judicial officials based on the Task Force's recommendations. Additional Task Force recommendations that are geared toward the Chief Justice and the NCAOC can be found in the Task Force's two reports.

This document contains guidance to local judicial officials in the following areas:

1. General best safety practices in the courts;
2. Case management priorities and court innovations as the North Carolina courts phase back to full operations;
3. Minimum requirements for the resumption of civil and criminal jury trials; and
4. Best safety practices for civil and criminal jury trials.

## GENERAL BEST SAFETY PRACTICES

This section provides guidance and information about best safety practice(s) in the courts. These recommendations are subject to change as the [CDC](#), the [North Carolina Department of Health and Human Services](#) (NCDHHS), and local health officials alter their guidance based on new research and evidence regarding the transmission and prevention of the virus. Local court leaders should be prepared to make changes to their plans, accordingly.

### COVID-19 Facility Coordinators

Pursuant to Emergency Directives 11, 13, and 16 of Chief Justice Beasley's [May 21, 2020](#) and [June 20, 2020](#) orders, each senior resident superior court judge shall serve as or designate a COVID-19



coordinator for each facility in his or her district. In districts with more than one court facility, the same coordinator may be designated for multiple facilities.

Before any court calendar is published or distributed, the COVID-19 coordinator must ensure that:

1. Each session of court, either individually or when considered collectively with other planned sessions of court, will not result in members of the public sitting or standing in close proximity and / or for extended periods of time in contravention of current public health guidance; and
2. All Judicial Branch personnel assigned to a courtroom for more than thirty minutes will have a facemask made available prior to the session of court.

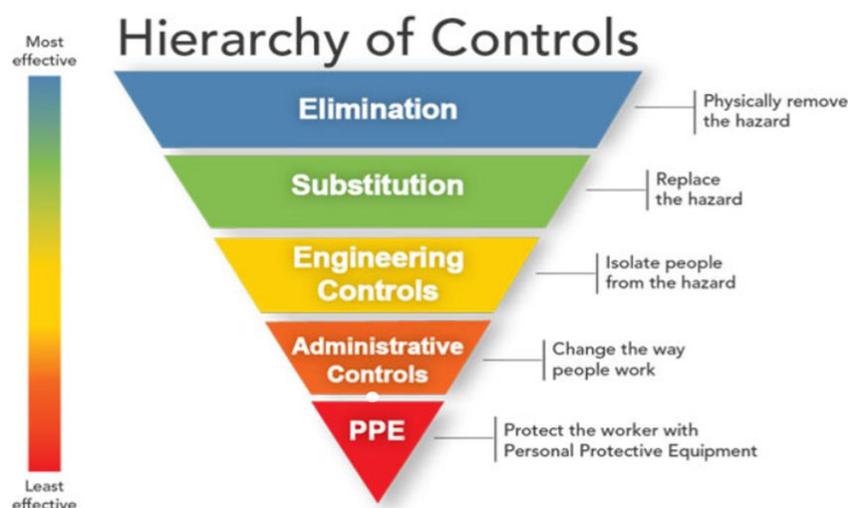
## Hierarchy of Controls

There is a continuum of risks associated with the spread of COVID-19. Risk may increase based on:

1. The number of people;
2. The size of a space;
3. The length of time that people are gathered together;
4. The proximity of the attendees to one another; and
5. The airflow over time.

Due to the interplay of these factors, there is no specific time (e.g., 30 minutes or one hour) that people may safely assemble in the same room. Therefore, in the courtroom setting, a combination of tools should be used to reduce the risks as much as possible.

The hierarchy of controls is an effective means to implement various tools to help prevent the spread of COVID-19 within court facilities. The control methods at the top of the hierarchy are more effective and protective than those at the bottom, and local court officials should consider using a combination of available control methods.



Source: <https://www.cdc.gov/niosh/topics/hierarchy/default.html>



Wherever possible, judicial officials should eliminate the risk of infection by limiting in-person contact to the greatest extent possible. Examples of elimination include proceedings conducted remotely through Webex; orders rendered without hearing based on written motion, affidavit, or argument; and waivable offenses disposed through online tools such as the [Electronic Compliance and Dismissal](#) (ECAD) system.

Where the physical hazard cannot be eliminated and substitution is not possible, the three remaining controls should be used.

### 1. Engineering Controls

- Designed to isolate employees from hazards before contact with the hazard, without relying on employee behavior.
- Examples: Physical barriers such as plexiglass (sneeze guards), drive-through service, signage, hand sanitizer in high-traffic areas, rope barriers to control crowd flow, enhanced cleaning and disinfecting, and limiting badge access to immediate working areas.

### 2. Administrative Controls

- Action by the hiring authority or employee through changes to policies and procedures.
- Examples: Teleworking, staggered shifts and hearings, online training, requiring sick employees to stay home, and non-punitive sick leave policies.

### 3. Personal Protective Equipment

- Used to prevent individual worker exposure.
- Examples: gloves, goggles, and masks / face coverings.

## Courthouses and Other Court Facilities

### 1. Occupancy Thresholds for Courthouses and Courtrooms

- Currently, public health officials are not aware of specific guidance for courthouses and suggest looking toward recommendations for similar settings with regard to duration and types of exposure that are expected to occur in the facility. The most similar operations for which guidance is available are places of worship.

*NCDHHS' Interim Guidance for Places of Worship and Religious Services (May 22, 2020) provides:*

*"It is recommended that places of worship . . . [s]pace seating arrangements so there are 6 feet between groups who live in the same household. Consider limiting seating to alternate rows."*

Source: <https://files.nc.gov/covid/documents/guidance/NCDHHS-Interim-Guidance-for-Places-of-Worship-Phase-2.pdf>



## 2. Social Distancing

*“Social distancing means avoiding [large gatherings](#) and maintaining distance (at least 6 feet or 2 meters) from others when possible. Strategies that businesses could use include:*

- *Allowing flexible worksites (such as telework)*
- *Allowing flexible work hours (such as staggered shifts)*
- *Increasing physical space between employees at the worksite*
- *Increasing physical space between employees and customers (such as a drive-through and partitions)”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>

- The general guidance of six feet for social distancing is for casual interactions between individuals for less than 10 minutes, and one hour is considered a prolonged period of time. Issues such as air flow within the facility, use of masks / face coverings, and individuals coughing or sneezing will vary and affect the safety of all.

## 3. Cleaning and Disinfecting

*“Current evidence, though still preliminary, suggests that SARS-CoV-2, the virus that causes COVID-19, may remain viable for hours to days on surfaces made from a variety of materials. It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads.”*

- *If an object may be contaminated and can be cleaned, follow the [CDC cleaning and disinfection recommendations](#). First clean dirty surfaces with soap and water. Second, disinfect surfaces using [products that meet EPA’s criteria for use against SARS-Cov-2](#) and are appropriate for the surface.*
- *If an object may be contaminated and cannot be cleaned, it can be isolated. Isolate papers or any soft (porous) surfaces for a minimum of 24 hours before handling. After 24 hours, remove soft materials from the area and clean the hard (non-porous) surfaces per the cleaning and disinfection recommendations. Isolate hard (non-porous) surfaces that cannot be [cleaned and disinfected](#) for a minimum of 7 days before handling.*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>

## 4. Signage

- Courts should post clear signage regarding safety practices. See [NCAOC court facility signage examples](#).
- Suggested locations for signs include:
  - Entrance doors;
  - Main lobbies;
  - Breakrooms;
  - Bathroom doors;
  - Meeting rooms;
  - Elevators; and
  - Floor markers (where lines may form).



- COVID-19 posters and other resources created by NCAOC’s Communications Division are being translated into North Carolina’s top languages (Spanish at a minimum), and posted online for use, as applicable, by all courts.

## 5. Entrances

- Security screening queues should be marked for social distancing using engineering controls.
- Provide and mark outside waiting areas for overflow lines while enforcing social distancing.
- High-touch areas such as door handles, countertops, buckets at security screening, etc. should be cleaned on a regular frequent basis.
- Hand sanitizer stations should be installed near entrances, elevators, and courtrooms.
- Consider tracking / logging people who enter facilities for contact tracing. If a log or other tracking is to be implemented, consider:
  - Who will be responsible for the log?
  - How will you keep it private?
  - How will the information be used?
  - Note that paper sign-in sheets may increase risk of contamination.

Note: Evidence-based advice is in conflict with respect to logging people who enter facilities, so local officials should consider this possibility in light of local data and guidance from local public health officials.

## 6. Temperature or Health Screenings: Visitors / Public

- The CDC recommends [daily health screenings](#) of staff and attendees at mass gatherings, if feasible. NCDHHS recommends that all [K-12 schools](#) and [childcare centers](#) conduct daily health screenings of staff and students. Such screenings may include temperature taking.
- If health screenings are considered, consult with your local public health officials for assistance in developing appropriate policies.<sup>1</sup>
- If health screenings are implemented, consider the following:
  - Who is permitted to administer the health screening (e.g., must it be a health professional or can it be a law enforcement officer)?
  - If the person being screened must answer questions, will the information be saved or stored? If so, by whom and for how long?<sup>2</sup>
- If health screenings are implemented, ensure that the policy includes provisions that address:
  - Rescreening: Walking even a short distance on a hot day can increase body temperature and cause false high temperature checks. Consider how long to wait before allowing a person to rescreen.
  - Refusal: What happens if a person who is required to come to court refuses the screening?

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<sup>1</sup> If health screenings for employees are implemented, records reported in writing must be retained for the duration of the workers’ employment plus 30 years. See 29 CFR § 1910.1020. In addition, both the Americans with Disabilities Act and the Family Medical Leave Act require that the records be treated confidentially and maintained separately from personnel files.

<sup>2</sup> Privacy or HIPAA concerns may arise if personally identifiable health information is maintained and stored as a result of the screening process.

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- Possible exposure: If a person presents with symptoms of COVID-19 or does not successfully complete the screening, where will the person wait while you determine how best to provide services?

## 7. Public Service Counters

- Install plexiglass barriers at the counter between the court personnel and the public.
- Mark where individuals who are waiting should stand.
- Pens should be cleaned between use, if shared.
- Consider other engineering controls, such as providing curbside service for some tasks.

## 8. Lobby and Hallways

- Limit the number of people permitted in the space, following current social distancing guidelines, and clearly mark where individuals should sit or stand while waiting.
- Design pathways / one-way lanes to limit traffic in narrow areas.

## 9. Elevators

- Encourage use of stairs.
- Mark for social distancing and limit the number of people permitted to ride at a time.
- Clean buttons frequently.

## 10. Meeting Rooms

- Arrange tables and chairs to ensure at least a six-foot distance between meeting attendees, not to exceed maximum occupancy based on social distancing.
- Remove white board pens and erasers; if needed, people should bring their own.
- Those using rooms should bring pens as needed.
- Tabletops should be sanitized on a regular frequent basis.
- Conference phones should be sanitized on a regular frequent basis.

## 11. Bathrooms

- There is no CDC guidance to limit bathroom capacity:
  - The barriers in stalls should prevent spread of respiratory droplets.
  - Washing hands next to another person for 20 seconds does not meet the definition of close contact.
- Confirm that all sinks have running hot water.
- Ensure soap and paper towels are checked and filled regularly.
- Use signage to encourage social distancing and proper handwashing.

## 12. Water Fountains and Ice / Drink Machines

- Should be cleaned and disinfected regularly, particularly high-touch areas like buttons.



### 13. Lactation Rooms

- Should be sanitized on a regular frequent basis.

### 14. Recirculating Air / HVAC

- The spread of COVID-19 through ventilation systems is not likely because respiratory droplets cannot travel long distances.
- Installing HEPA filters is not recommended due to the high cost, short service life, and incompatibility with existing equipment.
- Each local court will need to have these concerns addressed by local county representatives as to the capacity of each facility to ensure safe interior air quality.

*“The risk of spreading the virus that causes COVID-19 through ventilation systems has not been studied, but is likely low. Routine HVAC maintenance is recommended. Although it is never the first line of prevention, consider general ventilation adjustments in your workplace, such as increasing ventilation and increasing the amount of outdoor air used by the system. Maintain the indoor air temperature and humidity at comfortable levels for building occupants.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>

### 15. Trash Receptacles for Masks and Gloves

- Use no-touch trash receptacles and include hand sanitizer near trash receptables so people can perform hand hygiene after removing personal protective equipment.

## Court Personnel

### 1. Employees who Interact with the Public

*“To keep your employees safe, you should:*

- *Consider options to increase physical space between employees and customers such as opening a drive-through, erecting partitions, and marking floors to guide spacing at least six feet apart.*
- *At least once a day [clean and disinfect](#) surfaces frequently touched by multiple people. This includes door handles, desks, phones, light switches, and faucets.*
- *Consider assigning a person to rotate throughout the workplace to clean and disinfect surfaces.*
- *Consider scheduling handwashing breaks so employees can wash their hands with soap and water for at least 20 seconds. Use hand sanitizer that contains at least 60% alcohol if soap and water are not available.*
- *Consider scheduling a relief person to give cashiers and service desk workers an opportunity to wash their hands.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>



## 2. Shared Equipment and Supplies

- Minimize the passing of objects that, if contaminated, could transmit infection.
- Although there is not a lot of data on how long the coronavirus lives on surfaces, including paper, limit transfer of papers and pens. Wash hands before touching anything else.
- Shared equipment should be cleaned regularly (e.g., copiers and printers). [NCAOC Technology Services Division's guidance on cleaning equipment](#) is available on Juno.

## 3. Mail and Other Documents

- Assign a point person in each office to receive paperwork.
- Utilize inter-office mail and minimize personal delivery.

## 4. Employee Health Information and Screenings

- Advise employees not to report to work if they have symptoms of COVID-19.
- Provide written information for employees to stay home if they are ill.
- Facilities should have a flexible and non-punitive sick leave policy and should ensure that all employees are aware of this policy.
- Post signage on building entrances to raise awareness.

## 5. Staggered Shifts

- Hiring authorities should determine the best options for their local employees.
- Options may include a team concept (Team A / Team B), flexible work hours, etc., as well as rotation of employees between telework and physical work onsite.
- Managers should consider seating arrangements such as checkerboard seating. Ensure all seats are six feet apart in all directions.

## 6. Employee Breakrooms

- Breakrooms should remain open for individual use and access to a refrigerator and microwave.
- Signage should be posted about maintaining social distancing and proper handwashing.
- Tabletops and other surfaces should be cleaned on a regular frequent basis.
- Consider removing some tables and chairs to enforce social distancing.

## 7. Employee Meetings, Social Gatherings, and Visits

- Minimize in-person meetings and encourage remote meetings (ensure proper bandwidth for virtual meetings and hearings).
- In-person social gatherings (e.g., birthday celebrations, retirement parties, and baby showers) should be prohibited until it is determined they are safe to have.
- Encourage use of email and telephone for communication.
- Employees are encouraged not to have social visitors in the office.
- Consider a policy on bringing children into the office.



## 8. Communications and Training to Court Personnel

- Local court leaders and hiring authorities are strongly encouraged to share information with personnel so they know that their safety is paramount.
- General information for all employees should be shared by all hiring authorities in a timely manner.
- Ensure that employees have been trained regarding how to put on / take off personal protective equipment.

## Personal Protective Equipment

OSHA defines personal protective equipment (PPE) as specialized clothing or equipment worn by an employee for protection against infectious materials. PPE must be worn correctly to be effective.

### 1. Masks / Face Coverings

*The CDC recommends that people wear face coverings when around others, even when social distancing.*

*“Cover your mouth and nose with a cloth face cover when around others*

- *You could spread COVID-19 to others even if you do not feel sick.*
- *The cloth face cover is meant to protect other people in case you are infected.*
- *Everyone should wear a [cloth face cover](#) in public settings and when around people who don't live in your household, especially when other [social distancing](#) measures are difficult to maintain.*
  - *Cloth face coverings should not be placed on young children under age 2, anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance. . . .*
- *Continue to keep about 6 feet between yourself and others. The cloth face cover is not a substitute for social distancing.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

- **Court Personnel**
  - Strongly encourage or require masks / face coverings to be worn by employees:
    - In common areas (e.g., hallways, restrooms, break rooms, and lobbies);
    - Where two or more people are gathered for a short time and social distancing cannot be maintained; and
    - Where two or more people are gathered for an extended duration even if social distancing is maintained.
  - Exception: When an employee has a health condition and a health-care professional certifies in writing that the wearing of a mask / face covering would be detrimental to that employee's health, and that certification is provided to the appropriate hiring authority.
  - Employees who choose to wear a mask / face covering should not be prevented by the hiring authority from doing so.



- Masks / face coverings can be ordered from NCAOC’s online supply store, and they should be provided to employees by the Judicial Branch, with distribution coordinated by the hiring authority. For instructions on how to use masks properly, see [COVID-19 Workplace Safety](#) (NCAOC June 5, 2020).
- If N95 masks will be used, all users must be fit-tested and the facility must have a respiratory protection program in place, per NCDHHS.
  - Review [CDC guidance on fit testing](#).
  - Review [CDC guidance on respiratory protection programs](#), which are designed for hospitals, but these procedures need to be in place if N95 masks will be used.
- **Members of the Public**
  - Strongly encourage or require everyone entering a court facility to wear a mask / face covering.
  - If a person does not have a mask / face covering or refuses to wear one when masks are required, consider the following:
    - If the person is required to be in court, how do you ensure they are not called and failed? How do you assign a new court date and notify all parties?
    - Will you provide a mask / face covering for individuals seeking emergency relief (e.g., domestic violence protective orders or workplace violence)?
    - Will you prioritize who is given a mask / face covering and, if so, how?
    - Will your local court security enforce the policy?
  - If masks will be distributed to the public, court officials should plan ahead for supply chain issues and limited resources.
- **Everyone**
  - Masks should be changed if they are dirty or contaminated or wet from breath. There is no specific time limit for wearing a mask; the guidance is based on the state of the mask, not how long it is worn.
  - If masks are not used correctly, they can increase an individual’s risk of exposure (e.g., facial hair can decrease the effectiveness of a mask).

## 2. Gloves

- Hiring authorities should follow [CDC guidance for businesses around PPE use](#), including gloves.
- If gloves are used, [education should be provided](#) about how to use them safely (e.g., do not touch face, change gloves if torn or soiled, and remove safely and wash hands afterward).
- Note that wearing gloves can give someone a false sense of security and lead to unintentional cross-contamination (e.g., the wearer touches an object and then touches their face).

Note: Evidence-based advice is in conflict with respect to gloves, so local officials should consider this possibility in light of local data and guidance from local public health officials.



## In-Person Court Proceedings

Pursuant to the Chief Justice's Emergency Directives, no session of court may be scheduled if doing so would result in members of the public sitting or standing in close proximity and / or for extended periods of time in contravention of current public health guidance, and judicial officials should continue to make use of remote hearing technology to the greatest extent possible to limit in-person appearances.

If local court officials determine that in-person court proceedings may be scheduled pursuant to the [Chief Justice's Emergency Directive 11](#), they should implement a combination of engineering controls, administrative controls, and PPE, such as:

1. Maximum safety occupancy shall be posted ([Emergency Directive 12](#)).
2. Public seating shall be clearly marked for social distancing of six feet in all directions ([Emergency Directive 12](#)).
3. All Judicial Branch personnel assigned to a courtroom for more than thirty minutes should have a facemask made available prior to the session of court ([Emergency Directive 13](#)).
4. Stagger start and break times when there are multiple courtrooms operating.
5. Schedule appointment times for hearings.
6. Divide high-volume calendars into multiple courtrooms by last name.
7. Ask that only the person required to be in court appear.
8. Conduct calendar calls remotely via Webex.
9. Assign the same court personnel to work with the same judge in the same courtroom (less rotation to reduce spread).
10. Install physical barriers (plexiglass) in front of the judge and / or courtroom clerk.
11. Encourage materials for the hearing, such as briefs and memoranda, to be submitted electronically prior to the hearing and discourage hard copies unless they are required to be in the court file.
12. Designate separate doors as "entrance only" and "exit only" to control the flow of traffic in tight doorways.
13. Permit the use of door stops, when not violative of fire and safety codes, to minimize frequent touching of doors into and out of the courtrooms.
14. Designate a single person to retrieve documents from counsel and parties and deliver them to the presiding judge or clerk (e.g., a bailiff).
15. Instruct counsel and parties not to approach the presiding judge or clerk unless directed by the court and only when wearing a mask / face covering.
16. Instruct defense counsel to wait behind the bar and to approach the prosecutor's table only when directed to do so (i.e., do not crowd the prosecutor's table).
17. Affirm oaths; inform people that they must bring their own religious text if they wish to swear on one.
18. Minimize the passing of objects, including papers and pens, that normally would be passed back and forth in court transactions and interactions. Individuals should wash their hands after contact and before touching anything else. Pens should be cleaned between use, if shared.
19. Provide cleaning wipes at counsel tables to wipe surfaces, if available. Encourage attorneys and parties to bring their own wipes to clean tables.



Additional considerations for in-person court proceedings include:

1. With respect to **attorney-client communication and interactions** when social distancing is not possible, consider plexiglass partitions, masks / face coverings, and / or headsets and microphones (must be a private connection).

## 2. Interpreters

- Disposable gloves and disinfecting wipes or alcohol prep pads should be provided in order to allow for safe handling and disinfection of interpreting equipment.
- Court interpreters should use remote wireless interpreting equipment for all in-person events. Alternatively, interpreters and limited English proficient (LEP) parties should be allowed to bring their mobile phones into the courtroom to be used in lieu of interpreting equipment. This would allow the interpreter to create a direct audio connection to the LEP party, thus avoiding any physical handoff of equipment.
- Interpreters should disinfect interpreting equipment before and after use.
- Interpreters should sanitize equipment in front of the LEP party before handing it to the party.
- If the use of equipment or a mobile phone is not practical or allowed, especially in brief proceedings, the interpreter should be allowed to maintain physical distancing from the LEP party and to interpret in the consecutive mode loudly enough to be heard.

## 3. Witnesses

- Encourage remote appearances, when permitted by law.
- Consider alternate locations for witnesses, such as a jury box, to effectuate social distancing from the bench.
- Consider installing plexiglass barriers between the witness and judicial official.
- Provide tissues and hand sanitizer at the witness stand.

## 4. Court Reporters

- Social distancing should be clearly marked and enforced around the court reporter's station / desk in the courtroom.
- If the witness or clerk sits above the court reporter, consider moving the witness or court reporter to another location in the courtroom (e.g., jury box) to minimize the droplets spread through coughing, talking, breathing, etc.
- Equipment should be cleaned frequently.
- Permit the court reporter to appear remotely via Webex when possible.
- Be cognizant of court reporters using the voice writing method as they may not be able to wear a mask / face covering while in court.

## 5. Weddings

- Limit the number of observers (two witnesses are required).
- Conduct in-person ceremonies outside, enforcing social distancing.



- Limit the days and times available for weddings to be performed.
6. Ensure that courts safely remain open to the **public and press**.
- Consider administrative orders regarding the number of credentialed press permitted and utilizing pool feeds to minimize the number of individuals in a courtroom.
  - Consider permitting remote observation of in-person court proceedings to minimize the number of individuals entering a court facility while keeping the courts open.

## References and Resources

- [National Institute for Occupational Safety and Health \(NIOSH\) Hierarchy of Controls](#)
- [CDC Cleaning and Disinfecting Guidelines](#)
- [CDC Information on Cloth Face Coverings](#)
- [CDC Poster on Cloth Face Coverings](#)
- [CDC Poster on Wearing and Taking Off Cloth Face Coverings](#)
- [CDC Poster for People with Symptoms of COVID-19](#)
- [CDC Information for People at Higher Risk](#)
- [CDC Business FAQs](#) (includes information on temperature checks and ventilation systems)
- [CDC Workplace Decision Tool](#)
- [Orders of the Chief Justice and the Supreme Court Related to COVID-19](#)
- [Judicial Branch COVID-19 Task Force](#)

Information from NCAOC Human Resources Division is available on Juno.

# CASE MANAGEMENT PRIORITIES AND COURT INNOVATIONS AS COURTS PHASE BACK TO FULL OPERATIONS

This section provides a sample framework for case management during the period of reduced operations. Ultimately, the prioritization of specific case types and matters in any individual county or district must be done by local court officials through cooperation and communication among themselves. The discussion in this section is intended to offer a framework for local stakeholders as they think through what prioritization will work best in light of their own local circumstances and needs.

Because of the uncertainties surrounding the virus' progression, this section will describe operations in four phases that can be adjusted upward or downward by local policy- and decision-makers, depending on the level of threat and the extent of spread of the virus at any given time:

1. **State of Emergency Phase:** This refers to the time period between March and May 2020 when the Governor's "Stay-at-Home" and "Safer-at-Home" orders were in effect.



2. **Emergency Curtailment Limited Operations Phase:** This refers to the phase of operations that the courts began on June 1, 2020, as local courts began to expand operations with significant limitations on in-person contact, through both a heavy reliance on remote proceedings and strict safety measures for limited in-person proceedings.
3. **Relaxed Social Distancing Phase:** This refers to a more expansive phase of operations where social distancing and other safety measures for in-person proceedings can be relaxed somewhat based on public health guidance.
4. **Return to Full Operations Phase:** This refers to a phase when we have a vaccine against or highly effective treatments for COVID-19 that allow our courts to resume full operations.

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people, as guaranteed by the Constitutions and laws of the United States and North Carolina, by providing a fair, independent, and accessible forum for the just, timely, and economical resolution of their legal affairs. That mission remains constant during the COVID-19 pandemic and thereafter. However, court operations have had to be curtailed substantially to minimize the danger of infection and transmission of the disease through the types of close physical contact that have become an integral part of court processes in North Carolina and around the country.

As we move toward resumption of full operations, court officials must continue to focus on the mission of the Judicial Branch, while being mindful of the importance of protecting the safety and health of all those who participate in the judicial process, including court officials and employees, lawyers and litigants, jurors, witnesses, and members of the public who need to visit court facilities. To that end, local officials should consider current guidance and safety recommendations when evaluating requests for continuances or excusals from appearing in court, and consider more liberally granting such requests, particularly for high-risk individuals, at least through the Emergency Curtailment Limited Operations Phase.

Expanding back to full operations will require significant attention to case management by court officials. Local court officials should adopt a model of case management that employs some degree of triage, taking into account the following considerations:

1. The significant case backlogs that developed during the State of Emergency Phase.
2. Until the threat of exposure is eradicated through vaccines or effective treatments are developed, certain types of in-person court proceedings may be impractical or even impossible.
3. The continued need for social distancing will create a need for larger spaces for court or fewer people within existing spaces, thereby causing shortages in courtroom space.
4. Additional necessary precautions will inevitably slow down court proceedings. As an example, while remote hearings through video technology are a helpful alternative to in-person hearings in court, they may also be more time consuming.
5. The increased competition for courtroom space and increased demands on the time of judges, prosecutors, attorneys, clerks, bailiffs, and other court actors will lead to scheduling conflicts that will need to be resolved.



NCAOC recommends that local court officials approach case management triage based on two primary factors:

1. The classification of proceedings by the level of risk of exposure and transmission, with priority given to proceedings that can be handled with little or no risk; and
2. A case priority ranking system based on the relative importance of various proceedings, both as a result of the significance of the rights at issue and in light of external factors, such as the presence of statutory timeframes and the implications for federal funding.

## Classification by Level of Risk of Exposure / Transmission

1. **Low risk** proceedings do not involve physical contact or close proximity between participants. Examples include:

- Hearings, chambers conferences, calendar calls, depositions, and mediations conducted via video conferencing;
- Client interviews (including jail interviews) conducted via video conferencing; and
- Dispositions based on written motions or affidavits without oral argument.

Many of these proceedings continued during the State of Emergency Phase. Absent a showing of good cause, all such proceedings should continue to be conducted remotely to the fullest extent possible during the Emergency Curtailment Limited Operations Phase and the Relaxed Social Distancing Phase.

2. **Medium risk** proceedings can be accommodated with appropriate social distancing and other safety precautions. Examples include:

- In person hearings in which the courtroom will accommodate all participants and necessary witnesses / observers, while allowing each person to maintain a distance of six feet from every other person;
- A hybrid of in-person and remote hearings, in which one or more participants and necessary witnesses / observers attend through an audio or video connection; and
- Grand jury proceedings conducted in an appropriately large room with social distancing maintained.

These proceedings may be conducted, with appropriate social distancing and other safeguards, during both the Emergency Curtailment Limited Operations Phase and the Relaxed Social Distancing Phase.

3. **High risk** proceedings are those in which safe social distancing is not possible due to the size of the courtroom and / or the number of participants. Examples include:

- Conventional jury trials (i.e., using a “jury box” for a 12-person jury in close quarters and retiring to a small jury deliberation room);



- Large civil and criminal calendar calls, where large numbers of persons are summoned for the same place at the same time; and
- Traffic administrative courts, where hundreds of traffic tickets are scheduled for disposition on the same day at the same time, requiring large numbers of people to wait in line.

These proceedings cannot be conducted, at least in a conventional manner, until the public health crisis has passed. However, these proceedings may be conducted during the Emergency Curtailment Limited Operations Phase and the Relaxed Social Distancing Phase if, through the use of technology and other innovations, local court officials can provide for these proceedings to be conducted in a safe manner that does not result in close physical proximity between participants or otherwise violate best safety practices and public health guidelines.

## Case Priority Ranking System

Court officials are likely to experience shortages in courtroom space and competition for those limited resources. For this reason, each county or district leadership team should adopt a case management plan that includes an analysis and ordering of pending cases based on a case priority ranking system. Some of the considerations that might be included in creating such a ranking system are set forth below:

1. The constitutional rights that would be affected by any further delay of the proceeding;
2. Any statutory deadlines for the hearing or disposition of the matter;
3. Any state or federal rules or guidelines that require the hearing or the delay of the matter, including rules that would impact federal funding, such as Title IV-E funding;
4. The significance of the rights and interests at stake in the proceeding, as compared to those in other cases that are scheduled for the same time;
5. The age of the case;
6. The complexity of the proceeding;
7. The need for and availability of foreign language or sign language interpreters;
8. The availability or unavailability of courtroom space;
9. The availability or unavailability of the presiding judicial official, lawyers, other needed court staff, parties, and witnesses due to scheduling conflicts;
10. Any other factors that would normally qualify a case for a peremptory setting;
11. If the case will be for trial, the consent of all parties or lack thereof to an immediate trial;
12. If the case will be for trial, whether it is possible to conduct parts of it remotely;
13. The availability of court reporters and / or the ability to record proceedings; and
14. In particular with respect to criminal cases:
  - a. Whether the defendant is confined while awaiting trial and, if so, whether pretrial release conditions can be modified to allow the defendant to be released from custody;
  - b. The offense class;
  - c. The number of and reasons for prior continuances;
  - d. Any demand for a speedy trial;
  - e. The likely length of any trial;
  - f. The number of defendants;
  - g. Public safety; and
  - h. Any health issues of the defendant.



## Combining Risk and Priorities

Local judicial officials should work together to balance the competing complex concerns as they make decisions about how to expand, with public health and safety serving as the guiding stars. As they conduct this balancing, local court officials should ask the following questions with respect to each type of proceeding:

1. Can this proceeding be conducted with little or no risk of exposure / transmission of infection?
2. If not, can this proceeding be modified with the use of technology or innovations to reduce the risk of exposure / transmission to an acceptable level?
3. Is this a proceeding that can be conducted in compliance with public health guidance through the application of current social distancing measures, appropriate personal protective equipment, and other best safety practices?

NCAOC and the Task Force offer the following submission from the court managers as an example of the interplay between the risk of exposure and the priority ranking of various matters.

### District Court

	Low Risk	Medium Risk	High Risk
Low Priority	<ol style="list-style-type: none"> <li>1. Bond Forfeiture</li> <li>2. Expunction</li> </ol>	<ol style="list-style-type: none"> <li>1. Tax Delinquency*</li> <li>2. Arbitration*</li> </ol>	<ol style="list-style-type: none"> <li>1. H &amp; I Felonies</li> <li>2. Jury</li> </ol>
Medium Priority	<ol style="list-style-type: none"> <li>1. Emancipation</li> </ol>	<ol style="list-style-type: none"> <li>1. Misdemeanor*</li> <li>2. DWI</li> <li>3. Traffic*</li> <li>4. Nonjury*</li> <li>5. Motions*</li> <li>6. Divorces*</li> <li>7. PSS/Alimony*</li> <li>8. Child Support FAM*</li> <li>9. Equitable Distribution*</li> <li>10. TPR</li> </ol>	<ol style="list-style-type: none"> <li>1. Criminal Admin</li> <li>2. Citizen-Initiated Comp</li> <li>3. Child Support (IVD)</li> </ol>
High Priority	<ol style="list-style-type: none"> <li>1. First Appearances*</li> <li>2. Pleas</li> <li>3. Judicial Waivers</li> </ol>	<ol style="list-style-type: none"> <li>1. DV Bond hearings</li> <li>2. Minor Settlements*</li> <li>3. Custody*</li> <li>4. Juvenile A/N/D &amp; Delinquency*</li> <li>5. IVC hearings*</li> </ol>	<ol style="list-style-type: none"> <li>1. Felony Probable Cause</li> <li>2. Drug Treatment</li> <li>3. DWI Treatment</li> <li>4. Veterans Court</li> <li>5. Probation Violation</li> <li>6. Small Claims</li> <li>7. 50B DV Hearings</li> <li>8. 50C No-Contact Hearings</li> </ol>

*\*remote hearings = lower risk / courtroom hearings = higher risk*



**Superior Court**

	<b>Low Risk</b>	<b>Medium Risk</b>	<b>High Risk</b>
<b>Low Priority</b>	1. Criminal Non-Jury Trials if Conducted via Webex <hr/> 2. Bond Forfeitures if Conducted via Webex	1. Criminal & Civil Non-Jury Trials if Conducted in Person <hr/> 2. Bond Forfeitures if Conducted in Person <hr/> 3. Gun Permit Denial Appeals Conducted in Person	1. Misdemeanor Appeals  <i>Option to waive jury trial if Judge agrees.</i>
<b>Medium Priority</b>	1. Guilty Pleas: Not in Custody Cases Conducted via Webex  <i>Potential need for public computers for SLRs to use for Webex purposes.</i> <hr/> 2. Civil Administrative Sessions / Civil Case Management Conducted via Webex  (e.g., trial date assignment, status hearings) <hr/> 3. Swearing-In New Attorneys and Judges Conducted via Webex <hr/> 4. Completion of Mediation via Webex	1. Guilty Pleas: Not in Custody Cases Conducted in Person <hr/> 2. Specialty Courts Conducted in Person  (e.g., drug court / 90-96 hearings, Veterans treatment court)  <i>More staffing involved from various offices / resources for these types of hearings.</i> <hr/> 3. Appeals from the Clerk Conducted in Person  (e.g., foreclosures, incompetency) <hr/> 4. Administrative Appeals Conducted in Person  (e.g., EEOC, Long Term School Suspensions) <hr/> 5. Completion of Mediation in Person	
<b>High Priority</b>	1. Criminal Administrative Sessions / Criminal Case Management Conducted via Webex  (e.g., Bond Hearings, Motions to Suppress, Status Reviews, Setting of Trial Dates & Rule 24 Hearings)	1. Criminal Administrative Sessions / Criminal Case Management Conducted In-Person  <i>Extradition matters will not be eligible for hearings via Webex.</i>	1. Criminal & Civil Jury Trials  <i>Requirement of 12 jurors in addition to alternate jurors in Criminal / Civil trials can agree to less.</i>



	Low Risk	Medium Risk	High Risk
<b>High Priority</b>	<p>2. First Appearances Conducted via Webex</p> <p><i>Contingent on jail facility connection.</i></p>	<p>2. Probation Violations for In-Custody / Jail Cases Conducted In-Person</p>	<p>2. Hearings on Writs of Habeas Corpus</p> <p><i>If coming from DOC, additional exposure risk. Special care and PPE should be provided to any individual arriving from DOC facilities to local detention centers.</i></p> <p>3. Will Caveats</p> <p><i>Treated as jury trial matters. Cannot be treated as non-jury trial. Receives priority over all other cases.</i></p> <p>4. Facial Constitutional Challenges to Acts of the General Assembly</p> <p><i>(i.e. Three (3) Judge Panel Cases)</i></p> <p><i>More judges, staffing, media, attendees, etc. than a regular court setting.</i></p>
	<p>3. Probation Violations for In-Custody / Jail Cases Conducted via Webex.</p> <p><i>Contingent on jail facility connection.</i></p>	<p>3. Probation Violations for Not in Custody Conducted in Person</p> <p><i>Probation officer who makes field visits may be an additional factor in favor of a Webex hearing.</i></p>	
	<p>4. Probation Violation Hearings Conducted for Defendants Not in Custody via Webex</p> <p><i>Probation officer who makes field visits may be an additional factor in favor of a Webex hearing.</i></p>	<p>4. PV Arrest Review / Probable Cause Hearing Conducted in Person</p>	
	<p>5. PV Arrest Review / Probable Cause Hearing Conducted via Webex</p> <p><i>Contingent on jail facility connection.</i></p>	<p>5. Guilty Pleas: In-Custody / Jail Cases Conducted in Person</p>	
	<p>6. Guilty Pleas: In-Custody / Jail Cases Conducted via Webex</p> <p><i>Contingent on jail facility connection.</i></p>	<p>6. Guilty Pleas: Not in Custody Cases Conducted in Person</p>	
	<p>7. Guilty Pleas: Not in Custody Cases Conducted via Webex</p> <p><i>Contingent on connection capability.</i></p> <p><i>Potential need for public computers for SLRs to use for Webex purposes.</i></p>	<p>7. Criminal Motions if Conducted in Person for Matters that Cannot be Completed via Webex</p> <p><i>(e.g., capital cases, extradition matters)</i></p>	
	<p>8. Motions if Conducted via Webex in Criminal Matters</p> <p><i>(e.g., pre-trial/dispositive, suppression matters, bond issues, in camera reviews)</i></p>	<p>8. Grand Jury</p>	
		<p>10. Sex Offender Registry Hearings</p> <p><i>Offenders may not be allowed to be "online" or have limitations concerning online usage, thus eliminating any online resolution method.</i></p>	
		<p>11. Review &amp; Issuance of Search Warrants if Completed in Person</p>	



	Low Risk	Medium Risk	High Risk
<b>High Priority</b>	<p>9. Review &amp; Issuance of Search Warrants if Completed via E-Mail</p> <p><i>Sworn by Webex.</i></p> <hr/>	<p>12. Review &amp; Issuance of Law Enforcement Officer Recordings if Completed in Person</p> <hr/>	
	<p>10. Review &amp; Issuance of Law Enforcement Officer Orders (Phone Orders) if Completed via E-Mail</p> <p><i>Sworn by Webex.</i></p> <hr/>	<p>13. Motions for Appropriate Relief / Evidentiary Hearings Conducted in Person</p> <p><i>If coming from DOC, additional exposure risk. Special care and PPE should be provided to any individual arriving from DOC facilities to local detention centers.</i></p> <hr/>	
	<p>11. Settlement Approvals Conducted via Webex</p> <hr/>	<p>14. Civil Non-Jury Trials Conducted in Person</p> <p><i>Webex non-jury civil trials are not favored by many attorneys; however, Webex may be a viable option for bench trials.</i></p> <hr/>	
	<p>12. Civil Motions Conducted via Webex (e.g., emergency, contempt, TROs, BCR 9.3 case management conferences, BCR 10.9 discovery disputes, NCBC status conference)</p> <hr/>	<p>15. Settlement Approvals Conducted in Person</p> <hr/>	
	<p>13. Petitions for Release of Law Enforcement Agency Recordings Conducted via Webex</p> <p><i>Statutory priority under NCGS § 132-1.4A(f): petitions filed pursuant to this subsection shall be set for hearing as soon as practicable and shall be accorded priority by the court.</i></p> <hr/>	<p>16. Petitions for Release of Law Enforcement Agency Recordings Conducted in Person</p> <p><i>Statutory priority under N.C.G.S. § 132-1.4A(f): petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.</i></p> <hr/>	
	<p>14. Swearing-In New Judges and Attorneys via Webex</p> <p><i>SL 2020-3 permits swearing in of attorneys remotely.</i></p>	<p>17. Swearing-In New Attorneys and Judges in Person</p> <hr/> <p>18. Judicial Review of State Board Decisions Conducted in Person</p> <p>(e.g., Appeal of County Commission Decisions/Rulings, appeal of State Board of Elections decision)</p>	



## Resolving Conflicts—Rule 3.1

Rule 3.1 of the General Rules of Practice is designed to resolve scheduling conflicts when attorneys have commitments in more than one court. Local communication and cooperation will be essential to resolving conflicts concerning courtroom space and case prioritization. In addition, NCAOC and the Task Force recommend utilizing Rule 3.1 for guidance in resolving conflicts over courtrooms and other courthouse facilities, as well as court personnel, during the upcoming time of expected shortages.

## Court Innovations to Consider

In its two reports, the Task Force made a series of recommendations about court innovations to the Chief Justice, the NCAOC, and local court officials for their consideration. A complete list of those recommendations, which are currently under consideration by the Chief Justice and NCAOC, can be found in the Task Force's [June 12, 2020](#) and [June 30, 2020](#) reports. The following recommendations are directed to local judicial officials:

1. Clerks should exercise their existing authority to enter judgment in absolute divorces and to enter judgment based on the pleadings, when possible.
2. Chief district court judges should require / order that custody mediation orientations and sessions be held remotely.<sup>3</sup>
3. Judges should conduct chambers conferences remotely, even absent consent of a party.
4. Consistent with existing statutes and case law, courts should render orders without a hearing when they may be made based on affidavits, verified motions, and written argument.
5. Consider using referees as provided in N.C.G.S. § 1A-1, Rule 53 for issues in civil cases.
6. Request or require that defendants register for the [Court Date Notification System](#) as a condition of release or when the defendant receives a summons or citation.
7. Judges, magistrates, clerks, and other court officials should remind defendants and witnesses of the [Court Date Notification System](#). Court staff should obtain email addresses and phone numbers for the purpose of contacting parties if there is a change to the court schedule.
8. Senior resident superior court judges should survey each county in their district to determine which jails and correctional facilities have video conferencing capability for attorney / client conferences. If such a capability is not already operational, determine if and when it can be established and an estimate of its cost to the county.
9. Consider changes to calendaring / docketing of court matters, to the extent that they are possible with existing technology or through non-technological means:
  - a. Limit the docket size based on courtroom and / or court facility capacity or ability to stage matters to meet social distancing requirements. Counties should work with local health and other county officials to determine social distancing capacities for each courtroom.
  - b. Use morning and afternoon calendars instead of single, day-long calendars. In criminal cases, district attorneys should consider defense attorneys that practice in multiple counties and allow for attorney scheduling to accommodate it (e.g., group cases by attorney blocks).

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<sup>3</sup> Safety concerns should continue to be considered for parties entering into mediation to discuss co-parenting. The parties retain the right to request a waiver of mediation, pursuant to N.C.G.S. § 50-13.1(c).



- c. In a district court traffic setting, schedule only the number of defendants that can safely fit in a courtroom for social distancing at different intervals (e.g., 40 defendants at 9 a.m., 40 at 11 a.m., etc.).
  - d. Stage larger volume courts in multiple courtrooms with multiple judges.
  - e. Schedule cases by attorney / parties (e.g., Attorney Smith’s cases scheduled at 9 a.m.).
  - f. If remote hearings are not possible for “high-risk” individuals, consider scheduling a block of time for “high-risk” individuals to appear in court.
  - g. Consider remote screening for deferred prosecution / first offender programs.
6. Local policies should be implemented for motions (or types of motions) to be addressed without oral argument. Civil examples include motions to compel, motions to dismiss, motions to continue or for peremptory setting, and other administrative matters.
7. Explore / consider temporary changes to improve the jury process for civil cases, such as:
- a. Requiring jurors to watch the juror orientation video online prior to appearing for service; and
  - b. Encouraging the use of online juror questionnaires, and perhaps case-specific questionnaires, prior to appearing for service to reduce time in court.

## PLANNING FOR THE RESUMPTION OF JURY TRIALS

Jury trials constitute a cornerstone of the American justice system, both in civil and criminal courts, and a substantial number of civil and criminal cases cannot be resolved without the decision of a jury. The effectiveness and fairness of the courts depend, in large measure, on the availability and willingness of citizens to serve on juries. Throughout the duration of this pandemic, local court officials must find new ways to conduct jury trials that are as safe as practicable for all participants and that overcome the reluctance of many potential jurors to enter a public building and serve on a jury during a pandemic.

The resumption of jury trials presents one of the most daunting challenges in the expansion of court proceedings during the COVID-19 pandemic. Traditionally, jury trials have involved the gathering of large numbers of people—including potential jurors, courthouse personnel, attorneys, clients, witnesses, court reporters, bailiffs, and observers—in relatively small courtrooms. Jury service typically requires close physical proximity with other jurors, beginning in a jury assembly room, then in a courtroom gallery, followed by placement in a jury box, and concluding with deliberations in a small jury room.

The Task Force, comprised of various stakeholders in the judicial process, believes it is important for the Chief Justice and NCAOC to provide clarity and predictability, to the extent possible, with respect to the resumption of jury trials in our state courts. However, as the Task Force’s reports to the Chief Justice noted, there is no “one size fits all” approach with respect to North Carolina’s 100 counties. Thus, the balancing of these complex concerns and considerations in individual cases must be left to the reasoned judgment of the presiding judicial officials.

Local officials should be mindful of the concerns of all stakeholders as their districts ramp up court operations, including the conduct of jury trials in both civil and criminal cases. The transition back to full operations may vary by the type and complexity of caseloads and by local issues such as the prevalence of the virus in any given county and the availability of appropriate facilities, but there must be a



paramount concern for the safety of all participants. Like all other court proceedings, local judicial officials should attempt to scale back gradually toward the full resumption of jury trials.

Based on the Task Force's recommendations, NCAOC suggests that complex lengthy trials not be chosen as the first jury trials immediately after the Chief Justice's orders allow them. Instead, local officials should begin with shorter and less demanding jury trials, such as simple civil trials and lower-level felonies, while new protective measures are being perfected. Moreover, presiding judges should not force parties to proceed to trial if they are unprepared due to the pandemic, and should be sensitive to the potential need for additional delays to allow for adequate trial preparation by all parties.

## Stakeholder Concerns

The complexities and the challenging nature of managing jury trials in this environment are illustrated by the comments and concerns that were expressed by various stakeholders to the Task Force, some of which are shared across groups and some of which are in conflict with each other. A summary of the written and verbal comments follows:

1. **Judges** expressed concerns about the limitations of court facilities, including the fact that many North Carolina courthouses only have one or two courtrooms. There are significant challenges inherent in scheduling trials that accommodate social distancing, and judges expect there to be competition for limited courtroom spaces in the coming months as all court operations expand, not just jury trials. Judges also expressed concerns about management issues in safely summoning, orienting, and monitoring potential jurors and seated jurors, including the impact that trials will have on overall traffic in court facilities. Finally, judges expressed concerns over maintaining appropriate safety practices within courtrooms without creating an atmosphere that could operate to prejudice any party.
2. The **civil and family law bars** expressed a readiness to resume trials by early August in order to move their cases, as long as it can be done safely, but they requested as much advance notice as possible upon calendaring so they can coordinate scheduling and complete trial preparations. In order to accommodate social distancing concerns, the civil bar expressed a general willingness to consider consenting to six-person jury trials or bench trials in appropriate cases, as well as a reduction in the number of peremptory challenges.
3. The **district attorneys** expressed a similar desire to resume calendaring criminal trials by early August, coupled with local control over when and how trials in individual cases resume after that date. They expressed concerns that criminal defendants have both statutory and constitutional rights that could be impacted by an extended delay in jury trials across North Carolina. The district attorneys were especially concerned about defendants who are incarcerated. While the district attorneys agree that criminal defendants can waive certain rights, they noted that it is the individual defendant who must make that decision. For that reason, along with differences in facilities, resources, and health concerns throughout the state, the district attorneys expressed a belief that any emergency directives from the Chief Justice should set guidelines but allow local court officials to prioritize cases selected for trial. They noted that numerous other states are following such a localized approach. The district attorneys expressed concerns that each case is unique and that



any decision to separate when jury trials can begin based on class of offense could prompt constitutional challenges. Finally, the district attorneys expressed concerns that victims of crime have constitutional rights and a strong interest in having their cases heard in a timely and efficient manner.

4. The **private criminal defense bar and public defenders** expressed a number of concerns about the resumption of jury trials, including:
  - The impact of the pandemic on their ability to meet safely with in-custody clients to review discovery and to conduct substantive discussions about case preparation;
  - The increased difficulty in locating and interviewing witnesses and gathering other information to prepare a defense during the “Stay-at-Home” and “Safer-at-Home” phases;
  - The impact that the pandemic has had on the ability of investigators, mitigation specialists, and experts to perform their work in the field;
  - Concerns about their ability to protect their clients’ constitutional rights to confrontation and cross examination if witnesses and jurors wear masks in a courtroom, as well as concerns about ensuring the accuracy of trial transcripts if witnesses testify wearing masks;
  - Concerns about having the ability to communicate confidentially with their clients during trials, especially under arrangements that include social distancing or plexiglass barriers;
  - Concerns that social distancing practices resulting in a reconfiguration of jury seating might impede their opportunity to view jurors during trial;
  - Concerns about the dehumanizing impact of physical separations between them and their clients, as well as the potential negative inferences that jurors might draw from those physical separations;
  - Concerns about the ability to select a jury that is fully representative of the community given that more prospective jurors will likely seek deferrals and excuses; and
  - Opposition to a resumption of criminal jury trials without the consent of both the state and the defendant prior to September 21, 2020, and opposition to the resumption of any capital or non-capital first-degree murder trials prior to November 30, 2020.
  
5. **Clerks** expressed concerns about managing large numbers of jurors when they return to the courthouse, including the logistics of handling juror orientations and reporting. Clerks agreed that jurors should report in staggered intervals, but they recognized that this process will require more attention and planning. Because of these additional steps, the clerks asked that judges and attorneys carefully screen cases to ensure that cases calendared for jury sessions will actually require a jury for determination. Clerks also noted the need for generous deferral policies and second noticing for potential jurors who do not appear. Finally, clerks stressed the importance of messaging to the public concerning measures that are being taken to keep people safe, including the necessity of accuracy in that messaging.
  
6. **Court managers** expressed concerns about the potential impact that holding jury trials under current conditions may have on future appeals and motions for appropriate relief, as well as the safety of court reporters who often sit in close proximity to testifying witnesses.
  
7. **All stakeholders** expressed concerns about safety and the availability of appropriate personal protective equipment, particularly for high-risk participants and their families.



All of these concerns and perspectives should be taken into consideration by judicial officials as they plan for resuming trials in their districts. For criminal jury trials in particular, judges should be mindful of the handicaps that criminal practitioners have been and will continue to operate under during this pandemic, including the limitations on their ability to meet with their clients; the need for confidential communications with clients and witnesses during trial; the importance of being able to view the facial expressions of witnesses during testimony; and the possibility that certain courtroom arrangements could prompt prejudicial inferences about their clients.

## Minimum Requirements for Resumption of Jury Trials

Pursuant to the Chief Justice's [Emergency Directive 16](#), the Task Force has recommended that the Chief Justice order, in an upcoming emergency directive, a specified date for the resumption of jury trials, subject to any prerequisites that the Chief Justice deems appropriate, including the submission of any operations plans from local districts. In addition, the Task Force recommends the following minimum requirements for the resumption of jury trials in the trial courts of North Carolina.

### 1. Local Consultation and Planning for the Resumption of Jury Trials

In preparation for the Chief Justice's directive establishing the earliest date on which jury trials may resume, every senior resident superior court judge should, in consultation with other local court officials—including the COVID-19 coordinator, chief district court judge, clerk of superior court, district attorney, chief public defender (or one or more members of the local criminal defense bar in non-public defender districts), trial court administrator or coordinator, and a local civil attorney—craft a plan for the resumption of jury trials in his or her judicial district. In the event that the chief district court judge determines that a separate plan for district court is warranted, the chief district court judge should, in consultation with other local court officials—including the COVID-19 coordinator, clerk of superior court, trial court administrator or coordinator, family court administrator, and one or more members of the civil and domestic bar—craft a plan for the resumption of district court jury trials in his or her judicial district.

These plans should be crafted well in advance of the anticipated date of the first jury trial. Communication and cooperation among local officials are imperative, not only with respect to the management of jury trials, but also with respect to the coordination of the use of court facility space needed for jury management and its effect on the operations of other courts within the same facility.

Before proceeding with the scheduling of jury trials, the senior resident superior court judge and chief district court judge must be able to confirm to the Chief Justice that they have done the following:

- Reviewed all of the Chief Justice's Emergency Directives pertaining to COVID-19 and these minimum requirements for the resumption of jury trials; and
- Considered input from the stakeholders described above, as well as local public health officials, and concluded that it is reasonable for the district to proceed with jury trials under a local plan or plans crafted by those judges, which follow all appropriate standards for the health and safety of participants, including any specific guidelines as may be provided by the Chief Justice.



Depending on local health conditions, the senior resident superior court judge and / or chief district court judge may exercise discretion to delay resumption or to suspend operation of jury trials in the interest of local health and safety.

While remote jury trials are not a feasible option in North Carolina at this time, some of the processes leading up to the impaneling of a jury—such as juror orientation, prescreening for deferrals and excuses, strikes for cause based on written juror questionnaires, and other aspects of jury management—could be handled by remote means.

In planning for the resumption of jury trials, every senior resident superior court judge and chief district court judge (or their designees) should meet with the clerk of superior court (or designated jury coordinator) in each county in their district to address the summoning and management of jurors during the period of required social distancing. The senior resident and chief district court judge (or designee) and clerk (or designee) should give careful consideration to special issues relating to jury management during upcoming months, including, for example:

- Determining the number of jurors to summon for sessions of court, taking into consideration reasonable projections for attendance and deferral requests in light of the pandemic;
- Assessing the feasibility and details of arranging for jurors to report in staggered groups (e.g., 25 to 40 in the morning and a similar number in the afternoon);
- Providing arrangements for online or staggered orientation sessions for each group of potential jurors as they report;
- Establishing criteria for addressing deferral requests based on COVID-19 concerns; NCAOC encourages the chief district court judges to review their district’s excuse policy under N.C.G.S. § 9-6(b) and to expand it to allow for deferrals and excuses to be heard remotely and for more leeway for deferring / excusing jurors who are in a high-risk group (as defined by [CDC guidelines](#));
- Including a printed message with each jury summons that is also posted online, advising potential jurors of the safety precautions that have been undertaken to protect their health and safety while serving;
- Conducting a safety “walk-through” with the clerk in each county (as well as designees from the sheriff’s office and local health department) in his or her district, viewing where jurors will go from the time they enter the courthouse until they leave at the end of their service, including jury assembly, jury orientation, waiting before and after selection, entrances to and exits from the courtroom, break rooms, deliberation rooms, and other areas;
- Determining whether current jury assembly rooms and jury deliberation rooms are sufficiently large to provide appropriate spacing for social distancing in each room; if so, use tape or markings to indicate where seating is allowed; if not, identify other rooms to be used for jury assembly and jury deliberation (including the possible use of the trial courtroom, another available courtroom, or other room in an alternate local facility);
- Developing a waiting plan for seated jurors, using an appropriate waiting room or a call-back system to free up space in the courtroom during the remaining jury selection, if needed;
- Determining whether each courtroom needs plexiglass shields at counsel tables, the witness stand, and / or the workstations of the courtroom clerk and court reporter;



- Considering the possible need for cautionary jury instructions that may be appropriate with respect to obvious shields that have been placed in the courtroom in order to avoid prejudicial inferences by jurors, upon request; and
- Preparing to deal with trial issues that create potential complications due to social distancing, including, for example, the handling of requests for bench conferences.

## 2. Facility Assessment and Local Rules

Pursuant to the Chief Justice’s [Emergency Directive 16](#), if local court facilities are determined to be inadequate to convene socially distanced jury trials, the senior resident superior court judge was directed to identify, no later than July 1, 2020, other appropriate facilities where trials may be safely convened. If the alternate facility is located outside the county seat, information about the alternate proposed facility shall, pursuant to N.C.G.S. §§ 7A-42(i) and 7A-130, be [submitted to NCAOC for approval](#) and, in the case of the superior court division, to the Chief Justice for approval as well.

Upon identifying facilities for use in conducting jury trials with appropriate social distancing, whether in the courthouse or elsewhere, each senior resident superior court judge and chief district court judge should craft and adopt a set of local rules or administrative orders that govern how to conduct jury trials under conditions that necessitate social distancing in superior and district court, respectively.

These rules should be drafted in a manner that will address at least the following concerns for all jury trials conducted while social distancing is recommended, whether the trial is held in a courtroom or an alternate facility:

- The manner in which failures to appear and requested deferrals will be handled; local rules are encouraged to provide for lenient failure to appear policies and the liberal granting of deferrals during the pandemic, with appropriate consideration of the impact this may have on fair cross-section challenges and the diversity of seated juries;
- Accommodate bench trials and jury trials with less than 12 jurors with the consent of the parties to better allow for social distancing; in criminal cases, there must be strict compliance with N.C.G.S. § 15A-1201;
- Any room to which jurors or potential jurors are directed should be sufficiently large to accommodate social distancing for that number of persons, and seating arrangements for jurors and other participants in the jury trial should be clearly marked to so provide while also allowing the parties and their attorneys to observe jurors during the trial;
- The maximum number of people who will be allowed in the courtroom at one time;
- The manner and scheduled sequences in which jurors will be required to report to the court facility and courtroom, such as staggered reporting times and the number of jurors in each reporting group;
- The designation of the area in which jurors will be directed to wait before being brought into the courtroom;
- The maximum number of potential jurors that will be summoned into the court facility at one time and the maximum number of potential jurors that will be directed into the courtroom at one time, considering necessary social distancing requirements;



- The manner in which jury orientation(s) will be conducted, considering necessary social distancing requirements; (note that the size and dimensions of the courtroom and jury assembly room may require jury orientation(s) to be conducted in staggered increments or remotely);
- The manner in which voir dire of prospective jurors will be conducted, considering necessary social distancing requirements; (note that the size and dimensions of the courtroom and jury assembly room may require voir dire to be conducted in staggered increments or remotely, in part);
- Any restrictions on attorneys, witnesses, or other trial participants concerning approaching the bench, approaching a witness, or movement within the courtroom that will be required to maintain social distancing, such as:
  - Counsel should remain seated at counsel table during witness and juror examination; and / or
  - When standing to present opening statements and closing arguments, counsel shall remain six feet from all other persons in the courtroom.
- Any requirements for the introduction and handling of exhibits in the courtroom (e.g., requiring that all exhibits be presented to the jury electronically rather than passing exhibits among the jurors);
- The optional use of podiums by attorneys for opening statements and closing arguments;
- Any modifications to traditional or local customs concerning jury selection, including the potential use of written jury questionnaire(s);
- Any special instructions to provide for the ability of attorneys to consult privately and confidentially with their clients during the trial, particularly in criminal cases, while maintaining social distancing or with other appropriate safeguards in place (e.g., plexiglass partitions); and
- Review of any changes to the courtroom layout, being mindful of the importance of all participants being able to observe the facial expressions of the witnesses, jurors, and defendant, particularly in criminal cases.

Jury deliberations should take place in a room of sufficient size to allow for proper social distancing among all jurors. It may be necessary to use the actual courtroom or another courtroom as a jury deliberation room. If so, the presiding judge should enter appropriate orders concerning the privacy of jury deliberations and station bailiffs appropriately to enforce those orders.

Each presiding judge should be mindful and considerate of the anxiety of potential jurors who are kept waiting. Every effort should be made to begin jury trials promptly at the time designated. If unexpected delays are encountered, jurors should be allowed to leave the court facility and return at a designated time, rather than being kept waiting in a jury assembly room.

### **3. Calendaring Cases for Trial**

On or after the date specified by the Chief Justice as the earliest date allowed for the resumption of jury trials, and upon confirmation of readiness after consultation with the clerk of superior court and the COVID-19 coordinator, civil jury trials may be calendared in district and superior court in consultation with the COVID-19 coordinator.



On or after the date specified by the Chief Justice as the earliest date allowed for the resumption of jury trials, criminal jury trials may be calendared for trial, subject to the following recommendations:

- NCAOC and the Task Force recognize that authority for the calendaring of criminal cases lies with the district attorneys pursuant to N.C.G.S. § 7A-49.4. However, based on the Task Force’s recommendations and during the first 90 days after the Chief Justice’s orders allow for the resumption of jury trials, criminal cases selected for trial should be prioritized by the senior resident superior court judge in consultation with the elected district attorney, the chief public defender (or a senior member of the criminal defense bar in non-public defender districts), and the COVID-19 coordinator.
- In conducting the prioritization of criminal trials described above, the senior resident superior court judge is encouraged to give careful consideration to at least the following factors:
  - The extent to which a jury trial of the case can be conducted with safety for the health of all participants;
  - The readiness of the case for trial, as determined by counsel for each party;
  - The age of the case;
  - Whether or not the defendant remains in custody pending trial;
  - The complexity, number of parties, and expected length of the trial; and
  - The consent, or lack thereof, of the defendant and defense counsel to proceed to trial at this time, particularly with respect to legitimate concerns over health and safety or the likelihood of unfairness arising from protective measures taken during the court proceeding.

The Task Force recommends that the first jury trials set for hearing should be civil cases, lower-level felonies (e.g., Class H or I), or misdemeanor appeals that are expected to take less than one week to try. In addition, it is recommended that no complex civil case, high-level felony case (e.g., Class B2 or higher, absent consent of the parties), or any case expected to require multiple weeks for trial be calendared within the first 90 days after the date specified by the Chief Justice for the resumption of jury trials.<sup>4</sup>

#### 4. Communication

Each presiding judge should be mindful of the importance of communication to potential jurors concerning safety precautions that have been taken so that they will be comfortable with the idea of jury service. NCAOC recommends that a letter from the presiding judge be included with each jury summons, advising potential jurors of the precautions that are being taken to provide for their health and safety during jury service, reminding them of the importance of jury service, and informing each juror that they have an opportunity to request a deferral of service by making that request in advance by telephone. It is suggested that requests for deferral be made in advance of the court date, but that a method also be provided for jurors to communicate changes in their status up until their reporting date, especially with respect to health concerns.

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<sup>4</sup> With the exception of the recommendation in this paragraph, the Task Force unanimously approved all recommendations regarding the resumption of jury trials. The district attorneys on the Task Force objected to this recommendation for the reasons set forth in footnote 1 to the [Task Force’s June 30, 2020 report](#).



It is imperative that judges be mindful of and follow the recommended best safety practices for jury management and jury trials that are itemized in this report, and they should be familiar with all safeguards and precautions that have been undertaken to provide a safe space for jurors. As part of their orientation, judges should include mention of these safeguards in written and oral communications to jurors. The jury clerk should also have a list of these safeguards in order to address telephone inquiries from prospective jurors.

## BEST SAFETY PRACTICES FOR JURY MANAGEMENT AND JURY TRIALS

### Before Jury Selection and Trial

The first step in resuming jury trials and grand jury proceedings involves the summoning of a pool of prospective jurors from which to select juries. The focus in this stage is to disperse and reduce the number of individuals who appear in person for jury service.

#### 1. Juror Reporting Practices

- Judicial officials should anticipate lower jury yields. Assume that half of summoned jurors will appear after processing failures to appear, summons that are unable to be delivered, and deferrals / excuses. Consider collecting statistics on juror yield, if not currently doing so, to determine the average number of jurors who appear and are willing to serve.
- Consider pooling jurors pursuant to N.C.G.S. § 9-5 to limit the number of venires that have to be summoned, as long as pooling does not increase the size of the pool required.
- Consider conducting juror orientation remotely to reduce the number of people in close proximity and to reduce the foot traffic to and within court facilities.
- If conducting juror orientation in person, do so with smaller groups of individuals at staggered times.
- Summon the jury pool to appear at staggered times to limit contact. Those selected to appear at staggered times should be randomly selected (e.g., if the space used for the jury assembly room has a maximum occupancy of 30 individuals and 80 jurors are summoned to report, then 30 jurors could report at 9:00 a.m., 30 jurors could report at 12:00 p.m., and the remaining 20 jurors could report at 2:30 p.m.).
- Consider using technology to notify jurors remotely when and where they should appear (e.g., if a trial settles at the last minute, the jury clerk would notify the jurors by telephone or other messaging medium that they are no longer needed, eliminating the need for the jurors to appear in-person).
  - A text notification system, similar to what the Judicial Branch currently uses for court date notification or the county uses for emergency notifications, could be used or texts could be sent via email.
- Prior to reporting, notify jurors of the amenities available and what is restricted / unavailable so they can plan accordingly (e.g., if access to a shared refrigerator is restricted, jurors may want to pack ice with their lunches).



- Provide clear information to jurors and potential jurors about the steps taken to prevent the spread of COVID-19. Communicate this information through jury summonses, websites, juror call-in messages, and courthouse [signage](#). See Appendix A for a sample frequently asked questions document that districts can tailor to match their needs and unique circumstances.
- Use disposable stickers / name tags that are issued and disposed of daily in lieu of reusable plastic juror badges.
- Require jurors to maintain [social distancing](#) and recommend that they wear [masks / face coverings](#) when appearing in person. Courts should plan to provide masks for jurors who do not have a mask or face covering.

## 2. Excusal, Deferral, and Failure to Appear (FTA) Policies

- The chief district court judge or his or her designee, pursuant to N.C.G.S. § 9-6(b), should consider revising the district’s excuse or deferral policy. Recommended policies include:
  - Reducing the number of people who must appear in person to request an excuse or deferral by providing remote or telephonic request methods;
  - Considering deferrals of service before granting excuses;
  - Allowing more flexibility for excusing / deferring individuals who may not be able to serve, taking into account the [CDC guidance](#) regarding persons who are *high-risk* or who may live with or act as a caregiver for someone who is high-risk, and including this information in the jury summons;
  - Allowing more flexibility for excusing / deferring individuals who are at heightened risk of contracting COVID-19 and transmitting it to others, such as essential workers in the health or service industry or people who have recently traveled;
  - Relaxing show cause policies (e.g., if a person does not appear, resending the summons rather than issuing show cause); and / or
  - Offering an amnesty program after the COVID-19 pandemic has relaxed.

*Those at high-risk for severe illness from COVID-19 are:*

- [Older adults](#)
- *People of all ages with certain [underlying medical conditions, particularly if not well controlled](#)*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

- These policies should be retained to ensure jurors represent a fair cross-section of the community and to address legal challenges that may be brought after the trial.
- Provide clear information with the jury summons regarding how to contact the court if a juror has safety concerns, such as a recent exposure to COVID-19, *up to and including the day of jury service*, to prevent a juror from appearing in-person who may have been recently exposed but is not within the court’s deadline to request an excuse or deferral.



### 3. Jury Assembly

- The court should determine the maximum seating availability, applying [social distancing measures](#), and mark appropriate seating arrangements (i.e., “sit here” or “do not sit here” signage). In high-traffic areas like elevators or cashier counters, it is advisable to mark spacing six feet apart to enforce social distancing.
- Reengineer courtrooms to allow social distancing (e.g., remove the jury box and replace it with individual chairs, if possible).
- Encourage jurors to wear [masks / face coverings](#); provide masks when supply is available; consider requesting supply from the county.

*“We now know from recent studies that a significant portion of individuals with COVID-19 lack symptoms (‘asymptomatic’) and that even those who eventually develop symptoms (‘pre-symptomatic’) can transmit the virus to others before showing symptoms. This means that the virus can spread between people interacting in close proximity—for example, speaking, coughing, or sneezing—even if those people are not exhibiting symptoms. In light of this new evidence, CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies) especially in areas of significant community-based transmission.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>

- Use additional courthouse space, if available, to space jurors apart for social distancing and summon small panels to the courtroom for voir dire.
- Avoid assembling large groups of people when possible. It is preferable to stagger groups throughout the day than to assemble everyone together in a large space. If this is not possible, determine if a large space exists in the community that could be used as the juror assembly room, such as a school auditorium or gymnasium, theater, convention center, or recreation center.
- Assembly areas should be frequently cleaned according to [CDC](#) and local health guidelines and recommendations.
- Limit the direct exchange of documents and other items with jurors (e.g., photo identification and parking vouchers).
- Provide hand sanitizer, tissues, and lined trash cans in all areas where jurors will convene.
- Restrict or remove shared amenities, such as books, magazines, microwaves, etc.
- Do not reuse pens / pencils without proper cleaning between use.

### Jury Selection and Trial

Additional safety precautions are necessary once the prospective jurors are in the courtroom for voir dire, impaneling, deliberation, and adjournment. The recommendations in this section may be used for grand jury proceedings as well. The focus during this phase should be on implementing the [hierarchy of controls](#) to minimize the potential for exposure to and spread of COVID-19.

As described earlier in this report, there is a continuum of risks associated with the spread of COVID-19 based on numerous factors. Due to the interplay of these factors, there is no specific time (e.g., 30



minutes or one hour) that people may safely assemble in the same room. To reduce the risks, individuals should take certain precautions such as [social distancing](#), washing hands often, avoiding close contact with others, disinfecting frequently touched surfaces, and wearing masks / face coverings. Removing a mask for a brief moment increases the risk of transmitting COVID-19 since COVID-19 [spreads](#) through droplets when people talk, cough, or sneeze. Masks / face coverings are also [advisable](#) because people raising their voices could increase the spread of COVID-19 due to the production and projection of droplets.

When considering whether attorneys, parties, and witnesses should be required to wear masks / face coverings in criminal trials, the rights of the defendant should be weighed against the health and safety of all individuals in the courtroom. Courts may consider requiring witnesses to wear masks while testifying, except in criminal trials, where the court should address confrontation clause issues with the parties pretrial. Courts may also consider the use of face masks with clear panels, such as [those used by individuals who are deaf or hard of hearing](#).

## 1. Convening Jurors and Others in a Courtroom / Enclosed Space

- Require that all attorneys are healthy and not symptomatic and, before coming to court, require that they report to the court if they are not healthy or are [symptomatic](#) so they can receive further direction.

*The CDC recommends that personnel entering the workplace “report symptoms, stay home, and follow CDC guidelines.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html#more-changes>

- Because exposure risk increases with the amount of time spent in the courtroom, trials should be kept as short as possible. Jury trials held in half-day increments are not advisable as that may lengthen the overall duration of the trial and lead to more opportunities for jurors to contract COVID-19 and transmit it in the courthouse.
- NCDHHS strongly recommends that jurors wear masks / face coverings, even if they are seated six feet apart, especially if they are in a small enclosed space for several hours. [CDC guidance](#) is that people wear face coverings when around others, even when social distancing.
  - Allow for breaks throughout the day to permit jurors to remove their masks, perhaps by going outdoors. Jurors should maintain social distancing while outside and on breaks.
- Consider selecting more alternate jurors than normal in the event that a juror must self-quarantine due to close contact with a positive COVID-19 individual outside the courtroom.<sup>5</sup>
- Microphones should be cleaned between each use, after each user, and at the end of the day. Alcohol wipes may be used after each person uses the microphone.

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<sup>5</sup> If a juror or other trial participant reports a COVID-19 positive test result, all people who were within six feet of that person should quarantine for 14 days. If the exposure occurred for many hours in a small courtroom with poor ventilation, all trial participants may need to be quarantined, even if social distancing was followed.



- Plexiglass partitions have been recommended for use in [retail](#) and [manufacturing](#) settings to aid in social distancing. Such partitions can be useful for designating one-way traffic in hallways or for brief encounters at cashier’s counters. At this point, however, NCDHHS advises that the effectiveness of plexiglass partitions is unclear in settings where people would share the same air for extended periods of time, such as a jury box or a small courtroom. While plexiglass partitions offer some protection against direct sneezes and coughs, air particles may be able to travel around them depending on how they are installed.

## 2. Voir Dire

- Direct prospective jurors to individual courtrooms rather than to a jury assembly room (online orientation will assist with this process).
- Conduct voir dire in stages with multiple groups to ensure safe distancing.
- When more than one panel of prospective jurors is needed, consider conducting multiple sessions of voir dire from small panels, striking jurors for cause, joining the panels, and then completing voir dire and peremptory challenges.
- Consider asking jurors to complete written pretrial questionnaires and submit them to the court electronically or by mail.
- Use [remote](#) technology, such as Webex, to conduct voir dire.
- Encourage counsel and the parties to stipulate to six-person juries in civil trials to reduce the number of people in the courtroom and the amount of time required for jury selection.
- Provide clear information to impaneled jurors regarding how to contact the court if the juror has new safety concerns, such as a [recent exposure](#) to COVID-19. (The juror should not appear in-person to report this information to the court.)
- Conduct bench conferences in chambers or another location close to the courtroom (e.g., an adjacent jury deliberation room that may now be too small to accommodate a jury panel) where safe social distancing may be practiced.
- Consider streaming or projecting the trial to other courtrooms, or online, to allow the public to view the trial while limiting physical contact. This will limit the number of people in the courtroom to those whose physical presence is necessary.
- If the space previously used as the jury deliberation room contains restrooms for jurors that are too small to accommodate jurors safely, consider reserving restrooms for jurors near the designated deliberation space to limit interaction between jurors and others in the restrooms.
- Courts should be cognizant that jurors may speak louder than usual due to social distancing and consider limiting nearby access to the jury deliberation space to prevent others from listening to deliberations.
- Provide hand sanitizer, tissues, and lined trash cans in the courtroom and jury deliberation room; provide sanitizing wipes in the jury deliberation room for cleaning shared objects.

*The CDC recommends practicing “routine cleaning of frequently touched surfaces.*

*High touch surfaces include: Tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, sinks, etc.”*

Source: <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>



- Affirm jurors rather than having jurors swear on a religious text. Notify jurors that they must bring their own religious text if they wish to be sworn. Religious texts brought to the courthouse should not be shared with another juror.
- Seat jurors in cordoned-off sections of the courtroom gallery, when possible, to provide appropriate distancing as recommended by current CDC and local health guidelines and rearrange courtroom furniture accordingly.

### 3. Exhibits

- Utilize technology to manage and view exhibits, if possible (e.g., view on a screen in lieu of physical copies).
- Attorneys / parties should be required to prepare marked original exhibits to be used at trial as well as copies of exhibits for counsel, the judge, each witness, and the court reporter.
- Attorneys / parties should be required to provide copies, for each juror, of any exhibit they will seek to publish to eliminate the passing of a single exhibit between jurors.
- If it is not possible to provide multiple copies of a published exhibit for the jurors, jurors should sanitize their hands and don [gloves](#) prior to handling the exhibit; jurors should properly remove and dispose of gloves and sanitize hands after handling the exhibit.

*“Paper-based materials, such as books and loose-leaf paper, are not considered high-risk for COVID-19 transmission, and do not need additional cleaning or disinfection procedures.”*

Source: <https://files.nc.gov/covid/documents/guidance/Strong-Schools-NC-Public-Health-Toolkit.pdf>

### 4. Notebooks and Pens / Pencils

- Encourage jurors to bring their own pencils / pens; if the court provides pencils / pens, they should be new or properly cleaned prior to a juror’s use.
- If juror notebooks are used, the court should provide instructions regarding where the notebooks are to be left or how they will be safely gathered and stored to prevent cross-contamination during court recesses.
- Courts may wish to give each juror a poly / plastic folder that can be easily cleaned with a disinfecting wipe, into which the juror may deposit writing instruments and notebooks during court recesses.

## References and Resources

- [Coronavirus \(COVID-19\)](#) section of the CDC website
- [Coronavirus and the Courts](#) section of the National Center for State Courts website
- [StrongSchoolsNC Public Health Toolkit \(K-12\)](#) (NCDHHS June 8, 2020)
- [Interim Guidance for Restaurants](#) (NCDHHS May 22, 2020);
- [Jury Management Subgroup Best Practice Recommendations During the COVID-19 Public Health Emergency](#) (Arizona June 1, 2020)



- [COVID-19 Continuity of Operations During a Public Health Emergency Workgroup Best Practice Recommendations](#) (Arizona May 1, 2020)

## CONCLUSIONS

North Carolina is the ninth most populous state in the nation. While the state has a unified court system, that system operates in 100 different counties with 100 different court cultures. Adapting that system to the current pandemic conditions is a challenge that none of us has had to meet before, and we must be patient with each other as we all seek to adjust the way we do business. Regardless of the specific steps taken in each county and district, the coming months will be a learning experience for all of us. While NCAOC and the Task Force recognize the stress of speedy forced change, we are hopeful that this experience will lead to new and exciting innovations in our system. Throughout the duration of this pandemic and beyond, we all must continually engage in self-evaluation and strive for ongoing improvement to the services we provide to the public. And, above all else, we must always do that in ways that are designed to protect the safety of the public and our most valuable resources, our Judicial Branch personnel.





## **APPENDIX A**

**(CLICK [HERE](#) FOR AN UPDATED VERSION OF  
THE DOCUMENT IN APPENDIX A)**



# JURY SERVICE DURING COVID-19

## FREQUENTLY ASKED QUESTIONS



**Why are the courts summoning jurors when the virus is still going around and there is no cure?**

Jury service is one of the cornerstones of our system of justice, expressly provided for in the U.S. Constitution and North Carolina Constitution. The Court has an obligation to uphold the constitutional rights of the citizens of this state, which includes the right to a jury trial. We are making every effort to take the necessary steps to keep reporting jurors safe while still protecting the rights of individuals and providing meaningful access to the courts.

**What safety precautions are being taken at the courthouse to protect jurors?**

Safety precautions may vary by courthouse / facility. Steps are being taken to clean facilities frequently according to CDC guidelines and to create an environment conducive to social distancing. Court staff is encouraged to wear masks and wash hands frequently. Some courthouses are taking temperatures and requiring the public to wear a cloth face covering. Plexiglass has been installed in some courthouses to serve as a barrier. The Chief Justice of the Supreme Court of North Carolina has directed that hand sanitizer be made available, at a minimum, at all entrances to court facilities. Jury selection and / or trials may be held in a different location if the courthouse or courtroom cannot safely accommodate social distancing for jurors.

Notices have been posted at the entrance to each court facility directing that any person who has likely been exposed to COVID-19 should not enter the courthouse. Attorneys and other persons who do not have business in a courthouse should not enter a courthouse, and those who do have business in a courthouse should not prolong their visit once their business has concluded. Attorneys are strongly encouraged to submit filings by mail rather than in person.

Visit your [county's page](#) to view any local orders regarding specific procedures, such as required face coverings. See the [Judicial Branch COVID-19 page](#) for more information and emergency directives. There may also be local city or county government orders in place that require face coverings.



# JURY SERVICE DURING COVID-19

## FREQUENTLY ASKED QUESTIONS



**I am considered a high-risk individual for COVID-19 and I have been summoned for jury service. Do I have to appear?**

Contact the [jury coordinator](#) in your county for juror excuse policy information.

**I live with a person / I am a caretaker for a person who is a high-risk individual for COVID-19 and I have been summoned for jury service. Do I have to appear?**

Contact the [jury coordinator](#) in your county for juror excuse policy information.

**Do I have to wear a mask at the courthouse?**

Some courthouses may require you to wear a mask or cloth face covering before being allowed to enter.

Visit your [county's page](#) to view any local orders regarding specific procedures, such as required face coverings. There may also be local city or county government orders in place that require face coverings.

**Will a mask be provided if I do not have one?**

Visit your [county's page](#) to view any local orders regarding specific procedures, such as required face coverings and the availability of masks if you appear without a mask.

**Do I need to bring my own hand sanitizer?**

The Chief Justice has directed that hand sanitizer be made available, at a minimum, at all entrances to court facilities. Please be aware security policies may prevent you from entering the courthouse if you have your own sanitizer. Please check with the [local facility](#) before appearing for court.



# JURY SERVICE DURING COVID-19

## FREQUENTLY ASKED QUESTIONS



**If I am selected, how will the jury pool be seated to ensure social distancing?**

Every effort will be made to practice social distancing in the jury pool and jury box. In addition to other protective measures, the Chief Justice has ordered that spaces where the public and jurors will congregate be marked at intervals of 6 feet to ensure social distancing.

Jury selection and / or trials may be held in a different location if the courthouse or courtroom cannot safely accommodate social distancing for jurors.

**If selected for a jury, will jurors be seated in a small room to deliberate?**

Every effort will be made to practice social distancing during jury trials and deliberations. The Chief Justice created a COVID-19 Task Force that has developed guidelines and best practices for the conduct of in-person court proceedings in compliance with current public health guidance. The Chief Justice also ordered that each court facility designate a COVID-19 Coordinator who is directed to determine whether there is adequate space in the court facility to convene a jury trial in keeping with current public health guidance.

In making this determination, the COVID-19 Coordinator will take into account the need for the jury to observe social distancing, as well as for jurors to be socially distanced in the courtroom and any deliberation room.

The COVID-19 Coordinator is encouraged to consult with the local public health director, or their designee, in making this determination where possible. Jury selection and / or trials may be held in a different location if the courthouse or courtroom cannot safely accommodate social distancing for jurors. If you have additional questions, check with the [local facility](#) before appearing for court.



# JURY SERVICE DURING COVID-19

## FREQUENTLY ASKED QUESTIONS



### How long will the trial last?

This will vary by the policies established by each county's COVID-19 Coordinator in collaboration with local court leadership. Courts have been encouraged to limit the trial duration and to prioritize less complex trials that will require less time to hear in order to shorten the time a juror must appear.

### How long will I be in court each day?

This will vary by the policies established by each county's COVID-19 Coordinator in collaboration with local court leadership.

### What should I do if I am experiencing COVID-19 symptoms prior to my jury service date?

Do not appear at the courthouse to report your symptoms. If you begin experiencing COVID-19 symptoms prior to your jury service date, please inform the jury coordinator in your county by phone.

### What should I do if I experience COVID-19 symptoms during my jury service?

If you begin experiencing COVID-19 symptoms during your period of jury service while at the court facility, please inform the nearest court employee (e.g., clerk, bailiff).

### What should I do if I have concerns about the safety measures in the courthouse or if I feel safety precautions are not being followed?

If at any time during your jury service you are concerned about your health or safety due to a lack of safety measures or because guidelines are not being followed (e.g., social distancing is not being practiced, there is no hand sanitizer at the courthouse entrance), please bring your concerns to the attention of the judge, the clerk, or the bailiff to be addressed.

