

***COVID-19:  
Recovery and  
Reconstitution  
Guidance  
for the  
Trial Courts***



Nebraska Administrative  
Office of the Courts & Probation

*April 2020*

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## Trial Courts

### Recovery and Reconstitution Guidance

#### Business Continuity

The following Recovery and Reconstitution Guidance should be referenced based on the current state of the pandemic. This guidance is intended to assist while being responsive to the local trial courts and mindful of the health and safety of staff, litigants and the public.

Recovery from an epidemic/pandemic begins when a court along with the county partners determines the situation has been adequately contained or controlled and the court has adequate staff and resources to resume normal business functions.

To the best of our ability, the court must continue to provide Nebraskans with equal access to the courts, equal ability to participate in court proceedings, and must ensure all parties are treated in a fair and just manner.

Just as the local trial courts had to assess and evaluate how best to execute their mission essential functions in implementing their Emergency Preparedness Plans (EPP), the local trial courts need to assess and evaluate how best to resume normal business functions in such a manner that ensures access to courts and also protects the health and safety of the judges, court staff, litigants, parties and the public. Therefore, the trial courts will need to continue to perform their mission essential functions while at the same time *methodically* and *strategically* expanding those functions in a manner that reduces the likelihood the trial courts would need to re-implement their respective EPP.

#### Plan and Prepare *Before* Resuming Business Functions

Before resuming modified and eventually normal business functions of the trial courts, judges, clerks of the district court and clerk magistrates are strongly encouraged to:

1. Collaborate and communicate with each other in developing *incremental* processes and strategies for resuming trial court services.
2. Coordinate with the local officials, including the county board, city council and, most importantly, the local health officials so timely and accurate information can guide incremental processes and strategies. For example, local conditions will influence the decisions that public health officials will make regarding community-level strategies. Each community is unique and appropriate mitigation strategies will vary based on community transmission and the characteristics of the community and its population.

Trial court's incremental processes and strategies are best scaled up and down depending on what is happening at the local level.<sup>1</sup>

3. Reference the [Centers for Disease Control and Prevention website](#) often for the most up-to-date information on how best to decrease the spread of COVID-19. At a minimum, continue to maintain CDC recommended preventative actions in the courtroom and court offices, including:

- Stay home if you are sick, except to get medical care.
- Inform your supervisor if you have a sick family member at home with COVID-19.
- Wash your hands often with soap and water for at least 20 seconds.
- Use hand sanitizer with at least 60% alcohol if soap and water are not available.
- Place hand sanitizers in multiple locations to encourage hand hygiene.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Cover your mouth and nose with a tissue when you cough or sneeze or use the inside of your elbow. Throw used tissues in the trash and immediately wash hands with soap and water for at least 20 seconds or use hand sanitizer containing at least 60% alcohol.
- Clean AND disinfect frequently touched objects and surfaces such as workstations, keyboards, telephones, handrails, doorknobs, counters, microphones, tables, and chairs/arms of chairs.
- Provide disposable wipes so that commonly used surfaces can be wiped down by judges, court staff, attorneys, litigants or others after touching or using.
- Avoid using other employees' phones, desks, offices, or other office supplies and equipment, when possible. If necessary, clean and disinfect them before and after use.
- Provide tissues and no-touch disposal receptacles.
- Practice social distancing maintain distance (approximately 6 feet) from others
- Avoid having more than 10 individuals at any given time in a courtroom, hallways, breakrooms/lunchrooms, and office. [This number may be modified per CDC/local health department recommendation.]
- Place signage that encourages social distancing and hand hygiene at the entrance to courtroom and other workplace areas where they are likely to be seen. [See Attachment A]

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<sup>1</sup> CDC website: [Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmissions](#)

## Specific Considerations for Trial Courts

### Legal:

- Review any judicial order(s) and communication from the Nebraska Supreme Court
- Review and/or modify any existing judicial orders of the local trial courts
- Review state statutes and court rules (See Attachment B)
- Consider impact of court sanctions (e.g., warrants, financial penalties, custodial sanctions) on the courts, jails and probation

### Case Management:

- Review the Progression Standards Reports:
  1. Non-closed cases exceeding progression
  2. Non-closed cases within progression, but nearing the progression time frame
  3. Add/update Judges Notes on the reports to assist with planning and scheduling
  4. Take care of any outstanding data entry issues with the reports so the court is only managing pending cases
- Review [Neb. Ct. R. § 6-1455](#), uniform waiver system, to determine if violations not listed on the statewide schedule could be locally approved for waivers of appearance and pleas of guilty. If previously adopted, continue this practice to assist in case management during the recovery.<sup>2</sup>

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<sup>2</sup> As part of their emergency preparedness plan, several county court districts have issued “administrative orders” which establish set fines within the jurisdiction for offenses not included on waiver and fine schedule approved by the Supreme Court for statewide use under 6-1455(C). Rule 6-1455(D) allows waivers for offenses not on the schedule in “individual cases” when authorized by the county judge or judges, which seems to allow considerable discretion.

Examples of offenses in these locally approved waivers have included: 1) First offense possession of less than one ounce of marijuana where the judge determines that attending the substance abuse course required under Neb. Rev. Stat. § 29-433 is not in the best interest of the defendant; 2) No proof of insurance when insurance has been obtained; 3) Minor in possession, first offense; and 4) Driving under suspension when the license has been reinstated.

Other judges have authorized waivers like these on a case-by-case basis. If the judge has not signed a blanket order setting the fines, a judge should sign off on the waiver whenever possible. The clerk magistrate is not specifically authorized to impose a penalty under [Neb. Rev. Stat. § 24-519](#) for offenses not included on the Supreme Court approved waiver schedule.

- Review the calendar to determine what adjustments can be made to better handle the pending cases:
  1. Evaluate pending cases to determine if scheduling modifications, videoconferencing or telephonic hearings should continue as established with the implementation of the EPP
  2. Use block scheduling for certain types of cases (e.g., arraignments, civil, criminal) to be heard by one judge using videoconferencing to communicate the proceedings to several court rooms or handled by several local judges at the same time in each of their respective courtrooms to allow for optimum court attendance while maintaining social distancing of litigants
  3. Determine if specific dockets or case types could be efficiently and effectively managed by a retired judge or a judge from another county/judicial district either in person or remotely
- Evaluate the process for time payments – Can a person make a telephonic and/or written request for an extension? Can staff grant a continuance? How many? When would a person need to be before the judge?
- Review cases that will require an interpreter(s) and coordinate scheduling with the Statewide Language Access Coordinator and/or the local interpreter coordinators and scheduler
- Encourage self-represented litigants to submit a [Registration of Email Address for Self-Represented Litigant](#) form (DC3:01) so all documents and notification may be emailed (may also allow for increased ability to using videoconferencing)

**Courtroom/Court Office Management:**

- Consider asking CDC directed COVID-19 health screening questions prior to parties, attorneys or public entering the courtroom or posting signage with health expectations for self-screening
- Consider rearranging the courtroom or positioning the parties throughout the courtroom to encourage social distancing
- Consider continuing to use technology as a substitute for in-person hearings
- Review the calendar to determine what adjustments can be made to better handle the pending cases:
  1. Group cases by attorney and/or firm, which may result in fewer people being in the courtroom or allow for more efficient use of videoconferencing/teleconferencing

2. Use block scheduling for certain types of cases (e.g., arraignments, civil, criminal) to be heard by one judge using videoconferencing or handled by all of the judges at the same time in each of their respective courtrooms
  3. If certain types of cases are going to be continued, then consider scheduling them in time specific increments on the rescheduled court date
  4. Use multiple courtrooms or other meeting space and connect using videoconferencing
- Encourage attorneys to meet with clients offsite prior to coming to court
  - Discourage attorneys from using jury selection as an incentive for reaching a plea or settlement agreement (e.g., encourage pre-trial conferencing)
  - Create a Google calendar or some other means that would allow individuals to schedule an appointment to come to the courthouse to conduct business
  - Provide specific days and/or alternative times (e.g., evening hours, over lunch, weekends) to handle certain types of cases or to accommodate certain populations who are at a higher risk to become ill or because of other circumstances are unable to come to court during the day (e.g., health professional, just able to go back to work)

#### **Court Staff:**

- Evaluate staff to determine who are at higher risk for severe illness and who may qualify for COVID-19 related leave
- Consider continuing to rotate staff for as long as practical, including considering extending court hours and staff working in shifts
- Consider bringing back staff gradually and in this order:
  1. Ready-to-Work (RTW) status employees, unless they are considered higher risk for severe illness (e.g., people older than 65 years or older, people with asthma, people with HIV, people with underlying health conditions, people with disabilities)<sup>3</sup>
  2. Mission essential employees who are able to telecommute, but because of their job description or duties as assigned cannot continue to telecommute
  3. Telecommuting employees who are not higher risk for severe illness and able to return to work

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<sup>3</sup> CDC website: [People Who Need to Take Extra Precautions](#)

4. Higher risk for severe illness employees and those who may qualify for COVID-19 related leave who are able to telecommute and those who are unable to telecommute who must remain on RTW status (however, continually evaluate whether “telecommuting work assignments” can be given to those who remain RTW status)

To address the increased workload:

1. Consider requesting part-time staff be approved for full-time status
2. Consider requesting overtime compensation in the form of compensatory time in compliance with the [\*Personnel Policies and Procedures Manual #25\*](#)
3. Evaluate the work needed to be done to determine if it can be done remotely by court staff in another county (AOCP will assist with finding court staff from another county)

### **Jury Trials:**

The following information is from a webinar<sup>4</sup> given by the Center for Jury Studies, a project of the National Center for State Courts (NCSC).

- Anticipate lower jury yields so work with local health officials to get a “snapshot” of the population in the community
  - Increase the number of jurors summoned
  - Impaneling more jurors to avoid having to adjourn or a mistrial
- Anticipate excusal rates to be higher for certain populations because current data suggests a disproportionate burden of illness and death among racial and minority groups<sup>5</sup>
  - Anticipate jury pools will also be disproportionate
  - Anticipate fair cross-section challenges
  - Document why jurors are excused (may need to update database to allow for a COVID-19 excusal)
- Implement a generous deferral policy
  - If possible, defer rather than excuse from service entirely
  - Extend deferral period
  - First deferral as a matter of right

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<sup>4</sup> Center for Jury Studies, March 26, 2020, webinar video and slides: <http://www.ncsc-jurystudies.org/What-We-Do/COVID-Resources.aspx>

<sup>5</sup> CDC website: [COVID-19 in Racial and Ethnic Minority Groups](#)



- Second deferral with good cause
  - Persons currently testing positive or in self-quarantine
  - Persons at high-risk of infection
  - Persons living with others at high risk of infection
  - Health care professionals
- Adopt “forgiving” failure to appear policies
  - Follow-up with non-responders or failure to appear jurors with a second notice or second summons
  - Suspend order to show cause (OSC) calendars and capias warrants until after pandemic abates
  - Consider an amnesty program in 12-18 months giving the option of a OSC/warrant or serving in a jury pool
- Cleaning/Disinfecting
  - Frequently wipe down essential workspaces
  - Avoid directly exchanging documents with and between jurors
  - Restrict access to common areas, including juror amenities (e.g., coffee, microwaves, refrigerators, magazines/puzzles/games)
  - Juror badges – switch out with one-time-use option
  - Include information in the summons encouraging juror to bring personal entertainment
- Social Distancing
  - Remove chairs or put signs on chairs to keep potential jurors/jurors from being able to sit next to each other
  - Seat jurors in cordoned-off section of the gallery instead of the jury box
  - Use larger conference room in the courthouse for trial recesses and deliberations or allow jury to stay in the courtroom
  - Discourage attorneys from using jury selection as an incentive for reaching a plea or settlement agreement (encourage pre-trial conferencing)
  - Minimize the number of jurors at each stage of jury service
    - Staggered reporting times
    - Jury panels report directly to the courtroom
    - Smaller panels to courtroom for voir dire
    - Consider alternatives for voir dire (e.g., written questionnaires; remote prescreening for time, hardship and for cause conflicts)
- Reduce the time jurors are in the courtroom
  - Limit time for voir dire and alternatives for voir dire (e.g., written questionnaires; remote prescreening for time, hardship and for cause conflicts)
  - Limit time for opening and closing statements

- Communicate with jurors/potential jurors as much as possible and in as many different ways as possible
  - MESSAGE 1: The Court takes public health and safety seriously and has implemented aggressive policies to prevent the risk of infection for jurors and other court users
  - MESSAGE 2: Jurors are performing an extraordinary service making sure individuals have access to justice
  - Messaging needs to appeal to civic-mindedness, altruism and moral courage
  - Include information in the summons
  - Provide information on website and social media platforms
  - Issue press releases or public service announcements
  - Juror call-in message
  - Courthouse/Courtroom signage

### **Additional Considerations**

#### **Communications:**

- Regular communication with public and stakeholders on modified processes and procedures and potential challenges
- Share all information in an honest, consistent and timely manner
- Ensure communications and information-sharing channels remain open with public and all external stakeholders
- Provide continuous updates concerning recovery and preparedness in the event of another pandemic wave
- Review and adjust messaging as necessary (e.g., signage, notices, orders)
- Monitor and forecast potential public/media relations issues and quickly address any rumors and misinformation
- Re-affirm contacts and planned actions with public and media points of contact
- Communicate to the public and other stakeholders the lessons learned and how the gaps that were discovered will be addressed

#### **Facilities and Physical Security:**

- Consider current CDC health and safety directives and evaluate court room and court offices to determine what directives could be put in place (e.g., social distancing barriers and shields, signage or tape on chairs/floor to show people where to sit/stand, signage with CDC directives)
- Ensure protective health equipment is available and accessible to staff and the public for the next 30-60 days (See Attachment C)

- Review physical security procedures – update and modify as necessary (e.g., screening of public, policy for who may be in the courtroom depending on the type of hearing, maintain signage with expectations)
- Identify courthouse security issues and notify local law enforcement

#### **Human Resources:**

- Delay the return of staff who are considered vulnerable by the CDC definitions where possible for the last possible phase of transition
- Ensure protective health equipment is available and accessible to staff and the public for the next 30-60 days (See Attachment C)
- Assist employees in accessing employee assistance programs concerning trauma potentially caused by widespread fear and grief

#### **Emergency Management:**

- Monitor international and national health information sources for any updates on next pandemic waves
- Balance recovery actions with essential preparedness for next wave actions
- Re-affirm contacts and planned actions with AOCP and community emergency management personnel
- Assess and project potential support needs
- Monitor transition continuously and take necessary action
- Adjust actions to restore essential functions and to ensure success for future emergencies
- Review past actions, assure employees have recovered and return to maintenance levels
- Revise emergency preparedness and Modified Operations plan
- Identify gaps and needs for future emergencies

#### **Technology Management:**

- Continue to use technology in managing daily operations (e.g., videoconferencing, teleconferencing, electronic filing)
- Conduct after-action review
- Identify gaps and needs both in short term and long term
- Assess technology capacity and security issues

#### **Telecommunications:**

- Assure capacity is maintained
- Review contracts for cell phones, laptops, etc. to assure continued service and availability

## **Travel and Training**

- Institute pre-pandemic travel and training sequentially in accordance with the AOC
- Review [CDC's travel information](#) prior to traveling, especially if it is international or outside of Nebraska

# Health Alert!

## Nebraska Courts & Probation Offices

This location is practicing CDC-approved social distancing in an effort to reduce any ongoing impact of COVID-19. Maintain at least 6 feet from staff and other visitors. Please ask to be directed to handwashing facilities should you need them after covering a cough or sneeze. Note that occupancy is limited to:

### PEOPLE

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If you are:

- feeling ill
- showing symptoms or illness
- have been exposed to the COVID-19 virus
- believe you may have been exposed
- asked to self-quarantine by a health care official
- traveled to areas with known COVID-19 spread

please contact your attorney or clerk's office at the phone number below to explain your illness.

**We appreciate that you are here to fulfill your legal obligation. However, we are taking all necessary precautions to avoid spreading illness during this current health crisis.**



STATE OF  
**NEBRASKA**  
JUDICIAL BRANCH

[www.supremecourt.nebraska.gov](http://www.supremecourt.nebraska.gov)

**Contact Information:**

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ATTACHMENT B

**Constitutional and Statutory Authority for Emergency Preparedness**

Constitutional Provisions

[Art. V, Sec. 1](#)  
[Art. V, Sec. 8](#)  
[Art. V, Sec. 12](#)  
[Art. V, Sec. 23](#)  
[Art. V, Sec. 27](#)

Supreme Court Administrative Authority

[Art. V, Sec. 1](#)  
[Neb. Rev. Stat. § 25-2221](#)  
[Neb. Ct. R. § 1-105](#)

Jurisdiction

[Neb. Rev. Stat. § 24-302](#)  
[Neb. Rev. Stat. § 24-517](#)

District/County/Juvenile Court Interchange

[Neb. Rev. Stat. § 24-230](#)  
[Neb. Rev. Stat. § 24-303](#)  
[Neb. Rev. Stat. § 24-304](#)  
[Neb. Rev. Stat. § 24-312](#)  
[Neb. Rev. Stat. § 24-516](#)  
[Neb. Rev. Stat. § 43-2,125](#)

Hearings by Telephone/Videoconference

[Neb. Rev. Stat. § 24-303](#)

Court Facilities

[Neb. Rev. Stat. § 24-515](#)

Change of Venue

[Neb. Rev. Stat. § 25-410](#)  
[Neb. Rev. Stat. § 25-411](#)  
[Neb. Rev. Stat. § 25-412](#)  
[Neb. Rev. Stat. § 25-412.01](#)  
[Neb. Rev. Stat. § 25-412.02](#)  
[Neb. Rev. Stat. § 25-412.03](#)  
[Neb. Rev. Stat. § 25-412.04](#)

Judicial Absences

[Neb. Rev. Stat. § 24-305](#)  
[Neb. Rev. Stat. § 24-306](#)  
[Neb. Rev. Stat. § 24-307](#)  
[Neb. Rev. Stat. § 24-308](#)  
[Neb. Rev. Stat. § 24-309](#)  
[Neb. Rev. Stat. § 24-310](#)

Clerks

[Neb. Rev. Stat. § 24-337.01](#)  
[Neb. Rev. Stat. § 24-401](#)  
[Neb. Rev. Stat. § 24-402](#)  
[Neb. Rev. Stat. § 25-1144.01](#)  
[Neb. Rev. Stat. § 25-1301](#)  
[Neb. Rev. Stat. § 25-1912](#)  
[Neb. Rev. Stat. § 25-2729](#)  
[Neb. Rev. Stat. § 29-1207](#)

Clerk Magistrates

[Neb. Rev. Stat. § 24-507](#)  
[Neb. Rev. Stat. § 24-508](#)  
[Neb. Rev. Stat. § 24-519](#)  
[Neb. Rev. Stat. § 24-520](#)

Miscellaneous

[Neb. Rev. Stat. § 24-501](#)  
[Neb. Rev. Stat. § 24-734](#)

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STATE OF  
**NEBRASKA**  
JUDICIAL BRANCH

**Administrative Office of the Courts and Probation  
PPE Needs Form**

**COVID-19 Response Activities Only**

<b>Requesting Agency</b>	
Agency Name:	
Address:	
City:	State:
Zip Code:	County:
<b>Primary Contact for Delivery</b>	
First and Last Name:	
Title:	
Email:	
Phone Number:	
<b>Staffing</b>	
Approximate number of staff requiring PPE:	
Number of staff (generally) interacting with the public:	
Anticipated date of critical need:	
Are you following the most recent CDC PPE Use Guidance? (See links below) Yes or No:	
<b>Requested Items</b> (based on a 4-week need)	<b>*Quantity</b>
Disinfectant wipes (individual containers)	
Hand sanitizer	
Reusable face coverings (number of individual items)	
Surgical face masks (number of individual masks)	
Gloves (boxes of 100)	<b>*Number of boxes</b>
<input type="radio"/> Small	
<input type="radio"/> Medium	
<input type="radio"/> Large	
<input type="radio"/> Extra-Large	
<b>Additional comments to support your request:</b>	
Send completed request form to: <a href="mailto:renee.faber@nebraska.gov">renee.faber@nebraska.gov</a>	
Renee Faber, Supportive Services Specialist, Rehabilitative Services, Administrative Office of the Courts and Probation	
*Final quantity and product received may differ; orders will be fulfilled based on vendor availability	

**CDC Use Guidance:**

- [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-faq.html?deliveryName=USCDC\\_2067-DM25135](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-faq.html?deliveryName=USCDC_2067-DM25135)
- <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html>

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