Guidance for All Court Proceedings During COVID-19 Pandemic
(Effective October 1, 2020; Updated 12/31/2020)

NOTE: Courts are not required to commence in-person proceedings, including jury trials, and should include in their discussions with the county judge/mayor and local health authority a proper date for commencing in-person proceedings under an operating plan.

- **Courts whose local administrative district judge or presiding judge have not submitted the required recertification by January 11, 2021, are not permitted to hold in-person proceedings.**
    1. The local administrative district judge (LADJ) or presiding judge of a municipal court (PJ) must consult with the local public health authority to review a previously-submitted in-person proceeding operating plan to determine whether the plan provides sufficient health and safety protocols to permit in-person proceedings. LADJs and PJs should discuss with the local public health authority whether current local pandemic conditions are conducive to in-person proceedings and what precautions should be taken when those proceedings are conducted. Documentation of the consultation must be submitted with the recertification.

    2. The LADJ and PJ must, after conferring with the judges of all courts with courtrooms in county building (LADJs) or municipal buildings (PJs), state the objective criteria that will be used to determine when an in-person proceeding is necessary and when all reasonable efforts do not permit the proceeding to be conducted remotely. The criteria should be specific and not include broad case of hearing type categories (e.g. courts may not indicate that all motions to suppress will be held in person, etc). Examples of criteria may include items such as inability of parties to participate due to a disability or lack of technology. If a LADJ or PJ has questions about whether certain criteria are appropriate for in-person proceedings, please contact the Regional Presiding Judge.

    The LADJ and PJ should submit the recertification to the Regional Presiding Judge. Upon written acknowledgement from the Regional Presiding Judge that the recertification meets the requirements, the courts in the county or city may commence in-person proceedings only in accordance with the Supreme Court's most recent emergency orders, guidance issued by the Office of Court Administration (OCA), the county/city operating plan, and the criteria stated in the recertification. The Regional Presiding Judge must forward a copy of each recertification to the OCA at coronavirus@txcourts.gov.

- **Courts should use all reasonable efforts to conduct proceedings remotely.**[1]
  All proceedings should occur remotely (such as by teleconferencing, videoconferencing, or other means) unless litigants or other court participants are unable to successfully participate in a remote hearing for reasons beyond the court's control.[2] If a district, county, or probate court

[1] *See* Twenty-Ninth Emergency Order Regarding the COVID-19 State of Disaster, #4.

[2] Courts who need technical assistance with remote proceedings may contact the Office of Court Administration at

determines that it cannot reasonably conduct a jury proceeding remotely, then it may conduct an in-person jury proceeding so long as it follows the conditions set for in the Supreme Court's Order, the Office of Court Administration's Guidance, and the operating plan (all discussed in more detail below). Courts may need to conduct hybrid hearings in certain proceedings.

- **In-person jury trials must not be held prior to February 1, except as noted below:**
    - The Twenty-Ninth Emergency Order generally prohibits in-person jury proceedings, including jury selection and trials, prior to February 1.

    - Justice and municipal courts are prohibited from holding an in-person jury proceeding prior to February 1.

    - District courts, statutory or constitutional county courts, and statutory probate courts are prohibited from conducting in-person jury proceedings on or after October 1 unless:[3]
        - The local administrative district judge for the county in which the court is located has, before the jury proceeding and after conferring with the judges in the county and the local public health authority, submitted an operating plan for conducting jury proceedings consistent with this Guidance (see jury proceeding operating plan instructions below);
        - To assist with coordination of local resources and to manage capacity issues, the judge has obtained prior approval for that jury proceeding from the local administrative district judge and Regional Presiding Judge;
        - Not more than five days before the jury proceeding, the local administrative district judge has consulted the local public health authority and verified that local health conditions and plan precautions are appropriate for the jury proceeding to proceed;
        - The court has considered on the record any objection or motion related to proceeding with the jury proceeding at least seven days before the jury proceeding or as soon as practicable if the objection or motion is made or filed within seven days of the jury proceeding; and
        - The court has established communication protocols to ensure that no court participants have tested positive for COVID-19 within the previous 30 days, currently have symptoms of COVID-19, or have had recent known exposure to COVID-19.

    - Except for criminal cases where confinement in jail or prison is a potential punishment, courts may conduct remote jury proceedings as long as the court considers on the record any objection or motion related to proceeding with the remote jury proceeding at least seven days before the proceeding or as soon as practicable if the objection or motion is made or filed within seven days of the jury proceeding.
        - Except for non-binding proceedings, a court may not permit or require a petit juror to appear remotely unless the court ensures that all potential and

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zoomhelp@txcourts.gov.

[3] Associate judges of these courts who are authorized to hear jury trials may conduct in-person jury proceedings under the same criteria.

selected petit jurors have access to technology to participate remotely.[4]

- In criminal cases where confinement in jail or prison is a potential punishment, remote jury proceedings must not be conducted without appropriate waivers and consent obtained on the record from the defendant and prosecutor.[5]

- **Prior to any court holding in-person proceedings, including jury proceedings**, other than essential hearings that cannot be conducted remotely because doing so is not possible or practicable,[6] the local administrative district judge for a county or the presiding judge of a municipal court, as applicable, must submit an **operating plan** for all courts in the county (local administrative district judge) or municipality (presiding judge of a municipal court) to the Regional Presiding Judge.

  - Each local administrative district judge must attempt to confer with judges of all courts with courtrooms in county buildings, including district judges, county court at law judges, county judges, justices of the peace, associate judges, magistrates, and chief justices of the courts of appeals where applicable.

  - In developing the operating plan, the local administrative district judge or presiding judge of a municipal court must consult with the local health authority and county judge/mayor.[7] Documentation (e.g. email, letter, etc.) from the local health authority and county judge/mayor showing that the consultation has occurred must be submitted with the operating plan.

  - Upon written acknowledgement by the Regional Presiding Judge that the operating plan meets the requirements of an operating plan discussed below, the courts in the county or city may commence in-person proceedings only in accordance with the Supreme Court's most recent emergency order, guidance issued by the Office of Court Administration (OCA), and the operating plan.

  - The Regional Presiding Judge must forward a copy of each operating plan to the OCA at coronavirus@txcourts.gov.

  - **NOTE: Courts that have previously submitted acknowledged operating plans (county/municipality) for in-person proceedings may submit a jury proceeding supplement to their plans rather than entirely new operating plans.**

[4] OCA has a limited number of devices available to provide to potential jurors without adequate technology. To discuss the availability of those devices, please contact zoomhelp@txcourts.gov.
[5] OCA will soon issue detailed guidance to assist courts wishing to conduct virtual jury proceedings and is available, to the greatest degree possible, to provide assistance to courts in conducting virtual jury proceedings.
[6] Essential proceedings include, but are not limited to, criminal magistration proceedings, CPS removal hearings, temporary restraining orders / temporary injunctions, juvenile detention hearings, family violence protective orders, and certain mental health proceedings.
[7] Local Administrative District Judges should consult with the county judge at a minimum, and presiding judges of a municipal court should consult with the mayor at a minimum.

Operating plans will remain in effect until updated guidance is issued from the OCA indicating they are no longer required or upon the expiration of the applicable Emergency Order, as amended or extended, requiring adherence to OCA guidance.

- **An operating plan for in-person proceedings, including jury proceedings, must contain the following components:**[8]
    - **Judge and Court Staff Health – how the courts will ensure judges and court staff do not enter the courthouse if they have new or worsening signs or symptoms**[9] **and will protect judges and staff from exposure to the degree possible.**[10]

        Courts should take precautions to ensure judges and courts staff do not enter the courthouse when there is a likelihood that they may have COVID-19, and courts should take reasonable steps to protect judges and court staff from contracting COVID-19.

        Courts should consider encourage teleworking for judges and court staff whenever possible and feasible.

    - **Scheduling – how the courts in the building(s) covered by the plan will coordinate scheduling to reduce occupancy in the courthouse to the lowest degree possible.**[11]

        In-person proceedings must be scheduled to reduce the number of people entering or in the courthouse at any one period of time. Judges in counties and cities with multiple judges in a building must coordinate scheduling of any in-person proceedings to reduce the number of people in the courthouse at one time.

        Judges scheduling in-person jury trials should schedule no more than 10 cases per docket, unless pre-approval for larger dockets is obtained from the Regional Presiding Judge. Judges should attempt to alert parties who will not be proceeding prior to the day of trial to reduce attendance at the court facility.

    - **Vulnerable Populations – how the courts will provide notice to vulnerable individuals and those who live with or are caregivers for vulnerable individuals and provide accommodations to reduce the appearance of those individuals at the courthouse.**[12,13]

        Vulnerable individuals are those over age 65 and individuals with serious underlying health conditions, such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune systems are compromised such as by chemotherapy for cancer or other conditions requiring such therapy.

[8] In developing an operating plan, courts should review the Texas Department of Health Services' Minimum Recommended Health Protocols for COVID-19.
[9] CDC. *Symptoms of Coronavirus*.
[10] DSHS. *Checklist for All Employers*.
[11] CDC. *Get Your Mass Gathering or Large Community Events Ready*.
[12] CDC. *People who are at Higher Risk for Severe Illness*.
[13] CDC. *What Can You Do*.

- **Social Distancing – how the courts will ensure that adequate social distancing will be maintained for all individuals not within the same household who may be in a courthouse.[14]**

  Courts should consider how to ensure distancing in public common areas, galleries of courtrooms,[15] wells of the courtroom, hallways, elevators, restrooms, or other locations where the public might gather.

  Special attention should be given to scheduling in buildings with multiple courtrooms, as common areas such as waiting areas, halls and elevators may become crowded in such a way that it is impossible to maintain appropriate social distancing.[16]

- **Hygiene – how the courts will ensure that individuals in the courthouse will have access to supplies to maintain high levels of hygiene[17]**

  Courts should consider having hand sanitizer dispensers available at various locations around the courthouse, including at the entry and exits from the building and courtrooms. Courts should ensure that tissues are available for public use in courtrooms and other public areas. Courts should post readily visible signage reminding individuals of best hygiene protocols.[18]

- **Screening – how the courts will ensure screening of all individuals entering the courthouse or courtroom areas[19]**

  Individuals feeling feverish or with measured temperatures equal to or greater than 100.0°F, or with new or worsening signs or symptoms of COVID-19 such as fever, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, sore throat, loss of taste or smell, congestion or runny nose, nausea or vomiting, diarrhea.[20]

  Special attention should be given to how inmates or detainees from jail and juvenile facilities who may be transported to a courtroom will be screened, including consideration of a lower threshold temperature of 99.6°F as an indicator of symptoms.[21]

  Screeners should be provided appropriate face protection and gloves.[22]

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[14] CDC. *Social Distancing, Quarantine, and Isolation*.
[15] DSHS. *Checklist for Churches/Places of Worship*.
[16] White House, CDC. See pp. 10 & 14 in the *Guidelines for Opening Up America Again*.
[17] CDC. *How to Protect Yourself and Others*.
[18] DSHS. Stop the Spread of Germs Flyer. https://dshs.texas.gov/coronavirus/docs/StopSpreadofGerms-English.pdf (English) and https://www.cdc.gov/coronavirus/2019-ncov/downloads/stop-the-spread-of-germs-sp.pdf (Spanish).
[19] CDC. *Symptoms of Coronavirus*.
[20] DSHS. *Checklist for All Employers*.
[21] Suggestion for considering lower threshold for jail inmates made by DSHS physicians.
[22] CDC. *Personal Protective Equipment: Questions and Answers*.

- **Face coverings – how the courts will ensure face coverings over the nose and mouth are worn.**[23,24]

  Cloth face coverings, at a minimum, should be required of individuals while in the courthouse. Should an individual be in the courthouse for lengthy periods of time, non-medical grade face masks should be considered if they are available.[17]

- **Cleaning – how the courts will ensure frequent and appropriate cleaning of surfaces in and around courtrooms and common areas.**[25]

  Sanitizing should be routinely and more regularly performed, including when a transition of participants occurs within a courtroom between hearings and after recesses.[17]

- **An operating plan for in-person jury proceedings, must contain the following components:**[26]

  - **Summoning Jurors**

    Courts must include with juror summonses information on precautions that have been taken to protect the health and safety of prospective jurors and COVID questionnaires that elicit from prospective jurors information about their exposure or vulnerability to COVID-19.[27]

    Courts should consider using juror questionnaires for voir dire to assist in shortening the length of voir dire or the number of venirepersons. Courts should liberally grant excuses or reschedule prospective jurors who have been potentially exposed, who are symptomatic, and who are vulnerable or live with someone vulnerable to COVID-19.

  - **Location(s) for Jury Selection, Trial, and Deliberation**

    Courts must identify an appropriate location for conducting the various phases of a jury proceeding that enable adequate social distancing at all phases. Courts should detail how the court will ensure adequate security at the alternative location and that the court has followed the appropriate guidelines required of courthouses for in-person hearings at any alternate location.[28]

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[23] CDC. *Use of Cloth Face Coverings to Help Slow the Spread of COVID-19*.
[24] *See* *Executive Order GA-29* and *Attorney General Opinion KP-0322*.
[25] CDC. *Reopening Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes*.
[26] In developing an operating plan, courts should review the Texas Department of Health Services' *Minimum Recommended Health Protocols for COVID-19*.
[27] *See* sample COVID-19 questionnaire.
[28] Courts who may need to hold a proceeding outside of the courthouse should review Chapter 292 of the Local Government Code (related to having an auxiliary facility designated as a courthouse) and Government Code Sections 24.033(b) (district courts), 25.0019(b) (statutory county courts), 25.0032(b) (statutory probate courts), 26.009(b) (constitutional county courts), 27.0515 (justice courts), 29.015 (municipal courts), and 30.000123 (municipal courts of record)—relating to designating alternative locations for proceedings.

- **Screening**

  In addition to the requirements of the in-person operating plan described above, courts must screen all court participants and observers for elevated temperatures and use a questionnaire to determine if the individual has recently had symptoms of COVID-19 or been exposed to COVID-19.

  Courts must ensure that participants in a trial who are incarcerated are screened by the jail/prison prior to transport to the courtroom and any known exposure, symptoms, or COVID-19 positive test results within the past 30 days are reported to the judge presiding over the jury trial.

  The jury trial operating plan must detail the communication protocols that will be established to ensure that no court participants have tested positive for COVID-19 within the previous 30 days, currently have symptoms of COVID-19, or have had recent known exposure to COVID-19.

- **Face Coverings**

  In addition to the requirements of the in-person operating plan described above, courts must ensure that all persons entering the common areas of a courthouse, including a courtroom or any other location being used to conduct a jury trial, wear a face covering at all times unless the person is an individual that is not recommended to wear a mask by the Centers for Disease Control or the Texas Department of State Health Services.[29]

  Courts must ensure that all court participants wear face coverings from jury qualification through the end of trial. Court participants who may need to lower their face mask to speak or for a short period of time must be required to wear a face shield. When speaking, a court should permit a court participant to lower his or her mask so long as a face shield is worn and the person speaking is immobile.

- **Social Distancing**

  Courts must ensure that social distancing of all court participants and observers is maintained at all times during the jury proceeding, including during the trial and deliberation. Special attention should be paid by courts to ensure adequate social distancing and managed exits of individuals during breaks, especially when dismissing large groups of people for a break.

- **Alternate Jurors**

  Courts are encouraged to consider selecting alternate jurors to permit the trial to continue in the event of a juror becoming ineligible to serve for a reason unrelated to that person's exposure to or contraction of COVID-19.

[29] CDC. *Use of Cloth Face Coverings to Help Slow the Spread of COVID-19*.

- **Arrangement of Courtroom**

  Courts must submit as part of the jury trial operating plan descriptions or drawings of the way in which courtroom participants (judge, parties/counsel, jurors, witnesses, court reporters, bailiffs, public) will be arranged in the courtroom. Special attention should be paid to placement of the witness and parties so that the jurors, judge, and attorneys can see the witness and parties during testimony. Special attention should also be paid to placement of evidence presentation displays so that jurors and witnesses can see the information being displayed. Courts should plan for spaces where a judge can have sidebar or private conversations with jurors and counsel.

- **Microphone Protection Protocols**

  Courts must limit, to the degree possible, the shared use of microphones during the jury proceeding. If a microphone must be shared, courts should limit the passing of the microphone unless the microphone is cleaned between each user. In addition, disposable microphone covers must be placed on shared microphones and changed between each user.

- **Exhibit/Evidence Management**

  Courts must limit, to the degree possible, the use of physical or paper exhibits/evidence where feasible or appropriate by converting the exhibit/evidence to a digital form. When physical or paper exhibits/evidence is required, courts should reduce the exchange of that exhibit/evidence to the number of persons necessary and should limit passing the exhibit/evidence to the individual members of the jury. If an exhibit/evidence is required to be transferred from person-to-person, single use gloves should be worn and discarded immediately after handling the exhibit/evidence.

  During jury deliberations, courts should make efforts to provide the jury with access to digital exhibits/evidence that would normally be shared with the jury during deliberation. Where digital exhibits/evidence is not feasible, courts should consider limiting the transfer of the exhibits/ evidence from juror-to-juror by spreading the exhibits/evidence on a table for inspection from the table in the jury deliberation room.

- **Witnesses**

  Courts must inquire whether witnesses to the proceedings have COVID-related issues. To the degree constitutionally permissible or with the consent of the parties, judges should permit witnesses to testify remotely via videoconference, especially if that witness has symptoms of or a recent positive test for COVID-19, has been recently exposed, or is vulnerable to contracting COVID-19.

- **Food Precautions**

  Courts that provide food to jurors or other participants during a jury proceeding must ensure individual food portions, such as individually boxed meals, are provided.

- **Cleaning**

  In addition to the requirements of the in-person operating plan described above, courts must implement frequent cleaning protocols during the jury proceeding. Specifically, courts must ensure that shared spaces such as witness stands, seating in the gallery, and seating during qualification/voir dire are cleaned during transitions of those spaces. Courts should assign seats for members of the jury panel and selected jurors to reduce potential transmission and the need for more frequent cleaning.

- **Approval Process**

  The jury trial operating plan must describe the process for a judge to obtain approval to proceed with a jury proceeding from the local administrative district judge and Regional Presiding Judge.

  The jury trial operating plan must describe the process by which the local administrative district judge will, not more than five days before the jury proceeding, consult with the local public health authority to verify that the local health conditions and plan precautions are appropriate for the jury proceeding to proceed.

- **Objections/Motions Related to Proceeding with Trial**

  The jury trial operating plan must describe the procedures by which a judge with an approved jury proceeding will consider on the record any objection or motion related to proceeding with the jury proceeding at least seven days before the jury proceeding or as soon as practicable if the objection or motion is made or filed within seven days of the jury proceeding.