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To: Chief Judges
Circuit Courts of Virginia

From: Chief Justice Donald W. Lemons
Karl Hade, Executive Secretary

Re: Guidance and Considerations for the Resumption of Jury Trials Memorandum

This email attachment is intended to assist you as you make a plan for restarting jury trials in your jurisdiction.

Please remember much of this material falls in the category of "please consider." As I have restated often, this effort will not result in a "one size fits all" product for the circuit courts of the Commonwealth.

Be sure to include various people mentioned in the memorandum as you consider what to do in your jurisdiction.

When your plan is ready for review, send it to the Chief Justice at dlemons@vacourts.gov.

As certain courts produce a plan and as provided and with their permission, we will post them for your consideration.

My thanks and appreciation is extended to the Jury Task Force who were very helpful in the development of this memorandum.

Call Eddie Macon if you have questions.

Guidance and
Considerations for
the Resumption of
Jury Trials

June 29, 2020

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I. Introduction

On March 12, 2020, Governor Northam entered Executive Order 51 (2020) Declaration of a State of Emergency Due to Novel Coronavirus COVID-19. This state of emergency became effective March 12, 2020, and, as amended on May 26, 2020, is to remain in full force and effect until amended or rescinded by further Executive Order. On Monday, March 16, 2020, pursuant to Va. Code § 17.1-330, the Chief Justice issued an Order declaring a judicial emergency for all district and circuit courts of the Commonwealth to protect the health and safety of court employees, litigants, judges, and the general public (“First Order”). This First Order was effective from March 16, 2020, through April 6, 2020. On March 27, 2020, this Court entered an Order extending the Declaration of Judicial Emergency for a second twenty-one day period, effective from April 6, 2020, through April 26, 2020, for all district and circuit courts of the Commonwealth (“Second Order”).

On March 30, 2020, the Governor, through Executive Order 55 (2020), required Virginia residents generally to stay at home due to the public health threat. This Executive Order expired on June 4, 2020. On April 22, 2020, the Court entered an Order extending the Declaration of Judicial Emergency for a third twenty-one day period, effective from April 26 through May 17, 2020, for all district and circuit courts of the Commonwealth (“Third Order”). On May 1, 2020, the Court entered a Clarification Order Concerning Tolling of Statutory Speedy Trial Deadlines During the Judicial Emergency In Response To COVID-19 Crisis (“Clarification Order”). On May 6, 2020, the Court entered an Order modifying and extending the Declaration of Judicial Emergency from May 18 through June 7, 2020 (“Fourth Order”). Paragraph 4 of the Fourth Order was amended on May 12, 2020 (“Amended Fourth Order”). On May 26, 2020, Governor Northam entered Executive Order 63 (2020), effective May 29, 2020, requiring, among other

things and with some exceptions, that face masks be worn inside buildings. On June 1, 2020 the Court entered an additional Order modifying and extending the Declaration of Judicial Emergency from June 8 through June 28, 2020 (“Fifth Order”). The Fifth Order was amended June 8, 2020 to include a temporary stay of unlawful detainers and evictions (“Amendment to the Fifth Order”). The Fifth Order was further amended on June 22, 2020, to allow the issuance of unlawful detainers and writs of evictions for matters unrelated to failure to pay rent (“Second Amendment to the Fifth Order”).

On June 22, 2020, this Court then entered an order extending the Declaration of Judicial Emergency from June 29, 2020, through July 19, 2020 (“Sixth Order”). The period of the Declaration of Judicial Emergency covers March 16, 2020, through July 19, 2020. The Court may extend the period of the Declaration of Judicial Emergency for additional twenty-one day periods.

The Chief Justice created a Jury Task Force to address the reinstatement of jury trials throughout the Commonwealth. The Jury Task Force includes the following members: Chief Justice Donald W. Lemons, Justice S. Bernard Goodwyn, Justice D. Arthur Kelsey, Chief Judge Lisa Bondareff Kemler (Alexandria), Chief Judge William T. Newman, Jr. (Arlington), Chief Judge William Chapman Goodwin (Augusta), Chief Judge Bruce D. White (Fairfax), Chief Judge Richard S. Wallerstein, Jr. (Henrico), Judge John Marshall (Henrico), Chief Judge Douglas L. Fleming, Jr. (Loudoun), Chief Judge Mary Jane Hall (Norfolk), Judge Jerrauld C. Jones (Norfolk), Chief Judge Joi Jeter Taylor (Richmond), Judge W. Reilly Marchant (Richmond), Chief Judge David B. Carson (Roanoke City), Chief Judge Tracy C. Hudson (Prince William), Judge Victoria A. B. Willis (Stafford), Edward F. Jewett (Clerk, Richmond Circuit Court), Captain James Jenkins (Richmond Sheriff’s Office), Jovo Skoro (Application

Developer, Richmond Sheriff's Office), Karl R. Hade (Executive Secretary), Edward M. Macon (Assistant Executive Secretary and Legal Counsel), and Kristen L. Mynes (Law Clerk to Chief Justice Donald W. Lemons, Jury Task Force Reporter). The Jury Task Force is also consulting with the Virginia Department of Health ("VDH") in its effort to determine best practices and how to safely resume jury trials.

As required by the Sixth Order, to resume jury trials, each chief circuit court judge shall develop a plan for their circuit that describes how and when the circuit will be able to safely conduct jury trials, either in their existing courtrooms or in alternate space that may be made available. In creating the plan, each chief judge shall consult with the following persons but is not limited to: (1) the other judges in the circuit, (2) clerks of court, (3) local sheriffs, (4) public health officials, (5) facilities and equipment departments, (6) budget personnel, (7) attorneys (civil and criminal), and (8) local bar associations. Chief judges should consider resources and guidance provided by the Office of the Executive Secretary ("OES") and the Centers for Disease Control and Prevention ("CDC") as well as the factors provided below.

Each plan should include (i) a statement of the criteria the judges have considered to determine if they can safely conduct jury trials in their courts, and (ii) guidelines and restrictions each court in the circuit is prepared to implement (recognizing that circumstances may be different for different jurisdictions within each circuit) to protect jurors, attorneys, clerks, judges, court staff, members of the press, and others present from the risk of the spread of COVID-19 from in-person court proceedings. The written plan may include different guidelines and restrictions for different courthouses or localities within a judicial circuit, and localities within a circuit may be prepared to begin jury trials at different times. The written plan should also vary by the needs of each locality and circuit.

The written plan shall be submitted to the Chief Justice on or before August 17, 2020.

No jury trials shall be held in a particular locality until the plan for that locality is approved. The Chief Justice will communicate his approval or denial of a proposed plan to the chief judge who submitted it. A chief judge may request an extension of time beyond August 17, 2020, to submit the plan to the Chief Justice. Localities are not required to resume jury trials by a certain date—the resumption of jury trials depends on a particular courthouse’s ability to hold the jury trial as safely as possible. If the courthouse is not safe for jury trials, jury trials cannot be held.

In preparing the plan, the courts should work to mitigate risk as much as possible, but the Jury Task Force understands that the safety measures will not completely eliminate risk. The issues identified below are considerations that each chief judge should address in the creation of his or her plan. As more information becomes available, this document might be updated with new considerations, solutions, and guidance.

II. Information about the COVID-19 Virus

A. Key measures (<https://www.vdh.virginia.gov/coronavirus/key-measures/#statewide>)

- i. These are the datapoints used to evaluate the spread of COVID-19 throughout Virginia
- ii. Case measures
 1. Total cases by date reported
 2. Confirmed cases by date of symptom onset
 3. Includes 7-day moving average
- iii. Hospital measures
 1. Number of hospital beds occupied
 2. Number of patients hospitalized with a positive or pending COVID-19 test
 3. Number of hospitals reporting difficulty acquiring personal protective equipment (“PPE”) in the next 72 hours
 4. Includes 7-day moving average
- iv. Testing measures

1. Number of people tested, number of positive tests, and percent positivity by lab report date, “PCR”¹ only
- B. VDH COVID-19 Data (<https://www.vdh.virginia.gov/coronavirus/schools-workplaces-community-locations/businesses/>)
- C. Requirement to wear face coverings
- i. Executive Order 63 (2020)
(<https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-63-and-Order-Of-Public-Health-Emergency-Five---Requirement-To-Wear-Face-Covering-While-Inside-Buildings.pdf>)
 - ii. Fifth Order
(http://www.vacourts.gov/news/items/covid/2020_0601_scv_amendment_to_fifth_order.pdf)
 - iii. Sixth Order
(http://www.vacourts.gov/news/items/covid/2020_0622_scv_sixth_order.pdf)
- D. Symptoms
- i. Anyone can have mild to severe symptoms
 1. Fever or chills
 2. Cough
 3. Shortness of breath or difficulty breathing
 4. Fatigue
 5. Muscle or body aches
 6. Headache
 7. New loss of taste or smell
 8. Sore throat
 9. Congestion or runny nose
 10. Nausea or vomiting
 11. Diarrhea

¹ “PCR” refers to “Reverse transcription polymerase chain reaction laboratory testing”

12. This list does not include all possible symptoms, but the CDC continues to update its list as it learns more about COVID-19. Additional information can be found at: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>
- ii. Emergency warning signs
 1. Trouble breathing
 2. Persistent pain or pressure in the chest
 3. New confusion
 4. Inability to wake or stay awake
 5. Bluish lips or face
- iii. The CDC provides a “self-checker” interactive dialogue on its website
 1. <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>
 2. Select “self-checker”
 3. Walks through possible symptoms and asks questions

III. Jury Summons

A. Summoning

- i. Jury pools may be smaller than pre-pandemic jury pools. Consider increasing the number of summonses sent to potential jurors
- ii. Estimate juror availability through census data, information on the outbreaks in the locality, rates of infection
- iii. On June 4, 2020, the NCSC hosted a webinar on “Reestablishing Jury Pools in the COVID-19 Era”
 1. <https://vimeo.com/426265829>
 2. This webinar discusses how to address jury pool size, ensuring that the jury pool is representative of a locality, made suggestions about FTAs and warrants, among other similar guidance

B. What information will the summons contain?

- i. The court should consider including information about the steps the individual courthouse has taken to mitigate the risk to the public, litigants, and employees
- ii. Introduce the public to “self-screening”
 1. Potential jurors should monitor themselves for symptoms

- (a) Fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, diarrhea
 - (b) This list does not include all possible symptoms, but the CDC continues to update its list as it learns more about COVID-19. Additional information can be found at: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>
 - (c) Emergency warning signs
 - (i) Trouble breathing, persistent pain or pressure in the chest, new confusion, inability to wake or stay awake, bluish lips or face
 - (d) The CDC provides a “self-checker” interactive dialogue on its website
 - (i) <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>
 - (ii) Select “self-checker”
 - (iii) Walks through possible symptoms and asks questions
2. Consider instructing jurors to take their own temperature before visiting the courthouse, and ascertain it is less than 100.4 (whatever the number is from CDC)
- iii. Inform potential jurors of the risks if they are a person in the high-risk category, if they live with or take care of someone who is in the high-risk category, etc.
1. “High-risk” individuals
- (a) According to the CDC (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk-old.html>):
 - (i) People aged 65 years and older
 - (ii) People who live in a nursing home or long-term care facility
 - (iii) People with chronic lung disease or moderate to severe asthma
 - (iv) People who have serious heart conditions
 - (v) People who are immunocompromised
 - 1. Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS,

and prolonged use of corticosteroids and other immune weakening medications

- (vi) People with severe obesity (body mass index [BMI] of 40 or higher)
- (vii) People with diabetes
- (viii) People with chronic kidney disease undergoing dialysis
- (ix) People with liver disease

(b) According to the National Center for State Courts (“NCSC”)

https://www.ncsc.org/_data/assets/pdf_file/0015/34314/Considerations-in-Resuming-Court-Operations.pdf):

- (i) Persons 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

(c) After the explanation of high-risk, consider asking jurors to answer YES or NO to a question similar to: “Do you fall into any of the high-risk categories listed above?”

C. Considerations for responding to jury summons:

- i. Consider allowing jurors to defer service to a later date if they are in the risk-category or live/take care of someone in the risk-category
- ii. Consider liberally granting excuses to jury duty
- iii. Good cause considerations:
 - 1. Waiting for test results or currently self-quarantined
 - 2. Those in the high-risk category
 - 3. Those who live with or care for someone in high-risk category
 - 4. Health care professional or someone who works in long-term care facilities or otherwise would be in contact with high-risk people
 - 5. Sole caregiver for children
 - 6. NCSC released the results of a poll on pandemic-related obstacles to reporting for jury duty:

https://nationalcenterforstatecourts.app.box.com/s/n7w8zu89tbayfjr0qz6h7mn6nr_g0x6qh/file/680542851103

- iv. Can jurors self-select out of jury duty during COVID-19?
 - 1. VDH epidemiologists recommend allowing those at risk and caring for those at risk to be permitted to self-select out
 - 2. Court should consider whether it wants to allow potential jurors to self-select out of jury duty with the following questions at this stage or during actual jury selection at the courthouse
 - (a) If high-risk people live in their household?
 - (b) If they are a sole caretaker?
 - (c) Is childcare available?
 - (d) Do they interact with high risk people for work?
 - (i) Do they work in a long-term care facility or other healthcare environment?
 - 3. Consider instituting amnesty programs so jurors can come when it is convenient to them?
 - (a) Permit jurors to pick the month that best fits their needs to serve on a jury

D. What should courts do about failures to appear at this time?

- i. Consider whether court will issue FTAs

E. Reporting

- i. Stagger reporting dates and times
 - 1. Consider coordinating with General District Courts and Juvenile and Domestic Relations courts about their own dockets and schedules
 - 2. Try to schedule large groups of people for differing days
- ii. Increase the number of juror reporting dates to decrease the number of jurors on any one date

IV. Courthouse

A. Control measure considerations

- i. Social distancing
 - 1. “Close contact” is standing less than 6 feet apart for more than 15 minutes
 - 2. Signage and floor markings

(a) CDC communication resources available on this page:

<https://www.cdc.gov/coronavirus/2019-ncov/communication/print-resources.html?Sort=Date%3A%3Adesc>

3. Consider adding enhanced barriers such as plexiglass between public, court staff, and jurors

ii. Routine cleaning

1. As recommended by the CDC, frequently touched surfaces should be cleaned every 2 hours. These include but are not limited to:

(a) Witness boxes

(b) Chairs (fabric-upholstered chairs are difficult to disinfect, consider using plastic covers or replace fabric-upholstered chairs with plastic, wood, or leather chairs)

(c) Photographs and non-paper exhibits

(d) Doors to building, restrooms (and stalls), court rooms, and jury deliberations rooms

(e) Tables

(f) Chairs

(g) Handles in stairwells

(h) Elevator buttons

2. All other surfaces should be cleaned at least once per day

3. Refer to the EPA-approved disinfectants for use against COVID-19. The list includes which directions to follow for best use and the amount of contact time required. The contact time is the “amount of time the surface should be visibly wet” in order to kill the virus.

(a) <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>

(b) Courts may also wish to consider NanoSeptic (<https://www.nanoseptic.com/>) and its possible use in the courthouses.

iii. Hand hygiene

1. Jurors should have access to hand sanitizer, but will need breaks to fully rewash their hands.

- (a) How often will jurors get breaks to rewash their hands
 - 2. Provide easily accessible hand sanitizer in multiple locations
 - 3. Information on hand hygiene: <https://www.cdc.gov/handwashing/index.html>
 - (a) Hand washing
 - (i) Wet hands with clean, running water, turn off the tap, apply soap
 - (ii) Lather hands by rubbing them together with the soap. Lather the backs of your hands, between your fingers, and under your nails
 - (iii) Scrub your hands for at least 20 seconds. Need a timer? Hum the “Happy Birthday” song from beginning to end twice
 - (iv) Rinse your hands well under clean, running water
 - (v) Dry your hands using a clean towel or air dry them
 - (b) Hand sanitizer
 - (i) Use when soap and water is not available
 - (ii) Must contain at least 60% alcohol
 - (iii) Apply the gel product to the palm of one hand (read the label to learn the correct amount)
 - (iv) Rub your hands together
 - (v) Rub the gel over all the surfaces of your hands and fingers until your hands are dry. This should take around 20 seconds.
 - 4. When to wear gloves: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/gloves.html>
 - (a) Gloves are not effective if not used properly
 - (i) If using gloves, may need to provide guidance to jurors on how to use properly
 - (b) VDH recommends hand hygiene/washing over gloves.
 - 5. Install hands-free foot pedals to open doors where possible
(https://www.ncsc.org/_data/assets/pdf_file/0024/38751/Considerations-for-Reopening-Courthouses.pdf)
 - 6. Consider posting information about hand hygiene in the building and providing written instructions for use of hand sanitizer while in courtroom
- iv. Respiratory etiquette

1. Face coverings in all settings
 - (a) Guidance on face coverings: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>
 - (b) Guidance of face shields in place of face masks:
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>
 - (i) “Since cloth face coverings may be difficult to wear for extended periods of time, especially in hot humid environments, require touching of the face and repositioning of the coverings, and may require frequent removal and replacement for water or nourishment breaks, social distancing will be very important when use of cloth face coverings are not feasible. In such instances, employers may also consider providing workers with alternatives to cloth face coverings, such as face shields.”
2. Evaluate need for lids on toilet seats to prevent spread of aerosols
3. Air filtration and ventilation
 - (a) Most of the information that is currently available on airflow and disease spread focuses on healthcare setting. Helpful information from these documents can be applied to other settings.
 - (b) CDC recommendation of ventilation:
 - (i) Consider opening windows in courtrooms that may have them
 - (ii) Consider improving the engineering controls using the building ventilation system. This may include some or all of the following activities:
 1. Increase ventilation rates
 2. Ensure ventilation systems operate properly and provide acceptable indoor air quality for the current occupancy level for each space
 3. Increase outdoor ventilation, using caution in highly polluted areas. With a lower occupancy level in the building, this increases the effective dilution ventilation per person
 4. Disable demand-controlled ventilation

5. Further open minimum outdoor air dampers (as high as 100%) to reduce or eliminate recirculation. In mild weather, this will not affect thermal comfort or humidity. However, this may be difficult to do in cold or hot weather.
 6. Improve central air filtration to the MERV-13 or the highest compatible with the filter rack, and seal edges of the filter to limit bypass
 7. Check filters to ensure they are within service life and appropriately installed
 8. Keep systems running longer hours, 24/7 if possible, to enhance air exchanges in the building space
- (c) From the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE):
- (i) ASHRAE HVAC standards are commonly referenced in local building codes and universally accepted nationwide
 - (ii) Transmission of SARS-CoV-2 through the air is sufficiently likely that airborne exposure to the virus should be controlled. Changes to building operations, including the operation of heating, ventilating, and air-conditioning systems, can reduce airborne exposures. Ventilation and filtration provided by heating, ventilating, and air-conditioning systems can reduce the airborne concentration of SARS-CoV-2 and thus the risk of transmission through the air.
 - (iii) Add portable air filtration, ventilation, and/or ultraviolet germicidal irradiation devices along with fans in high-density spaces such as waiting rooms, prisons, and shelters.
 - (iv) https://www.ashrae.org/file%20library/about/position%20documents/pdf/infectiousaerosols_2020.pdf
 - (v) https://www.ashrae.org/file%20library/technical%20resources/ashrae%20journal/2020journaldocuments/72-74_ieq_schoen.pdf
- (d) According to VDH, ideally, facilities should be equipped with air exchange systems using high efficiency filters. Utilize cross-draft airflow if possible.

Consider the use of shaded outdoor spaces when conditions allow with cross-draft airflow augmented by evaporative coolers as an outdoor alternative.

(i) See “air filtration” section of CDC’s guidance for cooling centers:

<https://www.cdc.gov/coronavirus/2019-ncov/php/cooling-center.html>

(e) Should courts assess the introduction of air purifying equipment?

(f) Consider consulting with HVAC professional about the court’s system?

v. Screening/monitoring for symptoms

1. Self-monitor for symptoms (fever, cough, shortness of breath, etc.)

2. Check temperature twice a day

3. Will court provide the checklist from VDH or CDC for the jurors to check off that they have done this?

(a) Attached below

<https://www.vdh.virginia.gov/content/uploads/sites/182/2020/06/Visitor-Screening.pdf>

(b) “COVID-19 Screening Protocol: Survey for Patrons”

(i) YES or NO, are you currently experiencing any of the following symptoms?

(ii) A new fever (100.4°F or higher) or a sense of having a fever

(iii) A new cough that you cannot attribute to another health condition

(iv) New shortness of breath or difficulty breathing that you cannot attribute to another health condition

(v) New chills that you cannot attribute to another health condition

(vi) A new sore throat that you cannot attribute to another health condition

(vii) New muscle aches (myalgia) that you cannot attribute to another health condition, or that may have been caused by a specific activity (such as physical exercise)

(viii) A new loss of taste or smell

(ix) In the past 14 days, have you had close contact (within about 6 feet for 15 minutes or more) with someone with suspected or confirmed COVID-19?

- (x) Have you had a positive test for the virus that causes COVID-19 disease within the past 10 days?
- (xi) Anyone who answers YES to any of the patron screening questions should not be permitted to enter the facility
- 4. If the court does not want jurors to self-monitor, the court will need healthcare workers to perform screening at the court
- vi. Excluding the sick and protect the high-risk
 - 1. Identify high risk jurors, determine whether these jurors will be excluded altogether or in what circumstance
 - 2. How to identify if juror is in high-risk category or if they live in a household or care for someone who is high-risk?
 - 3. Are they in a profession where they would interact with high-risk persons?

B. Entering courthouse

- i. What will entrances and exits look like?
 - 1. Flow of traffic (single door entrance, single door exit?)
 - 2. How will the court keep physical distance?
 - (a) Consider the use of tape markings on the floor both inside and outside of the courthouse to ensure physical social distancing
 - 3. Will there be an entrance dedicated to jurors versus other courthouse visitors?
 - (a) Consider dividing the entrances/exits of the courthouse by reason for visiting courthouse such as jury duty, traffic court, visiting clerk's office, etc.
- ii. How will a person entering the courthouse verify that he or she does not have a fever or symptoms?
 - 1. Who is the "point person" for the court for the public to contact if exhibiting symptoms?
 - 2. Who will the juror or patron tell "I have a fever" or "I have been coughing" so they do not enter the building and possibly infect others?
 - 3. Consider setting up a phonenumber for this purpose
 - 4. Consider delegating this task to a specific person so they may answer questions, provide resources, and coordinate with the public
- iii. Personal protective equipment ("PPE")

1. Will the court provide it?
 - (a) If so, who will they provide it to? Just jurors or any patrons/litigants?
 - (b) Gloves, masks, face shields?
 - (i) Consider the use of face shields as an alternative for those who cannot wear a face mask
 - (ii) “Since cloth face coverings may be difficult to wear for extended periods of time, especially in hot humid environments, require touching of the face and repositioning of the coverings, and may require frequent removal and replacement for water or nourishment breaks, social distancing will be very important when use of cloth face coverings are not feasible. In such instances, employers may also consider providing workers with alternatives to cloth face coverings, such as face shields.”
2. What items will the court require?
 - (a) Beyond face masks, will the court require gloves?
 - (b) Will jurors bring their own hand sanitizer?
3. How will litigants and lawyers communicate privately?
 - (a) Consider creative solutions to the problem of lawyers needing to consult with litigants throughout the trial
 - (i) Use of technological devices
 1. Can the lawyer and litigant communicate through the use of typing on a cell phone, tablet, or laptop?
 - (ii) Use of brief recesses outside of the courtroom
 - (iii) Use of headsets generally used by interpreters and translators

C. Common areas

- i. How will the court keep visitors 6 feet apart?
 1. Will the court use tape on the floor?
- ii. Elevators
 1. If the court has an elevator, can it accommodate more than one person while social distancing?
 - (a) The CDC defines “close contact” as standing within 6 feet for more than 15 minutes

- (b) How long is the elevator trip?
 - (c) Could more than one patron use the elevator if the elevator trip lasts only for a few minutes?
- 2. If not, will the court consider allowing multiple patrons on the elevator if wearing masks and for a brief period?
- 3. If a multi-story courthouse, how will the court minimize trips to multiple floors?
- 4. Elevator buttons must be regularly cleaned
- 5. Consider providing hand sanitizer near elevators
- iii. Stairwells
 - 1. How many people can use the stairwell at one time?
 - 2. How will the court ensure physical distance?
 - 3. Consider providing hand sanitizer near stairwells
- D. Jury selections
 - i. How many people will be called for a jury pool at a time?
 - ii. What rooms will be used?
 - 1. What space is large enough to hold the jury pool?
 - 2. Can court make outdoor area available for participants to congregate instead of using one of its larger rooms for this purpose?
 - (a) Consider using party tents or other outdoor items to create a gathering point that is also shaded
 - 3. Consider other creative solutions to this problem
 - iii. What questions should be asked of jurors during this COVID-19 pandemic?
 - 1. If high-risk people live in their household?
 - 2. If they are a sole caretaker?
 - 3. Is childcare available?
 - 4. Do they interact with high risk people for work?
 - (a) Do they work in a long-term care facility or other healthcare environment?
 - iv. Are jurors permitted to remove their mask for the jury selection process?
 - 1. Jury selection often involves observing the face of jurors

2. If a potential juror removes his or her mask for the jury selection process, VDH recommends the distance between the potential juror and others be increased to at least 10 feet
3. After initial selection, then return to masks as much as possible

E. Courtroom

- i. Which room(s) can hold a jury with social distancing implemented?
- ii. What will the courtroom look like?
 1. Where will jurors sit?
 2. Where will public sit?
 - (a) If court cannot permit public to view, what does it do?
 - (b) Will courts be able to use video streams to permit the public to sit in a different room for spacing?
 3. How will court keep jurors 6 feet apart?
 4. Will court use plexiglass as additional control method?
- iii. Exhibits
 1. Will court promote the copying of exhibits in multiples to prevent jurors from having to pass them and potentially spread germs?
 - (a) Consider hosting a pre-trial conference in which parties can produce multiple copies of the exhibits for the jurors
 2. Does court have technology that would allow it to put exhibits on a screen?
 - (a) Consider television screens and other monitors to display exhibits
 - (b) In a courtroom that generally does not have a screen, consider repurposing computer and television monitors to place in front of jury box
 3. Can exhibits be placed in an area where jurors can walk up to view it and not have to pass it?
 - (a) Consider using a table for any exhibits that cannot be reproduced or duplicated
 - (b) Allow jurors to walk to table one at a time to view the exhibit without passing between them to limit exposure risk
- iv. How will court have a sidebar?
 1. Will judge, lawyers, reporter leave room to discuss?

2. Will jury be removed so as to allow the sidebar to occur?
 - v. Can witnesses remove their mask?
 - vi. Can litigants remove their mask?
 1. Particularly, if an attorney believes that the jury needs to see a criminal defendant's face, what will the court do?
 2. Face shield?
 3. Could the defendant sit further away?
 - vii. Protocol for jurors going to the restroom?
 1. One person at a time?
 2. Will there be a restroom provided just for the jury trial participants?
 3. How frequently will jurors be allowed to fully wash hands?
 - viii. Feeding jurors
 1. Will court provide food?
 2. Will court permit jurors to bring their own food from home?
 3. Will court allow jurors to leave courthouse to purchase own food?
 - ix. Jury instructions
 1. Will multiple copies be made for the jurors?
 - x. Jury deliberations
 1. What room would accommodate jury deliberations with social distancing?
 - (a) Consider using the courtroom for jury deliberations and permitting the jury to remain in the courtroom while deliberating
 2. How to communicate jury questions to the judge?
 - xi. What if the entire courthouse needs to be shut down for a period?
 1. What protocol for notifying jurors/litigants/public?
 2. How transparent will court be about the closure?
 3. What happens to litigants?
- F. Protocol if a person in the courthouse develops symptoms
- i. OES released guidance on "What to do if an employee tests positive?" (http://oesinet/courtadmin/emergency_prep/covid19/2020_0407_employee_tests_positive_procedure.pdf) which may be helpful in addressing the questions in this section for other individual participants who develop symptoms or test positive:

1. Require any employee who tests positive to stay home from work, urge the employee to follow medical advice, remain home, self-quarantine
2. District court supervising authority should notify the OES Department of Human Resources and provide the employee information on leave options. Circuit court employees should notify their supervising authority and consult with their human resources representative.
3. Identify all areas in the office where the COVID-19 positive employee was physically present during the two-week period before testing positive
4. Arrange for a thorough cleaning and sanitizing of the area where the employee(s) worked per guidelines issued by the CDC at:
<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>
 - (a) “Cleaning” refers to the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection.
 - (b) “Disinfecting” works by using chemicals, for example EPA-registered disinfectants (attached) to kill germs on surfaces. This process does not necessarily clean dirty surfaces or remove germs. But killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.
 - (c) At a “facility that does not house people overnight”
 - (i) Close off areas visited by the ill persons. Open outside doors and windows and use ventilating fans to increase air circulation in the area. Wait 24 hours or as long as practical before beginning cleaning and disinfection.
 - (ii) Cleaning staff should clean and disinfect all areas and shared equipment used by the ill persons, focusing especially on frequently touched surfaces
 - (d) How to clean and disinfect:
 - (i) Hard surfaces (non-porous)
 1. If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection

2. For disinfection, most common EPA-registered household disinfectants should be effective. Follow the manufacturer's instructions for all cleaning and disinfection products for concentration, application method and contact time.
 3. Again refer to the list of EPA-approved disinfectants and identify the amount of time a surface must remain wet in order for the disinfectant to be effective. Many of these products require the surface to remain wet for 10 minutes, while others will work in 2 minutes or less.
 - a. The list is available: <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>
- (ii) Soft surfaces (porous)
1. Examples: carpeted floor rugs
 2. Remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces
 3. After cleaning, if items can be laundered, launder items in accordance with the manufacturer's instructions using the warmest appropriate water setting for the items, then dry completely
 4. There are EPA-approved products suitable for porous surfaces
 - a. <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>
- (iii) Electronics
1. Examples: tablets, touch screens, keyboards, remote controls, etc.
 2. Remove visible contamination if present
 3. Follow manufacturer's instructions for all cleaning and disinfection products
 4. Consider use of wipeable covers for electronics
 5. If no manufacturer guidance is available, consider the use of alcohol-based wipes or sprays containing at least 70% alcohol to disinfect touch screens
 6. Dry surfaces thoroughly to avoid pooling of liquids

- (e) Cleaning staff and others should clean hands often
- 5. Ask employee to identify individual coworkers and others they may have been in “close contact” with within 48 hours before the COVID-19 positive employee became symptomatic
- 6. Alert other employees as soon as possible and urge them to seek medical care as necessary and to consult their own doctors
 - (a) The CDC recommends that asymptomatic individuals who have been in “close contact” for a prolonged period of time with an individual “with symptomatic COVID-19 during [the] period from 48 hours before symptoms onset until [that symptomatic individual] meets criteria for discontinuing home isolation” to stay home until 14 days after the last exposure to such individual
 - (b) Healthcare information remains confidential under the Americans with Disabilities Act (“ADA”) so the employer should tell everyone who was possibly exposed at work to the positive employee *without* revealing that employee’s identity
- 7. When communicating with those who have been in close contact, be aware that this is a sensitive topic, and it is probably best to alert them individually by phone call. It is important to act quickly so if the court cannot reach them personally, then it may be necessary to email them as well
 - (a) Consider using electronic means in order to communicate with jurors, litigants, attorneys, and all others who may have been exposed to someone with COVID-19
- 8. Those in the close contact group may have a lot of questions. Some period of time has likely passed since their exposure to the COVID-19-positive colleague, so they may ask if they or their family members are at risk. Don’t speculate. Instead, refer them to their own doctor and to the CDC website. What the court *can* do is reassure them you will be supportive and will provide information about resources, leave, etc.
- 9. Once the court has spoken with both the employee who tested positive and their close contacts, consider alerting others in the workplace. It is important to respect

the confidentiality of both the positive-tested employee and anyone in the close-contact group.

(a) Provide other employees the facts: “The person tested positive on a certain date and is now self-isolating. The close contacts have been told and were asked to leave the workplace and self-quarantine. If you were not already told you were a close contact, then you are not one. If you have questions about COVID-19, or your situation, please call your doctor and look at the CDC website. Once the work area has been cleaned and it is determined it is safe to return to work you will be notified.”

10. It is also recommended that the court notify others who occupy the same building and/or interact frequently with court or clerk’s office, that an employee of the court or clerk’s office has tested positive for COVID-19. This notice should be provided without disclosing the name of the employee who tested positive.
11. Before other employees return to work, the judge/clerk should make a plan to remain operational and take steps to limit the number of people in the courtroom or office at any one time; for example, by locking doors and admitting one or two people at a time and/or by posting notices with contact information and requiring customers/court users to schedule an appointment. Courts and clerks should handle only the most urgent matters and clerks should use secure drop boxes to minimize in-person contact. Telephone, e-mail and two-way audio-visual communications should also be used as much as possible to minimize in person contact.
12. Judges/managers should consider staggering shifts to minimize the number of employees in the court/office at any one time. It may also be necessary to reduce hours that the clerk is open to the public in order to process material submitted via drop box, email, etc. It may be helpful to use physical markings such as tape on the floor to maintain six feet of distance from customers. Courts and clerks’ offices can remain operational by posting a public notice of how all matters will be handled in order to minimize in-person contact, and be carefully following precautions recommended by the CDC.

13. All court employees, including those who do not have symptoms of the COVID-19 virus and have not been in “close contact” with anyone who has tested positive, should continue to practice social distancing and hand washing, should routinely sanitize work surfaces and take other precautionary measures, and should continue to monitor themselves and their family or other household members for any symptoms of the COVID-19 virus.
 14. Other business-specific recommendations from the CDC:
<https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>
- ii. If a juror develops symptoms after the jury is empaneled, during first day, during multi-day trial:
1. Will they be tested?
 2. Is rapid testing available in the locality?
 3. Consider whether this results in a continuance or a mistrial.
 - (a) How long is the trial?
 - (b) How many days into the trial? Does that matter?
 - (c) Will jury cease for 14-days?
 - (d) Will jury have to quarantine?
 - (e) Who else in the building would have to quarantine?
 - (f) Consider the use of alternate jurors
 - (g) Consider the use of a reduced number of jurors (such as 5) by agreement of the parties
 - (h) Consider mediation instead of jury trials
 4. If juror tests positive, the room should be vacated, cleaned, and left empty for at least 24 hours as per the information from OES and the CDC outlined in III(E)(i) above.
 5. What would happen to the rest of the building?
 - (a) Would the entire courthouse shut down?
 - (b) What would the cleaning look like in other areas?
 - (i) Restrooms
 - (ii) Common areas

- (iii) Other rooms the juror may have visited
- 6. How many people do these jurors come into contact with?
 - (a) Not simply in the courthouse, but on their way there as well. If they take public transportation, who is at risk of being exposed if juror develops symptoms on day 3 of a 5-day jury trial but is asked to continue with the trial?
- 7. How will the court notify people the juror may have come into contact with?
 - (a) Close contact is standing within 6 feet of an infected person for more than 15 minutes
 - (i) Consider how long the jurors are sitting 6 feet apart during the day
 - (ii) Consider the surfaces the juror may have touched that others may have also touched
 - (iii) Consider the size of the room, the number of people in the room, the proximity, and the length of time
 - (b) Contact tracing
 - (i) Who will do this?
 - (ii) Will there be a designated person?
 - (c) Any public transportation, maintenance, food workers that they may have interacted with
 - (d) Other patrons of the courthouse on the days the juror was in the courthouse
 - (e) Courts will need to comply with any HIPAA as it relates to COVID-19
 - (i) <https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>

iii. Sheriffs

1. How to protect sheriffs and sheriffs' deputies who *must* be within 6 feet of inmates for extended period of time?
2. What PPE is required?
3. What if a sheriff or sheriff's deputy tests positive?
 - (a) How many criminal defendants would this impact?
 - (b) How to trace which criminal defendants/inmates are exposed?

(c) Any rooms the sheriff or sheriff's deputy was in should be vacated, cleaned, and left empty for at least 24 hours as per the information from OES and the CDC outlined in III(E)(i) above.

4. What cleaning protocols for the transport vehicles?

(a) Consider incorporating the information provided in III(E)(i) above on how to clean hard surfaces.

5. How is an inmate who is exposed to this many people being monitored?

(a) Does the inmate remain in isolation throughout jury trial?

(b) Does the inmate interact with other inmates or other deputy sheriffs?

iv. Clerks

1. How to protect clerks and deputy clerks who do the interactions?

(a) Plexiglass in clerk's office?

(b) Barriers between clerks/litigants/jurors/judges?

2. What if a clerk or deputy clerk tests positive?

3. If the clerk or deputy clerk is not the clerk in the jury trial courtroom, what effect?

v. Court reporter

1. Where will the court reporter sit in the courtroom in order to be able to hear all of the participants?

2. What if a court reporter tests positive?

(a) Are there replacements?

(b) Does the trial stop?

(c) Depending on layout, who was in close contact with the court reporter?

vi. Lawyers

1. What if a litigant's attorney tests positive?

(a) Does the trial stop?

2. How would technology factor in?

(a) Consider how the court might be able to incorporate technology to allow the attorney to video call or teleconference

vii. Litigant

1. If a litigant tests positive, what effect?

(a) Does the trial stop?

(b) Continuance? Mistrial?

2. Particularly if a criminal defendant, must the trial be stopped?

(a) If not, how will the criminal be able to participate in his own trial?

(b) How would technology factor in?

(i) If criminal defendant, considerations must be made about defendant's ability to effectively participate in his or her own trial.

viii. Judges

1. What if a judge tests positive?

2. If the judge who tested positive is another judge in the courthouse but not directly involved in the trial, what effect?

3. If the positive judge is the presiding judge, what effect?

(a) Substitution? Continuance? Mistrial?

VDH Interim Guidance for Daily COVID-19 Screening of Patrons

Businesses and employers can help prevent the spread of COVID-19 by following the CDC's [Interim Guidance for Business and Employers Responding to Coronavirus Disease 2019](#). An important part of that is ensuring ill patrons are not permitted to enter the establishment. Businesses should post signage at the entrance that no one with a fever or symptoms of COVID-19, or known exposure to a COVID-19 case in the prior 14 days, is permitted in the establishment. For businesses **required** to screen patrons prior to admission to the venue/facility, the screening questions (page 2, below) can be used as a guide for assessing patrons. Businesses and patrons should know the [symptoms of COVID-19](#) and follow the CDC guidelines for [what to do if they are sick](#) with symptoms of COVID-19. VDH recommends that ALL businesses develop a plan for healthcare support if a patron becomes ill.

If a patron answers YES to any of the symptom screening questions, the business should activate the emergency protocol for COVID-19.

- Immediately isolate the ill person from others and ask that person to wear a facemask or cloth face covering, if not already doing so. Patrons may already be required to wear face coverings under Executive Order [63](#).
- Determine if the person needs medical care.
- Most people with COVID-19 develop [mild to moderate illness](#) and do not require medical care. In these situations, the ill person can be sent home to self-isolate. If the person is not severely ill, but medical care seems indicated, the person should call his or her healthcare provider before visiting the provider's office; if the person does not have a healthcare provider, the person should first call an urgent care center or hospital emergency room.
- If the person is experiencing any medical emergency or emergency warning signs of COVID-19 including, but not limited to, trouble breathing, persistent pain or pressure in the chest, new confusion or inability to arouse, or bluish lips or face, call 9-1-1 immediately and notify the operator that the person might have COVID-19.

All Patrons Should be Educated* On:

- Proper [hand hygiene](#);
- Wearing a face covering when entering, exiting, traveling through, and spending time inside businesses according to [Executive Order 63](#);
- Maintaining appropriate physical distance from persons not living in the same household (at least 10 feet for establishments with physical activity, singing, or cheering and at least 6 feet for all other settings);
- Limiting physical contact with others, as much as possible; and
- Limiting contact with surfaces, as much as possible.

*Education may occur through verbal instruction or signage provided in common areas where all patrons will view the information.

Additional COVID-19 Resources

- VDH website on COVID-19 www.vdh.virginia.gov/coronavirus/
- [VDH COVID-19 Business Website](#) (with a Business Toolkit that includes signage resources)
- [Executive Order 65](#) and [Phase Two Guidelines for All Business Sectors](#)
- [Persons at Higher Risk for Severe COVID-19](#)

COVID-19 Screening Protocol: Survey for Patrons

YES or NO, are you currently experiencing any of the following symptoms?	Yes	No
A new fever (100.4°F or higher) or a sense of having a fever	<input type="checkbox"/>	<input type="checkbox"/>
A new cough that you cannot attribute to another health condition	<input type="checkbox"/>	<input type="checkbox"/>
New shortness of breath or difficulty breathing that you cannot attribute to another health condition	<input type="checkbox"/>	<input type="checkbox"/>
New chills that you cannot attribute to another health condition	<input type="checkbox"/>	<input type="checkbox"/>
A new sore throat that you cannot attribute to another health condition	<input type="checkbox"/>	<input type="checkbox"/>
New muscle aches (myalgia) that you cannot attribute to another health condition, or that may have been caused by a specific activity (such as physical exercise)	<input type="checkbox"/>	<input type="checkbox"/>
A new loss of taste or smell	<input type="checkbox"/>	<input type="checkbox"/>
In the past 14 days, have you had close contact (within about 6 feet for 15 minutes or more) with someone with suspected or confirmed COVID-19?[§]	<input type="checkbox"/>	<input type="checkbox"/>
Have you had a positive test for the virus that causes COVID-19 disease within the past 10 days?	<input type="checkbox"/>	<input type="checkbox"/>

From VDH/OEPI/DSI June 17, 2020 (<https://www.vdh.virginia.gov/content/uploads/sites/182/2020/06/Visitor-Screening.pdf>)

Adapted from materials from the Washington and Arizona Departments of Health

*This document does not contain the “COVID 19 Optional Patron Agreement: Infection Control Practices”