

## **Supreme Court Mandates and Guidance Regarding Resuming Jury Proceedings**

This document provides mandates and guidance for courts resuming jury proceedings. To support court planning, the Supreme Court developed the Ad Hoc Jury Task Force (Jury Task Force) and charged the Jury Task Force with analyzing issues courts will face when jury operations resume. The Jury Task Force recommended best practices regarding conducting jury trials and grand jury proceedings while protecting the safety of court participants. The Jury Task Force also recommended best practices for the jury summons process, including securing adequate jury pools and communicating with the public about changes in the jury process. The Kansas Supreme Court developed this document after considering the Ad Hoc Jury Task Force Report dated July 31, 2020 (Jury Task Force Report).

The Supreme Court gratefully acknowledges the Jury Task Force's recommendations. The Jury Task Force's expeditious work will help courts take measures to reduce the spread of the virus and protect the health and safety of court participants while providing access to justice in Kansas. Whether a court implements many of the Jury Task Force's recommendations will depend on physical layout, local needs, and available resources. The Supreme Court expresses its continued appreciation for the critical partnerships between individual counties and local court officials.

2020-PR-123 requires each district court to submit to the Office of Judicial Administration a plan for resuming jury trials. The Office of Judicial Administration will review the plan to determine if each mandate in this document is provided for in the plan.

Section A of this document states the mandatory requirements for a district's plan. Section B discusses additional physical distancing, cleaning, and sanitation considerations. Section C explains when a court must hold a jury trial in person and when a court may virtually hold proceedings involving jurors. Section D provides direction on collecting and sharing data on virtual proceedings.

The Supreme Court may supplement or modify these mandates and guidance as information is collected from early trials and as health guidelines change.

### **A. Mandatory requirements for resuming jury trials**

Chief Judges must develop plans that, at a minimum, provide for the following:

1. Monitoring whether a larger number of jury summons than typical should be issued based on factors specific to the community.

2. Including with the initial juror summons a letter communicating steps the court is taking to keep jurors and court participants safe, what prospective jurors need to do to seek deferral or be excused, how the process will work once jurors arrive to court, and explaining who a prospective juror should contact and how to do so if the individual has questions about the process.
3. Modifying jury questionnaires to include:
  - A supplemental screening portion that relates to the venire member's health conditions, health conditions of persons in the venire member's immediate household or care, contact with COVID-19 positive individuals, and travel that may preclude jury service;
  - An explanation that the supplemental screening portion is not subject to the Kansas Open Records Act but will be accessible to the parties and the judge in any proceeding; and
  - A method by which venire members can update their information with the court.
4. Determining how to prevent disclosure of sensitive health information on questionnaires during voir dire.
5. Handling deferral and excusal from jury service on an individualized basis instead of creating blanket policies.
6. Implementing the following physical distancing measures:
  - The location for the proceeding must allow for physical distancing so people can remain at least six feet apart or utilize engineering adjustments approved by a local health officer (courts may enter an order relaxing this requirement for a criminal defendant and defense attorney if the defendant and defense attorney mutually agree);
  - Ensure members of the public, court employees, and jury trial participants exercise appropriate physical distancing in any court office, courtroom, or other portion of any facility being used for the proceeding. These steps must include marking six-foot distances in any area where people are likely to congregate or utilizing engineering adjustment approved by a local health officer. Any public area that cannot be adapted for appropriate physical distancing must be closed.

7. Providing details about each courtroom or court facility where grand jury proceedings, voir dire, or jury trials will take place.
8. Explaining how physical safety and security measures similar to those in place at the courthouse are achieved if a non-court space is used.
9. Establishing a voir dire process that implements the physical distancing measures set out in Mandate (A)(6) and considers measures to reduce group interaction, including staggered venire panels.
10. Considering the increased timeframe needed to screen venire members entering the jury selection location.
11. Considering whether to increase the number of alternate jurors for each trial.
12. Posting signage throughout the courthouse to communicate safety measures implemented in court offices and courtrooms.
13. Implementing the following cleaning measures:
  - Courtrooms, auxiliary areas used for trial proceedings, and areas used for jury deliberations and breaks (including restrooms, eating areas, stairwells, and elevators) must be sanitized at least every day and between hearings. High-touch surfaces such as chairs, tables, door handles, counters, etc., must be wiped down frequently with disinfectant wipes.
  - Removing all surplus furniture, fixtures, and conveniences from the courtroom to minimize the need for sanitization.
  - Sanitizing the witness stand, including the seat and microphone, after each witness testifies.
  - Removing or sanitizing the lectern and microphone after each individual's use.
  - Providing storage for jurors' personal belongings and items acquired during the trial, such as pens and notebooks, using resealable bags for each individual juror. Each evening court staff should collect and securely store the items, then return the bags to the individual juror the next day. Alternatively, jurors could be instructed to bring their own writing instruments, water bottles, snacks, and lunches. When provided by the court or the individual juror, each jurors' items should be stored separately.

- Providing hand sanitizer and disinfectant wipes in all areas used by jurors, if possible.
  - Restricting the number of people in elevators and stairwells and posting signage to advise of such restrictions if practicable.
  - Posting all signage regarding cleaning and safety protocols in English and Spanish and in compliance with the Americans with Disabilities Act (ADA).
14. Implementing personal protective equipment protocols that comply with Kansas Supreme Court Administrative Orders, including 2020-PR-124 and its amendments.
  15. Including remarks in jury orientation explaining the basic safety procedures all court users must practice:
    - Sanitation: Explain the sanitation procedures used by the district court, what is being cleaned, and how.
    - Physical Distancing: Remind jurors to maintain adequate physical distancing at all times. Courts may consider language explaining that court security or other personnel will monitor all lines and staging areas to ensure that all prospective jurors are engaging in physical distancing.
    - Hygiene: Remind all prospective jurors to practice robust hygiene, including washing hands frequently for at least 20 seconds.
    - Symptomatic Jurors: Explain that jurors who do not feel well or who have COVID-19 symptoms must stay home and should contact court staff for further reporting instructions. Give guidance about whom to contact and how, whether by phone or email.
  16. Explaining how and where sidebars will occur with physical distancing.
  17. Explaining how and where a defendant may speak to his or her attorney in private during proceedings and during breaks.
  18. Developing written protocols for how exhibits will be handled between attorneys and court staff, and by jurors.
  19. Developing written protocols for the use of interpreters.

20. Explaining how the public will access the proceeding through seating in the courtroom, a livestream broadcast, or allowing observers into the remote court proceeding. If seating in the courtroom, livestream broadcast, or allowing observers into the remote court proceeding are not possible, a closed-circuit broadcast transmitted to another area of the courthouse must be made available, if practicable. As a last resort, if none of the mentioned options are available, a recording or transcript of the proceeding must be made available as soon as practicable.

If the court allows observers into the remote court proceeding, the court should mute them, thereby allowing observation of the open court proceeding but not participation. To protect against cybersecurity threats, instructions to on how an observer may join the remote proceeding should be provided directly upon request.

21. Handling of the venire and jury from entry into the facility through discharge, including items such as:
  - Physical distancing requirements—both for the room in which the proceeding is being conducted and during recesses;
  - Assuring jurors' ability to hear and see witnesses and exhibits;
  - How food, if any, will be handled and delivered to jurors;
  - Where the jury will deliberate, how the court will ensure juror deliberations are not overheard, and how the jury will leave for and return from its deliberation;
  - Procedures for the venire and jurors to report any of the situations provided in numbered paragraph 15 of Administrative Order 2020-PR-123 and actions for response by the court and parties; and
  - A review of the above procedures from front door to jury room with court staff, attorneys, and county and facility personnel (i.e., security and screening personnel).
22. Addressing health and safety issues that may arise during the trial such as symptomatic jurors or court participants, or safety noncompliance by jurors or court participants.

## **B. Additional Physical Distancing, Cleaning, and Sanitation Considerations**

1. Courts should consider the additional physical distancing, cleaning, and sanitation measures recommended on page 17 of the Jury Task Force Report.
2. To accomplish the requirement to maintain six feet of physical distance or utilize engineering adjustments approved by a local health officer set out in 2020-PR-123, courts should consider the recommendations on utilizing or reconfiguring all available space set out on pages 20-21 of the Jury Task Force Report. Courts should also consider the guidance on jury selection on pages 27-28 of the Jury Task Force Report.

## **C. In person versus virtual proceedings**

Based on the recommendations of the Jury Task Force, courts:

1. Must conduct criminal trials in person unless a defendant clearly waives any applicable constitutional and statutory rights, including those discussed on pages 25-26 of the Jury Task Force Report;
2. Should conduct jury selection in-person in most cases;
3. Should consider conducting civil trials virtually if procedural requirements are waived, technology is available, the parties consent, and the case is conducive to a remote proceeding; and
4. Should consider conducting grand jury proceedings virtually, if the court can maintain secrecy regarding jury selection and deliberations.

## **D. Collecting and Sharing Data on Virtual Proceedings**

Individual judges and districts across Kansas (as well as any criminal defendants, civil litigants, and their counsel) who intend to explore and evaluate whether virtual jury proceedings are feasible may use the recommendations in the virtual best practices attachment to the Jury Task Force Report.

Each participating judge should consider statutory and constitutional issues that may arise during a virtual proceeding.

Each participating judge and district should report its results, findings, and recommendations, including specific information regarding technical issues and fiscal impacts, to the Office of Judicial Administration. Participating attorneys should also be provided a means to submit feedback at the conclusion of any jury trial conducted virtually

either in whole or in part. OJA should then synthesize the information into quantitative data reports and best practices for future use.