

Dated at Waukesha, Wisconsin this 2nd day of July, 2020.

BY THE COURT:



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Jennifer R. Dorow  
Chief Judge  
3<sup>rd</sup> Judicial District

STATE OF WISCONSIN

CIRCUIT COURT  
THIRD JUDICIAL DISTRICT

WAUKESHA COUNTY  
20-SO-25 (JT) (67)

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**IN THE MATTER OF:  
COVID-19 OPERATING PLAN FOR  
WAUKESHA CIRCUIT COURT  
JURY TRIALS**

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**WHEREAS:** The Wisconsin Supreme Court, in light of the COVID-19 Statewide and National states of emergency, has entered certain orders related to the operations of the Circuit Court regarding jury trials; and

**WHEREAS:** On March 22, 2020, the Wisconsin Supreme Court ordered that although the courts of the State of Wisconsin remain open, all civil and criminal jury trials scheduled to begin before May 22, 2020 are to be continued and rescheduled by the assigned judge to a date after May 22, 2020; and

**WHEREAS:** On March 31, 2020, the Wisconsin Supreme Court issued Interim Rule 20-02 which suspended statutory deadlines for conducting non-criminal jury trials until further order of the court; and

**WHEREAS:** On May 22, 2020, the Wisconsin Supreme Court ordered that March 22, 2020 order regarding the suspension of jury trials, that Interim Rule 20-02 regarding suspension of deadlines for non-criminal jury trials, and the April 15, 2020 amended order regarding remote hearings, are extended for each circuit court until that circuit shall have prepared an operational plan for the safe resumption of in-person proceedings and jury trials and the plan shall have been approved by the chief judge of the applicable administrative district; and

**WHEREAS:** On May 22, 2020, the Wisconsin Supreme Court outlined the specific criteria required in each circuit court operational plan as to how that circuit court will conduct jury trials so as to reduce to the greatest extent possible the risk of transmission of the virus that causes COVID-19 and that promotes the health and safety

of all those present in the courtrooms, jury rooms, and other court related confined spaces of that circuit court; and

**WHEREAS:** On June 19, 2020, the Waukesha County Judiciary, submitted an operational plan which contains a statement regarding communication with local justice partners regarding the safe resumption of jury trials; a requirement that all persons who are present in the courtrooms, and other court-related confined spaces shall wear face coverings, except as authorized on the record by said judge; outlines practices for appropriate sanitation/hygiene of frequently touched surfaces and the hands of participants; specifies that notices regarding face coverings and availability of hand sanitizer and disinfecting wipes/sprays in court-related areas will be appropriately posted and noticed; and incorporates many recommendations made in the Final Report of the Chief Justice's Wisconsin Courts COVID-19 Task Force;

**THEREFORE, IT IS ORDERED:** The operational plan of the Circuit Court of Waukesha County (see below) regarding procedures and practices for conducting jury trials during the 2020 public health emergency and pandemic COVID-19 is hereby approved and is effective July 7, 2020. All previous orders identified in the May 22, 2020 order of the Wisconsin Supreme Court related to the suspension of jury trials cease to apply to the Circuit Court of Waukesha County. The Circuit Court must continue to follow its operational plan as approved by the chief judge until further notice of the Wisconsin Supreme Court.

**IT IS FURTHER ORDERED:** That the provisions of this order shall be subject to further modification or termination by future orders.

**IT IS FURTHER ORDERED:** That 20-SO-06 (67) B is rescinded in its entirety. Jury trials may resume on July 7, 2020 subject to the operational plan attached hereto.

## **Operation Plan for Resumption of Jury Trials Waukesha County**

**In order to meet the needs of Waukesha County, its citizens, the Waukesha County Court System, the Court's staff and all those entering the Courthouse in the midst of the COVID-19 Pandemic, the Circuit Courts have met and consulted with community representatives and stakeholders to prepare for the resumption of jury trials.**

The Plan is adopted as set forth herein after consulting with the following:

- Chief Judge
- Jury Judge
- Clerk of Circuit Court
- District Court Administrator
- District Attorney
- Victim Witness
- SPD Regional Chief
- Sheriff's Department
- County Executive
- County Board Chair
- Department Heads
- Health and Human Services, Public Works and Emergency Management
- Public Health
- Corporation Counsel
- Private Bar
- Department of Corrections Regional Chief
- CJCC
- Public Information Officer

### **General**

1. The World Health Organization declared a global pandemic of Coronavirus Disease 2019 (COVID-19) due to widespread human infection worldwide, Wisconsin Governor Tony Evers and Waukesha County Executive Paul Farrow declared public health emergencies, respectively, for the State of Wisconsin and County of Waukesha. The Waukesha County Circuit Court System has issued Orders on Emergency Temporary Services.

2. The Waukesha County Judiciary discussed and considered the recommendations outlined in the Chief Justice's Wisconsin Courts COVID-19 Task Force Report, as well as the State Supreme Court orders dated May 22, 2020 and are committed to following this plan.

3. The Waukesha County Judiciary recognizes and is committed to open access to our courts and service to the public, and to protecting the health and safety of all litigants, judicial officers, court and security staff, attorneys, public, all other participants in court proceedings, and other individuals entering the courthouse.

Restrictions and recommendations to avoid gatherings in excess of ten (10) people are problematic because many Court proceedings, including jury trials, require more than ten (10) people in the courtroom at one time. The public has a right to view open public Court proceedings that are not otherwise closed or confidential according to law. All courtrooms have space limitations and the public does not have the right to enter the courtroom if the number of people in the courtroom exceeds safety limits, fire codes or other legal restrictions. Similar safety concerns regarding the number of people who can safely enter a courtroom during a contagious disease public health emergency also apply and it may be necessary to limit the number of people who can enter the courtroom to view proceedings. However, the Court will take steps necessary to allow the public to view courtroom proceedings via live video stream to another large room or by Zoom video through an internet connection or by YouTube. Any public access by livestream shall be controlled by the Court and reasonable public access to hear and see will be allowed during all on-the-record proceedings. The public will have no right to participate verbally, as all audio access will be muted so as to avoid unintended interruptions.

4. All court officials will use reasonable efforts to continue to conduct proceedings remotely with all participants encouraged to appear via zoom first, then by telephone.

5. Prior to the issuance of this Order, the Clerk of Courts office, in consultation with the court officials, addressed staffing needs and began the process of examining which personal protective equipment and supplies are deemed necessary. Where feasible, courtrooms will be supplied with protective gear and Plexiglas on the bench (where necessary to comply with the social distancing recommendations) and between counsel tables as outlined below. In addition, spaces for social distancing seating will be marked on the benches in each courtroom gallery. The use of personal protective equipment and other mitigation efforts will be reassessed regularly to ensure continued compliance with any new conditions.

6. In developing this plan, the Waukesha County Judiciary have consulted with the stakeholder committee mentioned above. This plan will be modified should the circumstances of the COVID-19 public health emergency require modifications to address changing conditions and safety issues.

7. The 12 Waukesha County Circuit Court Judges operationally function in four divisions: Civil, Criminal-Traffic, Family and Juvenile, with probate matters being heard by two of the judges. Each division and the Register in Probate have promulgated plans consistent with Order 20-SO-25 (IP) (67), In The Matter of: COVID-19 Operating Plan for Waukesha Circuit Court In-Person Proceedings.

8. Prior to the Final Report of the Chief Justice's Wisconsin Courts COVID-19 Task Force being released, the Chief Judge formed a Jury Committee consisting of stakeholders consistent with the group of stakeholders listed above to address the resumption of jury trials. Committee responsibility was divided into four sub-committees, Jury Facilities, Public Information, Jury Questionnaires and Voir Dire. The Committee and each sub-committee met several times to address the resumption of jury trials. Each sub-committee issued a report and recommendations, which have been considered by the stakeholders listed above in approving this plan.

### **Judge and Court Staff Health**

1. All individuals involved in the judicial system will be encouraged to continue to monitor their health and to report any concerns to the Chief Judge.

2. Court officials and court staff will be required to practice social distancing, and practice appropriate hand hygiene recommendations at all times.

3. Court officials and court staff will be required to wear face coverings as outlined below.

### **Vulnerable Populations**

1. According to the CDC, the following individuals are considered to be vulnerable populations:

A. People 65 years and older;

B. People who live in a nursing home or long-term care facility;

C. People of all ages with underlying medical conditions, particularly if not well controlled;

D. People with chronic lung disease;

- E. People with moderate to severe asthma;
- F. People who have serious heart conditions;
- G. People who are immunocompromised;
  - i. 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;
- H. People with severe obesity (body mass index [BMI] of 40 or higher);
- I. People with diabetes;
- J. People with chronic kidney disease undergoing dialysis; and
- K. People with liver disease.

2. Each court official will include information on orders setting hearings, dockets notices, and in other communications notifying individuals who are in vulnerable populations of the ability to contact the court to identify themselves as a vulnerable individual and receive accommodations.

3. Vulnerable populations, including jurors, who are scheduled for court will be accommodated by advising the Court and/or clerks so that appropriate steps will be taken in each case.

### **Screening**

1. Those entering the Courthouse, including jurors, are subject to security screening by County personnel through the Sheriff's office. Prior to the screening station, each person entering the Courthouse will be directed to a large sign with COVID-19 screening questions and asked to perform a self-assessment. Only those who, in their own judgment, answer the questions in the negative shall proceed through screening and enter the Courthouse.

### **Face Coverings**

1. All persons, including jurors, who are present in courtrooms, jury rooms, and other court-related confined spaces shall wear face coverings unless a court official specifically determines on the record that it is necessary for a person not to wear a face covering during the person's testimony in order for the court official or jury to weigh the person's credibility.

- A. The face covering requirement shall be posted at the entrance of each courtroom, jury room, and court-related confined space.
- B. The face covering requirement will be enforced by the court officials.

- C. Individuals will be encouraged to bring cloth face coverings with them, but if the individual does not have a face covering, a disposable mask will be provided.
- D. Supreme Court Rule 62.02(1)(f) requires parties to dress in a manner showing proper respect for the court, the proceedings, and the law. This provision is made applicable to the public at large when inside the Wisconsin courts. Face coverings must comply with this Rule.
- E. Any mask or face covering brought by an individual is subject to approval of the court.

### **Social Distancing**

1. All persons not from the same household who are permitted in the court building will be required to maintain adequate social distancing of at least 6 feet.

2. No more than two individuals not from the same household will be permitted in an elevator. If more than one individual from the same household is in an elevator, no other individuals will be permitted in the elevator.

3. Each restroom will be evaluated to determine the appropriate capacity to ensure social distancing and the maximum capacity has been posted on each restroom door.

4. Public common areas, including breakrooms and snack rooms, have been closed to the public or have been mapped and marked for appropriate social distancing.

5. Mitigation of the COVID-19 pandemic is further addressed by adoption of social distancing mapping of all court facilities insuring that facilities used will operate with six-foot social distancing or mitigation devices such as Plexiglas in lieu of six-foot social distancing to reduce transmission of the COVID-19 virus in the following areas:

- A. Courtrooms
- B. Courthouse or courtroom entryways
- C. Hallways
- D. Conference rooms
- E. Jury rooms
- F. Elevators
- G. Any other location where court participants may congregate
- H. Jury assembly rooms
- I. Rooms for the voir dire of juries

The Court recognizes that attorney-client confidentiality and trial strategy may be hindered if strict compliance to social distancing is required at all times. The Court will make exceptions

to allow attorneys and clients to deviate from social distance protocols to consult with each other or to facilitate representation (including co-counsel situations) in the courtroom when necessary.

### **Gallery**

1. The maximum number of persons permitted in the gallery of each courtroom will be determined and posted. The maximum capacity of the courtroom will be monitored and enforced by court staff.

2. The gallery of the courtroom will be marked to identify appropriate social distancing in the seating.

### **Well**

1. In each courtroom, the counsel tables, witness stand, judge's bench, and clerk, court reporter, and bailiff seating have been arranged in such a way so that there is social distancing of at least six feet between each space or outfitted with Plexiglas as outlined above.

### **Sanitation/Hygiene**

1. Hand sanitizer dispensers will be in all court-related areas of the courthouse, including but not limited to the public entrance to the building, outside of elevators on each floor, outside of each courtroom, and outside of bathrooms.

2. Disinfectant wipes or spray will be provided for each courtroom and jury room.

3. CDC flyers outlining appropriate hygiene, social distancing, and public safety will be posted in multiple locations on each floor of the court building.

4. The Clerk of Courts office will maintain a sufficient inventory of such items.

5. Warm water and soap shall only be used to clean Plexiglas surfaces.

6. The county will continue to follow CDC guidelines on cleaning all court related spaces. In addition to regular housekeeping/cleaning duties, additional housekeeping measures will continue as needed to ensure employees and the public have access to clean, sanitary facilities.

### **Public Information**

1. The Waukesha court officials and the Clerk of Courts office will continue to work with the Waukesha County Public Information Officer to notify the public and media on changes related to the expansion of court operations in Waukesha County.



2. The Clerk of Courts office will update its website with current information related to all COVID-19 efforts.

3. The Public Information Sub-Committee will work diligently to implement the Communication Plan. Appendix A, Public Information Sub-Committee Communication Plan.

## **Jury Trials**

### 1. Trial Days

A. In order to maximize the use of our designated jury trial courtrooms and reduce the backlog of jury trials, as well as accommodate the social distancing required for jurors during the voir dire process, the Courts will schedule the start of jury trials on multiple days per week (Tuesdays, Wednesdays and Thursdays) and stagger the report time for jurors, as appropriate.

#### i. Exceptions:

1. If there is not a civil trial scheduled and there is a third non-custody criminal trial scheduled, the civil courtroom can be used for the non-custody criminal case.
2. Five day or lengthier trials can start on Monday.
3. Juvenile Court should only be used for six-person juvenile court type trials.

### 2. Jury Status Hearings

A. All jury status hearings are to be scheduled no later than the Thursday prior to the start of the trial and if feasible the Monday prior. This will allow for the prioritizing of trials and movement of court officials to accommodate trial and court calendars.

### 3. Jury Assembly Areas

A. Jury Assembly Room (JAR): In order to maximize the use of the JAR, the Clerk's office will remove the tables in the JAR and adjacent café on days these spaces will be used for jury assembly purposes. The chairs will be lined up around the walls and middle area of the room.

#### B. Alternate Jury Assembly Areas:

- i. Cafeteria: Half of the cafeteria will be designated as an alternate jury assembly area when needed. For such use, the chairs will be lined up around the walls and middle area of the room.

- ii. Cafeteria breakout room: The cafeteria breakout room will be used as an overflow room if the JAR and café are overcapacity.
  - C. Juvenile Center: Jury Assembly will be held in the Juvenile Center for any 6 person trials that are held there.
- 4. Selected Jury Trial Courtrooms
  - A. Short Term: The courts have identified one civil courtroom, two criminal courtrooms and the juvenile center for jury trial use. The Judges will schedule trials into those courtrooms on a rotating basis based on priority scheduling as determined by the Judges on a divisional basis. The following courtrooms have been reviewed and determined to be the best options for use:
    - i. C267 (Civil)
    - ii. C215 (Criminal)
    - iii. C162 (Criminal)
    - iv. Juvenile Center (6-person juvenile/related jurisdiction hearings)
  - B. Long Term: An on-going review of the short-term plan will be done to determine whether the courts are able to expand the number of courtrooms available for jury trials to all or a more phased in approach.
  - C. These courtrooms will only be used for jury trials once all Plexiglas is installed as outlined below.
- 5. Voir Dire
  - A. C350 or the individual court rooms as outlined below will be used for jury selection (voir dire). Jurors will report to the Jury Assembly Room and once assembled sent to the appropriate courtroom for jury selection. Once the jury is picked, the jurors will go to C215, C162 or C267 for the trial.
    - i. When Plexiglas is added to the gallery of C215 and C267, those courtrooms can be used for voir dire as well as C350.
  - B. Voir Dire for 6 person trials held in the Juvenile Center will be conducted in the Juvenile Courtroom.
  - C. When feasible, the number of jurors called will be reduced through the use of pre-voir dire questionnaires.
- 6. Plexiglas Locations for Selected Jury Trial Courtrooms
  - A. Bench
    - i. Between Clerk and Judge
    - ii. Between Judge and Witness

iii. Between Witness and Court Reporter

B. Jury Box

- i. Between the 2 rows of jurors
- ii. Between each juror – approx. 4 feet high

C. Well

- i. Counsel Tables: Plexiglas will be installed at each counsel table separating the participants. It will sit on the table about 18 inches and then hang over (L shaped). A little space will be created at the bottom of the Plexiglas so that documents can be passed between counsel and client.
- ii. Bailiff station: a shield will need to be created at the bailiff station in situations where the bailiff is within 6 feet of the defense table.

D. Gallery

- i. Seating Rows: Between each row to facilitate voir dire and allow for additional public seating

7. Deliberation Rooms

- A. C267 Jury Room
- B. Jury Assembly Room
- C. Administration Conference Rooms
- D. Juvenile Court Jury Room

8. Prioritize trials – The following case types will be prioritized: criminal cases in which speedy trial demands and prompt disposition requests have been made, ME, CF, TPR's and any other cases that have time limits, followed by CM, CV and PR case types.

9. PPE - face coverings, hand sanitizer and sanitization/hygiene will be followed and utilized as outlined above.

10. Viewing to the public – priority seating in the courtroom will be given to family members and victim(s). If sufficient seating is not available, the trial will be streamed into another courtroom, broadcast by zoom or live streamed on YouTube.

11. Microphone – The use of a microphone stand with a mesh or external cover should be used for microphones located within the courtrooms.

## Appendix A

### Jury Committee Public Information Subcommittee

#### Resuming Jury Trials - Communications Plan

##### Messages:

- “We acknowledge concerns about health and safety due to COVID-19. We are taking precautions and will provide additional information as to specific procedures and mitigation efforts as is becomes available.”
- “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” (e.g., cleaning, disinfecting, masks, social distancing, etc.)
- Supreme Court Order and what it means
- Waukesha County plans to resume Jury Trials (date)
- What we have already done to increase courts services
- What we are doing to get back to full service
  - Mitigation efforts
  - Cleaning efforts

##### Ideas to disseminate information to the staff & public:

- YouTube video to put on website
- An insert/FAQ to mail with jury summons
- Public service announcements & press releases
- Social media messaging
- Waukesha County Insider articles
- Messages to all employees
- Courts employees FAQ’s about what do if there are cases and exposure
- **Internal deliverables**
  - Management level announcement email: Jury service is resuming, impacts on facilities, screeners, courts employees, what most county employees will notice, mitigation efforts, links to resources
    - Department heads

- CJCC
    - Judges
  - Courts staff announcement
    - Will explain changes to them and what they will need to communicate to lawyers, litigants, and how to get more information
  - Law enforcement partners announcement
    - Bailiffs, jail, screeners, DOC
  - Countywide employee announcement
- **External deliverables**
  - Press release
    - Will be posted online
    - Will go out on social media
    - Will also go to attorneys
  - Article in County Exec newsletter
  - **Juror communications – priority communications**
    - Initial announcement (letter) to those who have already been summoned
    - Initial announcement (letter) to those who will be summoned
    - Update jury page - letter about the issue of jury trials
    - Flyer for jurors – made in advance
  - Mitigation efforts document – will be linked to website - made in advance
  - Web page update
  - Video about mitigation efforts – link – made in advance
  - FAQ document
- **First Jury Trial Communications Plan** – will need to prepare for when we know when first Jury Trial will be held